

LOCAL SELF-GOVERNMENT IN BOSNIA AND HERZEGOVINA WITH AN OVERVIEW OF THE REPUBLIC OF SRPSKA

Review paper

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Abstract:

Local self-government units are key cells of every country's development, pervading deeply needs and interests of local community members, the citizens of a state, who are considered to be the key factor in survival and development of a community. No successful democratic society can be achieved without a good and efficient local self-government. For that reason, a special attention needs to be brought to the issue of local self-government units.

In Bosnia and Herzegovina, there is a fragmented system of local self-government units at entity level, with a very low degree of mutual cooperation, which greatly complicates and hinders the functioning of local self-government units at the state level. There is no unity in regulation and compliance of local self-government units functioning, at the state level, with the European Charter of Local Self-Government, or the documents of the Council of Europe, which is at odds with the aspirations of our country in the process of Euro-Atlantic integration with the rest of Europe.

Keywords: *local self-government, monotype and non-monotype system, the European Charter of Local Self-Government, financing of local self-government units, municipal bonds, Association of Municipalities and Cities*

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1. INTRODUCTION

Bosnia and Herzegovina has a fragmented system of local self-government units, monotype in the Republic of Srpska and non-monotype in the Federation of Bosnia and Herzegovina, with a different structure of competences and different regulation of territorial organization and functioning. There is a diversity, in terms of bodies of local self-government units in the entities, as well. This study is focused on the problem whether the existing structure, competences and functioning of the local self-government system in Bosnia and Herzegovina correspond to the actual social, economic and political environment in Bosnia and Herzegovina and the Republic of Srpska. The subject of the research is a detailed analysis of the structure, competences and functioning of the local self-government system in Bosnia and Herzegovina and at the entity level, in order to identify weaknesses and the degree of the system compliance.

The research has been conducted with the main scientific aim to establish whether the current structure, competences and functioning of local self-government system in Bosnia and Herzegovina correspond to actual social, economic and political environment in Bosnia and Herzegovina, and based on the research results, to come up with specific possible solutions i.e. benefits, with respect to the most efficient functioning of local self-government units achieved in Bosnia and Herzegovina and to completely meet the interests of all local communities members, the citizens of our country, and to contribute to development and prosperity of the Bosnia and Herzegovina as a whole.

The main social objective of the research in the paper is how to adjust, in the process of conforming to EU standards, in the most rational manner, the structure, competences and functioning of the system of local self-government in our country and to eliminate the problems that have been occurring in the previous functioning, slowing down the progress and further development of Bosnia and Herzegovina.

The basic hypothesis upon the research in the paper is based is that the existing structure, competences and functioning of the local self-government system in Bosnia and Herzegovina, at the entity level, do not correspond to the actual social, economic and political environment in Bosnia and Herzegovina and represent an obstacle to its further development. In Bosnia and Herzegovina, there is a high degree of diversity in terms of economic development and cultural differences, which leads to inevitable acceptance of non-monotype system of municipalities.

2. LOCAL SELF-GOVERNMENT - CONCEPT AND CHARACTERISTICS

“Local self-government implies right and capacity of local self-government units to, within the limits of the Law, regulate and govern certain public affairs under their own responsibility and in the interest of local population (Gavrić, Banović, Krause, 2009)”.

According to the European Charter of Local Self-Government adopted by the Council of Europe in 1985, local self-government can be defined as the right of citizens and local self-government bodies, to regulate and manage, within the Law, specific public affairs, under their own responsibility, in the interest of local population (Kunić, 2010).

Its essential purpose is sorting out existential problems and providing qualitative service to local population.

The key characteristics of the local self-government are:

- autonomy and independence,
- decentralization and democratization,
- voluntarism based action.

These characteristics make local self-government significantly distinctive from the public administration, characterized by a hierarchical relationship, subordination of lower to higher bodies, centralization and coercion prevailed operations.

