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GUARANTEES FOR LOCAL SELF-GOVERNMENT IN EUROPEAN CONSTITUTIONS

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Constitutional and legal regularisation of local self-government is currently the subject of heated debate in Georgia in the framework of constitutional reforms. We believe that this paper, which analyses the appropriate constitutional norms of European states, will add to the debate.

It is interesting to learn about the experience of states where local self-governance has a long-standing tradition, as well as of those where it emerged not long ago. Before we begin to address several specific issues, we would like to note that securing constitutional guarantees for local self-government should not be a mere formality. Constitutional guarantees should actually force the state power to respect and to protect the rights of local self-government.

We can isolate a group of European states in which constitutions do not pay sufficient attention to, or even ignore outright, issues related to self-government. This means that the constitutional controls exercised by the state power over self-government are relaxed and the possibilities of implementing restrictions in this sphere are reduced.

A fundamental law of Sweden, namely the Instrument of the Government, states in Article 7 that decision-making power is exercised by elected assemblies and that local authorities may levy taxes¹. There are no other provisions in the act concerning local government. In the same vein, the constitutions of Denmark, Finland and Switzerland pay scanty attention to local government. The Constitution of the Swiss Confederation delegates the power of ensuring autonomy for municipalities to cantonal legislation². There are also cases where constitutions do not contain any single article about local government, namely the constitutions of Norway and Bosnia and Herzegovina. The

¹ Constitution of Sweden, Article 7

² Constitution of Swiss Confederation, Article 50 (par 1)

danger of the liquidation or the exhaustion of local government under conditions of a full or partial vacuum do not exist in developed democratic states due to their regularisation by constitutions. Meanwhile, in countries where democratic institutions are weak and traditions of local government are only making their first steps, the absence of constitutional guarantees poses a genuine threat. However, an analysis of constitutions shows that even the extensive regulation of local government does not mean that this important institution is thoroughly protected.

There are different approaches to defining local self-government. We would like to stress that local self-government is not a fundamental right. The subject of the right of self-government is a relevant territorial corporation and not an individual or a group of individuals living on its territory.

The Constitutional Court of Germany and German legal writings do not consider the right to self-government to be a fundamental, or “a similar to a fundamental,” right³. Self-government is understood within the state and not as a fundamental right against the state⁴. In our opinion, the European Charter on Local Government also does not consider local self-governance as a fundamental individual or a group right⁵. The charter talks about the rights of local governmental bodies and not those of an individual or a group of individuals⁶.

Constitutions of the post-Soviet states, as well as those of some Eastern European states, describe the right to self-government as the right of residents or citizens of a unit of self-government. This definition moves to the background the importance of the unit of local self-government as a subject of local self-government. The Constitution of Belarus outlines the execution of self-government and government through a range of various bodies and in different forms⁷. The Basic Law of Ukraine considers the right of self-government to be the right of the residents living in territorial communities, villages and towns⁸. The right of self-government is similarly understood by the constitutions of Hungary⁹, Croatia¹⁰, Macedonia¹¹ and Slovenia¹². Apparently, this can be explained by a lack of experience. It is well known that an institution of self-governance was an unknown phenomenon in the Soviet Union and in states of “the socialist camp”. There was no room for decentralised bodies and local self-government in these firmly centralised states. Obviously, this is why self-governance turned out to be a new and unfamiliar phenomenon after the demise of the totalitarian regimes.

³ BVerfGE 48, 64 (79); 58, 177 (189).

⁴ Nierhaus, Michael. Die kommunale Selbstverwaltung. Beiträge zur Debatte. Büchner, Christiane/Franzke, Jochen (Hrsg.). Berlin 1999. S.10; Kronisch, Joachim. Aufgabenverlagerung und gemeindliche Aufgabengarantie, 1. Auflage, Baden-Baden 1993. S. 71ff.

⁵ Stern, Klaus. Das Staatsrecht der Bundesrepublik Deutschland, Band I (Grundbegriffe und Grundlagen des Staatsrechts, Strukturprinzipien der Verfassung). München, 1977. S.304

⁶ European Charter of Local Self-Government. Article 3 (par 1)

⁷ Constitution of Belarus, Article 177.

⁸ Constitution of Ukraine, Article 140 (par 1)

⁹ Constitution of Hungary, Article 42.

¹⁰ Constitution of Croatia, Article 132 (par 1)

¹¹ Constitution of Macedonia, Article 114 (par 1).

¹² Constitution of Slovenia, Article 138.

