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EUROPEAN CHARTER ON LOCAL SELF-GOVERNMENT: STANDARDS AND PRACTICAL APPLICATION

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Abstract: Local self-government is considered one of the foundations of European democracy. The importance of local self-government in Europe is not only administrative, but also political and social, and is based on the fundamental principle that decisions should be made as close as possible to citizens. Without strong local self-government, the state itself becomes centralized, which leads to greater bureaucracy and alienation of citizens from political decision-making, i.e. from the opportunity to directly participate in the conduct of local government affairs. The most important elements on which local self-government in Europe is based are subsidiarity and financial autonomy. The European Charter of Local Self-Government, adopted in 1985 under the auspices of the Council of Europe, is the first binding international treaty dedicated to protecting the autonomy of local authorities. The European Charter establishes common standards for political, administrative and financial independence, thereby placing local self-government at the very heart of democratic governance. Through this text, we analyze the historical context, key principles, legal structure and oversight mechanisms in the practical application of this important act, emphasizing its central role in shaping and improving local democracy and Europe as a whole, with a special focus on the Republic of Serbia. The European Charter of Local Self-Government represents more than a simple proclamation of certain principles. Indeed, the European Charter is a fundamental, binding legal instrument that has significantly shaped the understanding and practice of local democracy in contemporary Europe. By combining strong principles (such as subsidiarity and financial autonomy) and a flexible binding mechanism, the European Charter has gained widespread acceptance across European countries. The aim of this paper is to provide a comprehensive analysis of the standards established by the European Charter and to examine how they protect local democracy. Particular attention is devoted to identifying the areas in which the Republic of Serbia is fully aligned with these standards, as well as those in which legal gaps remain and further improvements are required.

Keywords: local self-government, European Charter, Council of Europe, local authorities, decentralization, centralization, Republic of Serbia, ratification, financing, governance

1. INTRODUCTION

Local self-government is a crucial part of a modern democratic system, enabling citizens to participate, directly or through their elected representatives, in decision-making on affairs and other important issues of local importance. In response to the need for unified standards in this area, the Council of Europe adopted the European Charter of Local Self-Government in 1985 [1] (hereinafter: the European Charter), which has become a principal legal framework for regulating relations between central and local authorities on the European continent. This act is of particular importance in the context of European integration, as it represents the legal framework that candidate countries for membership of the European Union must implement in their national legislation. By ratifying the European Charter in 2007 [2], the Republic of Serbia undertook to harmonize its legal system with European standards in the field of local democracy. The monitoring mechanisms, in particular the work of the Congress, facilitate continuous dialogue and a stimulus for further reforms. The European Charter continues to serve as an indispensable starting point for all discussions on decentralisation, strengthening the potential of local authorities and deepening democracy.

This is the most important European document in the field of local self-government. It confirms the thesis that democracy is most thoroughly realised at the local level, and therefore establishes the fundamental principles on which it must be based, such as the legal protection of local self-government and the right to its own sources of income.

2. HISTORICAL DEVELOPMENT AND THE ORIGINS OF THE CHARTER

The idea of creating a universal document that would regulate local self-government at the European level emerged as the fruit of many years of work by the Council of Europe. The key steps towards this goal were the Declaration on Local Self-Government of 1968 and Council of Europe Resolution No. 126 of 1981 [3]. The

mentioned Resolution was of particular importance because it provided for the first draft of a legally binding international instrument in this field. After thorough consultations and preparations, the European Charter of Local Self-Government was finally adopted in Strasbourg on 15 October 1985 [4], and entered into force on 1 September 1988. It is the result of many years of efforts by the then Standing Conference of Local and Regional Authorities of Europe, the predecessor of the current Congress of Local and Regional Authorities of the Council of Europe. The Charter has been ratified by all member states of the Council of Europe without exception, confirming its universal acceptance as a common European standard. For the signatory states, the Charter is a binding international treaty, which obliges them to bring their legislation and practice into line with its principles, which in practice implies that the fundamental principle of local self-government is recognised and implemented in domestic legislation, and if possible in the constitution itself as the supreme legal act of each state. It is very important to emphasize that the adoption of the European Charter was preceded by the activity of the then Conference of Local and Regional Authorities, which was institutionalised and transformed into the Congress of Local and Regional Authorities of Europe in January 1994 [5]. This body today plays a major role in monitoring the implementation of the European Charter and promoting local democracy in the member states of the Council of Europe.