The European Charter of Local Self-Government contains provisions by which the relationship principles of the central and local bodies are determined, such as *the principle of legality, the principle of efficiency and expediteness, the principle of proportionality, the principle of so called residual competence, and the principle of subsidiarity, i.e. the righteous autonomy.*

Staff of local self-government bodies is composed of persons performing work duties at the bodies, on a permanent and professional basis, consisted of officials, officers and employees.

3. CHARACTERISTICS AND LEGAL BASIS OF LOCAL SELF-GOVERNMENT IN BOSNIA AND HERZEGOVINA

Characteristics and complexity of local self-government in Bosnia and Herzegovina come out of its complex organizational and functional structure, composed of two entities and Brčko District, empowered with high degree of autonomy and competences in state administration functioning.

Local self-government *is not regulated or determined* by any provision of *the Constitution of Bosnia and Herzegovina*, unlike other actual constitutions of developed countries, except in terms of territorial organization of Bosnia and Herzegovina. In other countries, local self-government is treated as *a right of citizens*. According to the Constitution of Bosnia and Herzegovina, local self-government falls within the competence of the entities. However, Bosnia and Herzegovina is a signatory of the 1954 European Charter of Local Self-Government, which is legally binding, although constitutional and legal compliance with the same have not been accomplished.

The basic form of local self-government units in Bosnia and Herzegovina is municipalities or cities, and there are no *second instance forms of local self-government units*, present in comparative legal systems such as districts, departments, etc.

Nowadays, in Bosnia and Herzegovina, there are 80 municipalities in the Federation of Bosnia and Herzegovina and 63 municipalities in the Republic of Srpska, i.e. there are two different and contradictory systems of local self-government, when location, jurisdiction and functioning of municipalities, cities and other forms of local self-government are concerned.

4. LOCAL SELF-GOVERNMENT IN THE REPUBLIC OF SRPSKA

Local self-government in the Republic of Srpska is entrusted to municipalities and cities, and is executed by citizens and authorities of local self-government units.

A *Municipality* in the Republic of Srpska acts as a decentralized body of entity government, under the Constitution, the Law and the Statute, and as a basic territorial unit of local self-government, it is formed on a part of a populated area, one populated area or more than one populated areas. In the Republic of Srpska, a *monotype model of municipality is accepted*, i.e. all municipalities have the same competences and powers, i.e. legal status of municipalities is the same regardless of size, population, level of development, etc. Accordingly, there are three essential characteristics of the local self-government concept in the Republic of Srpska (Kunić, 2010):

- one-level local self-government,
- monotype organization with a municipality as the basic unit of local self-government,
- "Omnibus" system of jurisdiction accepted, where units of local self-government, regardless of different territorial, demographic, economic and other differences, execute almost the same tasks.

Units of local self-government have their own legal personality and other unique features (their own name, territory, population, autonomous regulations, bodies, property, budget, symbols, holidays, seal, etc.).

Pursuant to the Constitution of the Republic of Srpska, Article 102, authentic competences of municipalities are defined, according to which, a *municipality* (Simović, Dmičić, 2005):

- enacts development program, urban planning, budget and final accounts,
- regulates and provides utility services,
- regulates and provides use of city construction plots and business premises,
- ensures construction, maintenance and use of local roads, streets and other public facilities of municipal significance,
- ensures meeting the needs of citizens in culture, education, health and social welfare, physical culture, provision of information, craft, tourism and catering industry, environment protection and other areas,
- executes laws and other regulations and general acts of the Republic entrusted to the municipality for execution,
- ensures enforcement of regulations and general acts of the municipality,
- establishes organs, organizations and services for needs of the municipality and determines their organization and business operations,
- carries out other operations stipulated by the Constitution, the Law and the Statute of Municipality.