In terms of the correct formulation of the right of self-government and its subjects, there are no problems in the majority of Western democracies. The Constitution of Denmark considers this right to be a “right of the municipality”¹³. So does the Constitution of Austria in Article 116, which states that “the County is a territorial corporate body entitled to self-administration”¹⁴. Article 28 (Paragraph 2) of the Basic Law of Germany clearly states that there are two subjects of self-administration in Germany, namely the municipality and the association of municipalities.

Some positive trends can be seen in some of the post-Soviet states. For example, the Constitution of Armenia states in Article 104 that local self-administration is the right of the municipality. According to Article 142 (Paragraph 1) of the Constitution of Azerbaijan, “local self-government is carried out by the municipalities”. It is clear that the Constitution of Azerbaijan sees a municipality as a subject of self-administration. Likewise, Article 119 of the Constitution of Lithuania states that the “right to self-government shall be guaranteed to administrative units of the territory of the State”.

It is necessary to strengthen local self-governance institutionally on a constitutional level. It should be derived from the constitution that a unit of local self-administration must be a full subject of law. This does not mean guaranteeing the existence and inviolability of an isolated specific unit. If we grant individual characteristics to a constitutional guarantee, all territorial reforms dictated by public interests, current developments and logic will be hindered.

In its turn, the institutional quality of the local self-administration’s guarantee should not be understood, so that the state is able to exhaust its essence and to replace entities of local self-government by administrative units with no autonomy. While liquidating units or changing borders, a state must act in accordance with the principle of proportionality and a relevant territorial corporation of public law should be given the opportunity to state its own viewpoint and defend it by legal means.

Many European constitutions provide certain regulations concerning administrative and territorial changes. However, without material and legal demands and effective legal remedies, these regulations acquire a formal nature.

The Constitution of Russia provides that the “borders of territorial entities under local self-government should be changed only with the consent of their population”¹⁵. Emphasising this point is quite interesting. However, it is unclear what “taking into consideration the opinions of the population” means, or how these opinions are expressed and what happens if the opinions of the population are not taken into account.

In this respect, Article 110 of the Constitution of Armenia is more developed. It clearly states that the unification of municipalities or the division thereof should be carried out only in the public interest, and the local population can express its opinion by referendum. However, the results of a referendum do not impede the unification or the division of municipalities, thus making the idea

¹³ Constitutional Law of Denmark, Article 82.

¹⁴ Federal Constitutional Law of Austria, Article 116 (par 1).

¹⁵ Constitution of Russia, Article 131 (par 2).

of a referendum pointless to a degree. In addition, the constitution is vague about which legal remedies are available to the local population if its will has been ignored.

Like the Constitution of Armenia, the Estonian and Albanian constitutions stipulate the necessity¹⁶ to take into consideration the opinions of the local population while changing the territorial borders of their units of self-government. However, like the Constitution of Armenia, they do not provide any clear scheme allowing the local population to act if their opinions are not taken into account.

The Constitution of the Czech Republic has quite a unique approach to existential guarantee of units of territorial self-administration. Article 100 (Paragraph 3) states that a “higher unit of territorial self-administration may be established or dissolved solely by constitutional law”¹⁷. This formal requirement is rather strict, but the constitution does not say anything about material and legal demands, which are essential. In addition, issues concerning the dissolution, establishment or other problems of smaller units of self-administration are not regulated by the constitution.

The above-mentioned observations can be generalised in relation to several constitutions of Western European states. In Italy, provincial boundaries and new provinces may be changed and created in accordance with current laws after consulting residents¹⁸. However, the Constitution of Italy does not stipulate what happens if the local population’s interests are ignored, or what specific material or legal demands are put forward for changes to be implemented. The Constitution of Portugal regulates issues of establishment, the abolishment of municipalities and changes to their areas after consulting with units of local self-government¹⁹. Although it is a good idea to provide local units with the possibility to express their views, the issue of protecting these views remains open. It is desirable for a constitution to take into account and provide guarantees against the unreasonable and voluntary abolishment of the municipalities or some other manipulations. A constitution should establish a unit of local self-government whether it is called a community or a commune or a municipality as a legally qualified subject.

The constitutions of Denmark, Latvia, Switzerland, Austria, Azerbaijan, Belarus, Lithuania and several other countries do not say anything about the legal status of units of self-administration. Presumably, this issue is regulated by subordinate normative acts in these states. The legal status of units of local self-government is mentioned in the constitutions of Luxembourg²⁰, Poland²¹, Spain²², Bulgaria²³, Serbia²⁴, Slovakia²⁵ and Armenia²⁶.

¹⁶ Constitution of Estonia, Article 158. Constitution of Albania, 108 (par 2).

¹⁷ Constitution of Czech Republic, Article 100 (par 3).

