



European Documents on Regional Autonomy/Democracy - Initiation of the Application in Serbia -

**EUROPEAN DOCUMENTS ON REGIONAL
AUTONOMY/DEMOCRACY - INITIATION OF
THE APPLICATION IN SERBIA**

Zajecar, October 2009

Publisher:
RARIS – Regional Development Agency Eastern Serbia

For publisher:
Vladan Jeremić

Authors:

Dr **Stevan Lilić**, full-time professor
Faculty of Law, University in Belgrade

Mila Vujić
Chairperson of the European Movement
in Serbia – Niš

Dr **Jovan Živković**, full-time professor
Department for Legal and Economic Sciences
State University in Novi Pazar

This booklet is produced in cooperation with the Centre for Regional Policy from Niš

The booklet is published within the project “Support to the regionalization process – the Timok initiative”

- The project is supported by:
1. Canada Fund, Canadian Embassy in Belgrade
 2. Open Society Fund
 3. Balkan Trust for Democracy

The opinions and views expressed in this booklet are those of the authors only and do not necessarily represent the official views of organizations that have supported the implementation of this project.

CONTENTS

1. INTRODUCTION.....	4
2. INFLUENCE OF THE <i>EUROPEAN CHARTER OF REGIONAL AUTONOMY</i> UPON THE CHANGES IN PRACTICAL POLITICS IN THE CURRENT SOCIO-POLITICAL PRACTICE.....	6
3. REVISION OF THE PRESENT LEGAL FRAMEWORK IN THE CONTEXT OF REGIONALIZATION IN SERBIA.....	9
4. REGIONAL CONCEPT AND LOCAL SELF-GOVERNMENT.....	13
5. RELATIONS IN LOCAL COMMUNITIES – TASKS FOR PRACTICAL POLITICS.....	14
6. NATIONAL MINORITIES AND SOCIAL PROCESSES IN SERBIA.....	17
7. CONCLUSION.....	20

INTRODUCTION

Despite of certain social changes suggesting that Serbia will also be re-structured, most of all, in view of the *Agreement on Stabilization and Integration (ASI)*, the *Strategy of the Regional Development of the Republic of Serbia for the Period from 2007 to 2012* and the *Act on Regional Development (2009)*¹ – as it was omitted to regionalize Serbia by the new Constitution (2006)² – it becomes certain that Serbia will, in its near future, be in the situation to take steps in its regionalization. To this effect, the European Charter of Regional Autonomy³ will be relevant for all levels of decision-making, i.e. now more actual (though still in the draft form) European Charter of Regional Democracy (2008). Certainly, two remarks have to be emphasized right away: (a) that the *European Charter on Regional Autonomy* is accented because this is the first document in which relevant European experiences in the field of regional self-government were synthesized, as well as that (b) this document has not been adopted by the Committee of Ministers and ratified by the Parliamentary Assembly of the Council of Europe (PACE) and that it is not obligatory for Council of Europe member countries. In relation to the fact that Serbia has no obligation of commitment to any document adopted by

institutions which gather regional and local authorities in Europe, any further discussion related to the *Chart* or other documents is a matter of affirmative and instructive character for the future development period of Serbian society according to the norms and standards which are being inducted in the European countries.

With respect to the given Charter, particular aspects of the Helsinki Declaration of Regional Self-Government (2002)⁴ and the Draft European Charter of Regional Democracy (2008)⁵ that have come into being as a sort of summary of all the considerations of particular legal-political practice in some member countries of the Council of Europe. To that extent these documents are in a way integral parts of the subject treated in this paper.

Stressing the significance of regionalization through the European Charter of Regional Autonomy (De-

¹ Act on Regional Development is adopted by the National Assembly of the Republic of Serbia on July 8, 2009, at the proposal submitted by the Ministry of Economy and Regional Development. The professional public has missed to see in this Act a step toward decentralization of Serbia - since this is the problem of administrative de-concentration resting upon functioning of the centralist approach.

² The Constitution of the Republic of Serbia was proclaimed in the National Assembly on November 11, 2006

³ *European Charter of Regional Self-Government*, Congress of Local and Regional Authorities of Europe, Council of Europe, 1997

⁴ Helsinki Declaration on Regional Self-Government adopted by the attending ministers at the thirteenth conference of the European Ministers in charge of a set of local and regional authorities in Helsinki, June 27-28, 2002

⁵ Draft European Charter of Regional Democracy in its Key Elements of Regional Democracy stresses: "Principle of Democratic Governance", "Citizen Participation", "Principle of Subsidiarity", "Principle of Good Governance and Administration", "Concept and Definition of Regional Authority", "Relations with Local Authorities", "Principle of Loyalty and Respect for Territorial Integrity", "Principle of Cohesion", "Constitutional or Legal Basis of Regional Self-Government", "Scope of Regional Self-Government", "Right of Initiative", "Regional Elected Bodies", "Conditions of Office of Elected Representatives Composing Regional Bodies", "Resources of Regional Authorities", "Self-organization of Regional Authorities", "Right of Association, Inter-regional Cooperation and External Relations", "Right to be Consulted", "Supervision of Regional Authority Acts" and "Protection of Regional Self-Government."

mocracy) actually points to its specific character in its intention to change the overall legal-political practice of the Serbian society in view of new system options, even more so when it is known that the international community transforms this aspect of social organization into a convention that suggests the rules for each country which is on its way to democratization, decentralization and affirmation of pluralist social system.

