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# The Parallelism of Serbian Constitutional Norms on the Concept and Competences of Autonomies

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**Abstract**: Serbia is a decentralised unitary state comprising two territorial autonomies – the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija. The autonomies are constitutional institutions (categories), which means that their status is generally regulated by the Constitution. However, this regulation primarily concerns Vojvodina, whereas Kosovo and Metohija's status will be determined by a special law, which will embody the constitutionally proclaimed 'substantial autonomy'.

The Constitution determines the concept and competences of provinces through six articles, leaving the more specific regulation to the law and provincial acts. The paper critically describes this constitutional regulation, with the major remark that some provisions are redundant as they are, unacceptably, simply repeated.

**Keywords**: territorial autonomy, autonomous province competence, constitution, Serbia, Vojvodina, Kosovo and Metohija.

## INTRODUCTION

Part VII of the Constitution, 'Territorial Organisation', establishes a vertical state power structure. It contains a section with common provisions for territorial autonomy and local self-government, only to repeatedly but separately regulate these two concepts in further constitutional provisions. This approach to regulation is susceptible to criticism because the intention to define common provisions for the two forms of territorial decentralisation is ridden with serious omissions. The initial common provisions section is "completely redundant, because its inclusion results in the Constitution addressing the same issues twice, and more problematically, doing so in different ways each time". It is not even "wise, given the proponents of greater autonomy for autonomous provinces, to formulate common provisions for territorial autonomy and local self-government under the same section of the Constitution, as it provides them with a strong argument to claim that "provincial autonomy" advanced little in the Constitution relative to local self-government" (Marković, 2006: 61–2).

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Territorial autonomy is not a pure and generally accepted concept of constitutional law or public international law. Even more than a century ago, no subject of international law was considered so loose and vague, and full of speculation, as was autonomy (Chipman Gray, 1909: 122). In the modern day, at the advent of the 21st century, autonomy has become more important, as many ethnic groups demand (greater) autonomy within their national states, and the states' resistance to that autonomy often leads to internal ethnic violence (Légaré & Suksi, 2008: 155). This paper will address the topics of autonomy, as cited in the title, from the perspective of domestic, Serbian constitutional law.

Territorial autonomy, as a political unit of self-organisation, which is also referred to as ethno-territorial autonomy (Milosavljević Stević, 2023: 80), should be distinguished from non-territorial autonomy with the personality principle underlying minority autonomy (Lošonc, 2021: 53). Autonomy means independence in managing one's own affairs, which is possible only in parts of a state's territory, under its legal order (Milojević, 2002: 85). Territorial autonomy constitutes the intermediate level of government, often referred to as a region, which differs from local self-government in having a qualitatively higher authority of originally regulating legal relations and legislation in the material sense. From the state, however, the region differs in that the state (constitutional) government has above it only "the social legal norm as the content of the joint (collective) legal act of a stronger part of the state" (Petrović, 2002: 683–4).

## THE CONCEPT, ESTABLISHMENT, AND TERRITORY OF AUTONOMOUS PROVINCES (ARTICLES 176 AND 182 OF THE CONSTITUTION)

The Republic of Serbia is one of the few decentralised unitary states with territorial autonomies as special political units at the intermediate level of government – Vojvodina and Kosovo and Metohija. We proceed from the point that both autonomous provinces were established by the Constitution, as was also confirmed by the Constitutional Court, stating, in the reasoning of its Decision IUo-360/2009 of 5th December 2013, that "the autonomous province is a creation of the Constitution, not its citizens […]". In different forms and with different powers, our autonomous provinces have their precursors in the past – the Region of Kosovo and Metohija, since the end of World War II,[2] and the duchy of Vojvodina (*Srpska Vojvodina*), in a distinct and short-lived form, existed even a hundred years earlier (1848/49). After the suppression of the Serbian Revolution, the created Duchy of Serbia and Tamiš Banat (1849) did not enjoy the status of territorial autonomy but that of a special administrative region, a crown land, *Kronland* (Simović, 2019: 806). Although the facts pointing to the post-war political intention to form just one province, Vojvodina, were well-known (Vukadinović, 2020: 131–2), the Kosovo and Metohija Region was also established (1945), which, almost 20 years later, grew into an autonomous province (1963). One explanation for this change is that equating the status (and name) would, to some extent, solve the problem of underdevelopment of Kosovo and Metohija, which poses major problems for Serbia (Gatalović, 2015: 86).