¹⁸ Constitution of Italy, Article 133 (par 2).

¹⁹ Constitution of Portugal, Article 249.

²⁰ Constitution of Luxembourg, Article 107 (par 1).

²¹ Constitution of Poland, Article 165 (par 1).

²² Constitution of Spain, Article 140.

²³ Constitution of Bulgaria, Article 136 (par 3)

²⁴ Constitution of Serbia, Article 176 (par 2)

²⁵ Constitution of Slovakia, Article 65 (par 1).

²⁶ Constitution of Armenia, Article 104 (1)

The Constitution of the Czech Republic specifies²⁷ the form of a legal person – a unit of self-government is a territorial corporation of public law. In our opinion, this is what “territorial union of citizens” means. The same conclusion can be made in regards to the Constitution of Turkey, which uses the term “public corporate organisation”²⁸, the Constitution of Portugal²⁹, where the term “territorial legal persons” is used, and the Constitution of Slovenia, which uses the term “local self-governing union”³⁰.

The basic law should stipulate solid guarantees of local self-government as an institution of law to avoid the abolishment of this right or its excessive restriction. Some elements should be taken into account to ensure the effective constitutional protection of local self-administration. The range of objectives of local importance has to be specified clearly. The units of self-administration should be empowered to make decisions concerning all local problems. The right to self-administration will be exhausted if it is not authorised to achieve the objectives of local importance independently and under its own responsibility.

When we talk about objectives of local importance and issues related to these objectives, it is necessary to comprehend the essence of local importance. A specific objective that does not have any relevance for local society will not acquire weight by merely putting it on a list of local objectives. On the other hand, if a specific issue is not qualified as an objective of local significance, this issue will not lose importance for the local unit and its residents. In short, a range of objectives of local importance has to be defined not only formally and legally, but also materially. Otherwise a scope of action for a legislator could be expanded unacceptably, while a guarantee for an institution of local self-administration would merely play the role of a placebo³¹.

A definition of “local society matters” was clarified by the Constitutional Court of Germany, which decided that “the issues that are deep-rooted in local society or have a specific relation with local society” should belong to the sphere of objectives at the local level³². These are matters which “are common for a community inasmuch as they are related to individuals living and residing in a (political) community”. However, an approach of this kind will provide a different list of matters in different instances. This depends on the size of the unit of self-administration, its finances, its number of residents and various other factors. All of this enables us to infer that it would be reasonable if a constitution determined not an exhaustive list of objectives of local importance, but rather provided a clear constitutional standard through formulating a general definition for considering the matter as having local importance. It would have been a reference point for all legislative and executive branches and the judiciary.

²⁷ Constitution of Czech Republic, Article 100 (par 1).

²⁸ Constitution of Turkey, Article 127 (par 2).

²⁹ Constitution of Portugal, Article 235 (par 2).

³⁰ Constitution of Slovenia, Article 139 (par 1)

³¹ Schmidt-Jortzig, Edzard. Die Einrichtungsgarantien der Verfassung. Dogmatischer Gehalt und Sicherungskraft einer umstrittenen Figur, Göttingen 1979, S.40

³² BVerfGE 79, 127, 150, 151

In this respect, Austrian federal constitutional law provides an interesting interpretation of the scope of a community's competence. It comprises all of those matters that exclusively or preponderantly concern the local interests of community residents provided that all necessary measures for solving existing problems are executed within the territorial boundaries of that community³³. The Constitution of Turkey formulates a similar approach, when it points out the objectives of local importance that are common for local residents³⁴.

The Constitution of Serbia presents a different approach. It highlights effectiveness, or the effective solution of matters of local importance³⁵. Units of local self-government are competent in those matters, which are effectively realised within a unit of local self-government. The effectiveness of the unit of local self-government is also underscored in the Constitution of Slovenia³⁶. It also provides a second characteristic of local matters, stating that "local affairs" are those "which affect only the residents of the municipality". This approach ignores the essence of the issue and its relation to the interests of local society.

Local self-government means regulating all local matters by units of self-government. This expresses "a principle of universal competence", which is laid out in the Basic Law of Germany³⁷. German communities are empowered to solve all matters concerning local society. This is actually a continuation of a German legal tradition stemming from the city charters of the Prussian era (19.11.1808, §§108 da 169)³⁸.

A principle of universal competence is encountered not only in Germany. For example, in Poland, the territorial self-administration has all the powers that are not reserved for other public bodies by the constitution or laws³⁹. This same principle of universal competence works in Estonia⁴⁰.