Since the application of the concept of regionalism has found its justification in many countries of developed democracy and the states that have recently joined the EU – all this depending on the tradition and the most immediate contemporary conditions of the given society⁶ - it can be pointed out that the practice of *indirect political right* has created such a social constellation that the expansion is evident of the system abilities regarding equalities in freedom (*isoleftism*), before law (*isonomy*) and rights to participation in government (*isocracy*).

Since our public does not take the social concept of regionalism as an urgent goal despite devastating data

about economic, social, demographic and other aspects that characterize other parts of Serbia apart from Belgrade and Novi Sad, a basic survey of the main aspects of defining regionalization according to the all-inclusive document of the Council of Europe, European Charter of Regional Autonomy, is given here.

In the context of the given issues, **the analysis is to present suggestions for new actions of practical politics in Serbia**, above all, through the aspects such as **socio-political and constitutional-legal practice** regarding the issues such as **importance of further spread of local self-government and the position of national minorities**.

⁶ About experiences of West European countries with the models of regional organization there are many texts. In this case, and for your information only, we are mentioning two, namely, Dr Irena Pejić, ph. d, (2007) “Decentralizacija vlasti i organizovanja regionalnih jedinica” (“Decentralization of Government and Organization of Regional Units”), in *Ka regionalnoj državi (Toward Regional State)*, Niš: Filozofski fakultet Univerziteta u Nišu, and Dr Nadija Skenderović-Čuk, (2002), “Evropske koncepcije regionalizma” (“European Conceptions of Regionalism”), in *Sandžak multietnička regija - evropska iskustva (Sandjak: A Multiethnic Region - European Experiences)*, Novi Pazar: Centar za regionalizam - Novi Pazar and NIŠP “Sandžačke novine”. In N. Čuk’s paper it is emphasized that regionalization takes place, on principle, through three aspects, namely, *as regionalization by adjusting the existing institutions* (Holland, Germany and Great Britain), *as regional decentralization* (France, Portugal and, to some extent, Greece and Turkey) and *as institutional (political) regionalization* (Spain, Italy and Belgium) which has, meanwhile, become a federal state.

1. INFLUENCE OF THE EUROPEAN *CHARTER OF REGIONAL AUTONOMY* UPON THE CHANGE OF PRACTICAL POLITICS IN THE CURRENT SOCIO-POLITICAL PRACTICE

In order to get out of the social crisis which was felt before and after eighties, when the ideas of unitary national states gave out regressive results, the European efforts have resulted in a series of documents critically directed toward centralized communities, all for the sake of affirming other kinds of social organization. Their intention was to establish additional levels of citizens' subjectivity as the condition needed for the realization of a democratically structured government no matter if it was the *Madrid Convention on Transfrontier Cooperation* (1980) or *European Charter of Local Self-Government* (1985). However, the efforts invested into making the documents related to the *regional autonomy* (starting from 1993, at the Conference held in Geneva) created, already by mid-1997, the initial space for issuing the *European Charter of Regional Autonomy* (through Recommendations No. 34) as a significant legal document.⁷ Thus the frame process for reorganization of Europe was completed with special tasks for the subsequent period of time – for it is the issue of initiating the institutionalization of the principle of autonomy – through the right to bring about legal acts by which the original jurisdictions of the units wider than local self-government are defined in view of the fact that the basic standards are set for all the countries wishing to expand the democratic principles and to get integrated into Europe.

The significance of the *European Charter of Regional Autonomy* lies in the

⁷ The Council of Europe has continued, in addition to the issuing of the *Helsinki Declaration on Regional Self Government*, to build upon this aspect of social organization by adopting the following documents at its Council of Ministers: *Declaration from Valence* (2007) and the *Draft European Charter of Regional Democracy* (2008)

fact that it requires the changes in the social practice through several aspects:

(a) Democratization of the government institutions

The concept of regional idea promotes the system social changes which denote *democratization of the society by changing the character of the governing institutions* thus providing for “right of citizens to participate in the conduct of public affairs at all levels of government is one of the democratic principles that are shared by all the member States and that the exercise of that right at regional level contributes to the entrenchment of democratic values and the rule of law”⁸. Such an approach implies a direct criticism of the centralist social system that fails to provide for a direct way of individual inclusion into governing activities. In other words, the concept of regionalization inaugurates decentralization of unitary social system by the principle of *subsidiarity*⁹ since it is, to paraphrase,

⁸ Second Art. of the Preamble of the *European Charter of Regional Autonomy*. In the *Helsinki Declaration* this idea is even more explicit, namely, that the process of decentralization and devolution (transfer of power to lower level) “reflects the shared conviction that economic growth, sustainable regeneration, quality public services and full democratic participation can be more effectively facilitated if governmental institutions are not overtly centralized” (*Helsinki Declaration*).

⁹ In her definition of this concept, Marijana Pajvančić navodi: “The principle of subsidiarity is defined as a general assumption of authority in favor of local community as a primary form of citizens' self-government. In the local community, all the affairs that are not explicitly under the jurisdiction of other levels of authority are taken care of, along with enumerating of all the competences at higher levels of authority. The application of this principle to the distribution of jurisdiction requires that the competences of all other forms of authority are determined by the method of enumeration. The

based on equal legitimism of different levels of government: local, regional, state and European and it represents significant contribution to the building of democracy in Europe.¹⁰

(b) It affirms political pluralism by the middle level of authorities

The presence of the phrase *political pluralism* by which the international community inaugurates a new form of social organization enables us to perceive two relevant aspects of the contemporary society. First of all, it refers to implied achievement of *political society* unlike the society with the characteristics of the community; it is only upon this basic fact that it is possible to affirm the so far suppressed factors of the social structure that were pushed to the margins in the centralized and national state.