By signing this document, Council of Europe member states sought to achieve greater unity of the Council of Europe wanted to achieve greater unity in preserving and implementing the fundamental principles that form the basis of the Charter and their common heritage. By adopting the Charter, the member states of the Council of Europe wanted to contribute to the improvement of local self-government and the principles of democracy and decentralization. All these concepts are highlighted in the preamble itself, which is written in a formal and declarative tone. The Charter defines local

self-government as one of the essential parts of the *materiae constitutionis* [6].

The adopted principles have improved local self-government systems, especially in the countries that were socialist in Central and Eastern Europe, and the principles themselves are the minimum European standard that makes a democratic society in the field of local government law [7].

3. STRUCTURE AND KEY PRINCIPLES OF THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT

The essence of the European Charter is contained in Article 3, which defines local self-government as the right and ability of local authorities to, within the framework of the law, regulate and manage a substantial part of their public affairs under their own responsibility and in the interests of their local population.

The European Charter of Local Self-Government consists of three main parts [8]. The first part establishes the general principles of local self-government, the second part deals with the supervision of the work of local authorities, and the third part contains provisions on the implementation of the Charter.

Within the first part, the Charter formulates local self-government as “the right and ability of local authorities to, within the framework of the law, regulate and manage certain public affairs under their own responsibility in the interests of their local population” [9]. This definition emphasizes two basic principles: the autonomy of local authorities and their accountability to the local population.

The European Charter establishes several essential principles that constitute standards for the functioning of local self-government:

- 1) Constitutional and legal basis – the principle of local self-government must be recognized in the constitution or fundamental law of the state [10];
- 2) Autonomy of local authorities – local authorities must have genuine autonomy to make decisions to take decisions and manage the affairs within their competence without

unnecessary intervention by central authorities [11]. The European Charter stipulates that public affairs are primarily carried out by the authorities closest to the citizen. The transfer of responsibilities to a higher level is acceptable only if the performance of the task at a lower level is less efficient or impossible. Accordingly, local authorities have the right to shape their internal administrative structure. The supervision of the central authorities over their work is limited only to the verification of legality and must be carried out in a manner prescribed by the constitution or law, thus protecting the decisions of local authorities from unjustified interference in the assessment of expediency.

- 3) Financial autonomy - local authorities should have appropriate and proportionate sources of revenue, as well as the right to determine tax rates within the framework determined by law [12]; In order for local authorities to be able to effectively carry out their tasks, they must have adequate financial resources of their own. The European Charter requires that the revenues of local authorities be proportionate to their powers, that they have the right to specify, within the law, the rates of individual local taxes and that the system of financial assistance from the central government must not be used to jeopardise their discretionary decision-making rights.
- 4) Right to association – local authorities have the right to cooperate with each other and to form associations with other local authorities for the purpose of carrying out tasks of common interest [13];
- 5) Protection of territorial boundaries – the territorial boundaries of local units cannot be changed without prior consultation of citizens or holding a referendum [14].

4. LEGAL STRUCTURE AND METHOD OF OBLIGATION

One of the most important features of the European Charter is its flexible “à la carte” system of obligations. Although states must ratify the entire European Charter, they are obliged

to implement at least 20 provisions from Part I, of which at least 10 must be from the so-called “hard core”. This important set of provisions includes provisions guaranteeing a constitutional and legal basis (Art. 2), a definition of self-government (Art. 3), subsidiarity (Art. 4), the right to consultation (Art. 4, paragraph 6), border protection (Art. 5), financial resources (Art. 9) and legal protection (Art. 11). This system has enabled wide ratification while respecting the different national systems.

In 2009, the Additional Protocol on the right to participation in the affairs of local authorities was adopted, which goes into details relating to citizens’ rights to information, consultation and direct participation in decision-making. The Additional Protocol has been in force since 1 June 2012.

In addition to the fact that the European Charter applies primarily to the member states of the Council of Europe, its principles have been accepted in the organisation and functioning of local self-government in other countries as well, which is in line with the integration processes in Europe, and the principles themselves are broadly stated to be able to be applied by all states, regardless of differences in their historical, traditional and other circumstances [15].

