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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
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COMMENTS
ON THE CONSTITUTION OF SERBIA
(Part VII)

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1. Part Seven of the Constitution contains provisions on the territorial organisation (Art. 176 – 193). In addition, some provisions included in other parts of the Constitution, as well as the Preamble, are of relevance for assessing the constitutional regulation of territorial organisation.
2. Part One (Constitutional principles) includes a general provision on the citizens' right to provincial autonomy and local self-government, which right is stated to restrict state power. This right shall be subjected only to a supervision of constitutionality and legality (Art. 12). The provision of the citizens' right is repeated in Art. 176, with the addition that the citizens shall exercise their right directly or through their freely elected representatives.
3. The explicit provisions on the right to provincial autonomy and local self-government are to be welcomed. At the same time, it should be emphasised that these provisions, which confer the constitutional right only on citizens, should not be interpreted as preventing the extension of the right to vote and of other participatory rights at the provincial and local level to non-citizen residents.
4. It is also to be welcomed that the constitutional right covers the right, not only to local self-government, but also to provincial autonomy. However, the explicit constitutional guarantees for provincial autonomy are rather weak.
5. According to Art. 182(1), there are two autonomous provinces in the Republic of Serbia: the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija. The establishment of new autonomous provinces is possible only following the procedure required for amending the Constitution, after the citizens (residing in the region?) have approved the proposal in a referendum (Art. 182(2)).
6. The supreme legal act of an autonomous province is the Statute. Only the adoption of the Statute of the Autonomous Province of Vojvodina is regulated by the Constitution: the Statute is adopted by the provincial Assembly, but only after a prior approval of the National Assembly. (Art. 185)
7. The adoption of the Statute of the Autonomous province of Kosovo and Metohija shall obviously be regulated by the law referred to in Art. 182(2) of the Constitution. According to this provision "the substantial autonomy of the Autonomous Province of Kosovo and Metohija shall be regulated by the special law which shall be adopted in accordance with the proceedings envisaged for amending the Constitution".
8. The Preamble of the Constitution also includes a reference to "the status of a substantial autonomy" of the Autonomous Province of Kosovo and Metohija". However, the Constitution leaves open the contents of this "substantial autonomy". Pending the international solution to the problem of the province's future status, this could be considered appropriate. On the other hand, the Constitution can also be seen as an effort to exclude certain solutions to the problem. Thus, the Preamble characterizes the Province of Kosovo and Metohija as an "integral part of the territory of Serbia" and states that "from such status of the Province of Kosovo and Metohija follow constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija". The oath a newly elected President shall take before the national Assembly also stresses the territorial integrity of Serbia: "I do solemnly swear that I will devote all my efforts to preserve the sovereignty and integrity of the territory of the republic of Serbia, including Kosovo and Metohija as its constituent part ..." (Art. 114(3)). The President is also said the "express state unity of the republic of Serbia (Art. 111). This repeated emphasis on the status of the Province of Kosovo and Metohija raises questions about the very purpose of the constitutional reform.

9. Art. 177 contains a general provision on the competences of both autonomous provinces and units of local self-government. The definition, however, is very vague. Thus, "local self-government units shall be competent in those matters which may be realised, in an effective way, within a local self-government unit, and autonomous provinces in those matters which may be realised, in an effective way within an autonomous province". An additional requirement, however, is that the matter "shall not be the competence of the Republic of Serbia".

10. The constitutional regulation of the division of competences between the State, autonomous provinces and units of local self-governance are quite complicated and leave quite a wide scope for interpretation and specification through legal acts of lower rank. Art. 183(2) includes a list of fields where autonomous provinces shall regulate matters of provincial interest. However, the exact division of competences between the State and the provinces shall be determined through law. As regards the municipalities, their areas of competence are listed in Art. 190, but this provision also includes a requirement of "accordance with the Law". Correspondingly, Art. 177(2) states that "what matters shall be of republic, provincial or local interest shall be specified by the Law". The Constitution also contains a provision (Art. 97) on the competences of the Republic of Serbia (Art. 97) which also covers the fields mentioned in Art. 183(2). Whether Art. 97 has any significance for the division of competences between the State and the units of provincial autonomy and local self governance remains unclear.

11. The constitutional guarantees for the financial autonomy of autonomous provinces are rather weak too. Thus, Art. 184 leaves open whether the provinces have a right of taxation or not. The Constitution also delegates to the level of the law the specification of state subsidies due to the autonomous provinces (Art. 184.(2). By contrast, Art. 184 (3) includes a rather peculiar provision according to which "the budget of the autonomous Province of Vojvodina shall amount to at least 7 % in relation to the budget of the Republic, bearing in mind that three sevenths of the budget of the Autonomous Province of Vojvodina shall be used for financing the capital expenditures".

12. The Constitution does not include any explicit guarantees for the financial autonomy of the municipalities, either. Art 188(4) only lists the sources of revenue but does not, for instance, establish a right to taxation or state subsidies

13. As is laid down in Art. 12(2) autonomous provinces and units of local self-governance are subject only to supervision of legality and constitutionality. According to Art. 192(1) "the Government shall be obliged to cancel the enforcement of the municipal general act which it considers to be in non-compliance with the 'Constitution or the Law, and institute the proceedings of assessing its constitutionality or legality within five days. Although it is not expressly stated (unlike in Art. 186, concerning the decisions adopted by autonomous provinces) the proceedings obviously take place before the Constitutional Court (see para 4 of Art. 167(1)). It would have been preferable to let the Constitutional Court decide – in conformity with the provision in Art. 186 concerning the decisions of autonomous provinces) - also on the interim ban on the enforcement of the municipal act.

14. According to Art. 192(2-3) "the Government may, under the terms specified by the Law, dismiss the Municipal Assembly" and "appoint a temporary body which shall perform the duties within the competences of the Assembly, taking into consideration the political and national composition of the dismissed Municipal Assembly". This provision should be interpreted in the light of Art. 12(2): the dismissal should be possible only if the Assembly has acted in contradiction with the Constitution or the law. Because of the constitutional / legal nature of the measure, the Government's competence of dismissal should have been subjected to the requirement of a prior assessment of the case by the Constitutional Court.