In that sense, Art. 9 precisely defines that the region can realize its interests by representation in legislative or governing bodies, whether through the procedures of *negotiations* and *consulting* between interested state and region bodies, that is, that they stem from con-

regions' competences must neither be limited nor should they intrude upon the original jurisdiction of local authorities." (M. Pajvančić. 2008. „Ustavni okvir regionalne države“ („Constitutional Framework of Regional State“) in *Decentralizacija u kontekstu novog ustava Srbije i EU integracija (Decentralization in the Context of the New Constitution of Serbia and EU Integrations)*. Novi Sad: Centar za regionalizam

¹⁰ Paragraph 4, Preamble, *European Charter of Regional Autonomy*. In *Helsinki Declaration*, it is said that wherever there is regionalization, regional self-government is part of the democratic government. In this way of regional authorities, once they are established, must meet minimal standards of the democratic system just as they must take on legal competences and the possibility, within the constitutional and legal framework, to order and lead part of the public offices in their competence, in the interest of their citizens and in agreement with the principle of subsidiarity.

sultations of state bodies and a structure representing given region.¹¹

(c) It installs the wider understanding of the concept of autonomy

In the attempts to realize higher degree of democratization of the societies, the European Charter of Regional Autonomy also contributes to affirmation and enlargement of the *concept of autonomy*. This kind of conclusion is possible on the basis of the definition of *regional autonomy*: stating that the concept of regional autonomy implies the right and the genuine ability of the *widest territorial communities* (underlined by J.Ž.) within each member state with the elected bodies which are between state and local communities and which have either prerogatives of self-government or prerogative of state character to carry out, as their responsibility and in the interest of their population, a considerable part of tasks in public interests and in accordance with the principle of subsidiarity¹² With this positioning, the social community puts an emphasis on the change of the concept of state sovereignty since through the principle of regionalization it pleads for the foundation of the state on the regional concept.

¹¹ Art. 9 of the European Charter of Regional Autonomy regulates forms of region's participation in state affairs. The co-operation of different levels of government the Helsinki Declaration likewise states that "in so far as the constitution and/or law enable it, regional authorities and/or their representative bodies shall be represented or consulted, through appropriate bodies and/or procedures, with regard to international negotiations of the state and the implementation of treaties in which their competences or the scope of regional self-government are at stake." (3.3)

¹² European Charter of Regional Autonomy, Art. 3, paragraph 1

(d) Enables integration processes on the principle of inter-regional cooperation.

The last of the above-mentioned aspects that focuses attention on the significance of the European Charter of Regional Autonomy refers to the *integration processes based on the principle of inter-regional cooperation*. The international community has opted for such an approach with the belief that interregional and transfrontier co-operation is a valuable and necessary contribution to further building of Europe¹³ as well as the basis for elimination of any kind of obstacle to special cooperation that the unitary countries very often practiced. In that sense we have to understand the bodies it has formed for official coordination since it is evident that, in the process of institutional building, cooperation must expand which asks for additional guiding of the existing regional heterogeneity toward homogenization of values and principles with which Europe is creating its common space. That is why the *European Charter* has obliged the existing states, members of the Council of Europe, to accept the attitude stating that the building of respective European institutions must, in setting up and realization of the policies realized at the European level, take into account the existence of regions within the European states and to encourage participation of the region in the given institutions, especially within the Congress of Local and Regional Authorities of Europe (CLRAE) and the Committee of Regions of the European Union.¹⁴

¹³ Ibid, Preamble, paragraph 11. In order to establish social balance, the draft of the European Charter of Regional Democracy further elaborates this aspect in the Preamble (paragraphs 5, 6 and 7) assuming that the integration of minorities cannot be a neglected aspect of the organization of the democratic society.

¹⁴ Ibid, Preamble, paragraph 12. The Helsinki Declaration also stresses that the Council of Europe “provides a privileged meeting

place for European governments to address issues of local and regional government and to engage in dialogue at European level with the elected representatives of local and regional authorities as brought together in the Congress of Local and Regional Authorities of Europe (CLRAE)” (6).

2. REVISION OF THE PRESENT LEGAL FRAMEWORK IN THE CONTEXT OF REGIONALIZATION IN SERBIA

Regionalization is not explicitly verbalized by the currently valid Constitution of Serbia; it permits, however, apart from autonomous provinces of Vojvodina and Kosovo and Metohija, the formation of new autonomous provinces. Vojvodina has certain regional competences with respect to the rest of the country, while Kosovo and Metohija are under a special regime of the Resolution of the UN Security Council, No. 1244.

Constitution of the Republic of Serbia¹⁵ has paid special attention to the obligation of the state to take care about regional and sustainable development, namely, „Republic of Serbia takes care of equal and sustainable regional development in accordance with the law “ (Art. 94). Thus, the Republic of Serbia arranges for and provides for “development of the Republic of Serbia, politics and measures for encouraging uniform development of individual parts of the Republic of Serbia including the development of underdeveloped regions” (Art. 97, paragraph 12). Though the legal frame for regionalization exists in the provisions of Art. 182, paragraph 3 of the Constitution which sets down the formation of new autonomous provinces through a complicated and somewhat controversial procedure, there is an increasing number of publicly expressed professional opinions that the regionalization of Serbia requires the change of the Constitution¹⁶. The alternative to the

relatively complex procedure of changing the Constitution might be an interpretation which would be offered by a National Assembly Committee, more precisely by the Constitutional Affairs Committee which, according to Article 44 of the Rules of Procedure of the National Assembly of the Republic of Serbia, among the rest: “examines (...) fundamental issues of application of the Constitution”.