4.1 LEGAL NATURE AND PROTECTION MECHANISMS

Although the European Charter is not directly applicable in all national legal systems, its legal nature as an international treaty includes the obligation of the signatory states to implement its provisions in their legislation. What is special about the European Charter is that it does not dictate a single model of local self-government, but rather respects the different legal traditions and political systems of the member states [16]. This flexibility has enabled the European Charter to be ratified by 47 member states of the Council of Europe, making it the most widely accepted instrument in the field of local democracy.

The instruments for protecting the right to local self-government provided for in the European Charter include:

- the right of local authorities to legal remedies to ensure the free exercise of their tasks [17];
- the limitation of administrative supervision exclusively to the review of constitutionality and legality [18];
- the prohibition of the dissolution of local councils without a procedure provided for by law and the obligation to restore their functioning as soon as possible [19].

4.2 MONITORING MECHANISMS AND IMPLEMENTATION

The monitoring of the implementation of the European Charter is systematic and comprehensive. The Congress of Local and Regional Authorities of the Council of Europe plays a central role, monitoring local and regional democracy in all member states. The Congress organises monitoring missions, transfers good practice and publishes reports assessing the coherence of national legislation and practice with the European Charter. As an expert support, the Congress has at its disposal the Group of Independent Experts on the European Charter, a body composed of leading academics.

In addition, a specialised online database, “Carta-Monitor”, has been established, which provides everyone with access to a detailed analysis of the European Charter by article for each individual state, as well as comparative analyses between countries. This tool helps researchers, activists and decision-makers to monitor progress in implementation.

5. IMPACT OF THE CHARTER ON THE LEGISLATION OF THE REPUBLIC OF SERBIA

By ratifying the European Charter in 2007 [20], the Republic of Serbia committed itself to aligning its legislation with its standards. This process was finalized with the adoption of the Law on Local Self-Government in 2007 [21],

which represents a significant step towards strengthening local self-government in Serbia.

The Constitution of the Republic of Serbia also contains provisions that are in line with the European Charter. Namely, Article 12 of the Constitution of the Republic of Serbia defines that state power is limited by the “right of citizens to provincial autonomy and local self-government”, while Article 176 guarantees citizens the right to local self-government, which is subject only to the control of constitutionality and legality [22]. This constitutional regulation reflects a substantial shift from the previous Constitution of the Republic of Serbia from 1990, which did not provide adequate protection for local self-government [23].

However, problems arise in practice in the application of the standards of the European Charter. The most significant challenges include:

- financial dependence of local units on the state [24];
- inadequate demarcation of competences between central and local authorities [25];
- limitation of the normative autonomy of local authorities [26].

5.1 MANDATORY PROVISIONS OF THE EUROPEAN CHARTER AND RATIFICATION BY THE REPUBLIC OF SERBIA

When ratifying the European Charter, each Contracting State must undertake to accept at least twenty paragraphs of the provisions that make up Part One of the European Charter (out of a total of thirty, which is two-thirds of the total number), at least ten of which must be chosen from among the precisely defined paragraphs [27] that constitute the “hard core” of the European Charter, which are contained in the following articles:

- Article 2
- Article 3, paragraphs 1 and 2
- Article 4, paragraphs 1, 2 and 4
- Article 5
- Article 7, paragraph 1
- Article 8, paragraph 2

- Article 9, paragraphs 1, 2 and 3
- Article 10, paragraph 1
- Article 11 [28].

Each Contracting State, when acceding to or accepting the European Charter, shall notify the Secretary General of the Council of Europe of the provisions it has accepted in accordance with the provisions of paragraph 1 of this Article. Serbia, in accordance with paragraph 2, has notified the Secretary General of the Council of Europe of the positions it has accepted. By counting the positions accepted by Serbia (a total of 24 positions, including all 10 mandatory “hard core” positions), Serbia has fulfilled the minimum requirements, which demonstrates a strong commitment to the principles of local self-government.

