

The Compliance of Local Self-Government Financing Rules in the Republic of Serbia and the Republic of Srpska with the European Charter of Local Self-Government

Brano Hadži Stević¹

University of East Sarajevo, Faculty of Law, Pale, Bosnia and Herzegovina

Submitted: 2024-12-30 • Accepted: 2025-01-28 • Published: 2025-02-18

Abstract: A necessary precondition for the existence and functioning of local self-government is the existence of appropriate financial resources. The European Charter of Local Self-Government is an important legal act regarding the question of local self-government in general, including its financing, since this act sets a number of standards that represent a common frame for national legislators. This paper tends to analyse the legislation of the Republic of Serbia and the Republic of Srpska concerning financing and its compliance with the principles from the Charter. In order to achieve this goal, dogmatic and comparative methods will be used, as well as statistical data. Upcoming analysis will show that the legislation in Serbia and Srpska is not *in toto* in accordance with the standards prescribed in the Charter regarding the financing of local self-government units.

Keywords: local self-government, the European Charter of Local Self-Government, financing, standards.

INTRODUCTION

Local self-government today is considered a constitutive part of a democratic state, as a type of decentralization, which presents a desirable form of relations between units of government. However, the decentralization should not be *formal* but real, and an important element of genuine decentralization is connected with the financial power of local government. An important international act devoted to local self-government in general and, *inter alia*, to the question of its financing is the European Charter of Local Self-Government (hereinafter: the Charter). Hence, the Charter presents a European set of standards that can be used as a criterion for evaluating local government regulation in any European state. Taking this into account, the purpose of this paper is to check the compliance of Serbia and Srpska legislation with the Charter.

The importance of this topic is clear since (1) local government is a constitutional category whose functioning is inextricably connected with proper financing; (2) there is no democracy without financially independent local government; (3) the Charter has extraor-

¹ Corresponding author: brano.hadzi.stevic@pravni.ues.rs.ba • <https://orcid.org/0009-0001-0844-3450>



eISSN 2620-0406

Citation: Hadži Stević, B. (2025). The compliance of local self-government financing rules in the Republic of Serbia and the Republic of Srpska with the European Charter of Local Self-Government. *NBP. Nauka, bezbednost, policija*, 30(2), pp. 177–198. <https://doi.org/10.5937/nabepo30-55763>



dinary significance, among all, by setting the key standards concerning financing of local self-government, and (4) the compliance of any domestic law regarding local government with the Charter is an indicator of democratization of a national system concerning local self-government. In domestic doctrine, the question of financing local self-government is not sufficiently explored, and this paper tends to fill that gap to a certain extent. In order to achieve the main aim of this paper (evaluation of Serbian and Srpska's legislations), the dogmatic and comparative methods, as well as some statistical data, will be used for checking the main hypothesis: the legislation of the Republic of Serbia as well as of the Republic of Srpska is not completely in accordance with the local government financing standards prescribed by the Charter.

METHODS

Since this paper is devoted to the evaluation of the compliance of Serbian and Srpska's legislations with the Charter, it is clear that the main methods are dogmatic and comparative. The dogmatic method will be applied in order to analyse the current legal solutions in relevant legal acts. Both the constitutions of Serbia and Srpska have some provisions devoted to local self-government (hereinafter: LSG), but the main sources of law regarding LSG are statutes. Concerning Serbia, the most important statutes are the Law on Local Self-Government and the Law on Local Self-Government Financing. On the other hand, the main statute in Srpska is the Law on Local Self-Government.

Taking into consideration that this paper tends to evaluate the LSG legislation of Serbia and Srpska concerning compliance with the Charter, the provisions of this Council of Europe document will be analysed. Particularly important is Article 9 of the Charter, since it is *in toto* devoted to the “financial resources of local authorities”, as can be seen from the name of this article. The comparative method will be used (1) in order to contrast the Serbian and Srpska solutions with each other as well as (2) to compare their compliance with the Charter. Finally, relevant reports will be used as well as statistical data regarding LSG financing.

The structure of the paper is as follows: the first part of the paper will present the positive law solutions through the application of dogmatic method regarding LGS financing in Serbia and Srpska; the second part will be dedicated to the discussion in order to compare Serbia and Srpska solutions with the Charter and to provide a critical review of the current legal solutions; the last part of this paper is devoted to the conclusion and potential recommendations to both Serbian and Srpska's legislator that could enable the full harmonization of statutes with the Charter standards regarding financing.

RESULTS: THE MAIN GUARANTEES REGARDING LOCAL SELF-GOVERNMENT

Constitutional guarantees regarding LSG. LSG presents “an inherent right of freedom of local communities” as well as “one of the foundations of a democratic establishment” (Pál & Radvan, 2024: 208). The importance of LSG justifies the constitutional regulation of this issue. According to Article 5 of the Constitution of Srpska, its constitutional system



rests, *inter alia*, on LSG, while Article 101 prescribes some competencies of LSG and proclaims that the LSG system is regulated by statute. Article 12 of the Constitution of Serbia proclaims that state power is limited “by the right of citizens to provincial autonomy and local self-government” (this right is confirmed in Article 176), and those citizens’ right “is subject only to judicial and statutory review”, i.e. the central authority is not authorized to check the purposefulness of local decisions.

The Serbian Constitution proclaims that the LSG units have their property, different from state property (Article 86), whose manner of use and disposal (Article 87) as well as taxes and other revenues (Article 91) are regulated by statute. Article 92 prescribes that “local self-government units have budgets in which all revenues and expenditures that finance their competences must be shown”. Also, Articles 177–181 and 188–193 of the Serbian Constitution regulate a number of relevant questions, such as the delimitation of competences between different levels of authority, delegation of tasks, the right to self-regulation of bodies, LSG assemblies, cooperation of autonomous provinces and local self-government units, types of local self-government units, their establishment and position, competences, legal acts, and protection of LSG. Hence, the constitutional guarantees concerning LSG are stronger in Serbia compared to Srpska, and “a more thorough constitutional regulation of local financial autonomy results in its better quality” (Pál & Radvan, 2024: 209). Since Article 194 of the Constitution of Serbia prescribes that international law, such as the Charter, have greater legal force than statutes, the Charter presents positive law in Serbia. Taking into account the democratic character of the existence of LSG, we believe that more detailed constitutional regulation of this issue is desirable, i.e. justified.

Statutory solutions. The Serbian Law on LSG of 2007 (Article 2) as well as the Law on LSG of Srpska of 2016 (Article 3) define that LSG presents the *right of citizens* to directly and through their freely elected representatives participate in the realization of common local interests of the residents, as well as the *right and obligation of LSG institutions* to regulate and manage public affairs within the statutory limits in order to achieve the interests of the local population. In accordance with Article 15 of the Serbian Law on LSG, every LSG unit has its own property, which is managed by its authorities, but the question of LSG financing will be regulated by a special statute. That statute is the Law on Local Self-Government Financing of 2006, the act that regulates the “provisioning of funds to municipalities, cities, and the city of Belgrade for the performing of their own and delegated tasks” (Article 1). There are at least two important questions regarding LSG financing: (1) Which revenues belong to an LSG unit, and (2) Can an LSG unit freely dispose of them?

The Law on LSG Financing of Serbia prescribes that a local budget consists of their own and delegated revenues, as well as transfers (in some references quoted in this paper, the term “grants” is used as a synonym for transfers), revenues based on borrowing, and other revenues prescribed by law (Article 5), and all revenues of an LSG unit “can be used for any purpose, in accordance with the law and the decision on the budget of the local self-government unit, except for those revenues whose special character is determined by law”. Similarly, the Law on LSG of Srpska prescribes that “all movable and immovable things and asset rights belonging to the LSG unit” constitute its property, which it “manages, uses, and disposes of” in accordance with the law, providing “care of a good host” in order to achieve the “interest of the local population” (Article 72). Revenues and receipts of the LSG units in Srpska are taxes, fees, charges, incomes, and receipts from property and other revenues (Article 74).



Therefore, both Serbian and Srpska statutes proclaim the range of LSG units' revenues and the right of every LSG unit to freely dispose of them. The word "freely" refers to disposition that is, in local institutions opinion, best for the interest of the local population *without* the intervention of central institutions. Besides, the laws on LSG of Serbia and Srpska distinguish between their own and delegated affairs of LSG units. The influence of central institutions is, clearly, considerably greater regarding the delegated affairs. Consequently, the real freedom of disposition of local finances relates to the LSG units' own affairs.

The European Charter of LSG. The Charter sets organizational, functional, and control standards that "contribute to raising the level of democracy in Europe" since "democracy is most consistently and fully realized in local communities" (Dimitrijević et al., 2020: 23). The Charter prescribes that LSG is "the right and the ability of local authorities" to regulate and manage local affairs "in the interests of the local population" (Article 3). Although there are different local government systems, it is indisputable that local government presents "one of the key elements of the rule of law" (Stanković, 2015: 11). According to lines 4–6 of the Preamble of the Charter, the local authorities represent "one of the main foundations of any democratic regime" and "the right of citizens to participate in the conduct of public affairs" is one of the common democratic principles in member states that can be "most directly exercised" at the local level. Article 2 of the Charter proclaims that the principle of LSG shall be recognized in national legislation and, if it is possible, in the national constitution. Since the territorial organization of a state is *materia constitutionis* and since it refers to LSG, it is common to proclaim or even regulate the LSG in constitution, as we saw in the cases of Serbia and Srpska. The main powers and responsibilities of local authorities shall be prescribed by the constitution or by statute, and all powers given to local authorities "shall normally be full and exclusive" without undermining or limitation by any other authority (central or regional), except in accordance with the law (Article 4).

Although there are different definitions of LSG, it is common to claim that a typical element of LSG is the existence of finance revenues necessary for fulfilling the prescribed LSG competencies (Stanković, 2015: 18–24). The most important article of the Charter regarding the topic of this paper is Article 9 (Financial resources of local authorities). This article sets the minimum standards concerning the question of LSG financing, and probably the first sign of the importance of financing is the fact that this article is the most extensive of all articles in the Charter. It is not a surprise since the financial resources are *conditio sine qua non* of LSG functioning and a necessary indicator of *true decentralization*. Which standards are set by Article 9? *Firstly*, local authorities have the right to "adequate financial resources of their own" and they are entitled to freely dispose of them respecting their own powers. *Secondly*, local authorities' financial resources are "commensurate with the responsibilities" provided for by the domestic law. *Thirdly*, at least a part of the financial resources of local authorities must be derived "from local taxes and charges" and the local authorities are entitled to determine the rate of them. *Fourthly*, the financial systems on which resources available to local authorities are based need to be of "sufficiently diversified and buoyant nature" for the purpose of keeping pace "as far as practically possible with the real evolution of the cost of carrying out their tasks". *Fifthly*, since LSG units are not equally developed, i.e. some of them are weaker, the protection of such units demands "the institution of financial equalisation procedures or equivalent measures" that strives



to correct inequality without diminishing the local authorities' discretion. *Sixthly*, when it comes to the distribution of the reallocated resources to the LSG units, local authorities must be appropriately consulted. *Seventhly*, in order to preserve the local authorities' policy discretion, grants to local authorities should, to the greatest extent feasible, not be designated for the purpose of funding *particular* projects. *Eighthly*, local authorities have the right, to the extent permitted by law, to access the national capital market for the purpose of "borrowing for capital investment".

DISCUSSION: IS THERE COMPLIANCE WITH THE CHARTER?

"Democracy is not functioning well anywhere without a large share of local self-government" and "without the necessary degree of financial autonomy of the LSG, there is no autonomy at all" (Dimitrijević et al., 2020: 22, 26). The previous section showed which standards regarding LSG financing are set by the Charter, and this legal document presents "the main reference point and a benchmark" for local democracy (Kirchmair, 2015: 128). The standards prescribed in the Charter are not "resistant to development" and can be considered as a "continuously developing living material". Therefore, the Congress of Local and Regional Authorities (hereinafter: Congress) "is not only restricted to control the compliance of what has been requested years before, but rather to improve the application of these principles and standards" (Kirchmair, 2015: 135).

The transfer of "competencies, responsibilities, and financial resources" from the central (state) level to the lower levels of territorial units, i.e. lower levels of government, is called fiscal decentralization (Finžgar & Oplotnik, 2013: 654–655; Radvan, 2017: 15). In other words, fiscal decentralization implies several levels of public budgets, for instance, the state budget, regional budgets, and LSG units' budgets. Increased fiscal decentralization is "an important way of boosting democratic participation in the decision-making process" and refers to "capacity and authority to define and collect taxes and revenues" (Aristovnik, 2012: 6). Hence, "normative decentralization should go together with financial and fiscal decentralization" (Dimitrijević et al., 2020: 273). The lower levels can function efficiently only if "they hold suitable competencies and sufficient financial resources" that they can spend freely (Finžgar & Oplotnik, 2013: 654–655). Some authors speak about "fiscal health" of LSG that presents "the product of thousands of decisions" regarding suitable revenue and appropriate expenditure and analyse LSG finance through the lens of LSG's cause of ill-health, treatments, remedies and emergency interventions (Drew, 2022).

Theorists present different models of measuring fiscal decentralization, for instance, the percentage of subnational revenues independently collected compared to those that are financed through transfers (Aristovnik, 2012: 7–10). Similarly, the criteria could be the share of local finance within the total public finance; the share of local finance in relation to the GDP of a given country; the structure of local self-government expenditures in relation to their assigned (delegated) tasks etc. (Finžgar & Oplotnik, 2013: 654). There are four models of LSG financing: (1) centralized, (2) system of separated revenues, (3) system of shared revenues, and (4) the mixed system (Stanković, 2015: 33). In Serbia and Srpska, the mixed system of LSG financing is accepted.



Some problems regarding local financing are worldwide common (such as an over-centralized system of financing, a limited level of one's own revenues, problems with financial equalisation, and a lack of appropriate consultation on local matters) and reports in a significant number of countries show that “Article 9 is often poorly implemented” (Congress, 2020: 35), although financial independence presents “an essential requirement for fair local government” (Radvan, 2017: 8). Does this apply in the case of the legislation of Serbia and Srpska? In the following lines, we will analyse the compliance of Serbian and Srpska LSG financing legislation through the lens of every single standard set in Article 9 of the Charter.

ONE'S OWN REVENUES AND FREEDOM OF DISPOSITION

First standard: *Local authorities shall be entitled to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.* The lack of adequate financial resources of LSG units causes excessive dependence on the central authorities and “centralization via decentralization” (Stanković, 2015: 167). Serbia's as well as Srpska's LSG statutes proclaim that LSG units have their own financial resources that they can freely dispose of. This means that LSG units have autonomy in determining the spending priorities. But the question is what those resources (revenues) are. It is crucial to distinguish one's own revenues and other revenues of LSG units. The term “one's own revenues” refers to resources that “originate from independent decisions” of LSG authorities, without “interference from higher authorities”, as well as resources that are “of local origin”, although they are not directly collected by an LSG unit's authorities if the central government has no right to arbitrarily alter them (Pál & Radvan, 2024: 210). “The essence of LSGs are its own competencies,” and the presumption for their “independent and efficient realization are financial resources” (Stanković, 2015: 32). In order to evaluate LSG's financial autonomy, we can compare the share of their own revenues and total local revenues as well as the local tax revenues compared to total local revenues. This implies applying the following formula: “The higher the indicated share, the stronger should financial autonomy be, in principle” (Pál & Radvan, 2024: 210). If the share of one's own revenues is so low that LSG units can use them only to finance mandatory tasks and functions, there is no financial autonomy. Therefore, the question of financial autonomy is connected with the amount of LSG's own revenues as well as discretion to spend those revenues.

The Law on LSG Financing of Serbia in articles 5–49 exhaustively regulates this issue, distinguishing one's own revenues and the revenues from other levels of government. While one's own revenues are those whose rate (method and criteria for determining the amount) is determined by an LSG unit itself, the revenues from other levels of government are 1) assigned revenues (their rate is determined by a statute, but the income generated on the area of an LSG unit belongs in whole or in part to that unit) and 2) transfers. Also, the part of an LSG unit's budget are revenues based on borrowing and other revenues determined by law (Article 5). All those revenues of LSG units have a non-designated character, i.e. they are “general revenue of the budget” and can be used “for any purpose” in accordance with the law and the budget of an LSG unit. The only exception is related to the revenues whose purpose is explicitly determined by law (Article 4).



The real autonomy of the LSG is “proportional to the LSG units’ own revenues” and “the degree of freedom in disposing of those revenues” (Stanković, 2015: 32). An LSG unit’s own revenues (Article 6 of the Law on LSG Financing of Serbia) are: (1) property tax, excluding tax on transfer of absolute rights and tax on inheritance and gift, (2) local administrative, communal, and residence charges, (3) fees for the use of public goods, concession fees, and other fees prescribed by the law, (4) revenues from fines imposed for misdemeanours prescribed by LSG unit’s acts, (5) revenues from donations, self-contribution, leasing, etc. According to Article 7 of the Law on LSG Financing of Serbia “the rates of one’s own revenues, as well as the method and criteria for determining the amount of local taxes and fees are determined by the assembly of LSG unit by its decision, in accordance with the law”. In 2021, local fees and charges were the most important own revenue, with a share of 44% in the composition of LSG’s own revenues, while the share of the property tax was 43.3% (Network of Associations of Local Authorities of South-East Europe [NALAS], 2024: 221–222).

The assigned revenues include (1) revenues from assigned taxes (taxes regarding personal income, inheritance, and gifts, as well as taxes on the transfer of absolute rights), (2) revenues from delegated fees, and (3) transfers for equalisation, compensation, solidarity, and general transfers (articles 35–41 of the Law on LSG Financing of Serbia). Concerning the assigned revenues, although the central government determines their rate, the amount generated in the area of an LSG unit is assigned to it *in toto* or at least partially. The most significant revenues of LSG units in Serbia present assigned revenues (approximately 40%), one’s own revenues (about 35%), and about 20% goes on revenues from transfers (Government of the Republic of Serbia, 2021: 54). Within assigned taxes, the most important part are personal income taxes. The gross wages tax “accounts for almost 80%” of total Personal Income Tax assigned to LSGs in Serbia. As of 2016, cities receive 77% (previously 80%), municipalities 74% (previously 80%), and the City of Belgrade 66% (previously 70%) of the wage tax (NALAS, 2024: 213). The most funds are allocated to local issues in Denmark, even 66% of total public finance or 37% of the GDP (Finžgar & Oplotnik, 2013: 670). Also, the Serbian legislation prescribes earmarked and non-earmarked transfers, whereby the first are connected with financing of certain functions and tasks, while non-purposeful transfers are related to the GDP, and they belong to all LSG units in accordance with the criteria prescribed by the law. Since one of the standards from the Charter is devoted to the transfers, we will later analyse them.

The Law on LSG of Srpska regulates local revenues in the following manner. Article 74 of this act only proclaims that “revenues and receipts of the LSG unit include...” without clear distinction between one’s own revenues and other revenues. According to Article 74 as well as Article 11 of the Law on Budget System of Srpska, LSG units’ budget revenues are: (1) taxes (such as real estate tax), (2) charges (e.g., administrative, residence and communal charges), (3) fees (such as fees for water protection, rent and concession fees), (4) revenues and receipts from LSG property (e.g., rental income and interest income) and (5) other revenues (such as revenues from grants, transfers or fines imposed for misdemeanours prescribed by LSG unit’s acts). Also, it is important that LSG units have right to determine the rate of some taxes, within the limits set by statute. For example, according to Articles 8 and 20 of the Real Estate Tax Law of Srpska, LSG units have the right to determine the rate of tax (no more than 0,20%) and all revenues collected on this basis



belong to LSG unit. According to the Document of the Framework Budget of the Republic of Srpska for the Period 2024-2026, the LSG units in Srpska will receive about one billion BAM in 2024, with the following structure: (1) tax revenues: 616 million BAM, (2) non-tax revenues: about 283 million BAM, (3) grants: 12.1 million BAM and (4) transfers between LSG units: 91 million BAM.

According to Article 9 of the Law on Budget System of Srpska, *some revenues are shared* between Srpska, LSG units and other subjects: (1) revenues from indirect taxes, whereby 24% belong to LSG units (but the individual participation of LSG units are determined in accordance with criteria established in Article 10); (2) revenues from income taxes, whereby 25% belong to LSG units; (3) revenues from fees from changing the purpose of agricultural land, whereby 50% belong to LSG units; (4) revenues from the rent of land owned by Srpska, whereby 50% belong to LSG units; (5) concession fees for the use, when Srpska grants the right, whereby 70–90% belong to LSG units, depending on the level of development of certain LSG unit, but the 95% of concession fee for the use of electricity facilities belong to LSG units (Article 32 of the Law on Concessions of Srpska); (6) revenues from the special water fees, whereby 30% belong to LSG units. Those shared revenues are also important for LSG units. An argument in favour of this is the available statistics. In 2022 the LSG units got 408.3 million BAM from indirect taxes (NALAS, 2024: 105). In 2024 the LSG units got 50.2 million BAM in 2024 from income taxes and those revenues constitute between 6% and 10% of LSG unit's budget (NALAS, 2024: 105).

LSG units' own revenues in Srpska constitute about 35% of their total revenues (Congress, 2024: 8). Hence, approximately 65% of LSG unit's revenues are transferred from the higher levels of government, e.g. 64% in 2021. This leads to the conclusion that LSG financing shows "a high level of dependence" on revenues from central institutions (NALAS, 2024: 106). When it comes to Serbia, about 37% of revenues of LSG units are their own revenues, 43% are shared taxes and the rest goes on general and investment grants (NALAS, 2024: 220). The share of LSG units' revenue to GDP over the past six years is approximately 6%, while LSG units' debt decreased by 36% when compared to 2015 (NALAS, 2024: 217). The share of LSG units' own revenues, for instance, in Hungary is 42%, in Poland 27.5%, in Slovakia 23% and in the Czech Republic is less than 20% (Pál & Radvan, 2024: 219). Why the LSG units' own revenues are not higher in Serbia and Srpska? We share the opinion of some authors who claim that the LSG units' own revenues are not at a high level since, *inter alia*, central authorities use statutes to reserve "safer sources of income for themselves" and to leave the more uncertain and difficult to collect ones to local authorities (Stanković, 2015: 33).

When we are familiar with the type of revenues that exist in Serbia and Srpska, the question of freedom of disposition is crucial. Hence, is there the right of LSG units to use the mentioned revenues freely? Some authors claim that financing of local authorities characterizes "the scarcity of their own (original) revenues" as well as "a strong dependence on earmarked transfers" and therefore, "the financial resources that local authorities can freely dispose of are very limited" (Orlović & Rajić, 2021: 117). In accordance with Article 75 of the Law on LSG of Srpska, all funds from their own revenues are part of the LSG unit budget, and LSG units have the right to "their own financial resources, which the authorities of an LSG unit can freely dispose of within their jurisdiction, in accordance with the law". Similarly, Article 4 of the Law on LSG Financing of Serbia proclaims that all revenues



of the LSG unit are “the general revenue of the budget of the LSG unit and can be used for any purpose”, in accordance with the law and the decision on the budget of the LSG unit, “except for those revenues whose special character is determined by law”. Hence, the first standard from the Charter is fulfilled neither in Srpska nor in Serbia since their own revenues constitute only about one-third of all LSG revenues, although LSG units have freedom of disposition.

An important question regarding the freedom of LSG units is the process of adopting their budget. According to Article 31 of the Law on Budget System of Srpska (LBS), the procedure of adopting the draft and the proposal of the local budget is as follows: the main problem regarding the procedure is the participation of the Ministry of Finance of Srpska (hereinafter: MoF) in the process of adopting the local budget. After the local executive determines the draft of the local budget, the executive submits it to the MoF since this institution has the right to provide “recommendations on the submitted draft”. The local assembly adopts the draft, and the local executive creates a proposal of the local budget and delivers it to the MoF “with embedded recommendations”. Afterwards the MoF needs to give its consent to the proposal, which is *conditio sine qua non* for the adoption of the proposal from the local assembly. Although the LBS prescribes that the MoF gives recommendations, the opinion of the ministry is not optional but *de facto* mandatory. In practice, there are some cases when the MoF refused to give its consent to the proposal since the recommendations were not respected (e.g. the Act of the MoF No. 06.04/400-1254-1/23). This legal solution is not in accordance with the Charter’s principle regarding autonomy in local financing issues. Beyond spending decisions of LSG units, the most important is one regarding local budget, and other levels of government should not have “supervision or preventive monitoring over the local budget” (Congress, 2020: 35). In this regard, the solution in Serbia is better since this type of monitoring is not prescribed in Serbian legislation (see Article 42 of the Law on Budget System of Serbia).

COMMENSURABILITY

Second standard: *Local authorities’ financial resources shall be commensurate with the responsibilities provided for by the constitution and law.* The term “commensurability” refers to the requirement that “local authorities receive sufficient financial resources to enable them to carry out their tasks and functions” (Congress, 2014: 13). Hence, the balance between LSG units’ total revenues and their mandatory functions should be achieved. Nevertheless, the commensurability of financial resources is *questio facti* since the Charter does not provide any criterion for evaluation. It is necessary to compare the competencies of LSG units with the financial resources they (freely) dispose of. But we could claim that the amount of central government grants and transfers presents a useful indicator in this sense. The higher the share of transfers from central authorities is, the lower the commensurability is. Also, some authors claim that the commensurability of local finances can be measured by the ratio between the revenues and expenditures of local finance with the competencies of local self-government (Finžgar & Oplotnik, 2013: 654).

Article 73(1) of the Law on LSG of Srpska prescribes that the financial resources of LSG units are “commensurate with their competences assigned to them by law” and “each transfer of new functions is accompanied by the provision of financial resources necessary



for their efficient execution". Hence, in a formal sense, it is doubtless that the legislation of Srpska is in accordance with the second standard from the Charter. But is there real commensurability? According to the Document of the Framework Budget, about 78 million BAM are planned to be transferred to LSG units from Srpska's central government in 2024 as well as in 2025. This amount includes approximately 3.3 million BAM per year for underdeveloped and extremely underdeveloped LSG units (Government of the Republic of Srpska, 2023a: 59). The significant number of transfers constitutes local finance (about two-thirds of local revenues), which shows that there is no commensurability *stricto sensu* since those revenues should have supplementary character, but the data analysed for the purpose of this paper show that they present the majority of revenues of LSG units both in Serbia and Srpska. The analysis of the first standard showed that only about one-third of local revenues present the LSG units' own revenues. Taking this into account, it is not surprising that local authorities worldwide are "facing increasing difficulties to cover their mandatory tasks and functions" (Congress, 2014: 2). In other words, a significant number of countries "cover the existing deficit" of LSG units by transfers from central authorities, equalisation measures, borrowing, and this tendency is a "departure" from the principle of commensurability (Finžgar & Oplotnik, 2013: 651). The composition of revenues in Srpska's LSG units in 2021 was the following: their own revenues constitute 36%, shared taxes form 6%, general grants compose 54% while investment grants represent 4% (NALAS, 2024: 112).

Finally, if the amount of responsibilities of LSG units is expanded, it is necessary to expand the amount of financial resources of an LSG unit equivalent to the cost of fulfilling new tasks. On this basis, Article 35(3) of the Law on LSG of Srpska prescribes that the delegation of new tasks to LSG units should be accompanied by the relevant finances necessary for that purpose. When it comes to Serbian legislation, Article 3 of the Law on LSG Financing proclaims the guarantee of sufficiency of revenues by wording: "In case of delegation or entrustment of new tasks to the LSG unit, the Republic is obliged to provide the appropriate revenues, i.e. the sources of revenues necessary for the performing of these tasks". Those guarantees are significant since every LSG unit has clear legal ground to ask for new revenues. Without these finances, there is no commensurability with the responsibilities prescribed by law. As some authors claim, if there is the growing number of tasks [...] there must be an increase of the financial resources" (Radvan, 2017: 10). But the delegated tasks imply that an LSG unit has no freedom in spending revenues received on this basis since central authorities can control legality as well as expediency of execution of those tasks, which includes control of spending connected revenues.

In conclusion, the authors of the Report regarding local democracy in Srpska claim that the first and the second standard of the Charter regarding LSG financing are not respected because of a "lack of adequate financial resources which are commensurate to the tasks" of local authorities (Congress, 2019: 26). Since the statistical data regarding it are similar in Serbia, we could conclude that the same applies to Serbia.

LOCAL TAXES AND CHARGES

Third standard: *At least a part of financial resources of local authorities must be derived from local taxes and charges of which, within the limits of statute, local authorities have the*



power to determine the rate. Fiscal autonomy, as a “natural assumption for the realization of the principle of subsidiarity” (Orlović & Rajić, 2021: 115), can be understood as “a basic element of local autonomy”, and it is “measured by the extent to which local government can independently tax its population” (European Commission, 2021: 34; Wollman, 2024: 80). In other words, the power to levy local taxes presents “direct evidence of local financial autonomy” and the greater the share of local revenues in an LSG unit’s budget is, the greater financial autonomy exists (Congress, 2020: 36). Despite the fact that local taxes are a necessary element “for the economic autonomy” of LSG, some countries, such as the Czech Republic, made notification of non-accepting this provision of the Charter, but this country has technical issues, i.e. about 6.300 LSG units (Radvan, 2017: 12, 18). Fiscal autonomy implies taxing powers as well as “supplementary tools” such as transfers (Aristovnik, 2012: 7). The lack of “enough revenue from local taxes” and the high dependence of LSG units on the state budget means that it is “not possible to talk about real economic autonomy” (Radvan, 2017: 7). The percentage of local taxes in the LSG units’ own revenues varies between 10 and 90 percent in the states that ratified the Charter, whereby Poland has the highest percentage (Congress, 2014: 12).

There are at least two criteria regarding the question of whether a tax is a local tax: (1) the possessive criterion (whether tax revenue is the revenue of an LSG unit) and (2) the criterion of rate (whether an LSG unit can determine the amount of tax rates). Some authors claim that there are more criteria, e.g. local tax must come from a local source (Radvan, 2017: 10–12). Aristovnik (2012: 14) claims that the degree of tax efficiency depends on true autonomy of LSG units in determining their own tax base. In the light of the third standard, a tax is indeed a local tax – or genuine tax (Wollman, 2024: 80), if local authorities have the right to determine the rate. But a statute can prescribe “a ban of tax rates” within which local authorities “may freely determine the actual rate” (Congress, 2020: 37). Also, it is important that local taxes are levied by local authorities. Furthermore, some claim that shared taxes are not local revenues since they are “levied by another authority”, although LSG units receive a share (Congress, 2014: 8). We think that the crucial thing is that an LSG unit has the right to freely spend the revenues from taxes, regardless of whether LSG has complete freedom to set the rate of tax or needs to respect the statutory framework.

The Law on LSG of Srpska prescribes in Article 75 that LSGs derive part of their own financial resources “from taxes and charges”, of which they have the power to determine the rate, in accordance with the law. Hence, the Srpska Law basically repeats the provision from the Charter. According to the Report from 2019 regarding local and regional democracy in Bosnia and Herzegovina, the requirements regarding this standard are only partially met since the strengthening of local fiscal autonomy requires “more power to local authorities to decide on local sources of revenue” (Congress, 2019: 27). Article 6 of the Law on LSG Financing of Serbia prescribes that an LSG unit’s own revenues are, *inter alia*, property tax, local administrative charges, local communal charges, and residence charges. According to Article 7 of the Law on LSG Financing of Serbia, the local assembly has the right to determine “the rates of their own revenues, as well as the method and criteria for determining the amount of local charges and fees” in accordance with the law (for instance, the statute can determine the highest and lowest rate or amount of fee, i.e. charge.). Therefore, LSG units in Serbia have the right to collect their own taxes “but have limited powers to determine the rates” (Congress, 2017: 18). For example, local parliament determines the level of the property tax rate (except for the tax on the transfer of



absolute rights and inheritance and gift tax) up to the highest rate prescribed by the law regulating property taxes (Article 8). Similarly, local parliament has the right to determine local communal taxes (Article 11), residence tax (Article 19), etc.

From the central government level, LSG units in Serbia have the right to delegated revenues and transfers. Revenues from delegated taxes that belong to an LSG unit are prescribed in Article 35 of the Law on LSG Financing of Serbia, and they include personal income tax regarding some revenues, inheritance and gift tax, and tax on the transfer of absolute rights. In this case, there is no LSG unit's right to determine the rate, but they have the right to freely spend the delegated revenues. In 2021, local fees and charges were the most important LSG units' own revenue in Serbia. They constituted about 44% of the Serbian LSG units' own revenues, while property tax constituted 43.3% (NALAS, 2024: 221–222). Hence, this standard is fulfilled in Serbia.

DIVERSIFICATION AND BUOYANCE OF LOCAL FINANCE

Fourth standard: *The financial systems, on which resources available to local authorities rest, are sufficiently diversified and buoyant in nature for the purpose of keeping pace with the real evolution of the cost of carrying out their tasks.* This standard relies on two principles: the diversification of local financial systems and the buoyancy. The diversification refers to the existence of different financial sources of LSG units. Hence, local finances should include taxes, transfers, charges, fees, penalties, etc. This principle ensures “resilience to external economic factors” as well as keeping the “autonomy during fluctuation in economic cycles” (Congress, 2020: 37). The more types of revenues an LSG unit has, the more diversified its finances are. The sources of LSG units’ finances were analysed in this paper, and we can conclude that the principle of diversification is fulfilled in Srpska as well as in Serbian legislation.

On the other hand, what does it mean that local finances should be buoyant? They should ensure the rise in order to meet “the costs of the delivery of services”, and buoyancy refers to adaptation to “new circumstances, needs, and macroeconomic scenarios” (Congress, 2020: 38). The more ways to react in local finance crisis-related situations exist, the more buoyant those finances are. LSG units should have the competence to react in case of financial necessity, for example, by changing the rate of a tax. The legal ground for this in Srpska is, for example, Article 8 of the Real Estate Tax Law, which proclaims the right of every LSG unit to determine the rate of this tax. Also, the central authorities should adapt the amount of transfers if it is necessary in order to help LSG units. Finally, the delegation of new tasks to LSG units should be accompanied by relevant finances necessary for that purpose. As we have already mentioned, this is prescribed by Serbian as well as Srpska's legislation.

THE PROTECTION OF WEAKER LSG UNITS

Fifth standard: *The protection of weaker LSG units demands the institution of financial equalisation procedures or equivalent measures in order to correct inequality without diminishing local authorities' discretion.* The system of financial equalisation is an instrument



for the protection of financially weaker LSG units “with the aim of offsetting differences in revenue raising capacity or public service cost” (Blöchliger et al., 2007: 5). Hence, the mentioned system has a “redistributive function” and serves to reduce and level the disparity between LSG units (Wollmann, 2024: 76). Some authors claim that the purpose of financial equalisation is “to allow local authorities to provide their citizens, if they so wish, with services of generally similar levels for similar taxation levels” and to “compensate, at least in part, for differences in authorities’ financial capacity [...] and spending needs” – paras. 37 and 39 of the Recommendation Rec(2005)1 (Council of Europe, 2005).

The methods of equalisation are different, and they have a parochial character, but we can divide them into two groups: (1) methods for redistribution of fiscal resources followed by the autonomy of local authorities regarding spending, and (2) methods which imply that central institutions “closely shape and adapt public service delivery at the local level” (Blöchliger et al., 2007: 5). Also, we could differentiate vertical (grants from higher authorities) from horizontal equalisation (redistribution of local tax revenues, particularly if they are collected by central institutions), as well as a combination of both (see para. 42 of the Recommendation Rec(2005)1) (Council of Europe, 2005). Taking this into consideration, it is understandable that the Charter mentions not only financial equalisation but also equivalent measures that refer to “a range of different institutions, mechanisms, and arrangements designed to redress the effects of the uneven distribution of funding” (Congress, 2020: 38).

The Law on LSG of Srpska prescribes that the distribution of revenues between Srpska and its LSG units shall be determined on the basis of an LSG unit’s level of development in order to “supplement the LSG units’ own sources of financing” and ensure the efficient realization of their competences (Article 76). The same article prescribes that Srpska’s parliament determines the criteria for redistribution of revenues from Srpska’s budget, taking into consideration the level of development of an LSG unit. Those criteria (such as unemployment rate, population density, the number of business entities in the LSG unit in relation to the sum of business entities in Srpska, and their income in an LSG unit per capita) are regulated by the Decision on Criteria for Assessing the Degree of Development of LSG Units in Srpska.

All LSG units in Srpska, depending on their level of development, are divided into four groups: (1) developed, (2) middle developed, (3) underdeveloped, and (4) extremely underdeveloped. In 2020, about 2.3 million BAM was transferred from central institutions to underdeveloped and extremely underdeveloped LSG units (NALAS, 2024: 106), while about 3.3 million BAM will be transferred to those units during the period 2024–2026 (Government of the Republic of Srpska, 2023a: 59) (the Budget of Srpska for 2024). The special financial support is necessary for underdeveloped and extremely underdeveloped LSG units, and this fact is recognized by Srpska’s legislator since Article 76(8) prescribes that Srpska, “through equalisation measures”, provides support to those two types of LSG units, with the aim of “reducing differences in the degree of development and the financial burden in the execution of their competences.”

An instrument of financial equalisation between LSG units is financing of local projects, and this issue is regulated by the Rulebook on Co-Financing Projects of Underdeveloped and Markedly Underdeveloped Local Self-Government Units from 2018. Financial resources for this purpose are part of Srpska’s budget within the resources of the Ministry for



Administration and Local Self-Government, and this co-financing aims to “supplement financing sources” regarding local projects (Articles 3–4). The main demand for co-financing is that certain project “promotes local development” in production, export, environmental protection, education, etc. (see Article 6). The amount granted to an LSG unit cannot exceed 30.000 BAM, and the Ministry reserves the right to control “the earmarked spending of resources” (Articles 12–13).

According to the Report from 2019, the problem of inequality between LSG units is *in general* connected with the demographic trends (emigration from Srpska) as well as urbanization, i.e. concentration on a few centres. The fifth standard of LSG financing is only partially fulfilled since the current system relies “too heavily on special grants” from central authorities (Congress, 2019: 27). A clear indicator that Srpska has a great problem regarding the fifth standard is the number of (extremely) underdeveloped LSG units. According to the Decision on Degree of Development of LSG Units in Srpska in 2024, 15 LSG units are underdeveloped, and 20 of them are extremely underdeveloped. Since Srpska has 64 LSG units, more than half of them belong to the category of (extremely) underdeveloped. Hence, it is necessary to take steps regarding this issue for the purpose of decreasing the mentioned numbers.

When it comes to Serbia, an important legal act regarding this issue is the Law on Regional Development of Serbia that divides LSG units into four groups depending on the level of development. According to this criterion, there are differences between LSG units whose level of development is higher than the republic average (group I) or presents 80–100% of the republic average (group II), 60–80% (group III), and LSG units whose level of development is lower than 60% of the republic average (group IV). The third group are “insufficiently developed” LSG units, while the fourth group constitutes “extremely insufficiently developed”. In order to equalize the development of LSG units, republican institutions, public companies, agencies, and other forms of organization founded by the Republic of Serbia participate in the financing of projects in LSG units from the fourth development group (Article 42a of the Law on LSG Financing).

There are two types of transfers that are relevant for the evaluation of Serbian legislation regarding the fifth standard of the Charter. According to Article 2 of the Law on LSG Financing of Serbia, non-earmarked transfers present the sum of transfer for equalisation, general, compensatory and solidarity transfers. The *transfer for equalisation* presents a part of the total non-earmarked transfer that is distributed to LSG units whose *per capita* income based on delegated taxes is below a certain percentage of the average of municipalities (without cities). On the other side, the *solidarity transfer* is a part of the total non-earmarked transfer that is distributed to all LSG units, except for the city of Belgrade, on the basis of the level of their development. The Law on LSG Financing of Serbia prescribes that the criterion for determining the right to equalisation transfer is connected with the estimated amount of revenue from delegated taxes per inhabitant for the year for which the budget is adopted. If this amount is less than 90% of the estimated average income per inhabitant from delegated taxes in all municipalities in the Republic, excluding cities, the LSG unit has the right to get this transfer. The exact amount is determined by criteria prescribed by Article 38 of this statute. The greater the degree of lag in fiscal capacity, the greater the amount of equalisation transfers per inhabitant and vice versa (Aleksić, 2008: 33).



The amount of revenues for the City of Belgrade regarding transfers of solidarity, compensation, and general transfer, determined in accordance with statutory rules, do not belong to the City of Belgrade but present the amount of revenues for solidarity transfer. All LSG units, except Belgrade, have the right to this transfer, and the exact percentage is determined by Article 43 of the Law on LSG Financing, on the basis of the level of development of those LSG units. For example, 50% of the full amount of this transfer belongs to the LSG units from the fourth group of development. Finally, an aspect of equalisation relates to *general transfers*, since less developed LSG units receive a larger share of the general transfer. The amount of general transfer is obtained when the sum of transfer for equalisation and compensation transfer is subtracted from the sum of non-earmarked transfer (Article 41 of the Law on LSG Financing). Article 42 of this statute prescribes relevant criteria regarding the sharing of general transfers, such as the number of inhabitants and the surface of LSG. But the SCTM claims that this system is “insufficiently transparent” since Serbian LSG units are not “able to calculate by themselves the amount of transfer funds that they should rightly receive” (Congress, 2017: 17).

According to the Report from 2017, this standard as well as the seventh standard are not met, since there is the “lack of transparency surrounding the system of equalisation and the distribution of State grants,” especially regarding “the lack of clarity in the criteria for distributing resources from the reserve fund of the ministry of finance” (Congress, 2017: 3).

CONSULTATION WITH LSG UNITS

Sixth standard: *In the process of distribution of reallocated resources to the LSG units, local authorities need to be appropriately consulted.* This standard is connected with Article 4(6) of the Charter, which prescribes that local authorities will be consulted “insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters that concern them directly”. The appropriateness of consultation refers to the timeliness aspect, information, as well as subjects. More precisely, it is important that LSG units have enough time to analyse the data regarding the allocation of resources, and the provided data need to be relevant, sufficient, and transparent, i.e. “procedures must ensure openness, transparency, and fairness”. When it comes to subjects, the mentioned principles will be respected if relevant associations of local authorities are consulted (Congress, 2020: 39).

The question of cooperation between LSG units is regulated by Chapter XI of the Law on LSG of Srpska, and the main association is the Association of Municipalities and Cities of the Republic of Srpska. Especially important is Article 151 of the Law on LSG of Srpska that regulates the duties of central institutions toward LSG units, such as the obligation of Srpska’s authorities to submit the drafts and proposals of statutes and other legal acts to the mentioned Association as well as to the institutions of LSG units for the purpose of consultation with LSG units regarding the issues concerning them. Article 73(2) of the Law on LSG of Srpska prescribes that LSG units will be consulted “in an appropriate manner” on all issues related to the ensuring and distribution of funds, as well as on “all amendments of a statute that may affect the financial situation” in LSG units. Basically, the Law on LSG of Srpska just repeats the provision from the Charter. But, what does “consulting in an appropriate manner” refers to? In other words, the lawmaker should think



about defining the process of consulting, although the goals of consulting (fund-related issues and amendments of provisions regarding LSG financing) are regulated in an acceptable manner. Other authors have similar opinions since they claim that consultation refers to the “manner in which a decision is made and the criteria for doing so” (Congress, 2020: 39). According to the Report from 2019, the sixth standard of LSG financing is fulfilled, although “there is still room for improvement” (Congress, 2019: 28).

In the Report from 2017 regarding Serbia, it is stressed that “although means of consultation were well developed, in particular via the Standing Conference of Towns and Municipalities (SCTM), they nevertheless needed to be consolidated through formal legal standards” (Congress, 2017: 13). Although there is continuous cooperation between the SCTM and central authorities, embodied in memorandums, protocols on cooperation, etc., that “establish concrete mechanisms for cooperation” with central authorities, the rapporteurs think that this needs to be raised to a higher level by filling the lack of relevant legal regulation regarding this question. The only codified form of consultation in this sense, as well as the relevant institution regarding financial matters of LSG, is the Commission for LSG Financing established by Article 50 of the Serbian Law on LSG, whose members are appointed by the Government of Serbia and the SCTM. This commission analyses the criteria for awarding transfers, monitors the uniformity of the LSG system, and the level of indebtedness and prepares proposals for changing and improving the LSG financing system.

An example and an indicator of the great importance of consultation with LSG units is the Programme for LSG System Reform for the period 2021–2025. The main role in creating this act was held by the Ministry of Public Administration and Local Self-Government, which led “the broad consultative process”, whereas “the Standing Conference of Towns and Municipalities was one of the key partners and interlocutors in drafting the document itself”. The result of this cooperation is an act that presents “the first policy document that lays out the reform of the local self-government system in a comprehensive and all-inclusive manner” (NALAS, 2024: 216). Within the Standing Conference there is the Committee for Finance and Public Property, a permanent working body that analyses issues in this area but also serves as a forum for the exchange of experiences and good practices between LSG units. In sum, the mechanisms of consultation in Serbia regarding financing of LSG units “seem to be quite well developed”, and particular importance belongs to the Commission for LSG Financing (Congress, 2017: 17). Nevertheless, more precise regulation regarding consultation is necessary, regardless of satisfying practice.

THE DESIRABILITY OF NON-EARMARKED TRANSFERS (GRANTS)

Seventh standard. *In order to preserve the local authorities' policy discretion, grants to them, to the greatest extent feasible, will not be designated for the purpose of funding particular projects.* An important instrument of LSG units' financing from central authorities, as well as an indicator of local autonomy, are transfers. The essence of the distribution of revenues through transfers is supplementing the budgets of LSG units for the purpose of fulfilling their obligations and to redress “vertical fiscal imbalance” (Drew, 2022: 127). There are general transfers as well as transfers for specific projects. The dichotomy between earmarked and non-earmarked transfers is similar. “Block grants or even sector-specific



grants are preferable” from the perspective of local authority freedom of action, “to grants earmarked for specific projects” (Congress, 2020: 34). The criteria for awarding general transfers should not be *ad hoc* determined but set by statute to enable local institutions to anticipate the amount of transfers they will receive. This is “key information for them to develop sound financial planning practices” in accordance with their discretion (Congress, 2020: 38). Although this presents the best solution, the applicability of it is sometimes problematic, especially regarding (extremely) underdeveloped LSG units. In this regard, transfers are sometimes instruments for financing operating costs, such as paying the salaries (Congress, 2020: 38).

Sometimes it is claimed that “the balance of central transfers has changed” since earmarked and ring-fenced transfers are “becoming increasingly dominant at the expense of general” transfers, and this presents a “recurring issue”. For that reason, the discretion of local authorities to determine where that money will be spent is reduced (Congress, 2014: 2). Consequently, the lack of discretion in determining spending priorities shows that financial autonomy is at a low level. In the case of earmarked transfers, LSG units need to submit a report to the central government. According to Article 148(3) of the Law on LSG of Srpska, LSG units are required to submit quarterly reports on the implementation of cooperation agreements to the ministry in charge of cooperation for cooperation that includes projects financed from the budget of the Republic. According to the Budget of Srpska for 2024, the central institutions will transfer *in toto* 63.8 million BAM to LSG units. According to the Report from 2019, the requirements from seventh standard are satisfied in Srpska (Congress, 2019: 28).

In accordance with Article 2 of the Law on LSG Financing of Serbia, non-earmarked transfers are the sum of equalisation, general, compensatory, and solidarity transfers. We have already spoken about transfers for equalisation, solidarity transfers, and general transfers within the analysis of the fifth standard. Compensatory transfer is a part of the total non-earmarked transfer, which compensates for a part of the lost revenues caused by the change in the tax regulations of Serbia in case of non-compensation by other revenues (Article 39). The non-earmarked transfers are particularly important since LSG units have the freedom to determine for which purpose they will use the amount received from these transfers. Articles 47 and 48 of the Serbian Law on LSG prescribe two principles regarding non-earmarked transfers: the principle of predictability and the principle of dynamics of transferring. Those principles prescribe that (1) the Serbian Ministry of Finance and Commission for LSG Financing prepare an overview of the non-earmarked transfers for every LSG unit, and (2) one twelfth of non-earmarked transfer will be transferred to an LSG unit until the 25th of the month for the current month.

On the other hand, earmarked transfers are used for financing certain functions and expenses. The Law on LSG Financing prescribes that there are two types of earmarked transfers: functional transfers and earmarked transfers in the narrower sense. The first one is used for the financing of expenditures within a certain function (Articles 2 and 44), while the second one is used for a specific purpose, i.e. central authorities finance the performing of certain tasks within an LSG unit’s own or delegated tasks (Article 45). Different ministries provide earmarked grants to LSGs, with the largest portion of grants coming from the Ministry of Education, Ministry of Social Protection, and the Ministry of Culture. It seems that this standard is met in Serbia.



BORROWING FOR CAPITAL INVESTMENTS

Eighth standard. Local authorities *have the right, in accordance with law, to access the national capital market for the purpose of borrowing for capital investment*. The importance of an LSG unit's access to the national capital market lies in the fact that the existing revenues are often not sufficient for the purpose of further development of an LSG unit. Investment projects demand a high amount of money, and if central authorities cannot provide help, borrowing for capital investment is the solution. The standard from the Charter mentions accordance with law, but statutory limits "should not deter" LSG units from borrowing "or make it extremely difficult in practice" (Congress, 2020: 41).

Article 78 of the Law on LSG of Srpska proclaims the right of LSG units "to borrow on credit in accordance with the procedures and within the limits established by law". The Law on Borrowing, Debt, and Guarantees of Srpska (LBDG) concretises the question of borrowing of an LSG unit using the regular revenues generated in the previous fiscal year as a criterion, taking into account whether it is long-term or short-term borrowing. According to Article 59(1) of this statute, an LSG unit has the right to long-term borrowing if "the total amount due for repayment in any subsequent year does not exceed 18% of the amount of its regular revenues generated in the previous fiscal year". If it is a short-term debt (one-year debt maturity), this debt cannot be higher than 5% of LSG unit's regular revenues generated in the previous fiscal year. According to the Document of the Framework Budget of the Republic of Srpska for the Period 2024–2026, the stock of public debt of Srpska, in 2024, will be about 5.94 billion BAM, of which about 447 million BAM, i.e. 7.5%, goes to the LSG units. According to the Report from 2019, the "ceiling for borrowing" contained in the LBDG "favours cities, while smaller municipalities can hardly ask for large funds, as their small budgets cannot sustain serving debts". Regardless, they claim that the eighth standard is "generally satisfied" (Congress, 2019: 28–29).

The borrowing of an LSG unit is possible only if the local parliament makes a decision regarding this question. According to Article 62(5) of the LBDG, the assembly of an LSG unit decides on the indebtedness, but the Ministry of Finance of Srpska gives its consent to the indebtedness. Since the eighth standard of the financing relates to the borrowing for capital investment, the proof of fulfilment of this standard in the legislation of Srpska is Article 66(2) of the LBDG, which prescribes that LSG units "can take long-term debt to finance capital investments". The same statute prescribes in Article 10(1) that "a capital investment is a development project, a project to improve and build infrastructure, including movable and immovable property, equipment, and consulting services that are an integral part of such a project, which was previously approved by the competent management body and has a depreciation period of more than five years, and is in the function of public interest".

In Article 93 of the Serbian Constitution, it is prescribed that LSG units can borrow. According to articles 33 and 34 of the Serbian Law on Public Debt, LSG units are authorized to borrow both on domestic and international markets, in domestic or foreign currency, but they need to get the consent, i.e. prior approval of the Ministry of Finance of Serbia. The request for approval of borrowing needs to provide an explanation, i.e., reasons for which the need for borrowing arises, as well as the data on LSG unit's revenues, the data on indebtedness on the date of submission of the request, etc. LSG units have the right



to borrow for the purpose of financing current liquidity, caused by the disparity of their revenues and expenditures that is limited to 5% of the revenues collected in the previous year (Article 35 of the Serbian Law on Public Debt). Long-term borrowing of LSG units is, in general, prohibited, but the exception is prescribed regarding financing or refinancing of capital investments (Article 36 of the Serbian Law on Public Debt). In 2021, the debt at the subnational level was at 52.3 billion RSD, which is 1.5% of general government debt and 13.8% of local government revenues [...], this debt accounts for 0.8% of GDP" (NAL-AS, 2024: 214–215). Also, LSG units have the right to borrow by taking credits or issuing long-term bonds (Article 37). The central authorities must be informed on a monthly basis about types of borrowing, the amount and repayment of the debt, the value, and the level of interest rates (Article 37). In summary, the eighth standard is satisfied in Serbia.

CONCLUSIONS

Legislation in Serbia, as well as in Srpska, is *in formal sense* harmonized with the Charter, but there are some *substantive* weaknesses. The formal harmonization lies in the codification of the provisions from the Charter, in some cases literally, especially in Srpska. But substantive weakness lies in the fact that some goals set by standards from the Charter are not fulfilled, while others are partially met.

Both in Srpska and Serbia, the first and second standards, probably the crucial ones, are not fulfilled, and the statistical data showed that there is no true decentralization if their own, adequate, and commensurable resources of LSG units lack. It is common to Serbia and Srpska that the sixth standard is not fully met, although Srpska's statute is better in comparison to Serbian. The first step in Serbia is to fill the gap regarding legal regulation of consultation, while the process of consulting should be regulated in detail in Serbia as well as in Srpska. Finally, a common problem in Serbia and Srpska is the inequality between LSG units. Although legal mechanisms are prescribed, the number of (extremely) underdeveloped LSG units is worrying, and current solutions "fail to smooth out economic disparities between rural and urban areas". Hence, it is necessary to "review the currently used formula and distribution criteria in the equalisation systems" (Congress, 2019: 3–4).

The Report from 2017 shows that LSG financing legislation of Serbia *generally* complies with the third, fourth, sixth, and eighth standard of Article 9. However, it only partly complies with the fifth and seventh standard and demonstrates non-compliance with the first and second standard (Congress, 2017: 18). When it comes to Srpska, the Report from 2019 shows that legislation of Srpska complies with the seventh and eighth standard, and partially complies with the fourth, third and sixth standard. The first, second and fourth standard are not met (Congress, 2019: 26–29). According to the Strategy of Development of LSG in Srpska from 2023 to 2029, one of the strategic aims refers to the "improvement of the local self-government financing system" that includes a "systematic increase in local government revenues". Measures for achieving that include increasing LSG units' own revenues, increasing the share of LSGs in the distribution of direct taxes and fees, and more active attraction and use of grants and project funds (Government of the Republic of Srpska, 2023b: 53). Similarly, Serbian authorities set a goal to amend the current legal framework regarding the LSG financing system in order to strengthen "the capacity of local governments" (Government of the Republic of Serbia, 2021: 131). Whether the desired



goals will be achieved remains to be seen, but it is indisputable that the standards prescribed by the Charter will continue to be the benchmark for evaluating those solutions.

ACKNOWLEDGMENT

This paper was written for the purpose of the project “Pripadnost i raspodela javnih prihoda i javnih primanja u okvirima sistema finansiranja jedinica lokalne samouprave u Republici Srbiji i Republici Srpskoj,” which was implemented by the Faculty of Law of the University of Novi Sad and the Faculty of Law of the University of East Sarajevo, with the financial support of the Autonomous Province of Vojvodina. The author is thankful to Savka Dodić for providing him with some statistical data mentioned in this paper.

REFERENCES

Aleksić, V. (2008). Ciljevi novog sistema finansiranja lokalne samouprave u Republici Srbiji. *Pravo – teorija i praksa*, 25(3–4), 31–36.

Aristovnik, A. (2012). Fiscal decentralization in Eastern Europe: Trends and selected issues. *Transylvanian Review of Administrative Sciences*, 37(E), 6–22.

Blöchliger, H., Merk, O., Charbit, C., & Mizell, L. (2007). Fiscal equalisation in OECD countries. *OECD Working Papers on Fiscal Federalism*, (4), 1–39. <https://doi.org/10.1787/5k-97b11n2gxx-en>

Congress of Local and Regional Authorities. (2014). *Adequate financial resources for local authorities*. <https://rm.coe.int/1680718ef4>.

Congress of Local and Regional Authorities. (2017). *Local and regional democracy in Serbia*. <https://rm.coe.int/local-and-regional-democracy-in-serbia-monitoring-committee-rapporteur/168074f>.

Congress of Local and Regional Authorities. (2019). *Local and regional democracy in Bosnia and Herzegovina*. <https://rm.coe.int/local-and-regional-democracy-in-bosnia-and-herzegovina-monitoringcomm/168098072a>.

Congress of Local and Regional Authorities. (2020). *A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government*. <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>.

Congress of Local and Regional Authorities. (2024). *Report on the compliance of local self-government financing in Republika Srpska with the European Charter of Local Self-Government*. https://www.alvrs.com/UcitaneSlike/admin/Dokumenti/report-on-the-compliance_eng-final-1.pdf.

Council of Europe (Committee of Ministers). (2005). *Recommendation Rec(2005)1 of the Committee of Ministers to member States concerning the financial resources of local and regional authorities*. Council of Europe. <https://search.coe.int/cm?i=09000016805db09e>.



Dimitrijević, P., Lončar, Z., & Vučetić, D. (2020). *Pravo lokalne samouprave*. Službeni glasnik.

Drew, J. (2022). *Saving local government: Financial sustainability in a challenging world*. Springer.

European Commission. (2021). *Self-rule index for local authorities in the EU, Council of Europe and OECD countries, 1990-2020*. https://ec.europa.eu/regional_policy/sources/policy/analysis/KN-07-22-144-EN-N.pdf.

Finžgar, M., & Oplotnik, Ž. J. (2013). Comparison of fiscal decentralization systems in EU-27 according to selected criteria. *Lex Localis – Journal of Local Self-Government*, 11(3), 651–672. [https://doi.org/10.4335/11.3.651-672\(2013\)](https://doi.org/10.4335/11.3.651-672)

Government of the Republic of Serbia. (2021). *Program za reformu sistema lokalne samouprave u Republici Srbiji za period od 2021. do 2025. godine*. <http://mduls.gov.rs/wp-content/uploads/Program-za-reformu-sistema-lokalne-samouprave-u-Republici-Srbiji-za-period-od-2021.-do-2025.-godine.docx?script=l>.

Government of the Republic of Srpska. (2023a). *Dokument okvirnog budžeta Republike Srpske za period 2024-2026*. https://vladars.rs/sr-SP-Cyril/Vlada/Ministarstva/mf/PPP/Pages/Dokument_okvirnog_budzeta.aspx.

Government of the Republic of Srpska. (2023b). *Strategija razvoja lokalne samouprave u Republici Srpskoj za period 2023–2029*. <https://vladars.rs/sr-SP-Cyril/Vlada/Ministarstva/muls/Pages/default.aspx#collapsible6>.

Kirchmair, L. (2015). International law and public administration: The European Charter of local self-government. *Pro Publico Bono*, 3(3), 124–135.

Network of Associations of Local Authorities of South-East Europe (NALAS). (2024). *Fiscal decentralisation indicators for South-East Europe*. <https://nala-observatory.eu/publications/23>.

Odluka o kriterijumima za ocjenu stepena razvijenosti jedinica lokalne samouprave u Republici Srpskoj [The Decision on Criteria for Assessing the Degree of Development of Local Self-Government Units in the Republic of Srpska], *Official Gazette of the Republic of Srpska*, 56/23.

Odluka o stepenu razvijenosti jedinica lokalne samouprave u Republici Srpskoj za 2024. godinu [The Decision on Degree of Development of LSG units in the Republic of Srpska in 2024], *Official Gazette of the Republic of Srpska*, 93/23.

Orlović, S. P., & Rajić, N. N. (2021). Konsultacije centralnih i lokalnih organa u oblasti finansiranja u Srbiji. *Zbornik radova Pravnog fakulteta u Novom Sadu*, 55(1), 113–128. <https://doi.org/10.5937/zrpfns55-31074>

Pál, Á., & Radvan, M. (2024). Constitutional regulation of local financial autonomy in the visegrad countries. *Studia Iuridica Lublinensia*, 33(1), 207–227. DOI: 10.17951/sil.2024.33.1.207-227

Radvan, M. (2017). Article 9 of the European Charter of Local Self-Government in the Czech Republic. *Financial Law Review*, 2(4), 7–21. <https://doi.org/10.4467/22996834FLR.17.011.9039>



Stanković, M. (2015). *Lokalna samouprava u Srbiji. Prošlost, sadašnjost, budućnost*. Pravni fakultet Univerziteta u Beogradu.

Zakon o budžetskom sistemu Republike Srpske [The Law on Budget System of the Republic of Srpska], *Official Gazette of the Republic of Srpska*, 121/12, 52/14, 103/15, and 15/16. <https://www.paragraf.ba/propisi/republika-srpska/zakon-o-budzetskom-sistemu-republike-srpske.html>

Zakon o finansiranju lokalne samouprave Republike Srbije [The Law on Local Self-Government Financing of the Republic of Serbia], *Official Gazette of the Republic of Serbia*, 62/2006, 47/2011, 93/2012, 99/2013, 125/2014, 95/2015, 83/2016, 91/2016, 104/2016, 96/2017, 89/2018, 95/2018, 86/2019, 126/2020, 99/2021, 111/2021, 124/2022, 97/2023, and 85/2024. https://www.paragraf.rs/propisi/zakon_o_finansiranju_lokalne_samouprave.html

Zakon o koncesijama Republike Srpske [The Law on Concessions of the Republic of Srpska], *Official Gazette of the Republic of Srpska*, 59/13, 16/18, 70/20, and 111/21.

Zakon o lokalnoj samoupravi Republike Srbije [The Law on Local Self-Government of the Republic of Serbia], *Official Gazette of the Republic of Serbia*, 129/2007, 83/2014, 101/2016, 47/2018, and 111/2021. https://www.paragraf.rs/propisi/zakon_o_lokalnoj_samoupravi.html

Zakon o lokalnoj samoupravi Republike Srpske [The Law on Local Self-Government of the Republic of Srpska], *Official Gazette of the Republic of Srpska*, 97/16, 36/19 and 61/21. <https://www.paragraf.ba/propisi/republika-srpska/zakon-o-lokalnoj-samoupravi.html>

Zakon o porezu na nepokretnosti Republike Srpske [The Real Estate Tax Law of the Republic of Srpska], *Official Gazette of the Republic of Srpska*, 91/15. <https://www.paragraf.ba/propisi/republika-srpska/zakon-o-porezu-na-nepokretnosti.html>

Zakon o regionalnom razvoju [The Law on Regional Development of the Republic of Serbia], *Official Gazette of the Republic of Serbia*, 51/2009, 30/2010, and 89/2015. https://www.paragraf.rs/propisi/zakon_o_regionalmrazvoju.html

Zakon o zaduživanju, dugu i garancijama Republike Srpske [The Law on Borrowing, Debt, and Guarantees of the Republic of Srpska], *Official Gazette of the Republic of Srpska*, 71/12, 52/14, 114/17, 131/20, and 90/21.

Wollman, H. (2024). *Local government and governance in Germany: Challenges, responses and perspectives*. Springer.