When it comes to the Constitution of Serbia, its general reconstruction is needed with the aim to create a legal framework and a set of rules that are straightforward since, apart from its being a legal act, the Constitution is also a system of values. As for regionalization, expert public has already expressed some views stating that the Constitution of Serbia allows for regionalization while some other interpretations stress that the Constitution represents hindrance to the concept of regionalization which is pronounced within the European Union. The European Union firmly supports regionalization to the end of a better integration of citizens, incitement of

tution and this even among those who have adopted it”. In Paster’s interview one detail is especially worth our attention. While speaking about the fact that regionalization can be carried out so that the territory of region is not identical to that of province and that there can be many regions in the province, he said that “province and region are not synonymous but parallel notions”. We are of similar opinion since “it is not irrelevant whether we use the term province or the term region since this too is an indicator of the essence of its function”. The Constitution allows for the possibility of forming new provinces but it does not speak about regionalization in the same way it is spoken about in the European Union. Regions are here understood as counties while in Europe it is not only region which is spoken about but Euroregions which cross the borders of the existing states which is quite difficult to fit into the present constitutional frame of Serbia. Source. www.politika.rs

¹⁵ *Constitution of the Republic of Serbia*, “Official Gazette of the Republic of Serbia”, No. 98/2006.

¹⁶ Leader of the SVM (Union of Hungarians from Vojvodina) I.Pastor has stressed that, in his opinion, “at this moment a much bigger political problem lies in the fact that the constitutional-legal framework is not being put into practice since there is no political will to obey the Consti-

development and realization of complex economic, political and social programmes as successful as it is possible. According to some Constitutional provisions, it can be clearly seen that the Constitution does not explicitly mention regionalization; instead, it only mentions regional development.

The issue of regionalization of Serbia is, by the European standards (especially the questions of “how many” and “what kind of” regions are optimal for Serbia), of special importance not only from the standpoint of decentralization and “good territorial organization” of Serbia but, above all, regarding democratization and the “European future” of Serbia. The first step in that direction, meaning, concerning “regional (economic) development” has already been made – the National Assembly has adopted, on July 8, 2009, the *Act on Regional Development* (2009) which, among other things, implies “development regions” (in accordance with the NUTS-2 Standard), “development associations” and other institutions which contribute to regional development. The basic objective of the regional development policy is increase in the living standard of all citizens, not only of those living in Belgrade or Novi Sad. Certainly, this implies investments into infrastructure, creation of new job openings, but also social consensus and cooperation of all entities – on the national and the local level.

According to the *Act on Regional Development*,¹⁷ the concept of region implies a “statistical territorial entity which consists of one or many areas, established to meet the needs of planning and carrying out the politics of regional development in accordance of the NUTS Standard and which is neither an administrative territorial entity, nor it has legal subjectivity” (Art. 4, paragraph 1). For the sake of reducing regional dif-

ferences in economic growth and of stimulating the development of underdeveloped areas, of reducing negative demographic tendencies and of encouraging regional, interregional and trans-frontier economic co-operation, the *Act on Regional Development* assumes the formation of seven statistic regions, namely Vojvodina, Belgrade, East, West, Central and South Regions and Kosovo and Metohija.

The Act introduces “statistic regions” which have no political attributes, that is, no regional bodies of government that would be established at direct elections. Statistic regionalization does not imply political autonomy of regions; instead, it only defines municipalities and cities which fall under jurisdiction of regional development agencies. Regional development agencies, together with municipalities and other users will only have the opportunity to use the IPA funds, but will not participate in the system which manages spending of those funds. Therefore, the management system remains centralized. These regions will not be administrative territories; neither will they have legal subjectivity. Yet, each of them will have their own public agency for regional development which will be responsible for carrying out the policy of regional development. The regional agency will be ultimately supervised and controlled by the Government of Serbia and its institutions. In the pre-accession period the “statistic regions” will not have autonomy over the means allotted to them from EU funds for regional projects, as according to the rules of using the pre-accession funds, they cannot participate in management of a decentralized system of implementation of the EU funds.

Act on Regional Development also states the foundation of the *National Agency for Regional Development* as an institution at the state level for realizing the policy of regional development as well as a *network of regional development agencies* at the regional level. The national agency

¹⁷ *Act on Regional Development*, “Official Gazette of the Republic of Serbia”, No. 51/2009

for regional development will control the network of regional agencies and coordinate activities at the national, regional and local levels. The regional development agencies will be responsible for carrying out the policy of regional development of the Republic of Serbia at the regional level.

Though the *Act on Regional Development* somewhat lays the foundation for the beginning of regionalization in Serbia, at this moment, at the political stage, the opinions are divided about whether this technical-administrative action will open up the way to substantial decentralization and regional autonomy that would imply the regions being able to, through their own institutions, make decision about important issues in their everyday regional life and within which the regions will have genuine and factual financial independence.