When depositing its ratification, the Republic of Serbia, in accordance with Article 12 of the European Charter, made a declaration by which it undertook to accept the following provisions:

- Article 2 – Constitutional and legal basis of local self-government.
- Article 3, paragraphs 1 and 2 – Concept of local self-government (right and capacity of local authorities to regulate their affairs, freely elected councils).
- Article 4, paragraphs 1, 2, 4 and 6 – Scope of local self-government (basic powers, freedom of initiative, consultation of local authorities).
- Article 5 – Protection of local authority boundaries (obligation to consult before changing boundaries).
- Article 7, paragraphs 1 and 3 – Conditions for exercising powers (free exercise of functions and incompatibility of functions).
- Article 8, paragraphs 1 and 2 – Administrative supervision (exercised only in accordance with the Constitution and law).
- Article 9, paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 – Financial resources (right to own resources, local taxes, access to the capital market).
- Article 10, paragraph 1, 2 and 3 – Right to association (cooperation, consortia and international cooperation).

- Article 11 – Local authorities (right to appeal to the court) [29].

In this way, the obligation of the Republic of Serbia under the European Charter has been specified, respecting the flexibility granted to the contracting states to choose the minimum number of provisions to which they will be considered bound, including the mandatory “hard core” provisions. The Republic of Serbia has accepted almost all the provisions of Article 9 of the European Charter, and the Law on the Financing of Local Self-Government [30] is a key instrument for their implementation.

By ratifying the European Charter, the Republic of Serbia has formally accepted the essential European standards in the field of local democracy and decentralization. An analysis of the key domestic legal acts of the Constitution of the Republic of Serbia, the Law on Local Self-Government, the Law on the Financing of Local Self-Government and the Law on Territorial Organization of the Republic of Serbia indicates that the legal order of the Republic of Serbia is to a significant extent aligned with the international obligations undertaken.

In this analysis, it is important to note that the Republic of Serbia has not made a declaration of acceptance of the following provisions from Part I of the European Charter:

- Article 4, paragraph 3 – Principle of subsidiarity (performance of tasks as closely as possible to the citizen).
- Article 4, paragraph 5 – Adaptation of delegated powers to local conditions.
- Article 6, paragraph 1 – Independent determination of the internal administrative structure.
- Article 6, paragraph 2 – Conditions of service and promotion of employees in local self-government.
- Article 7, paragraph 2 – Financial compensation and social security for elected representatives.
- Article 8, paragraph 3 – Proportionality of administrative supervision [31].

The Law on the Ratification of the European Charter of Local Self-Government does not contain any justification or explanation as to why certain articles or provisions of the European Charter were not accepted.

Constitutional guarantees, the definition of original competences according to the principle of subsidiarity, an established financing system that seeks to ensure adequacy and autonomy, a procedure for changing borders that includes prior consultation of citizens through a referendum, as well as strong mechanisms of legal protection before the Constitutional Court and the Administrative Court, represent a concrete realization of the principles of the European Charter. In addition to the fact that in practice there may be challenges in the application of these norms, the legislative framework provides a reliable basis for the further development and strengthening of local self-government in the Republic of Serbia, in accordance with its international positions.

6. ADDITIONAL PROTOCOLS AND RELATED DOCUMENTS

The progress of local self-government standards at the European level was further enhanced by the adoption of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of local authorities, adopted by the Council of Europe in 2009 [32]. This Protocol prescribes the mechanisms of involving citizens in decision-making processes at the local level, in particular through direct participation of citizens in the conduct of local self-government affairs (direct democracy), including referendums, citizens' initiatives and referendums [33]. The Republic of Serbia has not ratified this Additional Protocol to date [34], which is an obstacle to the full harmonisation of national legislation with European standards.

However, it is important to note that in 2021, the Republic of Serbia adopted a special Law on Referendum and People's Initiative [35], which specifically regulated the implementation of these institutions. With the adoption of this law, the provisions of the Law

on Local Self-Government and the Law on the Capital City that relate to local referendums [36] ceased to apply.

Other significant instruments in this field are:

- European Urban Charter [37] - focuses on the specific problems of urban environments and the rights of citizens in cities.
- World Charter on Local Self-Government (UN-Habitat) [38] - this document sets global guidelines for decentralization. It was developed under the auspices of the United Nations in order to apply the principles of local autonomy beyond the borders of Europe.
- Recommendations of the Congress of Local and Regional Authorities [39] - The Congress is a Council of Europe body that regularly monitors the state of local democracy in each member state. Their reports and recommendations have great political authority and often serve as a basis for legal reform in a country that is "lagging behind" in implementing standards.
- European Strategy for Innovation and Good Governance at Local Level (2008) [40] - introduces 12 principles of good governance, including the rule of law, efficiency and transparency.

