

**STATUS OF SERBIAN TOWNS IN THE LIGHT OF RECENT PLANS TOWARDS A NATIONAL
DECENTRALISATION STRATEGY**

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ABSTRACT

Decentralisation has been recognised as one of the key priorities of the Serbian Public Administration Reform Strategy adopted in the beginning of 2014. To that end, Serbian Government has taken steps towards preparation of a national decentralisation strategy.

Currently, Serbia has a single-level and an almost completely monotype structure of local government, in which towns have the same organisation of bodies and almost identical competences as municipalities, with minimal exceptions for the Town of Belgrade, as the country's capital.

In light of the on-going discussions relating to decentralisation in general and, more specifically, reform of the local government system, the authors analyse some of the main issues within that discussion, particularly the ones relating to the status of towns in general and the status of the capital and provide proposals for possible reforms in that respect. Some of these issues include: possibilities for widening the competences of towns and thus creating foundations for a polytype system of local government and organisation of their bodies, in particular executive bodies, in towns, as well as the most suitable manner of election of mayors. Moreover, the authors will delve into possibilities for establishing a second level of local government and the position of towns in such a system. The presented analysis is founded on the situation analysis of the current system, selected comparative examples, as well as analysis of historical development of local government systems in Serbia during the past two centuries. Finally, the listed issues will be analysed from the perspective of the current constitutional framework, i.e. the necessity for its alteration with an aim of designing an optimal decentralisation model.

Key words: decentralisation, strategy, local self-government, local government, town, Serbia

1. INTRODUCTION

1. At the beginning of 2014, the Serbian Government adopted its second Public Administration Reform Strategy (the first strategy was realised during the period 2004-2013 and had limited positive effects)¹. Among its other objectives, this document declares the need to draft and adopt a National Decentralisation Strategy. The Government ascertained that the aim of decentralisation should not be in the mere disempowerment of central authorities and transfer of competences to non-state actors, but that the process makes sense only if it enables quality public service which

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¹ These effects were mainly realised in the normative sphere, while a much more modest performance was accomplished in the reform of inadequate practices. See, for instance, OECD (2013), "Serbia Priorities Report 2013", SIGMA Country Assessment Reports, 2013/03, OECD Publishing. <http://dx.doi.org/10.1787/5jz2rql40pbs-en> (1.3.2015.)

meet the citizens' everyday needs, wherein these needs can best be recognised by authorities closest to citizens.

2. Towards preparation of the National Decentralisation Strategy by the end of 2014, two important documents were produced: (1) a situation analysis of the local self-government system in Serbia and (2) a study on two possible decentralisation models – one within the boundaries of the current constitutional framework and the other assuming certain constitutional changes². The third step of the preparatory process, envisaged for the first half of 2015 should be finalisation of a cost-benefit analysis for both decentralisation models offered in the mentioned study. After that, results of analyses would be presented to competent national bodies and drafting of the National Decentralisation Strategy would start.

3. Reassessment of the status of towns represents one of the key points in this process. Basic ideas on possible and desirable changes in their status are the subject matter of this paper. Authors share the belief that sources of ideas for resolving issues of decentralisation in general, including the case of towns, should be sought both in purely theoretical considerations and comparative law, but also in one's own legal heritage. Beginning with that premise, the paper first presents the basic features of the status of towns in the present local self-government system in Serbia, followed by relevant comparative and domestic experiences. In the final part of the paper elements of the two formulated decentralisation models are presented, including with the proposed future status of towns.

2. BASIC FEATURES OF THE PRESENT SYSTEM OF LOCAL SELF-GOVERNMENT AND THE STATUS OF TOWNS

4. Republic of Serbia has a single-level local self-government system, with municipalities (*opštine*), towns (*gradovi*) and the Town of Belgrade (*grad Beograd*) as its units. There are a total of 174 local self-government units – 150 municipalities, 23 towns and the Town of Belgrade. Until 2007, the Law on territorial organisation envisaged only five towns: Belgrade, Novi Sad, Priština, Kragujevac and Niš. That year 19 more big municipalities gained the status of town (Valjevo, Vranje, Zaječar, Zrenjanin, Jagodina, Kraljevo, Kruševac, Leskovac, Loznica, Novi Pazar, Pančevo, Požarevac, Smederevo, Sombor, Sremska Mitrovica, Subotica, Užice, Čačak and Šabac). The law³ defines a town as an economic, administrative, geographical and cultural centre of a wider area, with a population over 100.000 inhabitants, with the exception that a territorial unit with less than 100.000 inhabitants can be determined as a town, when there are specific economic, geographic or historical reasons for that. This exception was applied widely, so now there are as many as nine towns (out of the total 34) with less than 100.000 inhabitants. Similar to a municipality, the territory for which a town is established needs to form a natural geographic entirety, an economically connected area with developed communication between its settlement and a seat as its gravitation centre. Besides by number of inhabitants, current towns significantly differ in size of their territory and number of settlements (see Table 1).

The legal definition of town as a local self-government unit differs, thus, from the concept of town in the usual linguistic and legal sense. In this other sense a town is an urban type settlement,

² The first documents was drafted by a group of authors for the Standing Conference of Towns and Municipalities, the national local government association, which is taking an active part in the discussions concerning the planned decentralisation strategy. The latter was solicited by the OSCE Mission to Serbia, to assist the Serbian Ministry of Public Administration and Local Self-government which is coordinating the preparatory phase for the drafting of the decentralisation strategy. In both cases, the authors were engaged as experts in the drafting of the documents.

³ Law on territorial organisation of the Republic of Serbia (*Official gazette of the Republic of Serbia*, No. 129/07).

while a town as a local self-government unit includes not only urban settlements, but also their wider surroundings, i.e. all settlements in a wider area, while some of them (one or more) can have the character of an urban settlement and others can be of a suburban character. In practical terms, areas of former municipalities that had a certain number of inhabitants were declared towns. The difference between an urban settlement and a town as a local self-government unit indicated here is obvious from the fact that there are 193 urban settlements and only 24 towns. On the territory of the Town of Belgrade, for instance, there are 16 urban settlements, i.e. Belgrade and 15 smaller towns (see Table 1).