Changes of the Act on Territorial Organization of Serbia. In accordance with the *Act on Territorial Organization of Serbia*,¹⁸ territorial organization of the Republic of Serbia comprises: 150 municipalities (minimal population number is 10.000), 23 cities (minimal population number is 100.000) and the City of Belgrade as a territorial entity, as well as two autonomous provinces (Vojvodina and Kosovo and Metohija) as form of territorial autonomy. According to this Act, no statistic regions are to be established while the formation of regional development agencies as associations of several municipalities has so far been *ad hoc*, mostly supported by donor and without adequate legal and institutional framework that would organize the process.

The *Act on Territorial Organization* still represents a step back from the promotion of democracy and coming closer of local authorities to citizens

¹⁸ *Act on Territorial Organization of Serbia*, "Official Gazette of the Republic of Serbia", No. 129/07

since in some of its parts it is contradictory to the European Charter of Local Self-Government. This is especially reflected in the following: *Act on Territorial Organization* introduces into the legal and political system of the Republic of Serbia the criteria which are taken into consideration when defining the size of local self-government units and municipality areas. The criteria for founding local self-government units are too wide which has been used for defining the status of city in certain municipalities and preserving too large units of local self-government without any reasonable explanation. Regarding the formulation of the provision on the criteria for city formation, the impression is this is some sort of attempt to introduce some sort of regions through cities though no scientific standards are respected (such as, for instance, the existence of a wider urban zone), nor the criteria of the EU institutions (EUROSTAT units by the NUTS nomenclature). A new act on territorial organization would have to provide the framework for forming or changing the areas of particular municipalities or cities as well as assume the formation of statistic regions.

Changes of the Act on Financing Local Self-government. According to the presently valid *Act on Financing Local Self-government*¹⁹ it is stated that cities and municipalities have the right to: a) direct revenues, b) determination of the revenue rates, and c) collection of direct revenue. The Act, additionally, determines the rate of the share of municipalities and cities in income taxes. The amount of transfer for each unit of local self-government for the subsequent year is determined in the budget memoranda as well as economic and fiscal policy thus improving the position of fiscally poorer

¹⁹ *Act on Financing Local Self-government*, "Official Gazette of the Republic of Serbia", No. 62/2006

units of local self-government. The amount of transfer is precisely defined and so are the precise criteria for distribution of both basic giving and of means of balancing material position of local self-government units so that they can have certain and steady sources of revenue which they can plan and which provide for citizens' inclusion into budget debates. This Act should be changed so that it could arrange for region financing as well.

Act on Regions. In addition to the changes of the already existing laws, especially with respect to the adopted *Act on Regional Development*, the possible need for adoption of a separate *Act on Regions* should be considered, which would regulate in detail the position, authority and responsibility of regions, should regions be introduced into the constitutional order of Serbia.

3. REGIONAL CONCEPT AND LOCAL SELF-GOVERNMENT

The task of the contemporary democratic societies is direct toward establishing genuine balance among competences of the central government, on one hand, and regional and local autonomy, on the other. In this case, the issue is the introduction of a regional social concept instead of a centralized one which, not so rarely, grows into an oligarchic and authoritarian approach to the social system.

When it comes to regional self-government, it is necessary to remind ourselves of three models of regionalization that can be found in the European states. The first model of evolutionary regionalization within the existing system of local self-government includes Sweden and Germany, the second one implies that regional decentralization of the unitary state is realized through formal constitution of region with the institutions having no higher or different status comparing to other government bodies as in France and Portugal. The third model of institutional or political regionalization is characterized by a high degree of regional autonomy and constitutionality as in Italy and Spain.

Following the most recent provisions on regionalism, we point out that the Standing **Committee of Local and Regional Authorities of the Council of Europe** defines conceptually regionalization as the formation of a new level in the state territorial organization, that is, the introduction of new institutions which can be of a great variety with respect to bodies, responsibilities, power, that is, competences but which are always installed above the level of the existing local institutions.

Socio-political aspect about purposes and functions of the regional level, that is, type of government, tells about smaller or greater autonomies of specific populations and territorial units of government, greater efficiency of

control over social resources, cost reduction of managing economic and other subsystems of the society, including also satisfaction of increasing citizen's needs for social security and life quality, common self-respect, mutual esteem and civil solidarity in political community.

Political-economic competition and mutual control of all the levels of government also implies legitimacy of state system, pluralization of society, safeguarding and development of value patterns, more direct communication of government with concrete configuration of interests and recognition of responsibility of citizen's service. The necessity is also further increase of citizens' participation in affairs of public importance along with emphasizing the relevancy of "softening the frontiers" or so-called "soft frontiers."

The very concept of region is defined very flexibly, including the regions which are only subordinated levels of the central government or which are, in a narrow sense, an expression of regionalization in which region is a territorial authority that can be further differentiated according to its constitutional status.

Regionalism as a political concept should be understood as the concept denoting the intentions to realize political-legal recognition for a greater or smaller degree of autonomy of specific communities and their territorial units of government. This, first of all, encompasses competences that regional authorities can have with less than full sovereignty but more than mere administrative functions. Thus, we can conclude that, if there is no developed local democracy in the state, then there is no genuine democracy in it in the modern sense of the word.