Independent municipal competencies are (Gavrić, Banović, Krause, 2009):

- In terms of regulatory actions and municipal management:
 - Adoption of municipal development programs,
 - Adoption of development, spatial, urban and implementation plans,
 - Adoption of budget and final budget account,

- Development and provision of construction land and business premises,
- Organization of Communal Police,
- Inspection activities in accordance with the Law,
- Management and disposal of municipal assets,
- Education and arrangement of municipal authorities, organizations and services,
- Carrying out cadastral, geodetic, property and legal affairs in accordance with the Law,
- Collection, control of collection and enforced collection of original municipal income,
- Legal representation of the municipality,
- Law and other regulations enforcement.
- In terms of providing services:
 - Execution of specific functions in the field of culture, education, sports, health and social welfare, civil protection, information, craft, tourism, catering industry and environment protection,
 - Installation and provision of utility services such as production and supply of water, gas, heating, public transport, sanitation, water purification and wastewater discharge, maintenance of cemeteries and providing funeral services, maintenance of streets, roads, green, recreational and other public areas, storm water and other precipitation drainage and cleaning of public areas,
 - Establishment of enterprises, institutions and other organizations to provide services within their jurisdiction, their management and organization arrangement,
 - Arrangement of construction, maintenance and use of public facilities and infrastructure necessary for execution of municipal functions.

Pursuant to the Constitution the Republic of Srpska, local self-government system is regulated by the Law, according to which, local self-government affairs can be entrusted to *a city*. A city is constituted by the Law, in an urban area, making a coherent geographic, social, economic, historical and territorial entity with an appropriate level of development. If it does not have two or more municipalities in its composition, it is empowered with competences assigned to municipalities, and municipalities, within the city composition, have the right to execute all municipal competences, which have not been assigned to the city, under the Law or the Statute.

The bodies of local self-government units in the Republic of Srpska are *the Municipal Assembly and the Mayor of Municipality*. The Municipal Assembly, consisted of municipal assembly members, is a decision-making and policy-making authority of the municipality, with powers emerging from original and independent municipal jurisdiction, stipulated by the Constitution, the Law and the Statute of the Municipality. The same applies to the powers of the Mayor of Municipality, who is responsible to the Municipal Assembly for his work and legality of all acts proposed by the Municipal Assembly.

Citizens are directly involved in local self-government in terms of making decisions on construction of utility facilities, taking initiative for enacting and amending regulations and acts under jurisdiction of the municipality, recommending and complaining

about the work of local self-government, excluding and integrating populated places, from /in the composition of the municipality, through referendum, assembly of residents, civic initiatives, local communities, citizens' panels, proposals, citizens' hours in the Municipal Assembly and other activities stipulated by the Law.

5. LOCAL SELF-GOVERNMENT UNITS FINANCING AND PROPERTY IN THE REPUBLIC OF SRPSKA

In the Republic of Srpska, all movable and immovable property, essential for execution of competences of local self-government units, is owned by local self-government units and includes communal infrastructure facilities, business facilities and other facilities of public utility companies, founded by local self-government units, facilities financed from the municipal budget or through citizens' contributions, then property acquired in the procedure of legal succession after the companies and institutions existing no more.

According to the Constitution of the Republic of Srpska, the Article 103, a city and a municipality are entitled to revenues determined by the Law and allocated funds for execution of entrusted activities. Revenues of local self-government include (Gavrić, Banović, Krause, 2009):

- local taxes (taxation of real estates, agriculture and forestry revenues, games of chance revenues, etc.),
- local stamp duties (municipal, administrative, utility, etc.),
- local fees (construction land development, use of natural and other resources of common interest, spatial and urban planning, etc.),
- real estate revenues (rent, interest, sale),
- contribution revenues,
- revenues from offence procedure fines determined by the municipal acts,
- other revenues stipulated by the Law.

Local self-government units can be financed both from credit funds and municipal bond issue for construction and implementation of utility and infrastructure projects.

According to the data formerly published ("Euroblic", 5 December, 2011. *Loans obtained exceed the budget*), municipalities and cities in the Republic of Srpska are charged with more than 290 million BAM of loan debt. It was the debt in the end of 2010 disclosed by the Ministry of Finance. The highest debt had Banja Luka, followed by Bijeljina, Prijedor and Dobož. Presently, the most indebted municipalities are Knežev, Šamac, Srbac, Gradiška, Laktaši, Novo Goražde, Istočni Stari Grad, Kozarska Dubica and Kostajnica. Municipalities are usually indebted due to financing important infrastructure projects, like investment in water supply network and road construction, but it is not rare for municipalities to become indebted in order to settle debts or pay salary to employees.

6. ASSOCIATION OF MUNICIPALITIES AND CITIES IN BOSNIA AND HERZEGOVINA

The Association of Municipalities and Cities of the Republic of Bosnia and Herzegovina was originally founded in 1973, for the purpose of improvement and development of local self-government system and protection of interests of local communities; due to actual state-political organization and territorial concept of Bosnia and Herzegovina, two entity associations have been constituted, the Association of Municipalities and Cities of the Federation of Bosnia and Herzegovina and the Association of Municipalities and Cities of the Republic of Srpska.

The Association of Municipalities and Cities of the Federation of Bosnia and Herzegovina was founded in 2002 with the aim of further development, work improvement and protection of interests of local self-government units, through exchange of experiences and opinions, promotion and protection of common interests, participation in regulation adoption consultations and cooperation with national and international associations.

The Association of Municipalities and Cities of the Republic of Srpska was founded in 1998 in Brčko, and represents the national association of affiliated municipalities, with the aim of mutual cooperation, providing services to its members, sharing experiences, representing their interests before the central authorities, joint performance and action. The strategy of the Association is creating and ensuring high standards of all crucial elements of the organization, i.e. objectives, resources, structure, personnel, information and vital elements of management and planning, decision-making, coordination and control of all the Association members.

7. RELATIONSHIP WITH CENTRAL GOVERNMENT AND LOCAL SELF-GOVERNMENT REFORM

In the Republic of Srpska, local self-government is under the jurisdiction of the Ministry of Public Administration and Local Self-Government of the Republic of Srpska, exercising main activities related to (Ministry of Public Administration and Local Self-Government, 2011):

- system and organization of public administration,
- system of public services,
- drafting laws and by-laws within the Ministry jurisdiction,
- providing opinions on compliance of internal organization acts and systematization of working positions in administrative bodies with the Law and other regulations,
- study-analytical and analytical-personnel affairs,
- salaries of the employees in the Republic administration,
- citizenship,
- personal status of citizens,
- administration inspections,
- administrative cases in the second-degree proceedings,

- drafting submissions in court and other proceedings,
- coordination of public administration reform,
- administrative fees,
- Central Registry activities and correspondence for the needs of the Republic administrative bodies,
- political and territorial organization of the Republic,
- organization and improvement of the political-territorial and electoral system of the Republic,
- parliamentary system,
- political organizations and citizens' associations,
- foundations,
- *study-analytical and statistical-registry activities related to local self-government,*
- *drafting reports on implementation of local self-governance units policies for the previous year;*
- *execution suspension of the decisions made by local self-government units bodies,*
- *administrative supervision of local self-government units bodies and legality of acts,*
- administrative and professional activities, including information and documentation activities enabling planning, monitoring and execution of the Ministry programs,
- *duties related to European integration strategy and policy in the realm of Public Administration and Local Self-Government,*
- *harmonization of regulations with the EU legislation in the field of Public Administration and Local Self-Government and other activities in accordance with the Law,*
- administrative and other professional activities of the Republic administration, not delegated, according to this Law, to jurisdiction of other Republic administration bodies.

According to the insight into the Annual Progress Report on implementation of the First Action Plan of the Public Administration Reform Strategy in Bosnia and Herzegovina, for the period from 1 January to 31 December, 2010, we can notice that the progress rate of the First Action Plan planned measures implementation, as compared to the previous reporting period, mounted up by 10.16%, while the overall implementation of the AP I is 49.23%.

The highest implementation progress has been achieved in the domain of Institutional Communication at the level of 64.57% and the lowest in the domain of Information Technology at the level of only 37.70%. The degree of AP I implementation until 31 December, 2010 is shown in the Table 1 at the levels of government in Bosnia and Herzegovina.