5. Towns can establish so-called towns municipalities (*gradske opštine*) which do not have their own self-government competences, but perform some tasks from the town's competences. Currently, they exist in six towns and there are a total of 30 of them (17 in Belgrade, five in Niš and two each in Novi Sad, Vranje, Požarevac and Užice). Establishment of town municipalities is in the domain of the town's competences and it is regulated by the town's statute. The towns are only obliged to establish at least two town municipalities, if it chooses to establish them at all. An exception is established by the Law on the capital⁴ which determined an obligation of Belgrade to establish town municipalities, while their number, establishment or abolition is determined by the Belgrade statute. Although all town municipalities formally have a more or less equal legal status, there are differences between them in individual towns concerning the circle of public tasks from the towns' competences delegated to them, as well as in some elements of their organisation, relations with town authorities, financing etc. On one hand, those differences are a logical consequence of different needs of specific towns and their right to regulate these issues to meet those needs, and on the other hand this resulted in the absence of at least minimal legal regulation of the status of town municipalities.

6. The territory of municipalities and towns can be divided into so-called local communities (*mesne zajednice*) are established. On the territory of central Serbia and the Autonomous Province of Vojvodina there is a total of 4.121 of them. It needs to be stressed here that town municipalities and local communities are not local self-government units.

| Towns | Territory (km ²) | Number of town municipalities | Number of settlements | Number of local communities | Population in 2013 |
|------------|------------------------------|-------------------------------|-----------------------|-----------------------------|--------------------|
| Belgrade | 3.234 | 17 | 157 | 267 | 1.669.552 |
| Novi Sad | 699 | 2 | 16 | 46 | 346.163 |
| Niš | 596 | 5 | 71 | 17 | 259.125 |
| Kragujevac | 835 | | 57 | 78 | 179.030 |
| Leskovac | 1.025 | | 144 | 139 | 141.719 |
| Subotica | 1.007 | | 19 | 37 | 140.233 |
| Kruševac | 854 | | 101 | 55 | 126.900 |
| Kraljevo | 1.530 | | 92 | 68 | 123.724 |
| Pančevo | 756 | | 10 | 17 | 122.492 |
| Zrenjanin | 1.327 | | 22 | 36 | 121.683 |
| Šabac | 797 | | 52 | 61 | 114.548 |
| Čačak | 636 | | 58 | 69 | 114.141 |
| Smederevo | 484 | | 28 | 38 | 107.048 |
| Novi Pazar | 742 | | 99 | 26 | 102.122 |
| Valjevo | 905 | | 78 | 50 | 89.112 |
| Sombor | 1.216 | | 16 | 22 | 84.187 |
| Vranje | 860 | 2 | 105 | 52 | 82.845 |

⁴ Official gazette of the Republic of Serbia, No. 129/07.

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|-------------------|-------|---|----|----|--------|
| Sremska Mitrovica | 762 | | 26 | 34 | 78.776 |
| Loznica | 612 | | 54 | 56 | 78.136 |
| Užice | 667 | 2 | 41 | 30 | 76.886 |
| Požarevac | 477 | 2 | 27 | 38 | 74.713 |
| Jagodina | 470 | | 53 | 60 | 71.583 |
| Zaječar | 1.069 | | 34 | 35 | 58.183 |
| Priština | | | | | |

Table 1. Data on territory, number of town municipalities, settlements and local communities and population in towns (*Source*: Serbian Statistical Office)

7. Besides municipalities and towns, territorial organisation of the Republic of Serbia, above that level, is composed of two autonomous provinces as forms of territorial autonomy. Finally, there are administrative districts (*upravni okruzi*), established for the territory of several municipalities and towns, with the exception of the town of Belgrade (since the seats of central state bodies are situated here). There is 29 administrative districts and they are a form of deconcentration and not decentralisation. The 2009 Law on regional development⁵ established five regions as statistical functional territorial units. They correspond to NUTS2 units and consist of one or more districts (*oblasti*) which correspond to the NUTS3 level and there are a total of 30 districts. The territory of these developmental districts mainly correspond to division to administrative districts, with the addition of Belgrade which is also considered a district in the meaning of the Law on regional development (as well as a region at the same time).

| Regions (NUTS 2) | Belgrade Region | Vojvodina Region | Region of Šumadija and West Serbia | Region of South and East Serbia | Region of Kosovo and Metohija | Total |
|--------------------------------------|-----------------|------------------|------------------------------------|---------------------------------|-------------------------------|-------|
| Districts (NUTS 3) | 1 | 7 | 8 | 9 | 5 | 30 |
| Administrative districts | 0 | 7 | 8 | 9 | 5 | 29 |
| Town of Belgrade | 1 | | | | | 1 |
| Towns in total | 1 | 6 | 10 | 6 | 1 | 24 |
| Municipalities | 0 | 39 | 42 | 41 | 28 | 150 |
| Local self-government units in total | 1 | 45 | 52 | 47 | 29 | 174 |
| Settlements in total | 157 | 467 | 2.112 | 1.973 | 1.449 | 6.158 |
| Urban settlements | 16 | 52 | 53 | 46 | 26 | 193 |

Table 2. Administrative division of the Republic of Serbia in compliance with the NUTS classification (*Source*: Serbian Statistical Office)

8. All towns, with the exception of Belgrade, have the same status. The specific status of Belgrade is recognised by the 2006 Serbian Constitution. It envisaged that a special law is to be passed on its status and that it can have wider competences (additional tasks) than other towns. However, relevant legislation introduced only minimal differences in competences between towns and the Town of Belgrade, as well as between all towns and municipalities. Similarly, all towns and municipalities have bodies of the same type and differences exist only in the number of deputies in their assemblies and members of executive bodies (town or municipal council) and

⁵ Official gazette of the Republic of Serbia, No. 51/2009, 30/2010.

somewhat in the organisation of their administrations (a unique local administration or several local administrations established for different fields of competence). Therefore, it can be said that the local self-government system is basically monotype since it lies on a uniform model for all towns and municipalities, regardless of their type, size, population and other mutual differences.

Within the towns' (as well as municipalities') competences we can distinguish between their original (self-government) tasks and delegated tasks. Within their original competence there is a relatively wide list of tasks belonging to different fields. Besides determination of their own organisation, passing a statute, budget, development plans and other important documents, the realm of original competences is dominated by those in the fields of communal services, construction land and office space leasing, local roads and infrastructure of local importance, as well as certain tasks in the fields of education, culture, healthcare, social services and child care, tourism, crafts, catering and trade. However, the majority of these competences are incomplete or overly conditioned by formal limitations introduced by legislation. So far, towns have an additional competence in establishing their own local (communal) police, and the Town of Belgrade has three additional original competences⁶. The circle of delegated competences is wide and encompasses significant tasks from the competence of the central state determined by sectorial legislation. The general approach is that the same tasks are delegated to all municipalities and towns (a linear approach) and only in few occasions this has been done to only some of them. A comparison shows that there are fields in which significant tasks were delegated, as well as others in which this is not the case even though both groups of tasks are similar in nature⁷.

9. In management of local public tasks of towns (and municipalities) a dominant role is given to their representative bodies, while direct citizen participation are underdeveloped. Local assembly as the highest representative body elects two executive bodies: mayor and the town council (in municipalities – a president of the municipality and a municipal council). Elections of deputies to the local assembly are based on the proportional electoral system and the town (or a municipality) makes up a single electoral unit. The law determines a relatively wide range of the possible number of deputies (from 19 to 75 and for the Town of Belgrade up to 110) within which local statutes specify the exact number of deputies. The total number of deputies in 145 municipalities and towns on the territory of central Serbia and the province of Vojvodina is 6.612 (including deputies in town municipalities). A local assembly has a president which can be permanently employed in the local government, as well as a deputy president and a secretary. The number of assembly sessions annually is six to ten on average, while the number sessions of assembly working bodies is higher. Operation costs of local assemblies are high and represent one of the highest expenses of local budgets, mainly caused by an upward trend of converging the deputies' engagement into some kind of a paid post.

Relations between the two executive bodies are, in the functional sense, principally differentiated, but not in the personal and factual terms, nor in terms of their responsibility and relations towards the local administration. Besides the president of the municipality and his/her deputy, i.e. mayor and his/her deputy, municipal or town councils have 11 members elected by the assembly (in the Town of Belgrade there can be up to 13 members). Most of them are employed in the local government. The maximum number of all municipal and town council members would be 1.587 and the actual number is very close to that. Additionally, presidents of municipalities can have up

⁶ In the fields of waterpower engineering, roads and protection from fire.

⁷ Parallel to preparations for the decentralisation strategy, the Government undertook to establish a complete inventory of public tasks performed on all levels of government, since it did not exist for a few decades.

to three, and mayors up to five assistants. Including them, it follows that in 23 towns and 122 municipalities, the local executive stratum encompasses around 2.400 people.

10. For municipalities with up to 50.000 inhabitants the Law on local self-government⁸ determines that their administration is established as a unique body, and in those which have more inhabitants and in towns, there can be either a single administration or two or more administrations for specific fields. Some towns have utilised this possibility in different ways and some have established even more than ten administrations⁹. Administrative capacities of towns are unequal. The majority of towns have adequate capacities for performance of all their tasks, while in the majority of municipalities that is not the case. Contrary to that lies the fact that the majority of towns and municipalities, similar to state administration, has a surplus of permanent or temporary employees. According to an official estimate, the number of employees in the administration of 145 municipalities and towns is 44.628 in total¹⁰.

11. Besides the main local bodies – assembly, executive bodies and administrative bodies, most towns (as well as municipalities) or a number of them, also have other bodies or offices, such as: council for interethnic relations, ombudsperson, public attorney office, office for legal aid, office for affairs of local communities, mayor's office, staff for emergencies, local public agencies and public funds, one or more public utility companies, cultural institutions, public information institutions, social work centres, some social care institutions and other different forms of municipal or town organisations (e.g. sports associations, the Red Cross, veterans' organisations, tourist and other organisations). Except when the law clearly determines the method of establishment, status and role of the listed bodies or organisations, their organisation, status and financing is determined according to very heterogeneous models.

12. Despite evident needs for inter-municipal cooperation by establishment of mutual bodies, offices or public utility companies, it exists in limited, almost negligible volume. Inter-municipal cooperation is founded on the principle of voluntariness and usually occurs when there are external incentives in the form of possibilities to obtain donor funds and far less in the independent hindsight of mutual interest and the need for more rational and efficient performance of tasks. Exceptions in that sense so far include the realised cases of concessions of certain public functions, as well as concluding other arrangements to establish public private partnerships.

13. Local economic development as an important local government function has been properly recognised only in the past few years. Consequently, capacities of individual local governments for performance of that function, as well as realised initial results are very different and often unsatisfactory. Public utility companies are not yet reformed. The design of a coherent policy of regional development is also still in initial phases, as well as creation of institutional capacities for its realisation. Fiscal equalisation measures are undertaken by the central state within its budgetary policy and on the basis of classification of municipalities and towns according to the

⁸ *Official gazette of the Republic of Serbia*, No. 129/2007, 83/2014.

⁹ Novi Sad has 15 separated administrations (administrative bodies), Leskovac and Niš have 11 administrations each, while Jagodina, Čačak and Sremska Mitrovica have eight each. On the other hand, Belgrade has a single administration.

¹⁰ Data of the Ministry of Finance for the territory of central Serbia and Autonomous Province of Vojvodina on the date 16 October, 2014, <http://www.mfin.gov.rs/UserFiles/File/Registri%20zaposlenih/2014/IzvestajBrojRepublika%20za%20avgust%202014.pdf>, 23.12.14.) This number also includes local officials, i.e. all persons employed in municipalities and towns, as well as employees of other local public services and institutions funded from local budgets.

level of their development¹¹. It aims at securing a minimal level of capacity of less developed local communities to perform their functions, and is at the same time, limited by budgetary crisis. Due to all that the capacity of municipalities and towns to provide an adequate level of public services within their domain differs and is often highly dependant on the assistance of the state budget.

14. The system of local government finance established by a 2006 law¹² could not become stable for a few years now, due to serious fiscal and economic crisis. Relative importance of local finances in total public finances is lower than in countries of the European union, but the total volume of local finances for current domestic circumstances is objectively high. From the three types of public revenues of the local budgets (original revenues, shared revenues and transfers), the most important revenues in 2013 were shared revenues (54,8%), then original revenues (26,4%), followed by transfers (17,7%). The share of each of these categories of revenues in individual municipalities and towns differs, so the average share of transfers exists in 30 local governments, while in 36 of them these revenues comprise from 20 to 30 per cent of total revenues, in 47 over 50% and in two municipalities it goes even over 80 per cent. In the remaining 32 local governments the share of transfers is smaller than the average and the smallest in Belgrade (0,5%) and Novi Sad (6%). The relationship between capital and current expenses in 2013 is such that capital revenues on average make up only 15,5% of the total expenses (the rest being current expenses). Within the category of current expenses, the dominant part belongs to expenses for employees and expenses for goods and services.

15. Besides the frequent indication of the need for a more comprehensive financial oversight of local governments by the state, the analyses of national experts, as well as recommendations of experts of the Council of Europe, point towards certain shortcomings in the complete oversight system, primarily to the fact that state oversight is almost exclusively conceived as *ex post* oversight. Such an oversight, by way of its very nature, cannot prevent the very occurrence of illegal behaviour, but is only directed towards detection of illegalities and other irregularities and their sanctioning. The same applies to inspection oversight occurring during administrative work and does not always have a preventive or advisory character. Nor are line ministries always ready to provide the necessary advice and provide the solicited opinions on application of legislation which often leaves the local officials and civil servants to themselves, even when they show readiness to prevent their own mistakes.

2. COMPARATIVE EXPERIENCES OF EUROPEAN COUNTRIES AND DOMESTIC TRADITION AS SOURCES OF IDEAS

16. Every country in Europe adopted its own model of territorial decentralisation, shaped by its tradition and specific characteristics of social, political and administrative system. That is the case with all subnational levels of government and particularly with local self-government. Besides

¹¹ By a governmental decree all local government units are classified in four groups according to the level of their development: the 1st group – 20 local governments with a development level over the national average, the 2nd group – 34 units with a level of development between 80 and 100 percent of the national average, the 3rd group – 47 underdeveloped local government units with a level of development between 60 and 80 percent of the national average and the 4th group – 44 extremely underdeveloped units with a level of development under 60 percent of the national average. Within the last group there are 19 local government units with the level of development under 50 percent of the national average which were granted the status of a devastated area. Decree on establishment of a uniform list of development of regions and local self-government units for 2014 – in Serbian: Uredba o utvrđivanju jedinstvene liste razvijenosti regiona i jedinica lokalne samouprave za 2014. godinu (*Official gazette of the Republic of Serbia*, Np. 104/14.)

¹² Law on local government financing, *Official gazette of the Republic of Serbia*, No. 62/2006, 47/2011, 93/2012.

wide acceptance of the European Charter of Local Self-government, representing only minimal common standards and guarantees of local self-government, significant differences remain between local self-government systems, even among member states of the European Union. These differences relate both to the number and size of local government units, as well as to organisation of local bodies, competences, financing and resources, oversight of local government operations and legal protection of local self-government. In terms of middle or regional levels of government, the situation is even more diverse. This is also described by the fact that despite numerous initiative, a common binding document on regional self-government has not been adopted yet under the auspices of the Council of Europe, but only a reference framework for regional democracy¹³. Since it does not have the character of a convention, this document was not offered for signature and ratification by the member states.

Bearing that in mind, the following paragraphs provide only basic remarks on characteristics of local and regional self-government systems, primarily in the European Union member states. More specifically, it draws out the characteristics that could be useful in drafting of the Serbian National Decentralisation Strategy, including the possible changes in the status of towns.

17. The first fact which is noted is that the local government systems in Europe were and are subject to many reforms. In most of the examined countries, during the last ten or fifteen years there have been significant changes in territorial organisation and essential features of local government systems (e.g. in Croatia, Denmark, Greece or Romania)¹⁴.

18. It is hard to find a European country in which there is only one subnational level of government, i.e. where there is only one level of local self-government under the central level of government. More precisely, among EU member states, besides Lithuania, below the central level there is usually at least one more form of regional self-government or more than one level of local self-government and in a significant number of states, there is both. Two subnational levels of government exist in Greece, the Netherlands, Denmark, Sweden, Finland, Estonia, the Czech Republic, Croatia and Slovenia and three or more levels in Luxembourg, Belgium, Germany, Poland, Romania, Great Britain, Ireland, France, Portugal, Spain, Austria, Italy, Malta and Cyprus.

19. Different forms of decentralisation are considered regional level of government, i.e. in the words of the Council of Europe's Reference framework on regional democracy, all "territorial authorities between the central government and local authorities." In that sense, different entities are considered regions: federal units in federal states, regions in so-called regional states (Italy and Spain), territorial entities with different forms of autonomy and different forms of regional self-government. This framework also accommodates areas enjoying special autonomy granted to them either by international agreements or national legislation (usually constitutions). Examples of Spain and Italy as regional states demonstrate that the regions' autonomy does not need to be identical in nature and scope. Examples of regional self-government include e.g. Croatian counties (*županije*) or Dutch boards. Besides 20 counties, the capital Zagreb performs the competences of counties. In the Netherlands, there are different types of boards on the regional level, as forms of functional decentralisation.

¹³ Council of Europe Reference Framework for Regional Democracy, MCL16(2009)11, <https://wcd.coe.int/ViewDoc.jsp?Ref=MCL16%282009%2911&Language=lanEnglish&Ver=original&Site=DG1-CDLR&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679> (16.4.15.)

¹⁴ For a more detailed overview of reforms of territorial organisation in European states, see *Decentralisation at crossroads - Territorial reforms in Europe in times of crisis*, Council of European Municipalities and Regions, 2013.

20. Among European countries there are significant differences in territory and population of local government units. Some countries stand out by having small municipalities such as France with its 36.000 inhabitants (out of which 31.000 municipalities have under 2.000 inhabitants), followed by the Czech Republic, Slovakia and Turkey and in some part Switzerland. On the other end, the biggest municipalities are in Great Britain (over 140.000 inhabitants), Georgia, Denmark and Lithuania (with over 60.000 or 50.000 inhabitants)¹⁵. In the past decades, several European states conducted the processes of amalgamation, i.e. enlargement of municipalities. These processes were never easy and some even failed at them.

In the majority of European countries, local government is organised in more than one tier. Besides Serbia, a single level local government exists in Montenegro, Iceland, Switzerland, Austria and Turkey and among them only Montenegro and Iceland do not have a regional level of government¹⁶. Where there is a multilevel local government, the first tier is usually comprised of municipalities and the second of towns, counties, districts or similar units. The third level, where it exists, usually appears as forms of regional self-government. The rule is that capital cities also have a special status, so the capital often simultaneously has the status of a town and a regional authority (e.g. Oslo, Vienna or Zagreb).

21. A significant number of states differentiates between certain types of local government units (the polytype model), determining different competences and organisation for them. Such a division can be established by law (for instance, according to size of population or type of settlement) or by leaving it up to local communities themselves to select the suitable organisation model. The most frequent differentiation is the one between rural and urban communities¹⁷.

22. In all European states there is a differentiation between original and delegated tasks of local self-government, with consequences primarily in the manner of their financing and oversight by higher levels of government. In respect of distribution of competences between different levels of government, besides the principle of subsidiarity from the European Charter of Local Self-government and other principles¹⁸, certain doctrines were developed, mostly through the practice of highest national courts, supporting the operation of local authorities, even in the fields not explicitly listed as fields in their competence¹⁹. In a number of European local self-government systems, besides the so-called obligatory competences, municipalities can be offered the possibility to perform some tasks within their facultative competence, if they consider that they

¹⁵ See *Decentralisation at a crossroads - Territorial reforms in Europe in times of crisis*, Council of European Municipalities and Regions, 2013.

¹⁶ For further data see *Local and Regional Government in Europe – Structures and competences*, Council of European Municipalities and Regions, 2012.

¹⁷ For instance, in Germany municipalities can be established as large towns, «ordinary» towns, independent municipalities and municipalities associated into administrative communities. In Croatia, since 2005 there are differences in competences of certain categories of towns, so additional competences related to maintenance of public roads, issuing construction and location permits and documents, decentralised to towns with more than 35.000 inhabitants and towns which are seats of counties, so-called large towns. Estonia has 193 rural municipalities and 33 towns. In Hungary, there are several types of local and regional self-government units – municipalities, towns, towns with the status of districts, towns which are seats of counties, counties. Budapest has a special status and is comprised of two levels of local authorities – town authorities and 23 districts.

¹⁸ On the principle of subsidiarity see: Milosavljević, B., Jerinić, J. and Damjanović, D., *Decentralizacija i primena supsidijarnosti u Evropi i Srbiji*, Beograd: Ministarstvo državne uprave i lokalne samouprave, 2014.

¹⁹ In France that is the doctrine *clause generale de competence* developed by the Council of State by which local and regional authorities can intervene in all issues for which they can demonstrate that there is a local interest. Since the reforms of 2010 this doctrine can now be applied only to local authorities and not to departments and regions. Similarly, the German Constitutional Court defined the notion of so-called institutional guarantee for local authorities which protects the essence of local self-government.

are competent for that and that it is necessary for their citizens (e.g. such possibilities can be seen in Germany, Luxembourg, Belgium etc.). Facultative competences can be determined for regional, as well as for local authorities (e.g. in Germany such a possibility exists for districts and local authorities).

23. One of the important characteristics of local self-government as a level of government is its direct democratic legitimacy. At least bodies of the first level of local self-government in all European countries are directly elected (council, assembly or other representative body). Concrete solutions in respect of electoral systems differ – from majority to proportional elections. In some countries, mayors are also directly elected (e.g. in Poland or Romania). In other countries, mayor is the bearer of the electoral list which wins the elections for the local assembly (e.g. France, Spain, Greece or Portugal), while in Belgium, Luxembourg or the Netherlands mayors are appointed by the central government. Finally, in Finland, Ireland and Iceland, local authorities are led by appointed managers.

24. The issue of oversight by central and regional authorities over local authorities is one of the central issues of the local self-government system in each country. The scope and type of oversight naturally depend on the type of task overseen (primarily, is it an original or a delegated task). Depending on that, oversight can encompass only the legality of local authorities' acts or also their expedience or efficiency. In certain situations, higher levels of government only have the right to suspend the execution of acts of lower level authorities, but in some countries this is possible only with a court decision, while in others that is not required. When the legality of local government acts is reviewed before a court, suspension of their execution can be automatic (e.g. in Finland) or the initiator (the oversight authority) bears the burden of proof of illegality of the decision and the need to suspend its execution (e.g. in Spain). On the other hand, local and regional authorities always enjoy some form of legal protection of self-government and it is usually exercised before some kind of a judicial body²⁰.

25. During the period of two centuries, as long as the legislative development of local self-government in Serbia lasts, there was a constant struggle between supporters of centralisation and decentralisation²¹. Outcomes of that struggle were variable, but local authorities were more often under strong state control than enjoying independence. Three main tendencies in the development of local self-government can be discerned: the tendency to enlarge municipalities, tendency towards uniformity (monotype model) and the tendency towards a single-level local government.

26. The system of small municipalities was maintained in Serbia throughout the 19th century and the first half of the 20th century with the exception of municipalities established in bigger urban settlements. Even then, there were efforts for municipalities to be somewhat enlarged, but never to become too large. At the beginning of the socialist period, small municipalities were predominant as well, but soon started the determined path towards their enlargement. Such steps were justified by the necessity to create a more significant local level of government, i.e. the intention for municipalities to become stronger and competent to overtake wider self-government and administrative state functions (especially the latter). The process of enlargement of

²⁰ In some countries such protection is obtained before regular courts (courts of general jurisdiction or administrative courts) and in others in a special constitutional court procedure (either before a constitutional court – e.g. in Germany or the highest court in the country which performs the role of the constitution). In Spain protection is possible in different procedures before administrative courts and the Constitutional Court.

²¹ For a more detailed overview see Milosavljević, B., *Dva veka lokalne samouprave u Srbiji: razvoj zakonodavstva (1804-2014)*, Beograd: Stalna konferencija gradova i opština, 2015.

municipalities was concluded during the 1960s, so the number of municipalities changed only slightly since then.

In the first Serbian law on municipalities dating from 1839 there was no criteria for the size of municipalities. The 1866 Law stipulated that “every borough, town or village has to have its own municipality, either only for itself, or together with other villages”, while a municipality could not have less than 200 tax heads (i.e. tax payers). Some twenty years later (in 1884) there was a demand that a municipality has “at least 500 tax heads” and only five years later (1889) there was a return to the old criterion (200 tax heads). In the Kingdom of Yugoslavia, the 1933 law demanded that municipalities have at least 3000 inhabitants (except when “terrain conditions and other entirely justifiable reasons” demanded that there is a municipality with even less inhabitants). After the Second World War the process of enlargement of municipalities had a fast flow: the number of municipalities in Serbia in 1952 was 2.206, in 1955 it was 737 and finally reduced to 186 in 1966/7. It has not significantly changed after that.

27. Differentiation between several types of local government units within the same level was a feature of the Serbian local self-government up until 1955. In that year there was a transfer from polytype to monotype organisation which was never departed, except only partially in the case of towns. While it existed, differentiation was based on the type of settlement and included two criteria: (1) scope and type of tasks in original and delegated competence and/or (2) organisation of self-government bodies.

Already in the first law on organisation of municipalities from 1839 there was a differentiation of three types, i.e. “three classes of municipalities”: the first included only Belgrade, the second - district and other boroughs, and the third - villages. The specificity of Belgrade was recognised in 1841, but only as a separate police and administrative authority (Administration of the Belgrade borough). In its status, Belgrade was later equalised with a district as a state administrative authority and in the sense of self-government it was equal to a municipality, with a specific organisation of bodies. These differences between rural and urban municipalities were maintained even later and they were primarily demonstrated in the composition of their bodies and somewhat in their competences. They were most completely derived during the first Yugoslav state. The 1921 Constitution envisaged two types of municipalities – rural and urban, which were later regulated by two separate laws (from 1933 and 1934). Urban municipalities (i.e. towns) got a much wider circle of delegated competences, while their self-governing competences were not significantly widened. There were also some differences in organisation of urban and rural municipalities²².

After World War II the polytype system was maintained only for a decade, and in a very complex form. During that time there was a “large number of formally, organisationally and legally fixed forms of people’s boards”, especially in towns²³. Since 1955 rural and urban municipalities were equalised. The constitutional system introduced in 1963 envisaged the possibility to establish more municipalities on the territory of large towns, which was applied in Belgrade. A town divided into municipalities had, in that way, two types of local self-government units: the town

²² The status of towns was granted to: Bakar, Banja Luka, Bela Crkva, Beograd, Bihać, Bitolj, Bjelovar, Valjevo, Varaždin, Velika Kikinda, Veliki Bečkerek, Vinkovci, Virovitica, Vranje, Vršac, Vukovar, Dubrovnik, Zagreb, Zaječar, Jagodina, Karlovac, Koprivnica, Kotor, Kragujevac, Križevci, Kruševac, Kumanovo, Leskovac, Livno, Ljubljana, Maribor, Mostar, Niš, Nova Gradiška, Novi Sad, Osijek, Pančevo, Petrinja, Peć, Piroć, Podgorica, Požarevac, Prizren, Priština, Ptuj, Ruma, Sarajevo, Senta, Senj, Sisak, Skoplje, Smederevo, Sombor, Split, Sremska Mitrovica, Sremski Karlovci, Stara Kanjiža, Stari grad na Hvaru, Subotica, Sušak, Tetovo, Travnik, Tuzla, Užice, Hvar, Herceg Novi, Celje, Cetinje, Čakovec, Čačak, Šabac and Šibenik.

²³ Pusić, E., *Upravni sistemi, II*, Zageb: Grafički zavod Hrvatske i Pravni fakultet u Zagrebu, 1985, p. 119.

was the primary unit, and town municipalities were secondary or derived units of local self-government. However, the town did not gain bigger competences in that way: only competences that were generally established for municipalities could be divided between it and town municipalities. The same model was maintained under the 1974 Constitution, with a possibility to establish so-called town communities of municipalities (*gradske zajednice opština*), which was not utilised in Serbia. The 1990 Serbian Constitution enabled that certain municipalities are by law determined as towns, with an obligation to form two or more town municipalities. Until 2007, this possibility was realised by four more towns (Kragujevac, Niš, Novi Sad and Priština). After the 2006 Constitution town municipalities lost the status of local government units.

28. Two levels of local government (municipality – *opština* and county – *srez*) existed as permanent categories up until 1967. Only seven years later (1974) there was an attempt to compensate for the second level with a community of municipalities (*zajednica opština*) which were abolished in 1991. Since then, there is a single-level model with municipalities and towns as single and basic units of local self-government. A single-level local self-government, thus, exists in Serbia only between 1967 and 1974 and, after that, from 1991 until today. The third level of local self-government in the form of districts (*okrug* or *oblast*) disappeared from time to time, but it was nevertheless maintained up until the beginning of 1950s when it finally vanished. In the Kingdom of Yugoslavia, at one point, there were even four levels of territorial units (district and duchies, district, county and municipality - *oblast* and *banovina*, *okrug*, *srez* and *opština*), out of which two were self-government units, one had weak self-government elements and one was without self-government elements. Besides that, for a period (i.e. until creation of municipalities) village self-government also existed. It will appear once more, after the Second World War, for a short while, as the primary level of self-government, in order to evolve into local communities (*mesne zajednice*), which do not have the character of local self-government units.

3. TWO PROPOSED DECENTRALISATION MODELS

29. **First of the two designed models** represents a collection of proposals for advancement of decentralisation within the current constitutional framework. Basically, these are suggestions aimed at elimination of observed deficiencies in the functioning of the local self-government system and at the same time towards further decentralisation. Realisation of all proposals is feasible without constitutional revisions. An overview of these proposals by field is provided in Table 3.

| <i>Field</i> | <i>Proposals</i> |
|---|---|
| Territorial organisation | <ol style="list-style-type: none"> 1) Develop separate analyses with economic, spatial, demographic and other indicators of effect of possible abolishment of extremely small municipalities in which there is a trend of decline of the population; 2) Analyse the effects of determination of certain larger municipalities as towns, in particular if there are no municipalities with the status of town on the territory of the administrative district or developmental. |
| Original and delegated competences of local self-government units | <ol style="list-style-type: none"> 1) A possible list of new tasks which could be transferred or delegated to local self-government units should be determined on the basis of inventory of tasks in competence of all three levels of government (central, provincial or local); 2) Develop a methodology for assessment of fulfilment of criteria for transfer or delegation of tasks; 3) Before any decision on transfer or delegation of tasks, there should be a consultative process involving local government units; 4) The law should always clearly state if tasks are transferred or |

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| | <p>delegated;</p> <p>5) The laws' rationale should list the results of the consultative process and assessments (under 2 and 3), as well as whether adequate resources are secured and administrative and other capacities for the performance of tasks.</p> |
| Additional competences of the town of Belgrade | <p>1) Utilise in a more decisive manner the possibility to delegate wider competences to towns and the Town of Belgrade;</p> <p>2) Delegate a wider circle of competences to towns and the town of Belgrade.</p> |
| Additional facultative and conditional competences of local government units | <p>1) Offer new tasks to local government units which they could undertake if they wish to, i.e. if they fulfil conditions set by law;</p> <p>2) Determine deadlines for fulfilment of these conditions and the procedure for their assessment;</p> <p>3) Re-evaluate if some of the tasks which are already in the competence of local government should be determined according to this principle.</p> |
| Inter-municipal cooperation and partnership with the private sector | <p>1) Create a more solid legal framework for inter-municipal cooperation including introduction of possible incentives;</p> <p>2) Introduce obligatory cooperation when it is a condition for quality performance of tasks and when the municipality is not able to perform certain tasks on its own;</p> <p>3) Encourage public private partnership arrangements.</p> |
| Management of functions of the local self-government | <p>1) Improve the legal framework and practice of citizens' participation;</p> <p>2) Determine a list of issues on which citizens must be consulted;</p> <p>3) Improve the local electoral system;</p> <p>4) Established a unique executive body;</p> <p>5) Adapt the local administrative structure to local needs and demands for efficiency;</p> <p>6) Standardize models for establishment of other local bodies, offices and organisations.</p> |
| Status of town municipalities and local communities | <p>1) Strengthen the role of town municipalities, especially the ones with a status of suburban municipalities;</p> <p>2) Secure a minimal legal framework significant for the position of town municipalities and local communities.</p> |
| Administrative districts and deconcentration | <p>1) Deconcentrate a larger number of tasks to administrative districts;</p> <p>2) Provide administrative districts with authorities for oversight over performance of delegated tasks of local government units;</p> <p>3) Affirm the role of the council of administrative district as a form of consultation and coordination.</p> |
| Functional and personal decentralisation | <p>1) Specify the legal framework for relations between local government units and public institutions and public services they found;</p> <p>2) Clarify the disputable relations between state and local bodies in relation to local public institutions and services;</p> <p>3) Improve the delegation of tasks from the competences of local government units and concessions of public services;</p> <p>4) More widely use the practice of creating deconcentrated nits of local administration.</p> |
| Financial decentralisation | <p>1) Establish a stable and predictable system of local government financing;</p> <p>2) Increase the responsibility of local governments for collecting of own revenues;</p> <p>3) Rationalise the expenses of local budgets in the financing local public sector.</p> |
| Oversight of local self-government | <p>1) Upgrade the mechanisms of <i>ex post</i> oversight by state and provincial bodies of the work of local governments;</p> |

| | |
|--|---|
| | 2) Provide regular control over regulatory acts of local governments; 3) Improve financial control over local governments, with a possibility to include forms of <i>ex ante</i> oversight; 4) Oblige state and provincial bodies to higher cooperation with local government bodies, provision of expert support and preventive action with an aim of proper and efficient application of the law. |
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Table 3. Overview of suggestion for advancement of decentralisation by field (the first model)

30. A few additional explanatory notes could be added to the proposals relating to towns. First of all, the model advocates for a more determined usage of the constitutional possibility to entrust wider competences to towns, in comparison to municipalities. The same proposal applies to Belgrade, which according to the Constitution can have wider competences than municipalities and other towns. This proposal is supported not only by the size of towns and their generally solid administrative and other necessary capacities to perform new tasks, but also the need to make a more significant step towards departing the strict monotype local government system and to enable towns to take over more responsibility for solving their own developmental, communal and other problems. The special position of towns in the local government system would have a fuller justification if they would be identified as subjects of regional development with a leading role in districts (NUTS 3). In relation to that, this proposal advocates that the status of towns should be provided to those municipalities which are seats of administrative districts or centres of developmental districts and have a population over 50.000 inhabitants, but do not have the status of towns at the moment. In addition, it is proposed to delegate new tasks to towns. Among other administrative tasks, this should especially be considered in relation to inspection oversight in certain fields.

If wider competences would be delegated to towns and the Town of Belgrade, it would be justified to transfer a significant number of towns' competences (in comparison to the present situation) to town municipalities, especially in the case of Belgrade and its suburban municipalities. Even though they are not currently local government units, it seems reasonable to encourage them to take over greater responsibilities, especially when their problems are atypical or different from those in urban zones. This could apply to town municipalities outside of Belgrade since they now have a much more modest competences than the ones in Belgrade, naturally, with a prior evaluation of their capacities to perform new tasks. In addition, the law could secure at least a minimal legal framework for the status of town municipalities. The issues which should be regulated include: bodies of town municipalities, oversight over their work, financing and legal personality. There should be an unequivocal extension of application of all (procedural, financial and other) legislation applicable to public authority bodies, since they are not presently a level of public authority, because they only perform public tasks from the competence of towns.

31. **The second model** starts from the position that suggested corrections in the present local government system exposed within the first model are of limited range. Their introduction could to some extent improve decentralisation and secure a more adequate division of competences between the central and local levels of government. However, some of the fundamental weaknesses which relate to systemic solutions would still exist and have a strong influence. Their nature is such that they hinder the true functional division of competences and realisation of the desired extent of decentralisation, i.e. prevent the establishment of all necessary preconditions for a decentralised, democratic and efficient system of performance of public tasks.

Therefore, the second model deviates from some of the current constitutional solutions, so its possible realisation would be conditioned with a prior constitutional revision and adequate legal

elaboration. The scope of these deviations is strictly limited to the measure necessary for establishment of elements of the projected model. Attention was paid to the necessity for proposals to be as much as possible incorporated into the wider constitutional framework defining the position of certain levels of government and relations between them. In a similar fashion, attitudes towards realities of the existing local government institutions were determined: the projected model is a collection of proposals for their perfection and on no account would it neglect or disregard their present values.

32. The model was also envisaged as a continuation of the previously described first model in the sense that implementation of proposals from the first models would create a basis for easier introduction of most of the proposals envisaged by the second. These would, therefore, be two phases of the same process – the process of local government reform with an aim of wider decentralisation. The basic elements of the selected model are (1) establishment of a polytype structure within the first level of local self-government (introduction of distinctions in relation to organisation and competence between municipalities, towns and the Town of Belgrade); and (2) establishment of a middle level of local government (in the form of districts). Besides these two levels of local government, there would be a possibility of (3) association of two or more districts on a voluntary basis as forms of regional self-government.