4. RELATIONS IN LOCAL COMMUNITIES – TASKS FOR PRACTICAL POLITICS

Having in mind the analysed European documents – above all the analysis of the *European Charter on Local Self-government*, considering individual aspects and Articles by which policy papers are being installed, to the end of strengthening regional and local self-government, the following tasks are listed, on the principle from general to specific:

1. Regional competences must be institutionally defined within new (regional) competences, through Constitutional or legal changes

European Charter of Local Self-Government, in Art. 7, defines regions that have competences with respect to communities and to which they refer to, should all respect the spirit of self-government in their relations with given communities. In established constellations with local communities, regions apply the principle of subsidiarity. Regions can transfer part of their competences to local communities according to the law, thus respecting the principle defined by Art. 5. Due to this, **the first recommendation to political action is that, by constitutional or legal changes, new competences should become part of regional regulations, that is, that bodies in region (such as, for instance, executive council of region, that is, boards formed by this body or the assembly of region) should be given the competences to safeguard further independence concerning all the issues that they make agreements about with local communities.**

As the defining of competences of regions implies either adoption of the new Constitution or a change thereof in the part which refers to territorial organization, then it is a responsibility of a Committee for Enactment of a New Constitution in the first case or, in the second case, it can be done through

amendment of the Law on Constitution, by which competences of regions are being defined.

2. Creating an institutional impact of regions on the policy of the Central Government, by determining the Constitutional status of regions and managing over overall potentials

Of the European documents that have directly dealt with these issues, we should single out the *Draft European Charter of Regional Self-government*²⁰, as the first document trying to get together relevant European experiences without any imposition of any model. The characteristic aspect of this *Charter* lies in its implication that regionalization establishes an inter-media level of institutions guaranteed by the Constitution and law. Regions of this level can meet the demands of a wider community while, at the same time, they can negotiate with the central government which cannot be done by municipalities or communities of municipalities. **This leads us to the second recommendation to practical politics that the established regions should be allowed substantial competences according to the new constitutional position in controlling their overall potentials that they develop in co-operation with the central government with respect to the state politics.** The respect of thus formulated principle increases the credibility of the region even in the decision-making at the central level (by establishing a special body in the National Assembly – House of Regions), as well as participation in transfrontier co-operation which represents the true base for establishing Euroregions which is also a proposal and possibility according to this *Charter*.

²⁰ Recommendation 34 (1997) of the CLRAE on the Draft European Charter of Regional Self-Government

Definition of the competences of regions necessarily implies either enactment of a new Constitution of the Republic of Serbia or its change in the part which refers to territorial organization. In this case, this is in the competence of a Committee for Enactment of a New Constitution or through issues of amendment of the Law on Constitution, by which competences of regions are defined.

3. Strengthening of regional self-government by expanding and linking of the self-government on the level of competences of local institutions.

Strategy on Innovation and Good Governance at Local Level, adopted by the Committee of Ministers of the Council of Europe in March, 2008, structures the principles toward better local government on the basis of divided responsibilities of governments, associations of local authorities and individuals in local government. **Accordingly, the third assumption of practical actions in politics is defined for the sake of permanent stimulation of actions of national and local interested parties in order to permanently improve the quality of local public services, population participation and direct political action.** The actors in the realization of this provision can be institutions competent by their very nature such as the Municipal Assembly, Association of Representatives of Municipal Government, and the like.

4. Introduction of the European labels of quality and of awarding the excellence, through which European practice is being recognized and applied in the field of regional and local self-government.

This *Charter* is relevant also regarding the obligation of local authorities to constantly improve their work, above all, in view of the “twelve princi-

ples »²¹. The actions of national program must have an integrated agreement with local authorities. **Regarding the importance of this document, the practical political activity has, as its task, to enable, which is the fourth recommendation to practical politics, the introduction, into all forms of action, the European mark of quality and reward for exceptionality by which the European practice in the field of local self-government is identified and applied.** That such an approach is not of formal character is confirmed by programs of action which include legal and institutional reforms, institutional dialogue, training and capacity building, self-evaluation, action plan making, and the like. That is why the Council of Europe has appealed to all local authorities to participate in this initiative and to voluntarily oblige themselves to their citizens that they will carry out their obligations in accordance with the “twelve

²¹ 1) Fair Conduct of Elections, Representation and Participation, to ensure real possibilities for all citizens to have their say in local public affairs; 2) Responsiveness, to ensure that the local authority meets the legitimate expectations and needs of citizens; 3) Efficiency and Effectiveness, to ensure that objectives are met while making the best use of resources; 4) Openness and Transparency, to ensure public access to information and facilitate understanding of how local public affairs are conducted; 5) Rule of Law, to ensure fairness, impartiality and predictability; 6) Ethical Conduct, to ensure that the public interest is put before private ones; 7) Competence and Capacity, to ensure that local representatives and officials are well able to carry out their duties; 8) Innovation and Openness to Change, to ensure that benefit is derived from new solutions and good practices; 9) Sustainability and Long-term Orientation, to take the interests of future generations into account; 10) Sound Financial Management, to ensure prudent and productive use of public funds; 11) Human rights, Cultural Diversity and Social Cohesion, to ensure that all citizens are protected and respected and that no one is either discriminated against or excluded; 12) Accountability, to ensure that local representatives and officials take responsibility and are held responsible for their actions.

principles” of good democratic governance.

In attempting to put the democratic assumptions into practice, which is part of the *Strategy on Innovation and Good Governance at Local Level*²², as a general direction of every civil state we quote three of its goals:

1. That citizens ... should be at the center of all democratic institutions and processes;
2. That local authorities permanently improve their government in accordance with the «twelve principles » of good democratic governance;
3. That state and/or regional authorities form and preserve institutional requirements for improving government at the local level, by building upon their existing competences in accordance with the *European Charter of Local Self-government* and other standards of the Council of Europe.

