

 Local Government and
Public Service Reform Initiative



We would like to thank the Assembly of Autonomous Province of Vojvodina and
Local Government and Public Service Reform Initiative of the Open Society
Institute for the great support provided for publishing the book

jovan komsic
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**principles of
european
regionalism**

Association of Multiethnic Cities of Southeast Europe Philia

Publisher:
Association of Multiethnic Cities of Southeast Europe Philia
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Printed by:
Assembly of Autonomus Province of Vojvodina

Circulation 200

Novi Sad, 2007.

CIP - Каталогизација у публикацији
Библиотека Матице српске, Нови Сад

323.174 (4)

КОМШИЋ, Јован

Principi evropskog regionalizma / Jovan Komšić ; [prevod
Vesna Stojaković Šcepanović.... [et al.] . - Novi Sad :
Asocijacija multietničkih gradova jugoistočne Evrope -
PHILIA, 2007 (Novi Sad : Skupština AP Vojvodine). - 1. knj.
(razl. pag.) : ilustr. ; 24 cm

Nasl. str. prištampanog teksta: Principles of European Regionalism. - Izvorni tekst i prevod
štampani u međusobno obrnutim smerovima. - Tiraž 200. - Bibliografija.

ISBN 978-86-86145-04-8

а) Регионализација - Европа

COBISS.SR-ID 226763783

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Jovan Komšić¹

1. Principles of European Regionalism

decentralisation of states and cross border cooperation of local and regional authorities in the documents of the Council of Europe

It is not possible to give simple and unambiguous answer to the question: *Are there clearly articulated and generally applicable European standards of decentralisation and regionalisation of nation states?* Nevertheless, we will not put ourselves at great theoretical risk if, at the beginning of analysis of this topic and contents of this study, we find that efforts made toward rehabilitation of failing levers of “the least poor” system of governance of modern states and societies, as well as the construction of “bottom up democracy” mechanism, in the late 20th and early 21st century, resulted in ever so infrequent and less convincing contestations of the view that *decentralisation* represents not only one of more attractive and acceptable faces of modern democracy, but also the possibility of more effective allocation of economic and overall social resources as well as conflict management in general. In line with this view, the conclusion that in the process of European integrations, *regionalisation* represents quite significant complementary process to the trends of globalisation and federalisation of European Union is not questionable at all. Certainly, the least problematic, both theoretically and practically, would be the postulation that modern democracy is inconceivable without constitutionally guaranteed and politically and systematically effectuated set of decentralised institutional arrangements.

Nonetheless, harmonisation of the three often contradictory processes, local patriotism and institutionalisation of “homeland region” on one hand, the state sovereignty on the other and supranational integrations, on the third, enables that the process of European unification runs not only in dynamic (dialectical) forms of “crisis and reform” (Veinfeld, 2003, 21), but also in a manner which one author refers to as “exact and adequate” (Guy Héraud). Even the authors who find that different combinations of specified levels of political communications and decision making enable the Union to be built by parallel “bottom up” and “bottom down” processes are not mistaken. (cf.: Sidanski, 1996: 278-280; 294-298).

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However, when it comes to the role and social expediency of vertical (territorial) apportionment of power and authority within nation states, we refer to the model of *regional state*. In accordance with the *strategy of adjustment* of political institutions to heterogenous social basis and imperatives of legitimacy and efficiency of authority, the latest, third type of government organisation (in addition to unitary and federal) is developing quite dynamically and contributes to the economic growth and stability of democracy. (cf.: Lovo, 1999: 423-526; Jovičić, 1996: 30-47; Skenderović, 2001: 211-221; Komšić, 2001: 168-173).

Therefore, given that in the EU countries and its wider neighbourhood, which adopted the concept of regional organisation of states, i.e. the Council of Europe currently counting 46 members, there are quite relevant and distinct decentralist and regional arrangements (ideas, institutional realities and procedures of political decision making, rule and governance), the assumption relevant to the question in the first sentence of this paper is no longer questionable. After the chapter dedicated to clarification of essential and most frequent issues and notions we will “deal with” in this analysis, we will also prove that the judgement that there are still numerous obstacles to be overcome before we reach more resolute answer is also not questionable. The following chapter is dedicated to the reasons *for* and *against* decentralisation. The third chapter focuses on major semantic dimensions of a number of most relevant European documents and generally accepted principles of regionalisation.

1.1 Concepts, Principles and Major Problems

1.1.1 Decentralisation

Convinced that *logic and political effectiveness of the centralism is the matter of bygone epochs, as well as that modern democracy presupposes making distinction between the purpose of state and fetishised monopoly of hierarchical coercion “on behalf of the nation”*, we deem that at the very beginning of this conceptual clarification, it is still reasonable to point to the complex nature of the concepts of “centralisation” and “decentralisation”.

Due to extremely condensed answers to the question of benefits from centralisation and decentralisation, we would first refer to Heywood’s (Andrew Heywood) summary of four strong reasons *for* centralisation, which include: 1) national unity; 2) harmonisation; 3) equality and 4) well-being. However, the same author observes that “...there are limits within which it is possible or desirable to implement centralisation” so that as a result, the four main reasons *in favour of decentralisation* may be provided: 1) participation in political life; 2) openness of institutions, closeness to people and increased democratic accountability; 3) government legitimacy and 4) freedom, division of power and establishing the network of checks and balances (cf. Heywood, 2004: 304-307).

The following facts also speak in support of complexity of issues concerning a modern state and territorial organisation of government. For example, parallel trends of globalisation and continental integrations on

one hand, and the process of (Euro)regionalisation by means of crossborder inter-territorial cooperation of sub-state regional and local communities on the other, suggest that the nation state is too small in some cases and in some other, too big for functional problem resolution. Daniel Bell would describe such situation as follows: "...the governments of nation states 'have become too small to cope with great problems', such as the impact of the global market competition or destruction of environment; on the other hand, governments have become 'too big to cope with small problems of particular cities and regions'". (cf.: Giddens, 2003: 434-435).

However, in spite of all benefits of decentralisation, one should always bear in mind the fact that the major task of modern democracy is not re-feudalisation of a political sphere and literal paralysis of central machinery of public administration. "To tear down the walls of the state is not ... to create a world without walls, but rather to create a thousand petty fortresses", according to M. Walzer (Walzer, 2000: 70). Both from the viewpoint of legitimacy and efficiency of managing economic and technological processes as well as from the aspect of protection of fundamental human rights and freedoms, in many of its functions, the state proves to be the most adequate form of regulation and governance of global society. In principle, all this suggests that major task of the modern moment in the development of democratic systems comes up to striking *the right balance* between the competences of the central state on one hand and regional and local autonomy on the other.

Consequential to Kelsen's view (*Hans Kelsen*) that "the idea of centralisation finds its most significant expression when all central norms are established and performed by one person in geographical centre of the state, thus constituting its statutory centre", follows the view that the idea of decentralisation is "...usually associated with the idea of a greater number of bodies, each of which has its sphere of competence" (Kelsen, 1998: 373). Accordingly, since all (de)centralisation issues are concerned with "... the sphere of validity of legal norms and authorities which establish and apply them ", we also opt for Kelsen's concept of *centralised government system*, as the legal system whose norms are "...applicable on the entire territory encompassed therein, which means that all its norms have the same territorial sphere of validity". On the other hand, *decentralised state* would constitute the legal system comprising "...the norms of different territorial spheres of validity", whereas some norms will be valid for the entire state territory (central norms), while some of them will be applicable only in certain areas within the local and provincial self-government (decentralised norms) (cf.: Kelsen 1998: 367-391; as well as Komsčić, 2000: 449-452).

Finally, on the Kelsen's *scale of decentralisation* of a government system, there are following principal levels (forms): a/ *administrative* decentralisation; b/ decentralisation through the *local autonomy*; c/ decentralisation by virtue of *autonomous provinces*; d/ *federal state* (federation). Accordingly, "the only difference between the simple state divided into the autonomous provinces and the federal state is in the level of decentralisation", observes Kelsen (Kelsen, 1998: 378-382). Similarly, Robert Dahl, under the notion of federalism, in its broadest sense, implies "the system in which some mat-

ters are exclusively *within the competence* of certain local units—cantons, states, provinces—thus being constitutionally *beyond* the scope of authority of national government, which again has its competence beyond the scope of authority of the smaller units” (Dahl, 1999: 282).

We found the same approach in Laza Kostić who also distinguishes between two types of vertical apportionment of power, “... which presupposes *delegation of certain responsibilities and attributions of state to lower units*, i.e. top-down devolution of power”. In the thirties of the previous century, the above mentioned author takes as a starting point the view that “if the power is exercised from a number of positions, if it is devolved, the state will be decentralised i.e. decentralist”, thus observing that the decentralisation may be of “...various scope, strength and content”, so that such states “...are sometimes categorised as federal states, sometimes as the states consisting of autonomous units, and sometimes as states organised into self-governments” (Kostić, 2000: 259; cursive J. K.). Kostić, also points exactly to the fact that in “complex” state entities the arrangements of vertical division of power are changeable and versatile. This may be noted in the examples of evolution of one state system as well as when comparing different political and state systems.

It seems that in such context, made up of numerous variables, political and empirical constant of institutional interactions is reflected in opposing aspirations of the “centre” and “periphery” to actually accumulate and provide statutory guarantees for maximally possible power potentials, that is, to provide as high as possible level of autonomy in relation to the control by the other level of authority. Kostić underlines this in the following way: “Self-governments very often would like to become autonomies and these on the other hand, aspire to become federations, respectively. Quite the opposite, the central authorities are in favour of their weakening and degradation: regression to a lower level of decentralisation”. Therefore, when speaking of theoretical (first of all legal) basis for differentiation between federation, autonomy and self-governance, Kostić points to “the major and safest grounds” - *greater or smaller autonomy of regions in relation to the state government*, that is to their legal potential to “preserve and maintain what they have and this being their authority, territory and population. With this in view, the relevant federal units are protected by the constitution, the autonomous ones by the law and the self-government units are not even fully protected under the law.” (Kostić, 2000: 261-262).

In addition to the aforementioned criterion of the level and quality of the actual autonomy, the cited author also considers more or less successful theoretical distinctions arising from the application of the following “supporting”, “subsidiary” and “non-autonomous” criteria: 1) presence of “originally state, basic powers” (legislative, administrative and judiciary functions) on the different governmental levels; 2) the number of functions (agendas and competences) or regional units (of autonomous and self-government territories); 3) the nature of the basic norm of internal organisation (constitutions, laws, statutes); 4) election, structure and competences of representative bodies as well as the degree of independence of executive bodies from the central authorities; 5) possibilities of regional units to

directly participate in formation of central authorities; 6) the methods of “formation of alliances” and decentralisation (negotiations, treaties, agreements made between representatives of specificities in a state); 7) the level of previous autonomy (of the state or simple self-government); 8) the membership status in the state (citizenship in federal units, whereas autonomies and self-governments have inhabitants); 9) the size of decentralised units and proportionate scope of competences (cf.: Kostić, 2000: 262-268).

Also relevant to this topic is the observation that in addition to the legal aspect, the issue of decentralisation may also be tackled from the sociological point of view. And if theoretical point of view is replaced by the political one, then the topic is inevitably linked to the issues of expediency, which Kostić tried to avoid in the above cited text.

Accordingly, another comparable information may be of use for better understanding of the complex phenomenon of decentralisation. Kostić refers to it in the following way: “In some cases the state delegates more and in some less agendas to the territorial units and there are no two states in the world in which this distribution would be regulated in the same manner. Even two federations are not identical between themselves. One federal territory may have greater competences than the other, whereas in some other state, sometimes even in the same one..., one territory has full economic competence while the other one is restricted in that sense... We have the same situation when it comes to autonomy. *In one state the judiciary is under complete control of autonomous territories, in the other one this is only restrictive, whereas in the third one there is not any control whatsoever. In some cases they have exclusively its own executive power and in some other combined and parallel.* Similar disparities may also be found among particular self-governments.

The scope of competences is not relevant to the type, that is, the degree of decentralisation. However, it bears considerable practical significance on the power of regional units, for actual sustenance of their status and position, i.e., for their resistance. Therefore, in the application and policy process, more consideration is given to these aspects than to any other. “*What we deal with here is content of relations rather than form of relations*” (Kostić, 2000: 266; underlined by J. K.).

Almost identical overtones and conclusions are also found in legal and political treatises of Slobodan Jovanović which are ten years older than Kostić’s observations. Therefore, for the sake of more comprehensive and thorough assessment of the content and quality of modern treatises, political initiatives and controversies, we deem the remark, which was found in the article dealing with problems of federalism, extremely valuable. Responding, in the period between 1920 and 1921, to political and public opinion concerns in Belgrade “...that the self-government which would be conferred upon particular provinces will shift into federalism”, Jovanović underlines: “*This statement cannot be sustained. (1) Provincial parliaments themselves are not in any way related to federalism... (2) Provincial laws, in the same way, do not necessarily imply federalism.* Self-government has never been restricted to only administrative tasks; it has always presumed the right to prescribe general rules... Whether those rules will be called laws, statutes,

decrees, it is all the same...What really matters is their relation to the state laws” (Jovanović, 1990: 362; cursive J. K.).

Besides, when we say that actual answers to the question of *expediency* of (de)centralisation are mainly guided by the *policy*, we imply the whole whirlpool of circumstances, opinions and actions. Generally, by reducing them to five major factors - 1) *global context* and immediate international environment; 2) *the spirit of the times and tasks of the epoch*-prevailing understanding of aims and tasks of the state; 3) nature of legal and political *institutions*; 4) *quality of elites* -beliefs, corporate interests and actions of the political class and cultural elites and 5) *specific cultural heritage* (background of political institutions and cultures of population), it is easier for us to grasp the fact that each institutional system functions in always specific contexts. They are defined by more or less concealed material considerations of power and profit, so that in the race for power and “the division of ideal and material loot” (*Max Weber*), as well as in the sphere of theoretical debates, this problem necessarily remains pervaded by contradicted evaluations of (dis)functionality of appropriate means, methods and procedures of the rule.

Apart from the superior democratic response to Platon’s question of “first”, i.e. “second” best system, all this does not lend itself to generalisation of modern state experiences to the level of solely valid and *generally-applicable* model. Nevertheless, we remain assured that we will not concede possible objections to bias if we underline that *logic and political efficiency of centralism is a matter of past times in the development of modern Euro-Atlantic sovereignty and democracy*.

Certainly, this view should be complemented by another one: decentralist formula of good, *functional* unity of differences, particularly in the case of heterogeneous societies (in traditional, confessional and ethno-cultural sense), must meet five major requirements (objectives, tasks). These include: 1/ *legitimacy* of the regime of government in the whole state territory; 2/ *constitutional patriotism*, or civil equality and loyalty of members of all ethno-national communities; 3/ *reducing* the extent and intensity of fundamental (sub)cultural and *political dissensions* concerning the identity of political community, nature of fundamental institutions and constitutionally guaranteed procedures of adoption of generally binding decisions; 4/ *reducing the costs of managing* economic and other subsystems of the society, along with meeting increasing needs of citizens for social security and quality of life and 5/ recognition of the model of *inclusive policy*, which intertwines social divisions, allows for different combinations of majorities and minorities on different government levels and which is, through permanent dialogues between majorities and minorities, committed to aggregation, not division of interests, that is, maximisation of the ruling majority by laying an emphasis on the cooperation rather than conflicts, the consensus, rather than the rule of the close majority (cf.: Lijphart, 2003: 95-105; Flyner, 1996: 58-59, 163-164; Komšić, 2004: 151-171).

To put it very briefly, in line with the Sartori’s view that “political form is better that best applies”, which also implies that “it is impossible to ignore the context” (Sartori, 2003: 158), we believe that *functional decen-*

tralisation of one political system may be argued in those cases when basic (systemic) combination of competences and governing capacities of different governmental levels provides for efficient combination of the two key imperatives of modern policy and these are *legitimacy and efficiency* (cf.: Komšić, 2000: 196-202; as well as Komšić, 2006: 438-457).

Since we have analysed different experiences, ideas, socio-political contents and legal arrangements lying behind the general notion of *autonomy* in a number of previous papers, (cf.: Komšić, 2004a: 97-117), this time we limit ourselves only to a number of observations of legal and political nature.

For instance, when he refers to the *norms* of autonomous units from the legal point of view, Laza Kostić does not perceive anything else but *heteronomy*, that is, subordination to the legislative power of the state. Establishing that these are only “detailed, supplementary, partly enforceable laws”, he underlines that the autonomies are “...such territories which are covered by the law, protected by the law, but not by its own. Nowadays they are not entities which adopt the laws themselves, but those ones for which somebody else’s law represents the grounds for and limits of power. Therefore, more suitable expression for them would be heteronomous rather than autonomous units” (Kostić, 2000: 263-264).

However, significantly different interpretations are also found in the past and contemporary trends of *European constitutionalism*. The aforementioned views mainly pursue, in power contents in which Kostić points out heteronomous positions, such institutional propositions of the law and policy, which provide for effective combination of freedom and autonomy with the system of duties and rule and are in compliance with the law. Actually, not challenging the necessary level of hierarchically organised state power, in the form of constitutionally guaranteed autonomy of central government and effective (sovereign) monopoly of legitimate physical force, the Euro-Atlantic constitutionalism bases its ideas of restricted, controlled and replaceable power upon the experiences of the entire system of autonomies and apportionment of power, on horizontal and vertical level of the political system. Here, the policy and law, in addition to the relationship of order and compliance, are also seen as an interactive control, competition and cooperation of political actors and institutions. All this has been recognised in the practice of federal and regional states as the sum of necessary requirements of authoritative (unique, efficient and legitimate) government.

And what we discuss here is not only the epoch, less than a century old, which keeps reassuring us that considerations on the character of autonomy and division of competences between central authorities and autonomous communities have been essentially changed under the influence of ideas and constitutional solutions of regionalist “federalism of cooperation” (cf.: Lovo, 1999: 511-514; as well as Friedrich: 1996: 96-101).

Namely, in his, for us extremely relevant and still, to a great extent, uncomprehended criticism of “the chimera of uniformity” and overbearing authority disposed to “waging of unnecessary wars” and “accumulation of all interests in the capital city” (cf.: Constant, 2000: 180-200), this philosopher of freedom comes to conclusion in the early 19th century that “present con-

querors, nations or rulers would like their kingdom to be *the mere flat surface they would overlook by their disdainful eye of power, which would not come across a single ripple in the surface which would irritate it or restrict its sight. The same code, the same measures, the same regulations and, if that can be achieved, gradually the same language, that is what is proclaimed as perfect social organisation.* (Constant, 2000: 189; cursive J. K.).

And when it comes to more profound sources of “inexhaustible lexicon of hypocrisy”, which is woven from phrases such as “national independence”, “national honour”, “rounding-up of borders” and similar expressions, Constant reasonably and convincingly points to “love for authority” and enormous benefits which power holders reap from forced establishment of symmetric institutional system and legislation away from the interests of “motionless people”. However, “*diversity means organisation, whereas uniformity implies mechanics. Diversity is life and uniformity means death*”, underlines the cited author.

Nation means nothing if it is detached from the parts comprising it, therefore “it is never emphasised enough that general will, as soon as it is beyond its own sphere, is not to be appreciated more than special will”. Accordingly, Constant insisted that federalism, which was different from the one it had been known until then, should be introduced into the internal administration of Post-Napoleon France. Leading idea of such new government organisation is reduced to the imperative that “national government, district government, municipal government, must stay within their own respective realms...”, which implies that “... *internal organisation of particular parts, if it does not have any impact on general system, should remain perfectly independent, and as in one’s private life, the part which does not jeopardise social interests in any way should remain free, and at the same time, all this, in existing parts, that does not cause any damage to the whole should enjoy the same freedom* (Constant, 2000: 99-102, 194; cursive J. K.).

Following this almost two century old and principally hardly disputable argument and as long period of neglect of these views on purposes and mechanisms of the government, the comparable experiences of development of modern political systems offer to us examples of social and political doctrines of power elites and patterns of rule which resemble Constant’s principles of political freedom and autonomy. Spain may serve as a relevant example, so that in the context of “unbreakable unity of the Spanish nation, common and inseparable homeland of all Spanish people” that is, “rights to autonomy of national entities and regions” (Article 2 of the Spanish Constitution), we do not find the division of competences which, as Laza Kostić said, would necessarily imply the relationship of subordination of autonomous units to the legislative power of the state. On the contrary, “system organised by the Constitution may be immediately defined as the federalism of cooperation. *Apart from primacy of the Constitution over the entire legal system, there is no hierarchical relationship between the state and community norms...according to the principle of cooperation, common to all modern federalisms, the greatest number of competences, split into two categories, are competitive rather than exclusive*”, says Philip Lovo (Lovo, 1999: 511; cursive J. K.).

1. 2. Regionalism and Regionalisation

At the root of the term “regionalism” lies the Latin word *regio*. Apart from other meanings, it designated a territorial area, as a rule of a more substantial size. According to Webster’s Dictionary (*Webster’s*, 2001), synonyms for region are area, bailiwick, zone, part, neighbourhood, premises, surface, country, homeland, fatherland, province, district, county, domain, range, field, space, expanse, terrain, sector, sphere, locality, landscape, world. In dictionaries of the Serbian language, the following are the most frequently used synonyms: part, landscape, area, county, range, country, area, province. In the standard language, and even in the expert literature, the cognate terms of “regionalism” and “regionalisation” are often intertwined. However, in the legal-political and sociological sense, they do not denote identical contents.

According to the opinion of experts in the Steering Committee for Local and Regional Authorities of the Council of Europe (CDLR), *regionalisation* is a notion which could be properly understood by bringing it into connection with the institutional aspect of the matter, therefore it distinguishes from regionalism, which is a political or ideological movement. Consequently, “regionalisation is generally understood as the creation of a new level in a state’s territorial organisation; the new institutions can vary widely in terms of bodies, responsibilities and powers, but they are always superimposed on the existing local authorities. They can be defined very broadly, including regions which are merely subordinate levels of the central government, or else narrowly, whereby the only expression of regionalisation is the region as a territorial authority, which can be further differentiated according to its constitutional status” (Marcou, 1998: 9).

On the other hand, *regionalism* corresponds to the definition of the region as a set of human, cultural, linguistic or other features which justify turning it into political requests for greater or lesser degree of autonomy, as stated in the study of Council of Europe titled “Regionalisation and its effects on local self-government” (1998). Roger Scruton’s “Dictionary of Political Thought” also persuades us that regionalism, in the political sense, can be understood as a notion denoting a type of movement for political-legal recognition of greater or lesser autonomy of specific communities and their territorial units of government. Here regionalism is defined as “advocating such forms of government which allow and encourage development of indigenous cultures and institutions within regions with special jurisdiction, and which entails devolving essential political original competencies to regional authorities, with less than full sovereignty, but more than mere administrative functions” (Scruton, 1996).

Historical aspect and contemporary types of regionalisation. - The traditional conception of the region has its roots in demographic designations of the unchanging features of an area. However, considering that the 19th century regionalist movements were backward-looking and had no immediate successors, the region as a political-administrative unit is a relatively recent concept (Marcou, 1998: 5). Relevant classifications of regionalism and regionalisation point at the following basic forms: 1) intra-national

form of organizing public services in larger states, without forming political-territorial units; 2) legal-political aspect of decentralizing national states by means of regions, as units with general or specific competencies; 3) transnational, geographic plan and 4) historically original process of regionalising the EU as well as the whole of Europe in general.

1) In larger states, which have within their borders areas that are distinguished by a number of characteristics, such as: population, culture, climate, economy, history, hydrography, etc., it is customary to form regions whose basic purpose is to improve the methods of administrative execution of the objectives of economic development defined at the central level of government. In addition to such a mode of regionalisation, also discernible are examples of spontaneous creation of regions through associations of several existing political-territorial units with the intent to solve particular very concrete mutual problems. Thus, for example, the Tennessee Valley Agency (TVA) was formed in the USA in the 30s with the objective to regulate water flows.

2) Referring to the key moments in the evolution of the modern concept of region, as well as those in the process of regionalisation in Europe, let us mention that during the World War II regions became political-organisational fact in France and Great Britain. They had different functions, ranging from defensive in Britain to policing in France. Although they were abolished after the war, regions in G. Britain soon came back into the “game of management”, tasked to be territorial-institutional frameworks of the public services organisation (health, electric power supply, gas supply and similar). Similar developments took place in France, where after they were reintroduced their functions were primarily geared to economic planning and organisation of affairs in the sphere of schools, judiciary, military affairs, social insurance and similar issues (Jovičić, 1993: 965).

As a manifestation of administrative-legitimacy crisis of the state, regionalisation becomes a focus of political debates and constitutional-legal changes in some European states in the 70s and 80s. Similarly to the previously mentioned Bell’s observation on inadequate dimensions of the state in relation to the nature of problems they face, Denis de Rougemont explained this crisis with a thesis that states are “... too small to play a decisive role on the global level, or to secure their defence. With the exception of two or three states, they are too large to truly instil vigour into their regions and solve the problems of unemployment, ecology and education” (According to: Weidenfeld, Wessels, 2003: 86). At any rate, in the last three decades there is an evident trend of not only growing expert and political interest for an alternative to the 19th century model of the centralised nation state, but also for an efficient correction of negative aspects of continental integrations and globalisation in general.

In that sense, Italy and Spain have confirmed the sustainability and functionality of a post-authoritarian model of a regional state. In Belgium, reforms of the constitutional system have decentralised the state whereby, apart from territorial regionalism, a sort of functional regionalism on a personal basis was also introduced. Thus there exist three regions, as political-

territorial units with constitutional guarantees for their autonomy (Brussels, Flanders and Wallonia). And the central parliament is so structured that, besides the House of Representatives and the Senate, it also comprises two separate Councils. They are made up of Members of Parliament from the ranks of the French-speaking (Walloon) and the Dutch-speaking (Flemish) language communities. The decision-making domain of these Councils covers issues in the sphere of culture and education. Their decrees have the power of legislation in respective regions.

The devolution (transfer) of powers in G. Britain is also specific of sorts. Devolution means that some areas of national policy and legislation are shared with regional parliaments and executives. In the United Kingdom today there are three institutionally recognized sub-state regions with varying degrees of autonomy - Northern Ireland (Ulster), Scotland and Wales. The asymmetric devolution model, initiated by the introduction of Ulster's autonomy (1920) and particularly intensified during the 90s, following the referenda held in Scotland and Wales (1997), represents an actually original attempt to find a compromise and institutional balancing between two principles of government - the supremacy of the central, UK Parliament and Westminster Government, on the one hand, and substantial autonomy of newly established territorial-political communities, on the other.

All three regions have their parliaments and executives. They have competencies transferred from the central level of powers which, as stated in the official publication of the Foreign & Commonwealth Office, allow for greater control over their national affairs (*United Kingdom's System of Government*, 28). In Scotland, which has the greatest degree of autonomy, *devolved matters* include regulating the following issues: labour and social affairs; health; local administration; education and schooling; housing; most of the transport issues; sports; law and legal order (policies, courts and barristers); agriculture, fishing and forestry; arts; environmental protection and national heritage; fund raising for economic development and internal investments. Issues falling in the exclusive domain of central authorities are stipulated by the new Fundamental law of Scotland and listed under *reserved matters*. They include: the constitution; defence; social welfare and benefit; foreign policy; immigration policy and citizenship; employment; financial and economic issues and energy management.

All in all, recapitulating largely varying European conceptions and experiences, we come to the conclusion that there exist *three main types of regionalisation*. The first could be named *evolutive regionalisation* within the existing system of local (self)government. This regards the tendency to utilise existing tiers of government organisation by adapting them to objectives of regionalisation (Sweden, Germany), rather than to establishing formally a new tier in the organisation of government. The second model is *regional decentralisation* of a unitary state, reflected in the formal establishment of regions. However, the status of these new institutions is not higher or different than that of other local authorities (France, Portugal). Finally, the third model - that of *political regionalisation*, or institutional regionalism - distinguishes a high level of regional autonomy and the constituent status of regions (areas, provinces) within the organisation and

profiling of the character of central, state authorities. All this serves as a ground for contenting that today, apart from unitary and federal states, we could discuss the new, third type of state-legal system - *the regional state*. This type of governmental structure (*tertium genus*) has established itself and received its well deserved place in theoretical rationalisations, primarily owing to the constitutional-legal solutions and political experiences of Italy and Spain in the past several decades (cf. G. Marcou, 1998: 11-20; Skenderović-Ćuk, 2001: 205-211).

Generally speaking, the strength of the decentralisation trend is illustrated by the prediction of M. Jovičić that in the future there will come to "...convergence of two forms of governmental structure - the federation and the unitary state with broad decentralisation, as both of them will strive towards the same goal: improved efficiency and strengthened democracy" (Jovičić, 1993: 340). This will be discussed later in the text, after we provide basic information on regionalisation as a form of trans-national (inter-state) association.

3) Experiences of the XX century have shown that countries with similar geographic, economic and political features have an interest in institutionalising various frameworks for multilateral cooperation. The dominating reasons why states associate into trans-national regional organisations are economy and safety. The most prominent defence organisations in the second half of the XX century were NATO and Warsaw Pact, which disappeared off the scene with the collapse of real socialism in Eastern Europe. On the other hand, the most prominent regional economic blocks are: North Atlantic Free Trade Agreement (NAFTA); European Union (EU); Asia-Pacific Economic Cooperation (APEC); Association of South East Asian Nations (ASEAN); Mercosur - in Latin America; Free Trade Area of the Americas (FTAA).

There are experts who argue that the reason why most of these organisations were formed in the 90s lies in the effect of globalisation, as well as in reduced efficiency of national governments in dealing with some of the key issues of safety and development. However, "the relationship between globalisation and regionalisation still remains unclear", cautions A. Heywood and notes that regionalisation may be a step toward globalisation, as well as an alternative for it or a form of resistance to that phenomenon. Be as it may, data indicate that already today more than one third of world trade takes place within four regions: North and South America, Europe, Asia and Oceania, and Africa and Middle East (Heywood, 2004: 277-281).

EU regional policy and Europe of regions - apart from customs union, agricultural policy, common market, monetary union and competition policy, *regional policy* falls among the most important common policies of EU. In contrast to seven earlier key objectives, the latest version of structural and political principles of EU regional policy is condensed down to three basic goals: 1) fostering of lagging regions, the ones reaching less than 75% EC average; 2) economic and social transformation of areas with structural problems such as: deindustrialization, unemployment, population decrease, etc; 3) adjustments and modernization of policies and systems of education, schooling and employment. In all that, interventions of the European

Community adhere the principle of subsidiarity, which in this particular case entails supplementing national, local and other activities, but exclusively and only where own resources are insufficient (Weidenfeld, Wessels, 2003: 297-303). In EU, regional policies are conducted by means of two funds - the Cohesion Fund and the Structural Fund. In 2005, these Funds reached 36% of the total resources of the Union, while together with the Agricultural Fund they account for 80% of the total budget expenses of EU (Prokopijević, 2005: 253-261).

Yet another fact demonstrating the importance of the regional aspect for all policies in EU today is the **Maastricht Agreement** (1993) whereby local and regional institutions are able to act independently in decision-making processes in EU. *The Committee of Regions* is the institution facilitating that. In it regional and local interests are brought together and then embedded into the legislative processes of the Community. In EU-15, the Committee of Regions comprised 222 representatives. After the enlargement, the Committee now has 350 members. Although it is an ancillary, advisory body of EU, its viewpoints and initiatives must be heeded by the Council of Europe, the European Commission and the European Parliament (Weidenfeld, Wessels, , 2003: 167-170).

That Europe today has also become *Europe of regions*, besides being “Europe of nations”, “Europe of citizens” and “Europe of minorities”, is demonstrated not only by the sheer number of approximately 300 European regions. Currently taking place is the increasingly dynamic process of cross-border (“inter-territorial”) cooperation between regions and local communities, also including the formation of many Euroregions. Also, between the years of 2000 and 2006, EU funded trans-national cooperation between bordering and other regions by 4,875 billion EUR through its *Interreg* Programme. Finally, the growing interest of European regions to be directly present in Brussels is illustrated by the fact that in the year of 2001 there were 180 regional representative offices and lobbying bureaus in the seat of EU (Weidenfeld, Wessels, 2003: 86-90).

1.1.3 Regional State

The reasons of opting for a regional state in the democratic transition processes in Italy and Spain were complex. Confronted with overwhelming repercussions of the fascist centralisation in Italy, as well as with the heavy burden of Frankist authoritarianism in Spain, liberalization and democratisation of these societies actually came to grips with the negative legacy of XIX century *piemontesismo* ideal - unitarisation of the state and “building of the nation” forced from the centre (cf. Lauvaux, 1999: 423, 452-457; 483-489, 504-514). According to Joan Marse, in that sense regionalisation has proven to be a very successful attempt “... to rationalise the state’s structure and functioning by employing the logic of autonomy and decentralisation, as opposed to a state that had been historically developed by the most conservative and most reactionary sectors as an ultimately centralised state” (Marse, 1997).

Clearly, without going into all the key moments in the Spanish democratic transition, which dealt simultaneously both with the issue of statehood and those of liberal reforms of the economic and political system, it would be a mistake to conclude categorically that the key to success was solely, or primarily, regionalisation. The risk of simplification would also increase if we formulated the hypothesis that, even without decentralisation by means of regional autonomies, liberalisation and democratisation would have brought Spain into the company of stable and prosperous European states. Actually, this was a mutually conditioned process of changing the form (manner) of ruling and the governmental structure. In that context, J. J. Linz and Alfred Stepan consider that "...that country was able to resolve the problem of statehood by means of successful regionalisation only because it first created... legitimate governmental authority, that was authorized and capable to restructure the state-political community" (Linz and Stepan, 1998: 126-129).

At any rate, the creators of Italian and Spanish democratic constitutions opted for an original model of governmental organisation, which should be able to retain the strong points of both the unitary and the federal system, while at the same time eliminating their main weaknesses.

Under the 1948 Constitution, **Italy** became a regionalised state. In line with Austro-German theories and the Spanish concept of *integral state*, a governmental organisation was formed with the following constituent elements: a) classical, indivisible, unified state and b) regions. Merging the ideas of a liberal, democratic and parliamentary state and explicitly referring to the principle of social state, as well as the principle of unity of state, the constitutional construction of the political system in Italy defines the principle of regional state with seemingly conflicting stipulations in Article 5 of the Constitution. On the one hand, it proclaims that "the Republic is one and indivisible", while at the same time emphasising that "the Constitution implements in the State the fullest measure of decentralisation" and "accords the principles and methods of its legislation to the requirements of autonomy and decentralisation". In addition to that, Article 114 provides that "The Republic is composed of the Municipalities, the Provinces, the Metropolitan Cities, the Regions and the State." And Article 115 states that "Regions are constituted as autonomous territorial units with own competencies and functions in line with the principles set forth in the Constitution". The objectively inherited historical, cultural and other specificities of 20 Italian regions influenced the constitution makers to opt for asymmetry in their institutional structures and capacities. Fifteen regions were granted the so-called ordinary status. Special status was granted to island regions (Sicily and Sardinia), as well as to bordering areas with mixed ethno-national composition of the population. These are Valle d'Aosta bordering France, Trentino-Alto Adige (South Tyrol) bordering Austria and Friuli-Venezia Giulia formerly bordering Yugoslavia.

The same principled approach was assumed by Spanish constitution makers in drafting the **Spanish Constitution** (1978). Preoccupied with the proverbial problem of nationalistic, autonomist-federalist tendencies, and the

need to safeguard democratic institutions by striking a functional balance between social clashes and consensuses, Spaniards incorporated the concept of *integral state* into the body of the Constitution in the following manner: “The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards; it recognizes and guarantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all” (Article 2); “The State is organized territorially into municipalities, provinces and the Self-governing Communities that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests” (Article 137).

The creation of a distinctive system of *pre-autonomies* in 1977 and 1987, in conjunction with an agreement between the strongest political parties, allowed for the eighth chapter of the Spanish Constitution to define a model which was open and flexible enough to make room even for those who had formally not accepted the Constitution prior to that (especially Basque nationalists and a segment of the right wing politically closely linked to Frankism). With difficulties, hindrances and differences of opinion, such an approach facilitated the creation of 17 autonomous communities, having very substantial degree of political autonomy. All of them assumed legal and executive powers within the scope of competencies granted to them by their statutes, while preserving the unity of legislation as stipulated by the Constitution (Marse, 1997).

In contrasting the institutional solutions in Italy and Spain, many similarities and differences can be observed. The main *similarities* are: 1) Formal proclamation of a unitary arrangement, notwithstanding the fact that in practice (especially in Spain) the system functions owing to normative solutions which theory defines as a category of “cooperative federalism”; 2) Regions, as a constitutional category and a constitutive element of central powers, which is reflected in the bicameral parliament structure (Cortes Generales) and direct representation of regions in the so-called Upper House - Senate; 3) Large differences between regions in size and population numbers; 4) Normatively defined distinction between regions (autonomous communities) with regular status and regions with special status; 5) Clear distinction between local self-government units (municipalities and provinces) and regional autonomous units; 6) Statute, as the highest constitutive act of the region, that cannot come into effect without the consent (approval) of the Parliament, or the Parliament adopts it with the participation of the representatives of the region; 7) Guaranteed financial autonomy; 8) Representative (assembly) organisation of regional authorities (based on general elections and proportional representation, as well as representation of smaller local units, without applying the principle of classical, functional division and balance of power); 9) Institutions of state supervision over the functioning and decisions of regional authorities (by the Government, Parliament, Constitutional Court, etc.) including the “power of exceptional intervention of the State”, which in cases of “serious infringement of the general (national) interest may lead to reprimands and suspensions of decisions made by regional authorities, and even suspension of regional autonomy for a certain period of time (in Italy). However, the said position of central

authorities does not entail obligatory heteronomy of regional autonomies. In that sense, Phillippe Lauvaux tells us explicitly that a constitutional system may be defined as a “cooperative federalism”. “Apart from the precedence of Constitution over the whole legal system, *there is no hierarchical relationship* between state norms and community norms... in line with the principle of cooperation, common to all contemporary federalist systems, most of the competencies divided into two categories are concurrent rather than exclusive” (Lauvaux, 1999: 511; marked in italics by J. K.); 10) Asymmetric regionalism, or flexibility and gradation in institutional formation of regions, is based on the principles of: freedom, democracy, pluralism, subsidiarity. In that context, the system of Spanish “facultative autonomies” has relied on: a) pre-autonomies of historical provinces; b) the right of local communities to enter into associations, and finally, c) the right of the State to initiate formation of autonomous communities. And the application of the model of gradation and openness in Italy is illustrated by the remarkable fact that it took 30 years to “...eventually find out what is the substance of competencies of the state on the one hand and of those of regions on the other” (Lauvaux, 1999: 454, 505). 11) Regulation of status and functions of local self-governments by means of national legislation, having lesser or greater leeway in administering independently issues pertaining to local self-government (constitute authority bodies below the provincial level; establish or abolish municipalities, define their territorial borders, etc.). In addition to that, audit and control powers over the lawfulness of actions of local authorities are divided between the state and regions. And in cases of conflict of interest between local authorities on the one hand and regional or state authorities on the other, recourse to court protection and somewhere even special arbitration is envisaged.

1.1.4 Subsidiarity

Once D. Monaghan, an American diplomat, articulated the experiences of American democracy in the following words: *Never confer upon the larger unit that which can be done by a smaller one. What can be done by family should not be done by municipality. What can be done by municipality should not be done by the state. What can be done by states should not be done by federal government.* Several decades later, the same was articulated by Jacques Delors, an influential European politician, in his statement: *In every system of federal inspiration, such as the European Community, the principle of subsidiarity represents a constant counterbalance to the spill-over mechanisms which tend to overburden the level of central authorities* (cf. Sidanski, 1996: 278, 312). What is this about?

Deliberating on the experiences and federalist future of Europe, Dušan Sidanski concludes “... that the principle of subsidiarity proves to be at the same time a criterion of positive *orientation towards new competencies* as well as *fence against the reckless euphoria of central authorities*”. In other words, by rationalising good practices and codifying and applying the said principle, “each collective and each level is conferred or disposes of powers to resolve issues which can be resolved better and more efficiently at

their level, either because of the nature or the dimensions of those issues”. In that sense, Guy Heraud today suggests that the term *exact adequacy* be used as another designation for the principle of subsidiarity and its referential ideas and practices of simultaneous creation of European institutions “from bottom to top” and “from top to bottom”, in relation to member states, regions and communities (cf. Sidanski, 1996: 279, 312; marked in italics by J. K.).

Without doubt, this concept corresponds considerably to N. Bobbio’s idea of *ascending powers* (Bobbio, 1990: 53-54), just as it is closely inter-related with notions of division of power, decentralisation, regionalisation and federalisation, in the broadest sense of that word. Also, subsidiarity and regionalism, owing to their openness towards *adaptation of policies* and political institutions “naturally” conferred to identities, without forced uniformation of the society by means of centralised (artificial) compulsion, obviously appear to be the “eventually discovered forms” of integration in diversity. In that sense, while analysing Denis de Rougemont’s concept of federalism, Dušan Sidanski says: “different levels are suited for autonomous powers. - As dimensions of responsibilities grow - transport, employment, inflation, defence - the level of decision-making is raised up to the continental or global level” (Sidanski, 1996: 279).

Consequently to these ideas, but also to possibilities of polyvalent understanding and application, “the principle of subsidiarity has succeeded to receive almost unanimous support, which is a rare case in the history of a principle” (Sidanski, 1996: 308). The issue at matter is the already mentioned chance that this term might basically be interpreted ambiguously - in the “defensive” or in the “aggressive” sense. Protagonists of the autonomy of local, regional or federal units of government perceive it as a barrier against over-prominent intervention by central authorities, while on the other hand, the principle of subsidiarity provides grounds for those who champion efficient protection of interests of the whole political community to make political choices of objectives and to referentially expand the scope of competencies of the central legal system.

For example, the way this principle is interpreted in the Swiss (con) federation corresponds to the defensive meaning of the term (protection of cantonal competencies from being encroached by central authorities). In Spain, highly vulnerable to centrifugal tendencies and dedicated to the objective of “integral statehood” in circumstances of autonomisation of local communities, “the clause of subsidiarity expresses the principle that the law of the state is a general law, while the laws of communities are separate laws and therefore limited” (Lauvaux, 1999: 513).

With the *Maastricht Agreement* (1992-3), Europe embarked on political integration, thanks to, among other things, the following formulation of subsidiarity in Article 3b, Paragraph 2 of the *Cooperation Agreement on European Union*: “In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action” (Lopandić, Janjević,

1995, 35). The text of the unratified *Constitution of the European Union*, officially signed by heads of states and governments of all EU member states on 29 October 2004 in Rome, also devotes significant attention to the principle of subsidiarity. In Chapter 3 (Union Competencies), the provision of Article I-11 says that the Union competencies shall be determined according to the principle of positive enumeration, and that the Union uses those competences according to the principles of subsidiarity and proportionality. The third Paragraph of the said provision says:

“3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in that Protocol.

Finally, that the analysed principle represents one of the fundamental moments in the standardization of the role that local and regional self-government plays in the democratisation of states as well as all European integration processes, is also demonstrated in the Draft European Charter on Regional Self-Government. The Charter’s Preamble, stating the reasons for adopting this document, takes subsidiarity as a form of ensuring “real participation of citizens in the process of making political decisions through upgraded and more efficient administration conjoined to the needs of citizens” (Skenderović-Ćuk, 2001: 219).

1.1.5 Municipality and City

One of the most illustrious authorities on democracy, Alexis de Tocqueville, wrote 150 years ago that “it is precisely *in municipalities that the power of free nations lies*. Municipal institutions are for freedom what elementary schools are for science; they make freedom accessible to people; they endear its *peaceful use* to people and accustom people to using it. *Without municipal institutions, a nation may create free reign for itself, but cannot have a freedom-loving spirit. Passing passions, coincidental circumstances may give it a shape of independence on the outside; but despotism pushed into the insides of the social community will sooner or later re-emerge on the surface* (Tocqueville, 1990: 56-57; marked in italics by J. K.). So how can we analyse the cited standpoint, apart from a giving a general remark that it is obviously very topical, especially for those countries making their first steps in democratic transition?

Let us start first of all by noting that municipality is one of the oldest, and closest to man, territorial communities of interest. In line with that, M. Weber shows how the ancient *polis* developed into an institutional “municipality”. However, only when cities became integrated into the great

Hellenic or Roman states did the term “municipality” in contrast to “state” come to be in the ancient world, says the above mentioned author and reminds us that, on the other hand, at the same time that annulled the political independence of the polis. In contrast to ancient times, the medieval city in Western (Northern and Central) Europe had a character of *commune* from its very beginnings, as Weber emphasises in drawing attention to the famous, most succinct of all principles of civic emancipation, contained in the proverb: *City air liberates* (Weber, 1976: Vol 2, 319-330; 350-351).

This exceptional idea is varied also in the words of Friedrich A. Hayek: “Almost everything that separates civilized from primitive society is closely related to large settlements of people that we call ‘cities’, and when we talk about ‘refinement’, ‘courtesy’ or ‘politeness’, we refer to the way of life in cities... What in advanced civilizations often makes the life of idleness in the country appear as the ideal of a cultivated life is indeed the opportunity that the country has to enjoy what has been created in the city” (Hayek, 1998: 289).

Clearly, even though municipalities originally developed without any influence on the part of state powers, today it would be impossible to affirm that municipal interests exist in principle beyond and against the interests of the global political-state community. On the other hand, municipalities in modern systems are only too often subjected to imperial assaults of power coming from apparatuses of central governments. Thus there are many authors who perceive their fragility and the uncertainty of preserving their autonomy.

Today municipal powers are usually limited to *administrative functions*. Municipalities are subject to both private and public law. As *subjects of private law*, they may have their own assets which are distinguished from those of the state, and as *public-legal entities*, they adopt individual norms pertaining only to the specific scope of local interests, on a limited territory and subject to control by the state apparatus. In that context, Slobodan Jovanović remarks that “as public-legal corporations, municipalities dispose of powers borrowed from the state”. However, this, as well as state supervision, does not mean that municipalities are subdued to orders coming from the state executives: “Municipal powers do not relate to central powers as lower administrative powers to higher ones... municipal authorities must respect the law, but not the directives of central powers”, says the author (Jovanović, 1990: 397-398).

Finally, if we consider the contemporary institution of *the city* and its relations with municipalities, on the one hand, and the central authorities on the other, the fact is that comparative experiences differ even from this angle. Let us also observe that in statutory regulations of the status of cities, distinction is often made in relation to the capital city of a state, giving it guarantees for special autonomy. And when it comes to other large urban and regional centres, the “city” is constitutionally categorized in the local self-government system, representing another, higher rung of local authorities (association of two or more municipalities), with regulations in place for possible transfers of municipal competencies and harmonisation of responsibilities carried out by the city or by metropolitan municipalities.

1.1.6 Local Authorities

Like all political notions and institutions, “*local authorities*” (administration, government, etc.) is a polysemantic phrase, subject to controversial theoretical-political interpretations and arguments for its “right” definition. In that context, also contradictory are responses given to the questioning of the purpose of local autonomy today and the nature of its original competencies. Generally speaking, one group of authors considers that local authorities can be efficient only if it is primarily understood and organised as a *local administrative service of the central authorities*. Others, however, see in local authorities an increasingly expanding form of political allocation of values, which has a positive influence on harmonizing the local with the national, creative adaptation of institutions, modernisation of administration and moving towards the sphere of real interests and true freedom, which is ensured through *market democracy* and the right of citizens to personal choice. We shall take the opinions of two competent authors as supporting arguments for the latter viewpoint.

The first opinion is that of the renowned lawyer and politologist Karl J. Friedrich, who remarks that “*indeed, in many instances territorial division of powers has proven to be more efficient than the functional division... Federalism indeed has a positive influence on more dynamic performance of local authorities geared to adequate application of constitutional rules pertaining to them and protecting them. Besides this negative and protective role, federalism and local administration create conditions for political experimenting, in one or more local units*”. (Friedrich, 1996: 100; marked in italics by J. K.)

Similarly, F. A. Hayek talks about advocates of centralisation, who “*were mostly concerned with freedom of the individual in general*” as well as the “*opportunity for experimenting*” with the purpose to “*warrant the advantages of free development*”. The point is, therefore, that: “*there are strong reasons why the action of local authorities generally offers a second best solution in cases when private initiative cannot be relied upon, in order to ensure certain services which require some sort of collective action, as this brings many advantages of a private company, while being less dangerous than the compulsory action by central authorities*” (Hayek, 1998: 227; marked in italics by J. K.).

At any rate, comparative experiences provide grounds for arguing that there might be three prerequisites or basic features an organisational entity must have in order to be considered a *local government*. According to M. Prokopijević, these are: 1) independent organisation and having some corporate powers; 2) autonomy with substance, with fiscal and administrative independence; 3) a nature of government derived on election or appointment by higher authorities, which includes the power to levy taxes from a segment of the population and companies; ability to pay its debts and to have the responsibility of performing administrative functions in the local community (Prokopijević, 2001: 23-25).

In short, along with central authorities, local authorities exist in every state. Whether their mutual relations are harmonious or whether we are talk-

ing about the existence of *dual state* (Koson and Saunders) which involves “organisational struggle for power between central and local governments, in which each organisation has certain resources at its disposal” (Rhodes) is less important for the general definition of the concept (cf. Damjanović, Đorđević, 1995: 402-403). In fact, the matter is also about *conflicts and compromises of different groups* and political classes, which are articulated in specific ways on both levels of the territorial organisation of powers. In that context, “there is a widespread opinion that government is least ‘felt’ when it is functionally strongest, meaning that it draws greatest attention to its presence when its results are poorest” (Damjanović, 2001: 15).

1.1.7 Local Self-Government System

The term “system” in social relations always implies something arranged, with a purpose, legal-technical forms and rules of organisation of the hierarchical relations between the parts and the whole, including also the interaction between the system and its surroundings. Accordingly, the “local self-government system” designates a specific sphere of legal-organisational relations between autonomy and control, in: a) relations between central authority bodies and bodies of lower territorial units; b) interactions between local authorities and c) relations between authorities and citizens.

Namely, viewed from the angle of vertical (territorial) organisation of powers, all modern states are inevitably criss-crossed by networks of different levels and units of government. In its simplest form, the municipality as a basic unit is at the bottom, and the bodies of central government are at the top. Ever since the very formation of the state of mass society - either due to technical reasons for efficient administration, or reasons of legitimacy and democracy - central authorities have regulated by legislation the status of basic territorial units of government. In that context, there seem to be empirical grounds for the following remark of Miodrag Jovičić: “Both the existence and the general functioning of the local self-government system are entirely a matter for central bodies. Just as they created the system, they can also alter or even revoke it” (Jovičić, 1996: 10). However, while recognizing the immense supremacy of the centre in the dynamic configuration of powers within a political community, attention must always be focused also on the following fundamental condition (*conditio sine qua non*) of liberal democracy. As we indicated previously, it was formulated long ago by Benjamin Constant:

“Obviously, the whole nation or its representatives have legitimate jurisdiction only over the interests of the latter kind (general interests of the nation - remark by J. K.); and if they encroach into the interests of the county, commune or individuals, they exceed their authority. The same would be with a county encroaching into the separate interests of a commune, or a commune attacking the strictly personal interests of its members.

... Up to now, local government was treated as a dependent branch of the executive powers; on the contrary, local government should never

constrain the executive powers, but it should neither depend on them" (Constant, 2000: 99; marked in italics by J. K.).

Besides municipalities, in most European states the networks of local government bodies comprise another one or two levels. For example, in Italy besides communes (cities, urban and rural areas), the local self-government system comprises another, higher level called "provinces" (Article 114, Italian Constitution). The same is in Holland. In Spain, this other level of local self-government is called "the province" (Article 137, Spanish Constitution). In Austria and Germany, second-level units are called "Kreise", in Sweden they are "counties", and in France "departments". Finally, in some states a third level of units was introduced in the local self-government system, called "regions", "areas", "provinces", etc.

All mentioned units of local self-government (autonomy) have their own bodies and competencies determined by the constitution, laws and statutes. That said, in *unitary* (simple) states all local self-government units are the creation of the constitution and of the law, consequently neither municipalities nor second or third-level units in the pyramidal structure of local self-government *are by any means constituent parts of the state* - they take no part in the formation of central bodies, nor do they participate in making decisions that are of general, state interest. Some levels, such as *Kreise* or counties, may serve as borders for electoral units in parliamentary elections, but that is the only link between them and the system of construction of global authorities (Jovičić, 1996: 10, 74, 106-107).

Considering that the same terms (such as "province" or "region") are used to designate qualitatively different territorial units of government, *the main distinction between simple* (unitary) states *and regional states* comes down to two main points. Firstly, in a unitary state there are no middle levels of autonomous authorities between municipalities and central government bodies, while in a regional state there exists a third type of government unit, called *region* or province. Secondly, compared to units bearing the same name and belonging to the local self-government system, *regions* in a regional state are differentiated primarily by significantly larger autonomous competencies. These also entail special rights defined by the constitution related to the formation and exercise of central powers, including also the guarantees that they cannot be abolished by the will of central government bodies. The most that the central government can do in controlling regional policy is to dissolve the regional council in cases of extreme violation of the constitution and the law (Italy), as well as to suspend temporarily regional decisions and instigate proceedings in front of the Constitutional Court (Spain).

1.1.8 Socio-Political Aspects of Decentralisation, Regionalisation and Local Democracy

Albeit, until few decades ago, system of centralised state administration was linked to the imperative of politics named - efficiency, and decentralization was considered sovereign authorities' concession to the lower levels of territorial organization; nowadays, due to the authorities' need for legitimacy, devolution and decentralization of powers are considered, without doubt, prerequisites for realization of both imperatives of modern governance: economic - administrative efficiency and acceptance from all diverse segments of population.

As shown above, both systems, centralized and decentralized, have their good and bad sides. Good sides of centralization are usually linked to its simplicity, cheapness and ability to authoritatively manage issues while protecting the interests of the state unity. On the other hand, virtues of decentralization are in flexibility of the system, adoptability to local needs, and faster and easier solving of the governing problems. Decentralized authorities' bodies are closer to the local lives and interests of citizens, making it easier for them to participate in the affairs of public importance.

Township democracy has been a convincing evidence of this, ever since the establishment of modern democracy. Its significance for the institution of control balance of "corruption and perversion of representative bodies" was best pointed out long ago (in 1824) when one of the founding fathers of American democracy, Thomas Jefferson, insisted on division of counties into wards. In reference to "Ward-system", Jefferson remarks:" a human spirit could not create a better fundament for free, stable republic that is good to govern than this "elementary ward-republic" (cf.: Arendt, 1991: 214-217; cursive J. K.). In line with the above mentioned is, not that old, idea that "...in the states of the party government, system of decentralisation can serve as a safeguard from partisan administration", that is: from absolute ruling the whole state administration "all its manifestations, even the most fragmented ones" by the party in power or coalition, (S. Jovanović, 1990: 403).