33. Municipalities, towns and Town of Belgrade would be first-level (basic) local self-government units, while Belgrade would also have the status of a district. Differences between municipalities and towns would relate to organisation of their bodies, as well as original and delegated competences. The criterion for size of municipalities could be raised to 20.000 inhabitants with a possibility for exceptions (smaller municipalities with a smaller number of inhabitants). By applying this criterion, the total number of municipalities could be reduced at least for one third. For small municipalities which would not be abolished, the law could establish an obligation of association in administrative communities with a neighbouring municipality or town (according to the German model, for instance) or an obligation to form most or some joint administrative bodies, offices, institutions, public utility companies and other organisations.

With the present towns, this status could be granted to some big municipalities and all the ones that are seats of administrative districts, while the criterion for the size of towns could be lowered to 50.000 inhabitants. Towns with town municipalities would differ from the ones without them in the sense that town municipalities would have a status of secondary (derived) local government units (i.e. like according to the 1990 Constitution of the Republic of Serbia) and perform a portion of the tasks in the competence of towns.

For large towns, for instance the ones with more than 150.000 inhabitants, the law could establish a mandatory division into town municipalities. Original competences of towns could be widened to include certain additional tasks in the fields of urban and spatial planning, construction, urban infrastructure, transport etc. Both municipalities and towns could gain certain additional competences in the field of communal police and public safety. When delegating tasks from the competence of the central state and the autonomous province, towns should be granted with a wider range of such tasks than municipalities.

The town bodies would be an assembly, an executive body and a town administration. The composition of the town's assembly could be determined up to the double number of deputies in comparison to deputies in municipal assemblies (that is up to 70). The mayor (with a deputy) would be the single executive body and he would be assisted with a city council composed of five members elected by the assembly among experts in certain fields. Some of the more important decisions from the mayor's competence could also be conditioned by a prior opinion of the

assembly. The administration in towns could be organised in several separate administration, but their number should be limited by legislation.

34. Introduction of the middle (district) level of local self-government could be realised by transforming the existing administrative districts into a district level of local government. The territory of present administrative districts should, in that sense, be re-evaluated and possibly altered if specially determined needs for that arise. Besides the existing 29 administrative districts, district status would also be granted to Belgrade.

The district would also have original and delegated competences. Besides passing their own statute and budget, regulation of organisation of district bodies and management of district public property, original competences of the district could include certain tasks related to establishment and maintenance of public services of importance for the district, realisation of infrastructure projects of district importance; taking care of some social and healthcare services, economic development of the district, cultural institutions, high school education, environmental protection, protection and rescue of the population, public order, protection of national minorities and other tasks. As delegated tasks the district should perform some of the tasks that are now entrusted to municipalities and towns, with determination of new tasks among the ones that are now performed through deconcentrated units in administrative districts as well as some other tasks. Municipalities and towns could also delegate or entrust via contract to the district level the performance of some of their original tasks.

The district could be authorised to conduct oversight over the first-level local government units and its bodies could act as the second instance in administrative procedure, upon appeal against first instance decisions of the municipal and town bodies in issues of their competence. Competent central and provincial bodies would conduct oversight over the work of district bodies.

The highest authority in the district would be the district assembly composed of deputies elected from the composition of municipal and town assemblies. By election to the district assembly, the deputies would keep their mandates in local assemblies. The number of deputies of the district assembly should not be too large and the assembly could pass decisions by a majority of all deputies. Some of the more important decisions of the district assembly could be conditioned by a previous opinion or consent of the municipal and town assemblies. The executive body could be a district council whose members would be elected by the district assembly upon proposal of municipal and town assemblies. There are, naturally, possibilities for different models of executive bodies that could be taken into consideration. District administration would be under supervision of the district council and assembly and the assembly would elect its head. Some of the existing municipal bodies could be raised to the district level, in the form of joint municipal and town bodies. The district level would also be a logical basis for organisation of some of the regional public services, such as regional landfills and regional water supply systems.

In order for the district level to come to life, it would be necessary to form a certain mass of district property. In addition, for their financing it would be necessary to secure adequate financial resources in the form of some original revenues, resources for conducting delegated tasks and grants from higher level of government. Besides the listed challenges, introduction of districts would certainly generate new expenses which could be reduced to a minimal measure if, in proportion with the relief of municipalities, towns and higher levels of government of some tasks which would in future be performed by the district, their costs for the performance of the same tasks would be simultaneously reduced. District administration or at least its bigger part

could be formed from the employees who performed the same tasks in municipalities, towns or higher levels.

35. As the existing regions (NUTS 2), except in the case of the Belgrade regions, are too large for realisation of functional cooperation among local government units, it is proposed to consider the idea of creating a possibility for voluntary association through functional cooperation of two or more districts. The motives for such association could be in realisation of functions of mutual interest or big projects of regional importance, or projects overcoming the boundaries of an area larger than one district. Depending on the nature of mutual interests and projects, such association could be performed on temporary basis or for a limited period determined in advance or on a long-term basis. In order to realise the cooperation joint bodies could be established and coordinative role transferred to them. Existing counties (*oblasti*) encompassing two or more districts could be used as the territorial framework for realisation of this regional cooperation. Fields of cooperation and forms for its realisation could be indicated more closely. If such models of cooperation would prove to be successful in the coming period, for instance during the next ten years, decision-makers could consider establishing a new level of regional self-government. On the territory of autonomous provinces, the model of regional self-government could have a different outlook or it could be evaluated as unnecessary due to actual possibilities of autonomous provinces to substitute the need for such a form of regional self-government. However, competences of the autonomous provinces and the reform of division of competences between the central and provincial level of government were not the direct subject of authors' analysis and a proper discussion of these issues would demand a separate comprehensive analysis which would perceive all the important aspects and offer adequate proposals.

4. FURTHER STEPS

The proposed models are primarily oriented towards developing an advanced concept of local self-government system and the relationship between the central and local level of government. As mentioned before, in order for models to be properly evaluated and finally defined by relevant decision-makers, a cost-benefit needs to be conducted. In addition, the proposed models should be subject to extensive public and expert discussion. The final decision on future steps will be made by the Government and its Council for Public Administration Reform.