²² The application of the *Strategy* at the European level will be monitored and directed (so that all will be included and all will have benefits from it) by the representatives of the Committee of Ministers, Parliamentary Assembly, Congress, European Committee for Local and Regional Democracy (CDLR) and Conference.

5. NATIONAL MINORITIES AND SOCIAL PROCESSES IN SERBIA

However, it is known that Serbia has no *Law on the rights and freedoms of national minorities*²³, that the *Act on Acceptance of the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities*²⁴ has not been adopted – that is why the items of the articles 26 and 27²⁵ of the *Act on National Councils of National Minorities* and the *Act on Local Self-government* are formal in character so that the whole treatment of the national minorities, regarding their collective rights in the Constitution, can be considered, to put it mildly, insufficiently explicit; therefore, certain suggestions can be given here that would be on

²³ *Act on the Rights and Freedoms of National Minorities* was adopted in 2002, at the time when Serbia was part of the Socialist Republic of Yugoslavia. Since this law is still effective today, used in a handy way, this is legally and politically impermissible.

²⁴ Despite the fact that this Convention (a document of the Council of Europe from Madrid, 1980) encourages cooperation between territorial communities or authorities in the fields of regional, rural and urban development, in the field of protection of the environment, improvement of operations of public institutions and enterprises and enabling a quick response after natural disasters and catastrophes, it is true that without the adoption thereof, there is no “strengthening of good neighbourly relations between territorial communities or the authorities” (Art. 2), but also there is no clear message on “encouraging the initiative of territorial communities or the authorities” (Art. 3).

²⁵ In the *Act on National Councils of National Minorities* - section about the International and Regional Cooperation, in Articles 26 and 27 it stands that the representatives of the National Council participate in negotiations or are consulting while negotiating bilateral agreements with mother countries in the part which directly refers to the rights of national minorities, (Art. 26). It also says that the “representatives of national minorities, through the Council of the Republic of Serbia for national minorities, participate in the procedure of making, that is, accessing international or regional agreements referring to the position and safeguarding of the rights of national minorities” (Art. 27).

the agenda of further improvement of the position of the members of the national minorities in Serbia.

Since the above-mentioned remark mainly refers to the Constitution of the Republic of Serbia as the highest legal act that all the other legal and legal-derived acts, we are of the opinion that its critical issues include the following articles of the Constitution of the Republic of Serbia: 1, 19, 75, 80 and 181.

a) Since the Republic of Serbia is defined as “a state of Serbian people and all citizens living in it” (Art. 1), that is, since it refers only to the majority population, then it can be understood that inclusion of national minorities in the phrase “and all citizens living in it” represents an example by which the status and rights of the collective are substantiated not only through a limited approach but also with no organic foundation and institutional opportunities for genuine integration. The approach to national minorities instead of minority national communities is set up from the outside, that is, the status of identity varieties of people – as defined constitutionally – is realized in a mechanical way despite the fact that they also part of the equal and domicile civil population corpus.

b) Taking into consideration the attitude of the constitutional determination of the Serbian state as expressed in the Art. 1, then the safeguarding of national minorities²⁶ - according to Art. 14 – is outstandingly external implementation of particular rights. Since the rights of national minorities are not realized with constitutional meaning, the consti-

²⁶ “The Republic of Serbia protects the rights of national minorities. The state guarantees special safeguarding of national minorities in order to carry out the full equal rights and preserve their identity.” (Constitution of the Republic of Serbia, Art. 14)

tutional guarantees²⁷ (Constitution, Art. 19) are directly questioned since the way of implementing law is also part of subsequent workup of particular legal assumptions instead of being expression of internal cohesion and system. To support this, we should add that the discourse used and in which the safeguarding and defense of the rights of minority communities is part of the unitary conceptual approach to every other and every different community (national, religious and linguistic) which does not belong to the nationally majority core.

(c) Since the attitude toward the collective rights of national minorities has improved with the adoption of the *Act on Prohibition of Discrimination*²⁸ and the *Act on National Councils of National Minorities*²⁹ still the question remains considering the ways in which these rights can be fully realized without any *Act on the Rights and Freedoms of National minorities* or

²⁷ “Guarantees of inalienable human and minority rights in the Constitution serve to preserve human dignity and realize full freedom and equality of each individual in a just, open and democratic society, based on the rule of law.” (Constitution of the Republic of Serbia, Art. 19)

²⁸ Act on Prohibition of Discrimination was adopted by the National Assembly of the Republic of Serbia on March, 18, 2009

²⁹ Act on National Councils of National Minorities was adopted by the National Assembly of the Republic of Serbia on August 31, 2009

In view of the fact that this Act has been adopted, it does not seem groundless to say that what the Constitution of the Republic of Serbia assumes is not approximate, namely: “Through collective rights the members of national minorities, directly or through their representatives, participate in decision-making or decide themselves about particular issues relating to their culture, education, information and official use of language and alphabet in accordance with the law. For the sake of realizing the right of self government in culture, education, information and official use of language and alphabet, the members of national minorities can elect their own national councils in accordance with the law (Art. 75, paragraphs 2 and 3)

Act on European Outline Convention on Transfrontier Co-operation Between Territorial Communities or Authorities. Since, it must be noted here, only if the laws are adopted which do not exist now, can the position of representatives of the members of national communities be fully encompassed, i.e. their structural representation within sub-national communities and also when it comes to economic participation in society, even more so since it is stated verbatim in the *Act on National Councils of National Minorities*: “National Council, *in accordance with the law* (underlined by J.Ž) cooperates with international and regional organizations, with state organs, organizations and institutions in mother countries as well as with national councils or similar bodies of national minorities in other states.” (Art. 26). If the system position of national minorities is partly improved, then it still lacks not only the fundamental legal base but also the legal regulations which provide national minorities with full propulsion – in their coming to be equal in the right to cooperation that they themselves consider relevant.