7. CONCLUSION

The European Charter of Local Self-Government represents a fundamental instrument of great importance in the development of local democracy on the European continent. Its importance is reflected not only in the determination of general standards, but also in the promotion of the understanding of local self-government as a crucial condition for the functioning of modern democracy. Since its adoption, the European Charter has had a significant impact on the legislation of numerous European countries, including the Republic of Serbia. It provides a standard framework that defines the minimum rights and freedoms that local authorities must have in every democratic society.

The European Charter is implemented in the Law on Local Self-Government through

the direct incorporation of its basic principles, such as the autonomy of local authorities, financial independence and protection from interference by higher authorities, which is largely aligned with the European Charter. However, there are also certain differences, especially in the scope of autonomy, financing and the level of constitutional protection, where the law allows for greater central supervision than the European Charter recommends.

In Serbia, the implementation of the European Charter is monitored primarily by republican authorities through the review of the legality of local acts, as well as by courts for the protection of autonomy, in accordance with the Law on Local Self-Government.

Although Serbia has ratified the European Charter and adopted laws that formally align it with its provisions, significant work still needs to be done at the level of practical implementation. Special attention must be paid to strengthening the financial autonomy of local units, expanding their normative independence and enabling more effective participation of citizens in local governance. Only through the full harmonization of national practice with the standards of the European Charter will local self-government in the Republic of Serbia be able to fulfill its fundamental role, i.e. continue to be an instrument through which citizens directly shape the quality of their daily lives.

The Republic of Serbia is still working on full decentralization (especially in terms of real financial power at the local level), and the European Charter serves as a control mechanism, through its working bodies.

Although the European Charter has established a strong legal foundation, its further effectiveness depends solely on the willingness of states to ensure both formal and substantive implementation through forms of financial and administrative independence, which would make local authorities real carriers of development, capable of responding to all the demands and needs of their community in accordance with modern European and other international standards.

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ЕВРОПСКА ПОВЕЉА О ЛОКАЛНОЈ САМОУПРАВИ: СТАНДАРДИ И ПРАКТИЧНА ПРИМЕНА

Резиме: Локална самоуправа се сматра једним од темеља европске демократије. Важност локалне самоуправе у Европи није само административна, већ политичка и друштвена, а заснива се на основном принципу који се оглукује у томе да се одлуке доносе што је могуће ближе грађанима. Без снажне локалне самоуправе, сама држава постаје централизована, што води у правцу веће бирократије и отуђењу грађана од политике, односно од могућности да непосредно учествују у обављању послова локалне самоуправе. Најважнији елементи на којима почива локална самоуправа у Европи представљају супсидијарност и финансијска аутономија. Европска повеља о локалној самоуправи, која је усвојена 1985. године под окриљем Савета Европе, представља први обавезујући међународни уговор посвећен заштити права на аутономију локалних власти. Европска повеља утврђује заједничке стандарде за политичку, административну и финансијску независност, чиме локалну самоуправу поставља у сам фокус демократског управљања. Кроз овај текст анализирамо историјски контекст, кључне принципе, правну структуру и механизме надзора у практичној примени овог важног акта, истичући пре свега његову интензивну улогу у обликовању и унапређењу локалне демократије и Европи широм ње, са одређеним посебним освртом на Републику Србију. Европска повеља о локалној самоуправи репрезентује нешто више је од обичне прокламације одређених начела. Наиме, Европска повеља је основни, обавезујуће правно средство које је значајно обликовало разумевање и праксу локалне демократије у савременој Европи. Комбинацијом чврстих начела (као што су супсидијарност и финансијска аутономија) и флексибилног механизма обавезивања, Европска повеља је постигла изузетно широко прихватање у практичној примени Европских земаља. Циљ рада је свеобухватна анализа стандарда које поставља Европска повеља и начина на који они штите локалну демократију, уз могућност идентификације делова где је Република Србија потпуно усклађена и делова где још увек постоје правне празнине и могућност унапређења стандарда и поступања.

Кључне речи: локална самоуправа, Европска повеља, Савет Европе, локална власт, децентрализација, централизација, Република Србија, ратификација, финансирање, управљање