There is "a principle of special competence" operating in some countries, for example, in England. Here, the local community is competent only in those matters, which are conferred to it by law⁴¹. The same applies to Ireland⁴². The Constitution of Ireland states that powers and functions are conferred to local government by laws. The Constitution of Azerbaijan leaves the same impression by providing an exhaustive list of the competences of municipalities⁴³.

Inculcating the principle of special competence in post-Soviet and post-socialist countries where traditions of democratic development are weak seems unacceptable. This would provide an unac-

³³ Federal Constitutional Law of Austria, Article 118 (par 2).

³⁴ Constitution of Turkey, Article 127 (par 1).

³⁵ Constitution of Serbia, Article 177 (par 1).

³⁶ Constitution of Slovenia, Article (par 1).

³⁷ Basic Law of Germany, Article 28 (par 2).

³⁸ *Sundermann, Welf/Miltkau, Thomas*. Kommunalrecht Brandenburg. Hamburg 1995. S.34

³⁹ Constitution of Poland, Article 163.

⁴⁰ Constitution of Estonia, Article 154 (par 1).

⁴¹ *Dols, Heinz/Plate, Klaus*. Kommunalrecht. 5. neubearbeitete und erweiterte Auflage. Stuttgart, Berlin, Köln 1999. S.10

⁴² Constitution of Ireland, Article 28 (a) (par 1, 2).

⁴³ Constitution of Azerbaijan, Article 144 (par 1).

ceptable broad scope for a legislator's actions. In our opinion, the unit of local self-government should have competences to implement or resolve all matters which by essence are of local importance. This does not imply that the competence of the local government is inviolable and invariable. It is possible to take away some powers from the local government only on the grounds of public interests and when certain tasks cannot be appropriately performed⁴⁴.

A principle of universal competence implies presuming competence in favour of the unit of self-government. While managing local matters in the absence of a separation of powers in Greece, a presumption of competence operates in favour of units of local self-government⁴⁵. The formulation provided by the Constitution of Belgium is different to some extent and determines the decentralisation of powers in favour of provincial and communal bodies⁴⁶. The purpose of this norm resembles that of the Constitution of Greece's analogous norm. The presumption of competence in favour of local self-government may be understood in the context of decentralisation.

Exercising local self-government independently and under its own responsibility is an essential characteristic of local self-government. A principle of a unit of local self-government's own responsibility means implementing local objectives without the intervention of other subjects, especially those of the state. The unit of local self-government should exercise the right to administration on its own behalf, under its own responsibility, and by its elective bodies⁴⁷.

A principle of own responsibility is expressed in the constitutions of many European states. The basic laws of Denmark⁴⁸, Russia⁴⁹, Armenia⁵⁰, Austria⁵¹, Lithuania⁵², France⁵³, Poland⁵⁴, Germany⁵⁵ and Slovenia⁵⁶ set out the right of local self-government to decide on matters of local importance. However, there are some countries where constitutions do not stipulate the unit of local government's own responsibility, for example, Latvia, Switzerland, Azerbaijan, Belarus, Finland, Bosnia and Herzegovina and Spain.

A principle of a unit of local self-government's own responsibility implies the admissibility of control over the lawful administration of self-government, while deciding on matters of local importance⁵⁷. If state control goes beyond these limits and acquires the form of control in respect to

⁴⁴ BVerfGE 79, 153.

⁴⁵ Constitution of Greece, Article 102 (par 1).

⁴⁶ Constitution of Belgium, Article 162 (par 3).

⁴⁷ *Pagenkopf, Hans*. Kommunalrecht. Köln, Berlin, Bonn, München 1971, S. 46

⁴⁸ Constitution of Denmark, Article 82.

⁴⁹ Constitution of Russia, Article 130 (par 1)

⁵⁰ Constitution of Armenia, Article 104 (par 2).

⁵¹ Federal Constitutional Law of Austria, Article 118 (par 3,4).

⁵² Constitution of Lithuania, Article 120 (par 2)

⁵³ Constitution of France, Article 72 (par 3).

⁵⁴ Constitution of Poland, Article 16 (pa2).

⁵⁵ Basic Law of Germany, Article 28 (par 2).

⁵⁶ Constitution of Slovenia, Article 140 (par 1).

⁵⁷ *Stoher, Rolf*. Kommunalrecht in der Bundesrepublik Deutschland. 3. Auflage, Stuttgart (u.a.) 1996. S.74

expediency, then the autonomy of local self-government will be violated. As for competences delegated by a state, control over lawful administration of self-government, as well as expediency, is admissible in this sphere as interests of the state are great here and the significance of objectives delegated goes beyond local limits.