d) Within the suggestions concerning the changes of the legal regulations, it is also considered relevant that equality and equal rights of minority collectivities at the local level are brought into question despite the fact that such possibility exists in the Constitution of the Republic of Serbia (Art. 181)³⁰ This alternative remains a dead letter because the members of national minorities cannot interconnect through local self government with other interested parties outside the state-regulated politics (since the present agreements that are made or concluded are no

³⁰ “Autonomous provinces and units of local self government cooperate with respective territorial communities and units of local self government of other countries within the foreign policy of the Republic of Serbia along with the respect of territorial unity and legal order of the Republic of Serbia.”

longer of protocol character) since such cooperation, regarding the EU politics, is based on larger rights that should be possessed by regional and local community. Not a single aspect in the need to enhance the rights of citizens and collectivities no longer points to the necessity of regionalization of Serbia – not even through the rights of national minorities if we know that at the present level of asymmetrical position of citizens and members of national minorities there is a drastic difference between the citizens living in the AP of Vojvodina and south of Belgrade, that is, that the national minorities in Serbia cannot have transfrontier cooperation according to the extent of understanding the needs of national minorities outside the established state policy.

Policy Papers

According to the *Declaration* the tasks for practical politics comprise the following suggestions:

1. Making the outline for the act on the rights and freedoms of national minorities in such a way that the position of national minorities obtains constitutional importance both at the state and the regional levels.

2. Initiating the outline for the act on adoption of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities in order to establish compatible relations to what the Constitution of the Republic of Serbia and the Act on Local Self-government, among other documents, foresee, i.e. by adoption of which it would be enabled that structural representation fully takes root according to the composition of population on the level of sub-national communities and also the transparency of the transfrontier

co-operation for representatives of national minority collectives.

3. Change of the constitutional definitions of Serbia in the Art. 1 since the foundation for new definitions should be in accordance with the paradigm of the society of civil providence thus increasing the extent of subjectivization of national minorities.

4. Return of property to local communities³¹ since not a single government has done it after 2000; no realization of genuine rights and freedoms is possible without being in the position to command the goods that are inalienable of people who make them and control them.

Only in the case that the above-mentioned suggestions are taken as guidelines in defining the position of national minorities can we speak about Serbia as a functional structure and, finally, the state of law, even more so since it involves most the subsystem sphere. In other words, only then can we speak about other approach and allocation of goods and services, re-regulation of behavior of not only central but regional authorities as well, re-defining political, economic, social and all other participation toward a greater extent of active inclusion of the members of national minorities as well as a greater extent of the possibility for the collective rights of national minorities to get realized through their right to their own identity.

□ Local communities have lost the right to command property in 1995 when, at the times of Slobodan Milošević, the *Act on the Means as Property of the Republic*.

CONCLUSION

The analysis of the *socio-political* and *constitutional-legal practice*, and of what would mean further *advancement of local self-government* and *improvement of the position of national minorities* - as stated in the Introduction to be the objective of this paper – makes it explicitly clear that the *European Charter of Regional Autonomy* turns out to be the crucial document for further development of civil and open society. Even more so when it is used to be the base – following the subsequent experiences from the countries already practicing regional concept – from which to draw new conclusions and bring about new and more precise provisions that would oblige future states that opt for regionalization. *European Charter of Regional Autonomy*, as well as other documents of this type (for improving organization of local self-government, transfrontier co-operation and the like), precisely define further provisions for overcoming the state in the societies that have not fully built a politically structured social system in which the citizen is the subject of every social engagement.

The relevance of this Charter also becomes apparent in view of the fact that it definitively establishes standards for the build-up for structuring social relations for every society tending toward the development of democracy, regardless of whether it is already marked as a candidate or if it is preparing for application to the membership of the European Union. In other words, knowing that the adoption of this or some other chapter which would deal even more strictly with provisions of regional problems is not a condition for joining the EU, the conclusion can be that during the transition of the Serbian society there should be no urgent move towards regionalization. Instead, regionalization must be a process, must be part of the general

awareness of the majority of citizens as well as political and legal carriers of the functions who see in it means to achieve general betterment of the citizens' position. Namely, regionalization in the Serbian society is not needed for its own sake; neither is it an occasion to say that Serbia is regionalized. It should be a step toward achieving something else, namely, uniform regional development and further increase of citizens' participation in social processes in the surroundings in which they live and work. Both these moments are casual and part of the unique social practice. This task is autonomous and independent of any kind of conditioning on the part of the EU or some of its bodies; it is relevant by itself for the citizens, for Serbia in which disproportions in the development of some of its parts are such that the unitary concept and centralized approach have endangered its very substance – man in all possible respects, namely, existential, educational, social behavior, moral as well as national, religious, linguistic, or any other aspects in the sense that certain majority has always been behaving in such a way as if there are no other established categories from the new age paradigm, namely initiative, solidarity, tolerance, dialogue, co-operation, responsibility and the like.



RARIS - Regional Development Agency Eastern Serbia

Trg oslobođenja 1, 19000 Zaječar, Serbia
tel/fax + 381 (0) 19 426-376, 426-377
office@raris.org
www.raris.org

Supported by:

