THE TREND OF LOCAL SELF-GOVERNMENT IN CROATIA

Nives Kopaitich Jurić


1. Introductory Remarks

Republic of Croatia is one of the recently established and recognized states in Europe. It was recognized as an independent and sovereign state by the EU countries on January 15, 1992. The admission of Croatia to the United Nations on May 22, 1992 completed the process of international recognition and the Republic of Croatia became an equal subject of international relations, and accordingly, one of the equal successor states of the former SFRY.

The international recognition of the Republic of Croatia and its inclusion in the international organizations and associations marked the beginning of a long lasting process of building of a democratic society on the basis of the rule of law, equality of citizens before the law and observation of human rights.

After the first multi-party elections held on April 22 and May 6 1990 Croatia, together with other countries in transition, began a process of transformation of the communist system into the system of parliamentary democracy and market economy, but at the same time it started, together with some other republics within the former SFRY, a political struggle for the establishment of equal relations within the federation. According to the SFRY Constitution then in force (adopted in 1974) Croatia as a republic had all the rights of a state, including the right to self-determination and secession.

The Croatian Parliament elected at the multi-party elections proclaimed the Constitution of the Republic of Croatia. The Croatian Constitution was a legal and political expression of the moment, partly also of the legal tradition of Croatia.
In addition to its provisions regulating personal, political, economic and social rights, the Constitution provides a general concept of the organization of government in the Republic of Croatia, based on the principle of separation of powers, as well as the basic structure of state administration and local self-government in Croatia.

The system of state administration and local self-government started to take shape by enactment of basic laws from this field, based on the constitutionally defined legal framework.

2. The Local Self-Government

The system of local self-government was elaborated in the Law on Local Self-government enacted at the end of 1992.

The Law on Local Self-government and Administration regulated the basic issues related to the bodies of local self-government units, their competencies and mutual relations, and established in principle the competencies of local units, as well as mechanisms for the governmental control of the legality of their work. The principle incorporated in the Law on Local Self-government and Administration was the principle of a monotype organization of local self-government on the entire state territory. However, it has become evident that it was impossible to achieve the then envisaged concept of local self-government by the unified approach to the local units. This relates primarily to the lack of differentiation of competencies delegated to the local units.

Other regulations necessary for the beginning of functioning of the envisaged system of local self-government, primarily the Law on the Territories of Counties, Towns and Municipalities in the Republic of Croatia were passed together with the Law on Local Self-government, at the end of 1992 and immediately at the beginning of 1993.

The territorial organization of the state, i.e. the way of defining the basic criteria for the establishment of local units, primarily their size, number of inhabitants, economic strengths and potential, but also the historic justification for their establishment, is an outstanding political and professional question, and one of the important moments that directly influence the strengthening of local democracy.

The establishment of the first territorial organization on this basis has only partially fulfilled the responsible task of shaping the local units, partly due to the fact that the Republic of Croatia is a country of unequal economic development, which has, throughout its history, encoun-
tered different influences, and partly due to its different historic, economic and especially social and cultural heritage.

In addition to the two above-mentioned fundamental and systematic regulations from the field of local self-government, the Law on the Election of Members of Representative Bodies was also passed. It regulated the issues related to the elections of members of representative bodies, nomination of candidates and conducting of elections, as well as legal instruments for the protection of electoral rights and other matters relevant for the election of members of representative bodies of these units.

The first local elections for representative bodies in the Republic of Croatia were held in 1993. Members of councils and assemblies, which were defined in Article 20 of the Law on Local Self-government as the representative bodies of citizens responsible for the passing of acts within the framework of the rights and duties of local units, were elected at those elections.

The envisaged system started to be realized by the holding of the first elections, by the constitution of representative bodies of local units, and, subsequently, by the election of executive bodies. However, it should not be forgotten that due to the temporary occupation of a significant part of the country, the first local elections for the representative bodies of municipalities, towns and counties were carried out with significant difficulties and on dislocated polling stations in the territory on which expelled and displaced non-Serbian population was located. So for example, the elections for the City Council of the City of Vukovar, Ilok and Petrinja were held at different polling stations all over the Republic of Croatia, with significant financial expenses and organizational difficulties.

3. State Administration

Parallel to the organization of local units, the process of reorganization and changes of the system of state administration was carried out.

The basic act regulating fundamental issues of the system of state administration is the Law on the System of State Administration enacted in 1993. In accordance with the adopted concept, the state administration was organized at the state level, and in counties, according to the territorial principle.
Ministries and state administrative organizations (state agencies) are responsible for the affairs of state administration as the bodies of central state administration. In counties, the units with dual functions which stems from their constitutional definition, as well as in the City of Zagreb, there are county offices and the city offices of the City of Zagreb.

Incorporation of a modular principle of the organization of the state administration, especially expressed at the state level, provided for a subsequent segmented modification and development of the existing concept of the organization of central bodies of state administration.

The law which establishes ministries and state administration organizations as the central bodies of state administration, namely the Law on the Organization and Competencies of Ministries and State Administrative Organizations has been amended and supplemented on several occasions, which represented a further development and completion of the system of state administration at the state level.

After the establishment of the authority of the Republic of Croatia on its entire territory, the territorial organization of county offices was redefined. As the bodies of state administration they were located in counties, and they conduct administrative proceedings of the first instance. The buildings which were the seats of offices and the seats of local branches of county offices and which had been devastated by the war, were reconstructed.

The territorial organization was redefined in such a way that county offices, together with their local branches were established in those municipalities and towns which had been temporarily occupied until 1995. In this way, the network of the bodies of state administration at the level of all counties was harmonized with the real situation and needs, in accordance with the conducted analysis, the needs of citizens and, above all, in accordance with the traffic connections.

During the years of temporary occupation of a part of the state territory, the provision of regular functioning of the bodies of state administration and local self-government was a special problem, accompanied also by the problem of functioning of the judiciary. The bodies of judicial power, primarily municipal courts, were forced to organize their work outside of their seats established by law. The war operations caused damage to the priceless documentation, such as land registers. Equally, the obstruction of the work of Registrar’s Offices on the territory temporarily occupied and out of the reach of Croatian authorities as well as the destruction of registers and other priceless documenta-
tion, represented a special problem for the life of citizens and realization of their rights and legal interests.

The normalization of inter-ethnic relations between the Croats and a part of Serbian national minority in Croatia remains to be one of the priorities of the Republic of Croatia. As its contribution to the normalization of relations, the Republic of Croatia has established numerous mechanisms for a reestablishment of trust. In its legislation and by its acceptance of international instruments, it has fully guaranteed the rights of all minorities living on its territory.

4. Decentralization, further Strengthening and Development of the System of State Administration and Local Self-Government

A further decentralization, strengthening of local democracy, including the local self-government in general, is impossible to achieve if the relations between central and local authorities are not precisely regulated. It is of course necessary to take care of supervisory mechanisms which will not limit the functioning of the local authorities and successful discharging of the affairs from their competencies defined by law.

The Council of Europe recommends to its member countries, especially to the transition countries including Croatia, to ensure the independence of local units within the framework of their own competencies. This has already been incorporated in the Constitution of the Republic of Croatia, or elaborated in the Law on the Local Self-government.

Although the role of the local authorities and the field of their competencies depend in the majority of member countries of the Council of Europe on the constitutional determination and foundation of fundamental principles of the local self-government and is directly influenced also by a possible lack of de-centralization, a limitation of the possibility of local authorities to act within the self-governmental or transferred competencies as well as by an insufficient legal differentiation and determination of the very competencies of individual bodies, the fact is that all the countries in transition are facing a de-centralization of authority and its transfer to the competence of the local authorities.

Without strengthening of the local authorities and their autonomy, it is difficult to achieve the strengthening of local democracy. The financial autonomy of the local units which is possible to achieve, among other means also through a tax decentralization, is essential. There are
mechanisms of financial decentralization in certain countries which can be considered and possibly adapted and incorporated into Croatian legislation. Therefore, when considering and defining the future legislative solutions, special attention must be given to the instruments of horizontal financial equalization between different units, which should primarily take into account their different financial potential.

We would also like to emphasize that in the Republic of Croatia, with the exception of the territory previously under the UNTAES (United Nations Transitional Administration), the process of transformation of state ownership and its transfer to local units is completed, and thus the quality prerequisites have been created for the financial independence of the local units. In other words, there are no financial, material or legal obstacles for the further transfer of state administration affairs to the local units, which is a guarantee of more economical discharging of the affairs with an improved and most acceptable availability of services to the citizens.

Furthermore, the real obstacle for the further decentralization has been removed in such a way that the previously existing dual characteristic of the competencies of county prefects in the part of state administration and of local self-government have been removed by the latest amendments of the Law on Local Self-government enacted in the fall of 1999.

The amendments of the said Law removed the dual characteristic of the simultaneous discharging of duties of county prefects and the Mayor of Zagreb which had existed before that. Namely, the head of executive power in a county and in the City of Zagreb had been at the same time Government’s official responsible for a harmonized and timely functioning of the state administration in the field, and his or her election had been subject to a subsequent approval by the president of the state.

Although the latest amendments of the Law on Local Self-government and Administration enacted in the fall of 1999 improved the system by the introduction of new institutes or by the modification of the existing ones, it is a fact that resolving of other open issues, both from the field of state administration and local self-government, is still ahead of us.
5. The Reform of the Territorial Organization

The redefinition of the territorial organization of the country is one of the basic preconditions for the further decentralization. The territorial organization established in 1992 was significantly changed by the enactment of the new Law on the Territorial Organization in the beginning of 1997.

Although each country encounters specific problems in establishing its territorial organization, one of the basic problems is the fact that there is a large number of small municipalities, some with less than 500 inhabitants, which are not able for successful fulfilment of the affairs for which they are responsible. Therefore, when considering the further decentralization, it is necessary to take into account the differentiating between the competencies of the local units.

6. Employment Status of State and Locale Civil Servants and their Training

One of the tasks of the Ministry of Justice, Administration and Local Self-government is the continuous training of all public servants. For that purpose the Ministry has organized periodical seminars and has been systematically checking the knowledge of its public servants. A duty to pass the state exam as a condition for a promotion has also been established and regulated in detail in a separate law. In our opinion, the state administration has sufficient number of highly professionally educated public servants. However, a better quality elaboration of the modalities of awarding them is necessary, as well as the introduction of a fairer and better elaborated procedure for their promotion. We can also assume that the normalization of financial situation and growth of economy will contribute to an increased drain of primarily highly qualified public servants from the bodies of state administration established at the central state level, but also from the bodies of state administration established in the counties.

The following are the remarks regarding the training of local public servants and other persons employed in the local units, and general remarks on their employment status:

The subject matter of the employment of public servants, their rights, obligations and responsibilities is regulated by law in an appropriate manner. However, we have a special problem in the local self-govern-
ment, namely the lack of legal regulation which would in an appropriate and modern manner regulate the employment issues for the local public servants. Namely, these issues are today regulated by the law which has almost entirely lost its effect, with the exception of employment issues.

The provisions of this law, although formally still in force, are almost totally inapplicable, which in practice causes certain degree of legal insecurity of the local public servants. Namely, certain units of local self-government resolve the major part of employment issues by their internal regulations, which results in an unequal treatment of local public servants, depending on the financial potentials of the local unit in which they work. They may also be overpaid or underpaid, and finally even prevented from exercising their employment rights, since their exercise has been sometimes left to the discretion of their superiors.

It is this Government's goal and intention to regulate the issue of employment status of the local public servants so that this important segment which employs a large number of professional and highly qualified experts would get a modern legal framework, and thus also security, prospects of promotion, an established system of salaries and responsibilities, and, which is very important, an efficient and professional protection of their rights based on employment. Since this is a very important legal matter, it is necessary to start a discussion and consultations with the experts from the Council of Europe, so that the result of the joint work would result in the drafting of the future text of the law.

Another visible shortcoming is an insufficient elaboration of the matter regarding the rights, obligations and responsibility of the elected local representatives. The Law on the Local Self-government and administration provides a basic outline of rights, obligations and responsibilities of the elected local representatives, i.e. of the members of the representative bodies of the local self-government units during their term. The legislator left a more detailed elaboration of these extremely important questions to be defined by the statutes of the local units, because the statutes are the basic general acts of the units. Partly this issue is left to be regulated by the rules of procedure of the representative body of the unit.

It was mentioned earlier that first local elections in Croatia were held in 1993, the second regular four-year term is expiring, therefore it is not at all difficult to understand the need for a systematic and constant education of all persons involved in the local self-government, i.e. members
of representative bodies of local self-government, members of executive bodies and of those employed in the units of local self-government.

It is equally necessary to work on the finalization and completion of certain institutes which are insufficiently or not at all regulated by the domicile legislature. For example, it is advisable and necessary to regulate in a different, wholesome and consistent manner the institute of incompatibility, or the inability to perform certain duties simultaneously with the membership in a representative body of a local unit.

7. Conclusion

It is beyond dispute that free market requires an efficient support and monitoring by the entire state administration apparatus. Therefore, Croatia is facing a fundamental reform of the system of both state administration and local self-government. In the previous years emphasis was put on the establishment of the basic institutes of the state and on the statehood itself, as well as on the stabilization of economy and on the reconstruction of residential and economic facilities, while the next step is certainly the building and completion of the system of state administration, further de-centralization of affairs and consolidation of the local self-government, all in order to make a more efficient and competent administration as a whole.