2 For the evolution of the right to territorial autonomy in Serbia, see Župljanić (2017). For instances of former, medieval forms of autonomy, see Mitrović (2003).

The constitutional-legal status of post-war territorial autonomies has differed from that of the present day, having been based on various Yugoslav and Serbian constitutions, and, at some point, even on provincial own constitutions and constitutional laws. While the theory argues that the establishment of territorial autonomy can be a conflict resolution mechanism (Wolff, 2010: 17), the example of Kosovo and Metohija speaks to the contrary, and at certain times, and not as prominently, this contradiction to the theory was also indicated by the constitutional development of Vojvodina's autonomy. Despite the proclaimed substantial autonomy of Kosovo and Metohija within Serbia, one lesson learned from Kosovo's unilateral secession (2008) is that the primary norms of public international law, such as the inviolability of territorial integrity, are vulnerable to geopolitical interests and overwhelmed by the inexorable logic of power (Castan Pinos, 2015: 12).

The status of provinces and their rights and duties are specified in detail by laws, but only to a limited extent (there is no specific law on territorial autonomy), and by regulations. Of the latter, we specifically highlight the Statute of AP Vojvodina and the provincial assembly decisions. Such regulations have never been enacted in AP Kosovo and Metohija. In this respect, a distinct particularity of the Serbian mid-level government is that the constitutional status of Kosovo and Metohija remains politically disputed and legally undetermined, termed 'substantial autonomy' that should first be defined and then regulated in detail by a special law to be adopted following the constitutional amendment procedure. Actually, the status of AP Kosovo and Metohija has so far been determined only by the Constitution, and merely nominally, given that, since 1999, Serbia still has no sovereignty over that part of its territory. Meanwhile, a separatist act proclaimed the 'Republic of Kosovo', which, backed by a certain number of foreign countries (mainly NATO member states), established a constitutional system of its own, remaining unrecognised by its home country, Serbia, and by most other countries.

Under its 'Fundamental Principles' (Article 12), the Constitution initially defines provincial autonomy as a human right that limits state power. The exercise of this right within a province is subject to the control of constitutionality and legality, but not necessarily of appropriateness. This constitutional right of citizens promotes further decentralisation of the state, given that power is also exercised at the level of local self-government units.

Specific to our positive law, another factor involved in shaping territorial autonomy is the decisions of the Constitutional Court. Some of these decisions include attempts to provide a theoretical formulation of the concept of territorial autonomy, with the first one being the Decision on the Constitutionality of the Act Establishing the Competences of AP Vojvodina. Additionally, in other decisions, the Court attempted to articulate the constitutional notion of provincial autonomy by defining autonomy and its original, transferred, and delegated affairs. These decisions include the Decision on the Statute of the Autonomous Province of Vojvodina, IUo-360/2009 of 5th December 2013, and the decisions on Vojvodina Academy of Sciences and Arts, IUo-427/2003 of 26th December 2013, and on the establishment of Vojvodina Academy of Sciences, Art and Culture, IUo-314/2015 of 6th April 2017. The Constitutional Court views territorial autonomy as a form of territorial organisation of the state, typically a unitary one, and an integral part of its internal system of government. It positions territorial autonomy between the federal unit and local self-government, or, vertically, below the former and above the latter. The degree of autonomy granted to the province is greater than that of local self-government, and

lower and qualitatively different from that of the federal unit. In defining the autonomous units negatively, the Court establishes that they lack the original authority necessary for statehood (Constitutional Court Decision IUz-353/2009 of 10th July 2012).

From among a variety of reasons for establishing the provinces of Vojvodina and Kosovo and Metohija, we highlight ethnic ones, given the ethnical diversity of these regions, coupled primarily with traditional or historical considerations. By comparison, Spain has upheld a long tradition of autonomy since its unification in the 16th century, which is seen in the fact that, even then, "the distinct institutions of certain parts of the country, once independent but then united under a single state, did not cease to exist". Subsequently, with a new Constitution (1978) "it was necessary to create a state able to satisfy and guarantee the autonomy demands by nations and regions, remaining, at the same time, unique, which means neither unitary nor integral […] but one that would constitute an intermediate form, in the words of *Gumersindo Trujillo,* of the federal-regional state" (Radović, 1985: 16, 20). In the context of Serbia, territorial autonomy has become a typical element of territorial organisation of the state, given the general post-World War II trend of constitutionalising this form of state power decentralisation; however, it is not also an indisputable segment of the constitutional identity of the Republic of Serbia, nor should it be so, due to its proven disintegrative effect on the political system (Simović, 2019: 804, 827).

With two provinces, Serbia has an asymmetrical territorial structure, as these two provinces do not share the entire state territory. The constitutional possibility of establishing new autonomous provinces, all up to 're-networking' the state territory, has not been achieved nor is it likely to be.

The right to provincial autonomy does not entail lawmaking – a province cannot create laws, nor does it have judicial authority, which limits its overall political and legal authority. Indeed, as an 'ordinary' autonomous province, AP Vojvodina has none of these authorities, while this is not excluded for some future 'substantial autonomy' of Kosovo and Metohija. The derived constitutional concept of autonomy implies that the province has the same form of government, organisational structure, and powers as the Republic. This is with a caveat that the constitutionally stipulated status of the provincial assembly approximates essentially the parliamentary system of provincial government to the assembly system. The autonomous province passes regulations as part of its normative and executive function (Articles 30 and 44 of the Statute of AP Vojvodina), while it also exercises administrative authority. The province does not have its representatives, as a political group, in the legislative authority, the National Assembly, as the federal units in comparative law do in the upper house of the central parliament. Nor does it have guaranteed seats (official functions) in the executive authority, the Government.

## *The Concept of Autonomous Province*

The constitutional section titled 'Concept' (Article 176, omitting the wording: of the provincial autonomy and local self-government) actually makes no mention of the specific criteria that constitute the concept of territorial autonomy and local self-government, except that it recognises it as the right of citizens – they are made holders of the right to territorial autonomy (Simović & Orlović, 2023: 913–5). This Article further governs the matters concerning the exercise of this right and the legal status of territorial autonomy

("Citizens shall have the right to provincial autonomy and local self-government, which they shall exercise directly or through their freely elected representatives. Autonomous provinces and local self-government units shall have the status of legal entities").

A more specific determination of the concept of territorial autonomy is provided in one of the preceding constitutional sections titled: 'Provincial autonomy and local self-government' (Article 12). From it, we derive a definition that provincial autonomy is a citizens' right that limits state power and that this right "is subjected only to the supervision of constitutionality and legality". Upon breaking this concept down, it becomes clear that provincial autonomy is a constitutionally guaranteed right of citizens. The holders (subjects) of this right, according to this definition, are all citizens of Serbia, that is, its nationals. In reality, however, the right to autonomy is not exercised by all citizens but merely by those residing in AP Vojvodina (while in AP Kosovo and Metohija, this constitutionally granted right is unenforceable). Most citizens, residing in central parts of the state territory, do not exercise their right to territorial autonomy due to the absence of a third established province.

The right to territorial autonomy also indicates that it limits, or curtails the sovereign power of central authorities. It means that territorial autonomy enjoys certain original competences that form the content of the right to autonomy, and that, at the same time, the state does not exercise those specific competences. The part of the respective definition concerning the right to control constitutionality and legality confirms exactly the fact that territorial autonomy is the holder of original competences, given that the administration of those affairs cannot be assessed for appropriateness and efficiency, nor could the state take away and transfer the original affairs to its own domain.

Article 176 further provides how the right to provincial autonomy is to be exercised: directly by citizens or through their freely elected representatives. The first option is direct, without intermediaries (deputies), and should, naturally, be used more frequently at the government level that is closer to the citizens than the central. However, direct citizen decision-making in the procedure for adopting provincial acts in AP Vojvodina has remained unpractised to date.

Citizens can participate in the initial stage of the direct decision-making process, notably through civic initiative, by which they initiate the procedure for the adoption of a provincial act (a statute or a decision). As a collective right, the provincial initiative requires support by a specified number of citizens to be valid. This number varies depending on the type of the general act being proposed. Proposals to amend or adopt the Statute of AP Vojvodina require at least 40,000 signatures, while those for a provincial assembly decision require at least 15,000 signatures. In both cases, the signatures must come from voters with a registered residence in the Province's territory.

Another way in which citizens can exercise the right to autonomy directly is through voting in the provincial referendum. The referendum is called by the Assembly of AP Vojvodina, on the request of either at least 30,000 citizens (with registered residence in the Province's territory) or a majority of the total number of deputies (at least 61). The referendum decision is merit-based; it either confirms or rejects a proposal for a decision falling within the purview of the Assembly. A further way is an optional, advisory referendum, used by the authorities to gain a preliminary understanding of citizens' opinions on a planned decision. A petition, which can be submitted by any individual, could also be

considered a way to directly exercise the right to provincial autonomy, provided the petition was accepted and the procedure for adopting the proposed decision was carried out.

The right to provincial autonomy can further be exercised directly through elections. Citizens exercise power directly – 'they actualise their right' on Election Day, at polling stations, by voting for the deputy electoral lists. The right to vote for deputies in the Vojvodina Assembly is, again, logically, exclusive to citizens with registered residence in AP Vojvodina. In AP Kosovo and Metohija, the provincial assembly has not been constituted since 1990. One notable fact is the adoption of the Declaration on the Assembly of the Community of Municipalities of the Autonomous Province of Kosovo and Metohija, in Kosovska Mitrovica, in 2008. That same year, the Assembly saw the election of its deputies, but it was neither recognised as a provincial authority nor did it have any effective power.

To date, citizens have been exercising their right to provincial autonomy indirectly, through their freely elected representatives, the deputies of the Assembly of AP Vojvodina. Citizens elect deputies directly in provincial elections, which are organised as free. Free elections involve voting by secret ballot, where everyone can express their genuine political will. At elections, all holders of election rights participate as voters or candidates on equal terms. The constitutional syntagm 'freely *elected* representatives' (Article 176, Paragraph 1) means that voting is direct – for deputies rather than delegate-representatives who would then elect deputies, that votes are secret, and that each vote is equal.

The autonomous provinces hold the status of legal entities (Article 176, Paragraph 2 of the Constitution), which means that this level of government gained recognition as a subject of law. The province, through its authorities, adopts acts and undertakes actions entering into legal relationships and creating consequences, which means it has: legal personality – it is a holder of rights and duties, legal capacity – by statements of intent, it concludes legal transactions and undertakes legal actions, and has a legal liability – it is responsible for any damages it causes. The Statute, as the supreme provincial act, sets out who will represent it as a legal entity – the Provincial Government.

## *The Concept, Establishment, and Territory of Autonomous Province*

The concept of provincial autonomy, defined in the preceding constitutional provisions (Arts. 12 and 176) as the right of all citizens, varies here (Article 182, Paragraph 1). Here, the autonomous province is not a citizens' right limiting state power but an 'autonomous territorial community'. If we merge these two definitions, then the autonomous territorial community is a manifestation of citizens' right to territorial autonomy, to its exercise. It should be differentiated from other units of decentralisation in comparative law, such as regions, districts, or counties, commonly representing the power deconcentration units without political subjectivity.

This Article (182(1)) explicitly states that autonomous provinces are established by the Constitution, that is, that the autonomies existing at the time of adoption of the Constitution are reinstated with its adoption. In a more specific interpretation, the existing autonomous provinces, in their current form and with the assembly as the supreme authority with constitutionally determined competences, were established by the existing Constitution. The reality, however, shows that the establishment was actualised only in respect of AP Vojvodina – the law on Vojvodina's competences was aligned with the Constitution,

with the highest provincial acts adopted, and the authorities formed, while the constitutional establishment of AP Kosovo and Metohija remained merely formal, non-applied (Simović & Orlović, 2023: 934–7).

The 'autonomous territorial community' comprises a population, a territory, and a government. Community is not a state and, therefore, its residents cannot be citizens, in the political sense, of the autonomous province but citizens of Serbia in the autonomous province. The territory of a territorial community is determined by the law of the state rather than a provincial general act. The provincial government is autonomous, unlike the state's, which is sovereign.

The autonomy of the two provinces, as constitutionally construed, varies. While Vojvodina's autonomy can be said to be 'ordinary', by the standards of theory, the autonomy of Kosovo and Metohija is termed 'substantial', something like 'the autonomy of greater depth' (Tkacik, 2008: 390). Before defining these concepts, it should be noted that Serbia, unique among the six federal units of the SFR Yugoslavia in having provinces, had, from the 1970s onwards, been experiencing a progressive decline in authority over those autonomous provinces. With their autonomy reaching the highest level, the provinces became the constituents, the founders of Yugoslavia, similar to its republics. This equation of provinces with republics was abolished by the 1990 Constitution, preceded by constitutional amendments (1989), and the status of autonomous provinces was limited to political-territorial units deprived of the features of statehood, including not only the constitutional and legislative authority, but also the constitutional judicial, judicial, and executive.

The reasons for the establishment of the two autonomous provinces (Kosovo and Metohija initially constituted a 'region') in the former Federal State of Serbia (subsequently the National Republic of Serbia) within Yugoslavia were primarily based on ethnic considerations. Both provinces had ethnically and religiously a distinctly diverse population, with Serbs comprising the majority of the population in Vojvodina, and Albanians in Kosovo and Metohija (1948 Population Census). In other Yugoslav republics, also ethnically heterogeneous (except for Slovenia), no autonomous provinces have ever been established. Primarily for the same ethnic reasons, Serbia, even after gaining independence (in 2006), retained, that is, re-established two autonomous provinces within its system of vertical separation of powers. Subsequently, AP Vojvodina adopted the Statute (2009), one that, even in its draft form, did not mask the 'craving for statehood' (Marković, 2008: 8–12), only to be replaced, following the Constitutional Court Decision (IUo-360/2009), by the existing Statute (2014).

Constitutional provisions on territorial autonomy and autonomous provinces also extend to any province that may be established in the future, given the constitutional possibility to do so. However, for AP Kosovo and Metohija, the Constitution envisaged the status of 'substantial autonomy' (Article 182, Paragraph 2, a phrase taken from the UN SC Resolution 1244). Based on the Constitution, the only discernible information about this autonomy is that it is distinct from 'ordinary' provincial autonomy and that it will be regulated 'by a special law that is enacted in accordance with the procedure prescribed for amending the Constitution'. What remains an open dilemma is what substantial autonomy means, given that constitutional law science knows no such concept (does AP Vojvodina, then, practice a 'non-substantial' autonomy?). This concept found its way into the Constitution due to political factors, as a political declaration 'aimed at expressing Serbia's willingness

to proclaim, unlike previous constitutional solutions, wide autonomy to this part of its territory' (Simović & Petrov, 2018: 376).

The concept of substantial autonomy should not be construed as antithetical to the provincial autonomy (the 'ordinary' one) under the Constitution, which could, then, be called 'non-substantial autonomy'. By envisaging substantial autonomy for one province but not also for the other, the Constitution, evidently, even discriminates between the two existing provinces (Nikolić, 2015: 612). Substantial autonomy is not only a higher or the highest possible level of autonomy but also one that must not threaten the unity and territorial integrity of a state. Substantial autonomy would encompass all of the features of a political-territorial autonomy as defined in the Constitution, but would additionally be promoted by a special law to enjoy the highest level of independence (self-governance), without compromising the statehood, integrity, or sovereignty of Serbia.

To date, no special law regarding substantial autonomy has been enacted. Although the Constitution, employing the future tense verb 'shall be regulated' for this form of autonomy, seemingly left the obligation of the state authorities to enact it without a specified time limit, a general deadline has been established by the Constitutional Act on the Implementation of the Constitution of the Republic of Serbia. Was this the constitution drafter's intention or simply inconsistency, given the different verb tenses used in the same sentence – substantial autonomy 'shall be regulated' (the future) by a special law that 'is enacted' (the present) according to the procedure… Nevertheless, the provision of Article 15 of the Constitutional Act that 'by 31st December 2008, all laws shall be aligned with the Constitution' is a general obligation applying to all laws, including any new ones provided for under the Constitution. It follows that the state has been failing to fulfil its constitutional obligation for a decade and a half.

Substantial autonomy is a matter of constitutional rank because a special law for it will be adopted 'according to the constitutional amendment procedure'. This law will have greater legal force than all the other laws. Its adoption procedure equates to the procedure for adopting a new constitution, where a republic referendum is mandatory. Although it would thus, formally and procedurally, stand on an equal footing with the Constitution, the special law could never have the force of the Constitution but would have to remain subordinate to and consistent with it. The main reason for this is material in nature – special law elaborates constitutional provision on substantial autonomy as the *materia constitutionalis*, and this is possible through constitutional amendments or the law, as in this case, which, as an elaborating act, retains less legal force than the Constitution.

The number of allowed autonomous provinces is not limited (*numerus clausus*); it can be greater than or less than the current count of two, depending on the fulfilment of constitutional requirements. In light of the constitutional possibility of reducing the number of provinces to one single entity, it is crucial to always bear in mind the historical fact that not even that one political autonomy has survived – in some countries that introduced it after World War II, it eventually ended. This was the case with Slovakia in former Czechoslovakia and with the Hungarian autonomous region of Mures in Romania (Marković, 1985: 34).

The Constitution provided for three possible conditions regarding the change in the status of autonomous provinces (Article 182, Paragraph 3) – established, abolished, or merged (Simović & Orlović, 2023: 937–40). Each legal status is to be effected following the procedure envisaged for amending the Constitution. Therefore, the acts of decreasing

or increasing the number of autonomous provinces are procedurally aligned, in terms that both can be carried out through the constitutional amendment procedure. For the same reasons stated above regarding the substantial autonomy law – that a constitutional amendment involves (presupposes) citizens' decision in a referendum – we hold that this issue, too, requires calling a referendum. It means the Republic, the people's referendum voted by all citizens rather than just those from the territory of the province being established, abolished, or merged with another province.

The three notions: established, abolished, and merged, by logic itself, cannot be treated completely equally by the law. The constitutional 'possibility' of territorial consolidation of already established, geographically distant provinces – Vojvodina, in the north, and Kosovo and Metohija, in the south, separated by the central part of Serbia – clearly does not exist. Hence, this option is a legal fiction, and as such superfluous, until a point in the future when a new province bordering the existing ones has actually been established. The issues of establishing new and abolishing the existing provinces fall under the same constitutional legal regime, with the existing provinces also being subject to the constitutional rules governing the alteration of their territorial borders (Article 182, Paragraph 4 of the Constitution).

The procedure to change the existing structure of vertical power sharing can be initiated by any of the four authorised subjects (under Article 203, Paragraph 1 of the Constitution), while the proposal to establish, abolish, or merge autonomous provinces is 'established', as cited in the Constitution, by all citizens. The citizens can do so, observing the law, only through a referendum, called by the National Assembly. The Act on the Referendum and People's Initiative (2021) in turn recognises, in this respect, the category of a 'national referendum on a part of the territory', as an advisory referendum aimed at gathering citizens' opinions, which "is mandatory before adopting a decision to establish, abolish, or alter the territory of an autonomous province […]" (Article 49, Paragraph 3). However, it hardly fits with the provision for the National Assembly to call a referendum on issues from its scope of competence while establishing, abolishing, or merging the provinces was not made part of it (under Article 99) but their formation is envisaged through the constitutional amendment procedure. Nevertheless, the only possibility remains that of the National Assembly calling such a referendum (the Act reads: "National Assembly shall call for the referendum for the territory of the Republic of Serbia where citizens need to decide on: 1) issues determined by the Constitution […]", Article 49, Paragraph 1, item 1) that would virtually constitute the referendum to amend the Constitution, primarily the provisions of Article 182 (mentioning two autonomous provinces).