In the context of D. Held's typology of historical stages of the development of democracy - starting with the antique democracy: town - state, through protective and developmental stage of liberal democracy, to the participative concept of social democracy (Held, 1990) - one could notice that, nowadays, segments of all these approaches are included in local democracy. This concept of modern (mega) polis administration represents, at any rate, complementary process and one of the important keys of the successful realisation of democratic governing global system's objectives and functions. As political system lacks "soul" and appealing "language of politics", unless it is based on "love towards little men" and tradition of local self government; the local politics cannot be progressive unless the central government is trained to efficiently realise social interests that cannot be realised by anyone but the state.

Besides the evident limitations of each of the institutional levels of democratic structure of society, the local framework may be the closest to the ideal of democracy, that comes down to: a) voting equality for citizens; b) effective participation in decision making; c) ability of good understating of the purpose of community and issues discussed and decided upon; d) final control of demos over political agenda and e) involvement of all members of the community into the demos (cf.: Dahl, 1994: 33). Thus the idea that *without developed local democracy, in fact, there is no real democracy in modern states*, could be supported by numerous arguments and meaningful maxims.

F.A. Hayek's remark, for instance, that *democracy has never functioned well without great participation of local self governments*, implies several meanings. Firstly, it speaks about the exact historical foundation of the European democracy experiences, which derived from free towns' tradition of local autonomies and citizenry. Secondly, this illustrates the whole complex of mutual relations between local and global level of organisation of political power. Thirdly, it refers to the aspect that is described by a method of use of political power in serving the citizens' sovereignty; division and balance of authority and in constitutional limitation of the power of sovereign - being it monarch or a state parliament. And fourthly, it illustrates morally-educative aspect of citizenry or, what Jefferson describes as "a fundament of republican freedom", Tocqueville as "the sense for structure" and "peaceful school of freedom", and Schumpeter "citizens spirit".

Different forms of local democracy, which, depending on political regions and traditions, are called: "local self-government", "local autonomy", "local administration", "local government", "local authority"...satisfy the following functions of democratic government: 1) accountability and electability of government; 2) closeness of public officials to their citizens; increased possibility of direct communication, transparency and control by civil society; 3) greater participation of citizens in matters of public interest; 4) greater possibilities for mobilization of the public; 5) primary political socialization and "training for higher and greater causes" (Burke); 6) school of human rights and civic political culture; 7) easier agreement on common interests; 8) more direct possibilities for harmonization of the traditional and the modern and for expressing multiple (plural, overlapping) identities of individuals and groups; 9) protection of cultural rights of minorities and their more efficient participation in decision-making on environment problems; 10) ensuring feelings of security, belonging to the community and solidarity; 11) freedom of organizing, pluralisation and autonomy; 12) delimitation, division and balance of power; 13) competition, mutual control and cooperation of different levels of territorial (vertical) government organization; 14) development of ascending government and social democracy in terms of expansion of democratic forms of decision-making from the political to the wider social sphere; 15) exact adequacy of organization, subsidiarity and higher efficiency in solving problems in local

environments; 16) greater possibilities for social experimenting, including easier and faster correction of mistakes than at higher government levels 17) alternative sources of information and public opinion that is less liable to control by political tycoons, etc.

1.2 Controversy - For and Against (De)centralisation

1.2.1 Against Decentralisation

Two specific approaches could be distinguished from corps of numerous arguments against distribution of power and decentralization through provincial autonomies, or federal units. While one belongs to antidemocratic, totalistic apprehension of right of force and a method of organization of force of right, the other type of impeachment is of liberal - democratic provenience.

1) In National Socialism (fascist) version of total power of corporate state², two approaches are the most representative. The first approach is one of the Fuhrer of the Third Reich Adolf Hitler: *“Germany can achieve political power only with brave soldiers. Pacifism, cosmopolitanism, federalism and parliamentarism must be recklessly eradicated. We need united national territory. All countries must have the same laws and they must be led by central government”* (According to: Calic, 1985: 87; cursive J. K.). The second, however, comes from the Mussolini’s (Benito Mussolini) headquarter of “corporate state”.³ *Nothing out of the state, nothing against the state, everything for the state*,⁴ was the maxim of the leader who tried to “gather the nation into a beam of energy” (cf.: Nolte, 1990: 229-233).

Specific opposition to consistent federalist and democratic division and balance of power, could also be found with the key actors of real-socialism “dictatorship over needs”. As a paradigm of such an approach to issues of federalism and autonomies, one can take the following Stalin’s (*J.V. Du-*

2 Thus in Eduard Calic’s book in which integrated Calic’s comments and shorthand notes of the secret conversations of Adolf Hitler and Richard Breiting (1931) were published, Hilter stresses: *“... I am an arch enemy of democracy that brought us to this misery... Ellite, which is not in our party, but not outside of it either, feels that only dictatorship can establish order; that it will be possible to protect interests of various classes by one corporate institution, and not by the Reichstag... The Third Reich will be governed from headquarters, not from armchairs and gremis of Reichstag consisted of professional politicians...”*; E. Calic, Hitler unmasked, Istarska naklada, Pula 1985, pages 46 -47. (cursive J.K.)

3 In his study on fascism, Ernst Nolte states that the meaning of a state understood as such could be best described in the following Mussolini’s sentence: *“We control political power, we control moral power, we control economic power, we are, thus, in the middle of corporate fascist state”*; According to: E. Nolte, Fascism in its epoch, Prosveta, Belgrade, 1990, page 230. (cursive J. K.)

4 *“Tutto nello Stato, niente al di fuori dello Stato, nulla contro lo Stato”*

gashvili Stalin) statement from his USSR “autonomisation” project of 1922: “If we do not endeavor to adjust a form....of interrelationships between the centre and provinces, by factual interrelationships, to power which makes provinces unconditionally obliged to be subordinate to centre; that is, if we do not exchange formal (factual) independence by a formal one as well (together with the real) autonomy, it will be much harder to defend a unity of republics in a year ...” (*Pravda*, 08th July, 1988; cursive J. K.).⁵

2) Contrary to the stated views, liberal-democratic way of thinking has very diverse approaches to positive and negative sides of centralization/ decentralization of powers. Whereas the views that support democratization through decentralization (federalization and regionalization) will be analyzed in our next chapter, the following summary of Franz Neumann’s delicate analysis of federalism will be used as an illustration of liberal-democratic challenging of thesis on inherent, principal-democratic functionality of autonomy and federalism: “there are no values that would belong to federalism as such, and federalism could not be successfully represented by thesis which declare that integral states certainly lead to political oppression”, says the quoted author, one of the most distinguished lawyers and expert in political sciences of the twentieth century (Neumann, 1974: 194). In his text “Theory of federalism”, Neumann leans on John Stuart Mill’s analysis, appraising him as “outspoken proponent of differentialism and individualism”. Especially in reference to this issue, he abstracts a question: “Should a state, that wants to be united, chose integral or federal form of organisation”, and an answer, which Mill gives in a debate on the structure of the future Italian constitution in the middle of the nineteenth century: “It is questionable whether different parts of a nation demand significantly different ways of governing from the ones in the other nation’s parts; thus it is not possible for them to be satisfied with the same legislature, the same government or administration. And, if this is not the case, which is a matter of facts, it is better for them to be entirely united..

Whenever it is not necessary to continually mirror different legislatures in different provinces, and basic institutions based on different principles, smaller variations can sustain the unity of government. The only thing that should be done is to assign local government with authority, big enough.” (Quoted: Neumann, 1974: 189-190).

Among the exposed opinions in the debates on the state organization of Serbia at the end of the twentieth century, one reflects preference towards a unified state. This is the opinion of Miodrag Jovičić that states: “when strong reasons for foundation of federation exist, federal organization must be accepted as the *only appropriate solution*. And conversely, when such reasons do not exist, unitary organization of a state is imposed as the *best solution*”, above all because of “simplicity, rationality, efficiency, and a relatively cheap organization of governments and their functioning” (Jovičić, 1996: 14).

⁵ More on this in: J. Komšić, *Critique of Neostalinist State Theory*”, unpublished thesis, Faculty of Political Sciences, Belgrade, 1993, pages 420-424.

1.2.2 Arguments for Decentralisation

In his pursuit for a good strategy for sustainable democratic changes, and in context of the most enduring experiences of representative democracies, Robert A. Dahl points out four main elements of modern politics. The first element is - “provision of mutual safety of groups in dispute”. The second - “strong and decisive executive government that depends on institutions responsible for various interests and demands”. The third - “integrated and not fragmented party system”, and the fourth, certainly extremely relevant to our debate, is - *representative administrations at the level lower than national* (Dal, 1997: 236-237).

In his pursuit for the most functional form of democratic decentralization of power, with the warning that the issue of adequate extent and domain (of competency) of autonomous units could not be solved within the scope of theory of democracy, the quoted author, after all, states that, in principle, certain level of organizational autonomy is necessary for the democratic process, and in that process he finds “relative advantages of a certain level of decentralisation and relative disadvantages of extreme centralization (Dahl, 1994: 78-79).” However, in order to defend the idea of validity of the very autonomous unit, in particular cases, taken together, seven relevant criteria have to be met. The first criteria represent a possibility of precise identification of the *domain and extent*. The second: strong people’s aspiration for *political autonomy*. The third stands for complying with the democratic government procedures in the autonomous unit. The fourth criterion is linked to *guarantees and protection of the basic political rights* and rights of newly developed *minorities*. The fifth is linked with the possibility created by a new entity to *include* the ones, who were submissive to “...*strong influence of decisions they had no control of*”, in the process of decision making. The sixth hypothesis implies that *number of conflicts about the objectives does not grow*, therewith the time and the number of individuals who feel jeopardized or cannot realize their goals. Finally, the seventh criterion says that *gains* of an autonomous unit, as of the whole state, are *bigger than the expenses* (cf.: Dahl, 1999: 293-296). To summarize, Dahl states, in another text on issues of post communist transition, that the “*danger for protection of human rights and democratic institutions does not originate in decentralization or autonomy per se, but in intensive conflicts and repressive actions that can be stimulated by them*” (Dahl, 1995/6, 134).

To illustrate that the mentioned criteria and comments are not just reasonable and useful for the current politics, but founded on the best tradition of the republican and democratic concepts, insight into another group of- philosophical-political, culturological and economic ideas and arguments for decentralization will be given.

1. As the key philosophical-political arguments for decentralization, we will present the ideas of three authors - two great men of the 19th century and one of the 20th century. According to the first one, above stated John Stuart Mill, the most important reason for restraining the government from interfering in the lives of people is as follows:

"If roads, railways, banks, insurance companies and joint stock companies, universities and bequests - all of them, were part of the government's domain; if the central administration would be given, besides this, authority to govern the things that are part of the accountability of municipality and community administration; if the government would appoint officers in all of these companies; if it would acknowledge and praise by higher ranking - then neither free press, nor legislation organized by people could preclude England, or any other state, from being free in name only" (Mill, 1999: 137-138)

In this context, Isaiah Berlin summarizes Mill's view on institutional presumption of freedom by following words: *"In order to make human life bearable, information has to be centralized and government decentralised"* (Berlin, 1992: 267, 289-290; cursive J. K.).

Another great author is Tocqueville. In his inspiring thinking, even from the contemporary perspective, on democracy in America, he criticizes centralism because of two basic things. The first one is encompassed in the fact that *"...administrative centralism is just capable to weaken nations that are submitted to it, for it constantly strives to decrease their civil awareness. Administrative centralism manages, indeed, to gather all available forces of nation for some time and at one place; however, it deserves renewal of these forces. It ensures a triumph on the day of a battle, but decreases the power of nation as the time passes. Thus it can contribute to the temporarily greatness of one man, but not to the enduring wellbeing of a nation"* (Tocqueville, 1990: 79; cursive J. K.). The second critique refers to an inadequate legislature, for the great centralized nations' *"legislature cannot accommodate to the needs and habits of people, and this presents a huge reason for derangements and distress"* (Tocqueville, 1990:140).

This and many other facts inspired Tocqueville to state: *"I believe that regional institutions are useful to all nations; and it seems to me that none of them needs these institutions more than those with democratic organization... Only the nations with few or no regional institutions deny their usefulness; only those who do not know of something speak badly about it..."* (Tocqueville, 1990: 79, 85-87; cursive J. K.).

Eventually, the third great man and contemporary philosopher and sociologist, Jurgen Habermas, has been preaching since the eighties of the last century that the answer to more obvious crises of legitimacy of modern system of government can only be achieved in greater democratisation of society. In this context, *"... contemporary system gives abundance of arguments which prove the importance of democratization, greater participation of citizens and decentralization of processes of collective opinion formation, because the market - administration cannot satisfy numerous collective needs"* (cf.: Habermas, 1983: 16-17; cursive J. K.).

2. **Culturological** importance of the idea of decentralized "conflict within one nation" can be well understood in Thomas Eliot's study of regionalization as a framework of harmonious realisation of unity and diversity. That is, accepting of thesis *"... that one nation should not be overly united nor divided for its culture to flourish"*, Eliot 1948 lucidly notices that *"excessive unity can be a consequence of barbarism and can lead to tyranny;*

excessive fragmentation can be a consequence of decadency and can lead to tyranny as well: any excessiveness will prevent further development of a culture". Eliot defines the same point in his other work by saying: "A country where fragmentation has gone too far presents a danger to itself; a country that is overly united - either naturally or knowingly, with honest intentions or cheating and oppression - is a threat to others. In Italy and Germany we have noticed that the unity with political and economic aims, impetuously imposed by force, had fatal influence on both nations". It is obvious and this author believes that "adequate level of unity and diversity cannot be defined for all nations and for all times" (Eliot, 1995: 51-62; cursive J. K.).

3. Considering numerous controversies among theorists, about economic effects of centralization of state administration, above mentioned Haywood claims that *"economic development and centralization always go together"* (Haywood, 2004: 305); on the contrary, Eliot notices that sudden and forced unity produces fatal influence on nation. Among the analyses that state persuasive economic reasons for decentralization we chose the following two. The author of the first one is Serbian economist Ljubomir Madžar. In the context of analysis of integrative and disintegrative processes in the states of Eastern Europe, he establishes that *"overly centralized systems have very little capacities for decision making - all the significant and great number of insignificant decisions are made in few points, and center as a point that dominates overall system is especially burdened with great number of decisions - thus they are found in a situation to move available resources with very small number of decisions"*. Therefore, having in mind experiences of real-socialism and other systems that use fear and enforcement as the only cohesive power, Madžar remarks: *"In contemporary situation, systems based on force are certainly not adjusted to imperatives of economic efficiency, and most certainly force has never been method of fast and efficient enlargement of people's wealth"* (Madžar, 1998: 106, 112; cursive J. K.).

Examining experiences of the first decade of post communist transition and by asking himself: *"where these reforms lead"*, American Nobel prize winner Joseph E. Stiglitz also indicates many incomprehensions of the process of reforms. One big mistake, such as oligarchy of society and disorganization of economy, that is done behind the curtain of, so called, depolitisation (*"putting a white glove on a raven hand"*), without protective regulatory rules in the process of fast privatisation), is also consisted of wrong assessment of politics. If we agree that this is the matter of not planned consequences of transition, then the cause of this huge mistake, according to Stiglitz, lies in the designing neglect of stakeholders' capability to use political processes for realization of egoistic strategies for sustainability and consolidation of their, not people's (state's) economic interests. For this reason, for reforms to be politically sustainable, Stiglitz insists on strategy of decentralization and collective action:

"For a society to be transformed, it is necessary to take collective action..." It is unavoidable for central level to play an important role and maybe the most effective as well, this way it will create an atmosphere in

which processes of evolution will best develop - including experimenting on a local level.

Accordingly, Comprehensive Development Framework - CDF argues for inclusion and participation of citizens. Faced with a choice between „imperfect“ spontaneous reforms from bottom upwards, and imposing from the top of what reformists consider “exemplary” institutions, CDF argues in favour of implementation of our knowledge and experiences which aims to improve approach to transformation directed from the bottom upwards“ (Stiglitz, 1999: 98-100; cursive J. K.).

Therefore, according to the stated and many other arguments in favour of thesis of increasingly fragmented and powerful interactive relation between democratisation and decentralisation, and in a context of Eliot's remark that adequate level of regional unity of diversity cannot be defined for all nations and for all times, we are reaching the key focus of this essay - concept of the European Council on regionalisation, form and actions of creation of regional EU policy and a practice of euro regionalism.

1.3 European Principles and Documents on Regionalisation

Having in mind a question that we posed at the beginning of our text, whether nowadays we have clearly articulated and uniformly implementable European standards for decentralisation and regionalisation of national states, we will say that there are more reasons for a negative than a positive answer. Small number of such uniformly accepted international legal instruments presents only one of the reasons for such an answer. Even more important reason is that the existing documents, as well, are predominantly based on recommendations and directions for decentralization and interregional (inter-territorial) cooperation, which allow national states to relativise even the minimal sum of adopted criteria and principles. On the other hand, in previous chapters of our analysis it has been indicated that it is possible to talk about the standards of regionalisation in more diverse and legally less precise manner. In the context of Italian and Spanish experiences, and on the example of expansive reception of subsidiary principle, as well as by arguments in favour of decentralization, we have illustrated that it is possible to sublimate the practice of European states, first of all EU members, into a corpus of ideas, values and initiatives, all the way to theoretical construction of ideal-type model of regional state. According to the mentioned apprehension of standards, nowadays, it is possible to talk about entirely understandable European *approach*.

Objectives, contents and instruments of European discourse have been formed and are still formed by complex field of interactive influences of numerous factors. Some of them are: development of integrations within EU; great expansion of EU; increasing trends toward decentralization of national states; and more intensive and diverse cross- border regional (inter-territorial) cooperation, that encompasses euroregionalisation as well, as the most evident result of a specific movement for regionalism within the European council.

All the above illustrates that in order to entirely understand and present European logic of decentralization, it is necessary to include into a scope of analyses of regionalisation's objectives, contents and domains, series of relevant documents, "born" in wider political surrounding of EU, in the **Council of Europe**. These are, above all: Madrid Framework Convention on Cross-Border Cooperation (1980); European Charter of Local Self Government (1985); Declaration on Regionalism in Europe (1996); Draft European Charter of Regional Self-Government (1997), and declarations and statements of European ministers responsible for local and regional self government (Helsinki, 2002; Budapest, 2005). Content of all these documents will show, among other things, the initiatives from "the above", affections of the "above", and what model type of state, democracy, social interactions and interstate integrations we can count on in Europe's near future.

1.3.1 Madrid Convention on Transfrontier Regional Cooperation (1980)

If we review again the key argumentative reasons for positive or negative answer to the issue of (non)existing standards, in terms of consequential, uniformly accepted, uniformly applicable and uniformly obligatory legally-binding matter; we can highlight the **Madrid European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities**, No. 106; 1980, and the additional protocol on its implementation (1995; 1998)⁶, later adopted, as the most important moment for the establishment of specific codification of the cross - border regional cooperation principle in the form of, so called, soft law.

So far over 30 countries, members of the Council of Europe, have signed and ratified the mentioned convention, which was adopted on 21st of May, 1980. The document preamble puts forward "achievement of a greater unity between its members and improvement of their cooperation". In this case, national states are not the only subject to the realization of the stated aim. More so, the focus is on "the territorial communities or powers" which implies local as well as regional levels of territorial organization of power and self government, where the state authority is illustrated and defined in the functioning of guarantees and improvements ("facilitation", "encouraging" and "strengthening") of close cross border cooperation of sub federal (local and regional) levels of government (article 1; as well as article 3; paragraph 1).

Cross border cooperation is defined in the sense of "agreed activities created in order to strengthen neighbour relations between territorial communities and governments within the competence of two or more par-

6 It is stated in the Agenda for development of good local and regional self government, adopted at the 14th Conference of European Ministers Responsible for Local and Regional Government in Budapest on 24-25 February 2005, that work on creation of the third Additional Protocol is in process: "To continue the work started at the Council of Europe with the intention to adopt the third protocol of the Madrid Transfrontier Convention and this way regulate European Co-operational Grouping ECG".

ties bound by a contract and closure of any agreement and arrangement necessary for realization of that aim” (article 2). Position of central (state) levels of power is explicitly protected by a statement which specifies that cross border cooperation “...will develop within the competence of local communities or local government the way it is defined in the individual law of each country” (article 2).⁷ Consequently, the Convention’s addition stipulates model of international agreements, as well as framework agreements, statutes and contracts on cooperation between territorial communities.

Out of 14 models of international agreements, only two (a model on development of cross-border cooperation and the one on regional cross border networking) are exclusively under the competence of the state. The other international agreements “...only decide on the legal framework of agreement or contract conclusion between territorial governments or communities”. On the other hand, it is stipulated that 16 types of regional agreements (framework agreements, statutes, contracts) regulate issues regarding the following areas: establishment of consulting groups; management of cross border local public affaires; establishment of private legal cross border association; procurement of goods and services; formation of bodies of cross border cooperation; economic and social cooperation; space planning; establishment and management of cross border parks; civil protection and aid in case of catastrophe; cooperation between schools and local communities; use of land by a cross border river catchment’s area; statutory regulation of cross border grouping with the legal status.

It is evident that along with the stabilization of democracy, extension and improvement of European integration processes, and the trends of decentralisation of internal organization of power, the first text of Madrid convention proved insufficient; and consequently the problems of dominant control of the state, dependency of the whole process on good will of central authorities, limitation of interregional cooperation to neighbouring, cross border territorial communities, and other open issues, have to be solved by additional protocols. There by, “having intention to give an international frame to an inter-territorial cooperation”, Additional Protocol number 2, of May of 1998, allowed the interpretation of the term “cross border cooperation” as *inter-territorial cooperation*, and this way, adequately named legal and legitimate partnership between European regions (preamble, and article 5). Thus the key result of such cooperation is not just geographical-political neighbourhood. It implies complementarity and similarity of European regions’ interests, whether they are neighbouring or part of the non - contiguous states

Additionally, the accent has been gradually moving to the expansion of subjectivity of territorial communities in processes of interregional co-

7 In this sense, article 3, paragraph 4. of the Convention is even more specific: “Agreements and arrangements will be concluded respecting the competences that are part of internal law of each contracted party, regarding international relations and general politics, as well as all regulations on control and inspection which territorial communities or governments can be subjected to. “



operation. To summarize, this type of cooperation could be resumed to few basic modalities: a) bilateral agreements of states and partnering regions; b) institutionalisation of Euroregions; c) Cooperation within multilateral state working bodies of bordering regions; d) Trans-European regional cooperation which involves in partnering network, besides political administrative regional bodies, business subjects - small and medium- sized enterprises (cf.: Skenderović-Ćuk, 2003: 195-196, and Skenderović-Ćuk, 2005: 13-15).

1.3.2 European Charter for Border and Cross Border Regions (1981; 1995; 2004)

In order to best illustrate expansive process of euroregionalisation, empowered by Madrid convention, we will analyse European Charter for Border and Cross-Border Regions.⁸ This document, adopted by structures of EU region Germany/Netherlands in 1981, then, by Pomeranian Euroregion in 1995 (Poland/Germany), including its modification of 2004, addresses all partners who want to participate in projects “Euroregion”, or “Europe without Borders”. Assessing the courses of European history that, after the establishment of nation-states, emptied the space around borders;⁹ creators of this charter intend to “heal the scars of history” by making border and cross-border regions “function as bridges and represent standard of European unity” (Chapter II - Historical and Political Background). In conversion of “three different, but contextually closely connected political and economic processes” (a/ elimination of borders within EU; b/ establishment of intellectual, political, cultural and economic contacts with third countries; c/ democratization of post communist countries of central and eastern Europe), it is extremely important to ensure: 1) new quality of borders; 2) strengthening of economic, social and cultural potentials of border regions; 3) making regions functional in terms of region being driving force of cross border cooperation; 4) ironing of seams of European regional development; 5) elimination of economic and infrastructural barriers and imbalance.

Considering the fact that “Europe is specifically characterised by its regional diversity, which should be seen as an advantage”, the important requirements for development of common European structure and strengthening of cooperation in all areas are not just partnership and subsidiarity, but also the fact that “an overall and thorough implementation of ideas of regionalisation in these countries’ constitutions directly contributes to the strengthening of cross border cooperation”. (Chapter III - Objectives of cross border cooperation in Europe).

8 *European Charter for Border and Cross-Border Regions* - Adopted on: 20 November 1981, EUREGIO, Germany/Netherlands (authors: Jens Gabbe, dr Viktor von Malchus); Amended on 1. December 1995, Szczecin, Euroregion Pomerania, Poland/Germany; Amended on 7. October 2004, Szczecin, Euroregion Pomerania, Poland/Germany.

9 “Moving from a centre of a state towards borders, economy, transport and culture were losing in their intensity, and demography decreased”; *European Charter for Border and Cross Border Regions* (Authors: Jens Gabbe, Dr Viktor von Malchus), EUREGIO, Germany/Netherlands (1981); Szczecin, Euroregion Pomerania, Poland/Germany (1995);

Chapter IV of the European Charter for Border and Cross Border Regions, emphasizes the importance of the following measures: 1) Intensification of continuous regional cross-border development and regional politics; 2) Improvement of infrastructure and economy; 3) Enhancement of cross-border environmental protection and preservation of nature; 4) Solving cross-border employment issues; 5) Promotion of cross-border cultural cooperation; 6) Development of cross-border cooperation according to public law and with the self-initiative of border regions. Considering all the facts, it is expected that European regions, and accordingly entire cooperation, through cross-border networks at the regional and local level, become model or *standard* for: a/ peaceful human coexistence with the respect for diversity and the rights of minorities; b/ respect for the principles of partnership and subsidiarity; c/ active participation of citizens, politicians, authorities and social groups in cross-border cooperation; d/ reconciliation, tolerance and equality; e/ social, cultural and economic cooperation and cohesion through cross-border integration with maintenance of states' sovereignty; f/ Europe of regions.

Eventually, having in mind many differences among territorial communities,¹⁰ as well as great expectations from the processes of democratization, decentralization and European integrations of the 21st century, the concluding paragraph of the analyzed Charter especially emphasizes necessity of “joint actions of the European Union, the Council of Europe, the OSCE, national authorities, regions and the local level, as well as solidarity of border and cross-border regions” (Chapter V - Outlook on 21st century).

1.3.3 European Charter of Local Self-Government (1985)

The process of harmonising the aims and contents of decentralisation in Europe was provided with significant incentives by adopting the text of the **European Charter of Local Self-Government** (*European Charter of Local Self-Government*, Council of Europe Convention No. 122, 15 October 1985). The member states of the Council of Europe started from the fact that the most direct exercising of the democratic right of citizens to participate in conducting the public affairs is possible, first of all, at the local level, as well as from the belief that “... only local authorities with actual responsibilities are able to ensure the efficient administration which is close to its citizens”. This actually implies that “Europe based on the principles of democracy and decentralisation of powers” requires the constitutional and legal grounds to guarantee the existence of local authorities with substantial level of autonomy and responsibility. In that sense, according to the principle of subsidiarity, a provision in Article 4 of the Charter stipulates

¹⁰ “Differences are especially noticeable in the following areas: administrative structures and competences; fiscal and social legislation; spatial planning and planning laws; environmental and waste legislation; politics and transport systems; general border problems and absurdities; unresolved economic and currency disparities; misinvestments in the service sector and social sphere due to legal and financial barriers”; *European Charter for Border and Cross-Border Regions* (III - Objectives; 1981; 1995)

that: *Public affairs shall, as a rule, be conducted primarily by those authorities which are close to citizens. When delegating the responsibilities to some other authority, the account shall be taken of the scope and character of activities, as well as the efficiency and economy-related requirements* (Item 3). In addition, “the rights delegated to the local authorities shall, as a rule, be full and exclusive. They shall not be denied or restricted by some other - central or regional authority, except in cases stipulated by the Law” (Item 4).

Considering the fact that having adequate ways, methods and resources is a relevant precondition of responsibility, efficiency and economy of local autonomy, the Charter guarantees the right to “have own adequate sources of financing, which they shall manage freely, within their powers”. It is also specified that “sources of financing the local authorities ... shall be in accordance with their responsibilities stipulated by the Constitution or law” (Article 9, Item 1 and 2). A provision in the following article determines the right of local authorities to associate, both within their national state and at the international level. In that sense, under the laws prescribed by the law, local authorities have the right to cooperate with the relevant authorities from other countries (Article 10, Item 3).

1.3.4 Declaration on Regionalism in Europe (1996)

Considering the statements that the Madrid Convention of the Trans-frontier Cooperation and the Strasbourg Charter of Local Self-Government are the documents that we could, without much risk, refer to as the European measure of decentralisation, we shall make another step, and include one document adopted by the Assembly of European Regions (AER) in the group of relevant indications of European logic and forms of regionalism. It concerns an organisation acting within the structures of the Council of Europe and the Congress of Local and Regional Authorities of Europe (CLRAE), representing the interests of more than 300 European regions and acting in accordance with the following programme principles: strengthening the regional development, responsibility and getting closer to citizens.

At the session in Basel, held in December 1996, this Assembly adopted the **Declaration on Regionalism in Europe** (*Declaration on Regionalism in Europe*, Assembly of European Regions, 1996) and on that occasion defined the *region* - its institutional organisation and competences - in the following manner: *a) Region is a territorial body recognised and established pursuant to the national Constitution, positioned immediately below the central level of authority and provided with the attributes of political self-government. Different political identities (statues, constitutive acts and political forms) express specific historical, political, social or cultural specificities of regions (Article 1); b) Institutional organisation is characterised by: the full legal status of the region, a representative assembly composed of directly elected members, as well as an executive body which is politically responsible to the assembly. Members of the assembly and its executive body may not be subject to such control by the central authorities that could hinder the free exercising of their functions (Article 2); c) The constitutional division of*

powers between the state and regions is conducted in compliance with the principles of decentralisation and subsidiarity, where the region should be assigned with the responsibility for all the functions that have a predominant regional dimension. In cases where the State delegated the organisation and exercising the administrative functions to the regional level, the State should at the same time provide the adequate personnel as well as finances (Article 3).

For the purpose of our analysis, very useful information would be to provide, in a supplement to the provision of Article 3 of the Declaration (Paragraph 1), the following examples of the existing regional powers (governance capacities):

- Regional economic policy;
- Regional planning, building and housing policy;
- telecommunications and transport infrastructures;
- energy and environment;
- agriculture and fishery;
- education at all levels, universities and research;
- culture and media;
- public health;
- tourism, leisure and sport;
- police and public order.

1.3.5 Draft European Charter of Regional Self-Government (1997)

Encouraged by the good acceptance of the European Charter of Local Self-Government in the political public of the Council of Europe countries, the speed of ratification and implementation of its principles in the norms of national legal systems, then, by the international cooperation based on the Madrid Convention, as well as the initiatives of a great number of European subjects, including the previously mentioned Declaration of the Assembly of European Regions, the Congress of Local and Regional Authorities of Europe (CLRAE) adopted the **Draft European Charter of Regional Self-Government** (*Draft European Charter of Regional Self-Government*, Congress of Local and Regional Authorities of Europe, 4th Session, Recommendation 34) at its 4th session in 1997.

Regardless of the fact that comparative institutional arrangements of the regionalist type are so diverse, along with all the necessary reserves related to any sort of imposition of a uniform model, the abovementioned draft defines regions as a constitutional category with the relevant amount of competences (original and delegated). A very significant assumption of competences in favour of regions has been noticed, except in cases related to the sphere of explicitly stated competences of the State. The political autonomy of regions has been supported by the adequate financial autonomy, as well as the right to communicate and participate in the work of relevant international associations. Moreover, the principle of subsidiarity requires the observance of local autonomy by regions, pursuant to the European Charter of Local Self-Government.

Considering the fact that this is the first time within the official European dimensions, that a basis has been offered for a public and legal *definition* of regional self-government - its principles, types and spheres of competences, relations with local authorities, interregional and transfrontier interactions, participation in the state affairs, as well as in European and international affairs, institutional organisations, finances, the role of regions in the domestic legal system, court deciding on competence conflicts and supervision of regional instruments - for the purpose of this paper, we will single out the definition of *the principle of regional self-government*, as the most interesting segment.

Thus, the provision in Article 3 (Item 1) stipulates that regional self-government denotes the right and the ability of the largest substate territorial authorities to have the elected representative bodies. These bodies are administratively positioned between the central and local authorities and have the right (prerogative), arising from self-organisation, or, yet, from a type normally associated with the central authorities, to manage under their responsibility, and in the interest of their population, a substantial share of public affairs in accordance with the principle of subsidiarity.

1.3.6 Standpoints of European Ministers responsible for Local and Regional Self-Government (Helsinki, 2002; Budapest 2005)

Many decades long practice of regionalisation of European countries, as well as multilateral initiatives of European organisations and institutions, provide more and more empirical grounds to profile, within the Council of Europe, as well as in the EU, a generally accepted corpus of concepts and principles which are common to all actually existing models of regional self-government. To confirm that this is true, we refer to the fact that this form of synthesis is already present in authoritative structures of the Council of Europe. European countries ministries responsible for local and regional self-government, have recently provided us with the number of such principles, ideas and recommendations in the **Helsinki Declaration on Regional Self-Government** (*Helsinki Declaration on Regional Self government*, Conference of European Ministers responsible for Local and Regional Self-Government, 13th Session, Helsinki, 27-28 June 2002).

Starting from the fact that nowadays many European countries are faced with the reform process or the process of introducing regional autonomy, also, that there is a great variety of contents and forms of regional autonomies resulting from various constitutional traditions, as well as socio-economic, cultural and geographic circumstances specific for each country, at the 13th session of the Conference of European Ministers responsible for Local and Regional Self-Government (held on 27-28 June 2002), it was solemnly declared that functioning of democracy was the pillar of peace, stability, prosperity and development. Along with that, it was stated that the growing trend of decentralisation and devolution of power across Europe contributed to strengthening democracy, in both countries with long democratic traditions, as well as new democracies existing only a little longer than a decade.

Furthermore, the Declaration manifested the common estimate that the economic growth, sustainable development, quality public service and full democratic participation could be much more effective providing the ruling institutions had not been fully centralised. In that respect, it is emphasised that, where existing, the regional autonomy represented a segment of democratic governance, and that the Council of Europe would further promote the exchange of good practices between the member states. Furthermore, “sovereignty, identity and freedom of countries shall be respected, while getting accustomed to new principles, to determine their internal organisation themselves”. What is more, the fact that “each state is entitled to decide whether or not to establish their regional authorities” is unquestionable. Accordingly, the countries are free to decide about establishing specific features of their regional self-government system. The Declaration also recommends to the Committee of Ministers to enhance the activities within the Council of Europe, that is, to draft different legal instruments in the framework of the Committee for Local and Regional Democracy (CDLR).

The basis for the implementation of the specified objectives was found in the Helsinki summary of common concepts and principles of regional self-government. We shall indicate their contents in more detail not only because they were ratified in the documents of the following 14th session of the Conference of European Ministers, held in Budapest on 24-25 February 2005, but also because we now have a consequently formulated platform for creation of the future European legal standard of regional autonomy.

Therefore, the Committee for Local and Regional Democracy (CDLR) has identified the ***core of the concepts and principles of regionalisation*** in the following manner:

- ***Regional authorities***: Regional authorities are territorial authorities between the central and local authorities. This does not imply the obligatory hierarchical relations between regional and local authorities.
- ***Regional self-government*** refers to legal competences and mandates of regional authorities, within the constitutional and legal framework, to regulate and manage the distribution of public affairs under their own responsibility, and in the interest of the regional population, in conformity with the principle of subsidiarity.
- In structures which include the regional authorities, the principle of regional self-government will be adequately recognised by domestic legislation and/or the Constitution.

As far as **common principles** are concerned, the CDLR has suggested the following:

1. ***Regional competences***: Regional competences are defined in the Constitution, statute of the region or national law. In the constitutional and legal framework, regional authorities shall have full discretion to exercise their initiatives with regard to any matter which is not excluded from their competences nor assigned to any other authority.

Nature of Regional Decisions: Regional authorities have decision-

making and governing powers within the scope of their competences. It will be possible to harmonise and implement these powers into the policies specific for a particular region. The decision-making power may include the right to adopt laws.

Possibilities to Delegate Competences: Within the limits of the law, and for the purpose of specific objectives, competences may be delegated to regional authorities by other public authorities. In this case, adequate (financial) conditions for the purpose of implementation of delegated tasks have to be provided for.

2. ***Relations with Other Sub-National Territorial Authorities:*** Mutual relations (partnerships) between regional authorities and other sub-state territorial authorities shall be regulated in compliance with the European principles of local self-government, regional self-government, i.e. pursuant to the principle of subsidiarity.
3. ***Participation in the State Decision-Making Process:*** Regional authorities shall take part in decision-making at the national (state) level when such decisions concern their competences and fundamental interests, that is, when they fall within the scope of regional self-government.
Character of involvement of regional authorities in national decision-making: This involvement implies taking part in the work of national representative bodies and consultations and negotiations conducted between the national and regional authorities. Where appropriate, regional authorities and/or their representative bodies shall be represented or consulted in the procedures concerning the international negotiations of the state, as well as the implementation of international treaties as regards the competences or the scope of regional self-government.
4. ***State Supervision of Regional Authorities:*** Supervision conducted by central authorities implies the assessment of legality of work performed by regional authorities. Moreover, since the assessment of expediency is a decision of regional self-government, it is also envisaged as a possibility when supervising the exercise of delegated competences. Furthermore, as regards the administrative supervision of regional authorities, it is considered to be legal only when it relates to cases stipulated by the Constitution and law, when conducted *ex post facto* and when the measures taken are in proportion to the importance of the interest intended to be protected.
5. ***Protection of Regional Self-Government:*** Regional authorities may be stipulated by the Constitution or established by the law. The existence of once established regions is guaranteed in the Constitution and/or law. It may be abolished only by an amendment to the Constitution or law, following the same procedure

that is applied for establishing regions. Regional authorities are entitled to have the court protection to ensure the free exercise of their competences and observance of the principles of regional self-government as regulated in the domestic legislation. Finally, borders of regions may not be changed without prior consultations with the regions concerned. These consultations may include voting in a referendum scheduled in a particular region.

6. *Rights of Regions to Associate and other Forms of Cooperation:* In compliance with their own competences and legal framework, regional authorities are entitled to join associations and participate in other forms of interregional cooperation. Regions may also be members of international organisations of regional authorities.

7. *Foreign Relations:* To the extent provided for by the national and European law, regional authorities shall have the right to join or be represented in national institutions and bodies established for the purpose of cooperation with European institutions. Regional authorities may cooperate with territorial authorities of other countries, within the framework of their competences, and in compliance with the domestic legislation, international obligations and foreign policy of a particular country.

8. *Self-Organisation:* Where the Constitution and/or law guarantee the right of regions to decide on their internal organisation, including statutes and regional institutions, that right shall be defined in the broadest possible sense.

9. *Regional Institutions:* In the framework of regional authorities, it is primarily envisaged to establish the representative assembly. Where executive powers are exercised directly by a representative body (assembly), they shall be delegated to a responsible person or body, in compliance with the legal propositions and procedures. Where the executive body is elected directly by people, it shall not be obliged to be responsible to the representative assembly, although it shall observe its decisions.

Method of Election: Regional assemblies shall be freely and directly elected by secret ballot on the basis of universal suffrage, or indirectly elected and composed of elected representatives of local self-government.

Financing the Activities: The exercise of functions of regional institutions shall be provided through the adequate financial support.

Sanctions: Where sanctions against the elected regional representative bodies are possible, they have to be determined pursuant to the law. Furthermore, they have to be in proportion to the importance of the interest intended to be protected, and shall be subject to the court review. Suspension and dissolution of the elected regional bodies may be envisaged only exceptionally.

- 10. Regional Administration:** Regional authorities shall have their own resources, administration and employees. Within the limits of the law, regional authorities shall freely establish the internal structure of their system of administration and their institutions. Regional public administration shall be in conformity with the general principles of the public service, hiring high-quality employees based on their skills and competences, along with the adequate opportunities for their further capacity building and promotion in career.
- 11. Financial Resources:** Regional authorities shall have at their disposal the resources proportionate to their competences and responsibilities, sufficient for their efficient implementation. For the implementation of their powers, regional authorities shall freely manage their funds, including taxes, a share in the national tax revenue, a share in the state funds without being conditioned by the state, as well as other funds stipulated by the law.
- 12. Financial Equalisation and Transfers:** Protection of financially weaker regional authorities shall be provided through equalising the procedures or equivalent measures to correct the effects of uneven distribution of potential sources of finance and financial obligations that they bear. Financial transfers to regional authorities shall be managed on the basis of the previously established rules, in accordance with objective criteria and regional competences. As much as possible, the grants provided to regional authorities shall not be allocated for financing the specific projects. These transfers shall not restrict the fundamental freedom of regional authorities to create the policy of exercising their own competences. Finally, for the purpose of loans for capital investments, regional authorities shall have access to the capital market within the limits established by the law.

The 14th session of the Conference of European Ministers responsible for Local and Regional Self-Government, held on 24-25 February 2005, confirmed the significance of the presented principle. In their discussion of the challenges and priorities of European countries and the Council of Europe in the field of local and regional democracy, ministers of European countries - member states of the Council of Europe tackled the problems of globalisation, changes in the role of the state, democracy deficit and, in that respect, the need to formulate new strategies and programmes. Together with improving the local democracy, civil participation and combat against corruption, it was stated that decentralisation and subsidiarity had to be considered high priorities. In other words, challenges were identified in the following fields: 1/ democratic citizenship and participation at local and regional level; 2/ legal framework and institutional structure of local

and regional authorities; 3/ local and regional finances; 4/ management and managing capacities of local and regional authorities; 5/ public ethics at local and regional level; 6/ transfrontier and inter-territorial cooperation between territorial communities and authorities.

The debate on all the above-stated resulted in the **Statement of the Ministerial Conference on Regional Self-Government** (*Statement of the Budapest Ministerial Conference on Regional Self-Government*, 14th Session of the Conference of European Ministers responsible for Local and Regional Government, Budapest, 24-25 February 2005), from which the following relevant points have been singled out, due to their reference to our topic:

- It was concluded that draft versions of legal instruments on regional self-government did not have, at that time, the required level of political support for their adoption;
- The significance of Helsinki Declaration, adopted at the 13th session of the Ministerial Conference (2002), was also confirmed. It was stated that the Declaration emphasised the importance of regional self-government for democratic societies and good governance, as close as possible to its citizens;
- It was also emphasised that reaffirmation of regional self-government, as well as other levels of authority, had to observe democratic principles of organisation and actions;
- Accordingly, participants were reminded of the specific principles, ratified in the Helsinki Declaration, and it was recommended that the Congress of Local and Regional Authorities supervise the development in the field of regional self-government across the continent.

To sum up what was previously stated, we will start by concluding that within the mosaic of present fronts and backs of a state, there are some evident changes in comparison with previous development cycles of European and global sovereignty.¹¹ Both goals and objectives of a state are changing. As a consequence, changes are even noticeable in the undertone of the so called state justification. In interaction with increasingly complex and demanding social environment, the state apparatus structure has become more robust and complex, in comparison with the situation from the beginning of the 20th century. On the other hand, since the state is the best and most efficient when its everyday coercion is minimally felt, information revolution and media engineering enabled transformation of sequence of jobs, which were inseparable until recently, from the traditional concept and phenomenon of *government* into much more sophisticated func-

11 On development cycles of sovereignty (concentration and deconcentration of government) see: E. Pusić, *Država i državna uprava (State and Public Administration)*, Faculty of Law, Zagreb, 1999, 289-309; 352-361.

tion of *governance; administration*.¹² Therefore, what we deal with here is something that French lawyer León Duguit lucidly observed a century ago, when he described the process of transformation of hierarchical monopoly of power of a classic public administration into a democratically controlled system of public service representing citizens' interests. This famous French lawyer wrote down: "Rulers and public servants are no longer masters who impose their sovereign power, *imperium*. They are no longer bodies of collective personality which command. They only manage tasks of the community". However, since he was aware of the threat to democracy created by development of social area under direct or indirect state regulation and administration, Mr. Duguit noticed an opportunity for *good governance*, even under the condition of increase of number and power of public services. He named that opportunity "...a very significant movement, which is one of the features of development of public law, i.e. *decentralistic movement*" (Duguit, 1997: 49-50; italics J. K.).¹³

The fact that after Duguit's study on transformations of the state and public law, the Europe has after all experienced a reversible process of megaconcentration of power in totalitarian state, "intoxicated" with an idea of sovereignty of the governing apparatus in the name of nation or class (Hitler's Raich and Stalin's Soviets) and that in democratic Europe and the "state of prosperity", only the last third of the previous century was marked by revitalisation of decentralistic movement, as an alternative to the crisis of classic sovereignty of the national state and slackened democracy, obliges us to be more careful in estimations of place and role of regionalisation, as well as in optimistic estimates of the perspectives of Europe of regions, even when the focus of attention is on present transformations of state, including predictions of already unpredictable future of Europe.

Following the analysed documents and author's ideas, we will describe a few general estimates, to that effect:

1. In the last century, the state definitely became ubiquitous factor of authoritative allocation of values and regulation of complex interactions of all particles of mass society. Regardless of modified levels of government, globalisation trends of transfer of power from the apparatus of national states to regional and international organisations, increasingly spreading liberal-democratic constitutionalisation of politics, pluralisation of society, increasing influence of the media, general public and civil society in general ..., national state remains primary institutional and organisational framework of forced provision of the system of government and rules of the social game. At the same time, it also represents a civilisation guaranty and form of effective protection of inalienable civil rights to life, freedom and property, as well as all other generations of human rights-political, socio-

12 "In that sense administration, as a system in interaction with environment is subject to the law of necessary diversity....If it wants to influence the environment, administration, by means of its own complexity, has to maintain the complexity of its respective environment which it wants to influence"; E. Pusić, *ibid*, pg. 403.

13 Duguit mentions the following types of decentralisation: 1) territorial; 2) proprietary; 3) establishing autonomous public services; 4) concessions; L. Duguit, *Transformations of Public Law*, Plato, Belgrade, 1997, page 50.

economic and environmental (cf.: Held, 1997: 86-88; as well as Komšić, 2000, 74-77).

2. The other side of the abovementioned fact that “statist society cannot be imagined without someone who commands” (T. Živanović),¹⁴ is pointed out by contemporary authors when they speak about changing a “philosophy of a state” and abandoning a command control in favour of governing in the form of consultations and negotiations. In that sense, there are different concepts which have become more popular on the theoretical scene, such as the concepts of “empty state”, “negotiating state”, “public service state” and so on (cf.: Haywood, 2004: 193-198; Dahl, 1994: 93-108; Pusić, 1999: 427-451; Cirn, 2003: 253-282, Offe, 1999: 95-107; as well as Komšić, 2006: 60-76). All in all, that “the Rubicon was crossed” with transformation of real structures and methods of public administration, even in the system of belief and comprehension of “the monopoly of legitimate physical force” (M. Weber) is substantiated by the fact that Schmitt’s (C. Schmitt) logic of governance (according to which owning the sovereign right to proclaiming external and internal enemies, as well as the right to war would be more than enough for existence of a unitary state),¹⁵ which is not nearly as attractive as it was during the 30s of the last century or even the last decade of the 20th century, in the phase of war and nationalistic transition on the territories of Former Yugoslavia. Apart from other things, that also means that today, there are significantly less theorists or politicians which would risk jeopardising their image of democrats, for the purpose of possible non-democratic intimate beliefs by openly questioning the fact which, following Habermass’s thoughts, Claus Offe describes as follows: *every attempt to achieve something using traditional means of state intervention (is) basically unsuitable or at the most useless and sometimes even a counterproductive approach* (cf: Offe, 1999: 99).

3. By synthesising the state of modern sovereignty, Haywood starts by concluding that the state today is faced by series of *threats*. The most significant are: a) globalisation b) withdrawal of the state and delegating of its competences to private institutions and c) decentralisation and transfer of duties from state institutions to regional, provincial and local bodies. We point out this author’s view, also because it is connected to the conclusion regarding “the model of governance at various levels, including local, state and suprastate bodies, which is hard to harmonise with traditional comprehension of a state”. Moreover, Haywood states that “centrifugal pressures, in their most prominent form, have caused transformation of the state power or a breakdown of the state itself”, illustrating this by examples of peaceful dissolution in Czechoslovakia and violent breakdown of the state in Yugoslavia (Haywood, 2004: 196-198).

14 From the preface of Toma Živanović on the book *Transformations of Public Law* by León Duguit, op.cit., pg 7.

15 “State as a relevant political unity has concentrated great competences for itself: to wage war and thereby openly dispose of human life...Necessity of conciliation within the state in critical situations leads to the situation in which as long as the state as a political unity exists, it willfully determines an “internal enemy”. ; C. Schmitt, “The Concept of Political”, cf.: C. Schmitt and its Critics, editors- Slobodan Samardžić, Filip Višnjić, Belgrade, 2001, pg. 31.

Presenting the problem of the state unity and preconditions of its functionality from a different aspect, our opinion is that decentralisation and regionalisation are not included in the corpus of principal threats to modern state. On the contrary, we are convinced that previous analysis of evolution of political systems of a number of European states, as well as standards of the Council of Europe and EU, proved how regionalisation was one of the key factors which, in some cases, contributed to preservation of the state in both of its basic functions (democratic legitimacy and government efficiency). We can also add an opinion that decentralisation in all EU countries is more or less considered an interactive field and arm of “top-down democratisation”.

Therefore, European states are far ahead in the process of decentralist overcoming of the crisis of traditional hierarchical monopoly of power. As a locus (source, guarantee and result) of that monopoly, the state in the end of the second third of the last century proved to be both small and great for effective regulation and management of some key elements of increasingly diverse and dense social substance. It actually proved to be inadequately organised without sufficient capacity for optimum fulfillment of duties of *protection and social welfare*.

In that kind of a situation, life has introduced series of new “players” in “the governing game”. Open game, involving the increasing number of legitimate interests and procedures of their integration (dialectics of conflict, control and cooperation), is now being played in three institutional “leagues” at: a) substate (local and regional) level; b) central (national); and c) suprastate (regional and global) level.

4. Motives of European integration are: 1) wish for new self-cognition and feeling of togetherness after nationalistic sideways; 2) wish for security and peace; 3) wish for freedom and mobility; 4) hope in economic welfare and 5) expecting common power (Weidenfeld, 2003: 10-11). In that respect, starting from the 50s of the last century, declared *objectives* of establishing European Union are: 1) *security*; 2) *peace*; 3) *freedom and 4) welfare*. During the eighties, this valuable “picture frame” of Europe was complemented by the following terms: 5) *democracy and 6) political stability*. When we deal with contemporary dimensions of European priorities and criteria for association by new members, one author (*Joseph Janin*) states that *efficiency, transparency and democracy today...*” are categorised into *benchmarks of the European political process*” (Weidenfeld, Wessels, 2003: 356-358).

Finally, when we talk about official definition of goals and values of political unit, although not ratified, the text of *the Constitution of the European Unit*¹⁶ represents a relevant indication of prevailing attitudes of the European political class. Following these values, such as: respect of human

16 The EU Constitution had been drawn up within the EU structures for a long time. It was adopted on 18th June 2004 and signed by heads of states and prime ministers of all EU members on 29th October 2004 in Rome. However, after the referendum in France and Netherlands failed, it was not ratified by all member states within the envisaged deadline, until 1st November 2006, so it did not enter into force.

dignity, freedom, democracy, equality, rule of law and respect of human rights, including the rights of members of minorities, as well as justice, pluralism, non-discrimination, tolerance, solidarity and equality among women and men (Article 1, item 2),¹⁷ there is also an abovementioned provision on subsidiarity and proportionality. Apart from other things, the important thing is a confirmation of awareness of significance of all levels of government and necessity of having a counterbalance of mechanisms of overflowing or overburdening of the central level of government. How much importance is given to the regional aspect of the modern European policy is more precisely proved by the fact that apart from the customs union, agricultural policy, single market, monetary union and policy of competition, *regional policy* belongs to the group of the most important common policies of the EU, such as Cohesion and Structural Funds, through which this policy is implemented, which reached more than a third (36%) of the total funds of the Union.

5. Presented facts lead some authors, particularly regional politicians, to conclude how Europe of regions is most likely a front of near future, for which both EU national states and supranational institutions have to prepare. There is some truth in these conclusions and it can be substantiated by the fact that since the middle of the eighties, regions “...have undergone a noticeable transformation from “the object of European policy” to active participants with the right to co-decision making on European issues (Weidenfeld, Wessels, 2003: 87). Theoretical corollary of such a penetration of regions into European trends of decision-making, including the Committee of the Regions, as well as advocating the three-level federal development of the EU with independent regions, are ideas of the federal EU and governing on the other side of the national state in a dynamical multi-level system, in which all political levels and social groups participate (see: Weidenfeld, Wessels, 2003: 332-337; as well as Cirn, 2003).

After all, these thinking patterns seem like some kind of exaggeration and prediction of the fact that power incorporated in the state (Durkheim) go in favour of inertia of the existing, as a proverb. Taking finance as an example, Eugen Pusić would say that “...*resistance to changes is motivated here by existential interests of members of the state political and administrative apparatus, that is specific interests of particular groups in comparison with the state action... Considering the position of such interested parties in the system, as well as experience and skills of the members of this group* (experienced professionals in administrative and political system - prim J. K.), *such a resistance is extremely hard to overcome*” (Pusić, 1999: 356).

6. Correctness of these conclusions can be confirmed by the absence of one theoretically and more importantly, politically and generally acceptable definition of “region”, either within the EU structures or Council of Europe. This kind of the broadest of organisation of European states offered such a definition within the milieu of relatively consistently developed political and legal principles by means of the Draft European Charter of

17 A. Fira Ed., *Ustav Evropske unije (The Constitution of European Union)*, FABUS, Novi Sad, 2005, pg. 28

Regional Self-Government. However, longevity of this preparatory phase in development of one document which, to make it more insignificant, belongs only to the corpus of “loose” legal norms, illustrates the low likelihood that European region and the three-stage level of decision making will replace the Europe of nations. In that respect, the existing practice of intergovernmentalism and its respective key role of national states in the two-stage system of decision making in the EU, can be illustrated by *The Statement of the Ministerial Conference on Regional Self-Government* (Budapest, 24th and 25th February 2005). It says that, at the moment, drafts of legal instruments, pertaining to regional self-government, do not have a required level of political support for its adoption. The opinion that “every state has its right to decide whether it will establish regional governments” clearly indicates “who wears the trousers in the house”.

7. However, Ministerial Conclusions from Helsinki and Budapest from 2002 and 2005, proved the trend. They illustrated that attitudes of political classes of national states are changing to some extent. Therefore, there is a reason for us to be satisfied. By means of conclusion of ministers of all European states stating that economic growth, sustainable development, good-quality public service and full democratic participation could be more effective providing that governmental institutions are not completely centralised, interactive impact of decentralisation and democratisation was acknowledged.

Anyway, outlines of relatively consistent set of principles of regionalisation of European states are already distinguishable. Its presence in the agenda of European policy obliges all politicians to practical determination in favour or against, even under conditions of evident unpopularity of denying the vertical apportionment of power. Taking into consideration that regional autonomy is a segment of democratic governance in cases where it exists, European citizens, who care about “top-down democracy” and personal subjectivisation in duties of the communities, can only work hard on affirmation of regionalistic alternative at the intrastate and supranational level.

One should not doubt the synergy effect of the movement for decentralisation of national states, exchange of good practices among states and regions, as well as increasingly intensive cross-border and inter-territorial cooperation of local and regional governments and communities.

Think globally - Act regionally.



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2. European Documents on Regionalisation

2.1 European outline convention on transfrontier co-operation between territorial communities or authorities

Madrid, 21.V.1980

Preamble

The member States of the Council of Europe, signatories to this Convention,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members and to promote co-operation between them;

Considering that, as defined in Article 1 of the Council of Europe Statute, this aim will be pursued in particular by agreements in the administrative field;

Considering that the Council of Europe shall ensure the participation of the territorial communities or authorities of Europe in the achievement of its aim;

Considering the potential importance, for the pursuit of this objective, of co-operation between territorial communities or authorities at frontiers in such fields as regional, urban and rural development, environmental protection, the improvement of public facilities and services and mutual assistance in emergencies;

Having regard to past experience which shows that co-operation between local and regional authorities in Europe makes it easier for them to carry out their tasks effectively and contributes in particular to the improvement and development of frontier regions;

Being resolved to promote such co-operation as far as possible and to contribute in this way to the economic and social progress of frontier regions and to the spirit of fellowship which unites the peoples of Europe;

Have agreed as follows:

Article 1

Each Contracting Party undertakes to facilitate and foster transfrontier co-operation between territorial communities or authorities within its jurisdiction and territorial communities or authorities within the jurisdiction of other Contracting Parties. It shall endeavour to promote the conclusion of any agreements and arrangements that may prove necessary for this purpose with due regard to the different constitutional provisions of each Party.

Article 2

1. For the purpose of this Convention, transfrontier co-operation shall mean any concerted action designed to reinforce and foster neighbourly relations between territorial communities or authorities within the jurisdiction of two or more Contracting Parties and the conclusion of any agreement and arrangement necessary for this purpose. Transfrontier co-operation shall take place in the framework of territorial communities' or authorities' powers as defined in domestic law. The scope and nature of such powers shall not be altered by this Convention.
2. For the purpose of this Convention, the expression "territorial communities or authorities" shall mean communities, authorities or bodies exercising local and regional functions and regarded as such under the domestic law of each State. However, each Contracting Party may, at the time of signing this Convention or by subsequent notification to the Secretary General of the Council of Europe, name the communities, authorities or bodies, subjects and forms to which it intends to confine the scope of the Convention or which it intends to exclude from its scope.

Article 3

1. For the purpose of this Convention the Contracting Parties shall, subject to the provisions of Article 2, paragraph 2, encourage any initiative by territorial communities and authorities inspired by the outline arrangements between territorial communities and authorities drawn up in the Council of Europe. If they judge necessary they may take into consideration the bilateral or multilateral inter-state model agreements drawn up in the Council of Europe and designed to facilitate co-operation between territorial communities and authorities. The arrangements and agreements concluded may be based on the model and outline agreements, statutes and contracts appended to this Convention, numbered 1.1 to 1.5 and 2.1 to 2.6¹⁹ with whatever

¹⁹ Additional model and outline agreements have been authorised for publication; they are appended to this Convention and numbered 1.6 to 1.14 and 2.7 to 2.16.

changes are required by the particular situation of each Contracting Party. These model and outline agreements, statutes and contracts are intended for guidance only and have no treaty value.

2. If the Contracting Parties deem it necessary to conclude inter-state agreements, these may *inter alia* establish the context, forms and limits within which territorial communities and authorities concerned with transfrontier co-operation may act. Each agreement may also stipulate the authorities or bodies to which it applies.
3. The above provisions shall not prevent the Contracting Parties from having recourse, by common consent, to other forms of transfrontier co-operation. Similarly, the provisions of this Convention should not be interpreted as invalidating existing agreements on co-operation.
4. Agreements and arrangements shall be concluded with due regard to the jurisdiction provided for by the internal law of each Contracting Party in respect of international relations and general policy and to any rules of control or supervision to which territorial communities or authorities may be subject.
5. To that end, any Contracting Party may, when signing the present Convention or in a later communication to the Secretary General of the Council of Europe, specify the authorities competent under its domestic law to exercise control or supervision with regard to the territorial communities and authorities concerned.

Article 4

Each Contracting Party shall endeavour to resolve any legal, administrative or technical difficulties liable to hamper the development and smooth running of transfrontier co-operation and shall consult with the other Contracting Party or Parties concerned to the extent required.

Article 5

The Contracting Parties shall consider the advisability of granting to territorial communities or authorities engaging in transfrontier co-operation in accordance with the provisions of this Convention the same facilities as if they were co-operating at national level.

Article 6

Each Contracting Party shall supply to the fullest possible extent any information requested by another Contracting Party in order to facilitate the performance by the latter of its obligations under this Convention.

Article 7

Each Contracting Party shall see to it that the territorial communities or authorities concerned are informed of the means of action open to them under this Convention.

Article 8

1. The Contracting Parties shall forward to the Secretary General of the Council of Europe all relevant information concerning the agreements and arrangements provided for in Article 3.
2. Any proposal made by one or more Contracting Parties with a view to adding to or extending this Convention or the model agreements and arrangements shall be communicated to the Secretary General of the Council of Europe. The Secretary General shall then submit it to the Committee of Ministers of the Council of Europe which shall decide on the action to be taken.

Article 9

1. This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. The Convention shall enter into force three months after the date of the deposit of the fourth instrument of ratification, acceptance or approval, provided that at least two of the States having carried out this formality possess a common frontier.
3. In respect of a signatory State ratifying, accepting or approving subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 10

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may decide unanimously to invite any European non-member State to accede thereto. This invitation must receive the express agreement of each of the States which have ratified the Convention.
2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 11

1. Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

Article 12

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, and any State that has acceded to this Convention of:

- a any signature;
- b any deposit of an instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Article 9 thereof;
- d any declaration received in pursuance of the provisions of paragraph 2 of Article 2 or of paragraph 5 of Article 3;
- e any notification received in pursuance of the provisions of Article 11 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Madrid, the 21st day of May 1980 in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe.

The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Convention.

Appendix

2.1.2 Model and Outline Agreements, Statutes and Contracts on Transfrontier Co-operation between Territorial Communities or Authorities

This graduated system of model agreements was devised by distinguishing between two main categories defined according to the level at which the agreement is concluded:

- model inter-state agreements on transfrontier co-operation at local and regional level;
- outline agreements, contracts and statutes capable of providing a basis for transfrontier co-operation between territorial authorities or communities.

As shown in the table hereafter, only the two model inter-state agreements for the promotion of transfrontier co-operation and regional transfrontier liaison fall exclusively within the jurisdiction of States. The other inter-state agreements merely establish a legal framework for the conclusion of agreements or contracts between territorial authorities or communities, the outlines of which have been placed in the second category.

<p>1 Model inter-state agreements General clauses for model agreements</p> <p>1.1 Model inter-state agreement for the promotion of transfrontier co-operation</p> <p>1.2 Model inter-state agreement on regional transfrontier consultation</p> <p>1.3 Model inter-state agreement on local transfrontier consultation</p> <p>1.4 Model inter-state agreement on contractual transfrontier co-operation between local authorities</p> <p>1.5 Model inter-state agreement on organs of transfrontier co-operation between local authorities</p> <p>1.6 Model agreement in interregional and/or intermunicipal economic and social co-operation</p> <p>1.7 Model agreement on inter-governmental co-operation in the field of spatial planning</p> <p>1.8 Model agreement in interregional and/or intermunicipal transfrontier co-operation in the field of spatial planning</p> <p>1.9 Model agreement on the creation and management of transfrontier parks</p> <p>1.10 Model agreement on the creation and</p>	<p>2 Outline agreements, statutes and contracts between local authorities</p> <p>2.1 Outline agreement on the setting up of a consultation group between local authorities</p> <p>2.2 Outline agreement on co-ordination in the management of transfrontier local public affairs</p> <p>2.3 Outline agreement on the setting up of private law transfrontier associations</p> <p>2.4 Outline contract for the provision of supplies or services between local authorities in frontier areas (private-law type)</p> <p>2.5 Outline contract for the provision of supplies or services between local authorities in frontier areas (public-law type)</p> <p>2.6 Outline agreement on the setting up of organs of transfrontier co-operation between local authorities</p> <p>2.7 Model agreement in interregional and/or intermunicipal economic and social co-operation (see para. 1.6)</p>
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2.1.3 Model inter-state agreements

Introductory note: The system of inter-state agreements aims above all to define precisely the context, forms and limits which States favour for territorial authority action, and to eliminate legal uncertainties likely to create problems (definition of the applicable law, judicial authorities, possible avenues of appeal, etc).

Further, the conclusion of inter-state agreements between the States concerned promoting transfrontier co-operation between local authorities would undoubtedly be advantageous in the following respects:

- official recognition of the legitimacy of such co-operation procedures and encouragement for local authorities to use them;
- purpose and conditions of intervention by supervisory or controlling authorities;
- exchange of information between States;
- links which may be established between such forms of co-operation and other procedures for concerted action in frontier areas;
- amendment of legal rules or interpretations thereof which hinder transfrontier co-operation etc.

The system of multiple choice model agreements enables governments to place frontier co-operation within whatever context is best suited to their needs by using the inter-state agreement for the promotion of transfrontier co-operation (1.1) as a foundation and supplementing it with any of the various options (model agreements 1.2 to 1.5). States could have recourse either to one option only or to more or even all of them, and they could do so either simultaneously or in stages. In the case of agreements between States which already have similar legal systems, such as the Scandinavian states, recourse to agreements of such a specific kind might prove unnecessary.

2.2 European Charter of Local Self-Government

European Treaty Series - No. 122
Strasbourg, 15.X.1985

Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which this aim is to be achieved is through agreements in the administrative field;

Considering that the local authorities are one of the main foundations of any democratic regime;

Considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe;

Considering that it is at local level that this right can be most directly exercised;

Convinced that the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen;

Aware that the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power;

Asserting that this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment,

Have agreed as follows:

Article 1

The Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in Article 12 of this Charter.

Part I

Article 2 - Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

Article 3 - Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

Article 4 - Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.

2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.

3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.

4. Powers given to local authorities shall normally be full and exclu-

sive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.

5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.

6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

Article 5 - Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

Article 6 - Appropriate administrative structures and resources for the tasks of local authorities

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.

2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

Article 7 - Conditions under which responsibilities at local level are exercised

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.

2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.

3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

Article 8 - Administrative supervision of local authorities' activities

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by

the constitution or by statute.

2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.

3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

Article 9 - Financial resources of local authorities

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.

2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.

3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.

4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.

5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.

6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.

8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

Article 10 - Local authorities' right to associate

1. Local authorities shall be entitled, in exercising their powers, to

co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.

2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.

3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

Article 11 - Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

Part II - Miscellaneous provisions

Article 12 - Undertakings

1. Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:

- Article 2,
- Article 3, paragraphs 1 and 2,
- Article 4, paragraphs 1, 2 and 4,
- Article 5,
- Article 7, paragraph 1,
- Article 8, paragraph 2,
- Article 9, paragraphs 1, 2 and 3,
- Article 10, paragraph 1,
- Article 11.

2. Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.

3. Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have

the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

Article 13 - Authorities to which the Charter applies

The principles of local self-government contained in the present Charter apply to all the categories of local authorities existing within the territory of the Party. However, each Party may, when depositing its instrument of ratification, acceptance or approval, specify the categories of local or regional authorities to which it intends to confine the scope of the Charter or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Charter by subsequent notification to the Secretary General of the Council of Europe.

Article 14 - Provision of information

Each Party shall forward to the Secretary General of the Council of Europe all relevant information concerning legislative provisions and other measures taken by it for the purposes of complying with the terms of this Charter.

Part III

Article 15 - Signature, ratification and entry into force

1. This Charter shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date on which four member States of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of the preceding paragraph.

3. In respect of any member State which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 16 - Territorial clause

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Charter shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Charter to any other territory specified in the declaration. In respect of such territory the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 17 - Denunciation

1. Any Party may denounce this Charter at any time after the expiration of a period of five years from the date on which the Charter entered into force for it. Six months' notice shall be given to the Secretary General of the Council of Europe. Such denunciation shall not affect the validity of the Charter in respect of the other Parties provided that at all times there are not less than four such Parties.

2. Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any paragraph of Part I of the Charter accepted by it provided that the Party remains bound by the number and type of paragraphs stipulated in Article 12, paragraph 1. Any Party which, upon denouncing a paragraph, no longer meets the requirements of Article 12, paragraph 1, shall be considered as also having denounced the Charter itself.

Article 18 - Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a) any signature;
- b) the deposit of any instrument of ratification, acceptance or approval;
- c) any date of entry into force of this Charter in accordance with Article 15;
- d) any notification received in application of the provisions of Article 12, paragraphs 2 and 3;
- e) any notification received in application of the provisions of Article 13;
- f) any other act, notification or communication relating to this Charter.

In witness whereof the undersigned, being duly authorised thereto, have signed this Charter.

Done at Strasbourg, this 15th day of October 1985, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

2.3 Declaration on Regionalism in Europe

Assembly of European regions

3.2.1 Preface

The Assembly of European Regions strives to have regionalism recognised not only within the European Union but also beyond. At a time when, within Europe, the strengthening of the European Union is being reflected upon, the role of the regions in the unification process is gaining importance. Themes such as the distribution of responsibilities and the cooperation through partnerships between the various policy levels have consequently come to the fore, subsidiarity being the basic principle to define everyone's role. The movement for regionalism is strong within the European Union as well as beyond. It is fuelled by the belief that the powers vested in the European Union, the (Member) States and the regions are complementary. Regions, federated states and autonomous communities are above all mainstays of democracy; they strongly support cultural diversity in Europe and they are major partners in socio-economic development. This is why they should be able to take responsibilities in the policy areas where they have a competitive advantage, amongst others, in economics (employment), culture, the environment, regional and country planning, scientific research etc. The Declaration on regionalism adopted by the Assembly of European Regions offers a reliable guide for regions on the way to enlarging and strengthening their powers. It is a document of norms and standards, an entity of beacons and stepping stones. It is not a charter that fixes the minimum norms for recognition of a region. The rich diversity of regions in the AER yields a great number of models and structures to streamline regional development. The Declaration on regionalism sets out the guidelines within which the AER member regions develop. Thus they endorse the AER objective: strengthening regional development. By this Declaration the AER wants to show what it, together with its members, strives for. They can enrich and strengthen the AER. This is why the Declaration is distributed, presented and discussed within the AER as well as beyond. In our capacity as former and

current Presidents of the AER, we want to further promote regionalism in Europe, thereby enabling regions to take up more responsibility in a Europe that is closer to the citizen.

Luc Van den Brande

President of the Assembly of European Regions
Minister-President of the Government of Flanders

Jordi Pujol i Soley

President of the Assembly of European Regions (1992/1996)
President of the Generalitat of Catalonia

2.3.2 Preamble

The Assembly of European Regions (AER) meeting in Basel on 4th December 1996:

1. Considering that the AER represents almost 300 European regions of varying sizes and different administrative and political structures with a total population of nearly 400 million;

2. Considering that the regions have different statuses, which vary according to their history, their culture and their constitutional principles and characterize the territorial organisation of each state. Whilst respecting this diversity, this common declaration expresses the regions' aspirations to further regionalisation within the institutional framework of their own country, which have a federal, decentralised or autonomous structure. This text cannot be interpreted as binding the regions to any of these structures;

3. Considering that the regions are an essential and irreplaceable element of European development and integration;

4. Conscious that the regions have different origins and functions, with some historically based on distinct communities, ethnic groups or even nations, and others created as administrative districts, exercising powers delegated to them by the state;

5. Recognising the importance in Europe of the process of integration and regionalisation;

6. Noting that people through historical, linguistic, cultural, social, economic and geographical ties, increasingly identify themselves with their region, the variety of which, constitutes an inexhaustible richness;

7. Convinced that states with strong regional political structures, ie. with legislative powers and their own finances can optimally resolve their economic and social problems;

8. Considering also that the regional reality justifies the participation of the regions in state bodies and actions at an international level;

9. Being aware that the regions, within the national legal order, are

an indispensable element of democracy, decentralisation and self-determination, by allowing people to identify with their community and by increasing the opportunities for their participation in public life;

10. Conscious that the regions and their peoples have endless possibilities to carry out and further develop mutually advantageous political, economic and cultural cooperation between themselves;

11. Noting the vast potential for political, social, economic and cultural cooperation between European regions and the significance of such cooperation at national, transfrontier and international level for the development of a united and cohesive Europe and for improved knowledge and understanding of its actions among the general public;

12. Considering that regional participation in the decisionmaking process of the European institutions, in accordance with the principle of subsidiarity, contributes to improving transparency of European Union actions for citizens;

13. Considering the relevance of the Council of Europe's draft European Charter of Regional Self-government (1996) and the European Parliament's "Community Charter for Regionalisation" (1988);

14. Convinced of the significance of this declaration, which reflects a political will and the aspirations that the regions wish to promote in Europe, while respecting the diversity of their situations which call for a variety of solutions;

Have adopted the following Declaration:

Article 1 - The region : definition and concept

1. The region is the territorial body of public law established at the level immediately below that of the state and endowed with political self-government.

2. The region shall be recognised in the national constitution or in legislation which guarantees its autonomy, identity, powers and organisational structures.

3. The region shall have its own constitution, statute of autonomy or other law which shall form part of the legal order of the state at the highest level establishing at least its organisation and powers. The status of a region can be altered only in cooperation with the region concerned. Regions within the same state may have a different status, in keeping with their historical, political, social or cultural characteristics.

4. The region is the expression of a distinct political identity, which may take very different political forms, reflecting the democratic will of each region to adopt the form of political organisation it deems preferable. The region shall resource and staff its own administration and adopt insignia for its representation.

Article 2 - Institutional organisation

1. The region shall have a full legal status.
2. The region's basic structure shall comprise a representative assembly and an executive body. Its organisation shall be a matter for the region alone.
3. The members of the representative assembly shall be directly elected by free and secret ballot on the basis of equal and universal suffrage. The assembly may be granted legislative powers, subject to the limits laid down in the domestic legal order.
4. The executive body shall be politically answerable to the representative assembly, subject to the conditions and procedures prescribed in domestic legislation.
5. Members of both the representative assembly and the executive body shall not be subjected to supervision by the central authority which would prejudice the free exercise of their functions.

Article 3 - Competences

1. The apportionment of powers between the state and the regions shall be determined in the national constitution or in legislation in accordance with the principles of political decentralisation and subsidiarity. Under these principles, functions should be exercised at the level as close to the citizen as possible. (see appendix)
2. The implementation of national law, either directly or by delegation, should, as a general rule, be the responsibility of the region.
3. The region should have responsibility for all functions with a predominantly regional dimension.
4. Where the state has decentralised administration at regional level, it shall transfer the corresponding staff and financial resources to the regional bodies in order to avoid duplication.
5. The regions shall exercise the powers assigned to them on an individual basis. The regions within a single state shall agree to harmonise, where appropriate, the action taken within their specific spheres of competence. To that end, they shall decide on the required procedures.
6. State decisions and measures which affect regional powers or interests - in particular measures which have implications for their financial situation or that of the local authorities, and decisions which affect the scope of any legislative powers the regions may have - may not be adopted without the prior assent of the regions involved.

Appendix to article 3, paragraph 1

Examples of the existing regions' powers:

- regional economic policy,
- regional planning, building and housing policy,
- telecommunications and transport infrastructures,
- energy and environment,
- agriculture and fisheries,
- education at all levels, universities and research,
- culture and media,
- public health,
- tourism, leisure and sport,
- police and public order.

Article 4 - Financing

1. The region shall enjoy financial autonomy and have sufficient own resources to develop its powers fully. It shall be governed in particular by the principles of economy, efficiency, effective use of resources, service to the citizen, and transparency in its budgetary decisions.

2. The fundamental principles governing the public finances and apportionment of revenue as well as state guidelines for regional budget management shall be laid down in the national constitution or in legislation. The regions shall also play a decisive role in the shaping of financial legislation at national level.

Article 5 - Financial resources of the region

1. The financial resources of the region shall consist basically of taxes partly or wholly transferred by the state, and of its own taxes.

2. The region shall receive the income necessary for the performance of its functions. It shall be entitled to an appropriate share of national tax revenue for this purpose. Its income shall be sufficient and concentrated uniformly on a small number of major sources of tax revenue in order to ensure stable regional budget management and allow the implementation of an economic policy directed towards sustainable development.

3. Under national legislation, the region shall be entitled to levy its own taxes and determine sources of tax revenue. For this purpose, it shall set the criteria for determining its taxes, duties and dues. Where the law permits, it may decide to charge supplements on state taxes.

4. Where a number of authorities share a source of tax revenue, the scale and procedure for the distribution of such revenue shall be prescribed by legislation. State financial allocations of a general nature shall take pre-

cedence over special allocations, which shall be governed only by statutorily prescribed criteria.

5. Where the region is not empowered to collect taxes, it shall be involved in determining the organisation of the relevant bodies and tax procedures.

It shall likewise be involved in determining the composition and procedure of the competent courts.

6. Within the limits prescribed by law, the region may seek credits to finance investments. Credit limits and arrangements for monitoring their legality shall be laid down by law.

Article 6 - Inter-regional financial equalisation

1. The principle of solidarity entails the existence of national systems of financial equalisation. The aims and procedure of financial equalisation shall be prescribed in the national constitution or legislation. Account shall be taken of the uneven distribution of the financial burdens borne by the regions, on the basis of objective criteria. However, financial equalisation shall not dissuade those regions required to make equalisation payments from making appropriate use of the sources of tax revenue available to them.

The needs of municipal authorities shall also be taken into account in the calculation of equalisation payments. Equalisation shall take the form of transfers from the state to the regions, and between regions.

2. The principle of solidarity shall also be expressed in the EU for reducing the interregional inequalities in order to achieve the aim of social and economic cohesion in Europe. The Structural Funds of the European Union shall be one instrument for the achievement of this aim.

Article 7 - Involvement at the central level of the state

1. The regions shall play an appropriate part in the legislative bodies of the State.

2. The state, within the scope of its own powers, shall make arrangements to coordinate the participation of the regional institutions in the state's decision-making processes, where such decisions affect the region's powers.

3. The regions shall be involved in appointing the judicial bodies responsible for the settlement of disputes over the division of powers between the state and the regions. Disputes between the regions and the state shall be settled by court proceedings or arbitration.

Article 8 - The state and the regions

1. Relations between the state and its regions and among the regions themselves shall comply with the principles of mutual respect, cooperation and solidarity. The regions and the state shall promote mutual cooperation and refrain from adopting measures which could prejudice or limit the exercise of powers at other levels.

2. Where it exists, state control over the regions shall be regulated by the national constitution, or failing that, by appropriate legislation.

3. Regions should be permitted to sign treaties or agreements with other regions within the same state.

4. As a general principle, administrative powers should be exercised by the regions and only in exceptional circumstances by the state.

Article 9 - The regions and local authorities

1. In exercising the powers assigned to them, regions and local authorities shall cooperate in a spirit of mutual trust and in accordance with the principle of subsidiarity. Regions and local authorities shall take all necessary measures to promote mutual cooperation, bearing in mind the control which regions may exercise over local authorities.

2. Local authorities shall be consulted on all regional measures which affect their sphere of competence or individual interests. In practice, these measures shall include any which have a bearing on the financial powers of the local authorities.

Article 10 - The regions and international relations

1. Regions shall have the capability to act at an international level. They may conclude treaties, agreements or protocols which are international in scope, subject to approval by the central government where this is required by national legislation.

2. The regions shall promote bilateral and multilateral domestic and transfrontier cooperation among themselves for the purpose of carrying out joint projects.

3. Regions shall have the right to set up their own representations, either individually or in conjunction with other regions, in other states and in appropriate international organisations.

4. Subject to the provisions of paragraph 1 of this article, the regions shall participate in the international activities of their state, in accordance with the relevant domestic legislation, whenever their own powers or essential interests are concerned.

5. Prior to the conclusion of an international treaty which affects their essential interests, the regions shall be consulted by the state. Should

the state intend to sign an international treaty which affects the powers of the regions, the regions shall participate in the drafting and conclusion of the treaty. The exact manner of their participation shall be governed by the domestic procedures in force between the state and its regions. Treaties shall be executed in accordance with the apportionment of powers between the state and its regions.

Article 11 - The regions and transfrontier cooperation

1. Regions with common frontiers shall, in compliance with relevant domestic legislation and international law, promote transfrontier cooperation.

2. Regions, taking due account of domestic legislation and international agreements between states, shall be entitled to conclude transfrontier agreements in order to develop their cooperation within the limits of their powers.

3. Regions shall have the right, within the legal framework of each state concerned, to establish joint deliberative or executive bodies.

4. The actions of these bodies shall be subject to the procedures of the competent courts in the same manner as actions of regional bodies.

Article 12 - The regions and European Union

1. The European Union shall recognise the regions of its Member States and associations of a regional nature as active participants in its policies. It shall have a body of regional composition which shall participate in decision making on issues having a regional dimension. Its members shall be proposed by the regions.

2. The regions may make representations to the institutions of the European Union. Such representations may be established jointly by several regions. The European Union and the Member States where they are located shall recognise their proper status.

3. The regions, within the scope of their powers, or where their interests may be affected, should participate in the determination of the positions taken by their states in the Community institutions.

4. Where an issue is the exclusive responsibility of the region or has a particular bearing on its interests, the state shall not be able to deviate from the position adopted by the region, save where domestic legislation requires this in the interests of unity. The state shall be required to justify any deviation from the region's position. On such issues, the region shall also be entitled to take part in the decision-making process of European institutions and shall in particular have the right to have its representation within the national delegation.

5. The regions shall implement Community legislation within their sphere of competence.

6. The regions shall manage assistance from the Community Funds for matters within their powers. For this purpose, the regions shall liaise with the European Union without the intermediation of the state.

7. The regions may enter into agreements designed to improve the implementation of Community policies. The courts shall supervise the implementation of Community legislation by the regions. The state and the regions shall keep one another informed of the measures they adopt in the implementation of Community legislation and programmes.

8. The regions shall have the right to bring proceedings before the European Court of Justice where measures taken by the Community institutions affect their powers or interests.

9. The legislation on elections to the European Parliament shall refer to regional constituencies in states which have decentralised political or administrative structures.

10. Arrangements must be made for contact between the European Parliament and regional parliaments in their capacity as institutions which directly represent the will of the **citizen**.

Article 13 - Final considerations

1. The Assembly of European Regions (AER), in adopting the present Declaration, which is inherently political in character, aims to promote and strengthen regionalism in Europe. In view of the wide variety of regional situations and aspirations, this document, which is not legally binding, is intended to serve for some regions as a guide containing basic standards or goals for regionalisation.

2. The AER and its members shall make such approaches to national governments, European Union institutions and other European bodies as are necessary to achieve the objectives of this document.

3. The Declaration also illustrates the fact that the region is the best form of organisation for resolving regional problems in an appropriate and independent manner. The states of Europe shall undertake to pursue as far as possible the devolution of powers to the regions and to transfer the financial resources necessary for their exercise, amending international legislation as necessary.

4. The AER and its members shall also promote European inter-regional cooperation at all levels and shall offer assistance in their regionalisation where necessary by proposing amendments to the constitution or constitutional law to allow for the creation of the most appropriate forms of regional structure.

5. Transfrontier cooperation strengthens and consolidates regionalism. The development of a regional identity based on transfrontier coopera-

tion promotes political and social stability.

6. The establishment of the Committee of the Regions within the European Union and the Congress of Local and Regional Authorities of Europe within the Council of Europe is a great step forward for regionalism in Europe. A longer-term goal shall be to establish a Europe of the regions as a third level of government; this would entail the Committee of the Regions attaining the status of a genuine regional chamber.

7. The AER and its members shall lend support to associations of local authorities. Its central aim, however, shall remain the development of a genuine regional identity.

8. The AER shall monitor the progress made in the individual European states towards achieving the goals set forth in this Declaration.

*Assembly of European Regions
General Secretariat*

2.4 Congress of Local and Regional Authorities of Europe

4th Session - Recommendation 34 (1997)¹ on the draft European Charter of Regional Self-Government

I The Congress, bearing in mind the proposal of the Chamber of Regions, and after taking note of an Opinion of the Chamber of Local Authorities ;

1. Having examined the report presented by Mr Peter Rabe (Lower Saxony, Germany) at the present session;

2. Having regard to Resolutions 67 (1970) on “the problems of regionalisation in Europe” and 117 (1980) on “regional institutions in Europe” of the Standing Conference of Local and Regional Authorities of Europe;

3. Having regard to Resolution 8 (1994) and Recommendation 6 (1994) of the Congress of Local and Regional Authorities of Europe and to the request in Resolution 8 to draw up a “European Charter of Regional Autonomy” along the lines of the European Charter of Local Self-Government, in co-operation with the Parliamentary Assembly, as stipulated in paragraph 23 of the Geneva Declaration;

4. Having regard to the Declarations adopted at various conferences and conventions organised by the Standing Conference of Local and Regional Authorities of Europe, particularly the Galway Declaration (1975), the Bordeaux Declaration (1978) and the Geneva Declaration (1993);

5. Having regard to the Resolution on “Community Regional Policy and the Role of the Regions”, adopted on 18 November 1988 by the European Parliament;

6. Having regard to the Parliamentary Assembly's commitment towards regionalisation and, in particular, to its Recommendations 1021 (1985) and 1256 (1995) on regions within the Council of Europe;

Debated by the Congress and adopted on 5 June 1997, 3rd sitting (see doc. CPR (4) 4 revised, Recommendation presented by Mr P. Rabe, Rapporteur).

7. Bearing in mind the European Charter of Local Self-Government (Council of Europe Convention No. 122) of 15 October 1985, and welcoming the fact that it has so far been signed by 32 member states and ratified by 24 of these;

8. Being mindful of the importance of the principle of subsidiarity, which was defined for the first time in an international text in Article 4, paragraph 3, of the European Charter of Local Self-Government and was included as a basic principle in the Maastricht Treaty;

9. Having regard to Recommendation No. R (95) 19 of the Committee of Ministers to member states on the implementation of the principle of subsidiarity, which was adopted on 12 October 1995;

10. Having regard to Statutory Resolution (94) 3 relating to the setting-up of the Congress of Local and Regional Authorities of Europe and to the Congress's Charter, particularly transitory provision No. 1, which presupposes that those countries without regions will make progress in the area of regionalisation ;

11. Having regard to its Resolution 37 (1996), whereby it provisionally approved a preliminary draft of the European Charter of Regional Self-Government;

12. Having regard to its Recommendation 22 (1996), whereby it sought opinions on the aforesaid draft ;

13. Thanking the Parliamentary Assembly for its contribution to the preparatory work on the Charter and for its favourable interim opinion in Resolution 1118 (1997) ;

14. Taking account of the position taken up by the European Union's Committee of the Regions [doc. CPR/GT/RSG (3) 5] and the opinions expressed by the Assembly of European Regions [doc. CPR/GT/RSG (3) 3] and the Council of European Municipalities and Regions [doc. CPR/GT/ RSG (3) 8] ;

15. Taking account of the proposals and comments from many associations of local and regional authorities in the member states ;

16. Taking account of the proposals received at the hearings held by its working group in Hanover (22 March 1996), Barcelona (18 October 1996), Florence (27 and 28 February 1997) and Wrocław (10 March 1997) as well as the many suggestions received from members of the Congress ;

17. Thanking the many experts who contributed to the preparatory work on the Charter, in particular Mr Philippe de Bruycker and Mr Nicolas Levrat ;

II Invites:

1. The Parliamentary Assembly of the Council of Europe to support the draft European Charter of Regional Self-Government, as appended hereto ;

2. The Committee of Ministers of the Council of Europe to examine the draft European Charter of Regional Self-Government, with a view to its adoption as a Council of Europe convention ;

3. The 2nd Summit of Heads of State and Government of the Council of Europe (Strasbourg, October 1997) to express a political opinion in favour of this step towards fuller recognition of the importance of regionalism for the process of European construction, in accordance with the lead given by the Vienna Summit ;

4. The Governments of member States which have not yet done so to ratify the European Charter of Local Self-Government, at the latest at the same time as their ratification of the European Charter of Regional Self-Government.

Appendix

Draft European Charter of Regional Self-Government

Preamble

The member States of the Council of Europe, signatory hereto,

1. Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles of respect for human rights and democracy, which are their common heritage and constitute conditions for democratic security and factors for peace ;

2. Considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe and that regions further the exercise of that right ;

3. Convinced that the existence of regions governed by representatives elected by universal suffrage and endowed with real responsibilities can provide an administration which is both effective and close to the citizen ;

4. Convinced that the principle of subsidiarity is a major contribution to the development of democracy in Europe on the basis of the equal legitimacy of the different levels of authority : local, regional, national and European ;

5. Considering that this Charter and the European Charter of Local Self-Government are complementary in the application of the principle of subsidiarity for the benefit of regional and local authorities ;

6. Aware that the region is an appropriate level of authority for effective implementation of subsidiarity, which is considered one of the basic principles to be observed with regard both to European integration and to the internal organisation of States involved in this movement;

7. Asserting that regionalisation must not be achieved at the expense of the autonomy of local authorities but must be accompanied by measures designed to protect such authorities and fully respecting what has been achieved through the European Charter of Local Self- Government ;

8. Affirming that recognition of regional self-government entails loyalty towards the State to which the regions belong, with due regard to its sovereignty and territorial integrity ;

9. Affirming that recognition of regional self-government should be accompanied by measures to implement solidarity between regions so as to foster balanced development ;

10. Considering that the region, as an essential component of the State, bears witness to Europe's diversity, contributes to the enrichment of its culture with due regard to its traditions and in keeping with its history, and furthers its economic prosperity with a view to sustainable development;

11. Aware that interregional and transfrontier co-operation makes a valuable and indispensable contribution to European construction ;

12. Affirming that the creation of appropriate European institutions should take account of the existence of regions within European States as regards the framing and execution of policies implemented at European level and should encourage regions to participate in such institutions, in particular in the Chamber of Regions of the Congress of Local and Regional Authorities of Europe and the European Union's Committee of the Regions ;

13. Asserting that these principles presuppose the existence of a level of regional authority endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for the fulfilment of their tasks ;

14. Considering that, over and above the profound differences existing between the legal and institutional traditions of the different European countries, it is both desirable and appropriate to extend the process of regionalisation within European States on the basis of the principles set out below;

15. Considering that one of the means by which these aims are to be achieved is through agreements in the field of their respective territorial structures,



Have agreed as follows :

Article 1

The Contracting Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in one of the procedures contained in Article 20 or Article 23 of this Charter.

Part I

A. Foundation of regional self-government

Article 2 - Foundation of regional self-government

1. The principle of regional self-government shall be recognised as far as possible in the constitution.

2. The scope of regional self-government shall be determined only by the constitution, the statutes of the region, national law or international law.

3. The statutory provisions determining the scope of regional self-government shall, as far as possible, afford the regions specific protection by virtue of the procedures or conditions for their adoption.

B. Definition of regional self-government

1. Principle

Article 3 - Principle

1. Regional self-government denotes the right and the ability of the largest territorial authorities within each State, having elected bodies, being administratively placed between central government and local authorities and enjoying prerogatives either of self-organisation or of a type normally associated with the central authority, to manage, on their own responsibility and in the interests of their populations, a substantial share of public affairs, in accordance with the principle of subsidiarity.

2. In conformity with the provisions of the present Charter, the scope of regional self-government shall be determined by the domestic law of each State on the conditions set forth in Article 2, paragraph 2.

2. Types of competence

Article 4 - Own competences

1. The competences of the regions shall be acknowledged or de-

terminated by the constitution, the statutes of the region, national law or international law.

2. The regions' own competences may not be affected or limited except by the constitution, by national law or by international law.

3. The regions shall have decision-making and administrative powers in the areas covered by their own competences. These powers shall permit the adoption and implementation of policies specific to each region.

4. Within the limits of the law, it is desirable that the implementation at regional level of tasks which fall within the competence of national government should be assigned to regional bodies. The regions shall be provided with the necessary resources to this end.

Article 5 - Delegated competences

1. Competences may, within the limits of the law, be delegated to the regions by other levels of government.

2. Delegation of competences shall, in so far as is reasonable, be clearly defined. The resources, in particular material and financial, for the effective exercise of these additional powers shall be properly provided for in the instrument of delegation.

3. The bodies responsible for exercising such competences shall, as far as is possible within the limits of the law, be allowed discretion in adapting their exercise to the conditions specific to the region and to their organisational structures, in the interests of efficiency and in accordance with the wishes of the region's inhabitants. Provision for the financial aspects in the instrument of delegation shall not excessively restrict this discretion.

3. Spheres of competence

Article 6 - Regional affairs

1. In addition to the competences which, in conformity with the principle set forth in Article 3, are acknowledged or attributed to the regions by the constitution, the statutes of the region, national law or international law, regional affairs shall equally cover any matter of regional interest that is not excluded from their competence or assigned specifically to another authority.

2. When exercising their competences the regions shall, with due respect for the law, be guided by the interests of the citizens as well as the principle of subsidiarity and take into account the reasonable requirements of national and European solidarity.



Article 7 - Relations with local authorities

1. The regions which possess competences concerning authorities to which the European Charter of Local Self-Government is intended to be applicable shall respect the spirit and the letter of that Convention in their relations with such authorities.

2. Regions shall apply the principle of subsidiarity in their relations with local authorities.

3. Within the limits of the law, regions may delegate some of their competences to local authorities in accordance with the principles set forth in Article 5.

4. In so far as it falls within their competence, regions shall wherever necessary endeavour to ensure financial equalisation between the local authorities located within their boundaries.

Article 8 - Interregional and transfrontier relations

1. In the spheres falling within their competence, regions shall be entitled to undertake activities of interregional or transfrontier co-operation, in accordance with any procedures laid down by domestic law. These activities shall be carried out with due regard to domestic law and to the international obligations of the State.

2. Regions forming part of a transfrontier area may, with due regard to the law of all national legal systems concerned as well as to international law, provide themselves with joint deliberative and/or executive bodies. The acts of these bodies shall be subject to the procedures of the competent courts to the same extent as if they had been performed by a regional body, in accordance with the principles set forth in the existing treaties on the subject.

3. The interregional or transfrontier relations of regions shall be governed by the relevant international agreements, in so far as these are applicable.

Article 9 - Participation in State affairs

1. In so far as rules adopted at central government level may alter the scope of regional self-government or affect the interests of regions, regions shall be able to participate in the decision-making process.

2. Participation by regions in central government affairs may :

- either be ensured through appropriate representation of the regions within legislative or administrative bodies ;
- or be based on procedures of discussion or consultation between State bodies and each region concerned ;
- or derive from consultation between central government bodies

and a structure representing the regions.

These forms of participation shall not be mutually exclusive.

Article 10 - Participation in European and international affairs

1. Regions shall have the right to participate or be represented, through bodies designed for this specific purpose, in the activities of the European institutions.

2. Regions shall at least have the right to be consulted by their national government whenever their State is negotiating the conclusion of an international treaty or the adoption of some other instrument within the framework of a European organisation which may directly affect their powers or their fundamental interests. The same shall apply whenever the implementation of rules adopted at European level may be their responsibility.

3. National governments may involve regions in the negotiating process, notably by including regional representatives in the national delegations.

4. In order to promote or defend their interests, regions shall have the right to set up, either individually or collectively with other regions or local authorities, liaison offices vis-à-vis other regions or local authorities or vis-à-vis international organisations - in particular European organisations - which are active in their spheres of competence.

4. Institutional organisation of regions

Article 11 - The principle of regional self-organisation

To the fullest possible extent, regions shall have the right to adopt and, at the very least, supplement their statutes with due regard to the Constitution and the laws passed in accordance with Article 2, paragraph 3.

Article 12 - Regional bodies

1. Without prejudice to the different forms of citizen participation in decision-making, regions shall be endowed with a representative assembly and an executive body.

2. The assembly shall be freely and directly elected by secret ballot on the basis of universal suffrage.

3. Except in the case of direct election by the population, the executive body shall be answerable to the assembly in accordance with the conditions and procedures laid down by the domestic law of each State party to the present Charter.

4. The conditions of office of elected regional representatives shall provide for the free exercise of their functions, in particular through adequate allowances.

5. Members of the representative assembly or the executive body may not be subjected to measures of the central authority which encroach upon the free performance of their duties, except in connection with judicial proceedings.

Article 13 - Regional administration

1. Regions shall have their own assets and their own system of administration, as well as such bodies of their own as they may set up and their own staff.

2. Regions may freely determine the internal structures of their administrative system and their bodies.

3. Regions may determine the conditions of service of their staff within the limits of such general principles as may be laid down by the central or federal authority in the matter.

5. Regional finance

Article 14 - Principles

1. The funding system for the regions shall provide them with a foreseeable amount of revenue commensurate with their competences and allowing them to conduct their own policies.

2. The regions' sources of funding shall be sufficiently diversified and buoyant to enable them to keep pace, as far as possible, with the real evolution of the cost of exercising their competences and with general economic development.

3. As regards the exercise of their own competences, the regions' financial resources shall consist mainly of own resources, which they may use freely.

4. The principle of solidarity necessitates the introduction, within each State, of a financial equalisation mechanism taking account of both the potential resources and the tasks of regions, with the aim of harmonising the living standard of inhabitants of the different regions.

5. Transfers and grants shall as a rule be made on a non-earmarked basis. Financial transfers to regions and, where applicable, sharing of taxes as provided for in Article 15, paragraph 3 shall be governed by predetermined rules based on a few objective criteria corresponding to the regions' actual needs.

6. Regions shall, within the limits of the law, have access to the capital market in order to cover their capital expenditure by borrowing, provided they can demonstrate their ability to service the debt throughout the repayment period from their own income.

7. A statutory obligation to comply with certain budgetary rules or a standardised accounting system shall not constitute an encroachment on the regions' financial autonomy.

Article 15 - Own resources

1. Own resources shall consist mainly of taxes, duties or charges which regions have the right to raise within the limits defined by the constitution or the law. Regions shall be able to determine the rates of regional taxes and duties.

2. Where they cannot raise their own regional taxes, regions shall be entitled, within the limits prescribed by the constitution or the law, to set additional percentages on taxes levied by other public authorities.

3. The regions' share in general taxes set by the constitution or the law shall also be regarded as own resources. Appropriate procedures shall be set up for consulting all regions on rules and arrangements for sharing and allocating such resources.

4. Regional tax management may, for the sake of rationalisation, efficiency and co-ordination, be made the responsibility of an administration belonging to several authorities or to an authority other than the region, without this affecting the ownership and use of the revenue.

C. Protection of regional self-government

Article 16 - Protection of regional boundaries

1. Without prejudice to such procedures of direct democracy as may be provided for in domestic law, a regional boundary may not be altered until the region concerned has given its agreement.

2. In the event of a general redrawing of regional boundaries, consultation of all the regions concerned, in accordance with any procedures prescribed by domestic law, may be substituted for the express agreement of each region.

Article 17 - Right of regions to institute legal proceedings

Regions shall be empowered to bring an action in the competent courts in order to secure the free exercise of their powers and respect for the principles of regional self-government enshrined in the present Charter or in domestic law.

Article 18 - Conflicts of competences

1. When a conflict of competences exists, it shall be settled by a judicial body.

2. Conflicts of competences shall be settled according to the constitutional and statutory principles of each State. Failing a clear solution in

the positive law applicable, the principle of subsidiarity shall be taken into consideration in the decision.

Article 19 - Supervision of regional instruments

1. Supervision of instruments adopted by regions maybe exercised only in such cases and according to such procedures as are provided for by the constitution or the law.

2. Any supervision of regional instruments shall be aimed only at ensuring compliance with the law. Such supervision shall be exercised only ex post facto, subject to the existence of a procedure for the approval of the region's statute.

3. Supervision may, however, include an appraisal of expediency with regard to the power of implementation referred to in Article 4, paragraph 4, and the exercise of competences delegated to the regions.

Part II

Article 20 - Undertakings and reservations

1. The Contracting States agree to be bound by all the provisions of this Charter and undertake not to hinder through any measure the effective exercise of the monitoring arrangements referred to in Article 22 of the Charter.

2. In order to take account of the diversity and developing nature of regional situations in European States, States shall be authorised to enter reservations in respect of the following articles :

- Article 4, paragraph 4,
- Article 8, paragraph 2,
- Article 10, paragraph 3,
- Article 13, paragraph 3.

In States where the regional assembly is traditionally composed of elected representatives of the local authorities forming the region, a State shall be authorised to enter a reservation in respect of the direct character of the election as provided for in paragraph 2 of Article 12.

3. No reservation other than those provided for in the preceding paragraph shall be permissible.

4. Reservations shall be notified to the Secretary General of the Council of Europe at the time of signature, ratification or accession.

5. Any State which has entered reservations may withdraw them at any time by notification to the Secretary General of the Council of Europe.

Article 21 - Interpretation of the Charter

None of the provisions of this Charter shall be interpreted as encroaching on or restricting a form of self-government more widely conferred on territorial authorities by international law or by the domestic law of each State Party.

Article 22 - Monitoring of the application of the Charter

1. Each State shall, during the year in which the Charter enters into force as far as it is concerned, and every five years thereafter, draw up a report on the application of the Charter.

2. States which have entered reservations in accordance with paragraph 2 of Article 20 shall examine in their report the relevance of maintaining such reservations.

3. The report shall be submitted for examination by the CLRAE, which shall transmit it with its observations to the Committee of Ministers and the Parliamentary Assembly of the Council of Europe. The Committee of Ministers shall consider every national report in accordance with such procedures as it shall lay down, and shall notify its conclusions to the State concerned and to the President of the CLRAE.

4. The Committee of Ministers shall, if appropriate and after consultation with the CLRAE and the Parliamentary Assembly, take measures designed to permit examination of reports submitted by non-member States of the Council of Europe.

Article 23 - Undertakings by States involved in a process of regionalisation

1. States in which a process of regionalisation is currently under way may ratify this Charter while undertaking to implement its provisions by setting up and developing regional structures. They shall undertake, within a period of not more than ten years from the entry into force of the Charter as far as they are concerned, to set up the legal framework and the administrative and financial mechanisms which will enable them to comply, in respect of their regions, with the rights set forth in this Charter, on the conditions stipulated in paragraph 1 or 2 of Article 20.

2. Each State in respect of which the Charter is in force on the conditions stipulated in the preceding paragraph shall, during the year in which the Charter enters into force as far as it is concerned, and every three years thereafter, draw up a report on developments in the regionalisation process ; these reports shall be subject to the procedure provided for in paragraphs 3 and 4 of Article 22. Following the fourth report at the latest, the Party concerned shall inform the Secretary General of the Council of Europe of its

undertaking to comply with the Charter on the conditions specified in paragraph 1 or 2 of Article 20.

Part III

Article 24 - Signature, ratification, entry into force

1. This Charter shall be open for signature by the member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This Charter shall enter into force on the first day of the month following the expiry of a period of three months after the date on which five member States of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of the preceding paragraph.

3. In respect of any member State which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiry of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 25 - Regions to which the Charter shall apply

The principles of regional self-government contained in this Charter shall apply to all the regions existing within the territory of a Contracting Party. However, each Contracting Party may, when depositing its instrument of ratification, acceptance or approval, specify the categories of regions to which it intends to confine the scope of the Charter or which it intends to exclude from its scope.

Article 26 - Accession by non-member States of the Council of Europe

After the entry into force of this Charter and after consultation with the CLRAE, the Committee of Ministers may, by a decision taken by a unanimous vote, invite any non-member State to accede to the Charter. This invitation must receive the express agreement of each of the States which have ratified the Convention.

Article 27 - Denunciation

Any Contracting Party may denounce this Charter at any time after the expiry of five years from the date on which the Charter entered into force for it. Six months' notice shall be given to the Secretary General of

the Council of Europe. Such notification shall not affect the validity of the Charter in respect of the other Contracting Parties, provided that at all times there are not fewer than five such Parties.

Article 28 - Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of :

- a) any signature ;
- b) the deposit of any instrument of ratification, acceptance or approval ;
- c) any date of entry into force of this Charter in accordance with Article 24 ;
- d) any notification received in application of Article 20, paragraphs 4 and 5, concerning reservations ;
- e) any notification concerning the exclusion of certain categories of regions from the scope of the present Charter, in conformity with Article 25;
- f) any notification by a State having ratified the Charter under the terms of Article 23, at the latest following the expiry of the period specified in Article 23, paragraph 2 ;
- g) all Committee of Ministers, Congress of Local and Regional Authorities of Europe and Parliamentary Assembly reports adopted under the arrangements for monitoring the application of this Charter ;
- h) any other act, notification or communication relating to this Charter.

*

In witness whereof the undersigned, being duly authorised thereto, have signed this Charter.

Done at, this day of19..., in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

2.5 Helsinki Declaration on Regional Self Government

**The ministers attending the 13 Session of the conference
of European ministers responsible for local and regional
government meeting in Helsinki on 27-28 June 2002**

Having, in a first working session under the theme – Regional Self government and subsidiarity – European models and principles“, had a valuable exchange of experiences and views with regard to regional self government regionalisation, decentralisation and the implementation of the principle of subsidiarity;

Having, in a second working session under the theme – Regional Self government and subsidiarity – Detailed examination of the texts prepared by the Steering Committee on Local and Regional Democracy (CDLR), held an exchange of views on the said texts;

Having considered the request by the Committee of Ministers to express, in light of the completed groundwork, an opinion on the nature of the instrument to be adopted by the Council of Europe on regional self government;

Whereas many member States of the Council of Europe are in the process of either reforming or introducing regional self government;

Whereas there exists a wide diversity in the models and forms of regional self government in Europe, stemming from the different constitutional traditions and socio-economic, cultural, and geographical circumstances specific to each state;

Whereas it is possible, as illustrated by the work carried out by the CDLR, to elaborate a set of core concepts and principles which are common to all models of regional self government;

Solemnly declare that :

1.

A functioning democracy is the basis for peace, stability, prosperity and development;

2.

the increasing decentralisation and devolution of government across Europe over the past decades has contributed to the strengthening of democracy, both in states with long democratic traditions and in the newer democracies;

3.

the process of decentralisation and devolution reflects the shared conviction that economic growth, sustainable regeneration, quality public services and full democratic participation can be more effectively facilitated if governmental institutions are not overly centralised;

4.

it is a matter for each state to decide whether or not to establish

regional authorities and in fact not all states have them;

5.

the Council of Europe has an important role to play in promoting and sustaining effective democracy among all its member States, at both national and sub-national level;

6.

the Council of Europe provides a privileged meeting place for European governments to address issues of local and regional government and to engage in dialogue at European level with the elected representatives of local and regional authorities as brought together in the Congress of Local and Regional Authorities of Europe (CLRAE);

7.

the statutory aim of the Council of Europe –to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage“ is successfully pursued by the setting of common standards in the areas of its competence, which include democratic governance;

8.

the European Charter of Local Self government, ratified by 37 member States, has had a significant positive influence on the development of local government and democracy in Europe;

9.

regional self government, where it exists, is a part of democratic governance and thus such regional authorities as are established must meet minimum standards of democratic composition and be endowed with the legal competence and the ability, within the limits of the constitution and the law, to regulate and manage a share of public affairs under their own responsibility, in the interest of their population and in accordance with the principle of subsidiarity;

10.

the Council of Europe should further promote the exchange of good practice among member states highlighting general principles identified from member states' experience;

11.

the Council of Europe should recognise and promote common principles on regional self government in a European legal instrument which takes into account member states' experience;

Accordingly, they acknowledge that such a legal instrument

12.



should respect the sovereignty, identity and freedom of states to determine their own internal organization, whilst conforming to these common principles ;

13.

should be broad enough to recognise the wide variety of democratic forms of regional self government;

14.

should make it clear that every state has the right to decide whether or not to establish regional authorities;

15.

should not upset the principle of equality between local and regional authorities with respect to autonomy, where this principle is established by the constitution or by law;

16.

should not lead to the creation of a scale of relative values between different models of regional autonomy;

17.

should allow the states a degree of choice in order to take account of specific characteristics of their regional self government system;

Noting that the question of the nature of the legal instrument to be adopted is the subject of diverging views;

Aware that a number of legal issues need to be addressed in greater depth in order to

enable decisions to be taken with a full understanding of all the implications of such a choice;

Express the opinion that:

18.

the Council of Europe should aim to adopt a legal instrument on regional self government that a. is based on the core concepts and principles already drawn up by the CDLR;

b) stipulates expressly that every state has the right to establish regional authorities or not;

c) provides member states with a degree of choice in order to take account of specific characteristics of their regional self government system;

d) ensures a harmonious coexistence with the European Charter of Local Self Government(ECLSG);

Recommend to the committee of ministers:

19.

to develop and reinforce the work of the Council of Europe in the field of local and regional democracy, including by facilitating the sharing and promotion of experience with regional self government;

20.

to continue and improve the dialogue at European level between governments and local and regional elected representatives as brought together in the CLRAE;²⁰

21.

to give terms of reference to the Steering Committee on Local and Regional Democracy to elaborate drafts for legal instruments of different types, having regard to the proposals made during the Conference and to the developing experiences of member states, and addressing the need for an appropriate relationship with the ECLSG.

APPENDIX

Core concepts and common principles on regional self government identified by the CDLR

A. Core concepts and principles

1.1. Regional authorities are territorial authorities between the central government and local authorities. This does not necessarily imply a hierarchical relationship between regional and local authorities.

1.2. Regional Self government denotes the legal competence and the ability of regional authorities, within the limits of the constitution and the law, to regulate and manage a share of public affairs under their own responsibility, in the interests of the regional population and in accordance with the principle of subsidiarity.

1.3. Where regional authorities exist

2. the principle of regional self government shall be recognized in domestic legislation and/or by the constitution, as appropriate.

B. Common principles

1. Regional competences

1.1. Regional competences shall be defined by the constitution, the statutes of the region or by national law. Regional authorities shall, within the limits of the law and/or the constitution, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority. Regulation or limitations of

²⁰ See Appendix



regional competences shall be based on the constitution and/or law.

1.2. Regional authorities shall have decision-making and administrative powers in the areas covered by their own competences. These powers shall permit the adoption and implementation of policies specific to the region. Decision-making powers may include legislative powers.

1.3. For specific purposes and within the limits of the law, competences may be conferred upon regional authorities by other public authorities.

1.4. When powers are delegated to regional authorities, they shall be allowed discretion to adapt the exercise thereof to regional conditions, within the framework set out by the constitution and/or the law.

2. Relations with other sub-national territorial authorities

2.1. The relationship between regional authorities and other sub-national territorial authorities shall be governed by the principles of regional self government set out in this document and local self government set out in the European Charter of Local Self government and the principle of subsidiarity.²¹

2.2. Regional authorities and other sub-national territorial authorities may, within the limits of the law, define their mutual relationship and they may co-operate with each other.

3. Involvement in the State decision-making process

3.1. Regional authorities shall have the right as described in paragraphs 3.2 and 3.3 below to be involved in state decision-making affecting their competences and essential interests or the scope of regional self government.

3.2. This involvement shall be ensured through representation in decision making bodies and/or through consultation and discussion between the state and regional authorities concerned. Where appropriate, participation may also be ensured through consultation and discussion between state authorities and representative bodies of regional authorities.

3.3. In so far as the constitution and/or the law enable it, regional authorities and/or their representative bodies shall be represented or consulted, through appropriate bodies and/or procedures, with regard to international negotiations of the state and the implementation of treaties in which their competences or the scope of regional self government are at

²¹ Whether this phrase is kept or not will depend on the nature of the legal instrument.

stake.

4. Supervision of regional authorities by State authorities

4.1. Any supervision of regional authorities by central state authorities shall normally only aim at ensuring their compliance with the law. However, the supervision of delegated powers may also include an appraisal of expediency.

4.2. Administrative supervision of regional authorities may be exercised only according to such procedures and in such cases as are provided for by constitutional or legislative provisions. Such supervision shall be exercised ex post facto and any measures taken must be proportionate to the importance of the interests which it is intended to protect.

5. Protection of regional self government

5.1. Regional authorities may be provided for by the constitution or established by law. The existence of regions, once established, is guaranteed by the constitution and/or by law and may be revoked only by the same due process of amendment of the Constitution and/or law that established them.

5.2. Regional authorities shall have the right of recourse to a judicial remedy in order to secure the free exercise of their powers and respect for the principles of regional self government enshrined in domestic law.

5.3. Regional boundaries shall not be altered without prior consultation of the region(s) concerned. Prior consultation may include a referendum.

6. Right of association and other forms of co-operation

Regional authorities shall be entitled to form associations and to undertake activities of interregional co-operation in matters within their competences and within the framework of the law. Regional authorities may also be members of international organisations of regional authorities.

7. External relations

7.1. In so far as national and/or European law allows, regional authorities shall have the right to be involved in or to be represented through bodies established for this purpose in the activities of the European institutions.

7.2. Regional authorities may co-operate with territorial authorities of other countries within the framework of their competences and in accordance with the law, the international obligations and the foreign policy of the state.

8. Self-organisation of regional authorities

Where a constitution and/or the law provide the right for regions to

decide their internal organisation, including their statutes and their institutions, it will define this right as widely as possible.

9. Regional bodies

9.1. Regional authorities shall have a representative assembly. Executive functions, where they are not exercised directly by the representative body, shall be entrusted to a person or a body answerable to it in accordance with the conditions and procedures laid down by the law. Where the executive body is directly elected by the population, it needs not necessarily be answerable to the representative assembly but should give it account of its acts.

9.2. Regional assemblies shall be directly elected through free and secret ballot based on universal suffrage, or indirectly elected by and composed of popularly elected representatives of constituent local self government authorities.

9.3. The conditions of office of elected regional representatives shall provide for the free exercise of their functions. They shall allow for appropriate financial allowance and/or for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, full or partial compensation for loss of earnings or remuneration for work done and corresponding social welfare protection. Members of the assembly shall have the right to express themselves freely during the meeting of this assembly. Any functions and activities which are deemed incompatible with the representative's office shall be determined by law.

9.4. Where sanctions against regional elected representatives are possible, they must be provided for by the law, be proportionate to the importance of the interest they are intended to protect and be subject to judicial review. Suspension and dismissal may only be foreseen in exceptional cases.

10. Regional administration

10.1. Regional authorities shall have their own assets, their own administration and their own staff.

10.2 Regional authorities shall freely determine the internal structures of their administrative system and their bodies, within the framework defined by law.

10.3. The conditions of service of regional authorities' staff shall comply with general principles of public service and be such as to permit the recruitment of high quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

11. Financial resources of regional authorities

11.1. Regional authorities shall have at their disposal foreseeable resources commensurate with their competences and responsibilities allowing them to implement these competences effectively.

11.2. Regional authorities shall be able to dispose freely of their resources, for the implementation of their competences.

11.3. In the implementation of their own competences, regional authorities shall be able to rely in particular on resources of their own at which they shall be able to dispose freely. These resources may include regional taxes, other revenues decided by regional authorities, fixed shares of state taxes, non-earmarked funding from the state and constituent territorial authorities, in accordance with the law.

11.4. The financial systems on which resources available to regional authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.

12. Financial equalization and transfers

12.1. The protection of financially weaker regional authorities shall be ensured through financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures should not have the effect of restricting the financial resources of regional authorities to the extent of hindering their freedom of administration.

12.2. Financial transfers to regional authorities shall be governed by predetermined rules based on objective criteria related to regional competences. As far as possible, grants to regional authorities shall not be earmarked for the financing of specific projects.

12.3. Financial transfers to regional authorities shall not limit the basic freedom of regional authorities to exercise policy discretion in the implementation of their competences.

12.4 For the purpose of borrowing for capital investment, regional authorities shall have access to the capital market within the limits of the law.

2.6 Conference of European Ministers Responsible

for Local and Regional Government

14th Session, Budapest 24.-25. February 2005.

Addition:

Appendix 1

Appendix 2

Appendix 3

Appendix 1

2.6.1 Declaration of the Budapest ministerial conference on delivering good local and regional governance

We, the European Ministers responsible for Local and Regional Government, meeting in Budapest on 24.-25. February 2005. for the 14th Session of our Conference

i) Note with satisfaction that an unprecedented number of states across the continent have committed themselves to the principles of democracy, human rights and the rule of law;

ii) Acknowledge that the challenges facing Europe today are not exclusively European - they are global and have to be dealt with coherently at both international and local level;

iii) Are aware that the peoples of Europe more than ever expect, and are entitled to expect, genuine democracy and good governance at all levels, which serve to prevent conflict, create stability and encourage participation in society ;

iv) Believe in the need to ensure that local and regional governance is democratic, efficient, responsive, transparent, participative and accountable;

v) Recognise the value of the intergovernmental co-operation established in the Council of Europe and of the *acquis* (conventions and recommendations) and the information base developed within this framework;

vi) Acknowledge in particular the role of the European Charter of Local Self-Government in laying down the principles of democratic self-government at subnational level and of the Congress of Local and Regional Authorities of the Council of Europe in promoting the implementation of these principles through its monitoring exercises;

vii) Note that our countries are confronted at national and European levels with a number of challenges and demands that concern in particular the capacity of local and regional authorities to deliver high-quality services and respond adequately to the legitimate expectations of citizens, the con-

gruity between local and regional authorities' competences and resources, the interest and involvement of citizens in public affairs at local and regional level, the development of co-operation between local and regional authorities, including across national borders;

viii) Resolve, in accordance with our respective countries' commitment to the aims, working methods and principles of the Council of Europe, to strengthen and steer our intergovernmental co-operation towards a number of essential goals to be pursued jointly and in good faith;

And therefore

I Agree:

1. to make "delivering good local and regional governance" an essential objective to be pursued by our member States in order to respond to the challenges facing our societies and meet the legitimate expectations of our citizens;

2. to pursue this objective also through our co-operation within the Council of Europe, including with the Parliamentary Assembly and Congress of Local and Regional Authorities;

3. to adopt the Agenda appended to this Declaration in which we identify the major challenges facing our member states in delivering good local and regional governance and commit ourselves to action by member States individually and through the Council of Europe over the next five years;

4. to keep the implementation and development of the Agenda under review at future sessions of our Conference;

II Adopt the following recommendations and messages:

1. To the Third Summit of Heads of State and Government:

We recommend to the Heads of State and Government of the member states of the Council of Europe, meeting in Warsaw on 16-17 May 2005 for their Third Summit:

- to reflect in their future agenda for the Organisation that effective democracy and good governance at the local and regional level are important for:

- preventing conflict and promoting stability;
- creating sustainable economic growth;
- promoting citizen participation in public life;
- securing the delivery of high quality public services; and hence
- creating sustainable communities;
- to recognise that such democracy and governance can only be achieved through the active involvement of citizens and civil society;
- and to provide specifically, in the Plan of action which they will

adopt, for the Council of Europe:

- to take the necessary steps to implement the Agenda for delivering good local and regional governance adopted at the 14th Session of the Conference of European Ministers responsible for local and regional government;

- to develop further, as necessary, standards of democracy and good governance;

- to have the capacity to work with member states to promote the adoption of these standards and good practices, including through the establishment within the Secretariat of the Council of Europe of a centre of expertise on local government reform to assist member states with capacity-building at the local and regional level, in co-operation with the Congress, member states and national associations of local and regional authorities;

- to contribute to transfrontier co-operation, in particular by adopting if appropriate a third protocol to the Madrid Outline Convention to regulate the legal status of cross-border co-operation groupings;

2. To the Parliamentary Assembly:

We thank the Parliamentary Assembly for its participation in, and contribution to this Conference and invite it to promote by all means the dissemination of, easy access to and awareness of the *acquis* and information base in the field of local and regional democracy as well as to continue its co-operation with the relevant intergovernmental structures;

3. To the Congress of Local and Regional Authorities:

We thank the Congress for its participation in, and contribution to this Conference and the colloquy, as well as for its ongoing work in monitoring the implementation of the European Charter of Local Self-Government;

We invite the Congress to promote by all means the dissemination of, easy access to and awareness of the *acquis* and information base in the field of local and regional democracy as well as to make use of it in the context of its monitoring of the European Charter of Local Self-Government;

We further invite the Congress to continue and where possible to enhance its co-operation with the relevant intergovernmental structures with a view to delivering good local and regional governance and facing the challenges identified in the appended Agenda in the best possible way;

4. To the Committee of Ministers of the Council of Europe:

We thank the Committee of Ministers for its participation in and contribution to this Conference;

We invite the Committee of Ministers:

- to adopt annual intergovernmental programmes of activities in the field of local and regional democracy that promote the goal of “delivering good governance at local and regional level” and implement the Agenda that we have adopted;

- to provide adequate resources in the annual budgets of the Organisation for the activities related to the implementation of the above-mentioned Agenda;

- to provide individual governments so requesting with all necessary assistance and support enabling them to attain the European standards of local democracy;

- to ensure that the implementation of the Declaration is kept under review by the intergovernmental structures and reported on at future sessions of the Ministerial Conference.

Appendix 2

2.6.2 Agenda for delivering good local and regional governance

We, the European Ministers responsible for Local and Regional government, meeting in Budapest on 24-25 February 2005 for the 14th Session of our Conference:

Further to the agreement to adopt “delivering good local and regional governance” as an overall objective and drawing on the views expressed and the information made available to the Conference⁴, identify the following major challenges and commit ourselves to the following actions by member States individually and through the Council of Europe over the next five years:

As concerns democratic citizenship and participation at local and regional level,

Challenges:

- Addressing the low level of electoral turnout in elections at local and regional level in many countries;

- Responding to the changing ways in which citizens engage in public life at local level and, in some cases, the decreasing willingness to do so;

- Broadening the scope for participation by foreign residents in public life at local level.

Actions:

- To pursue the implementation of Recommendation (2001) 19 on the Participation of Citizens in Local Public Life;

- To continue work on the ways in which information and communi-

cation technologies can facilitate democratic reform at local and regional level;

- To examine the desirability and feasibility of forms of remote voting in local and regional elections;
- To develop and make use of tools to assess the effectiveness of measures taken to enhance participation in public life at local level;
- To examine the desirability and feasibility of introducing convention-based legal standards on the participation of citizens in public life at local and regional level;
- To seek to overcome any obstacles to acceding to the Convention on the Participation of Foreigners in Public Life at Local Level and to seek to ratify it as soon as possible.

As concerns the legal framework and institutional structure of local and regional government:

Challenges:

- Giving full effect to the principle of subsidiarity by defining and legislating on the competences, structures and boundaries of local and regional authorities;
- Encouraging and creating the necessary conditions for inter-municipal co-operation;
- Fostering effective relations between different levels of territorial administration, particularly between central and local authorities.

Actions:

- To monitor developments in regional self-government with a view to identifying in particular innovations and any issues common to a number of states;
- To share our knowledge, experience and views concerning inter-municipal co-operation with a view to identifying and promoting good practices and drawing up guidelines on this topic;
- To share our knowledge, experience and views concerning the relationship between central and local authorities with a view to identifying good practice and drawing up guidelines on this topic;
- When engaging in processes of reform of local and regional self-government, to respect the European Charter of Local Self-Government and be guided by Recommendation (2004) 12 on the processes of reform of boundaries and/or structure of local and regional authorities.

As concerns local and regional finance:

Challenges:

- Reaching a level of resources for local and regional authorities which is commensurate with their responsibilities;
- Finding an optimum structure of income sources in order to al-

low local and regional authorities to offer their citizens services which are adapted to their requirements;

- Striking the right balance between a high degree of freedom for local and regional authorities in managing their finance and a high degree of accountability.

Actions:

- To make use of, implement and promote, as appropriate, the existing Council of Europe *acquis* in the field of local and regional finance, in particular Recommendations Rec (2004) 1 on the financial and budgetary management at local and regional levels and Rec (2005) 1 on financial resources for local and regional authorities;

- To promote and assess the impact of the Council of Europe's *acquis* in the field of local finance;

- To consider updating some of the previous reports in the field of local and regional finance and notably the report on "Local finance in Europe" examined by us the 11th Session of the Conference (Lisbon, 1996).

As concerns the leadership and management capacity of local and regional authorities:

Challenges:

- Fostering the leadership and capacity of local and regional authorities to deliver good local and regional governance and providing citizens with services of the highest possible quality while respecting budgetary constraints.

Actions:

- To share experiences on leadership, benchmarking and capacity-building for local and regional authorities with a view to identifying good practice and possibly preparing a recommendation of the Committee of Ministers to member States in these fields;

- To make use of and implement, as appropriate, the Committee of Ministers recommendations in the field of local and regional public services;

- To examine the possible ways in which local and regional authorities can co-operate with other authorities (inter-municipal co-operation, co-operation with authorities of a different level) and with the private sector (partnerships, concession of public services, contracting out certain elements) for improving public services offered to their citizens.

As concerns public ethics at local and regional level:

Challenge:

- Ensuring ethical behaviour by local and regional authorities, elected representatives and officials, whilst respecting local and regional self-government as well as individual rights and legitimate interests.

Actions:

- To continue to promote the Handbook of Good Practice on Public Ethics at Local Level and prepare, where possible, handbooks suited to the particular situation in member States and thematic documents targeted at specific audiences;
- To gather and share good practices concerning the evaluation of compliance with standards of public ethics at local and regional level;
- To exchange experiences and provide the information necessary for the review of the Handbook, with a view to preparing a revised version in 3 to 4 years time.

As concerns the development of the transfrontier and interterritorial co-operation of territorial communities or authorities:

Challenges:

- Removing remaining legal and administrative obstacles to transfrontier and interterritorial co-operation;
- Finding ways and means of providing territorial communities or authorities and their transfrontier co-operation bodies with the capacity necessary to engage in and develop co-operation;
- Establishing a clear and effective legal framework for institutionalised co-operation between territorial communities or authorities (euroregions).

Actions:

- To make use of the “check list” of measures to be taken prior to or after the ratification of the Madrid Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and its Protocols with a view to giving these instruments the greatest possible effect;
- To make use of, and implement, as appropriate, Recommendation Rec(2005)2 of the Committee of Ministers on good practice in and the removal of obstacles to transfrontier and interterritorial co-operation;
- To identify the persons or institutions in charge of, or responsible for transfrontier and interterritorial co-operation at the level of the state (or the regions, as appropriate), with a view to creating within the Council of Europe an informal network through which to request and share information and documentation;
- In co-operation with the associations of local authorities at nation-

al and European level, to develop and promote the use of training methods and tools aimed at enhancing the capacity of local authorities to engage in sustainable transfrontier co-operation initiatives;

- To continue the work engaged in the Council of Europe with a view to adopting a third protocol to the Madrid Outline Convention, regulating the euroregional co-operation groupings (ECG).

Furthermore, we commit ourselves:

As concerns the *acquis* of the Council of Europe:

To give the fullest possible implementation to the relevant norms and recommendations, at central state and local and regional levels, and to this end, to:

- ensure translation into the official language(s) of our respective states;

- publish and disseminate the texts concerned and organise promotional events on them;

- collect feed-back from relevant actors about the implementation of the *acquis* and report to the intergovernmental bodies of the Council of Europe in order that experiences are shared, lessons drawn and the *acquis* is constantly updated and improved.

As concerns the information base of the Council of Europe

- To promote awareness and make use of it wherever appropriate, through

- translation of the parts most relevant to our respective administrations, associations of local authorities and citizens;

- facilitated access to it by relevant actors;

- further input to be provided to competent bodies of the Council of Europe.

As concerns participation in the work of the Council of Europe:

- To review the working methods and procedures in force in our respective national administrations so as to ensure that our participation in the intergovernmental co-operation in the Council of Europe reflects the priority we attach to it;

- To share our experiences with a view to identifying good practices in this regard and keeping them under review.

Appendix 3

2.6.3 Statement of the Budapest ministerial conference on regional self-government

We, the European Ministers responsible for Local and Regional Government, meeting in Budapest on 24-25 February 2005 for our 14th Conference,

Having heard the report by our colleague Mr Hannes Manninen, Minister of Regional and Municipal Affairs of Finland, on the work carried out after our 13th Session in Helsinki on the legal instruments on regional self-government,

Having taken note of the invitation sent to the Conference by the Committee of Ministers of the Council of Europe,

Acknowledge the valuable work carried out by the CDLR, at the request of the Committee of Ministers, in response to our expressed wish, in preparing two draft legal instruments on regional self-government;

Recognise that neither of the two draft legal instruments currently has the degree of political support necessary for adoption;

Express the shared understanding that the existence of diverging views on the legal instrument does not in any way reflect on the value of regional self-government as such;

Having regard to the Helsinki Declaration, adopted at our 13th Session (27-28 June 2002) and to the final document of the Ministerial meeting on the role of the regions in the European Union (Rome, 16-17 October 2003), stress the importance of regional self-government and the fact that it can represent an enrichment for democratic societies, can help address new challenges of good democratic governance and, depending on circumstances, can respond to the need to deal with public affairs as close to the citizen as possible;

Reaffirm that regional self-government, like any other level of government, must respect democratic principles of organisation and operation and, in this regard, recall the specific principles endorsed by the Helsinki Declaration;

Accordingly recommend that the Congress of Local and Regional Authorities monitor developments in the field of regional self-government across the continent, having regard to the above-mentioned principles;

Note the *ad hoc* terms of reference given to the CDLR by the Committee of Ministers to “monitor developments in regional self-government across member states during the years 2005 to 2007 and by June 2008 report on such developments to the Committee of Ministers, identifying in particular innovations and any issues common to a number of states”;

In view of our agreement to hold the 15th Session of our Conference

in Spain in Autumn 2007, request the Committee of Ministers to instruct the CDLR to produce a substantial report on such developments, innovations and issues and communicate it to that session.

2.7 European Charter for Border and Cross-Border Regions

New version

Gronau, 7th October 2004

2.7.1 Preamble

Borders are “scars of history”. Cross-border cooperation helps to mitigate the disadvantages of these borders, overcome the peripheral status of the border regions in their country, and improve the living conditions of the population. It encompasses all cultural, social, economic and infra-structural spheres of life. Having both knowledge and an understanding of a neighbour’s distinctive social, cultural, linguistic and economic characteristics - ultimately the well-spring of mutual trust - is a prerequisite for any successful cross-border cooperation.

The wide range of problems and opportunities on both sides of borders in Europe makes cross-border cooperation indispensable. It helps to realise the principles of international law in a cross-border and regionally limited area: regional and local cooperation below the government level, between various social partners and segments of the population across international borders, promotes peace, freedom, security and safeguarding of human rights and encourages the protection of ethnic and national minorities. Border and cross-border regions are thus building blocks and bridges in the process of European unification, on behalf of the coexistence of European populations, including minorities. After all, some 32% of the population in more than 40% of the territory comprising the enlarged EU live in border regions. The European Policy makes allowance for this fact through considering all border regions (on external and internal borders) as European priority and through funding.

Subsidiarity and partnership amongst local, regional, government and European levels are also, more indispensable than ever before in cross-border cooperation. The positive experience gained through past practical, grass-roots cross-border cooperation within the European Union and in the member countries of the Council of Europe must again be used to boost fast-growing cooperation between and amongst the new EU Member States and the EU’s old and new external borders with its neighbours outside Europe to the East and the South.

This Charter is therefore consistent with the values and objectives of the Treaty on European Union and the new EU Constitution.

2.7.2 Historical and political background

1. Historical background

Europe today is characterised by its shared culture and history. Until the 17th century in particular, a patchwork of historical landscapes was formed. The 18th century, with its dynamic development in industry and politics, formulated concepts like the rule of law, human rights, basic rights and free enterprise. In the 19th and 20th centuries, the nation state developed as the predominant entity in the context of tensions between regions. Many of the new borders of these nation states, often the result of wars, became 'scars of history' that cut through Europe's historical landscapes with their regions and ethnic groups, whereas the latter never ceased to exist.

2. Political background

The traditional concept of national border often developed out of a protective function. From a legal standpoint, borders represent a line where the sovereignty of states ends.

Border strips of varying width arose in the era of nation states and their military conflicts, and also out of fear of military incursions. These typically had a peripheral status in many of their nation's spheres: the economy, transport, culture and population density often declined as one moved from the centres of a state to the border. With a few exceptions, this turned the border regions into structurally weak areas with non-existent or inadequate development in terms of roads and railways.

Fostered by the growing communication possibilities of transport modes, publications, later radio and telephone, and today the Internet, there is an almost inevitable gravitation towards national centres and ideas. To this day, the idea of the nation state continues to define culture, economics, society and politics. This trend has become particularly evident in Europe's border regions, and has led to losses of identity particularly where populations have shared cultural, linguistic, demographic and historical ties for centuries, despite new national borders.

As a result, from Southern through Central and Eastern Europe to Scandinavia and Ireland we find an abundance of typical border regions which in principle are often afflicted with the same problems. Generally they lie next to a border region in the neighbouring country which is similarly burdened with problems.

After the Second World War, Europe's municipalities, regions and

countries set about unscrambling these problems, which had evolved in the course of history but were often unjustified in cultural terms. The Council of Europe and the European Union grew into platforms for seeking understanding. Until the end of the 1980s the countries and regions situated in the eastern part of Europe remained shut off from this political development by the Iron Curtain. Until then, many borders with the countries of Central and Eastern Europe served to warn us of borders' almost impermeable barrier function (hence the term Iron Curtain) which can be politically motivated.

Since late 1989-1990, various processes have been under way in Europe. At first sight they appear to differ, but they are in fact closely related in terms of their content, politics and economics, and include:

- the dismantling of EU-internal borders with the realisation of the European Single Market;
- the shifting of EU-internal borders right up to the European Union's external borders, and thus to the external borders it shares with third countries;
- efforts to establish intellectual, political and economic contacts beyond the EU's new external borders with non-EU countries, such as Switzerland or Norway, the applicant countries to the EU, or non-Member States in the East, the Balkans and the Mediterranean;
- the fact that following the accession of 10 new Member States to the EU on 1 May 2004, most of the current external borders became new internal borders and new external borders appeared, primarily in Eastern Europe but also in the Mediterranean.

All border regions in Europe are directly affected by all of these developments, both on the EU's internal borders and on its external frontiers, where they are having to come to terms with a wide range of new tasks.

Today's, borders have largely lost their previous function of blocking off nation states from each other, even though there remain massive, clear economic, social and legal differences on the borders within the European Union and on the external borders of the enlarged Union to Eastern Europe and the Mediterranean which render cooperation much more difficult.

In many border and cross-border regions the empty spaces created around borders continue to exist. They are often still areas that serve as brakes to Europe's integration. It must also be borne in mind that many border regions in Europe are not only separated by a national border, but often also face special problems due to additional geographical features like rivers, seas, oceans and mountain ranges.

The previous national peripheral status of many border regions can only be transformed into a favourable situation within Europe when all economic, social, cultural, business, infrastructural and legal barriers are dismantled and Europe has been integrated into a single, diverse entity. Border areas on the periphery of Europe can also be freed from their isolation by establishing better connections. Border and cross-border regions thus as-

sume a bridge function and become touchstones of European unification and of a viable neighbourhood on the Union's external borders.

3. Economic background

The growing exchange of goods over a large area and the free movement of people, labour, services and capital, both between EU Member States and worldwide, are particularly affecting European border and cross-border regions.

Throughout Europe, the peripheral location of border regions within their respective country, and sometimes also in Europe, frequently leads to imbalances in comparison with the degree of economic concentration in central regions. Sometimes such imbalances (markedly different economic structures and income) are flagrant, as is the case in Southern, Central and Eastern Europe, or on the EU's external borders. In other cases, they only become clear on closer inspection, as for example in Western Europe's border regions that are grappling, say, with the consequences of previous one-sided structural and industrial development or the continuing lack of economic trade extending beyond a border.

The growing concentration effect of labour, services and capital in Europe's industrial centres must be counteracted through coordinated European and national policies, in particular through European spatial development, regional and transport policies and territorial cohesion in future EU policy.

The situation of border and cross-border regions in Europe is characterised by a wide range of economic barriers and imbalances on the internal and external borders of the European Union and in Eastern Europe itself.

Economic centres in border areas are often cut off from part of their natural hinterland across the border, which effectively distorts the possible structure of trade and services. For decades, the transport infrastructure in border areas has suffered from inadequate area-wide connections. Where major infrastructure is being created today in border areas, in most cases this is happening decades later than in comparable areas in the same country's interior. Where such infrastructure is still lacking, there is also a lack of physical prerequisites for cooperation and for future-oriented cross-border development.

As a result, border and cross-border regions still frequently have to struggle with a shortage of alternative and high-quality jobs and of national and cross-border educational facilities, and face disadvantages when taking up work in the neighbouring country, and a non-transparent cross-border labour market.

Companies in border areas frequently lack adequate knowledge of

market possibilities, export opportunities and marketing resources across the border. They complain about the limited possibilities for exploiting research and development on the other side of the border and crowding-out effects due to better competitive conditions in the neighbouring country. Furthermore, access to public contracts and research and development programmes across the border is frequently limited. At the same time, it must be noted that these problems vary in intensity from one border region to another, and that some of them are tackling and counteracting these problems in sub-sectors, albeit with varying degrees of success.

The public primarily expects the border and cross-border regions to provide solutions to all these problems, but these regions are not primarily responsible for their causes. As a result, the problems that still exist in Europe continue to be concentrated at its borders, with particularly clear differences arising from, for example:

- different administrative structures and competences;
- dissimilar fiscal and social legislation;
- the fact that it is hard to establish cooperation amongst small and medium-sized enterprises, which lack cross-border supplier and sales markets that have developed over time;
- different spatial planning and planning laws;
- varying environmental and waste legislation;
- unresolved everyday border problems and absurdities;
- currency disparities (especially on the EU's external borders!);
- different transport systems, which are not geared to the requirements of the cross-border internal market;
- diverging labour markets, wage structures and social systems at external borders, which threaten to become sources of conflict and turn into explosive issues;
- a loss of security through opening borders (cross-border police cooperation has not been assured in the past in legal and organisational terms);
- growing cross-border tourism in conflict with nature conservation and protection of the environment;
- existing and future misinvestments in the service sector and social sphere due to inadequate cross-border trading areas and legal and financial barriers;
- difficulties in cross-border vocational training, which creates a lasting barrier to an open European internal market and a cross-border labour market;
- prejudices, stereotypes, and inadequate empathy and understanding for the different characteristics of one's neighbours, which exist on both sides of borders.

2.7.3 Objectives of cross-border cooperation

1. The new quality of borders: meeting spaces

The 'human face' of European policy can show itself to its best advantage in places where the will to cooperate is vitally necessary and is put into practice, namely in border regions. Here, a 'back-to-back' existence must be transformed into a 'face-to-face' relationship by dismantling barriers and impediments at borders.

Nowhere is the need to overcome obstacles and barriers created by borders, which can then reoccur due to national laws despite the existence of the EU, more apparent than in the border regions of neighbouring countries. Something that is 'European theory' for someone living in the interior of a country often represents daily practical experience for citizens living in a border area who suffer the consequences of the border's existence and therefore want to see the causes of those difficulties removed. The willingness of citizens, communities and regions to seek cross-border solutions together does not entail any intention to shift borders or do away with nation states' sovereignty. The sole aims are to heal the 'scars of history', enable the population in the vicinity of borders to cooperate more effectively in all areas of life, improve living conditions for border residents and realise 'a citizens' Europe'.

Consequently, the goal of cooperation in border and cross-border regions is not to create a new administrative level, but instead to develop cooperative structures, procedures and instruments that facilitate the removal of obstacles and foster the elimination of divisive factors. The ultimate objective is to transcend borders and reduce their importance to mere administrative boundaries. In the context of ongoing European integration and stronger area-wide economic cooperation in the 'new' Europe, the people in border regions will then also be able to assert their right to equal living conditions, free movement and improved mobility at the de facto interfaces of European integration. Deciding for the success of cross-border co-operation is apart from treaties, EU regulations, loan programs and co-operation structures the political will of national governments and also of the regional / local authorities.

2. Smoothing out the interfaces of European spatial development policy

Spatial development today is considered synonymous with the deliberate organisation of the relationship between Man and his environment. In border and cross-border regions it includes the guiding principles of the sustainable arrangement and development of space and the means to achieve

this in countries and regions on both sides of a border. The spatial development policy of the member countries of the Council of Europe and the EU Member States must attach a high importance to cross-border cooperation (through the European Regional Development Charter, European Spatial Development Plan (ESDP), and CEMAT Guiding Principles on sustainable development on the European continent). The inclusion of territorial cohesion in future EU policies presents significant opportunities for implementation, including especially in border regions.

3. Overcoming border-related disadvantages and exploiting opportunities

Improving infrastructure

For border and cross-border regions that are still having to suffer as a result of their peripheral location in their country, and often in Europe as well, the construction and expansion of roads, railway links, airports, shipping routes and ports is vitally important. These create the necessary preconditions for cross-border cooperation. Within the context of the Trans-European Networks, new international and national connections must endow border and cross-border regions with region-specific links and enable them to use area-wide infrastructure, particularly with a view to eliminating border-related bottlenecks whilst contributing to the internal development of border areas and their connection to national centres.

But international connections must not turn border and cross-border regions into mere transit zones. When transport infrastructure is built or expanded, consideration must be given to the interests of the people affected and the requirements associated with protecting the environment, nature and landscapes. Consequently, transport infrastructure projects may only be carried out with the equal participation of the border and cross-border regions affected.

For the future development of border and cross-border regions on the EU's external borders and in Central and Eastern Europe in particular, the development of telematics and communications is presenting the border regions in question with some ground-breaking opportunities to escape their national (and sometimes also European) peripheral status and wipe out the traditional disadvantages due to their marginal location.

Promoting locational quality and common economic development

In the framework of Europe-wide disparities, in addition to territorial cohesion, cross-border cooperation is helping in particular to eliminate economic imbalances and obstacles in neighbouring border regions in a re-



gionally manageable framework, in partnership with national governments and European authorities.

Whereas cross-border infrastructure frequently does no more than create the preconditions for economic cooperation, a coordinated economic and labour market policy must directly improve regional and economic development on a cross-border basis.

Consequently, regional economic policy in border and cross-border regions should promote a dismantling of border-related differences in development and be integrated into the basic goals of national and European policies (for example, agricultural, structural, economic, spatial planning, regional and social policy objectives, and so forth). 'Regional cross-border development concepts' and 'operational programmes' must be drawn up and updated by the border and cross-border regions as bases for their joint development and then supported by national governments and the EU.

Cross-border programmes must serve to achieve concrete measures and projects that improve the cross-border cooperation of small and medium-sized enterprises, develop new cross-border relationships between producers and suppliers, eliminate border-related competitive disadvantages (as seen in public and private tendering procedures, administrative barriers and social dumping), promote cross-border vocational training and the mutual recognition of respective national qualifications, and enable a genuine cross-border labour market, the operation of cross-border enterprise zones and the creation of cross-border supply and waste disposal facilities (for example, for rubbish and water) as well as of cross-border health care.

4. Improvement of cross-border protection of the environment and nature

Air, water and natural development do not stop at borders. As a result, effective environmental protection and nature conservation extending beyond borders is needed, and should be incorporated into a cross-border spatial planning model. Active landscape design in border and cross-border regions requires a joint approach just as much as the elimination of cross-border problems to do with air and water pollution, waste reduction, recycling and clearance, noise abatement, and flood-prone river basins. In so doing, attention must be paid to the substantial differences in environmental protection and nature conservation and the resultant priorities in individual border and cross-border regions.

5. Promotion of cross-border cultural cooperation

Overcoming mistrust and developing mutual confidence and grassroots connections are key elements in any cross-border cooperation. Cross-border cultural cooperation is vitally important as an essential prerequisite

for any further confidence-building measures. A knowledge of the entire cross-border region and its geographical, structural, economic, socio-cultural and historical conditions is a precondition for the active involvement of citizens and all other partners. It is also closely related to social and cultural encounters across borders.

6. Making realities of subsidiarity and partnerships

Europe is characterised above all by its regional diversity. This should be seen as an advantage. Its unique, regionally evolved features and structures must be taken into account, preserved and developed further as we build the common European house and engage in growing cross-border cooperation in all domains.

Regional identity within countries and Europe can be considered a building block of a European Union at regional level too. Along Europe's frontiers, border and cross-border regions serve a valuable bridging function, and because they touch on people's daily lives they offer promising opportunities for development. As a result, they should be supported and promoted by all national and European institutions and political forces even more than before.

The border and cross-border regions are willing and able to make an important contribution to the broadest and most intensive possible familiarisation and interconnection for the purpose of European integration, whilst preserving their rich cultural diversity. Cross-border cultural cooperation also promotes understanding for ethnic and national minorities and the necessity of finding solutions to their problems. It thus makes an important contribution to tolerance and international understanding. Political and administrative authorities and the press, radio and television must create the conditions required for good relations between neighbours and help to break down prejudices.

Building on the plans and measures of municipalities and on the terms of reference of state planning and European concepts of development, border and cross-border regions are driving forces of regional cross-border development.

Achieving partnership and subsidiarity through improved coordination and intensive cooperation amongst local, regional, national and European decision-makers is indispensable for resolving the problems of the border and cross-border regions and exploiting existing opportunities in an optimal manner.

As a result, what we need are cross-border networks at regional and local level that not only enable economic and infrastructure cooperation, but also promote socio-cultural cooperation by dismantling barriers; for example, in the social sector, in education, in language training, in daily border problems and in cultural understanding, thereby building up mutual trust.

Consequently, in all parts of Europe, cross-border cooperation is an urgent task for the future, that must be tackled with an equal measure of caution and energy. Sustained solidarity with the particularly disadvantaged

border and cross-border regions of Europe is absolutely indispensable in this context.

2.7.4 The added value of cross-border cooperation

European added value arises from the fact that in the light of past experience, people who are living together in neighbouring border regions want to cooperate and thereby make a valuable contribution to the promotion of peace, freedom, security and the observance of human rights.

Political added value involves making a substantial contribution towards:

- the development of Europe and European integration;
- getting to know each other, getting on together, understanding each other and building trust;
- the implementation of subsidiarity and partnership;

- increased economic and social cohesion and cooperation;
- preparing for the accession of new members;
- using EU funding to secure cross-border cooperation via multiannual programmes, and ensuring that the necessary national and regional co-financing is committed in the long term.

Institutional added value entails:

- active involvement by the citizens, authorities, political and social groups on both sides of the border;
- secure knowledge about one's neighbour (regional authorities, social partners, etc.);
- long-term cross-border cooperation in structures that are capable of working efficiently:
 - as a vertically and horizontally functioning partnership, despite having different structures and areas of responsibility;
 - as a legally accepted target of aid and a working partner, receiving and administering funds;
- joint drafting, implementation and financing of cross-border programmes and projects.

Experience gained throughout Europe shows that jointly developed cross-border programmes and projects can be most effectively implemented and realised if the regional and local partners play a considerable role.

The **socio-economic added value** becomes apparent in the respective regions, albeit in different ways, through:

- the mobilisation of endogenous potential by strengthening the regional and local levels as partners for and initiators of cross-border cooperation;
- the participation of actors from the economic and social sectors (for example, chambers of commerce, associations, companies, trade

unions, cultural and social institutions, environmental organisations and tourism agencies);

- the opening up of the labour market and harmonisation of professional qualifications;

- additional development, e.g. in the fields of infrastructure, transport, tourism, the environment, education, research and cooperation between small and medium-sized enterprises, and also the creation of more jobs in these areas;

- lasting improvements in the planning of spatial development and regional policy (including the environment);

- the improvement of cross-border transport infrastructure.

Socio-cultural added value is reflected in:

- lasting, repeated dissemination of knowledge about the geographical, structural, economic, socio-cultural and historical situation of a cross-border region (including with the media's help);

- the overview of a cross-border region afforded in maps, publications, teaching material, and so on;

- the development of a circle of committed experts (multipliers), such as churches, schools, youth and adult educational establishments, the conservation authorities, cultural associations, libraries, museums, and so forth;

- equal opportunities and extensive knowledge of the language of the neighbouring country or of dialects as a component of cross-border regional development and a prerequisite for communication.

In this way, cultural cross-border cooperation becomes a constituent element of regional development. Only if socio-cultural cooperation takes place is a workable cross-border environment for business, trade and services established.

2.7.5 Cross-border cooperation as a European task and one of the EU's political objectives

Borders are the scars of history. We must not forget these scars, but we should not cultivate them when taking the decisions that will decide the future of Europe.

The diversity of Europe is regarded as an asset. It is an asset that should be cultivated and promoted. This diversity is reflected in the social and cultural life of all states and regions of Europe. Over the centuries these various cultures and social systems have led to the formation of certain administrative structures and powers, fiscal and social legislation, and many other different areas of political activity (e.g. spatial planning, economic support, media landscapes, etc.).

Our citizens have grown up in these different social and cultural environments. They will not always wish to sacrifice aspects of their everyday lives for the cause of European harmonisation, particularly where this would result in the loss of Europe's diversity.

Despite the reduction of barriers along the EU's internal and external borders, these different social and cultural environments (including the various administrative structures and systems) will continue to exist for many decades to come, and will encounter each other at borders.

No state in Europe - inside or outside the EU - will alter its tried and trusted structures, competencies and powers on account of the problems that arise in border regions. Furthermore, no state is able to draft its laws in such a way that they harmonise with all the neighbouring states on its borders.

The consequences will be felt for a long time: economic, social and legal problems, and obstructions to cooperation affecting the population on either side of each border.

Bilateral or trilateral cross-border cooperation at regional/local level will therefore remain a necessity over the long term, not just in order to prevent cross-border conflicts and overcome psychological barriers, but, above all, in order to facilitate partnerships that will balance and reconcile these differences, through Euroregions and similar structures. Partnerships of this kind need to be cultivated within regions, with all the often very different social partners on either side of each border, and externally, with national governments.

The sovereignty of the state ends at its borders. However, the differences and problems at these borders continue to exist, and require sustainable solutions that should be supported nationally and on European level. The European Constitution Treaty (III-Art. 116) and the European Cohesion Policy make allowance for this fact through regarding the cross-border cooperation as one of the three European priorities.

Cross-border cooperation is therefore first and foremost a **European task** and **political objective of the European Union** that needs to be implemented regionally/locally in partnership with the national authorities on the spot.

2.7.6 Outlook

The Charter on European Border and Cross-Border Regions reflects an awareness of the historical background and of the responsibility for the future of a Europe that is growing closer together and in which border and cross-border regions play a decisive role. They are becoming touchstones for:

- peaceful human coexistence, including respect for diversity and the rights of minorities;
- respect for the principles of partnership and subsidiarity;
- the active participation of citizens, politicians, authorities and social groups in cross-border cooperation;

- reconciliation, tolerance and equality, in spite of any differences between the respective partners;
- a new neighbourhood on the EU's external borders;
- social, cultural and economic interwoven cooperation, extending as far as cross-border integration, without undermining state sovereignty;
- a citizens' Europe where people feel at home in their regional diversity.

To travel down this road towards a 'Europe without borders' in the 21st century, joint action by the European Union, the Council of Europe, the OSCE, national governments, regions and the local level is every bit as essential as mutual solidarity between border and cross-border regions. This Charter addresses all the partners who are participating in shaping this process of the future, so it is particularly aimed at the border and cross-border regions themselves, as driving forces behind such development.

Adopted on:

20 November 1981, EUREGIO, Germany/Netherlands (authors: Jens Gabbe, Dr Viktor von Malchus) amended on 1 December 1995, Szczecin, Euroregion Pomerania, Poland/Germany amended on 7 October 2004, Szczecin, Euroregion Pomerania, Poland/Germany

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3. Analysis

3.1 Regionalisation and its Effects on Local Self-Government

Report by the Steering Committee on Local and Regional Authorities (CDLR) prepared with the collaboration of Professor Gérard Marcou²² Local and regional authorities in Europe, No. 64, Council of Europe Publishing

Introduction

This report deals with the importance of regionalisation in the political and administrative organisation of European states, particularly from the angle of its relations with local self-government.

The popularity of the theme of regionalisation and the concept of the region contrasts with the elusiveness of a satisfactory definition of regionalisation and the region. The traditional concept of the region originates in human geography: it refers to an area defined by a number of physical, climatic and human features showing some degree of temporal stability. As a political or administrative unit, on the other hand, it is a relatively recent concept, if one considers that the 19th century regionalist movements were backward-looking and had no immediate successors.

Italy was long the only country whose constitution provided for the institution of regions (although the “ordinary-status” regions were only introduced in 1970), while in France the region was merely a geographical area delimited for the purposes of implementing the government’s regional development policy. Most European states were unitary, with local authorities which had some degree of autonomy within the limits established by law. The few federal states (Germany, Austria and Switzerland) were exceptions²³.

Nowadays, the regionalisation theme has become so familiar that sometimes the peculiarity and ambiguity of the regional institution are over-

22 Gérard MARCOU, Expert for local and regional democracy, Professor of University of Lille II and University of Paris, associate of Concil of Europe, Director of GRALE.

23 The eastern European federal states (USSR, Yugoslavia, and Czechoslovakia from 1969 onwards) are deliberately left aside, as they no longer exist and should be discussed in a different context.

looked. It is completely absent from the legal systems and institutions of many countries, and other states implement such widely diverging conceptions that it would seem virtually impossible to squeeze them all into one category. Lastly, there is the question of the relationship between regions and federalism: can federate states be equated with regions?

It was apparently the reforms attempted or implemented in the 1970s which shifted regionalisation to the centre of political debate²⁴ by casting it as a manifestation of the “crisis” in the nation-state inherited from the 19th century, of which France was the archetype. This decade saw the implementation of regionalisation in Italy (1970), the emergence in the United Kingdom of the plan for devolved regional assemblies in Scotland and Wales, which was finally rejected in the 1979 referendum, the beginning of Belgian regionalisation with the constitutional reforms of 1970 and 1980, which introduced the language communities and two regions, the French regionalisation process of 1972, which had supplanted a more ambitious project rejected in the April 1969 referendum, and the establishment of the Autonomous Communities in Spain under the 1978 Constitution. The accumulation of these reforms, against very different political and institutional backgrounds, alerted the public more to the apparent massive spread of the regional phenomenon than to the differences among the reforms. As a result of this development and in view of the already existing federal states, the traditional unitary state seemed henceforth to be the exception, and progress in European construction seemed to confirm their obsolescence.

Yet none of these reforms could be seen as part of the process of European construction. In addition to the fact that the European treaties disregarded sub-national entities, whatever their legal status, all the attempts at “regionalisation” were responses to problems and situations peculiar to each of the countries in question²⁵: the language problem in Belgium, the response to the electoral successes of the Scottish and Welsh nationalist parties in the United Kingdom, the attempt to break the deadlock in the Italian political system at central level as an indirect consequence of the crisis in the late 1960s, and the response to the need for decentralisation in France.

However, the process of European integration soon began to play a major role in revitalising the region concept. With the introduction of the European regional policy in 1975, Community construction could be directly implemented at the local and regional levels, and the rapid growth of structural funds stimulated local and regional authority interest in Europe. The

24 See the introduction by Yves Meny (pp. 5-21) to: Meny, Y. (ed.) (1982) *Dix ans de régionalisation en Europe. Bilan et perspectives 1970-1980*, Cujas, Paris.

25 See Portelli, H. (1993) “Aux origines de la décentralisation dans les Etats européens: l’absence de prospective européenne” (The origins of decentralisation in European states: the lack of a forward-looking European approach), pp. 17-19, in Portelli, H. (ed.), “La décentralisation française et l’Europe”, Ed. Pouvoirs Locaux, Boulogne-Billancourt.

Commission divided up the territory into statistical areas in order to assess regional economic situations (the NUTS I, II and III nomenclatures).

Since Community policy in this area was aimed at remedying or preventing regional imbalance and therefore helping economically handicapped regions, it allowed the regions (and in fact any authority capable of representing the areas in question) to promote regional interests. Community regional policy triggered the setting up of all the current associations of regions, aimed at lobbying the Brussels Commission.

From 1980 onwards the Community's budgetary crisis led to a decrease in the relative size of the Common Agricultural Policy within the EEC budget, while the accession of Spain, Portugal and Greece caused an increase in the overall budget earmarked for regional policy, and eventually led to its confirmation in the Treaty on the occasion of the 1987 Single European Act. However, the successive reforms of regional policy and the structural funds in 1979, 1985 and 1988 not only resulted in an increase in their budgets, but they also considerably increased the Commission's assessing and decision-making powers as compared with the national governments.

This development stimulated competition not only between states but also between regions or groups of regions for the apportionment of regional policy resources.

The regions, or the authorities in charge of regional interests, established offices in Brussels; increasing numbers of associations of regions were set up (peripheral maritime regions, traditional industrial regions, central Alpine regions, western Alps regions, wine-growing regions, national capital regions, etc.); this culminated in a demand for participation in the institutions, to which the Maastricht Treaty responded by setting up the Committee of the Regions.

The Assembly of European Regions was founded in 1995 by amalgamating these interregional organisations with the regions which were members within the meaning of its statutes; its aim is to "reinforce the representation of the regions with the European Institutions and facilitate their participation in the construction of Europe and Community life in all fields relevant to them" (Article 2 para. 2) and to step up interregional co-operation²⁶; in 1994 it had 250 members, only two thirds of which were from European Community member states.

Above and beyond its socio-economic objectives, therefore, Community regional policy has had a major impact on the institutions. Firstly, it has promoted the setting up of new networks of operators who are to some extent independent from the prevailing inter-governmental rationale.

26 In fact the Assembly of European Regions was the successor of the Council of European Regions, after the latter's statutes were amended in 1987. It is an association established under Alsatian law and based in Strasbourg. Its statutes are published, together with those of various other organisations, in: Luchaire, Y./Dolez, B./ Vantroys, A. (1992), *Les relations extérieures des régions françaises*, Ministry of the Interior, *La Documentation Française*, Paris.

Secondly, it has legitimised the Community institutions within the local and regional authorities and facilitated recognition of the regional dimension in the national institutions, thus making the region a kind of common institutional reference point, despite the fact that there is no European conception of the “region”.

This development highlights a common overall trend in the regionalisation process, though this trend covers such a wide variety of institutional forms that it is still impossible to identify a “region” concept shared by all European countries, or even all European Union member states. The only possible definition is so general in nature as to completely obscure the region’s specific institutional status.

This applies to the definition given in the statutes of the Assembly of European Regions, which refers to the criteria adopted by the European Community and the Council of Europe: “local authorities immediately below the level of central government, with a political power of representation as embodied by an elected regional Assembly; failing this, it may be substituted by a group constituted at regional level or a body of the local authorities”.

This definition is purely descriptive and has the disadvantage of grouping under the same heading such different entities as the German *Länder*, the Dutch provinces, the French regions, the Swedish counties and even the new “unitary councils” set up as a result of the latest territorial reform which is currently being implemented in the United Kingdom.

It also has the drawback of labelling different entities in one and the same state as regions, depending on which administrative reforms the state introduces: e.g. French departments corresponded to this definition before the Law of 5 July 1972 introducing the regions.

In the Netherlands the term “region” is applied to administrative districts below the provincial level or the “metropolitan regions” within the meaning of the general principles act of April 1994.

The scientific label adopted by Jim Sharpe, namely the “meso government, which was selected to prevent confusion with the region²⁷, has the advantage of designating the intermediate level(s) of the state’s territorial organisation as that or those in which the most significant developments are taking place, though without creating an impossible category.

This is why it does not seem possible to advocate a single model or any specific conception of the region. On the other hand, a method of dealing with the regional dimension of the various issues and providing institutional responses consistent with the political and administrative situation in the individual countries might be proposed.

In the light of the comparative work conducted by the CDLR’s Committee of Experts on Regionalisation, this approach can be based on accu-

27 Sharpe, L.J. (1993) “The European Meso: an Appraisal”, p. 1, in Sharpe, L.J. (ed.), “The Rise of Meso Government in Europe”, Sage, London.

rate analysis of the different forms of regionalisation encountered, drawing on the experience of countries selected on the basis of the diversity of their institutional experiments and traditions and taking account of any reforms planned or under discussion.

This report is a summary of this work. It draws on an explanatory report prepared by Professor De Bruycker and Professor Nihoul and nine national reports from the following countries: France, Germany, Hungary, Poland, Portugal, Sweden, Switzerland, Spain and United Kingdom. Where necessary, other countries or authors will be referred to in footnotes.

3.1.1 Regionalisation and regions

If both the general trend towards regionalisation and the irreducible heterogeneity of intermediate levels of territorial organisation in European countries are to be taken into account, one must endeavour to clarify the relationship between the concepts of regionalisation and region (§ 1).

This clarification can then be used to distinguish between and describe the different forms of regionalisation (§ 2), before placing them back in their context (§ 3).

1. Definitions

The regionalisation concept is generally understood in a narrowly institutional sense. It therefore contrasts with regionalism, which is a political or ideological movement²⁸.

Regionalisation is generally understood as the creation of a new level in a state's territorial organisation; the new institutions can vary widely in terms of bodies, responsibilities and powers, but they are always superimposed on the existing local institutions. They could be defined very broadly, including regions which are merely subordinate levels of the central government, or else narrowly, whereby the only expression of regionalisation is the region as a territorial authority, which can be further differentiated according to its constitutional status.

On the other hand, regionalism corresponds to the definition of the region as a set of human, cultural, linguistic or other features which justify turning it into a body politic requiring a greater or lesser degree of autonomy.

The trend towards regionalisation as it is currently emerging in Europe makes these traditional definitions somewhat obsolete, because it is

28 In connection with these definitions, see: 1) on regionalisation: Duhamel, O./Meny, Y (ed.) (1992), *Dictionnaire constitutionnel*, P.U.F., Paris, article "Régionalisation" by Wallon-Leducq, C.M.; and 2) on regionalism: Voss, DH. (1989), *Regionen und Regionalismus im Recht der Mitgliedsstaaten der Europäischen Gemeinschaft*, Peter Lang, Frankfurt/Bern, New York/Paris, particularly pp. 21-51.

even happening in countries which do not intend to introduce a new territorial level and already have elected councils at every level. Regionalisation corresponds more generally to a new interpretation of the state's territorial organisation, and more specifically to a novel approach to the intermediate level and its duties and objectives.

To define regionalisation one should perhaps start from the geographical and economic definitions of the region. Disregarding the theoretical debates on this concept among geographers and economists, a number of virtually undisputed points can be established:

- The region is an intermediate area: it designates an area which is larger than that of local affairs (such as labour or population catchment areas) but is itself part of a greater national or state area.

- While the definition of a region depends on the criteria used, it nevertheless appears that different variables (natural, social, cultural and economic) more or less coincide, so that in the long run specific areas can be identified as regions.

- Economic organisation also has a territorial rationale: when economic operators modify their territorial environment by expanding their activities, the extra resources they pour into it help make the territorial structure more attractive.

- Development is an inter-territorial process which combines differentiation and interdependence between the various levels.

Thus the region can be defined as an intermediate level of territorial organisation of economic relations²⁹. Since development is produced by the combination of the different territorial systems, the opportunities for mobilising the resources of the regional system must be exploited.

Under this definition, the region is a source of potential rather than a framework for action. This potential can be tapped by increasing regional integration, helped along to some extent by regional sentiment. In the economic sense the region is not an institution, it is a simultaneously urban, industrial and political area, i.e. it is characterised by some degree of spatial polarisation by urban centres, industrial resources facilitating intra- and interregional specialisations, and lastly organisational forms which guarantee solidarity, co-ordination and the integration of private and public decisions.

The public institutions must then help ensure that this area functions smoothly. All the European countries are tending, by a variety of means and against differing institutional backgrounds, to resort to regional and local development to support employment and maintain the level of economic activities; increased participation by the citizens and economic groups in defining the main thrusts of public action seems to be a prerequisite for this.

An additional intermediate level in the state's territorial organisation is not a *sine qua non* for tapping regional economic and human potential and energising the regional environment. The main thing is for the public

²⁹ Marcou, G. (1988), *L'aménagement du territoire et les pouvoirs locaux et régionaux face aux mutations économiques*, International Institute of Administrative Sciences, Brussels, p. 17.

institutions to set their sights on these two aims. The public authorities must therefore to some extent encourage regional expression; this would justify referring to a tendency towards “regionalising” the public institutions.

However, one might more generally identify a regionalisation process where the public institutions are established in such a way as to reflect a number of distinguishing features of a region: accordingly, the retention of local law in certain fields and in municipal institutions in both the Alsatian departments and Meurthe-et-Moselle after 1919 is a form of regionalisation which preceded by far the region as an institution.

In order to gauge the scope of this institutional change one must remember that within the state’s territorial organisation the intermediate level is never a mere homothetic transformation of the local (municipal) level. On the contrary, whereas the local level was the direct expression of communities of inhabitants, the intermediate level has always been organised as a relay station for the central authorities; until recently it had never been designed to represent the interests of a political community at this level, but rather to discharge duties relating to general power or administration for the central authorities. This is the thinking behind the French department and the transformations it has since undergone; but it was also the former *raison d’être* of the British counties, and even in the 19th century German states the *Landrat* discharged administrative and judicial duties on behalf of the King in the districts (*Kreise*)³⁰.

Consequently, regionalisation corresponds to a change in the functions of the territorial institutes at the intermediate level. This change may take a wide variety of forms, and may or may not involve a new territorial level. Federalism and regionalisation do not necessarily coincide, because the federal state is formed through the union of several states, and there is no reason why such federate states should correspond to regional entities because of their historical development; they may even have some degree of internal heterogeneity, which is especially conspicuous because the fundamental political loyalty is to the federal state itself. Nevertheless, it should be recalled that federate states see themselves as regions as well, and, as regions, they are represented at the European institutional level.

Accordingly, on the basis of the national reports, a classification of the different forms of regionalisation might be drawn up in order to gain a better grasp of the extent of the phenomenon (§ 2). The enormous variety of these forms and the impossibility of formulating a common conception of the region are therefore explicable not by the change in the functions of the intermediate level which have just been described but by the heterogeneity of political and legal systems, as well as by the combination of divergent purposes (§ 3).

30 Marcou, G./Verebelyi, I. (1993), op. cit. pp 52 and 53.

2. Classification of forms of regionalisation

There are in fact three different types of regionalisation: a) regionalising without creating a regional level; b) regional decentralisation; and c) political regionalisation (or institutional regionalism). Federal states can be classified with one of the three aforementioned types. Each of these types correspond to a different conception of the region, but as shown below several forms of regionalisation can co-exist within a single state. Lastly, the specific position of the federal state in regionalisation will be discussed.

A. Regionalising without creating a regional level

This is a situation or policy met with in both unitary and federal states. It is the most common situation in Europe. In this case regionalisation does not involve introducing a new territorial level but rather tailoring existing institutions to the aims of regionalisation.

The example which is both the most characteristic and the most peculiar is that of the United Kingdom. Regionalism in this country has a long history which started with the unification of four separate countries under the same Crown: England, Scotland, Wales and Northern Ireland, not to mention the special systems in force in a number of islands. This development reflects the particular features maintained by the four countries which in the course of history became united under the English Crown.

These differences are expressed not only in cultural life but also in the administrative organisation and, in the case of Scotland, the legal system, whose basic institutions are extraneous to the Common Law family.

On the other hand England itself has never been regarded as a region, and the country was only subdivided into administrative regions to facilitate the work of the various ministries, except during the fairly short life of the regional economic planning boards (1964-79), which were in fact answerable to the central rather than the local authorities.

In April 1994 Government Offices for the Regions (GORs) were set up, covering the regional departments of four ministries (Environment, Transport, Trade and Industry, and the Employment Ministry's Training and Employment Division), under the responsibility of a regional director. The latter is, in particular, responsible for the Single Regeneration Budget.

The regional offices must work "in partnership with local populations" to develop "competitiveness, prosperity and quality of life" in the regions, and they must liaise with the local authorities, but the directors are answerable only to the Minister for Environment and the other ministers responsible for the programmes implemented by the regional departments.

Where Scotland, Wales and Northern Ireland are concerned, each of these regions is placed under the responsibility of a minister who is a member of the Cabinet and whose actions are scrutinised by a standing

committee of the House of Commons, made up of members of parliament from the region in question. The three regions have different administrative responsibilities; the most important is the Scottish Office.

This is an ambiguous system. On the one hand it ensures genuine participation by the region in question in the political system, and the ministries and parliamentary committees uphold regional interests in government and parliament; on the other hand, they are really just cogs in the government machinery and the ministry must guarantee the implementation of the government's overall policy in its region.

So it is not a form of regionalisation in the sense it has been defined, but rather a special form of devolved regional administration.

The process of local authority reorganisation launched in 1991 even went in the opposite direction from regionalisation, because it was aimed at establishing wherever possible "unitary" local governments, i.e. a system with only one local authority level. This reform was fully implemented in Scotland and Wales, but is meeting with firm resistance in England, where most of the counties in non-metropolitan areas will be retained.

In the European context, the counties, the Metropolitan Districts (after the dissolution in 1985 of the Metropolitan County Councils) and the nine Scottish regions³¹ came forward as the regional interlocutors of the European authorities. The regional ministries also defend their regions' interests in the Commission. The Labour Party victory at the May 1997 election has resulted in specific proposals for regional devolution. The people of Scotland and of Wales will be allowed to vote in separate referendums on proposals to create respectively a Scottish parliament and a Welsh assembly. In the Scottish referendum separate endorsement will also be sought for a proposal to give any parliament defined and limited powers to vary revenue. So far as England is concerned, the government proposes to build on existing arrangements for voluntary co-ordination between local authorities through the establishment of regional chambers. The government also intends, in the longer term, to introduce legislation to allow the people of England, region by region, to decide whether they want directly elected regional government.

Sweden is a unitary state with a two-tier local government system: the municipality and the county. At county level, a local authority and a government department co-exist and co-operate, the latter being under the authority of a Governor. The local authorities, especially the municipalities, have a wide range of powers and huge financial resources.

The prospect of Sweden's accession to the European Community, and then the actual accession, led to a debate on regionalisation, fuelled by the new opportunities for transfrontier co-operation and access to the

³¹ Second local government level, with an elected council, introduced under the 1974 territorial reform.

structural funds. Since 1991 there have been a number of official reports on the adjustments which such a process would necessitate in Sweden's territorial organisation.

It should be noted that while the municipalities have been radically reformed, reducing their numbers from 2 500 in 1952 to a current 278, the map of the counties (totalling 24) is virtually the same as in 1634. However, the organisation of individual counties has greatly changed. Since the 1862 reform counties have had an elected council which is independent from the national government.

Moreover, since 1989 most of the sectoral government departments have been placed under authority of the Governor, though the latter is surrounded by a council whose 14 other members are elected by the county council and which takes the most important decisions, so that in the county the national government is in fact largely placed under the supervision of the county council. However, regional development is still a matter for central government, not the county council.

The position of the county is therefore somewhat ambiguous, but it might be posited that at the institutional level it is fairly strongly oriented towards expressing regional interests, and the county councils are aspiring to a more important role in regional policy, taking the lead from European policies. However, at county level the central government tends to consider the municipalities rather than the county councils as its main partners.

In this connection, a number of approaches have been considered with a view to tailoring the intermediate level to the development of regionalisation. The most radical reform, which was discussed in a 1992 report, is to reduce the number of counties from 24 to between 6 and 12 and to set up in each resultant region both a central government department and a local authority with an elected regional council. This reform would move Sweden into the second type of regionalisation identified, that of regional decentralisation.

Other approaches are currently being advocated, and some could in fact, but would not have to, be combined with the foregoing one:

- reinforcing state responsibility at county level, in line with the concentration of state departments under the authority of the Governor; in fact this model would be going against the interpretation of regionalisation, as defined;
- developing inter-municipal co-operation: responsibilities currently held by the county council or the central government in the county would be transferred to the "super-municipalities" thus created;
- reinforcing regional power by transferring attributions from the central government departments in the counties to the county councils, perhaps accompanied by a reduction in the number of counties (see above).

Measures based on a combination of the second and third approaches were introduced into western Sweden (4 counties) and Skåne (2 coun-

ties) under the 1995 Act. This text defines the possible areas for regional co-operation between local authorities (health, public transport, regional planning and development, industrial development, culture, environment and education); a council made up of representatives of the municipal and county councils has been set up in each region; new responsibilities may be transferred to the counties, but no plans have been announced for new county borders.

In Germany too regionalisation involves co-operation between local authorities in the *Länder*;

consideration has also been given, under the influence of the local authorities, to creating a regional level, but the *Länder* also see themselves as an expression of regional interests and none of them has made much headway in this direction³². Nevertheless, a regional level based on co-operation between local authorities has been introduced in Lower Saxony (7 regions) and Rhineland-Westphalia (regional conferences organised on a voluntary basis).

More generally, however, the larger *Länder* have a type of internal regionalisation based on cooperation between local authorities. No reference is made here to the administrative districts (*Regierungsbezirke*) which exist in 8 of the 16 *Länder* and which form an intermediate level of the central government subordinate to the Land government, but to the regional associations of municipalities which exist in 5 *Länder* and generally cover a larger area than the administrative districts (although in Bavaria the two coincide). They are the expression of historic solidarities and exercise responsibilities in the fields of regional culture, health and social services. An example is the Palatinate association (in Rhineland-Palatinate).

Perhaps even more important are the planning regions, of which there are 113 in 12 *Länder*, though they are smaller than the administrative districts (except in 3 of the *Länder*). They have an average population of 700 000 and an average area of 3 150 km². These associations establish the regional plans provided for in the Federal Spatial Planning (General Principles) Act, which fall under the competence of the state.

However, the local authorities are involved to a greater or lesser extent in formulating the regional plans, an involvement which is justified by the fact that such plans are a prerequisite for obtaining urban planning documents. For instance, in the *Länder* of Baden-Württemberg, Bavaria, Lower Saxony and Rhineland-Palatinate regional planning is entrusted to decentralised structures operating under the supervision of the Land, the

³² On regionalisation in Germany see the following additional sources: Marcou, G (1995), "L'évolution récente du fédéralisme allemand sous l'influence de l'intégration européenne et de l'unification", RDP No. 4, pp 883-919 (particularly pp 912-914); Seele, G (1994), "Staatsaufbau, Raumordnung and raumwirksame Fachpolitik", pp. 28-70 (particularly pp. 35-38), in Akademie für Raumforschung und Landesplanung, *Conditions institutionnelles d'une politique européenne de développement spatial*, Verlag der ARL, Hanover.

regional planning association (representing *Kreise* and towns with *Kreis* status) or, in Lower Saxony, the *Kreis* itself. In three of the *Länder* an elected body representing the local authorities decides on the regional plan drawn up by the intermediate-level Land government (*Regierungsbezirk* - administrative district).

The local authorities and their representative organisations at Federal and Land level are responsible for co-ordinating and representing regional interests, drawing on their proximity to the population and the fact that in the federal system the Land is the state and it is not responsible for representing regional interests; in fact it corresponds to the NUTS I level in the Community's nomenclature. They are particularly opposed to the predominance of the *Länder* and their governments in the German delegation to the Committee of the Regions set up under the Maastricht Treaty.

However, in Switzerland, a Federal state made up of small units, the regionalisation process is leading to the development of inter-cantonal co-operation. Switzerland has a greater degree of regionalism than Germany, a phenomenon which is inherent in the cantonal identity. Swiss regionalism is fuelled by Switzerland's geographical, linguistic and religious diversity, as shown by the conflicts which led to the creation of the Jura canton in 1978 and the fact that most of the cantons have retained the same boundaries throughout history. This has preserved a number of regional idiosyncrasies, although in the course of time many responsibilities have transferred to the Federation.

Nevertheless, the imperatives of spatial planning and economic development are currently giving rise to new alliances or solidarities, at both the intra- and the inter-cantonal levels. The public authorities are able to organise and adopt economic production areas extending beyond the boundaries of their political territory³³. The formation of urban areas based on co-operation between municipalities and inter-cantonal groupings illustrate this facility and correspond to a type of regionalisation for essentially economic reasons.

The inter-cantonal groupings which have very gradually grown up since the late 1960s are primarily aimed at counterbalancing the predominance of Zurich canton, which, precisely, belongs to none of these organisations; they are the Alemannic Area, the Mittelland Area, the central Swiss Area, the North-western Area and the eastern Swiss Area. It should be stressed that these are cantonal rather than federal initiatives.

Lastly, in the Netherlands, with its deeply-rooted provincial structure, regionalisation is dominated by the search for an administrative framework suited to the country's unique urban structure. As Kleinfeld and Toonen have noted, the intermediate level does not suffer from its lack of regions; it would be more accurate to say that the intermediate level suffers from institutional "overcrowding".

³³ See the national report on Switzerland.

Rather than the twelve provinces, which play a fairly modest role (their budgets are ten times smaller than those of the municipalities) even though they have been quite dynamic for a number of years now, the Dutch conception of the region designates a level midway between the municipality and the province, and at this level there are indeed many institutions: 60 inter-municipal co-operation districts, 100 water boards (*waterschappen*), to mention only those with elected bodies, though there are also many districts geared to devolved state administration.

Many reforms have been planned, implemented and abandoned; none of them has had any lasting success, so that the status quo prevails. The latest project, which resulted in a law that came into force on 1 July 1994, is particularly interesting: it is aimed at setting up seven urban regions, each of which would take in the largest cities in the country with the surrounding municipalities, with a view to encouraging their development and competitiveness in the single European market.

This reform should subsequently lead to new provincial boundaries, whereby each region would become independent from the province and become a separate provincial entity. However, implementation of the reform, the first phase of which concerned Amsterdam, Rotterdam and The Hague, is currently blocked by opposition from the municipal councils and the populations, which were consulted by referendum (in Amsterdam and Rotterdam) and which refuse to allow their towns to be split up into a multitude of smaller municipalities under the new arrangements³⁴.

Whatever becomes of this reform, Dutch regionalisation is aimed at securing a new territorial organisation which would still be based on the three traditional levels of state, provinces and municipalities.

In the countries of central and eastern Europe, the current territorial organisation takes no account of the aims of regionalisation. Only Hungary and Romania have so far introduced local authorities at the intermediate level, but their size and configuration as well as their functions approximate them more to the provincial than the regional level. Some other countries (Poland, Czech Republic and Slovakia) are currently discussing regionalisation projects.

34 On this reform see Marcou, G. (1993), "La coopération intercommunale et la réforme territoriale aux Pays-Bas", 12-page report, Institut de la Décentralisation, Paris; Toonen, T.A.J. (1995), "Provinces versus urban centres. Current developments, background and evaluation of regionalisation in the Netherlands", Colloquy *Les Régions en Europe*, Institut d'Etudes Politiques de Rennes, CRAP/CERI, Rennes, 4-6 October; Raadschelders, J.C.N. (1996), contribution to "Riforma delle Autonomie in Europa", annual chronicle (ed. G. Marcou), *Annuario 1996 delle Autonomie locali*, Edizioni delle Autonomie locale, Rome, Vol. 1 pp. 449 ff.

B. Regional decentralisation

Regional decentralisation is the creation or replacement of a new local authority at the regional level. This type of regionalisation therefore has a specific institutional expression characterised by the application to the region of the general regulations governing local authorities. The region therefore neither has a higher legal status than, nor differs from, existing local authorities, but it has a broader geographic framework and its duties are mainly economic in nature. It fits in with the constitutional system of a unitary state³⁵.

France is currently the only one of the states whose experience is presented in this report which corresponds to this type, but the reforms under consideration in other western and eastern European countries show that some of them may well follow suit.

The current boundaries of the French regions were a response to the needs of state spatial planning policy; they are purely functional in nature, and in fact they have been criticised for this very reason.

Since the nation was constituted very early on, closely followed by the formation of the state, federalist and regionalist ideas have never had much influence in France. It is significant that the first modern regional institution was the office of regional prefect.

From the legal point of view regions are now territorial authorities like the municipalities and departments, though they do not have a constitutional guarantee on their existence. On the other hand, the constitutional principle of free administration of the territorial authorities (Article 72 of the Constitution) is applicable to them. French regionalisation respects the principles of the unitary state, which have their constitutional guarantee in the principle of the indivisibility of the Republic.

Unless otherwise expressly stipulated by legislation, the principle of free administration of the territorial authorities cannot be used as the basis for statutory powers. In practice the region's lawmaking powers are much more limited than those of the municipalities and departments, and particularly those of the mayor. Regions cannot exercise or assume the right of supervision of local authorities on their territory.

Territorial authorities' institutions, powers and finances are established by law. The regions are administered by a regional council elected by direct universal suffrage under a proportional vote taken in the departments. Executive duties are exercised by the Chairman of the regional council, who is elected by the latter. The regions are covered by the same standard jurisdiction clause as other local authorities. Moreover, legislation has

35 See Marcou, G. (1996), "L'expérience française de régionalisation (la décentralisation régionale dans l'Etat unitaire)", pp. 505-520 in *L'Etat de droit. Mélanges en l'honneur de Guy Braibant*, Dalloz, Paris.18

attributed or assigned them responsibilities in the following fields: spatial planning, state-region planning contracts, secondary education (educational planning and school premises), local economic development, transport, vocational training and tourism.

The French conception of the unitary Republic does not preclude taking account of local cultural differences. French law has incorporated and retained part of the German legislation introduced in the Upper Rhine, Lower Rhine and Moselle departments before 1919; the 1991 statute for Corsica stipulates that it is a *sui generis* territorial community with different institutions and wider powers than those of the regions. There are also special regulations for overseas regions, the city of Paris and the Ile-de-France.

In some countries regionalisation could be expressed by similar institutional arrangements. This applies to Sweden, if larger counties are created with elected councils holding new powers, while retaining a central government department at this level.

In Portugal, apart from the overseas regions which will be discussed again later, the regions as defined by the 1976 Constitution within the metropolitan territory have not yet been set up. However, the old districts, which were based on the Napoleonic model, have now lost their local authority status, and the 1991 general principles act set forth the general provisions on the creation of administrative regions, governed by an assembly made up of both municipal representatives and members directly elected by the citizens. The regions would exercise administrative responsibilities in the economic, cultural and environmental fields, in respect of which they would be attributed statutory powers. However, their boundaries have not yet been set.

Regionalisation projects in Poland, the Czech Republic and Slovakia also seem to follow this model. Polish regionalisation apparently involves reducing the number of voivodships, which would be reorganised around regional urban centres or the main towns and cities, depending on the project; there should be an elected council but, even though discussions are not centred on this matter, the recent transfers of responsibilities to the towns and cities limit the number of responsibilities which could be transferred to the regions.

Regional reform in Poland is still quite a long way off. On the other hand, such reform has made more progress in other countries, particularly Slovakia, where 7 regions are about to be introduced with local authority status and an elected council responsible for exercising a number of powers which would be transferred from the state (secondary schools, hospitals, regional planning and cultural amenities). Less progress has been made in defining the number and powers of the Czech regions, but as in the other two countries the region would one of the standard institutions of the unitary state.

Some states have created administrative regions without prior decentralisation, for the sole purpose of regional or spatial planning. This is the current situation in Portugal and Greece, and it was the case in pre-1972 France. The present administrative regions in England, in which Government Offices for the Regions were recently set up (see above), are further examples of this approach. Such administrative regions can lead to regional decentralisation where elected, statutorily self-governing institutions are subsequently set up, as in France and perhaps soon in Portugal. However, this is not indispensable. In Hungary the 1994 Law abolished the office of Commissioner of the Republic which had been instituted in 8 regions in 1990.

C. Political regionalisation (institutional regionalism)

This form of regionalisation covers a wide variety of situations. Spain is the only country which has fully implemented it. It is to some extent based on the Italian Constitution, but in fact in Italy institutional regionalism was a response to a national political project rather than the upsurge of regionalism, as was the case in Spain. Belgium has also taken this approach, even if it became a federal state in 1993. Lastly, political regionalisation is partly applied in the regions of certain states such as France and Portugal.

Political regionalisation in Spain as organised by the 1978 Constitution was mainly motivated by the restoration of the rights of the “historic” regions which had been recognised by the 2nd Republic but abolished under Franco. It reflects the complex relations between the Spanish nation, the “common and indivisible country of all Spaniards”, and “the right to autonomy of the nationalities and regions of which it is composed” (1978 Constitution, Article 2).

The seventeen Autonomous Communities are politically self-governing in that their constituent statutes also establish their organisation and responsibilities, within the limits set out in the Constitution and subject to approval by the Cortes Generales, and they exercise legislative power in fields falling within their competence.

The Constitutional Court has clarified the legal concept of autonomy (or self-government) in many of its decisions. Autonomy is not sovereignty, and the Constitution guarantees the supremacy of the state as the expression of the unity and predominance of the interests of the Spanish nation. However, regional autonomy is not the same as the administrative autonomy enjoyed by local authorities; the legislative and governmental powers of the Autonomous Communities are such that they enjoy “political autonomy” (judgment 25/1981 of 14 July 1981).

The fact that the state comprises entities with political autonomy necessitates a variety of legal systems and makes Spain a composite state (judgment 1/1982 of 28 July 1982). However, solidarity is the corollary of the autonomy principle (judgment 25/1981).

The Spanish regional system is not homogeneous. There are several different overlapping systems corresponding to different groups of Autonomous Communities.

The Autonomous Communities have large differences according to their heterogeneous historical experiences, cultural identities and aspirations, development level and social cohesion. Accordingly they have a differentiated assumption of administrative responsibilities, political powers and speed in their autonomous evolution.

The Spanish Constitution intended this differentiation in the apportionment of responsibilities as a transitional measure, and the 1992 Agreement setting up the Autonomous Communities provided for transferring to the “ordinary” Autonomous Communities most of the responsibilities listed in Article 151 (except medical services, prisons and the autonomous police). However, the heterogeneity subsists partly because the transfers of responsibilities have not been completed in respect of all the Autonomous Communities concerned and partly because of demands from Catalonia and the Basque Country for additional powers in keeping with their special status within the Spanish state.

Although the 1978 Spanish Constitution is to some extent based on the 1947 Italian Constitution, Italian regionalisation is less advanced, at least for the moment. As in Spain, regional self-government is considered in a different way from local self-government. The regions establish their own statutes, but the latter must be approved by parliament, and they exercise legislative powers in fields falling within their competence.

There is also a great deal of heterogeneity, because there are regions which hold a special status and exercise broader responsibilities and legislative powers. However, the Italian regions do correspond to any regionalist aspirations, apart from the northern regions which comprise linguistic minorities.

The ordinary regions were set up in accordance with statistical criteria. Political regionalisation may be encountered in particular forms in other states. The autonomous status granted to Corsica under the Law of 13 May 1991 recognises the special status of the island and attributes to it more extensive powers than those of the regions, but the Corsican assembly exercises no legislative powers. Scotland and Wales could become political regions after the next elections if the conservatives lose their majority.

In Belgium the reform of the state began with the passing of the language laws of 1962-63, when the linguistic frontier was fixed and the territorial principle established. The idea of cultural autonomy then took hold, and as a result the Constitution was amended four times (1970, 1980, 1988 and finally 1993), gradually establishing the three communities, three regions and four linguistic regions.

The Belgian Constitution allows the institutions of the Flemish Community and of the Frenchspeaking Community to exercise the powers of the

Flemish region and the Walloon region. In the case of the Flemish institutions, the community institutions took over the powers of the region in 1980, after which there remained only a Flemish Council and a single government in the North.

In the South, on the other hand, the French-speaking Community and the Walloon region each continue to have their own institutions.

The Constitution does, however, allow community powers to be exercised by the region and viceversa (Articles 137 and 138).

D. Federal states and regionalisation

There often is a tendency to contrast the federal state with the nation-state, equating it with the unitary state. Under this approach, federalism is a means of taking account of regional differences in the state organisation, be they cultural, linguistic or other, by granting them extensive political autonomy.

In fact federalism³⁶ and regionalism refer to different political realities. The federal state is always the result of the union of a number of states, each of which is itself a political entity that is not necessarily homogeneous, as illustrated by the status of Prussia within the German Empire and during the Weimar Republic, many US states and the Canadian provinces.

Although the federal constitution defines the federate entities' responsibilities and their place in the institutions and guarantees their political autonomy, an *a posteriori* reconstruction is needed to justify federalism by the autonomy which it grants to the federate entities. Moreover, the history of the more durable federal states shows that their creation was also a means of national integration; these federal states are in fact nation-states, as seen in the examples of Switzerland, the United States of America and Germany.

On the other hand, there is no precedent for a multi-national state which has been protected by federalism from tensions endangering its very existence: the USSR, Yugoslavia and Czechoslovakia did not break up because their federalism was artificial, but rather they had held together because communism had disguised the fact that the state lacked the requisite degree of national integration.

Therefore, federalism and regionalisation are two types of institutional arrangement which can be combined in different ways depending on the individual country's specific history and circumstances.

Institutional regionalism can sometimes emerge in a federal state. Self-governing federal entities have developed in Belgium just as in other

³⁶ For the sake of convenience and in view of the subject under discussion, we will equate federalism with the federal state, though in fact federalism is a much broader concept; the federal state is merely one of the forms it can take, and in some ways it is a contradictory form since the federal state absorbs the sovereignty of its component parts.

European states which have established entities with the autonomy required to express their cultural, linguistic or religious identity or their distinctive social and economic characteristics (e.g. Spain and Switzerland).

In both federal and unitary states institutional regionalism reflects weaknesses in national integration, and political regionalisation can result in federalism, as happened in Belgium and might happen in Spain and Italy.

However, this is a very different type of federalism from the traditional type, which derived from a desire for union and was a special mode of national integration; in this other type the federal option is the result of a centrifugal force, and it cannot be taken for granted that the federal option, which confers the title of state on an entity which is demanding political autonomy, will help restore unity.

Institutional regionalism is very different from federalism in institutional terms. First of all it is always asymmetrical as it stems from the recognition of certain specific features, whereas in the federal state all the subjects of the federation are equal. The aforementioned examples show that the encounter between political regionalisation and federalism raises difficulties to which there are only hybrid solutions.

Furthermore, the main feature of the federal state is the fact that the state's attributes are shared between two levels and that the federate states participate in one way or another in the exercising of state responsibilities at federal level. On the other hand, political regions are not state authorities, they have no constituent power and they play no part in exercising state responsibilities at the federal level.

The overall coherency and unity of the structure is ensured by the Federal Constitution, which lays down the respective powers of the federal state and the member states and provides for procedures to settle conflicts. However, the federal component is the reciprocal independence of the authorities from the federate authorities and from the federal state in the exercise of their respective responsibilities³⁷.

That does not preclude the existence of rival fields of jurisdiction or limitation of the number of fields in which the federate authorities can independently exercise their responsibilities; such independence must at least exist, especially in order to prevent the federate authorities, in exercising their state responsibilities, from being actually or potentially dependent on the central state in all fields.

Thus federalism does not preclude centralisation: one might say that the extent of centralisation in federations depends on the extent of the exclusive responsibilities of the federate states. On the other hand, the legislative powers of political regions are always actually or potentially subordinate to the national legislator; in Italy, where the special-status regions have exclusive legislative powers in principle, the reservation regarding the

37 Wheare, K.C. (1953), "Federal Government", Oxford University Press, 3rd ed., pp. 79 ff.

national interest which is included in their statutes has been interpreted by the Constitutional Court in such a way as to enable the national legislator to intervene in such matters.

Combinations of federalism and other forms of regionalisation are more complicated. First of all, there is no precedent for combining regional decentralisation with federate states. Whereas political regionalisation can affect federal state structures, as seen above, the same does not apply to regional decentralisation, to the extent that it does not express a form of political autonomy.

On the other hand, in modern federal states which have undergone a process of political centralisation, the aims of regional decentralisation can be met with the administrative powers exercised by the federate states. The evolution in state functions is naturally also reflected at federate state level.

Secondly, federate states can also undergo various forms of administrative regionalisation. There are examples of regional decentralisation inside federate states, and the situation of the Prussian provinces under the Weimar Constitution was a similar phenomenon. Present-day Switzerland provides examples of forms of inter-cantonal regionalisation aimed at solving certain economic problems. In Germany, regionalisation is also expressed in co-operation between local authorities.

3. The context of regionalisation

This subject can be dealt with more briefly since the classification reveals the context in which regionalisation is carried out in the various states that have been mentioned. It reveals the aims of regionalisation and the difficulties it encounters.

A. The aims of regionalisation

The aims of regionalisation are many and varied. Within a given country regionalisation can be a response to several different aims, but furthermore, the actual aims of the regional institutions can change with time.

Federalism, as seen above, is not a form of regionalisation; it always has political objectives. The federal state is the result of a political union and takes on state powers corresponding to the common interests of its members. In the course of time, however, the federal state has constantly expanded its powers to the detriment of its members, and the national integration which accompanies the construction of the federal state may have the effect of reducing the place of member states to a mere expression of regionalisation, at least in some respects, including the absorption of legislative powers in most fields by the federal legislator; the federate states may also lose ground in public perceptions.

Nevertheless, it appears that circumstances, a change in the international environment or to the balance which had been struck between the various components of the population and the state, can easily reactivate state attributes which are still vested in the federate authorities. Not only have some states split up under conditions which suggest that their members' status as states facilitated the breakup, but also, besides such spectacular cases, political developments sometimes point to a reawakening in the member states. This is illustrated by the revisions of the Basic Law in Germany which have accompanied the latest stages in European integration (the Single Act and the Maastricht Treaty) and unification³⁸, or the results of the Swiss referendum on accession to the European Economic Area.

Moreover, political regionalisation may take the form of federalism, as in Belgium.

Concerning the aims of regionalisation one can identify a political aim, possibly in relation to ethnic or cultural specificities, an economic aim and an aim of rationalising and modernising state structures.

Regionalisation may have a political aim without imposing any particular model for the process. The truth is that it is difficult to imagine regionalisation having no political aims when it comprises the setting up of regional institutions with some degree of autonomy.

Regionalisation as set out in the 1947 Italian Constitution was in fact a response to a political project, which had originated in a conception of the state developed within the People's Party just after the First World War and revived by the Christian Democrats just after the Second World War. In this conception, the state must be based on intermediate bodies, a position paralleled in the doctrine of the Roman Catholic Church; this means that the regions are a natural extension of the local selfgoverning bodies and a factor for pluralism aimed at obviating the dangers of authoritarianism and centralism³⁹. Although it was developed in a very different spirit, French regionalism also pursued political aims. The Gaullist project which came to grief in the 1969 referendum had been aimed at renewing the local elites on which the central power was based; on the other hand, the 1972 reform was aimed at incorporating these elites into the modernisation project being implemented by the state. Again, the 1982 reform made decentralisation a means of democratising the institutions, and regionalisation was geared to implementing its principles at regional level.

In Spain regionalisation is geared to the construction of a democratic state, leaving behind the centralising authoritarian state of the Franco era. More general, the setting up of elected regional institutions is always backed up by the argument that it increases participation by the citizens in decision-making, under authorities which are closer to them than the state.

38 Marcou, G. (1995), "L'évolution du fédéralisme allemand sous l'influence de l'intégration européenne et de l'unification", *RDP*, No. 4, pp. 883-919.

39 Onida, V. (1988), "Landesbericht Italien", pp. 244 and 245, in Ossenbühl, F. (ed.), *Föderalismus und Regionalismus in Europa*, Nomos, Baden-Baden.

In some cases regionalisation is aimed at meeting a regionalist demand for as broad a political autonomy as possible on the basis of a given region's and/or population group's ethnic, cultural or linguistic specificities. This is a political type of regionalisation whose underlying rationale is not integration as in federal states, but differentiation. In extreme cases this can lead to separatism.

In Spain, the confirmation of the historic regions with their recognised linguistic and cultural specificities, is accompanied by a special status and a refusal by these communities to be drawn into a system common to all the regions; on the contrary, they insist on retaining of their special status. In Italy this approach has only been adopted in certain small northern regions which use different languages (Valle d'Aosta, Trentino-Alto Adige, Friuli-Venezia Giulia). In France, Corsican regionalism and autonomous status are in line with this objective.

In the United Kingdom, public opinion (in Scotland and Wales) is again in favour of devolving certain parliamentary powers to Scottish or Welsh regional assemblies, which reflects some degree of exacerbation in regional sentiment, and would confirm the particularism of these "nations" within the United Kingdom; such regionalism contrasts with the total lack of regional sentiment in England itself⁴⁰.

The economic aim is present in virtually all forms of regionalisation, including those which do not involve creating an additional administrative level or new institutions. In view of the importance of regional economic systems for overall economic efficiency and the fact that the collective goods produced by the public institutions occupy an important position in regional economic systems, regionalisation may be aimed at tailoring existing local institutions to the needs of economic development or setting up new institutions better able to meet such needs, in the political and institutional context of a given country.

This is the objective of the urban regionalisation process initiated in the Netherlands. Moreover, French regionalisation has always been geared to achieving spatial planning goals: even the regional boundaries were drawn with this in mind, and funding public investment was the main task entrusted to the regions, in the aborted 1969 project, in the 1972 and 1982 laws and also in the practices developed under the latter texts. European regional policy is also a powerful factor in regionalisation because it legitimises this level of territorial organisation.

In Portugal, while the mainland regions provided for in the Constitution will at some stage have to be created, this will be done largely for the purposes of adapting administrative structures to the management of the large amounts of structural funds which have been paid to this coun-

40 Sharpe, L.J. (1996), "Regionalism in the UK: the Role of Social Federalism", pp. 62-65 in Färber, G./Forsyth, M. (ed.), op. cit.

try; where regional boundaries are concerned, discussions are under way between supporters of a 7-region set-up, as proposed by the Ministry of Economic Planning and Co-ordination, and those advocating a division into 5 regions, on the model of the European Community's NUTS II statistical units for Portugal.

The current regional co-ordination commissions, which are devolved state bodies, correspond to the 5-region set-up.

In Sweden the debate on redrawing the map of the counties has been given new impetus by the prospect of forthcoming accession to the European Union. The demand for regionalisation comes mainly from the southern regions (Western Sweden, Skåne and the Stockholm region), which wish to expand relations with the border regions of neighbouring countries, while local authorities in the peripheral regions are especially interested in the resources potentially created by regional policy because the economic recession in the country is affecting their financial situation.

The economic aim has scarcely been a factor at all in regionalisation in other countries: this is true of Italy, where economics is virtually absent from the responsibilities of the ordinary regions; and economics had very little to do with the creation of the Spanish Autonomous Communities. On the other hand, the role of the regions as institutions in developing infrastructures and organising regional networks reinforces the administrative boundaries and maintains economic dynamics which support the institution itself.⁴¹

Accentuating economic disparities or competition may revive forms of regionalism which had been considered extinct and threaten national unity if the wealthier regions get the idea that they would be more successful if they did not have to show solidarity with the poorer regions.

Lastly, regionalisation is often aimed at rationalising and modernising administrative structures; however, only reforms which are geared to encouraging regional expression, not just the action of the central authorities, can be seen as instances of regionalisation, in this case administrative regionalisation. The French regions reflect this trend, even to the extent of disregarding old historic regional boundaries. Even though departments co-exist with the regions, the creation of the latter went hand-in-hand with modernisation of the state.

In Sweden the main reason for the debate on new county boundaries was the realisation that the existing ones have become meaningless; national administrative agencies (particularly those in charge of road networks and education) often base their action on regional divisions other than those of the counties.

41 Färber, G. (1996), "Regions in Europe: the Economic Perspective", p. 30, in Färber, G./ Forsyth, M (ed.), *The Regions - Factors of Integration or Disintegration in Europe?*, Nomos, Baden-Baden.

The adoption of special regionalisation schemes can also be seen from this angle: above and beyond cultural differences, not all of which are asserted to the same extent, distance and isolation justify special institutions and increased autonomy. This fact emerges from study of Spanish and Portuguese island regions, Sicily and Sardinia and Italy, and the French overseas regions.

Lastly, in central and eastern Europe the introduction of regions in the Czech Republic and Slovakia would also mainly follow this model. While economic development is stressed in proposed reforms, the general aim is rather to secure a territorial structure enabling certain responsibilities to be devolved to units capable of coping with them in administrative terms.

B. Obstacles to regionalisation

These may be obstacles to all, or only to some specific types of regionalisation. Firstly the fear that regionalisation will threaten state unity; secondly the fear of depriving the state of the means of implementing its policies (challenging its internal sovereignty); and thirdly the fear on the part of the local authorities that their autonomy will suffer if such an intermediate level is introduced.

In practice, these three fears have seldom foiled regionalisation but they are inspired by provisions aimed at either guaranteeing state unity or protecting the autonomy of existing local authorities.

The fear of a threat to state unity from the creation of excessively powerful regions has generally hindered the setting up of large regions. This is the reason for the occasional allegations of irrationality in the establishment of regional boundaries or the exiguity of certain regions, although the latter is in fact explained by the desire to take account of local historical idiosyncrasies, as is also reflected in the structure of federal states (for instance Navarra or the Asturias [a single-province autonomous community holding ordinary status] in Spain, or the city-states and the Saarland in Germany).

Of course it is not only the size of the regions that can threaten state unity; the combination of size with other features is also at issue. With 17 million inhabitants North Rhine Westphalia does not pose a threat to German unity; but in Belgium the combination of linguistic and economic divisions between the French-speaking Walloons and the Dutch-speaking Flemish has shaken the unity of the country, which is now based on a fragile constitutional balance within a federal framework.

In Spain the Autonomous Community system differs from federalism in that the central government refuses to confer on these communities the attributes of a state, so as to prevent the threat of dismemberment of the Spanish State stemming from combined federalism and regionalism.

In Italy the creation of very large regions, as proposed by the Northern League, would probably threaten national unity; in fact the League is currently campaigning for the independence of an entity referred to as “Padania”. In the case of Belgium, and possibly in the case of Italy, solidarity between the regions is also being directly or indirectly called into question. However, there is less risk of separatism when regionalisation benefits economically weak regions rather than the wealthier ones. In the United Kingdom, the budgetary system in fact operates in favour of Scotland and Wales⁴², and oil resources in Scotland are no longer sufficient to sustain any advanced separatist plans; these facts suffice to ensure the unity of the United Kingdom under any reform introducing devolution into these two regions.

In central and eastern Europe the concern to guarantee national unity is present in discussions on regionalisation, and plans to establish a small number of large regions have little chance of success, because the governments of these countries realise that areas with widely diverging levels of development give rise to strong economic forces of attraction.

In countries which have introduced regional institutions, legal safeguards have been laid down for the unity of the state. In France the principle of the indivisibility of the Republic prevents the legislator from recognising “components” within the French people, as was held by the Constitutional Court in its 1991 judgment on the new status of Corsica.

The Spanish Constitution places regionalisation within a unitary framework: it proclaims “the indissoluble unity of the Spanish Nation, the common and indivisible country of all Spaniards” (Article 2), prohibits the federation of Autonomous Communities, makes co-operation agreements between these communities conditional upon the authorisation of the Cortes Generales (Article 145), and provides for control mechanisms aimed at ensuring that the Autonomous Communities fulfil their obligations within the Kingdom of Spain (Articles 153 to 155).

The case-law of the Constitutional Court states that autonomy does not include the right to act in a manner prejudicial to the interests of the nation or other general interests separate from the specific interests of the Autonomous Community, and that solidarity is the corollary of the autonomy recognised under the Constitution.

In the United Kingdom the devolution bill tabled in parliament in November 1976 stipulated that it did not affect the unity of the United Kingdom or the supreme authority of parliament in matters of legislation regarding the United Kingdom or any part of its territory (1st part, § 1) and it reserved supervisory powers on the part of the central authorities and parliament vis-à-vis regional legislation.

42 Sharpe, L.J. (1996), *op. cit.*, pp 71 and 72.

In fact, Belgium would appear to be the only country involved in regionalisation whose constitution contains no provision on the unity of the state; it merely lays down a procedure for settling conflicts of interest (Article 143), in addition to the supervision which the Court of Arbitration may be called upon to conduct. The Swiss Federal Constitution is much more restrictive in this regard (Articles 5 to 7).

Even if the unity of the state is not under threat, regionalisation is also limited by the concern not to deprive government of the means of implementing its policies. This subject often crops up in the conception of regionalisation. In France it is expressed by the combination of decentralisation and devolution, which enables the government to base its action on its own regional departments, and also by the legislation on powers which stipulates that some of the latter are entirely within the purview of the state. Sweden considers that the setting up of regional parliaments in the framework of enlarged counties might jeopardise the state's "internal sovereignty".

Devolution also exists in Spain and Italy, but the territorial departments subordinate to the government are less highly developed than in France, where they come under the authority of regional and departmental prefects; in Spain the position varies from one Autonomous Community to another depending on the powers actually assumed by the Community's administrative departments.

Even in Germany, a federal state, implementation of Federal legislation by the *Länder* is guaranteed by constitutional provisions governing federal supervision (Articles 84 and 85), and the Basic Law empowers the Federation to set up departments directly administered by the Federal Government (Article 87), a power to which the latter has often had recourse.

Lastly, the autonomy afforded to local authorities often limits the scope of regionalisation. The Portuguese Constitution provides that the setting up of mainland regions will depend on a favourable vote of the majority of the municipal assemblies representing the larger portion of the regional area's population (Article 256), but the Portuguese municipalities, which were set up in the Middle Ages, are concerned that the new regions will reduce their weight in the administration of the country, and their opposition has so far prevented regionalisation; increased safeguards on municipal autonomy was apparently a prerequisite for the creation of the mainland regions.

In the Netherlands the reform aimed at introducing metropolitan regions centred on the major cities was blocked by opposition from the populations of Amsterdam and Rotterdam to any attempt to restructure their municipalities.

In Sweden, where municipalities have very extensive powers and resources, regionalisation will, as seen above, probably be carried out on the basis of co-operation among municipalities in the same region.

Because the French departments had shown hostility towards the formation of regions, the 1982 reform and subsequent reforms have confirmed the importance of departments in the French administrative system; this approach has limited regional powers, but in fact it has encouraged dynamism in the regions, which have fewer management responsibilities and, despite the importance of secondary schools, still have a great deal of room to manoeuvre; the state-region planning contracts also make them the prime partners of the state.

3.1.2 The consequences of regionalisation

The consequences of regionalisation can be addressed from the angle firstly of relations between the regions and the state and among the regions themselves, and secondly of relations between local authority autonomy and the regions. The scope of this study must be narrowed because one can only deal with situations in which regions have actually been set up as new institutions in the politicoadministrative system.

The situation resulting from regionalisation will be compared with that of federal states, in order to identify the specific features of regionalisation and federalism and also the common aspects of all the systems which have to combine unity and autonomy, whatever the relation between these two elements.

1. Relations between the state and the regions and interregional relations

This report has already dealt with the provisions aimed at preserving the unity of the state and will now concentrate on the procedures and methods of co-ordination and co-operation and on the public finance aspects of these relations.

A. Co-ordination and co-operation

In practice, there is no clear-cut distinction between co-ordination and co-operation. Co-operation presupposes shared objectives between the co-operating parties; it includes and transcends mere coordination, but on the other hand co-ordination presupposes a minimum level of co-operation. In fact, in all modern administrative systems co-ordination and co-operation are only two of the expressions of the general development of intergovernmental relations.

Although it is generally considered desirable to establish a clear apportionment of responsibilities, as this provides the best guarantee for both the autonomy of the territorial authorities and the accountability of the

public authorities vis-à-vis the citizen, the complexity of the main fields of public policy often has the opposite effect, as the exercise of a legal responsibility frequently involves other public authorities or institutions.

This applies to regionalisation, though the latter generally leads to an expansion of intergovernmental relations either because it prompts the introduction of an additional governmental level or because it intensifies co-operation between public authorities within the same geographical area. The reasons for the trend towards regionalisation include the need for improved co-ordination of the various public interventions and for improved co-operation between the institutions.

The structure of intergovernmental relations vary considerably from sector to sector, depending not only on the apportionment of responsibilities between the different government levels but also on their relations with the interests in question. However, it is possible to identify different types of intergovernmental relations, whereby some of them are encountered more often in some countries than others and these differences apparently stem from the nature of the state and its constitutional organisation.

Exclusive consideration of the regional level narrows the range somewhat, eliminating some of the relations one observes when intergovernmental relations involve both the state and the municipalities. With specific regard to decision-making procedures, the relations between the state and the regions or among the regions might be broken down into three main categories: institutional or deliberative cooperation, contractual co-operation, and integration. Of course informal networks play a role in all these relations, though this role is difficult to pinpoint. Institutional co-operation may include recourse to specific types of agreements, but it is distinguished from contractual co-operation by the fact that it establishes permanent, stable forms of co-operation.

Institutional co-operation is characteristic of the studied federal systems. It is one of the aspects of “co-operative federalism”; and correspond to some extent to one of the “laws” of federalism which states that member states must participate in the political management of the federal state, but from another angle it points to the centralising trend which has characterised the development of federal states in that some of its forms enable the federal authorities to exert an influence over the powers of the member states.

In Germany, while the Bundesrat, which is made up of representatives of the *Länder* governments guarantees the participation of the *Länder* in federal legislation, the operation of the German administrative system overcomes the duality of federal and *Länder* administration through a large number of intergovernmental bodies responsible for co-ordinating, harmonising and even formulating the policies to be implemented by the competent ministers of the Federation and the *Länder*.

Examples are the conference of *Länder* prime ministers, which are

geared to formulating a joint position by the *Länder* (which is often difficult to achieve) when circumstances require (e.g. in 1990 regarding the negotiations on the unification of Germany and its financing), and 13 specialised ministerial conferences (set up under specific agreements), including the Conference of Transport Ministers, the Conference of Spatial Planning Ministers (MKRO) and the Conference of Finance Ministers.

These conferences draw on the work of innumerable commissions, committees and working groups made up of civil servants from the Federation and the *Länder*, responsible for preparing their decisions and organising their enforcement.

Although most of these conferences are held on the initiative of the *Länder*, the Federation is usually the driving force behind them. Ministerial conference decisions must be taken unanimously, in the absence of a text providing otherwise (e.g. for the MKRO).

One special form of co-operation between the Federation and the *Länder* which is laid down in the Basic Law (Articles 91a and 91b) is the *Gemeinschaftsaufgaben* (joint responsibilities), which are shared by the Federation and the *Länder*, give rise to joint funding and planning in specified fields and are organised under a Federal Act (the case of Article 91a) or an agreement between the Federation and the *Länder* (the case of Article 91b). The fields covered by such joint responsibilities fall under the competence of the *Länder*, but the Federation provides funding (generally 50% in respect of Article 91a) and contributes to planning, and therefore exerts an influence on the exercise of these responsibilities⁴³.

Institutional co-operation does not preclude recourse to contractual co-operation. Agreements between the Federation and *Länder* have become a common decision-making procedure, and the Basic Law and federal legislation provide for the conclusion of such agreements in certain cases. The combination of these two forms of co-operation result in a complex decision-making procedure which requires the Chancellor to know his limits in terms of exercising federal responsibilities and powers in the context of the *Länder* (particularly when the opposition is in the majority in the Land government), and conflicts are often referred to the Federal Constitutional Court.

Furthermore, the *Länder* often conclude mutual treaties regarding the exercise of specific responsibilities which involve several *Länder*; there

43 These joint responsibilities are as follows: 1) Article 91a: building of institutions of higher education including university clinics, improving agricultural structures, preserving coasts and improving regional economic structure; the planning committee is organised on a parity basis and decisions are taken on a three-quarters majority, including the majority of the *Länder*; the planning committee adopts an outline plan, which, however, does not include individual projects (except for the building of institutions of higher education), because the subject of the outline plan is a matter for the *Länder*; 2) Article 91b: educational planning and the promotion of research institutions and projects of supraregional importance.

are treaties in the fields of spatial planning, the development of areas which straddle *Länder* boundaries but in which an overall project has to be implemented (e.g. the Rhine-Neckar area or the outskirts of the city-states), and the operation of television networks, as the audiovisual field is one of the *Länder's* cultural responsibilities.

The Swiss federal system is in fact very different from the German arrangement. The cantons participate in federal legislation through an assembly, the Council of States, whose members are now elected by direct suffrage on the basis of two per canton (or one per half-canton). Federal legislation is constantly extending its scope, and Swiss federalism is now commonly described as “enforcement-oriented federalism”, meaning that most of the legislation is concentrated at federal level but the enforcement of laws is generally a matter for the cantons.

The apportionment of legislative powers is more complex in Switzerland than in Germany, and on the legislative front the cantons still exercise greater powers than the German *Länder*. Yet the cantons also indirectly participate in the executive because the 7 members of the Federal Council, the Swiss collegial executive, come from different cantons, and also because consultations are held with a view to formulating federal policies or legislation in a particularly compromise-oriented system.

Moreover, the Swiss cantons have developed the practice of inter-cantonal agreements (“concordats”), as is in fact expressly laid down in the Federal Constitution, “concerning matters of legislation, administration and justice” (Article 7 para. 2). However, whereas the German practice is to conclude treaties between two or more *Länder* on matters of common interest, the Swiss cantons draw up agreements which are negotiated and signed by all 26 cantons and half-cantons. These “concordats” therefore represent an alternative to federal centralisation in certain fields, providing the cantons manage to reach agreement.

In an agreement of 8 October 1993 they even established a conference of cantonal governments aimed at improving inter-cantonal co-operation, particularly in connection with the further development of federalism, the apportionment of responsibilities between the Federation and the cantons, the preparation of federal decisions, the implementation of federal tasks by the cantons and foreign and integration policies.

In Belgium the amended special law on institutional reform of 8 August 1980 (Article 92 bis) provides that co-operation between the state, the communities and the regions, which is especially important because of the complexity and fragmentation of the apportionment of powers, should be conducted by means of agreements, a number of which are mandatory. These agreements re-establish the physical unity of specific powers and facilitate the co-ordination of the various competent authorities. The co-

operation agreements have been retained in the federal system which has since been introduced⁴⁴.

Comparison with states which have introduced institutional regionalism highlights the distinguishing features of intergovernmental relations in such countries. First of all, the regions do not participate in any way in the national legislature or executive.

The membership of the Spanish Senate is not such as to represent the Autonomous Communities, because some four fifths of Senators are elected in the provincial framework, and the government is set up on a purely national basis. On the other hand, the assemblies of the Autonomous Communities can initiate legislation in certain conditions (Article 87).

Spain to some extent followed the model of “German co-operative federalism” in this respect. In 1983 sectoral conferences (*conferencias sectoriales*) were established by law to ensure co-operation between the state and the Autonomous Communities; they can adopt agreements which become binding upon the parties as soon as they are signed.

The central government and the Autonomous Communities also formulate bilateral agreements for investments in certain fields, either because the government wants to make specific investments within the territory of the Autonomous Community or because the extent of the planned investment and the fact that it cannot be covered solely by the Autonomous Community mean that the state has to step in.

In such cases the two authorities reach a consensus or conclude an agreement on the arrangements for the investment, whereby an appropriate agreement signed by both parties lays down the schedule for the operation and the funding quotas⁴⁵. Lastly, the Autonomous Communities can conclude mutual agreements for managing their own specific public services, in the cases, conditions and terms laid down in their statutes (Article 145).

Portugal has several modes of institutional co-operation for the island regions, in the form of participation in various national bodies; the Constitution also provides that in such regions the “organs of supreme authority” must consult the organs of regional government on matters within their powers which concern the region (Article 231.2). There is no equivalent of these provisions for the administrative regions which are provided for in the Constitution but which have not yet been created, which explains the different legal status of these two categories of regions.

Italy draws a distinction between special-status and ordinary-status regions. Whereas over 85% of the budget for ordinary regions comes from the state budget, the special regions have more extensive powers and are largely self-financing (over 55% of all their resources are independent), en-

44 Coenraets, Ph. (1993), “Les accords de coopération dans la Belgique fédérale”, *Administration publique*, pp. 158-200.

45 Pola, G./Marcou, G./Bosch, N. (ed.): *Investissements publics et régions*, L'Harmattan, Paris.

abling them to engage in more balanced co-operation with the state. However, the development of co-operation between the state and the regions is essentially based on agreements, and even the special-status regions have no form of institutional co-operation with the state.

The recourse to the agreement method was confirmed in Legislative Decree No. 616 of 24 July 1977, and was subsequently used in other contexts, such as the Mezzogiorno development programmes (Law No. 64/1986). However, as early as 1958 the Constitutional Court had acknowledged the need for close co-operation between the state and the regions, and now recognises the lawfulness of agreements between the state and a given region. Article 15 of Law No. 241/1990 empowers all government departments and authorities to conclude agreements to regulate co-operation in the development of activities of common interest. Regions can accede to such agreements, the contractual validity of which is recognised under Italian law.

However, France is the country with the most systematic contractual co-operation between state and regions. The existence of territorial authorities which have general jurisdiction above and beyond their attributions under the law and which are prohibited by law from exercising supervision over each other, has created the need in the French administrative system for new instruments of co-ordination and co-operation.

The state-region planning contract, which was developed on the basis of the Planning Reform Law of 29 July 1982 and which was designed as a means of ensuring consistency between national and regional planning, quickly became the main instrument for co-ordinating state action with that of the local authorities, and it has survived the recent decline in national economic planning. Since 1983, the state and each region conclude a planning contract for a five-year period. The methodology behind these contracts has developed towards concentration of action and clarification of clauses, particularly the financial ones. The contractual validity of the clauses in these documents was affirmed by the law itself and legally approved by the State Council, although discussions are continuing on reconciling such commitments with the requirements of annual budgeting.

The process of formulating the planning contract has become a complex form of political and technical negotiation between, on the one hand, the regional prefect and the state departments, and, on the other, the prefect and the region. The contract comprises the establishment of a joint institutional mechanism for monitoring and assessment. On the whole the parties implement the contract in compliance with the undertakings and any necessary adjustments are negotiated; on the other hand, little use is made of the formal procedure for revising the contract laid down in the law. Lastly, the state-region planning contract now embraces all the contractual undertakings made by the state in a given region under other contracts, which may be provided for in specific legislation, as for example contracts on the building of institutions of higher education which are jointly funded by the

region and possibly other local authorities, or the funding of contracts with other local authorities such as the urban contracts (“contrats de ville”). On the other hand there are no permanent institutions for co-operation or co-ordination between the regions and the state; the National Planning Council which had been provided for under the 1982 law and in which the presidents of the regions were to participate is now dormant.

In the Netherlands, which is also a unitary state, but one in which regionalisation has not led to the setting up of new institutions, there is also increased use of contractual techniques. Under the Fourth National Development Plan (VINEX) approved by parliament, agreements can be concluded with local and regional operators with a view to its implementation; in fact these agreements are drawn up with the towns and cities (see § 2 below), but while the government has itself directly concluded agreements with the four main cities in the country, it has drawn up a contract with the Union of Dutch Provinces delegating to the latter the negotiation and signature of agreements with the municipalities of 18 other towns⁴⁶.

The United Kingdom presents yet another model, which for the moment is unique and which might be called “integration-oriented regionalisation”, with regional ministries for Scotland, Wales and Northern Ireland operating under the authority of a Cabinet Minister and under the scrutiny of parliamentary committees made up of the members of parliament for these regions.

These ministries have several departments corresponding to sectoral ministries, whose responsibilities they carry out in their regions; they are also backed by a large number of non-elected bodies such as the regional development agencies. These regional ministries raise an unusual variant of the problem of relations between the state and the regions, because they are simultaneously a branch of central government and an organisation peculiar to the region; they are both the representatives of the region with the government and the agencies responsible for implementing national policy in the region.

In countries which have no regional institutions or else only have devolved government departments at the regional level, the problem of relations between the region and the state obviously does not arise, but relations at local level between local authorities and devolved government departments become more important (Sweden, England and Portugal where regional co-ordinating committees are concerned, and Hungary and Poland). In Sweden, the United Kingdom and Hungary it is difficult to equate the county as an institution with a region, even though it contributes to regionalisation with its changing responsibilities and institutions.

46 De Bruijn, H./van Eeten (1996), “L’administration négociée aux Pays-Bas. Une analyse des possibilités et des limites des conventions dans les relations intergouvernementales et les relations public-privé” in Marcou, G./Rangeon, F./Thiebault, J.L. (ed.), op. cit.

The Swedish counties are undergoing twofold vertical and horizontal integration. On the one hand, the elected county councillors now dominate the county's state administrative council and can therefore influence the action of the administrative departments, most of which have been placed under the county's State Administrative Department. On the other hand, there are formal and informal central controls: the national administrative agencies have issued a whole series of directives on the implementation of national legislation governing the mandatory powers of the counties or municipalities, but party links also have a role to play in the integration of the different levels⁴⁷.

B. Regional finances, solidarity and equalisation

Only the general and political aspects of this highly complex subject can be broached here, and the following will but illustrate the propositions set out below.

1) Regions generally have greater financial autonomy vis-à-vis their expenditure than their resources. This proposition applies equally to regions and federate states, with the notable exceptions of the Swiss cantons and the French regions - though obviously on a different scale - as well as the Swedish counties if equated with regions, but this is a hypothesis which must be treated with all due caution. Only these three types of authority are genuinely financially autonomous in terms of resources, because their independent resources constitute a large percentage of their total resources and they can levy taxes, set income tax rates; and therefore deciding on the amount of tax revenue, under the conditions set out in law. Swiss cantons and Swedish counties levy and set income tax rates; taxation provides 49% of the cantons' total budgetary resources, and income tax revenue represents almost two thirds of the Swedish counties' total resources.

The French regions have much smaller budgets because they have relatively few administrative attributions, but their tax revenue represents almost 50% of their total resources.

The Italian regions and the Spanish Autonomous Communities, however, derive most of their resources from shares in national tax revenue, over which they have no influence, and direct budget transfers from the state. In Spain, independent resources represent only 10% of the Autonomous Communities' budgets, and tax revenue only 1%. In Italy this percentage has increased to 15%, but independent and transferred tax revenue represents little more than 10%, although this average embraces wide disparities since special-status regions have more extensive tax-levying powers⁴⁸. The situ-

47 See the Swedish national report by M. Östhol and Marcou, G./Verebelyi, I. (1993), op. cit., pp 60-62 and 88 ff. 2 In 1992, although it was 57% in 1984.

48 1 See financial tables published each year in Volume 2 of the *Annuario delle Autonomie locale*, Edizioni delle Autonomie, Rome.

ation in the German *Länder* is fairly similar: over 85% of their tax revenue comes from their shares in national tax revenue; the *Länder* have a very low level of independent tax revenue.

2) The regions with the large budgets are also those with the lowest independent tax revenue. Here again Switzerland is the exception. This situation can be explained by the concern to avoid economic distortions caused by regional variations in the tax burden. This was an explicit consideration in the formulation of the financial system for the German Federation and *Länder*.

Moreover, when authorities wish to ensure some degree of equality in the level of public services they tend to place the emphasis on transfers from or shares in national tax revenue rather than independent taxation, because the former type of revenue is easier to adjust to the level of the needs. However, these aims are somewhat at variance with the financial autonomy objective.

3) Financial solidarity and equalisation mechanisms are not peculiar to regionalisation or federalism; they occur in most public finance systems. On the other hand, the modalities of their implementation and their intensity depend on institutional factors and explicit or implicit choices between political values.

The most vigorous equalisation systems are to be found in the United Kingdom and Sweden, though they concern local rather than regional budgets. In the United Kingdom equalisation is based on the principle of bringing resources into line with the estimated cost of the needs to be met: in a word, revenue support grants are calculated by comparing the standard spending assessment with the total average expected revenue from independent or transferred local taxation; in this system the assessment of needs is the most difficult, and sometimes controversial, operation.

Sweden has a system of tax revenue equalisation which is applied to income tax. Where the municipalities are concerned, the main mechanism consists of defining a guaranteed level of income tax bases, whereby the government sets a tax rate which is applied to the difference between a given municipality's real tax bases and the guaranteed level; this gives the amount of the equalisation grant paid to the municipality by the state.

Germany has a complex equalisation system based on the apportionment of VAT revenue. Since 1995, 56% of VAT revenue has gone to the Federation and 44% has been divided out between the *Länder* according to three main procedures: 75% of this volume is apportioned in accordance with the size of the population, which is already a form of equalisation in view of the uneven distribution of economic activities; the other 25% is used for attributing tax supplements to *Länder* whose tax revenue from all sources is below the average for the *Länder*; lastly, on the basis of variations in tax revenue

noted among the *Länder*, taking 50% of tax revenue totals from the Land's municipalities as the basis this time, a horizontal equalisation funded by the wealthier *Länder* is conducted on behalf of those *Länder* which lie below the equalisation index.

In Switzerland, the cantons' share in some types of Federal revenue and their contribution to some types of Federal social expenditure are adjusted in accordance with a financial capacity index. However, neither the Swiss nor the German equalisation system is sufficient on their own; they are both complemented with subsidies which are also attributed on the basis of equity criteria. Even so, the results do not always correspond to the aims and sometimes have a fairly limited impact as compared with the budgetary volumes in question. Equalisation in Switzerland concerns less than 3% of cantonal budgets; in Germany, before the integration of the eastern *Länder*, the percentage was the same, but in 1995 it can be estimated at approximately 12% of the *Länder* budgets. In fact this leap explains the increase in the proportion of VAT which is to be attributed to the *Länder* from 1995 onwards, preventing imbalance in the western *Länder* budgets, which have virtually all become net contributors⁴⁹.

4) Regionalisation can also be accompanied by pressures towards regionalising resources rather than promoting interregional financial solidarity. In this case it can help maintain inequalities rather than creating favourable conditions for endogenous development. Selfish regional interests may emerge in many different forms and at many levels, but they may be able to establish themselves through the institutions and the self-governing system. In more tragic circumstances, they fuelled separatism on the part of certain republics in the former Yugoslav and Soviet federations. This risk is particularly high when political regionalisation benefits wealthy regions.

5) Not only the creation of regions but also progress in decentralisation seem to push public expenditure up, even when the regions have little or no control over the changes in their resources. This phenomenon can be seen in Spain, Italy and France. In Spain, the Autonomous Communities' share in overall public expenditure increased from 6.1% in 1982 to 22.6% in 1992, and has since remained static; their staffing increased from 3.9% to 39.1% of the total Spanish civil service between 1982 and 1994, whereas over more or less the same period (1981- 1991) the latter increased by 50%.

The expenditure of the Italian regions is proportionally similar to that in Spain, and the consensus is that regionalisation was made possible by economic growth, particularly because the ordinary-status regions' most

49 On Germany see Marcou, G. (1994), "Finances publiques et inégalités territoriales", pp. 185-227, in Marcou, G./Kistenmacher, H./Clev H.G., op. cit., and Bundesministerium der Finanzen (1994), *Finanzbericht 1995*, Bonn, particularly pp. 99 ff.

important powers are in the social field and these gave the politicians direct control over a certain proportion of public expenditure; the result is that the regions' role is especially important because the economic situation gives them more resources to manage.

In France, where the regional councils establish the rates for taxes which they levy on the same bases as the municipalities and departments, the regions' share in local direct tax revenue increased from 5% to 8% between 1988 and 1994 and their overall expenditure in real terms increased by over 20% per annum or thereabouts between 1984 and 1988; despite a slowdown from 1987 onwards, which was also when the transfers of powers were completed, the growth rate stayed above 12% until 1991. The development of regional investment expenditure is even more significant, because it has grown much faster than investment expenditure in the departments and municipalities⁵⁰.

However, this evolution is apparently not entirely attributable to the creation of regions; it is a phenomenon which occurs in all decentralisation processes. Public expenditure is also to some extent a mode of legitimisation; the elected members of the new institutions must meet the needs confronting them. This corroborates Jim Sharpe's theory that meso government reinforces the coalition of consumers vis-à-vis the coalitions of producers characteristic of modern neo-corporatism.

2. Local self-government and the regions

Regionalisation obviously has different effects on local authorities' self-governing powers depending on whether or not it entails a new governmental level in addition to the existing local authorities. Clearly, when regionalisation involves transforming the functions of the intermediate-level institutions or inter-municipal co-operation it does not curb these local authorities' autonomy; on the contrary, it may reinforce it vis-à-vis central government.

However, the positive or negative consequences for local authorities are just one of the elements to be considered in assessing the merits of regionalisation, or to be more exact of the forms it takes in a given country. Here again, comparison between regionalisation and federalism is relevant to the appraisal of the specific institutional expressions of regionalisation.

One will therefore consider the situation of infraregional local authorities vis-à-vis the regionalisation process in a unitary state, then in situations of political regionalisation, and lastly in federal states. Three variables are relevant for analysing the consequences of regionalisation for local selfgovernment: the statutory, functional and financial dependence of local authorities.

⁵⁰ Report on France by G. Marcou.

A. Infra-regional local authorities and regionalisation in the unitary state

The most typical example here is France. The situation in Portugal is comparable, even though regionalisation is still hypothetical in this country's mainland European territory. In both cases regionalisation has been influenced by the concern to avoid affecting the autonomy of the other local authorities.

The French and Portuguese regions are in fact “local authorities” within the constitutional meaning of the term; this means that they have the same legal nature as municipalities or other local authorities. In France the regions were established by law, as permitted by the Constitution, but they do not have Constitutional status, unlike the departments and municipalities, whereas in Portugal the administrative regions are provided for in the Constitution although their establishment is subject to the wishes of the legislator and the majority of the municipalities in the region (Articles 238 and 256 of the Constitution; see I.1.B above). Local self-government (or the principle of free administration by the local authorities) is recognised and protected by the Constitution.

In this model the infra-regional authorities are in no way statutorily dependent on the region because both the institutions and the responsibilities of such authorities are established by national law, including territorial changes and the conditions for such changes. Clearly, neither the French regions nor the Portuguese administrative regions exercise statutory responsibilities vis-à-vis the other local authorities, namely the departments and municipalities in France and the *municípios* and *freguesias* in Portugal. Furthermore, controls over local authorities (control of legality and financial controls) are exercised by the state, not the region: they involve state institutions, namely the prefect in France and the civil or district governor in Portugal⁵¹, as well as the competent courts and in certain cases the government itself or a minister.

The two countries adopt different approaches to protecting the autonomy of infra-regional local authorities. In Portugal some (less than half) of the members of the regional assembly will be elected by the college of municipal councillors from the *municípios* in the region, while its other members will be elected by direct suffrage.

The Portuguese Constitution confers regulatory power on the local authorities, but they are also required to observe the regulations issued by

51 When the regions have been set up a Government representative will be appointed in each region; he will also represent the region with respect to the other local authorities within its area.

higher-level local authorities, which means that the administrative regions will be able to issue regulations binding upon the municipalities. However, the Constitution provides that the administrative regions, which will be responsible for co-ordinating and supporting the municipalities, must respect the latter's autonomy and refrain from limiting their powers.

The French local authorities have no regulatory power except where the latter is expressly provided for by law as part of the exercise of a responsibility; this explains the importance of negotiations, incentives and contracts in interregional relations and relations between the regions and the departments or municipalities. Furthermore, the apportionment of responsibilities between municipalities, departments and regions must not enable any of these authorities to exercise any form of supervision over any of the others (CCT, Article L.1111-4) and a decision whether or not to grant financial aid to another local authority cannot have the effect of establishing or exercising supervision (Article L.1111-4). On the other hand, the plan set out in the 1969 draft to include representatives of the local authorities on the regional councils, which plan was actually applied in the setting up of the regional public establishment provided for under the 1972 Law, has been abandoned.

These provisions show a desire to prevent the municipalities from becoming functionally dependent on the regions (or, in France, on the departments), but they also demonstrate that such dependence can be indirect and arise, for instance, out of financial "support". Subsidy schemes invariably lead to some degree of dependence, be it only in terms of determining the purpose of the subsidy. However, this means that one must assess the overall system governing resources.

One can only do so in respect of France because the Portuguese administrative regions do not yet exist, but it can be noted that communal and departmental finances are completely separate from regional finances: each local authority is specifically empowered to levy taxes, and the main budgetary transfers are attributed by the state in the form of a lump sum (except for investment subsidies for municipalities with populations of under 2 000). Financial equalisation systems are managed by the state, not the region, apart from small equalisation funds which are administered by the department council.

Broadly speaking, the Constitutions of unitary states include provisions geared to creating local authorities, guaranteeing their autonomy and establishing state control, with the sole exception of the United Kingdom, but more in the nature of its (unwritten) constitution than in what it provides. In unitary states without regional institutions it is always the state or

Its local representative, not an intermediate- level local authority, which supervises the local authorities; this is the case in Sweden, and now also in Hungary and Poland.

The Netherlands are the exception here because the provincial council is responsible for municipal reorganisation, and the executive elected by the provincial council (which is, on the other hand, chaired by the Queen's Commissioner) supervises the municipalities and their co-operation agencies⁵².

B. Infra-regional authorities and political regionalisation

In all the countries which have undergone political regionalisation (Spain, Italy, and Belgium even though it has now become a federal state, as well as Portugal in respect of its overseas regions), the responsibilities vis-à-vis local authorities have been apportioned between the state and the region. As in the unitary state, the national constitution defines the local authorities and the guarantees on their autonomy. General legislation on local authorities is adopted at the national level. In both Spain and Italy, as in Belgium, France and Portugal, the existence of municipalities and (apart from Portugal) provinces as an intermediate level is guaranteed by the Constitution.

However, there is *de facto* competition between the region and the province which has been facilitated in the case of political regionalisation by the weakness of the provincial level, confirming its subordinate status. For instance, where the expenditure of the French departments amounts to 46% of that of the municipalities (including communal groupings with independent tax-levying powers), the expenditure of the Belgian provinces corresponds to only 20% of that of the municipalities, and that of the Italian provinces under 9% of that of the municipalities.

In Spain the situation is more difficult to gauge, because the provincial level has disappeared in the one-province Autonomous Communities. However, the historic territories of the Basque Country and Navarra have a system based on "fueros" or privileges, which increases their resources; some of the other Autonomous Communities experience institutional clashes (Catalonia, Castile - La Mancha and the Valencia region), and some have a high level of co-operation⁵³. Political regionalisation generally tends to subsume the province as a district of the region.

52 Toonen, T.A.J. (1993), "Dutch Provinces and the Struggle for the Meso", pp. 132 and 133, in Sharpe, L.J. (ed.), op. cit.

53 On Belgium, see De Bruycker, Ph./Dujardin, Ph. (1994), "La décentralisation à l'épreuve de la nouvelle forme de l'Etat", pp. 59-90, in Delcamp, A. (ed.), *Les collectivités décentralisées de l'Union européenne*, La Documentation française, Paris; Delmartino, F. (1993), "Belgium: in Search of the Meso Level", pp. 40-60, in Sharpe, L.J. (ed.), op. cit.; on Spain, Fernandez Espinar Lopez, L.C. (1994), "Espagne: les structures locaux dans l'Etat des autonomies", pp. 117-148, in Delcamp, A. (ed.), op. cit.; Cuchillo, M. (1993), "The Autonomous Communities as the Spanish Meso", pp. 210-246, in Sharpe, L.J. (ed.), op. cit.; on Italy, Merloni, F. (1994), "Italie: l'Etat régional contre la centralisation?", pp. 233-254, in Delcamp, A. (ed.), op. cit.; Cassese, S./Torchia, L. (1993), op. cit., pp. 91-116.

Local authorities are in a situation of partial statutory dependence on the regions, reflected in the apportionment of law-making and supervisory powers. Spanish national legislation establishes the bases of the local authority system (Law of 2 April 1985), regulates local finances (Law of 28 December 1988) and the property system (Legislative Decree of 13 June 1986); however, the Autonomous Communities also exercise a subordinate legislative power, which has for example been used to create special local authorities below provincial level, such as the *comarcas* (regions) in Catalonia and the Asturias, the associations of municipalities (*mancomunidades de municipios*) in Aragon, the organisation of metropolitan areas, and also the provinces' powers and relations with the Autonomous Community.

The Autonomous Community is also responsible for deciding on the creation or abolition of municipalities or alterations to their territorial boundaries (Law of 2 April 1985, Article 13).

Supervision of legality is shared by the state and the Autonomous Community, which receives notification of decisions taken by the local authorities and may apply to the courts to have them rescinded; however, the Constitutional Court has called a halt to the efforts of certain Autonomous Communities to establish closer supervision over the provinces, particularly their budgets.

Portugal has introduced a similar system in the autonomous island regions. The latter legislate on regulations governing local authorities, in compliance with the Constitution and general national legislation, determine local authority boundaries (creation, removal and amendments) and exercise supervision.

Italian legislation on local authorities is still adopted at the national level, but the regions can legislate on town boundaries (Article 117 of the Constitution). Law No. 142/1990 lays down provisions enabling regions to rationalise the organisation of municipal territories and provides for setting up metropolitan municipalities in nine specified urban centres, leaving it to regional legislation to implement this reform and define further metropolitan municipalities; these municipalities are superimposed on the ordinary municipalities and combine both own attributions with those of the province.

The dilatory implementation of the reform (except in Bologna and Genoa) shows the limits of regional power as compared with municipal power. On the other hand, delays in the process laid down in Law No. 142/1990 for transferring or delegating regional powers to the municipalities and provinces reflect the regions' reluctance to initiate decentralisation⁵⁴.

Also in Italy, supervisory powers over local authorities are apportioned between state and region:

⁵⁴ Under Article 3 of this Law the regions must organise the exercise of administrative functions at local level by municipalities and provinces, apart from "unitary-type" functions which must be exercised at regional level.

supervision of decisions is exercised by a regional body constituted in accordance with the laws of the Republic (Article 130 of the Constitution); Law No. 142/1990 set out the principles governing such supervision, establishes the composition of the regional supervisory board and abolishes supervision of expediency. The state is responsible for supervising elective bodies (dissolution or revocation).

The 1976 British Scottish and Welsh devolution bill provided for empowering the regional assemblies to legislate on local government and finances, but it also guaranteed the current powers of local authorities.

Even though Belgium has become a federal state, legislation on municipal and provincial organisation is still adopted at national level (cf. the new law on local authorities of 26 May 1989). However, intermunicipal co-operation is now a matter for the regions (Law of 16 July 1993 specifying the apportionment of powers), and since 1980 supervision of local authorities has been gradually regionalised. Regions are currently responsible for organising and exercising the supervision of municipalities, subject to specific types of supervision organised by the national and community legislators in matters falling within their respective jurisdictions.

Broadly speaking, regional powers, based on a high level of legislative power and finances, tend to make local authorities somewhat dependent on the region, both functionally and financially. The determination of the Spanish Autonomous Communities and the Belgian regions (or communities) to affirm their autonomy from the central authorities leads them to lay particular stress on their power over local authorities, which are sometimes better advised to seek the support of the central government in certain fields.

The proximity-based approach plays against the local authorities: the regional authority can exercise more detailed supervision than the state supervisor. The regional legislator is a subordinate legislator as he is bound by national legislation, and so he is tempted to legislate in more detail, which reduces the area in which municipal or local autonomy can be exercised. And if, under regional decentralisation, applications can always be made to the administrative judge against a measure decided by a local authority which infringes local autonomy to the detriment of another body, in the case of political regionalisation it is more difficult for local authorities to challenge regional laws because the region is actually empowered to make laws.

In Spain only the national board of the local government department or the delegation representing the local authorities within the latter can apply to a competent authority to refer a national or regional law to the Constitutional Court (Article 119 of the Law of 2 April 1985). In Italy only the Government Commissioner in the region can appeal to the Constitutional Court against a regional law on the grounds of its unconstitutionality; the local authorities can only adduce the unconstitutionality of a regional law

which is already the subject of judicial review⁵⁵. In Belgium, however, local authorities can lodge an appeal directly with the Court of Arbitration.

C. Local authorities in the federal state

The situation in federal states is very different from that not only in states undergoing regional decentralisation but also in those experiencing political regionalisation. Local authority status is determined exclusively by the federate states, subject to any relevant Constitutional provisions.

Belgium is not really an example of this because its Constitution uses institutional regionalism to establish federalism, and the Belgian federal system still bears the clear imprint of such regionalism.

This is because the federal state is based on federate states, i.e. on the superimposition of state attributes at two different levels, and apart from a number of directly enforceable federal powers, internal administration falls within the competence of the member states. This is in any case the model used by Germany, Austria and Switzerland, but there is some diversity.

First of all, the federal constitution does not necessarily mention the existence or autonomy of local authorities. This applies to the Swiss Federal Constitution and those of the United States of America and Canada.

The German Basic Law recognises and safeguards the principle of self-government (*Selbstverwaltung*) by local authorities in general terms, including the principle of financial autonomy (Article 28), and establishes the bases of the system governing local authority resources (Article 106, paras. 5 to 8). On the other hand, the Austrian Federal Constitution is much more detailed: it sets out a veritable “general principles act” on the system of local authorities (Articles 115 to 120, together with the amended Constitutional Law on Finances of 21 January 1948). Yet the constitutions and laws of federal states set out the regulations governing local authorities; in principle there are no federal laws on territorial organisation or regulations governing local authorities.

The fact is that local authorities in federal states depend statutorily, functionally and financially on the federate state; where the federal constitution contains provisions on local authorities, federal law is rather a source of safeguards against the powers of the federate state to which the local authorities are answerable. Local authorities have basically no direct relations with the federal administration; to them, the state is the federate state to which they belong.

There is, however, partial functional and financial dependence on the federation in that federal legislation can set out programmes which require the participation of the local authorities (e.g. in the social policy

⁵⁵ Article 134 of the Constitution; Article 23 of Law No. 87/1953 of 11 March 1953.

field), and it directly affects their budgets firstly if it does not completely offset the costs arising out of federal programmes and secondly if it intervenes in local authority resources, for instance through tax policy measures aimed at different goals.

One typical example is provided by the current debate in Germany on the partial abolition of business tax and the alternative resources which would have to be found (e.g. a share in revenue from VAT or an eco-tax)⁵⁶.

Contrary to the generally accepted idea, while federalism undeniably encourages institutional diversity in the local authorities, it does not foster decentralisation. To be more exact it is neutral vis-à-vis decentralisation. The issue of decentralisation in fact arises inside each member state.

The extent of local authority autonomy depends on the extent of the guarantees set out in the federal constitution and of the powers and degree of financial autonomy granted to local authorities by the constitution and legislation of each federate state, but the federal constitution may also allow for both centralised and decentralised systems. In fact, within one and the same federation there may be considerable differences in the extent of the actual autonomy of local authorities; as in both Germany and Switzerland.

Local authorities sometimes have greater autonomy in unitary states than in federal ones, as can be seen from the examples of Sweden or Denmark; detailed comparison between France and Germany also shows that in many respects the French municipalities, particularly the urban municipalities, have more autonomy than their opposite numbers in Germany, particularly in terms of finance and town planning - which sometimes has drawbacks as well as advantages.

3.1.4 Conclusions of the CDLR

1. The different models of regionalisation

Each individual member state of the Council of Europe has its own history and geography, its cultural, linguistic and other human characteristics, its economic and social situation, and its political leanings and tensions, all of which generate and explain the wide differences existing in the territorial organisation of these states. These disparities also make it difficult to arrive at a common notion of the term *region* or to encompass in a single unambiguous definition the term *regionalisation*.

The word *regionalisation* may be used to cover a wide variety of situations, including also certain forms of co-operation between local authorities and even decentralisation of the administrative departments of

⁵⁶ "Die Reform der Kommunalfinanzen", *Informationen zur Raumentwicklung*, No. 8/9 1995, Bundesforschungsanstalt für Landeskunde und Raumordnung.

central government. In fact, regionalisation may also occur - and often does - irrespective of whether a recognised regional authority already exists or is to be formally created.

The decentralisation of the administration departments of central government is clearly distinguished from the other forms of regionalisation in that it is almost entirely consummated by reorganising the central government administration and its operation.

True, decentralisation of the central government's administrative departments is usually attended by a new conception of state-local government relations. Greater proximity of the central administration to the local authorities naturally entails the discovery of new forms (and procedures) for co-ordinating and supervising the action of the latter, and it may also aid the devolution of certain functions to local government.

While by no means insignificant, the effects of decentralisation nevertheless differ in extent and above all in nature from those produced by the other forms of regionalisation.

Development of intermunicipal co-operation assumes major importance in a number of European states. It is a response to the challenges which certain communities, not of sufficient size for the complete discharge of all their responsibilities, are unable to meet if they remain isolated. On a different plane, it also provides a response to the problems faced by Europe's large towns and the communities on their outskirts. Significantly, these areas are referred to under the designation of urban or metropolitan "regions".

The above forms of regionalisation admittedly have a substantial impact on local authorities engaged in reorganisation and establishment of institutional structures aimed at improving the management of affairs which pertain to their level and catering more satisfactorily for the needs of their residents.

Moreover, the stimulus to integration which they create frequently proves itself a powerful instrument of rationalisation and efficiency, and as a result the process can make for the conferment of new functions on the structures thereby established.

The CDLR has already had occasion to comment on the essential role which can be performed by types of association between local authorities, in particular between urban regions, and has given definite indications regarding the institutional structures of these regions; reference can therefore be made to its studies in this field⁵⁷.

Thus, in the context and for the purposes of these conclusions, attention will be focused on the forms of regionalisation based on the notion

57 See in particular the following studies: - Major cities and their peripheries - co-operation and co-ordinated management, No. 51 in the series "Local and Regional Authorities in Europe"; - The status of major cities and their peripheries, No. 59 in the series "Local and Regional Authorities in Europe".

of region as intermediate self-governing authority, on the level just below central government, having a political representativeness.

The trend towards greater regionalisation, even in this narrower sense which describes the development of the territorial structure in favour of an intermediate tier of government, does not necessarily lead to the creation of a new territorial entity but may rather entail the adaptation of existing institutions: it may occur within states where an intermediate authority already exists on which it is intended to confer new responsibilities and duties; at least in theory, regionalisation might in some cases lead to the abolition of a lower intermediate tier of government.

In other words, understood in this way, the process of regionalisation may take one of two paths: the creation of an intermediate authority, or the strengthening of one that already exists by allocating to it certain powers and the management of certain public services.

2. The purpose of regionalisation

Whatever the model chosen, regionalisation reflects a particular view of the nation state and translates a specific policy.

There are undoubtedly political motives underlying the establishment of a regional level of government when it is a case of responding to demands for self-government. More generally, the creation of autonomous regional authorities - or their reinforcement - can be justified by the desire to bring the exercise of public responsibilities as close as possible to the citizen and represents a method of implementing the *principle of subsidiarity*, which thus constitutes the basis and justification of the process.

Other forms of regionalisation linked with the enhancement of inter-municipal co-operation may also be contemplated in response to the political demand for more pronounced decentralisation.

The second aim of regionalisation corresponds to the need to structure the territory in such a way as to allocate public responsibilities to the different levels of government according to the *principles of efficiency and economy*. In this connection it is necessary to note that territorial organisation is an extremely complex and highly sensitive task and that the individual features of each country may justify the adoption of different solutions. In this sense, the setting up of a regional self-governing authority is advisable whenever it enables powers to be shared more rationally, available resources to be used more efficiently and economically and public services to be better managed for the benefit of the public.

Lastly, an economic aim usually exists whatever the form of regionalisation, even where it does not involve the creation of an additional tier of administration. Indeed, with the growing importance of regional economic systems in the present European and worldwide context, regionalisation can become a mandatory choice for adapting established local institutions to the

dictates of sustainable economic development or founding new institutions capable of fulfilling them effectively.

3. The factors of regionalisation

At all events, whether to regionalise or not remains an eminently political decision, which depends on the concept of state organisation adopted. This concept has changed - and is still changing - particularly in the light of the role taken on by the state and its component authorities and of the extent of their involvement in ordinary people's day-to-day lives.

It is up to policy-makers in each state to assess their country's specific situation and to decide whether one of the regionalisation models is an appropriate response to citizens' problems, expectations and aspirations. Several factors should be taken into account for this purpose:

- historical (e.g. presence of former territorial divisions, such as kingdoms, principalities, duchies ...);
- political (e.g. vigorous nationalism, autonomist, separatist or federalist movements);
- ethnic and/or cultural (including language factors);
- geographical (e.g. the larger the country, the more important it is to set up intermediate authorities; special consideration has to be given to islands ...);
- demographic (e.g. the existence of a large number of local authorities with small populations; concentration of population in certain parts of the country ...);
- socio-economic (e.g. marked differences in the development of the different parts of the country, activities of inhabitants of each area and the income they derive from these...).

It is impossible to place these factors in order, as the importance of each may vary, depending on the context. All deserve to be taken into consideration with a view to determining whether regionalisation is desirable, or even necessary, and which form it should take.

They also shape the course of the regionalisation process, influencing both the division into regions and the nature and scope of regional self-government, when this is the result of the process.

Nor is it possible to present a single regionalisation model or even a standardised regional model, be it in terms of size (geographical or population) or competencies. Such uniformity would not seem feasible given the differences between states.

On the contrary it is possible and worthwhile to indicate the criteria which may guide policy-makers. In particular, the adoption and implementation of these criteria in a given situation should comply with three principles:

- firstly, the solutions adopted should conform to the necessity of safeguarding the territorial unity of the state while preserving solidarity between its various components;

- secondly, in a rapidly changing environment, the regionalisation process should lead to solutions well suited current problems and also adaptable to future changes;

- lastly, given the highly competitive European and world situation, the territorial organisation of the state - and the accompanying administrative institutions - should act as a catalyst for stimulating the economy, avoiding unnecessarily bulky or complex structures which would hamper or handicap the private sector.

4. Administrative decentralisation and political regionalisation

Regional self-government has implications for local self-government whose importance in quantitative and qualitative terms warrants more thorough examination of the process of setting up or strengthening self-governing regional authorities.

This process may follow two paths that should be clearly distinguished: administrative decentralisation at regional level and political regionalisation⁵⁸.

Administrative decentralisation may involve the attribution to regions of management and/or planning powers in fields determined by the law. This may be distinguished from administrative decentralisation which takes place in the form of execution of public tasks by region-related state administrative authorities, which however do not represent an autonomous regional level.

Political regionalisation entails the attribution of legislative powers, enabling regions holding such powers to draw up or supplement statutory rules in the fields in which they have such powers.

The concept of regional self-government refers to the existence of an assembly which has democratic legitimacy and of a regional executive answerable to that assembly.

⁵⁸ This terminology is borrowed from Italian and Spanish doctrine and, in the legal systems of the two countries, characterises the specificity and the extent of the powers conferred under the respective constitutions on regions or autonomous communities. These powers are more akin to those enjoyed by federated states than to those of the regions in France or other European countries where forms of regional self-government are established. However, this terminology does not imply that the political dimension is absent from the sphere of regional decentralisation. This dimension is in fact inherent in the notion of regional self-government; what is more, it is present to differing degrees in all forms of regionalisation, even those not resulting in regional self-government.

Election of the regional assembly by direct suffrage is the only appropriate solution in the case of political regionalisation, especially in view of the ensuing hierarchical relationship between the region and the other territorial authorities. In the event of administrative decentralisation, on the other hand, the democratic legitimacy of the regional assembly may be based on indirect representation.

The choice of the model to be followed depends on the actual situation of each state. It is nevertheless possible to say that political regionalisation raises problems which are more complex to solve and also that the process as such implies the possibility of proceeding step by step. It is thus perfectly possible, within the context of a political and/or economic transition, to embark on this process by administrative decentralisation at regional level, thereby making it possible gradually to set up the structures necessary to the exercise of the management and planning powers devolved to this level, and to lay sound foundations for the move towards political self-government of the region, if so desired. Nevertheless, there is no reason to regard administrative decentralisation at regional level only as a step towards political regionalisation.

On the contrary, it constitutes a separate model designed to deal with problems of a different nature. It should be noted that the two models of self-government are not mutually exclusive and may coexist within a single state: the particular situation of some regions may justify, or even require, specific solutions, particularly the recognition of political self-government, despite this not being deemed appropriate for every region of the country concerned.

5. The definition of new geographical areas

When the regionalisation process involves the creation of new intermediate authorities and no obvious solution is imposed by historical, ethnic, cultural, linguistic or other traditions, the definition of their geographical area can also be made on the basis of other criteria.

First of all, the size of regions must be appropriate to the powers which it is planned to give them; if geographical size and scope of powers are inconsistent, the whole process becomes pointless. Similar considerations may be applied to the population of regions.

The aim is not, of course, to make every region the same size, with the same population: not only is this unnecessary, but there are usually several factors standing in its way. As far as possible, however, it is advisable to avoid significant disparities between regions, which could give rise to inefficiency.

Regions must also be large enough to make possible and effective the performance of the tasks entrusted to them. Regions must be in a position to foster the balanced development of the country. Often, there is no

way of delimiting them without “consolidating” existing inequalities, but in these cases, it would be appropriate in so doing to bear in mind the specific action which the situation of certain areas requires, in order to simplify structural policies and make them more efficient.

It should also be noted that, once the number of regions has been determined, account should be taken of how to make optimum use of public resources. Therefore, it is important to assess the benefits resulting from the new expenditure incurred through regionalisation.

The geographical situation - even when it is not an essential factor in itself - may also help to create and strengthen a feeling of belonging to a region. It is therefore appropriate to take due account of it.

Dividing the country and delimiting regions is not an innocuous operation: quite the contrary, it is likely to give rise to strong resistance, particularly from local authorities if they feel that the process is impinging on their prerogatives.

Furthermore, the factors mentioned above, already difficult to appraise, may give rise to discrepancies, generate conflicts of interest and create tension between incompatible solutions, all of which delay the process.

If such tension is to be reduced, and even prevented, it is absolutely essential that local authorities as well as their citizens be involved in the process, directly and/or through associations which defend their interests. In particular, it would be advisable for the opinion of the populations affected by the proposed reforms to be sounded out by means of referenda.

If the regional boundaries are drawn in such a way as to take account of pre-existing territorial authorities, and without calling these in question, this should normally simplify the process. However, if, despite the efforts made, it appears impossible to resolve every dispute, decisions will have to be taken in the light of the general interest.

6. Definition of regions' powers

The definition of powers should draw on the subsidiarity principle “as a criterion for allocating powers between different levels of government and guiding them in the exercise of these powers”⁵⁹.

At the same time, the attribution of powers to regional authorities must meet the requirements of efficiency and economy which the subsidiarity principle implies and which underlie the regionalisation process. Wherever possible, it is desirable for a set of exclusive powers to be allocated to the regions. An effort should also be made to ensure that all these powers

⁵⁹ The Committee of Ministers of the Council of Europe, on 12 October 1995, adopted Recommendation No. R (95) 19 on the implementation of the principle of subsidiarity. Furthermore, a report prepared for the CDLR entitled “Definition and limits of the principle of subsidiarity” was published as No. 55 in the series of studies on “Local and regional authorities in Europe”.

(whether or not they are exclusive) are appropriate to the size (in terms of territory and population) of the regional authorities. Such powers must be defined as clearly as possible, as uncertainties lead to both malfunction and conflict.

What is more, clarity is not irreconcilable with some degree of flexibility. Generally speaking, it of course seems preferable to avoid regionalisation “à la carte”, and equality between the regions should be ensured as far as possible, since this makes co-operation between regions easier, while its absence makes co-operation far more difficult. It is not essential, however, for every region to be given exactly the same powers at the same time; on the contrary, some time-lags may meet some regions’ need to avoid taking on responsibilities they are not yet ready to bear. It is also possible, as part of a dynamic process and in the light of changes in the situation, to provide for “adjustments” to the powers determined at the outset.

Any system of self-government should include an effective remedy enabling regions to protect their powers from illegal or undesirable interference by the state and enabling the state to prevent the regions from exceeding their powers. When powers are divided under constitutional law, the arbiter in dispute over powers should be, as a last resort, the body responsible for determining whether legislation accords with the constitution.

Lastly, care must be taken to ensure that administrative structures exist which are capable of performing the new tasks, and an answer must be found to the various problems relating to regional government staff.

7. Regional finance

There can be no genuine self-government without financial resources. The recognition of regions’ own powers and the delegation of responsibility for administrative management must be accompanied by the provision of appropriate financial resources, i.e. resources allowing regions to perform all of their tasks efficiently.

Regions, in particular those enjoying political self-government, should be allowed an appropriate margin for determining their level of expenditure and a corresponding control over their revenue.

When regions have a certain financial self-management, this has an impact on national macroeconomic policy; nevertheless, if their margin of manoeuvre is properly defined, this financial selfmanagement may not be an obstacle to a policy of expenditure control. Indeed, regions’ share of fiscal responsibility in relation to taxes they can levy is likely to encourage the search for greater efficiency, thus helping to moderate regional public expenditure and to stabilise the system for the financing of regions. The repercussions of the financial independence of regions on national economic policy should therefore be balanced against the advantages it can offer.

Lastly, it is also essential when creating regions that a financial

equalisation system be set up at national level, in order to lessen the effects of inequalities between regions, while maintaining their degree of autonomy.

8. Inter-regional and state/region relations

In the framework of the regionalisation process, the principle of subsidiarity plays a vital role. Nevertheless, compliance with this principle is not sufficient: attention should also be paid to the *principle of coherence and unity of application of public policies* for the benefit of the whole population, and to the *principles of co-ordination and territorial solidarity*⁶⁰.

In the fields of competence allocated exclusively to regions, it is advisable to define the limits to their action by means of legal instruments giving directives. To the extent that responsibilities over the same field are shared between the state and the regions, regional self-government should go hand in hand with the setting up of appropriate and functional machinery for co-ordination and co-operation between regions and the state.

Moreover, regions should have available a forum for dialogue allowing them to harmonise their action in the fields where synergy, though not indispensable, is advisable.

9. The impact of regionalisation for the existing authorities

Regionalisation inevitably has repercussions on the situation of local authorities and, where they exist, of the intermediate sub-regional authorities. These consequences arise in respect of the scope of the said authorities' powers and their relations with both the state and the regions.

The creation of a self-governing regional authority implies the reallocation of powers between the state and the other authorities. The question which then arises is whether these authorities' degree of self-government is to be restricted to the benefit of the new regional authorities, or whether their powers should correspond exclusively to certain powers hitherto exercised by the state. Consideration must also be given to whether it would be advisable to maintain any intermediate sub-regional authorities which exist. The answer to these questions is not necessarily the same in every case.

It is advisable that regionalisation takes place as far as possible without restricting the competencies of the existing local authorities - namely the municipalities - without strengthening the supervision over the latter and without reducing the financial means at their disposal.

However, it is possible that these authorities may have encountered difficulties in the efficient exercising of some of their powers and that re-

⁶⁰ See Recommendation No.R (95) 19 and the report of the CDLR on "Definition and limits of the principle of subsidiarity", quoted in preceding footnote.

gionalisation may therefore be the occasion for withdrawing these. Regions might possibly be authorised not only to “restore” these powers through delegation, but also, by the same means, to assign new responsibilities to the local authorities.

The option of delegating powers must not serve as a pretext for denying that local authorities have powers of their own, but rather as a way of ensuring that the system for the division of powers has the flexibility which enables it to achieve an appropriate balance between the responsibilities taken on by each level of administration and the actual underlying situation, while complying with the principle of subsidiarity.

This flexibility may be increased by making it possible for local authorities to hand certain powers over to the regions, with their agreement, where this makes a more efficient and economical management of local public services possible.

At all events, local authorities should have available a judicial remedy to protect themselves from any illegal interference in the fields of their competencies.

Viewed as a means of achieving an optimum allocation of tasks and the corresponding burdens, regionalisation is not a process which conflicts with local self-government; indeed the latter may emerge strengthened as a result.

The intermediate sub-regional authorities are in a particular situation, however, since the setting up of regions raises questions not only about their powers, but about their very existence.

It is advisable to keep them only if they are in a position to perform certain functions better than regions and municipalities. If they are not, they will simply stand in the way of the rationalisation which regionalisation aims to achieve, or they will remain in existence without real power.

Furthermore, the more levels of sub-national government there are, the more necessary it is to draw up a clear definition of the relations between them, so as to avoid constant disputes and the resulting paralysis of the workings of the system as a whole. So even in cases where regionalisation takes place without any change in the powers of the existing authorities, its effects are still not neutral, for the regional authority takes up a place between them and the state, thereby disrupting the interrelationships which previously existed.

Political regionalisation requires a thorough rethink of functional dependence, in order to avoid the proliferation of administrative checks on local authorities, but also to ensure the necessary coordination between their actions, those of any co-operation structures which may be set up by them and those of the regions. The need for co-ordination is just as important in the event of administrative decentralisation, although in this case the territorial authorities are placed on an equal footing and their relationships are free of hierarchical considerations.

In addition, political regionalisation can result in a change in statutory and organisational dependence, if the regions obtain powers relating to local organisation. In this case, the national uniformity of subregional territorial structures might decrease in proportion with the margin of manoeuvre granted to the regions. It therefore seems appropriate for states to supervise the exercise of these powers by the regions, in order to avoid unjustified inequalities between local authorities.

Regions could also be required, within the context of their financial self-management, to ensure at least some degree of equalisation of resources among the local authorities on their territory.

In addition, and in more general terms, the system of financing local authorities should be conceived with a view to limiting, if not suppressing, their “de facto” dependence on the state or the regions.

3.2 Effective Democratic Governance at Local and Regional Level

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3.2.1 Introduction

This report deals with the situation of local and regional democracy in the “Stability Pact Countries” of South-Eastern Europe: Albania, Bulgaria, Bosnia and Herzegovina, Croatia, Moldova, Romania, the State Union of Serbia and Montenegro and “the former Yugoslav Republic of Macedonia”.

This group of countries is characteristically heterogeneous. Each country was subject to socialist rule until the 1990s; each is oriented toward European integration – first, into the Council of Europe, and later, upon fulfilling accession conditions, into the European Union. Summarised as such, it would appear as though members of this group do not differ dramatically from the most recent enlargement countries, now new member states of the European Union (EU).

However, this comparison is valid only for two of the Stability Pact Countries (hereinafter, SPCs): Bulgaria and Romania. Both countries were involved in the same accession process as the eight Central European states recently admitted to the EU.

However, their membership was delayed, owing to their slower and

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more difficult reform course. These two countries existed before, during and after state socialism, maintaining the same territory (though with significant border changes for Romania in 1945).

The situations of the six other countries of South-Eastern Europe are far more complex. Four were components of the former Socialist Federative Republic of Yugoslavia (fSFRY). With the collapse of the fSFRY, and in response to a series of wars that erupted for the purpose of forming political communities based on ethnic homogeneity, these states sought independence. The late intervention of the international community imposed peace; yet, this intervention to a large extent recognised the ethnicisation of state building, based on the ethnicisation of settlements.

This is reflected in the international agreements that still provide the framework for domestic constitutional rules.⁶² As such, the major issue facing these countries is state building. Some of the most significant problems observed concerning the implementation of local self-government stem from the present organisation of the state, which itself is a consequence of arrangements guaranteed by the international community.

Nevertheless, it must be stressed that local self-government is always linked to international arrangements, and progress made in local self-government in terms of new state structures may be attributable to international guarantees. As well, dissimilarities among these countries appear to be increasing. It is expected that the current rate of progress in Croatia should enable the country to join the accession agenda predicted for Bulgaria and Romania between 2007 and 2009. Prospects seem less favourable, however, for the other three countries.

Since before state socialism, the territory of Albania has remained unchanged.

Thus, its current situation basically resembles that of Bulgaria and Romania. Sizeable populations of Albanian origin, however, reside in neighbouring countries of the region.

Lastly, Moldova struggles with numerous difficulties. A republic of the former Soviet Union, it is now a small country squeezed between Ukraine and Romania.

Moldova is a new state on the international scene: an independent Moldovan state ceased to exist after the sixteenth century; from the 1880s, Romania shared the province with the Russian Empire—and later, the USSR. In part of the territory, the authority of the central government continues to be challenged.

We can infer from these different backgrounds that local govern-

62 e.g.: The Constitution of Bosnia and Herzegovina, part of the Dayton Agreement; Serbia, where Kosovo is still under UN administration; and “the former Yugoslav Republic of Macedonia”, although to a lesser extent, with the Ohrid Peace Framework Agreement of August 2001. Furthermore, Croatia is also affected by the Dayton Agreement, regarding the return of refugees and judicial co-operation with the Hague war crimes tribunal.

ment issues must be handled in light of the state building needs of at least five of the SPCs; particular attention should be paid to local self-government to help consolidate new democratic state structures.

Another factor to be considered is the sizes of the SPCs, as these countries differ in terms of area and population. Population and area should be taken into account when discussing territorial reforms.

When taking stock of the current situations of the states of the region, and particularly in regard to local government, we must depart from any political or ideological approach on democracy and autonomy.

First, local or regional democracy should not be misunderstood. It is not a special type of democracy: democracy is a complex network of institutions, rights and behaviours implemented at all levels of government. Democracy at the local level cannot be isolated from its realisation at the national level. A key challenge in building constitutional democracy in the SPCs is to recompose the need to ensure citizens' rights, which are individual in nature, with the protection of minorities' rights, at the national and local levels. Local self-government has a special relevance to confronting this challenge.

Second, local self-government must be considered as part of the entire government system. It is necessary for developing better government, increased democracy, greater accountability and more responsiveness in managing public affairs. It should not, meanwhile, be in opposition to central or national government. The central government should consider decentralisation as an option in different public policies;

As the purpose of government is to serve civil society and citizens, the distribution of responsibilities and powers among different government levels must strive toward meeting functional needs. These functional needs may differ—not only from country to country, but also within a country, from region to region and according to public policies and time periods.

In the last few years, most countries have adopted numerous pieces of legislation, and ongoing reforms are often prepared with international support. Generally speaking, the countries of the region are striving to implement the standards expressed in the European Charter of Local Self-Government, which they all have ratified. All Constitutions recognise and guarantee local self-government at least at the municipal level, and the basic legislation on institutions and responsibilities has been adopted in line with the requirements of the European Charter of Local Self-Government.

However, some significant problems arise in connection with the implementation of local self-government. In view of this, we will focus on the following three issues:

- (1) territorial reform and the government levels;
- (2) relationships between government levels and the distribution of responsibilities; and
- (3) the level of democracy in local institutions.

Territorial patterns and government levels

A first necessary step of the analysis is to take stock of the present territorial pattern in the SPCs. Subsequently, reforms and reform projects regarding the municipal and 'regional' levels must be scrutinized. Lastly, cross-border co-operation should be considered as an opportunity to rebuild links between and among neighbours.

3.2.2 A Review of Territorial Patterns

The following table will try to summarise the number and types of territorial units, and to distinguish local self-government services from central government local services (deconcentration). Territorial units are referred to by the area and population of a country; when necessary, the international status is also noted.

The classification of the table is based not on geographical but legal criteria. Column 2 presents those countries that are comprised of a loose association of quasistate governments (Bosnia and Herzegovina; Serbia and Montenegro). Column 3 lists federal entities or regional autonomies, identified by the devolution of legislative power. Column 4 is for wider meso-level units; the fifth column shows supra-municipal units with a functional character; and the final column presents municipalities and their institutions for co-operation or local participation.

Central governments and local self-governments are listed in bold letters, local agencies of central government (deconcentrated authorities) are in ordinary letters, and co-operative efforts between local self-governments and infra-municipal institutions are in italics. Where the capital city has the status of a territorial unit of the upper level, this is mentioned in the corresponding column. Data on municipal self-governments reflect the distinctions made by domestic law among several categories of municipal self-governments.

These territorial patterns are partly attributable to the former regimes, and partly the result of reforms introduced or changes that have occurred during the last few years. The table makes it possible to draw out several basic features of local government across these countries.

First, no country suffers from excessive municipal fragmentation, compared with the average situation elsewhere in Europe (and especially in Western Europe).

This holds even when France, which has the highest number of small municipalities in Europe, is excluded from the comparison. Certainly, this does not mean that no reform should be made; rather, reforms cannot be justified only on the basis of municipality size, and the purpose of any territorial reform must be clearly stated.

Second, a federalist state structure and autonomous regions exist largely as a result of the wars that have followed the collapse of the fSFRY, the ensuing international agreements and ethnic divisions (Moldova). Other countries have kept unitary state structures, which have determined the type of regional level they implement.

Third, territorial authorities exist at the meso level⁶³ in all countries except for Montenegro and Republika Srpska. In the Federation of Bosnia and Herzegovina, cantons, as very small federative entities, present a very particular type of meso level.

Elsewhere, in Albania, Bulgaria, Croatia, Moldova, Romania, Serbia and “the former Yugoslav Republic of Macedonia”, there is a deconcentrated state authority and, at the same level, a local self-government, with the exception of Bulgaria, Serbia and “the former Yugoslav Republic of Macedonia”. In Moldova, the meso level is organised into rather small units (on average, 1,100 km_e): districts, designed for services and functions, which need to be organised on an inter-municipal basis.

These districts closely resemble the former *raion*. In “the former Yugoslav Republic of Macedonia”, the meso level corresponds to the former municipalities. The capital city may be subject to a special law.

Fourth, there is little or no co-operation between neighbouring local governments within the respective countries, or between cantons within the Federation of Bosnia and Herzegovina. The exaggerated devolution of powers to the cantons in the Federation of Bosnia and Herzegovina has fostered economic fragmentation, making the development of initiatives more difficult.⁶⁴

Reforms at the Municipal Level

Among SPCs, Croatia and “the former Yugoslav Republic of Macedonia” are the only countries where the municipal territorial pattern has changed drastically. As in Slovenia, post-socialist transition has led to the division of the large municipalities, characteristic of the previous regime.

In Croatia, reforms multiplied the number of municipalities fivefold (101 municipalities with uniform status in 1989; 547 municipal entities currently). Municipalities still have uniform status since the implementation of the local government act of 2001 (No. 33), and the qualification as “city”

63 Meso level: Jim Sharpe uses the expression “meso-government” to designate institutions at the intermediate (meso) level of territorial government organisation, beyond their differences. He distinguishes between institutions subordinated to central government and those vested with some autonomy. He considers that the rise of the meso-government is based on the development of the latter. J.L. Sharpe, “The European Meso: An Appraisal”, *The rise of meso-government in Europe*, London: Sage, 1993, pp.1 and sq.

64 See the speech of the High Representative Paddy Ashdown on 14 June 2002 in Banja Luka for “a single economic space” in Bosnia and Herzegovina: “successful decentralised countries (...) never confuse political devolution with economic fragmentation”.

is of no legal consequence. The Constitution enables larger cities to have conferred on them the authority of a county by law (art. 133), but no application has been made to date of this provision.

In “the former Yugoslav Republic of Macedonia”, the present organisation—with 123 municipalities and the city of Skopje—was established under the reform of 1996. Previously, there existed only 34 municipalities, and these constituencies still exist for state territorial offices. The territorial reform adopted on 12 August 2004, following the Ohrid Agreement of 2001, provides for larger municipalities (80). As a consequence, it also provides for power sharing with the minority Albanians at the local level, with special rights (use of the native language, etc.) for community members when their portion of the population exceeds 20 per cent. Expectedly, this reform faces strong opposition. Local elections, held in November 2004, should establish the councils of the new municipalities; new laws on Skopje and on financing municipalities should be adopted during the same session.

Several countries have adopted special legislation for the capital city, due to its demographic weight and to its functions: Tirana, Sofia, Zagreb, Bucharest, Belgrade and lastly Skopje. Such legislation is currently under discussion in Montenegro.

These subdivisions are vested with local self-government institutions; however, in Sofia, district mayors are elected by the municipal council.

In the State of Bosnia and Herzegovina, the Inter-Entity Boundary Line, established after the cease-fire and following several adjustments, raises very difficult problems of government. Namely, a significant part of the Federation of Bosnia and Herzegovina separates the north and south of Republika Srpska. Numerous municipalities are also divided by this line. Numerous small municipalities have formed as a result, especially in Republika Srpska. Co-operation between municipalities on both sides is impeded by distrust, and there is still a tendency to divide cities along ethnic lines. In the case of Mostar, the High Representative has been obliged to support the unity of the city administration; yet, the city is divided into several municipalities of different ethnic majorities. In Sarajevo, with four very autonomous municipalities, the situation is similar.

To sum up, the governments of the region pursued or are contemplating very different policies. Croatia and “the former Yugoslav Republic of Macedonia” have split large municipalities inherited from the Yugoslav period into smaller entities, while Serbia has not. Municipalities remain in Montenegro, Kosovo and Bosnia and Herzegovina, but according to the Inter-Entity Boundary Line. Albania is contemplating merging smaller municipalities into larger ones; “the former Yugoslav Republic of Macedonia” is considering rebuilding larger municipalities as well. Bulgaria has kept large municipalities, but has increased inner-municipality decentralisation.

These observations suggest two general comments. First, merging or splitting municipalities should not be the only remedies to respond to func-

tional difficulties or democratic demands. Second, general reorganisation brings about administrative costs and political tensions; therefore, reforms must be well founded and well prepared, in order for central governments to undertake them.

Other reform possibilities could be explored. Territorial reorganisation involving the merging of municipalities could be limited to situations in which excessive fragmentation results in the lack of financial and human resources. It could also be pursued step by step, on the basis of local considerations (for instance, the experience of the Netherlands). Co-operation between municipalities might be a response to functional needs through the delegation of competences to the inter-municipal level (by law or/and inter-municipal agreement); smaller communities could then remain as long as enjoy support from the people (for instance, as practised in France, with positive results). Meanwhile, inner-municipal decentralisation, with elected organs and responsibilities delegated upon them, could respond to democratic demands of the population, while keeping the functional advantage of larger municipalities.

Several countries of the region have developed infra-municipal decentralisation: in 2003, Bulgaria increased the number of settlements (with a minimum of 250 inhabitants) governed by an elected mayor. Other countries have followed this path as well, including Croatia, Serbia, Portugal and Poland.

Reforms at the Meso Level

There is much confusion over the meaning of “meso level”, especially with the increasing use of the term “region” to distinguish it. In fact, institutional and political realities vary tremendously from one country to another. In the case of the SPCs, the notion “meso level” appears to be especially inadequate. However, the organisation of this level is under discussion in most of these countries.

For the purpose of clarification, it is essential to parse out various interpretations of “region”.

The most general interpretation refers to an intermediate level of government with an elected council and self-government rights. The region is thus understood as an extension of self-government to the upper level of the territorial organisation of the state.

A more restricted interpretation refers to the increasing importance of territorial economic patterns in light of ongoing economic reforms—in particular, regarding openness. This interpretation supports the claim for stronger institutions, capable of implementing their own development policies. This vision is supported by the European Union regional policy, which is part of its economic and social cohesion policy.

A third vision of “region” is based on the revival of identities based

on history, local languages and ethnicity; it mobilises in this way political loyalties rooted in “the region”, as opposed to the state or central government. This vision, therefore, has more to do with regionalism as a form of nationalism, rather than regionalisation as a functional adaptation of state structures to new challenges.

As it appears, although the word “region” is often understood as suggesting a wide geographical area with relatively large autonomous powers, what is called a “region” is neither necessarily wide nor inevitably vested with large autonomous powers. However, size is relevant with regard to the type of functions to be performed at that level. Furthermore, some countries have adopted forms of administrative regionalisation, whereby authority at the regional level is appointed by the central government, with the duty to implement a regional development policy involving municipalities (for example, Portugal, Greece, Bulgaria and Lithuania).

Turning to the SPCs, it is apparent that the meso level is a major issue for state building, for democracy and for development. Different situations must be distinguished and considered.

In Bulgaria, Serbia and “the former Yugoslav Republic of Macedonia”, the meso level consists solely of a state authority. In “the former Yugoslav Republic of Macedonia”, the state territorial offices have kept numerous tasks considered to be within the state competence at the seat of the former larger socialist municipalities (as in Slovenia). In Bulgaria, the *oblast* (region) is a rather small, multifunctional level, which is traditional. Additionally, there are six regional units of the Ministry for Regional Development (NUTS II level), with a committee of economic and social cohesion. While districts did not exist in the fSFRY, they were created in Serbia in 1992, instead of regions (*regioni*) that had been constituencies of co-operation between municipalities. These districts took over a number of tasks previously carried out by municipalities. By contrast, Montenegro has no meso level.

In Albania, Croatia, Moldova and Romania, local self-government institutions exist at the meso level. Their basic role is to perform administrative functions of a rather local scope, but of a far broader scope than at the municipal level. Other functions are performed directly by central government field services covering more or less the same territory. Previously, Moldova was divided into 10 *judete*, according to the Romanian example in the reform of 1998. Law No. 764-XV of 27 December 2001 restored a form of territorial organisation closer to that of the former Soviet Union—with 32 districts (*raioni*) and two cities with district rights (Chisinau and Balti). Local state functions are performed in 25 territorial offices of government (following Government Decision No. 735 of 16 June 2003). In Romania, there are wider territorial units that may be compared to French departments, with an elected council, executive and prefect appointed by the central government.

The structure of the State of Bosnia and Herzegovina and of the State Union of Serbia and Montenegro cannot be analysed in terms of meso level institutions.

These states are loose unions of political entities vested with main state prerogatives, except for international personality. The Constitution of the State of Bosnia and Herzegovina reserves very limited powers to the central authority, and the entities have their own armies (Constitution of the Federation of Bosnia and Herzegovina, art. III.1; Constitution of Republika Srpska: art. 68, 104-107). In the Federal Republic of Yugoslavia, Montenegro grew increasingly autonomous of Belgrade; this was recognised by the Constitutional Charter of 2003.

In the Republic of Serbia and in Moldova, there are regional self-governments (respectively, Vojvodina and Gagaouzia), which reflect the third meaning of “region” mentioned earlier, although according to specific conditions.

In Serbia, the Constitution provides for autonomous provinces based on national, cultural and other characteristics. As Kosovo remains under the jurisdiction of UNMIK, its future status is open and will be decided by the United Nations Security Council.

The constitutional status of “autonomous province” is applicable to Vojvodina.

The new draft statute prepared by the provincial assembly is indeed a proposal for wider autonomy, with its own legislative power, and with the competence to organise a judiciary. Furthermore, the draft provides for a parliament with two chambers, one of which should be elected by the respective ethnic communities. This house would participate in elections of the government.

In Moldova, the Constitution was amended in 2002 to consolidate and guarantee the autonomy of Gagaouzia. Gagaouzia qualifies as an “autonomous entity,” with a special status established by an organic law adopted by at least three-fifths of the members of Parliament of the Republic (art. 111-1). Furthermore, according to new constitutional provisions, “specific forms and conditions of autonomy may be granted” to localities of the left bank of the Dniestr, according to a special organic law (art. 110). The *de facto* autonomy of the area called Transdnistria is based much less on ethnic division than on economic interest; the area can now be organised on the basis of the Constitution and integrated into the territorial organisation of Moldova.

Discussions on the regional level are currently underway in several SPCs, especially in those countries which are close to accession to the EU. In Bulgaria, the government is committed to further decentralisation to a second level of selfgovernment.

In Croatia, the reinforcement of counties (*županije*) by a revision of the territorial structure was contemplated; at present, the government

position is to keep the current territorial structure. In Romania, in addition to the professionalisation of prefects, the reform of the second level on the basis of existing *judete* or through the creation of a new regional level is being debated. In Albania, the focus is on the election and the responsibilities of the recently created regions.

Such reforms will have to take into account the need to guarantee the stability of the state and to preserve the self-government rights of municipalities. In smaller countries, it is doubtful that regional development policies call for a new regional authority; central government in these countries is in fact on the scale of regional governments in larger European countries.

Cross-Border Co-operation

In all countries, cross-border co-operation has become part of the European dimension of local self-government. For several South-Eastern European countries, the issue of cross-border co-operation is a consequence of newly drawn international boundaries between countries that belonged previously to the same state. In a number of cases, new borders have divided existing municipalities. In this context, cross-border cooperation may be a way to restore links and trust between communities by the realisation of mutually beneficial projects.

At present, however, cross-border co-operation is very limited at the city level, which is precisely where its impact might be most noticeable. In a number of countries, this is the consequence not only of distrust, but also of the limits of local self-government itself: little autonomy with regard to the centre, lack of resources, and unclear responsibilities. The progress of decentralisation should naturally support co-operation among municipalities of neighbouring countries.

A more general impediment to cross-border co-operation is the lack of a legal framework. The Madrid Convention of the Council of Europe on cross-border cooperation developed such a framework; however, several countries of the region yet to ratify this convention (“the former Yugoslav Republic of Macedonia”, the Union of Serbia and Montenegro and Bosnia and Herzegovina).

The development of Euroregions has been successful, involving institutions as well as representatives of civil society. There exist at least 10 Euroregions in which SPCs are involved. These regions have been created as a response by local authorities to the lack of co-operation between neighbouring countries. Euroregions have no legal power and are limited by the scope of the competence of their members, but they can promote common projects to improve living conditions in the fields of health, education and training, transport, tourism and co-operation in the case of natural disaster. Their levels of activity range widely, with some limited to consultations, and others able to carry out concrete projects.

According to the report of the Congress of Local and Regional Authorities of the Council of Europe on local democracy in the region, a limit to the development of cross-border co-operation results from the fear that this opportunity will be misused to establish co-operation based (solely) on ethnicity or kinship. A response to overcome this obstacle would be to develop agreements between the states concerned, which would specify the matters and the purpose of cross-border co-operation between local self-governments.⁶⁵

3.2.3 Relationships between Government Levels and the Distribution of Responsibilities

The development of local self-government and the decentralisation of responsibilities require a central government strategy and dialogue with representatives of selfgovernments.

In general, necessary institutions (local government associations) do exist. However, they must be established in some countries and their co-operation often must be improved.

Regarding the decentralisation of responsibilities to local self-governments, different models are possible, as reflected by the SPCs. In recent years, several countries of the region have improved their legislation. However, much remains to be done to achieve a clear and sound distribution of responsibilities, and to assign the necessary resources to local self-governments.

Central Government Support to Decentralisation and Associations of Self-Government Units

In Albania, Bulgaria, Croatia, Romania and Serbia, there is a central government department (rather recently created, in some) in charge of local government and decentralisation. For example, in Croatia, the responsibility for local and regional administration was transferred at the end of 2003 from the Department of Justice to a newly created Central State Office for Public Administration, in charge of the local government reform. Serbia has also a Ministry for State Administration and Local Self-Government. In Romania, the Ministry of Administration and the Interior is in charge of local government matters. Albania and “the former Yugoslav Republic of Macedonia” maintain a Ministry for Local Self-Government. In Moldova, however, there is no central government organisation in charge of local government and decentralisation; these issues are handled directly by the government and the head of the government. In the State of Bosnia and Herzegovina, local government is the responsibility of the government of Republika Srpska

⁶⁵ Stefan Sofianski (Rapporteur), Les enjeux de la démocratie locale en Europe du Sud-est, Congrès des Pouvoirs locaux et régionaux, 11e session, CG(11)7, partie II, 28 Avril 2004.

(there is a Ministry of Local Self-Government); in the Federation of Bosnia and Herzegovina, it is a responsibility shared by cantons and the Ministry of Justice.

In all countries of the region, local self-governments and councillors are free to create associations to represent their interests. In “the former Yugoslav Republic of Macedonia”, municipalities must be members of the national association; such an obligation is controversial with regard to article 10 of the European Charter of Local Self-Government. Local government associations have developed in all SPCs, and consultation with the central government is a common practice. Usually, distinct associations exist for the respective local government levels. In Romania, the four associations of local self-governments have decided to organise one common association. In Moldova, meanwhile, there are two associations of councillors (one for municipalities and one for districts) and an association of local and regional powers, representing municipalities, districts and so forth.

Local government representatives are involved in major policy choices regarding local government. In Serbia, although there is a Standing Conference of cities and municipalities (an association of local self-governments), apparently no consultation has taken place since March 2004 on current issues. Moreover, the Standing Conference has not yet been heard in preparatory works for the future Constitution of Serbia. In Moldova, “there is a continuing lack of an effective and institutionalised dialogue between central and local authorities”.⁶⁶

In the State of Bosnia and Herzegovina, sufficient information on present practices does not exist. Elsewhere, regular consultations on major issues, legislation and finance regarding local selfgovernment are reported. These practices include participation in working groups for the drafting of reforms and formal consultations for government projects. In some countries, the rights of associations of local self-governments are established in legislation on local government (Bulgaria, Romania).

At the same time, associations must develop their independent activities *vis-à-vis* their members, in order not only to consolidate their representativeness, but also to cope with their tasks. Some associations are already very active in this regard.

66 V. Popa and V. Furdui, General report on the situation of local autonomy in the Republic of Moldova, Conseil de l'Europe, Institute for Development and Social Initiatives “Viitorul”, Chisinau, June 2004, p.16.

Different Models of Responsibility Assignment

A first distinction should be made between general competence to deal with public affairs of local scope and assigned responsibilities.

The general competence to deal with public affairs of local scope is a general European standard, reflected in article 4.2 of the European Charter of Local Self-Government. It is important as a self-government right for local councils. Surprisingly, this right is not clearly recognised in the SPC's legislation, except in Romania and "the former Yugoslav Republic of Macedonia". In Serbia, the law can be read in favour of this right, but the application of the law is based on the interpretation that local authorities may perform only the tasks devolved to them by law. The legislation should evolve in this respect to be more in line with European standards.

Regarding assigned responsibilities, a great diversity of systems is possible. However, responsibilities of local government cannot be analysed without reference to the past, which was marked by a distinction between the Soviet model and the Yugoslav model. In the Soviet system, local councils were organs of state power.

As such, they performed numerous administrative tasks, but were not in charge of local interests; as such, there was no concept of local self-government. The situation was similar in socialist Albania. In Yugoslavia, however, municipalities performed a wide range of duties with their own resources and with extensive managerial autonomy, as an expression of the self-management ideology, but again without any distinction between state and local government functions.

Conversely, local self-government, as practised in European countries and as reflected in the European Charter, is based on a distinction between state (or central) and local government. The latter is supposed to promote local interests within the framework of the law. This implies defining and implementing a concept of local self-government responsibilities.

Regarding the present state of the law in the SPCs on the distribution of responsibilities, and without going into the details of the countries surveyed, several common issues exist beyond legitimate differences of approach. The idea of "own responsibilities" remains unclear. There is a discrepancy between the local government legislation and sectoral legislation, the result of which is to impede local selfgovernment in the exercise of its responsibilities. There are difficulties in defining the functions of the meso level with respect to the state and to the municipal level.

The idea of "own responsibilities" means that a number of tasks are performed by local authorities under their own (primary or sole) responsibility and, as a consequence, with some discretion, within the framework of the law. This does not preclude the possibility that they also perform delegated tasks—such as tasks carried out by local authorities as agents of the central government.

However, the conditions under which certain tasks are discharged are not always taken into account in their characterisation as ‘own’ or ‘delegated’ responsibility. As a consequence, local authorities may have very limited discretion, if any, within the scope of their so-called ‘own’ competences. Examples of this are provided below, as well as some clarifications recently introduced in legislation.

The first example concerns the management of education personnel. Often, this is considered a local responsibility. However, the development of education on which the personnel structure depends cannot be decided locally, and salary norms are fixed by the central government. The local authority, in such instances, is actually an agent of the central government; education is not its own responsibility.

In Albania, for instance, wages in education and healthcare were previously part of the conditional budget. Now, they are financed through ministry budgets, although they are serviced by local governments. Education and health in this instance are considered as “joint functions” in the Local Government Act No. 8652 of 31 July 2000. However, the responsibility may be considered as ‘delegated’ in relation to personnel matters, and a Law on the State Budget for 2003 redefined educational facilities and primary healthcare as delegated functions.

This explains why in Bulgaria, an increasing part of education expenditure is carried out directly by the state and social assistance and healthcare are direct responsibilities of the state, whereas until 2003, they were financed through municipal budgets. In other SPCs, teachers’ salaries are usually paid directly by the state budget (known as the “entity budget” in the State of Bosnia and Herzegovina).

The new law of Moldova on municipal public administration (Law No. 123-XV of 18 March 2003) is based on a clear distinction between own and delegated responsibilities, for both the municipal and district levels of self-government, even though the qualification of some responsibilities may raise doubt. Both categories of responsibilities are subject to different supervisory regimes: limited supervision for the legality of own responsibilities, and extended supervision for delegated responsibilities. The differentiation between state and local government functions is essential, and results in a more limited scope of local government own responsibilities. It is proper that these responsibilities confer a certain amount of discretion on local selfgovernment for policy making and management choices, albeit within the framework established by law. But, this differentiation is also essential for political accountability: for delegated functions, accountability is attributed to central government, whereas for own functions, it is attributed to the local authority. Another issue is the relationship between general local government legislation and sectoral legislation. Usually, local government legislation provides lists of matters falling within the responsibilities of local authorities. However, sectoral laws regulate a variety of functions, and may

give a very narrow interpretation of a local government responsibility, or even ignore the distribution of responsibilities.

An extreme case of such a discrepancy can be observed in “the former Yugoslav Republic of Macedonia”. According to the Local Government Act of 2002, the responsibilities of the municipalities newly established by the territorial reform of 1996 are fairly comprehensive, and include social welfare services, education, healthcare, urban planning and so on. Municipalities historically did not perform these functions. As such, these broad-ranging responsibilities have had to be devolved by numerous specific laws (more than 80) that are still pending. As a result, municipal responsibilities are quite limited in reality, and they comprise only urban planning and the maintenance of some local services and infrastructure (local roads, drinking water, parks and so on). Other devolved functions are in fact performed by the current state administration at the district level. In February 2003, the government adopted the Operational Programme of Decentralisation for 2003-2004, and the transfer of responsibilities should take place together with fiscal decentralisation by the beginning of 2005.

In other countries, sectoral legislation has been recently adopted in order to give substance and an adequate legal framework to the devolved responsibilities. For example, from 2003 to 2004, Albania adopted a new law on the local police, and policy papers were approved on water supply and sewerage, on primary and secondary education, on healthcare services, and on social services and assistance. In Romania, new laws were adopted on urban and spatial planning (Law No. 350/2001), on local public services (Law No. 326/2001), on hospitals (Law No. 270/2003), and on public healthcare units of local and *judete* interest (Law No. 99/2004), among others. In Croatia, numerous recent laws regulate the responsibilities of local self-government units in the fields of environment protection (*Narodne novine*, Law No. 128/1999), waste management (Law No. 151/2003), physical planning (Law No. 32/2002), publicly funded housing (Law No. 82/2004), municipal services (Law No. 26/2003, consolidated text), roads (Law No. 65/2002) and waterway ports (Law No. 65/2002), or transfer new tasks to them in the fields of healthcare (Law No. 121/2003), primary and secondary education (Law No. 59/2001), agricultural land (Laws No. 66/2001 and No. 87/2002). Of course, these pieces of legislation should be assessed with respect to the objective of consolidating local self-government.

A last general issue, influenced by the size of the SPCs, concerns the functions of the meso level.

Uncertainties persist as to which tasks the central government should transfer to the meso level, and how the latter should relate to the municipal level. A first option is to keep a purely state authority, subordinated to the central government (Bulgaria, “the former Yugoslav Republic of Macedonia”, Serbia). If this solution is adopted, it is essential for the state authority to be staffed by civil service professionals (career civil servants),

and for the municipal level to be given stronger powers to perform local government tasks, including through co-operation. Otherwise, there would be an imbalance between the requirements of central government policies and the representation of legitimate local interests, which is a *raison d'être* of local self-government.

Other countries have established local self-government at the meso level. This is the case in Albania, Croatia, Moldova and Romania, although state authority is maintained. This option has the advantage of enabling the further decentralisation of functions that clearly exceed municipal capacities, and which are clearly related to a particular territory. Efficient co-operation among municipalities, meanwhile, is enhanced through state authority and through the territorial concentration of administrative capacities. In small countries, functions delegated to the meso level are necessarily limited, since otherwise they would infringe upon municipal responsibilities.

The provisions adopted in Albania and Moldova contrast strongly. In Albania, no single, clear responsibility has been assigned to the new regions: the law is drafted in general terms. For instance, mention is made of the “construction and implementation of regional policies”, but the purpose of such policies is not specified; new regions are assigned “every other function given by the law”, broadly including functions delegated by constituent municipalities and by central governments (Local Government Act, art. 13).

In the case of Moldova, on the contrary, there are precise lists of responsibilities for both levels. However, one matter can be listed for both levels, without specification of how it is shared: this is the case for social assistance (art. 10[1]e and 11[1]e).

Furthermore, the district budget includes municipal budgets and must fix the share of the constituent municipalities from state revenues and from the share of the property tax allocated to local government (see Law on Local Public Finance, No. 397-XV of 16 October 2003, art. 2[1] and 21[2]). This means that district councils have a leading role in relation to municipalities, since they are responsible for adapting their resources to estimated needs.

However, examples from other small countries suggest that local self-government at the meso level may be useful when specialised. Among functions that can be appropriate for that level, the experience of these small countries displays: planning functions; public transport within the regional area; healthcare services available for a wider population basin; specific training and cultural institutions of a similar nature; and support to smaller municipalities in discharging their own responsibilities. In sum, the transfer of service provision tasks to a meso level self-government is justified when it allows for overcoming spillover effects and internalising costs.

As a result, a functional analysis has to be made before planning the devolution of responsibilities. The experience of the meso level in countries such as the Netherlands, Denmark or Hungary would be relevant for most SPCs.

A different case is the claiming of responsibilities on the basis of a regional autonomy programme. As illustrated by the case of Gagaouzia or by claims formulated in Vojvodina, the purpose is not functional, but political. Claiming responsibilities in this way can lead to difficulties of another kind, in relation to state governability and solidarity within the state, by bringing about a fragmentation of major state functions.

In the SPCs, regionalisation should take place in the state building process. Political claims should be balanced by a functional approach deemed to improve the provision of services to the population. This approach must use available resources efficiently, and move beyond the inward-looking claims of communities.

Financing Local Government Responsibilities

Local government finance is a major issue in the relationships between central and local government. There is no decentralisation without adequate funding. Whereas it is generally admitted in the SPCs that delegated tasks must be financed in totality by resources transferred from the central budget (at least in principle), the conception of the financing of other tasks is not so clear. There are also ambiguities regarding the characterisation of a range of resources, as is the case for the various types of expenditure (cf. supra).

The major observation regarding financing can be summarised as follows: with the exception of Serbia, financial decentralisation is limited. Local budgets are usually funded from tax shares and direct budgetary transfers, and local councils have little influence over their current revenues. Municipal property still must be established or protected in several countries; however, recent reforms have improved the financial situation of local governments.

“The former Yugoslav Republic of Macedonia” certainly has the lowest level of financial decentralisation, with a level of local municipal expenditure below two per cent of GDP, and a system of capping when more local resources are collected than planned.

In other countries, municipal budgets are dependent on the budget of the higher level. In Albania, pass-through transfers for the payment of wages in the preuniversity education and primary healthcare sectors and for social benefits to poor families represent close to 50 per cent of local government budgets (2003). This is, however, a major improvement in local self-government compared to the situation before 2000. At that time, the “conditional budget” formed more than 90 per cent of the local government budget, as an aggregate of expenditures included in the budgets of several ministries. Currently, only pass-through transfers are included in respective ministries’ budgets, but increasing discretion has been given to local governments since 2000. Local councils dispose freely of about 50 per cent of the total local bud-

get, and the share of own tax revenues jumped from three per cent of total local government revenues in 2002 to 12.2 per cent in 2003.

In Moldova, financial decentralisation is based on the district level. Municipal budgets depend to a large extent on the district budget, which decides on their participation in the share of general state revenues allocated to the district, and on their share in the property tax, including additionally own budgetary transfers to municipal budgets (Law No. 397-XV of 16 October 2003, art. 4). In Moldova, financial decentralisation seems to be limited at the district level.

In 2003, Bulgaria introduced a new financial system (in 2002, several amendments were made to the 1998 law on municipal budgets and to the 1997 law on local taxes and fees), similar to that implemented in Albania. Tasks delegated by the state are financed through resources allocated by the state: a percentage of the local yield of the personal income tax and a state grant to equalise revenues to meet expenditure needs. Local tasks, however, are financed by local revenues. The main difficulty of the new system is that the potential of local resources is not in line with the dynamics of expenditure, termed “expenditure standards”. As well, for many municipalities, the equalisation grant is too small to compensate for the low level of own resources. However, several functions considered to be of national scope have been taken over by the state budget (in the fields of health, social assistance and education). As a result, the share of local government expenditure has decreased (8.1 per cent GDP in 2000; 6.5 per cent in 2003). Local revenues now represent 32.1 per cent of the total municipal revenues, of which local taxes and local fees represented 21.1 per cent in 2003—compared to 11 per cent in 2000.

In Romania, the level of municipal expenditure increased significantly from 4.1 per cent GDP in 1999 to 8.5 per cent in 2003. Most budget-funded tasks are covered directly by the state budget and by tax shares. It is reported that following recent reforms the degree of financial autonomy of local authorities increased from 20 per cent to 50 per cent. Indeed, a major reform has been the introduction of a general personal income tax in 2000, the main part of which (63 per cent and later on 100 per cent) is assigned to municipal and *judete* budgets. However, there is no local tax power on the personal income tax. Tax collection has been transferred to local authorities as well, with the result that the tax collection rate has increased. This is only a temporary gain; on the whole, genuine own revenues can be raised from numerous taxes (namely, a property tax, which is increasing) and fees, upon which local governments wield rate-setting power.

Not surprisingly, the financial systems of the State of Bosnia and Herzegovina, Croatia, the State Union of Serbia and Montenegro and “the former Yugoslav Republic of Macedonia” remain quite similar. Although these systems are diverging, the basis of municipal finance in each is a basket of shared taxes. Grants play a very small role.

The financial system of Croatia differs most dramatically—first, because of the creation of counties, for which resources are necessary. Most tax revenues stem from tax shares, and the transfer of new responsibilities to cities has been financed by the concession of an additional share of the local yield of the income tax. As a result, the share of central government in personal income tax revenues has decreased from 60 per cent down to 25.6 per cent. Local taxes and other own revenues provide only a small part of local government revenues. However, municipalities do have the possibility to levy a surtax on the income tax, a possibility that is initially reserved to larger cities; 12 cities used this possibility up to the end of 2003. Nevertheless, the very unequal financial situation of municipalities, cities and counties suggests that the equalisation is not sufficiently developed. At present, it is based on annual decisions about minimum financial standards for each decentralised function, and a government decision on the mode of calculation of the amounts of equalisation functions for the coming year. A more stable system with clear criteria set out by law is desirable.

Tax and financial systems in the State of Bosnia and Herzegovina differ between the Federation of Bosnia and Herzegovina and Republika Srpska. Financial data reflect the weak position of the state: only 1.3 per cent of the total expenditure is financed by contributions from the Entities. In the Federation of Bosnia and Herzegovina, there is a federal law on the allocation of public revenues among cantons, and each canton must adopt a law on the allocation of public revenues among municipalities. Otherwise, the financing of local governments is very similar in the Federation of Bosnia and Herzegovina and in Republika Srpska. The whole allocation system is based on tax sharing applied to a basket of taxes, with a specific tax share for each tax. There is no grant system, and sharing rates are subject to discretionary variations in both entities and in each canton of the Federation of Bosnia and Herzegovina. There are a few local taxes, over which municipalities have some discretionary powers, representing on average 10 per cent of municipal revenues. Non-tax revenues may be significant in urban areas.

As a result, the system does not allow municipalities to make forecasts regarding the development of their revenues, and there are considerable fiscal disparities between municipalities in both Entities. With the introduction of VAT, planned in 2006, and the replacement of the sales tax, the derivation system will no longer be maintainable, and the whole finance system will require reconsideration. In Serbia, the budget of Vojvodina is financed by transfers based on the cost of the services transferred from the state to the province (10.4 billion dinars in 2003), and by tax shares (income tax and property tax, 3.1 billion dinars); there are no own revenues. As regards municipalities, the local finance system of Serbia seems to be quite sound compared to other SPCs. The level of municipal expenditure, at 5.6 per cent GDP, seems to be adequate for their tasks, considering the expenditures directly financed by the central budget (teachers' salaries, primary healthcare).

Municipalities also have an unusual rate of investment expenditure (24 per cent of the total expenditure of municipalities). With the reform introduced in 2002, municipal revenues increased considerably across Serbia: from 34.3 billion dinars in 2000 to 66.6 billion dinars in 2003 (revised budget of the Republic in 2002, 217.7 billion dinars). Until recently, the level of financial decentralisation in Serbia was also unusually high, with municipalities receiving 41 per cent of their total revenues (without debt) from their own revenues. These revenues consisted mainly of their own taxes, over which municipal councils had the power to vary rates. The reform of 2001-2002 gave municipalities greater control over fee rates. Municipalities may use the self-imposed contribution, which is a tax that municipalities may impose on their citizens through referendums, for specific investment programmes.

This is widely used (71 per cent of municipalities in 2002), although the total yield is under two per cent of the total revenue of municipalities. Additionally, municipalities are financed by tax shares from a tax basket (43 per cent of the total municipal revenue).

Municipalities receive the remainder of their revenues from the so-called "limited shared taxes", which are additional tax shares allocated yearly on the basis of needs criteria, and which are designed to achieve a certain equalisation. There is no grant system in Serbia, and equalisation is controversial because of the lack of clarity of the needs criteria. Local government finance in Serbia as it existed until 2003 shows that a certain fiscal decentralisation is also possible in difficult economic conditions.

This system is now under review because of radical changes to the tax system. With the introduction of VAT, which replaces the sales tax, the tax share of the sales tax will be replaced by a state grant based on 2002 revenues with corrections. Voting on this law was scheduled for July 2004. More importantly, the payroll tax, paid by companies at a rate voted by municipalities, was abolished on 1 July 2004 by a state budget law of 2004. (All municipalities voted for the maximum rate of 3.5 per cent; the yield was expected to be 20 per cent of the total municipal revenue in 2003).

The tax will be replaced by an increased share allocated to municipalities of the local income tax yield. This means that a local tax is replaced by a tax share, and it points to less fiscal decentralisation. However, the property tax revenues remain at a very low level, and reforms could increase the tax capacity of municipalities.

The situation in Montenegro is, in broad terms, rather similar to Serbia, with a high proportion of own revenues. A new local finance law provides for increased own tax revenues from 2004 (a surtax up to 13 per cent on the personal income tax), but fewer self-imposed contributions and tax shares.

Local finance of Kosovo is now quite distinct from Serbia. Municipalities are funded by transfers managed by UNMIK. However, since 2000,

municipalities receive own revenues from licenses and fees, and from 2003, following a pilot programme, UNMIK has introduced a property tax (UNMIK regulation 2003/29).

Tariffs for local public utilities are voted by municipal councils. As a whole, own revenues represent 20 per cent of the municipal budgets on average. This review of the key features of local finance in the SPCs shows that financial decentralisation needs to be improved in several countries, in order to support selfgovernment.

The experience of some countries shows also that it is possible even in particularly difficult situations. Municipal self-government cannot develop without a certain level of financial autonomy.

Municipal self-government also requires municipal property. This poses a challenge for the SPCs, since properties need to be identified before being transferred.

However, the property right of municipalities is now recognised in the law of all SPCs, with the exception of Serbia. In this country, a law of 1995 transferred to the Republic all municipal properties, including municipal enterprises. In turn, municipalities possess only the right to use, manage and lease these properties, including the right to sell this *usus* right. This law must be repealed to comply with the European Charter of Local Self-Government. According to the government of Serbia, a new law will follow the adoption of the new Constitution of Serbia.

In the State of Bosnia and Herzegovina, no such law was passed, and municipalities should still possess their traditional property rights. The situation is unclear in “the former Yugoslav Republic of Macedonia” after the territorial reform of 1996 and in Croatia for the same reason, although municipal property continues to be recognised. The situation of local government property is unclear in Moldova, as well. According to the Constitution, public property belongs to the state or to “administrative/territorial units” (art. 127). Municipal councils manage municipal properties, whereas such a competence cannot be found in the law on district councils (Law No. 123-XV of 18 March 2003, art. 18(2)x, and art. 49). Provisions on local revenues suggest that only municipalities (territorial administrative units of the first level) are entitled to public properties (see Law No. 397-XV of 16 October 2003, art. 4).

Other countries have adopted one or several laws deemed to solve property issues for municipalities: Albania (Laws No. 8743/2001 and No. 8744/2001); Bulgaria (Law of 1 June 1996, largely modified, with a new law pending, aimed at facilitating investments); and Romania (Laws No. 213/1998 on public property and No. 3/2003 on public services providing administration for the public and private domain). However, the main difficulty in this matter regards implementation; effective monitoring must be organised.

3.2.4 Democracy in Local Institutions

By themselves, decentralisation and self-government are not sufficient to guarantee greater democracy, but democracy requires decentralisation and self-government.

The progress of democracy depends on institutions and on political behaviour. The latter is particularly difficult to attain and requires time. Nevertheless, institutions have a responsibility to support the progress of democratic consciousness.

As regards political behaviour, it is beyond the limits of this report to assess whether or not it is in line with the new institutions. What can be concluded is that good laws are not sufficient for elections to run fairly (but, they are necessary), and that it is not enough to have fairly run elections (but, again, they are necessary) to confer political legitimacy on political elites.

This report focuses on observations that can be made from the analysis of the legislation and from information on institutions. A summary of the results follows.

Generally speaking, all SPCs have adopted legislation establishing democratic institutions of local self-government and procedures of citizen participation.

Legislation at times needs to be improved in order to guarantee self-government rights; as this is largely technical issue, it does not receive elaboration here. As well, the neutrality of the public service requires reinforcement. Above all, in some countries, ethnic divisions negatively affect the functioning of local institutions.

Elected Bodies

In all SPCs, a directly elected council rules each local government; in some countries, an indirect election exists only at the meso level. In Albania, members of regional councils are delegated by local councils in proportion to the population, and include all mayors (Constitution, art. 108-110). In Romania, Law No. 151/1998 on Regional Development established regional development councils; presently, there are eight development regions. The councils comprise of four representatives for each *judete*, including representatives for each category of municipality. Representatives are appointed for four years. However, the regional development council is not a local authority; it is supported by the regional development agency.

As regards the executive, legislation is more diverse. In Albania, Bulgaria, Moldova, Romania, “the former Yugoslav Republic of Macedonia”, Serbia and Montenegro and the Republika Srpska, mayors are elected directly. In the Federation of Bosnia and Herzegovina (according to the federal law on local government), Kosovo and Croatia, mayors are elected by councils.

At the meso level, the president of the *judete* in Romania, the president of the district in Moldova and the governor of the county (*župan*) in Croatia are elected by the council. The mayor (or the president) is assisted by a board or deputies, elected by the council or appointed by the mayor (the president).

Regarding electoral turnout, rates in the SPCs resemble European averages, according a recent survey commissioned by the CDLR on strengthening of participation at local level.⁶⁷ In a survey of 25 countries, including Bulgaria, Moldova and Romania, 13 countries reported electoral turnout of between 40 and 59.99 per cent during the last three elections. Bulgaria, Moldova and Romania all fall into the brackets; this is also the case for Albania. Nevertheless, there is no reason to be satisfied with such a rate. Improving transparency and the quality of decision-making would contribute to restoring confidence and increasing turnout.

The situation of elected local government officials is still a concern in a number of countries, and cases of forced dismissals of mayors remain. For example, on 23 March 2004, the Assembly of Gagaouzia dismissed the mayor of Comrat. The Supreme Court of Gagaouzia rejected the claim to allow the law of the Republic of Moldova to prevail, confirming the dismissal on the grounds that the mayor was an official.⁶⁸ In short, this case points to the need to distinguish clearly between the situation of a public servant and the situation of an elected official holding a political mandate. The situations of both require the protection of the law, but in different ways, as each serves a particular purpose: the former, the neutrality and the professionalism of the public service; the latter, the representative quality of the elected official holding a political mandate.

Democratic legitimacy, however, is not the only issue to consider. Governability of the local government unit is also important. It would be a major problem if, due to separate elections, a directly elected leader lacked a stable majority in the council—even more so if the council had its own chairman as a political leader. Much depends on the degree of fragmentation of political forces; the electoral system may aggravate the situation.

Citizen Participation

Much has been done regarding legislation to favour the direct participation of citizens in decision-making. In all countries of the region, legislation provides for local referendums and initiatives; differences relate

67 CDLR, Committee of Experts on Democratic Participation at Local and Regional Level, Experiences of member states with policies for the strengthening of participation at local level, Council of Europe, LR-DP (2004) 13 rev., 10 September 2004.

68 V. Popa and V. Furdui, General report on the situation of local autonomy in the Republic of Moldova, Conseil de l'Europe, Institute for Development and Social Initiatives "Viitorul", Chisinau, June 2004, p.7.

to the possible subjects of such procedures, the conditions of initiative, and the conditions of validity. However, referenda are only consultative in Moldova; in Kosovo, they are currently restricted under the international administration.

Although information on practice is lacking, thus making it difficult to assess the impact of the above-mentioned legislation, the direct participation of citizens is rather common practice inherited from the former Yugoslavia. In “the former Yugoslav Republic of Macedonia”, for instance, the population was consulted on amalgamating municipalities; in Serbia, municipalities intended to raise the self-imposed contribution. Examples in Western Europe show that the development of such procedures changes the practice of representative bodies, since citizens may challenge their decisions. Negative side-effects might include making the promotion of change more difficult, or facilitating emotional mobilisation on an ethnic basis.

Nevertheless, and insofar as the main concern is to increase the legitimacy of institutions, procedures of direct democracy may help to offset low turnout at local elections.

Institutions of community self-government within municipalities (sub-municipal units) are typical for several countries of the region—namely, directly elected settlement mayors in Bulgaria, and elected community councils in Serbia. In Bulgaria, a new law of 2003 on the territorial administrative division lowered the threshold for a settlement to elect its mayor from 500 to 250 inhabitants; as a result, the number of such mayors increased to 2,896. In Serbia, the *mesna zajednica*, which is a local community council upon which some administrative tasks may be delegated, must not be confused with urban districts, or inner municipality local self-governments. These institutions facilitate proximity with citizens, offer them a collective representation with regard to the municipality and guarantee the sustainability of wider municipalities. In Kosovo, it has been proposed to restore them as an alternative to splitting up municipalities. It has also been suggested to introduce a territorial element in elections to the municipal assembly, in order to create a linkage between councillors and the areas of the territory they represent.⁶⁹

Other forms of citizen participation or protection may be provided by the legislation of a particular country. Furthermore, according to the survey on strengthening of participation at local level, 21 out of the 26 countries reviewed have a general policy framework for promoting citizen participation locally. Bulgaria and Romania have such a framework; Moldova does not.

⁶⁹ Working group on local government, Framework for the reform of local self-government in Kosovo, July 2004.

However, much has still to be done to enliven democracy at the local level. In April 2004, the Congress of Local and Regional Authorities of the Council of Europe took stock of local democracy in South-Eastern Europe,⁷⁰ listing the main obstacles to the development of citizen participation as:

(i) the lack of transparency and accountability, local government often following the low standards of the central government, the lack of legislation on free access to official documents (with the exception of Bulgaria and Romania), the lack of regulations on the publication of basic documents, such as budgetary documents;

(ii) the low level of citizen participation in decision-making, with particular concern for members of national minorities and displaced persons, the need for reconciliation processes to overcome inter-community tensions; and

(iii) the passivity of NGOs with respect to public administrations, and the (low) level of media contributions to supporting democratic processes.

Neutrality of the Public Service

Neutrality of the public service is essential for guaranteeing equal treatment to all citizens, and for avoiding political bias in decisions. Merit-based recruitment therefore must be guaranteed by law. An emphasis on merit contributes to the attractiveness of the local public service and to improving recruitment. However, not all countries have yet adopted legal provisions for establishing such guarantees.

Among the SPCs, only Albania, Bulgaria and Romania have a public service law that can be applied to applicants for, or the personnel of, local government administrations regarding competitive examinations for recruitment. The implementation of examination procedures still must be reviewed. For the remaining SCPs, it is urgent to establish an adequate legal framework that would hold local public servants to high standards in performing their tasks, and thus inspire the trust of citizens. In countries with a deconcentrated state administration, public service rules must be developed and upheld. The heads of relevant agencies should be senior civil servants—not politicians—insofar as they have real powers, and not only a representative role. Current reforms in Romania to professionalise the prefects are a step in this direction.

70 Stefan Sofianski, *Les enjeux de la démocratie locale en Europe du Sud-Est*, Congress of Local and Regional Authorities of the Council of Europe, Chamber of Local Authorities, CG(11)7 Part II, 11th Plenary session, 28 April 2004.



The Impact on Local Democracy of Distrust among Communities

Distrust between communities negatively impacts the functioning of local institutions and public administration as a whole.

Distrust has provoked the fracturing of municipalities along ethnic lines, resulting in inchoate entities and border changes. This has happened along the Inter- Entity Border Line in the State of Bosnia and Herzegovina, between municipalities in the Federation of Bosnia and Herzegovina, and in “the former Yugoslav Republic of Macedonia”. Issues of interethnic discord have also hampered decentralisation in Kosovo; in “the former Yugoslav Republic of Macedonia”, they present obstacles to new territorial reforms, which are considered necessary for better management. In the Federation of Bosnia and Herzegovina and in Republika Srpska, the predominant rationale of institutional arrangements has been to decentralise powers to the smallest, ethnically homogeneous constituency.

As stated in the report on local and regional democracy in Bosnia and Herzegovina, presented in 2000 to the Congress of Local and Regional Authorities of the Council of Europe, “it is unacceptable that new municipalities should be founded on ethnic grounds”.⁷¹ The Constitutional Court of the State of Bosnia and Herzegovina issued an important sentence of 1 July 2000, delineating between ethnic collective rights and segregation in a multiethnic state.

In a number of cases, particularly in the Federation of Bosnia and Herzegovina, the ethnic dimension hampers local government management. Not only must personnel be ethnically balanced, but also deputies of the head of the municipality are, in fact, equal partners with him or her as representatives of particular groups.

Ethnic bargaining also affects the budget. In some municipalities, three budgets exist: the official budget and two informally agreed upon by the dominant ethnic groups.

The significant influence of ethnic political parties extends from the institutions over social and economic matters. Other countries are not immune to such bias.

3.2.5 Conclusions

Several conclusions and recommendations can be drawn from this review, on the basis of the general principles and values expressed in the conventions of the Council of Europe, and in particular from the European Charter of Local Self-Government.

⁷¹ Congress of Local and Regional Authorities of the Council of Europe, Report by Claude Haegi and Gianfranco Martini, CG/CP(6)29 rev., p.15.

General

- Local self-government must be considered as part of the whole government system; it is necessary for better government, more democracy, greater accountability and more responsiveness in managing public affairs. Central government should consider decentralisation as an option in different public policies. The distribution of responsibilities and powers among government levels has to be adequate to functional needs, as the purpose of government is to serve civil society and citizens. These functional needs may differ, not only from country to country, but also within a country and from region to region, according to public policies and time periods. Doing this, the government must pay close attention to the constitutional framework, to historical legacies and to existing communities.
- In the central government, an authority should be dedicated specifically to supporting the implementation of local self-government and its consideration by sectoral departments. Local government representatives have to be involved in the determination and the implementation of this policy, through their associations.

Territorial Reform at the Local Level

- With reference to the European average, no country suffers from excessive municipal fragmentation. Nevertheless, territorial reform may be justified for reasons other than the average size of existing municipalities. General reorganisation, however, brings about administrative costs and political tensions. Therefore, such reforms must be particularly well founded and well prepared, to justify their undertaking by the central government. In particular, amalgamation has to be based on common perspectives.
- If a territorial reform is justified, merging or splitting municipalities should not be the only (sole) remedies to respond to functional difficulties or democratic demands. Territorial reorganisation through the merging of municipalities may be limited to local situations in which an excessive fragmentation results in the lack of financial and human resources. It can also be pursued step by step on the basis of local considerations. Co-operation between municipalities could be a response to functional needs through the delegation of competences to the inter-municipal level (by law or/and inter-municipal agreement); smaller communities could remain while supported by the people. Conversely, innermunicipal decentralisation, with elected organs and responsibilities delegated upon them, could respond to the democratic demands of the population, while keeping the functional advantage of larger municipalities.
- More generally, there is too little inter-municipal co-operation; this detracts from finding solutions to key development issues. Municipal-

ties should be encouraged to cooperate by adequate legislative and financial provisions. This also would help to bring communities closer to each other.

The Regional Level

- The creation of a regional level of government is difficult. It depends on the size and complexity of the country. Regional government should be functional.
- Deconcentrated state government administration/agencies and local self-government need to be able to work together in a way that protects the integrity of the state, while recognising the rights of local authorities. Regional levels of government may not be viable in smaller countries.
- The establishment (or reinforcement) of local self-government at the regional level should seek to enable the further decentralisation of tasks that are in excess of municipal capacities. It should be aimed at improving services to citizens.
- Regional self-government must be clearly related to territory and to policy areas where efficient and effective co-operation between municipalities might be difficult to achieve. Regional functions should not encroach upon municipal responsibilities; on the contrary, they can be useful in supporting municipalities, particularly where they are specialised (e.g. land use planning, public transport, healthcare, training and culture).
- Where regional autonomy appears unavoidable due to recent events, it should be balanced by a functional approach aimed at improving services to citizens in a way that goes beyond the inward-looking representations of communities.

Cross-border Co-operation

- Cross-border co-operation is part of the European dimension of local selfgovernment; it is also an opportunity to restore links and trust among communities by the realisation of mutually beneficial projects.
- Cross-border co-operation among local self-governments (municipalities, regions or others) must be supported by governments, as well as by the EU.
- All countries should ratify the Madrid Convention on transfrontier co-operation between territorial communities or authorities.
- International agreements between the countries of the region should promote and facilitate cross-border co-operation.

Distribution of Responsibilities and Powers

- Decentralisation must be seen in the context of a distribution of responsibilities and powers among different government levels. Tasks should be based on an adequate level of resources and clear responsibilities.
- Much remains to be done to establish a sound distribution of

responsibilities and to assign the necessary resources to local government. This goes beyond legitimate differences in approach. Practice falls short of the European standard: the European Charter (article 3) refers to "... a substantial part of public affairs...". There are inconsistencies between "delegated responsibilities" and "own responsibilities". The latter needs to be more clearly established. There is no real "own responsibility" where there is no sufficient discretion for local policy choices.

- The general competence of local authorities to rule local affairs, other than responsibilities assigned by the law, should be clearly recognised in legislation.

- There are discrepancies between local government legislation and sectoral legislation, reflecting a reluctance to decentralise powers and thus impeding local authorities in the exercise of their responsibilities.

Financial Decentralisation

- Despite progress made in several countries, financial decentralisation is limited.

- Local authorities have little influence over current revenues. They should be granted more tax power within the framework set by law. • Sufficient discretion in expenditure should be secured.

- Municipal property must be recognised and guaranteed where it is not. Properties related to local government functions should be transferred into municipal ownership.

Ethnic Division

- Local government is well situated to build trust and overcome ethnic conflict.

- This applies in particular to larger multiethnic municipalities.

Ethnic divisions can negatively impact local government and the management of local affairs. Some municipalities are split along ethnic lines, hampering effective administration and the sustainability of the municipality. The design of municipalities must avoid consolidating ethnic divisions, and promote the equal treatment of citizens. Specific decision-making and control procedures can secure the rights of minority members, as long as it is necessary.

Citizen Participation

- Citizen rights are individual and equal, and do not depend on membership to any community.

- There is legislation in all countries establishing democratic institutions and mechanisms for citizen participation (e.g. local referenda).

However, this legislation should be supplemented by effective measures to reinforce transparency in decision-making, free access to official information, and accountability of councillors and public officials. NGOs and the media must play a more important role for these purposes.

- Care should be taken to ensure that democratic legitimacy is not pursued at the cost of governability, especially where the fragmentation of political forces and the use of particular electoral systems make a stable majority in a local authority difficult to achieve.

- Low electoral turnout may be offset by more direct democracy. Democracy may be served by the use of directly elected settlement mayors or local community councils. These institutions facilitate close contact with citizens, improve representation, and support the sustainability of the municipality.

Local Public Service

- A neutral local public service requires merit-based recruitment guaranteed by law. Merit-based recruitment can make a local public service career attractive and improve recruitment. It will also increase trust between local government and citizens. More needs to be done in order to develop the necessary legal provisions.

3.3 Regionalism and Transition - Experiences of the Central and South East European Countries

dr Nadia Skenderović Čuk⁷²

3.3.1 Conceptual Remarks

Decentralisation, based on the logics of the subsidiarity principle, by establishing regions, has, for quite a long time, not been considered with serious intent in the transitional countries. The reasons for such resistance may be found primarily in the traditionally centralised decision making process in a single-party governance system. In addition to that, a great number of challenges that the countries are faced with, having held the first multi-party free elections, are not in favour of the idea of achieving realistic decentralisation. Nevertheless, in the transitional period, there is, first of all, certain distrust towards introducing a new level of political decision making, which, if interpreted in such a way, could jeopardise the

⁷² Nadia Skendervic Cuk, Head of the office of Council of Europe in Belgrade, expert for decentralization and regionalization, PhD on International Law, Director of Local Democracy Agency in Subotica 1993-2001, associate on minority rights programs.

rigidly defined national sovereignty. This is a case of mixing the concepts of a strong and effective government, as indicated by the American author Zakaria. He concluded that “mixing these two concepts has led to a situation that many western governments and experts encouraged the creation of strong and decentralised countries in the Third World”, and indicated that centralisation often jeopardises development of the liberal democracy.⁷³ In practice, the political discourse in these countries, at the beginning of the 90s and somewhat later, pointed to two rather interesting features:

- Tendency to look for arguments of the *pro et contra* type in generally accepted standards contained in international legislative instruments. The actual state of affairs, however, indicated that there are only few such documents and they contain only a range of minimal criteria or principles which need not be fully applied. In case of regionalisation, such documents are generally of a non-binding character, containing recommendations and guidelines related to a preferable devolution of power. Rare examples of conventions or inter-state agreements only indirectly determine regionalisation, or only assume it, as is the case with the Madrid Convention on Trans-frontier Cooperation or various bilateral agreements on good neighbourly relations. Such situation has not been an obstacle to a great number of European countries which attempted, through regionalisation, to respond to new challenges of integration processes or globalisation. The situation is to certain extent less complicated when it comes to local self-government, as the European Charter of Local Self-Government defines the basic principles, types of authorities, the subsidiarity principle, functioning of local administration, as well as financial aspects of local self-governments in the signatory countries. Still, what we have here is actually a document based on a minimalist concept, which relies on a good will of signatory countries to incorporate its elements in their respective national legislations, as well as in the practice, which would ensure functionality of local self-government. In other words, if we talk about standards, particularly the European standards of local and regional self-government, it would be most appropriate to discuss the practice of European countries. Such practice reflects different experiences and objectives, consequently resulting in the absence of classical models, which may lead to jumping into a conclusion that standards or forms of regionalisation that could give grounds for its establishing in other countries, actually do not exist. At the same time, the question of functionality of the centralised structure of the state in an atmosphere of European super-national integration, established on the idea of the share of powers, is being neglected.

- Another aspect includes the already mentioned, specific circumstances surrounding these countries in the process of consolidation of newly-established democracy, which affect the orientation towards regionalisa-

⁷³ Zakaria, Fareed; *The Future of Freedom, Illiberal Democracy at Home and Abroad*, 2003

tion. Though with slight variations, these circumstances are manifested in the historical heritage, political ambience following the first parliamentary elections, and finally, the perspective of European Union accession. On the one hand, this contributes to a different extent of regionalisation, when compared to West European democracies, but on the other hand, it affects the dynamics of establishing regional self-governments, as well as their actual functionality.

For these reasons, it is necessary to establish to what extent is the regionalisation process actually a European trend, and then observe the context of transition during the 90s in some of the post-Communist European countries, in order to make conclusions related to the efficiency of decentralisation conducted there.

3.3.2 Modern Regionalism Trends in Europe

The trend of regionalism is present in most West European countries, in both unitary, as well as federal ones, with different degrees of autonomy and internal organisational structure. Special attention should be paid to Spain and Italy, as the examples of regional countries, but also to the Great Britain, i.e. the United Kingdom, being a country which developed its specific system of devolution of powers only at the end of the 90s, by making a historical step forward in its constitutional system reform.

The first two countries have recognised a democratic potential in regionalisation, which was considered inevitable to discontinue the former, authoritative system of powers. Spain decided to establish autonomous communities, which have not gained the same status, but have been provided with a possibility to extend their powers in accordance with their capacities and needs. Different degrees of autonomy are the result of the specific history of particular regions, thus, there are certain autonomies established pursuant to the laws of the Middle Ages, such as Navarre and Basque, or have been determined by specific cultural identity, as in the case of Catalonia. Both of these aspects have contributed to the creation of regional identities and forming very strong entities requiring the greatest degree of autonomy. A similar category would also include the communities regulated in Article 151 of the Constitution, which guarantees a high degree of authority to those communities, while the remaining ten communities - regions opted for a slightly slower pace, stipulated in Article 143, but still have at their disposal an opportunity to make their status equal to that of other regions. All these three form have their legislative and executive institutions of authority, as well as the Supreme Court integrated in a single justice system.

Asymmetry existing in powers assigned to regions is also typical of the first phase of constitutional reforms in Italy, which, in addition to fifteen regions, established another five regions with special powers, also differing

in terms of type and degree of powers. The competence of a region has been defined and restricted by the Constitution, while all other fields are under the State's responsibility. However, the regions having a special status have been assigned with original legislative powers, pursuant to their respective statutes. Still, in 2001, in the referendum, Italy amended certain constitutional provisions, directing them towards further decentralisation, particularly significant of which is the amendment of Article 117 as regards the powers of regions with regular status. The principle applied under the new provision is, by the way, typical of federations, as the list of regional powers had been replaced by a list of fields which are within the sole competence of the national parliament, as well as by another list of competences divided between the state and regions, whereby regions gain all other competences that are not under the responsibility of the State. Another significant article is the revised Article 119, providing a much wider financial autonomy to regions, as well as to municipalities and provinces. Nevertheless, the asymmetry has not disappeared because special regions have kept some of their additional powers, which stemmed out of their specific needs and historical heritage.⁷⁴

The Great Britain has traditionally been a unitary democratic country. However, following the referendum in 1997, in which Scotland and Wales gained autonomy, manifested in the establishment of the Parliament in Edinburgh and the Assembly in Cardiff, the whole picture has significantly changed. The United Kingdom obtained an asymmetric model of devolution of powers, with different degrees of autonomy in Scotland, Wales, England, the Northern Ireland and the metropolitan area of London. This system of devolution may actually be considered an attempt to establish a compromise between the two, generally quite incompatible, principles: the principle of supremacy of the national parliament and the principle of providing the fundamental self-government in domestic matters to newly-established sub-state territorial communities. The greatest degree of autonomy was assigned to Scotland, whose new Basic Law, as opposed to the previous one, contains only a list of competences reserved for the state, such as foreign affairs, defence, fiscal and monetary policy, national security, telecommunications. The remaining fields fall within the legislative competence of the Scottish parliament, which is entitled to make decisions on a wide range of issues, including: the legal system, internal affairs, local self-government, agriculture, education, health care, social issues and other.⁷⁵

Different levels of regionalisation exist in some other European countries, such as Sweden, the Netherlands, Portugal and France, but not, however, in the sense of regional countries, and having a completely different purpose.

⁷⁴ Meloni, Guido, *The Italian regional and local government system between legislative reforms and constitutional revision*, Report to the Institutional Committee of the CLRAE, January 2002

⁷⁵ Bogdanor, Vernon; *Devolution in the UK*, Oxford University Press 2001

However, if we disregard some of the above-mentioned experiences, there still remains the question whether there are European standards or attempts to direct regionalisation at the level of the international community.

Out of European documents which have directly tackled this issue, one should certainly pay attention to the Draft European Charter of Regional Self-Government, which has not obtained the status of a binding convention, but represents the first document in which an attempt was made to synthesise the relevant European experiences, without insisting on one specific model.⁷⁶ Thus, the region refers to all forms of decentralisation above the municipal level, starting from the second level of local self-government, through various forms of administrative decentralisation, to institutional regions and federal units. The thing in common is the fact that regionalisation establishes one intermediary institutional level, guaranteed by the Constitutions and law, which may respond to requests of the wider community, and at the same time, negotiate with the central government, which is not the case with municipalities or associations of municipalities. Regions also have fundamental competence to administer the affairs, with the possibility of additional delegating of other competences. This Charter stipulates the possibility of participation of regions in decision-making processes at the central level (either by constituting a special chamber in the parliament or by the system of negotiations), as well as their participation in the trans-frontier cooperation, which is again, separately regulated in the Convention on the Transfrontier Cooperation, providing the legal grounds for establishing the Euroregion.

The activities towards establishing the minimal criteria for recognising regionalisation have been continued recently, therefore, the European ministers for local and regional self-government, at the 13th session of their standing conference held in Helsinki in June 2002, adopted the Declaration on Regional Self-Government, representing a kind of an appeal to pass the appropriate international documents which would verify the more and more present regionalisation and its significance related to democracy, peace, stability and development of the modern Europe. This Declaration points to the fact that decentralisation has led to strengthening of democracy, in both, the countries with long democratic tradition and in new democracies, as well as that this process reflects a common belief that the economic growth, sustainable development, quality of public services and full democratic participation may be implemented only when the decision making institutions are not centralised. For this reason, pointing to these tendencies and the existence of European fora representing regional self-governments of Europe, the Council of Europe, that is, its Steering Committee on Local and Regional Democracy, has been invited to create a legal instrument,

⁷⁶ Recommendation 34 (1997) of the CLRAE on the Draft European Charter of Regional Self-Government

which would, while respecting the sovereignty, identity and freedom of countries to determine their internal organisation, provide a framework of different principles of regionalism, taking account of different models that have been developed in the mean time.⁷⁷

Based on this term of office, the Committee drafted a platform of basic principles on which the future convention will be grounded.

It includes, among others, the following:

- Regional institutions are defined as territorial authorities between central and local authorities, which, however, does not imply a mutually hierarchical relation.

- Regional self-government is defined as a group of legal powers and mandates of regional authorities to regulate, within the framework of the Constitution and Law, as well as administer the public affairs under their own responsibility and in the interest of the population of the region considered.

- It stipulates that regional self-government is determined by the Constitution and Law.

- It considers that regional powers have to be regulated in the Constitution, statute of the region or in the national legislation. Regions shall have full discretion in implementation of their powers in all matters which have not been excluded from their competences or delegated to another institution of authority.

- It stipulates that regions shall be entitled to make decisions, which may also imply the existence of legislative, as well as administrative powers in the fields falling within their competences. These powers have to be harmonised with certain specificities of the region considered, which allows adoption and implementation of the policy corresponding to that aim.

- It also stipulates a possibility of delegating additional powers to regions, which implies the obligation to provide adequate financial support.

- It prescribes that regional and local authorities have to establish their mutual relations, as well as cooperation, in accordance with the principle of subsidiarity.

- It provides a possibility for regions to be entitled to participate in decision making at the national level, when it comes to those issues concerning their competences and interests, or fall within the powers of regional self-government.

- It defines participation in terms of participating in the representative bodies, that is, decision-making bodies at the national level or through consultations and negotiations between the state and regional bodies. The necessity of regional representative bodies' participation, whenever possible, is particularly emphasised.

⁷⁷ Conference of European ministers responsible for local and regional government, *Helsinki Declaration on Regional Self-Government*, 13th Session, Helsinki, 27-28 June 2002

- It suggests that, whenever possible, regional bodies and/or their representative bodies should be represented in appropriate bodies or procedures when it comes to international negotiations of the state and implementation of international treaties pertaining to the powers or determining the scope of regional self-government.

- It stipulates that supervision of the work of regional self-governments implies only assessment of legality, but not the expediency of decisions, except in cases of delegated powers.

The administrative supervision of the work of regional self-governments may only be conducted if it is in accordance with the relevant constitutional or legal provisions, carried out *ex post facto* and in proportion with the significance of the interests intended to be protected.

- It stipulates that regional institutions are entitled to court protection to ensure a free execution of their powers, as well as observance of the principle of regional self-government, as regulated by the law.

- It states that regional borders may not be redrawn without the prior consultation, along with a possible referendum.

- It acknowledges the practice that regions have their assemblies, as well as institutions performing the executive functions (if they are not delegated to assemblies) which are responsible to the assembly, under the conditions and procedure stipulated by the law.

Pursuant to this document, regional self-government would be entitled to establish and organise its administrative structure in an independent manner. Regions should have at disposal their own resources, including regional taxes, a share in public funds without setting conditions regarding the purpose of allocation and other resources, as stipulated by the law.

The system of financial equalisation is also stipulated, aimed at protecting the weaker regions and correcting the effects of uneven distribution of potential sources of financing and financial obligations that they have to assume.

In addition, the attention is directed towards the international cooperation among regions which are entitled to establishing associations with other regions, as well as becoming members of international associations of regional institutions, pursuant to the foreign policies of their respective countries.

To the extent prescribed in the national and European legislation, regional authorities shall be entitled to be included in national institutions and bodies engaged in cooperation with European institutions.⁷⁸

⁷⁸ Conference of European Ministers responsible for local and regional government, *Final activity report of the CDLR to the committee of Ministers on the elaboration of legal instruments of different types on regional self-government*, Budapest, 2005

Transitional Problems and Regionalisation

One of the problems related to the transitional processes directly affecting regionalisation is the lack of tradition, or experience, in establishing autonomies or regions. The history of the Eastern and Central European countries includes scarce examples of complete autonomies, which could, nowadays, be an inspiration for the new political elites to start repeating such practice. The history of ethnic conflicts, redrawing of borders or dominance of one ethnic or cultural group over another, also invokes unpleasant associations. The period of single-party centralism at the time of the Communist regime, along with the inherited vast and inefficient state structure, cause additional complications in the process of creating a modern state, based on the principle of subsidiarity. The Communist heritage also implied the underdevelopment of peripheral areas, the lack of communication with neighbours, as well as the obsolete technology, which later impaired the perspective of Euro-regional cooperation.

Another category of challenges relates to the specificity of transitional process, as well as the political ambience following the first democratic elections. In other words, the democratic potential of the ruling parties, their interests and programmes have had direct consequences on the direction and outcome of the internal precomposition of the state, as well as on the climate that would be suitable to radical changes in that respect. Some of the actors strive to keep the absolute control over the entire decision making system, while others are interested to control the local, district and regional levels. Fundamental decentralisation in Poland was supported by Solidarity, while in the Czech Republic, some of the former members of the Citizens' Forum favoured centralisation.

Apart from that, in the process of democracy consolidation, it is easy to be tempted to suppress certain values of the constitutional liberalism, with decentralisation being one of them. Complicated issues burdening the political scene are drawing the attention away from decentralisation, due to a number of more relevant issues, as in the case of the Czech Republic, which first had to undergo the segregation process with Slovakia and only then consider undertaking the reform-related activities. Similar environment has been surrounding the democratisation of Serbia, which is the reason why the question of highly required constitutional reform has constantly been delayed.

Still, there is one aspect which is in many cases significant for the final transformation of the state structure, and this is certainly the perspective of accession to the European Union, along with the request to adopt the *acquis communautaire* afterwards. The European Union has indirectly required from these countries to reform their territorial governance structure, in order to build their capacities to govern their structural funds, indicating the preferable regional self-government with directly elected decision-

making institutions and the financial autonomy. Apart from that, the very concept of the European Union, based on the multi-level governance, underlines the significance of sub-national levels of authority. Decentralisation and regionalisation have, to a certain extent, contributed to the integration of these countries in the western sphere of a modern Europe, initiating a parallel line for establishing relations with the European Union through regional networking. Regions, particularly the trans-border regions, may establish and develop the cooperation with partner regions in the neighbouring countries, with the aim to enhance the economic development, intercultural cooperation and better relations, following many decades of isolation. The transfrontier cooperation has experienced prosperity, particularly in the countries which used to share the border with the EU countries, and are the EU members nowadays.

3.3.3 Reform Processes in the Central and South East European Countries

After the World War II, there was obviously a variety of motives affecting the orientation of different countries to turn to regionalisation. Decentralisation was a way to speed up the society's democratisation and a decentralisation system, based on the consocietal principle, was carefully designed in multiethnic environments. In some cases, a strong regional identity gradually led to the establishment of regions or even the federal devolution of powers. In recent decades, economic interests, along with the developed transfrontier cooperation have additional effects on speeding up of this process, particularly in respect of the European integrations.

The transition in the eastern part of Europe has not followed the same logic, and has consequently faced different problems.

Tradition of Poland was not marked by autonomies, with the exception of short periods, at the time of its division, when some territories, like Poznan (part of Prussia) and Galicia (part of Austro-Hungarian Empire) enjoyed the partial autonomy. For a long time there existed a difference between the south-east, less populated part, which was underdeveloped and inclined towards centralism, and the north-west part which was influenced by liberal values.⁷⁹ The similar lack of uniformity also remained in the later period, affecting the degree of urbanisation and economic development. Such heritage of the past has not been in favour of the potential regionalisation. In one of their studies, the OECD pointed to these two aspects - histori-

79 Gorzelak, Grzegorz; *Polish Regionalism and Regionalisation*, in Gorzelak & Kuklinski (eds) *Dilemmas of Regional Policies in Eastern and Central Europe*, University of Warsaw, European Inst. For Regional and Local Studies, 1992, p. 487

cal and economic ones, as crucial obstacles of the fundamental decentralisation of Poland.⁸⁰

Territorial division of Poland between 1950 and 1973 relied on the Soviet three-layer model. There used to be 17 voivodeships, 300 counties and over 4000 municipalities, i.e. local communities. A two-level system was established some time later, comprising as many as 49 voivodeships and a smaller number of municipalities, with tendencies towards centralisation.⁸¹ Instead of counties that the population had identified with, which included certain infrastructure, there was an increase in the number of voivodeships with reduced territories, having only symbolic functionality, due to small extent of their powers and economic underdevelopment. Municipalities grew only weaker, as they were not capable of assuming the competences of formerly existing county units, while their work was controlled by national councils.

Despite such restrictions and the lack of actual local self-government, it was the local elites who supported the Solidarity trade union, which was to influence its orientation towards decentralisation in the period that followed. Both wings of the Solidarity, the intellectual part and trade union movement, defined the maximum administrative decentralisation of the state as their political priority.⁸²

For all these reasons, one of the steps taken by the first post-Communist government was the adoption of the Law on Local Self-Government in 1990, which contributed to its renaissance, following the model of solutions from developed countries. At the same time, districts were introduced as a kind of sub-regional communities, but with no concrete powers or functions. Also the State Commission for Territorial Reorganisation of State was established, which proposed several models of regionalisation, that is, federalisation. Changes in the government that took place in the period from 1991 to 1993 temporarily interrupted this process, which was continued in 1997, when the coalition established on the grounds of the political movement Solidarity came to power. Their motive was to modernise the state through decentralisation, as well as reduce the control of the inherited administration, still inclining towards the former regime. It was also stated that the tasks of a modern and efficient government needed to be redefined, and it had to be exempted from unnecessary responsibilities, to be able to actually deal with strategic matters, including economy, foreign and security policy and harmonic economic development of the entire country.⁸³ This is precisely the kind of programme containing the essence of regionalisation,

80 OECD, *Transition at the Local Level: The Czech Republic, Hungary, Poland and the Slovak Republic*, Paris, 1996, p. 102

81 Millard, Frances, *Polish Politics and Society*, London, Rutledge, 1999

82 Hicks & Kaminski, *Local Government Reform and Transition from Communism; the Case of Poland*, Journal of Developing Societies, XI, 1, 1995, pp. 1-20

83 Millard, p. 53

which, by introducing new holders of decision making at the level below the central government, ensures the competent decision making when it comes to regional interests, contributing at the same time, to a harmonised development of the country. In the case of Poland, it meant the reestablishment of counties, which had a historical background, as well as strengthening of voivodeships, whose number had been reduced to 16. In October 1998, elections were held for local and regional assemblies, recording a great number of voters. In accordance with the principle of subsidiarity, municipalities were assigned with a wide range of exclusive, but shared powers in the field of education, health care planning transport, utility-related and other affairs in the interest of local community, while counties had the powers which could not be executed by municipalities, due to the fact that they corresponded to the interests of wider public. Voivodeships were assigned with the development component, and were, thus, responsible for regional economic development and business affairs, as well as for the area of higher education, health care services and other issues of interest for their territory. The elected assembly of voivodeships decides on the composition of the executive board, headed by the elected president (Marshal). The State still continues to conduct its supervision through appointed institutions representing the central government and control whether the decisions of self-government bodies have been adopted in accordance with laws pertaining to its status. Voivodeships are entitled, within the legal framework, to conclude bilateral and multilateral agreements on cooperation with foreign partners, and ever since Poland entered the EU, they have been governing the structural funds. As explained by the Prime Minister in his report on the implemented administrative reform - regions are considered the main driving force towards the accession of Poland to the European Union, providing the population with the possibility of full participation in the economic and security-related structures of a modern Europe.⁸⁴

As opposed to Poland, the Czech Republic had in its tradition local and regional self-governments, particularly when it comes to the two historical regions - Bohemia and Moravia. When it was established as a multi-ethnic state in 1918, Czechoslovakia consisted of Bohemia, Moravia, Silesia, Slovakia and Subcarpathian Ruthenia, and after the World War II, it became a federal state. Until December 1990, there existed a three-layer system of local self-government (municipal, county and regional). However, during the Communist regime, local self-government generally did not function, since municipalities did not have a legal status, and the Government made all possible efforts to diminish the power of the historical regions. This is how regions - *kraje* - were established, actually functioning as central authorities,

84 Chancellery of the Prime Minister of the Republic of Poland, Government Plenipotentiary for the Systemic Reform of the State, *Effectiveness, Openness, Subsidiarity: A new Poland for New Challenges*, Warsaw, Dec. 1999

along with 76 districts. Federalisation was, in that respect, only the hidden centralisation, which was based on the authoritative system of governance and violation of human rights and freedoms.⁸⁵

After the first multi-party parliamentary elections, the situation did not immediately change, primarily due to the fact that the new elite focused all of their attention to the reform processes, with the tendency to empower the state. This is how regions disappeared, with the explanation that they did not have a historical background, whereas their powers were transferred to districts. Districts, however, did not have democratically elected decision making institutions, and they were subsidiaries of the central authorities. The municipal self-government was also confronted with a number of restrictions. After President Havel had initiated a new administrative division, which was to be based on historical regions, the state commission drafted the proposal containing the four possible models:

- Institutionalisation of the so-called historical regions;
- Establishment of provinces as forms of extended districts;
- Combination of the first two models, in which provinces would be established within the borders of historical regions and would include a system of simultaneous functioning of state bodies and self-government institutions;

- Establishment of a federal system in which the Czech Republic, Slovakia, as well as Moravia and Silesia would be republics and have their own statutes, legislative and executive bodies and judicial system. Each region would make decisions on its internal organisation, while the number of federal ministries would be decreased.⁸⁶

Nevertheless, this proposal was adopted at the time of implementation of first privatisations, economic reforms, as well as the time of tensions between the Czech Republic and Slovakia. The segregation of the country, which followed up, managed to remove the issue of decentralisation from the state agenda.

When the new Constitution of the Czech Republic was adopted in 1993, it contained a provision on establishing higher levels of self-government, under a great pressure imposed by the Christian Democratic Party, as well as a strong resistance by the Prime Minister Klaus and his Citizens' Democratic Party. In the first option, regional self-governments would have the right to their budget, to govern their property and sources of financing, the right to adopt regional development programmes, to establish their decision making bodies, pass their own regulations, as well as the right to control the financial management of municipalities.

85 Hendrych, Dusan, *Constitutional and Legal Basis of Czech Public Administration*, European Review of Public Law, 8. 2., 1996, pp. 299-312

86 Obrman, Jan & Mates, Pavel; *Subdividing the Czech Republic: The Controversy Continues*, Radio Liberty Research Reports, 3, 4 March 1994, pp. 27-30

This was soon followed by the establishment of two commissions for implementation of these reforms, one greatly influenced by the Citizens' Alliance, and other under the auspices of the Civil Democratic Party - they were generally both against regionalisation. The proposals stipulated the establishment of regions as forms of regional self-government, with significant presence of the central institutions, though. Soon the debate between the President and the Prime Minister of the Czech Republic related to certain number of political issues was focused, in particular, on the issue of decentralisation. President Havel was in favour of the ideas of civil society and plurality of autonomies, whereas Prime Minister Klaus was against introduction of any kind of intermediary, as he considered that would jeopardise the economic development which was his priority. In other words, unlike Poland, where the right wing parties were in favour of regionalisation as a way of marginalising the former Communist regime, the situation was quite the opposite in the Czech Republic.⁸⁷

In 1997 the Czech Parliament, in both of its chambers, adopted the Constitutional Law on Establishing the Regions, envisaging 14 regions, but not providing any details regarding their regulation. In the next few years, around twenty bylaws were adopted, which meant the completion of the administrative reform, including the laws on regional institutions of authority, regional competences and regional elections, whose enforcement was, however, postponed by 1st January 2001. In compliance with this model, regions have a number of powers, but only those of the administrative character, which have been precisely defined in the Law on Transfer of Powers. Apart from this, regions have the right to submit draft laws to the National Parliament. The executive function is performed by the Regional Council, whose members are elected by the Parliament, and there is a special law which regulates the work of regional administration and public services. The state controls the legality of the work of regional institutions and is not entitled to interfere in the regional politics. Regions earn their revenues from their own regional taxes, while the taxes levied by the state are distributed to regions depending on the size of their respective territories.⁸⁸

The group of countries that have made considerable steps forward in the domain of regionalisation also includes Hungary, although to a lesser extent. Unlike the two previously described countries, Hungary introduced regions only when influenced by the European Union, but their content has remained incomplete or rather imprecise, however, the system of local and county self-government has been preserved.

87 Yoder, Jennifer, *Decentralisation and Regionalisation after Communism: Administrative and Territorial Reform in Poland and Czech Republic*, Europe-Asia Studies, Vol. 55, No.2, 2003, pp. 263-286

88 Op. cit.

Outcomes of Regionalisation in Transitional Countries

In comparison with the majority of other transitional countries, Poland, the Czech Republic and Hungary have made a significant step forward towards achieving decentralisation through the previously mentioned constitutional and legal reforms conducted at the end of the 90s. Similar efforts have been made in Croatia, which has established a proportionally great number of counties whose status is regulated in the law adopted in 2001. Counties have their elected assemblies, whose powers are precisely defined in Article 20, leaving no doubt regarding the types of those powers. However, what is typical of these, so to say, models, is the fact that regions, although guaranteed by the Constitution and regulated in detail by the relevant legislation, have been identified with the context of the three-level local self-government system, meaning, they do not have any legislative powers or adequate financial autonomy. Also the influence of the European Union on forming the regions is quite noticeable, as they are established in a technocratic manner, without taking account of regions' historical, economic, geographical or other criteria reflecting the identity of a particular area. This conclusion is contained in the report on the reforms conducted in the Czech Republic, submitted by the Council of Europe's Congress of Local and Regional Authorities of Europe.⁸⁹ The report also notes the presence of the terminology and statistical approach of the European Union, with regions created according to type NUTS-III, with a possibility to grow into larger and more comprehensive entities in the period to come. In accordance with this estimate, the Congress adopted a range of recommendations to enhance the municipal and regional self-government in this country, recommending the delegation of legislative powers to regions, in order to improve their functionality.

In other post-Communist countries the results have been less significant. Bulgaria and Romania, still in the process of public administration reform, have not managed, until present, to execute the expected decentralisation at the county or regional levels. In Romania, apart from the traditional, but institutionally weak counties, there are developing regions, which, as in Hungary, have been incorporated in order to meet the European Union criteria. Bulgaria has changed the course of its decentralisation for several times, to eventually, increase the number of its regions which leave the impression that their goal has not been precisely defined and there are no sufficient funds for their proper functioning. Regional associations of municipalities in Bulgaria tried, at one point, to assume the role of informal regions to establish the Euro-regional cooperation, however, without accomplishing any significant results. The regionalisation in Albania, stipulated in the Constitution, has been ratified in the law containing, however, rather

⁸⁹ Report on local and regional democracy in the Czech Republic, CLRAE, May 2000

imprecise formulations in terms of powers and methodology of work of the regional councils, where the dominant role is assumed by the prefect representing the state.⁹⁰

Our country is to embrace the constitutional reforms, which have been initiated for several times, though, but have not been completed yet. Out of a great number of proposals and discussions attempting to provide incentives for this highly required process, there appears certain distrust towards regionalisation and the potential status quo related to the current, insufficiently clarified position of Vojvodina. Nevertheless, the ultimate solution will depend primarily of the political will and efficiency in resolving numerous political problems that Serbia is facing nowadays.

The initial experiences of these countries in the process of decentralisation point to the fact that their priorities are still, to a great extent, focused on politics and economy, and to a much smaller extent on establishing a different, modern architecture of the society with local self-governments and effective regions. The significance of decentralisation is either neglected or overlooked, but it could contribute to a balanced development of the society, without encumbering the state with such tasks to which it is actually not able to respond. It is also often forgotten that the integration processes assume inclusion of the entire vertical structure of the society, in order for the state to have a better opportunity to join all institutions and processes of the European Union. Finally, nowadays the majority of European regions quite intensively represent their interests in Brussels, as well as participate in the work of different bodies, making direct benefits for their countries. Thus, from this perspective, it is not surprising that the EU funds have not been sufficiently used by new member states of the European Union.

Advantages of the Euro-regional cooperation, which was initiated in the Western Europe during the 70s of the previous century, providing incentives for the European integration in the crisis periods, have obviously not been adequately recognised. The intensive regional cooperation, often leading to the establishment of joint associations or decision making institutions extending beyond the state borders, contribute to prosperity of the country by opening the door to the single European market. At the same time, it may stimulate the harmonisation of the institutional and legislative system of a particular country with the European standards. Still, to provide an unhindered cooperation, as stipulated in the Madrid Convention on Transfrontier Cooperation, it is necessary to build capacity of the territorial community for partnership, by providing them with concrete powers and decision making possibilities. The tendency towards establishing the Euroregions is also present in the most recent decision of the EU to adopt regulations to standardise the criteria for the establishment of regions, as well as stimulate different areas for such initiatives, along with the provision of

90 Report on regional democracy in SEE, Institutional Committee CLRAE, November 2002

certain funds.⁹¹ In the same respect, drafting of the third protocol to the Madrid Convention should be envisaged, which would legally formulate the status of the Euroregions, their powers, as well as bodies of authority, and establish the legal subjectivity of the group that would consist of regions belonging to different countries. This is how regions would gain an integrated character corresponding with the image of a multi-level organisation of the integrated Europe.

3.4 Autonomy of Vojvodina and local self-government in the constitution of the republic of Serbia (2006) compared to European standards⁹²

Major aspects of Vojvodinian, pro-European, socio-economic possibilities and adequacy of institutional capacities represent in itself quite an extensive topic. Therefore, in accordance with the author's capacities, as well as opportunities provided by an author's article, only a number of internal political aspects and constitutional and statutory possibilities for Vojvodina aimed at expressing and improving its potentials to the benefit of provincial population and the state of Serbia in general will be pointed out here. Accordingly, we will contrast relevant solutions of the new Constitution of the Republic of Serbia (2006) with European concepts and principles set forth as well as with most relevant ideas of regional autonomy, which preceded the adoption of the Constitution.

3.4.1 Provincial autonomies - initiatives and Constitutional solutions

Considering that the specified topic, in the last decade, was a focal point of a number of published analysis, we will use this opportunity to remind you of the finding in one of our latest texts (2006). It quotes as follows: Agenda and policy related positions of the Democratic Party and the Democratic Party of Serbia are more obviously converging. Regardless of numerous disputes, inherited agenda and political differences in evaluation of functionality of provincial autonomies, as well as of essentially distinctive solutions in earlier party initiatives for constitutional changes in Serbia, the Constitutional drafts of the state president, Mr Boris Tadić (DP), as well as those of the Government headed by the Prime Minister, Mr Vojislav Koštunica (DPS), point to a number of qualitatively new approaches. One of the most noticeable innovations is reflected in the fact that among the aforementioned initiatives one could distinguish many more conceptual similarities in

91 Proposal for a European Parliament and Council Regulation establishing a European grouping of cross-border cooperation (EGCC)

92 This text comprises the part of more extensive text, which will be published in the magazine of the Faculty of Political Sciences in Belgrade, under the title: "Autonomy of Vojvodina and Local Self-government in the New Constitution of the Republic of Serbia - Overview of Constitutional Solutions in the light of European Standards".

implementation of the European logic and a model of state regionalisation, rather than fundamental differences in defining the nature of decentralisation and the role of autonomies in democratic Serbia⁹³.

Bearing all this in mind, contrasting the proposed models, we found that in quest of most functional constitutional and political system in Serbia, the entire century was necessary for the most influential democratic political parties and scientific community to take the position that decentralisation by means of autonomous provinces makes an important prerequisite of democratisation, constitutional patriotism and governing efficiency of the state within the pluralist social context, such as ours.

Therefore, even though matters have finally taken the right course, and in support of this speaks that fact that we embarked on the phase in which constitutional projects of the new governmental system, for the first time in the course of modern Serbian history, have more similarities than irreconcilable differences, throughout 2005 and 2006, very often the same question arose in public: "What is actually preventing parties, as rulers of our present and future, to take account of their own as well as our interests and finalise the task of establishing the constitutional, as Norberto Bobio said, "long-term treaty of peace"?!⁹⁴

As a result of accelerated adoption of the new Serbian Constitution, in November 2006, the parliamentary parties, following the five years of postponing and fierce confrontations, finally managed to reach an agreement regarding the text of the joint "treaty of peace". Unfortunately, there is so much leading us to the conclusion that in reaching the consensus some major concepts from the corpus of initiated solutions of Vojvodinian autonomy were "bargained away", which means not only, that critically re-evaluated part of legacy of the so-called socialist autonomy⁹⁵, but also some core European principles and methods of regionalisation.

In order to support the above assumption, we are going to compare, by means of 14 indicators, the constitutional solutions with previous drafts of the Serbian President and Government as well as with the European principles of regionalisation previously set forth. (See Table 1).

93 The first model was developed by the group of experts upon the request of the President of the Republic, in January 2005 and the second one, from February 2005, emerged as a result of the assessment of Government's experts and officials that as such it represents not only a compromise version of Government coalition, but realistically viable platform for reaching the consensus in the Serbian parliament; See: J. Komšić, *Dileme demokratske nacije i autonomije (Dilemmas of Democratic Nation and Autonomy)*, Official Gazette, Belgrade, PHILIA, Novi Sad, 2006, pp. 459-475.

94 See: N. Bobio, *Budućnost demokratije (Future of Democracy)*, Filip Višnjić, Belgrade, 1990, pp. 140.

95 See: J. Komšić, *Dileme demokratske nacije i autonomije (Dilemmas of Democratic Nation and Autonomy)*, Official Gazette, Belgrade, PHILIA, Novi Sad, 2006, pp. 377-407.

Table 1. Constitutional autonomy solutions compared to the previous drafts of the serbian constitution as well as to european standards

		Model of the President of the Republic of Serbia (2005)	Model of the Government of the Republic of Serbia (2005)	Constitution of the Republic of Serbia (2006)	European practice and standards (Council of Europe)
1.	Type of decentralisation	Asymmetrical decenmtralisation	Asymmetrical decenmtralisation	Asymmetrical decenmtralisation	Same; Asimmetry
2.	State parliament structure	Unicameral assembly of 250 MPs, with legally determined representation of deputies from the AP and cities in the national parliament	Unicameral assembly of 250 MPs, without regulated representation of the AP and cities in the Serbian Parliament.	Unicameral assembly of 250 MPs, without regulated representation of the AP and cities in the Serbian Parliament (Article 100).	There is a bicameral parliament in Italy and Spain. In unicameral parliaments of Portugal, Finland and Denmark electoral system provides for representation of autonomous territorial units.
3.	Local self-government system units	Municipalities and cities	Municipalities, cities, the City of Belgrade	Municipalities, cities, the City of Belgrade (Article 189).	Municipalitie-s, provinces, cities.
4.	Provincial autonomy; establishment, revocation, unification	Autonomous Provinces: Vojvodina and Kosovo and Metohija; For establishment of new provinces, the principles of optionality, graduality and majority consent shall apply.	Autonomous Provinces: Vojvodina and Kosovo and Metohija; Establishment of new provinces according to the procedure envisaged for changing of the Constitution.	Autonomous Provinces: Vojvodina and Kosovo and Metohija; Any establishment, revocation, unification of autonomous provinces shall be carried out pursuant to the procedure for the change of the Constitution; The proposal to be approved by the citizens in the referendum (Article 182).	Where there are regional authorities, the principle of regional self-government shall be recognised in an appropriate way in the local legislation or by virtue of the constitution.
5.	Territory of the autonomous province	May not be changed without the consent of citizens of the province (municipality, city) expressed in the referendum.	It is dependent on the majority vote in the state parliament; Any revocation, unification and establishment of new regions by the adoption of the Organic Law as in the procedure for changing of the Constitution	Shall be regulated by the law; It may not be changed without the consent of citizens of autonomous provinces, pursuant to the law (Article 182).	The borders of a region may not be altered without prior consulting of the region, which may imply voting of citizens of the region in the referendum.
6.	Competences of autonomous provinces	Original legislation; delegated competences of the Republic; Greater scope of original powers; simplified procedure for delegation of Republic competences	Original legislation; Delegated competences of the Republic; More restrictive approach in enumeration of original provincial competences	Shall not be entitled to adopt laws; Pursuant to the law AP regulate issues in 19 specified fields; See to it that human and minority rights are exercised; Determine the AP symbols; manage the property of the AP (Article 183); The Republic may by the law confer upon the province specific issues within its competence (Article 178).	Decision making powers of regional authorities may include a right to adopt laws; Italian and Spanish regions and autonomous communities adopt laws within their competences; It is also possible to delegate competences; Regional authorities shall be involved in the process of making decisions on the national level should they concern their competences or essential interests.
7.	Assumption of competences	To the benefit of a municipality	Not explicitly defined; Contextually- to the benefit of the Republic	Not explicitly defined; Contextually- to the benefit of the Republic	To the benefit of a municipality
8.	Type of autonomous power	Legislative; Executive; Government leader representing the Province	Legislative; Executive; President of the Executive Council representing the Province	Does not have legislative power; Adopts decisions and by-laws (Article 185).	Legislative; Executive; Partly judicial (Spain)
9.	Supreme act of law of autonomy	Basic law; Adopted by the majority in the Assembly of the AP; Supervision by the Constitutional Court of the Republic of Serbia	Statute; Comes into effect only upon the endorsement of the National Assembly of the Republic of Serbia	The Assembly of the AP adopts the Statute, with the previous consent of the National Assembly (Article 185).	Statute

10.	Autonomous Province Authorities	Assembly; Provincial government; Administrative authorities and other bodies and departments	Assembly; Executive Council; Administrative authorities; Ombudsman	Pursuant to the Constitution and the Statute, the AP independently regulate organisation and competences of its bodies and public services (Article 179).	Representative assembly; Directly elected members or in combination with elected representatives of local self-governments; Executive bodies; Administrative authorities.
11.	Protection of the Republic interests	Actual supervision of constitutionality of work of the AP authorities performed by common courts and the Constitutional Court of the Republic of Serbia.	The Government of the RS may institute proceedings for the assessment of constitutionality or legality of a provincial law, prior to its coming into effect; it may also inspect all other by-laws of the AP authorities.	The Government may institute proceedings for the assessment of constitutionality and legality of a decision of the AP before the Constitutional Court, prior to its coming into effect. In that case, the Constitutional Court may, until it issues its ruling, defer the contested decision of the AP coming into effect. (Article 186).	Supervision implies assessment of regularity of work of regional authorities; Supervision of delegated competences may also involve the assessment of expediency of decisions; Administrative supervision- ex post facto.
12.	Dissolution of the assembly of the autonomous community	Not provided for	May be proposed by the Government of the RS to the Constitutional Court, should the Constitution and law be flagrantly violated or the unity of the rule of law be infringed by the decisions of the Assembly and the Executive Council of the AP.	Not provided for	Suspension of the regional autonomy to definite period of time (in Italy); In principle, sanctions shall be based on the law, proportionate to the importance of interests which they are intended to protect and be subject to judicial review; Suspension and dissolution of regional authorities only in exceptional cases.
13.	Financial autonomy	The AP (municipality and city) is guaranteed the right to property and its own direct revenues, as well as to free disposal of revenue within its own competences; Share in the part of Republic revenues (taxes and levies).	Direct revenues stipulated by the Organic Law; Share in the part of Republic revenues (taxes and levies).	The AP disposes of direct revenues; The type and amount of direct revenue shall be provided by the law; The law provides for the share of the AP in the part of the Republic revenues; The Budget of the APV accounts for at least 7% in relation to the budget of the Republic of Serbia. However, the three sevenths of the APV budget shall be used for funding capital expenditures (Article 184).	Resources proportionate to their competences and responsibilities, sufficient for effective implementation of those competences; Dispose freely of regional taxes and the share of state taxes and funds without any requirements being imposed by the state; Access to the capital market.
14.	Protection of the provincial autonomy	The right to protection of autonomy shall be guaranteed; The Constitutional Court shall decide on any violation of the AP position stipulated by the Constitution and the law.	The AP may appeal to the Constitutional Court and institute proceedings for the assessment of constitutionality and legality of laws and other by-laws of the Republic as well as a by-law of the local self-government unit which violates the right to provincial autonomy.	The AP may appeal to the Constitutional Court and institute proceedings for the assessment of constitutionality and legality of laws and other by-laws of the Republic as well as a by-law of the local self-government unit which violates the right to provincial autonomy (Article 187).	Constitutional and legislative guarantee of existence of regions; Autonomy may be revoked by means of the same procedure that was used when the region was established; The right of regions to judicial protection.

The mosaic of presented information enables us to observe main differences between initial models and final text of the Constitution of the Republic of Serbia. They are easily perceived in the major indicators of the regional autonomy. Apart from presented drafts, which indicated some positive trends and the assumption that current political elites are finally, competently and responsibly, tackling the issues of the democratic division and balance of power, at the same time resisting the temptations of power-holding drives for maximization of power in the state centre (See: Komšić, 2006: 473-474), the new Serbian Constitution proved that “childhood diseases” of immature state and unconsolidated democracy have not been “cured” yet. Ethnocentric beliefs of political elites are still in play, as well as “material interests of the ruling power”, which has not completely given up “monopolist rent” or “extra profit” from exploitation of delusions, manipulations and fears of provincial autonomies. This certainly speaks in favour of reluctance of cultural elites, as well as of most influential circles within so-called scientific community of the metropolis to face the fact that provincial laws may not necessarily imply constitutional “breach for separatism”, but that, as Slobodan Jovanović pointed out almost a century ago, “everything depends on their attitude toward the state laws” (Jovanović, 1990: 362).

Therefore, at the very heart of the autonomy issue, i.e. within the scope of defining provincial competences and types of autonomous authority, we can recognise constitutionally established continuity with recent, Milošević’s line of reasoning behind the concept of “the unity of state”. It seemed that the short-lived agreement between the Democratic Party (DP) and the Democratic Party of Serbia (DPS), i.e. between the constitutional drafts aimed at harmonisation with European standards of regional state by the state President and the Government, was not decisive at the time of adoption of the new Constitution. What is more, this agreement may not have been the genuine one even in the phases which lead to the time of preparation of the final version of the constitution text. However, this is not what is relevant to our analysis.

The most relevant fact in response to the question regarding pro-European capacities of Vojvodina and constitutional and political potentials for their revitalisation and expansion is that *the autonomy of Vojvodina, in accordance with objective needs of the Province and the Republic on the whole as well as in accordance with European experiences and standards of regionalisation, has been deprived of the right to its own legislation within the scope of constitutionally guaranteed, original competences*. In line with such understanding of superficial autonomy, as a kind of permanently supervised administrative self-government, it is not surprising that a real nature of autonomy, which presupposes not only an inherent right of not being under the general supervision of the “centre”, but also the relevant scope of responsibility, self-initiative potential of provincial political factors and in-

stitutions, furthermore the possibilities of involvement in procedures of the republic laws adoption as well as the assumption of effective closeness in interaction with citizens, *depends above all on changing will of the majority in the national parliament*. Accordingly, the provision of Article 183 (“Autonomous provinces, pursuant to the law, regulate the issues of provincial importance in the field...”) will enable more thorough reader to gather the above specified information and establish that constitutionally guaranteed scope of provincial competences in principle encompasses 19 special fields. However, for every, in terms of law, literate reader if at all, incomparably more important is the fact that *the content of autonomy represents completely dependent variable of all-powerful republic legislation*.

That degree of *heteronomosity* is neither in line with the best liberal and democratic cognitive tradition nor in line with European principles and practice of regionalisation. When we consider the first (theoretical) aspect of matters, we can make reference to one, almost two century old, Constant’s (*Benjamin Constant*) observation that central authorities, if concerned with interests of local communities, overstep their authority, i.e. the limits of legitimate jurisdiction.⁹⁶ And when it comes to European experiences, we point out that the system of Spanish autonomies, within the scope of constitutionally defined material competences of autonomous community, is equivalent to federalist solutions of full legislative and administrative autonomy of the community authorities, along with the Supreme Court deciding in disputes in which the law of the community shall be exclusively applied. There is also a number of other solutions involving regions in decision making processes on the national (state) level; in architectonics of central institutions; in matters of electoral laws etc. (See: Komšić, 2006: 319-323). All this is not even anticipated in the text of the Serbian Constitution.

Additionally, compared to very flexible, Helsinki and Budapest wordings of concepts and principles of regionalisation (2002-2005), that is, in light of such definition of regional self-government (which “...stipulates legal competences and mandates of regional authorities to regulate and manage a share of public affairs within their own responsibilities and in the interest of regional population within the limits of the constitution and the law and in accordance with the principle of subsidiarity “), the face of our constitutional approach to autonomy assumes even “grumpier expression”, being obviously disinclined to the principle of subsidiarity, which among other things stipulates that whatever may be exercised more effectively on

96 „It is obvious that the whole nation or its representatives have legitimate jurisdiction over the interests of this latter kind (general people’s interests - prim. J. K.); and if they get involved with interests of a county, community or an individual, they would overstep their authority. The same would apply to the county which would get involved with special interests of a community or to the community which would attack extremely personal interests of its members”; B. Constant, *Principles of Politics and Other Papers (Principi politike i drugi spisi)*, Institute for Text Books and Teaching Aids, Belgrade, 2000, pp. 99 (cursive J. K.).

the lower level of power, should not fall within the area of competence of a higher governmental level.

Finally, when we consider legal standards of European democracies, the opinion of the most competent expert body of the Council of Europe (European Commission for Democracy through Law, that is, so-called Venice Commission) relies on the judgement that the part dedicated to the territorial organisation of authority is “not the most coherent one”. “On one hand, there are generous provisions on the principles, including the rights to provincial autonomy and local self-government, as well as to the substantial autonomy of autonomous provinces. On the other hand, *these concepts lack essence*. Constitutionally regulated distribution of competences between the state, autonomous provinces and local self-government units is pretty complex and *provides for wide interpretation and more specific regulation by legal norms of the lower level*” (cursive J. K.).⁹⁷

Similar view is taken with regard to the provisions of those Articles of the Constitution which guarantee financial autonomy. The issue of “... whether provinces have right of taxation or not remains open. The Constitution, also devolves to the level of the law, more specific establishing of type and amount of the state subsidies belonging to autonomous provinces”. Finally, with regard to already mentioned provision of Article 184, which precisely stipulates that the budget of the AP Vojvodina accounts for at least 7% in relation to the budget of the Republic of Serbia and that furthermore, 3/7 of the APV budget shall be used for funding of capital expenditures, the Venice Commission observes that all this seemed “pretty strange”.⁹⁸

Whatever may be the case, the peculiarities of our constitutional solutions concerning the division of power and competences between the state and lower units of territorial authority may be commented on in a manner adopted by the competent members of the Venice Commission. What would be actual standing of the Serbian politicians still remains to be seen, when we come to grips with forthcoming legislative solutions and answers to numerous open questions.⁹⁹ As for the question: to what extent all this previously mentioned will enable Vojvodina to preserve and improve the most prestigious part of its social entity, and here we refer to Vojvodina as European project and to the capacities and experiences of Vojvodina as a valuable “benchmark”, it might be most realistic to provide an answer by

97 *Opinion on the Constitution of Serbia* (No. 405/2006); European Commission for Democracy through Law (Venice Commission), Adopted by the Commission at its 70-th plenary session (Venice, 17-18 March 2007)

98 *Ibid*

99 The Constitutional Law for the implementation of the Constitution of the Republic of Serbia prescribes that the future convocation of the National Assembly shall be obliged to schedule elections in the local self-government units and the AP Vojvodina by 31 December 2007. The requirement for scheduling elections for local and provincial authorities is the adoption of the law regulating *territorial organisation* of the Republic of Serbia, *local self-government*, *local elections and the status of the capital*..

presenting the view that there are certain, still unwasted opportunities for preservation of whatever subjectivity and European identity of Vojvodina.

For more apparent capacity building, in line with European standards (the CoE and the EU), the new constitutional and legal reforms will be required, which consequently implies much more willingness, accountable policy work and tangible results in order to distinguish the purpose-designed contents of autonomy behind the facade. These views may also apply, to a great extent, to issues of local self-government. Nevertheless, some new solutions may be regarded as bringing us closer to European standards.

2. Local self-government - how much closer to European standards?

In the light of previously mentioned tasks of the present moment in development of democratic systems and vertical government organisation, which are reduced to establishing of the *functional balance* between the competences of the central state, on one hand, and local and regional autonomies, on the other, we have already referred to the first document which, on the principal level, has quite successfully resolved some of those tasks. This is **European Charter of Local Self-Government**.¹⁰⁰ It was adopted in the Council of Europe in October 1985 and so far has been ratified in all CoE member countries, apart from Serbia.

The starting point of the member countries to the Council of Europe was the fact that most immediate exercise of democratic right of citizens to participate in conducting public affairs is possible, first of all, on the local level, as well as the conviction that "...only local authorities with actual responsibilities may provide governance which will be efficient and close to the citizens". That consequently implies that "Europe based on principles of democracy and decentralisation of government" requires constitutional and legal guarantees for existence of local authorities with high level of autonomy and accountability. Accordingly, in line with the subsidiarity principle, the provision of Article 4 of the Charter reads as follows: *Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.* (Item 3). Furthermore, "Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law " (Item 4).

The major forms of institutional provision of democracy in the local community, according to the Charter, should include: councils and assem-

¹⁰⁰ *European Charter of Local Self-Government*, Council of Europe Convention No. 122, 15 October 1985.

blies, which comprise the members elected in free elections, by secret ballot, on the basis of universal and equal suffrage. In addition, local assemblies may establish executive bodies which are accountable to them. However, the assembly and executive bodies do not have right to derogate citizens' assemblies, referendum or any other form of direct participation of citizens in making decisions, which is stipulated by the local statute (Article 3).

Taking into consideration that disposing of adequate ways, manners and resources is essential prerequisite of responsibility, efficiency and economy of local autonomy, the Charter guarantees the right to "adequate financial resources of their own of which they may dispose freely within their own competences". In addition, it is also set down that "financial resources shall be commensurate with the responsibilities provided for by the constitution and the law" (Article 9, Item 1 and 2). Provision of the following Article provides for the right of local authorities to association, both within their nation state as well as on the international level. Accordingly, under conditions provided by the law, local authorities shall be entitled to cooperate with relevant authorities in other countries (Article 10, Item 3).

"The spirit" of the European Charter has been reflected to a certain degree in the text of the **Serbian Law on Local Self-Government**. Its adoption (February 2000) was, among other things, supported by aspiration for consistent fulfillment of promises of the Democratic Opposition of Serbia (DOS) in the summer 2000.

It should be pointed out that in *The Programme of Democratic Opposition of Serbia for Democratic Serbia*, during the first 100 days of new government, under the Item 9 it was stated that:

"The National Assembly of the Republic of Serbia shall be requested by the special resolution to adopt a new law on local self-government. This law will enable implementation of more pronounced decentralisation of power. The competences of the Republic and its bodies will be precisely demarcated from the self-government rights of local communities and their bodies. The affairs of local communities will be performed completely autonomously with regard to public authorities, pursuant to the Constitution, which provides for the right of competent public authorities to supervise their constitutionality and legality. Under the new law, multi-type model of municipalities shall be introduced, according to which big industrial and cultural centres will have greater scope of local self-government and perform wider range of tasks of public authorities, which the Republic will delegate to them by the law. This particularly applies to Belgrade, Novi Sad, Niš, Kragujevac and Priština. The new law shall guarantee stable revenue sources of local communities, with more pronounced level of autonomy when it comes to their collection and disposal!" (cursive J.K.).

To the question whether the promises have been delivered and which major innovations have been presented in the Draft Law from 2002, we responded in an earlier text in the following way:

With the new Law (February 2002) pre-election promises of the DOS started fulfilling. Accordingly, the major novelties in the Draft Law included: 1/ more precise demarcation of competences between local and republic authorities with the aim of more efficient provision of both rights and responsibilities of local self-governments; 2/ extension of municipal and city competences in the field of education, healthcare, social welfare and childcare and culture; 3/ revocation of executive committees and introduction of the new institution aimed at performance of the executive function, that it, the municipality president (mayor), who shall be elected at direct elections and shall administer municipal government; 4/ improvement of financial resources for municipalities and cities; 5/ local police; 6/ chief architect of the municipality; 7/ municipality manager; 8/international relations council; 9/ regulation of mutual cooperation relations between the authorities of local self-governments, republic and territorial autonomy; 10/ more precise defining of instruments and procedures of protection of local self-governments, including the possibility of establishing the local civil defender (Ombudsman), as well as the council for development and protection of local self-government etc. (Komšić, 2002: 130-131).

On the other hand, to the question what were the most disputable points within the public and assembly discussion on the Draft Law on Local Self-Governments and in which cases the compromises were made, the response would be as follows:

The representatives of former power, currently playing the role of opposition in the Parliament (SPS and SRP) did not vote in support of the Government Draft Law putting forward an argument that this was “a step backward” in relation to the previous law. Not disputing incontestable shifts toward democratisation and decentralisation, the MPs from the ranks of the Democratic Party of Serbia (DSS) pointed to weakening position of municipal assemblies and introduction of some form of presidential system on the local level. Consequently, they proposed, by tabling an amendment, an introduction of the municipal council as a third body of local self-government unit, in addition to the municipal assembly and president. Such compromise was also accepted in the Parliament.

Furthermore, the motions that the issue of the local police forces should be regulated by the separate law, which would entirely regulate rights, responsibilities and organisation of the police within the Republic, were also adopted. A lot of difference and doubtfulness was provoked by the proposal which allows for the appointment of the municipal manager. Moreover, *actual retainment of municipal property deprived of by the central authorities* resulted in numerous and reasonable disapprovals both in public and at the parliament sitting.

The law, therefore, starts from *the right of citizens to the local self-government* which is exercised directly and by virtue of freely elected representatives, by managing public affairs of immediate, mutual and com-

mon interest to the local population (Art. 1). The European standard of *local autonomy*, in terms of full and exclusive rights of local authorities within the rights which are conferred upon them, shall be provided for by the precise statutory definition of *original scope of activity* of local self-government units (Art. 3 and Art 18); by the provision that in discharging its original duties, local self-government units may be restricted only in cases and under conditions provided by the law, pursuant to the Constitution (Art. 4 Para 2), as well as by the guarantee of *financial autonomy* of the local policy (Art. 5 and Art. 77-97).

Chapter II (Local self-government units) regulates establishment of municipalities and cities, their legal status, their original and delegated scopes of activity, bodies and their manner of functioning (Art. 14-64.). The Provision of Article 24 stipulates that the status of the city of Belgrade shall be regulated by the special law.

However, as far as *local authorities* are concerned, the law stipulates establishment and scope of work of the municipal assembly, president and council. *Municipal assembly* is a representative body performing the principal functions of the local government, which are stipulated by the Constitution, the law and the statute. The assembly members are the councillors who are elected by the citizens in direct elections, by secret ballot, pursuant to the law and the statute. (Art. 26.). The executive function is performed by the *municipal president* (Art. 40-42.), and *municipal council* is the body which harmonises the functions of municipal president with the ones of the assembly and is responsible for supervision of the work of municipal administration (Art. 43 and Art. 60).

Under the law, citizens *directly participate* in the implementation of the local self-government by virtue of the citizens' initiative, assembly of citizens and referendum (Art. 66-69).

The area which is not formally prescribed or binding under the terms of the law pertains to *local community self-government*. Apart from formerly mandatory and basic territorial self-governing communities, *local communities* have been reduced to optional category since the early nineties of the last century. Accordingly, with regard to quite varying circumstances, the law only stipulates that villages (one, two or more of them) may establish local communities and other forms of community self-government. Local communities and other forms of community self-government may also be established within the cities - by quarters, precincts or boroughs etc. (Art. 70.). What is also regulated by the law is the right of the assembly of the local self-government unit to decide on establishment and revocation of local communities as well as the methods and sources of finance. Furthermore, they are also guaranteed the status of the legal entity, whereas the assembly of the local self-government unit may delegate to local communities as well to other forms of community self-government the exercise of particular tasks within the original scope of activity of the local self-government, also including the provision of necessary funds (Art. 71-75.).

Considering that, beside the adherence to democratic principles, the second principal function of local authorities pertains to their administrative effectiveness and legal and structural compliance with competences and functions of provincial and public authorities, *the relations of local self-government authorities to the Republic and territorial autonomy authorities* are regulated within the special chapter of the law (Art. 105-114). Finally, in order to fully exercise its democratic function, *legal protection* of the local self-government before the constitutional and administrative court is also quite significant. (Art. 8 and Art. 122-125.).

According to still applicable *Law on Territorial Organisation of the Republic of Serbia and Local Self-Government* (1991, '92. i '94.), there are 169 municipalities in Serbia (also including the municipalities in the territory of the Autonomous Province of Kosovo and Metohija), four cities (Kragujevac, Niš, Novi Sad, Priština) and the City of Belgrade. In addition, the territory of the AP Vojvodina comprises 45 municipalities, whereas the territory of the AP Kosovo and Metohija consists of 30 municipalities. Following the amendments of the aforementioned law (from 1992), *the city*, as a newly introduced territorial level, is entrusted with tasks which, on one hand, are delegated by the municipalities and on the other hand, it performs certain tasks delegated to it from the Republic level. The same status (of non-ordinary city competences) remains according to the solutions within the new Law on Local-Selgovernment, from February 2002. (Art. 22.).

Usually, the average municipality in our country has the population of 50,000, which renders it the biggest in Europe. Therein lies the reason for supporting the reform of the territorial organisation of the state, aimed at increasing the number of municipalities and reducing the average number of population living therein. For instance, Mr Miodrag Jovičić proposed at the time establishing of 420 municipalities in Serbia, regardless of the City of Belgrade, with the average population of around 20,000. However, if we take into consideration the dilemma: the uniform or multiform system of the local self-government in Serbia, as a regionalised state, this author maintains that, with the exception of Belgrade, all municipalities should have the same status, that is, have the same relation to the region and to central, public authorities (Jovičić, 1996: 74, 106-116).

Having in mind that in Serbia the number of inhabited areas by municipalities greatly varies and ranges, for example, from three (Municipality of Lapovo) to 153 inhabited areas (Municipality of Leskovac), furthermore, that there are even 11 municipalities with an area exceeding 1,000 square kilometres and another 10 municipalities whose area is over 800 square kilometres (i.e. that 11% of municipalities cover the 25% of the total area of the Republic), the other renowned authors also support the idea of reducing the size of municipalities (the area and average population). However, aside from Jovičić's ideas on retaining monotypic organisation of municipalities, there are also proposals that such organisation should be abandoned and the

special status of municipalities should be established (Lidija Basta et al., 1997: 34-35).

For the time being, and according to *The Law on Local Self-Government* (2002), the monotypic solutions in the organisation of municipal and city authorities will remain in force. It is stipulated by interim and final provisions that the character of autonomy of the capital, along with competences and organisation of local self-government units, in the city of Belgrade shall be regulated by a special law, within six months of the effective date of the Law on Local Self-Government (Art. 131, Para 1).

Taking into consideration all presented information as well as assessment of the nature of currently effective legal solutions of local autonomy, finally the question that follows is what the effect of the new **Constitution of the Republic of Serbia** has been and whether the level of incompleteness and the number of dilemmas have been reduced.

Responses of legal experts and local politicians differ. They vary from judgements that there are some positive shifts, regardless of obvious “restraint in the manner of defining territorial structural organisation and powers of local self-government” (See: Todorčić, 2007: 26-30), to quite critical ones that “on the whole the status of the local self-government is not satisfactory one” as well as that “excessive centralisation is not beneficial at all.”¹⁰¹ Whatever may be the case, we will draw our attention to innovations in relation to the old constitutional text.

In the new Constitution, in the part seven, dedicated to territorial organisation, we come across the specific definition of *demarcation of competences*. Probably, bearing in mind subsidiarity principle, the major criterion used by the writer of the Constitution is *expediency*, that is “the competence...in those issues which may be dealt with in an expedient way within the local self-government units...”. When it comes to the issue of what is expedient and which are the issues of republic, provincial and local importance, the authoritative power lies with the law. (Art. 176).

Local self-government units include, both according to the old and the new text of the Constitution: municipalities, cities and the city of Belgrade. The provision of the Article 117 of the old Constitution (1990) provided that *municipalities* were principal local self-government units. The same provision allowed under the law that particular municipality may be established as a *city* in the territory of which two or more city municipalities may be formed. Furthermore, it was stipulated by the city statute which tasks of the municipality were performed by the city and which ones by the city municipality. In addition, separate article regulated the status and statutory possibilities of defining the competences of the *City of Belgrade* (Art. 118). The Serbian Constitution of 2006 changes the situation by the

101 See the interview with Željko Ožegović, the President of the Standing Conference of Cities and Municipalities of Serbia, *Danas*, Belgrade, 28-29 April

provision of Article 189 which provides for clear-cut distinction between municipalities and cities.

Furthermore, with regard to the provision of the Article 114 of the Serbian Constitution from 1990, which only stipulates that “for fulfillment of tasks laid down by the Constitution and the law, the municipality shall dispose of the revenues provided by the law”, the relevant innovation is found in that part of the new Constitution text in which it is explicitly mentioned that the affairs of the local self-government unit shall be funded “...from *direct* revenues of the local self-government units” (cursive J.K.), as well as from the republic and provincial budget (Article 188).

Additionally, if we consider *competences of the municipality*, we also notice some innovations. Among other things, the municipality now sees to “protection, development and use of agricultural land” as well as to “exercise, protection and promotion of human and minority rights and to public information in municipalities”. In the provision of the same article there is a significant paragraph which stipulates that the municipal property is finally to be restituted to municipalities, of which they were deprived by the state in the nineties of the previous century. Along these lines, it is specified that “the municipality *independently manages municipal property*, pursuant to the law”. Nevertheless, despite the evident breakthrough, the lawyers point to the fact that the constitution writer “missed the opportunity to completely harmonize our legal system with the Recommendation no. 104 of the Congress of Local and Regional Authorities of the Council of Europe, which precisely recommends constitutional provision of full ownership title of the local self-government”.

Bringing to a close this short survey of new constitutional solutions concerning local self-government, we will put forward another, more general, conclusion made by the author of the previous observation: “It seems that the issue of decentralisation, which is one of the main reasons for structural deficiencies of Serbia, was not adequately considered in the process of harmonisation of the text of the Constitution and that as a result, it was opted for the neutral solution, which will later allow for statutory filling of the gaps” (Todorić, 2007: 27-29).

In this respect, the following statements of officials of the national association of local self-government units in Serbia are also indicative: “we missed the opportunity to provide grounds for regionalisation of Serbia”; “in order to achieve better functioning of local authorities, proportionate election system must be abandoned and the majority election system should be introduced or possibly combined system of election of councillors, who would not be mere puppets of the party leaderships”; “new law on territorial organisation of Serbia should definitely find modes of more balanced development of cities”.¹⁰²

102 Ibidem

Finally, summarising all that has been previously pointed out, we can conclude that local freedom and autonomy within the current constitutional framework of Serbia are very vulnerable categories. Their nature and scope are generally dependent on changing will of the majority in the Serbian Parliament. Nevertheless, there are also reasons for satisfaction. More than a decade long rule without the local self-governance in Serbia has finally been discontinued. By adoption of the Law on Local Self-Government (from 2002), which was later followed by the adoption of the Constitution in 2006, *the process has been started* the attainable goals of which pertain to stabilisation and development of the local democracy, according to citizens' criteria and principled position of the *European Charter of Local Self-Government*.

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