The standards described above are met by the constitutions of the majority of European countries. State control over the lawful administration of self-government in the course of deciding local matters is stipulated in the constitutions of the Czech Republic⁵⁸, Lithuania⁵⁹, Greece⁶⁰, Poland⁶¹, Croatia⁶², Macedonia⁶³, Portugal⁶⁴, Serbia⁶⁵, Slovenia⁶⁶ and Hungary⁶⁷. The Basic Law of Germany does not directly identify a form of control. However, it derives from Article 28 (Paragraph 2), which stipulates that communities should be guaranteed the right to regulate all local matters within the limits prescribed by law. Thus, a requirement for the lawful administration of self-government should be met and the extent of control should be appropriate. The Constitution of Iceland regulates this issue similarly. The municipalities regulate their own affairs independently according to current laws⁶⁸. The Constitution of Romania goes even further to strengthen the autonomy of self-government. It grants the right to exercise control over the lawful administration of self-government to a prefect appointed by the government. In addition, the prefect suspends or abolishes acts issued by the local self-government only through courts⁶⁹.

The constitutions of some states, for example, Denmark, do not specify a form of control over local self-administration⁷⁰. It would be better if this sphere were decided on a constitutional level due to the quite complex and sensitive nature of interrelation between state and local administration.

Further, it is not desirable if a constitution admits in one form or another state control over the expediency of units of local self-government in the course of managing matters of local importance, as this further increases the state power's influence over the local administration. In Austria, the land has the power to examine the county's financial activities and operations, which checks its thrift, efficiency and expediency⁷¹. In this respect, the Austrian model goes beyond supervising the county's lawful administration, which does not reinforce the positions of local counties. Monitoring

⁵⁸ Constitution of Czech Republic, Article 101 (par 4).

⁵⁹ Constitution of Lithuania, Article 13 (par 2).

⁶⁰ Constitution of Greece, Article 102 (par 4).

⁶¹ Constitution of Poland, Article 171 (par 1).

⁶² Constitution of Croatia, Article 136.

⁶³ Constitution of Macedonia, Article 115 (par 2); 117 (par 2).

⁶⁴ Constitution of Portugal, Article 242 (par 1).

⁶⁵ Constitution of Serbia, Article 192 (par 2).

⁶⁶ Constitution of Slovenia, Article 144.

⁶⁷ Constitution of Hungary, Article 44/a ("a").

⁶⁸ Constitution of Iceland, Article 78 (par 1).

⁶⁹ Constitution of Romania, Article 122 (par 4).

⁷⁰ Constitution of Denmark, Article 82.

⁷¹ Federal Constitutional Law of Austria, Article 119 (a) (par 2).

the county's finances is seen as crucial. The sphere of responsibility of a representative of the state power in French territorial units includes not only ensuring the observance of laws, but also the protection of national interests and administrative supervision⁷². This means that state control goes beyond the limits of supervision over the lawful activities carried out by units of self-administration. Decisions adopted by municipalities in the Netherlands can be annulled not only on the grounds of nonconformity with current laws, but also on the grounds of "public interests"⁷³, which actually means increasing the extent of state supervision.

A directive set out in Article 120 of the Constitution of Belarus can be considered as an attempt to preserve the old Soviet centralised system. The article stipulates that local representative councils and executive bodies must implement the decisions adopted by superior state bodies. Although the constitution also speaks about supervision over the legality of the activities of units of self-administration⁷⁴, it does not change the general picture and leaves unlimited possibilities for state bodies to intervene in local affairs.

It is not difficult to realise that a better alternative for the autonomy of the local self-administration is a model where state supervision is exercised at a minimum level. Increasing limits of state supervision may result in the unnecessary and groundless restraint of local self-administration independence. Managing local issues independently and under the responsibility of local authorities is key for the self-administration from which the content could be derived⁷⁵. The autonomy of self-administration consists of several significant elements including territorial, administrative and financial, taxing, human resources, planning and law-making issue. The territorial component of local self-government is founded on the idea that a self-government unit is a territorial corporation. Its activities are directed towards a certain territory that at the same time creates space for independent performance in the course of deciding matters of local importance. In our opinion, this issue is reflected in the constitutions of Belarus⁷⁶, Ukraine⁷⁷ and Cyprus⁷⁸.

Administrative autonomy means the powers of units of local self-administrative to regulate systems and activities of decision-making and executive bodies, of territorial units and of local enterprises and organisations⁷⁹. Administrative independence is not absolute. The main issues related to local representative and executive bodies, local enterprises or organisations are often regulated on a legislative or constitutional level. However, these regulations should avoid excessive specifications that may turn into a breach of the right to self-government.

⁷² Constitution of France, Article 72 (par 6).

⁷³ Constitution of Netherlands, Article 132 (par 4).

⁷⁴ Constitution of Belarus, Article 122 (par 2,3).

⁷⁵ *Pagenkopf, Hans*. Kommunalrecht. Köln, Berlin, Bonn, München 1971. S. 46

⁷⁶ Constitution of Belarus, Article 122 (par 1).

⁷⁷ Constitution of Ukraine, Article 144 (par 1).

⁷⁸ Constitution of Cyprus, Article 177.

⁷⁹ BVerfGE 91, 228, 238; *Schmidt-Jortzig, Edzard*. Kommunale Organisationshoheit. Staatliche Organisationsgewalt und körperschaftliche Selbstverwaltung, Göttingen 1979. S.26 ff.

According to the Constitution of Hungary, local self-administrative bodies independently regulate managerial activities as prescribed by law and within the determined jurisdiction⁸⁰. The administrative autonomy of the self-government is guaranteed in Croatia where units of local and regional self-government are authorised to regulate the internal administration of their affairs by their own statutes and within the limits of their legislation⁸¹. The autonomy of self-administration is also stipulated by the basic laws of Albania⁸², Serbia⁸³ and Austria⁸⁴.

Planning certain directions independently is an important characteristic of self-administration. Independence in planning is demonstrated in planning territorial development, which acquires special significance in the case of cities. The competence of local and regional units of self-administration in the sphere of urban development is highlighted in the Constitution of Croatia⁸⁵. Autonomy in urban development and agriculture is guaranteed by the Basic Law of Macedonia⁸⁶. According to Article 190 (Paragraph 2) of the Constitution of Serbia, an urban development plan is approved by a municipality. Apart from urban development, plans may be made in the following spheres: social, economic, etc. For example, the competence of municipalities in Azerbaijan covers the approval and implementation of social protection, developmental, economic development and local environmental protection programs⁸⁷.

Some post-Soviet countries, namely Belarus⁸⁸ and Ukraine⁸⁹, have similar formulations.

Local self-government is unimaginable without financial guarantees. Without financial autonomy, the effective management of local affairs is impossible. Financial autonomy is a power of local self-government granted to it in order to make decisions about expenditures and incomes independently and in compliance with the law. A unit of local self-government is authorised to receive the corresponding financial guarantees since it is impossible to exercise the right to self-government without at least minimal essential financing. The local self-government is authorised to get corresponding financial guarantees since without minimal financing it is impossible to achieve the desired influence over its activities.

A violation of financial autonomy means actually infringing the essence of self-administration and we can add that a guarantee for financial autonomy is an integral part of its foundation⁹⁰.

⁸⁰ Constitution of Hungary, Article 44/a (par 1/"e").

⁸¹ Constitution of Croatia, Article 135.

⁸² Constitution of Albania, Article 113 (par 1/"e").

⁸³ Constitution of Serbia, Article 179.

⁸⁴ Federal Constitutional Law of Austria, Article 118 (par 3/1).

⁸⁵ Constitution of Croatia, Article 134 (par 1,2).

⁸⁶ Constitution of Macedonia, Article 115 (par 1); Article 117 (par 2).

⁸⁷ Constitution of Azerbaijan, Article 144 (par 1/"7", "8", "9").

⁸⁸ Constitution of Belarus, Article 121 (par 1).

⁸⁹ Constitution of Ukraine, Article 143 (par 1).

⁹⁰ *Schmidt-Bleibtreu, Bruno/Klein, Franz. Kommentar zum Grundgesetz*, 9. Auflage. Neuvied (u.a.) 1999. S.639

Closely related to financial autonomy is independence on levying taxes, in other words, the right of the unit of self-government to impose and collect local taxes and payments. In this way, the local population shares the burden of expense for fulfilling objectives of local importance.

Issues related to the financial and tax spheres are so vital that even those constitutions that contain too scanty regulations for local self-government emphasise them. Article 121 (Paragraph 3) of the Constitution of Finland stipulates the right of self-government to levy municipal taxes. According to the Constitution of Iceland, sources of municipal income are determined by law, as well as the right to decide whether or how to use these sources of income⁹¹. The Constitution of Sweden, which dedicates only a single article to self-administration, grants the right to local bodies to levy taxes to enable them to perform their tasks⁹².

A number of constitutions envisage autonomy of local self-government in the financial and tax spheres, but ignore such important issues as guarantees for secured public funds. Article 72 (2) of the Constitution of France makes clear that territorial units enjoy financial and tax autonomy, but says nothing about the right of financial guarantees.

The Constitution of Russia ensures the powers of units of local self-government to approve and execute the local budget, levy local taxes and duties, receive corresponding financial possibilities when the central government names certain objectives to be achieved and to receive compensation from the central government for any additional expenses arising from decisions made by central public bodies⁹³. However, like the Constitution of France, it does not state any guarantees for secured public funds for local self-government. The Constitution of Azerbaijan provides the same rights in Articles 144 and 146, but there are several deficiencies⁹⁴.

In contrast, the Constitution of Poland stipulates the participation of territorial units in state income to perform their duties, that is, it provides guarantees for secured public funds⁹⁵. The sufficiency of local budgets to perform local tasks and sources are determined by Article 142 of the Constitution of Spain. The Basic Law of Hungary grants the right to local self-government bodies to request extra assistance from the central government to enable them to fulfill their commitments⁹⁶. Article 137 (Paragraph 2) of the Constitution of Croatia states the necessity of proportionality between revenues of units of local self-government and the authorities.

The Basic Law of Germany stresses that a guarantee to self-administration includes bases for its financial accountability. These bases encompass tax revenues, which ensure the economic sufficiency of the communities, and the right to determine tax rates⁹⁷. Apart from the general guarantee, the

⁹¹ Constitution of Iceland, Article 78 (par 2).

⁹² Constitution of Sweden, Article 7 (par 2).

⁹³ Constitution of Russia, Article 132 (par 1, 2), Article 133.

⁹⁴ Constitution of Azerbaijan, Article 144 (par 1/"4" and "5" and pa 2), Article 146.

⁹⁵ Constitution of Poland, Article 167 (par 1).

⁹⁶ Constitution of Hungary, Article 144/a (par 1 "c").

⁹⁷ Basic Law of Germany, Article 28 (par 2).

law also stipulates that communities have the right to revenues from certain taxes and the right to receive compensations from the central government when the latter demands the establishment of institutions in communities (association of communities), which results in increased expenditures or reduced incomes⁹⁸.

In order to successfully realise objectives of local importance, it is necessary to legally regulate relations related to the execution of local tasks. The limits of the self-administration's law-making authority are restricted to resolving local problems and are subject to strict demands for being lawful and in compliance with laws.

A group of constitutions, for instance, the constitutions of the Czech Republic⁹⁹, Azerbaijan¹⁰⁰ and the Netherlands¹⁰¹, grant the right to issue normative acts only to local representative bodies. It may be a positive phenomenon in the sense that empowering representative bodies may separate the functions of representative and executive bodies locally. However, the constitutions of many countries extend the range of the subjects that are authorised to issue normative acts. For example, local public organs, representative as well as executive, issue binding decisions in Belarus. At the same time, the council of deputies (representative body) can annul decisions issued by the executive that are not in compliance with the law¹⁰².

Some countries stipulate the adoption of basic local normative acts, which aim to regulate the activities of local self-government. Sometimes constitutions pronounce the adoption of local "constitutions", rules of regulations, charters, etc.

Article 107 (Paragraph 3) of the Constitution of Luxembourg states that a council of a commune develops and adopts the rules of regulations of the commune. In Serbia, the highest legal act of a municipality is a statute adopted by a meeting of the municipality, which regulates important issues such as the tasks of the meeting, the organisational structure of municipal bodies, rules for executive body elections, etc¹⁰³.

Local self-government also means independence in deciding human resources, cultural and cooperation issues. The format of this paper does not allow us to examine these aspects more thoroughly. We have already discussed what elements are the most crucial for exercising local self-government.

A mere formulation of guarantees for self-government and their insertion in constitutions is insufficient. A right tends to lose weight if its subject cannot defend its own legal positions. The unit of self-government should be given the powers to present its interests and to defend its rights in relation to other subjects and to appeal to a court.

⁹⁸ Basic Law of Germany, Article 106 (par 5, 5(a), 6, 7).

⁹⁹ Constitution of Czech Republic, Article 104 (par 3).

¹⁰⁰ Constitution of Azerbaijan, Article 145.

¹⁰¹ Constitution of Netherlands, Article 127.

¹⁰² Constitution of Belarus, Article 122 (par 1,3).

¹⁰³ Constitution of Serbia, Article 191 (par 1).

The most effective remedy against a breach of rights granted by constitutions is a constitutional complaint filed by units of self-administration. For example, when a legislator exhausts the local self-government and violates the constitution, the unit of local self-government will not be able to defend its own rights in courts that do not consider cases concerning the unconstitutionality of laws. Although a legal remedy for local self-government is ensured by the constitutions of Russia¹⁰⁴, Azerbaijan¹⁰⁵, Lithuania¹⁰⁶ and Ukraine¹⁰⁷, this right is incomplete as the unit of local self-government lacks the ability to bring a constitutional complaint to a constitutional court.