Table 1. Overview of AP 1 implementation until 31 December, 2010 at the levels of government in Bosnia and Herzegovina

Bosnia and Herzegovina	46,75 %
Republic of Srpska	53,71 %
Federation of Bosnia and Herzegovina	43,44 %
Brčko District	53,54 %

Source: Ministry of Public Administration and Local Self-Government, 2011.

According to the mentioned report, the overall implementation of the First Action Plan of the Public Administration Reform Strategy in Bosnia and Herzegovina is presented in the reform areas as follows:

Policy-making and coordination capacity development	47,51 %
Public Finances	54,23 %
Human Resources Management	51,61 %
Administrative Procedure	39,74 %
Institutional Communication	64,57 %
Information Technology	37,70 %

With respect to the Republic of Srpska, the overall implementation of the First Action Plan of the Public Administration Reform Strategy in the Republic of Srpska is presented in the reform areas as follows:

Strategy of Public Administration Reform in the Republic of Srpska, by reform areas is presented as follows:

Policy-making and coordination capacity development	49,07 %
Public Finances	57,17 %
Human Resources Management	53,10 %
Administrative Procedure	50,20 %
Institutional Communication	67,44 %
Information Technology	45,25 %

The overall local self-government system in Bosnia and Herzegovina, in respect of all its aspects, needs to be harmonized with the ratified European Charter of Local Self-Government and the European Union accession criteria, in accordance with the Council of Europe regulations, by harmonizing local self-government laws at the entity level in Bosnia and Herzegovina or enacting a Local Self-Government Framework Law at the state level, integrating its regulation into the Constitution.

8. FINAL CONSIDERATIONS

The system of local self-government in Bosnia and Herzegovina is fragmented at the level of entities and is characterized by a high degree of diversity in terms of competences and accepted system of its organization and functioning, as well as insufficient cooperation between local self-government units in the entities, and particularly within

the limits of Bosnia and Herzegovina. Constituted as such, the local self-government system, is an obstacle for the total development of our country.

In Bosnia and Herzegovina, there is a high degree of diversity, in terms of economic development and cultural differences, which makes non-monotype system of municipalities acceptable.

Local self-government is not regulated by the Constitution of Bosnia and Herzegovina, and there is no local self-government law at the state level although the European Charter of Local Self-Government was ratified and is legally binding for our country. It means that *normative decisions*, in terms of local self-government in our country, *have not been adequately harmonized*.

Limits to the competences of local self-government both in the Federation of Bosnia and Herzegovina and the Republic of Srpska have been set up quite broadly and can meet all needs of local community members.

Applying various local self-government systems, monotype system in the Republic of Srpska and non-monotype system in the Federation of Bosnia and Herzegovina, in the aspect of the European Charter of Local Self-Government ratification and interests of our country, in terms of the European Union accession, is inadmissible, because Bosnia and Herzegovina is obliged, from that point of view, to regulate local self-government at the state level, by the Constitution or laws at the state level. However, in the aspect of appropriate meeting the needs of local community members and rationality and efficiency of local self-government units financing, for Bosnia and Herzegovina, as a multiethnic community, characterized by varying levels of development in different regions, *non-monotype system of municipalities is acceptable*.

When the Association of Municipalities and Cities is concerned, at the level of Bosnia and Herzegovina, *there is no unified BIH Association of Municipalities and Cities*, which suggests to insufficient cooperation between particular municipalities and cities in Bosnia and Herzegovina, on individual as well as general basis.

The overall local self-government system in Bosnia and Herzegovina, in respect of all its aspects, needs to be harmonized with the ratified European Charter of Local Self-Government and the European Union accession criteria, in accordance with the Council of Europe regulations, integrated in the Constitution of Bosnia and Herzegovina. It means that it is necessary to implement harmonization of entity local self-government laws in Bosnia and Herzegovina or to enact a Local Self-Government Framework Law at the state level.

Regarding the Association of Municipalities and Towns, in order to raise to higher level cooperation among local self-government units, it is necessary, at the level of Bosnia and Herzegovina, to attain unity of entity Associations, acting as *the United Association of Municipalities and Cities in Bosnia and Herzegovina*, with or without the existence of present entity associations.

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