In many European states, the unit of local self-government is empowered to file a constitutional complaint. However, it should be noted that the models of complaints and the competences of constitutional courts differ. A model, which can be called the “German model”, operates in some countries. Its characteristic is the fact that the unit of local self-government is not restricted by any instance of the right of self-government.

The Basic Law of Germany grants the right to communities and the association of communities to file a constitutional complaint about the violation of a right stipulated in Article 28. In turn, Article 28 contains all of the aspects of the right of self-government. This norm goes beyond guarantees of self-administration in terms of objectivity and ensures a subjective legal position. Hence, the institutional guarantee of self-administration is positioned qualitatively between the basic right and the objective guarantee. It is logical if we describe this as a qualified institutional guarantee¹⁰⁸. The laws of lands can also become a subject of hearing before the constitutional court if it is impossible to appeal against them in a constitutional court of land. This means that a principle of subsidiary operates here. It is clear that communities and associations of communities are granted a broad range of remedies by the constitution.

We can attribute the Polish set of regulations under the constitution to the German model. According to Article 191, the constitutive organs of units of local self-government are empowered to bring a case before a constitutional tribunal regarding the following matters: the conformity of statutes and international agreements with the constitution, and the conformity of normative acts issued by the central government with the constitution and ratified international agreements and laws. Unfortunately, the constitution does not specify from what particular aspect the disputable act should be considered. Presumably, the hearing should touch upon the relations between a disputable act and those constitutional norms that regulate local self-administration. The scope of the competence of the Polish tribunal is broader in contrast to that of the German Constitutional Court. It can adjudicate matters of a disputable act’s conformity with statutes and international agreements. The constitution of a democratic state should meet international requirements in the part of

¹⁰⁴ Constitution of Russia, Article 133.

¹⁰⁵ Constitution of Azerbaijan, Article 146.

¹⁰⁶ Constitution of Lithuania, Article 122.

¹⁰⁷ Constitution of Ukraine, Article 145

¹⁰⁸ *Pagenkopf, Hans*. Kommunalrecht. Köln, Berlin, Bonn, München 1971. S.52

local self-administration. As for the legality of a disputable act, the issue should be heard in common courts since there is no point burdening constitutional courts.

The Hungarian model, too, resembles the German one in terms of the power of the local self-government to turn to a constitutional court to protect its rights¹⁰⁹. The scope of jurisdiction of the Croatian Constitutional Court includes the consideration of violations of the rights of units of local and regional self-administration guaranteed by the constitution¹¹⁰. The Croatian model reduces to some extent the powers of the constitutional court by hearing the constitutionality of decisions adopted by state organs, units of local and regional self-government and other public agencies. The Austrian model is different. Here, the powers of the community to file with the constitutional court are limited. The community can file a complaint only in relation to certain legal acts. It can appeal against those decisions which are adopted by the bodies supervising communities¹¹¹. Presumably, the constitutional court will be constrained by Article 119 (A) of the Constitutional Law in terms of content, which regulates state supervision.

In result of our analysis, we can conclude that there is a group of constitutions that stipulates constitutional disputes only over competences. In this case, many important aspects of the rights of the local self-administration do not receive enough attention. Disputes over the competencies of central and local self-government bodies are decided by constitutional courts in Albania¹¹², Bulgaria¹¹³ and Macedonia¹¹⁴. The Serbian Constitutional Court hears disputes over competencies not only between central and local public bodies, but also between units of provincial and local self-government¹¹⁵.

Our paper was an attempt to present and discuss all of the important aspects of local self-government that are subject to constitutional regulations. However, there is still a range of issues regulated by constitutions of European states. Unfortunately, we cannot cover them due to the format of this paper. We deliberately stayed away from studying the norms of the Constitution of Georgia, which refer to local self-government, as several very important changes are expected in the near future. We hope this paper will be useful for those working on new changes.

¹⁰⁹ Constitution of Hungary, Article 43 (par 2).

¹¹⁰ Constitution of Croatia, Article 128 (par 4).

¹¹¹ Federal Constitutional Law of Austria, Article 139 (par 1).

¹¹² Constitution of Albania, Article 131 ("d").

¹¹³ Constitution of Bulgaria, Article 149 (par 1 "c").

¹¹⁴ Constitution of Macedonia, Article 110 (par 5).

¹¹⁵ Constitution of Serbia, Article 167 (par 2, "2" and "3").