It follows that the only legitimate way to establish or abolish (merging is irrelevant at this point) an autonomous province is through the very constitutional amendment process, which must be initiated by some of the authorised proponents (the President of the Republic, the Government, deputies, or citizens). It is not excluded, but would be opportune, to have the submission of the initiative preceded by a call for an advisory (optional) referendum on the part of the territory in which the autonomous province would be established or abolished. Thus, the process of establishing or abolishing a province would involve the following legal steps: organising the advisory referendum in the province (optional stage); the National Assembly adopting a decision to initiate the constitutional amendment procedure upon receiving the initiative; the amending act being adopted by the National Assembly; voters deciding, upon the Assembly's call for a referendum, on

the proposal to establish or abolish an autonomous province. If citizens 'establish' (or, endorse) the proposal in the referendum, the National Assembly will officially proclaim the establishment or the abolishment of the autonomous province, which would also mean the promulgation of constitutional amendments.

In a democracy, it is only acceptable that the proposal to abolish an existing autonomous province originate from the citizens of its territory, thus freely expressing their will to abandon their acquired collective political right, which, again, is unknown to the history of territorial autonomies. Notwithstanding this point, we conclude that the only constitutionally valid way to abolish an autonomous province is to carry out the previously described constitutional amendment procedure, which would involve modifying the provisions (articles) relating to the respective autonomous province (AP Vojvodina is mentioned in two constitutional articles: 182 and 184, and AP Kosovo and Metohija in the Preamble and in Articles 114 and 182).

The Constitution also governs the territory and the borders of autonomous provinces (Article 182, Paragraph 4). They are defined by the law (The Act on Territorial Organisation of the Republic of Serbia of 2007), and confirmed by the Statute of AP Vojvodina ("the territory of AP Vojvodina shall comprise the territories of local self-government units established by law", Article 3) and cannot be altered without the consent of citizens of provinces, expressed in a (provincial) referendum. The Constitution uses the syntagm 'its citizens' to signify the citizens of the autonomous province. This usage is constitutionally and politically arguable and inconsistent with other provisions, as the Constitution, starting with the Preamble, recognises 'the citizens of Serbia', or 'all citizens', or just 'citizens'. According to the Constitution, the citizens of autonomous provinces do not exist in the constitutional or political sense, as it would encompass their particular constitutional and political rights, distinct from the rights of the citizens of Serbia (in this respect, the Constitutional Court also holds that an autonomous province is not a creature of 'male and female citizens' who live in it, as was written in the 2009 Statute, but - as an autonomous province of the Republic of Serbia – a creature of all citizens of Serbia, i.e. of the Constitution – from the reasoning statement of the Decision IUo-360/2009 of 5th December 2013).

The constitutional provision directing that the law should regulate the "terms under which borders between autonomous provinces may be altered" has no application in our constitutional system because such shared border, as previously noted, does not exist. This provision makes some sense only if it involves considerations of the future, one after the establishment of new provinces with a shared border. Referendum on changes to the provincial territory is mandatory – one that must be called, binding – the decision is made on the merits, and may also be preceding or subsequent in nature – called before or after the Law is amended.

## ON THE COMPETENCES OF AUTONOMOUS PROVINCES (ARTICLES 177, 178, 179, AND 183 OF THE CONSTITUTION)

The major issue of state organisation is distribution of competences among different levels of government. The potential arrangements vary – from states with developed political decentralisation, involving numerous powers, to a group of states where political decentral-

isation can be quite moderate, similar to deconcentration. The extent of decentralisation, undeniably a constitutional law issue but even more a political one, must be addressed by considering not only the fundamental reasons for establishing political autonomy in the first place but also the current political conditions in a given state. Division of competences in a unitary state will always ultimately be a result of a balance of political power between the state itself and an internal area, a region – as a general rule, a stronger state means more power at the central level, while a strong region – politically, economically, and demographically – signifies the pursuit and achievement of greater decentralisation. This is also true for Serbia with the autonomous provinces of Vojvodina and Kosovo and Metohija, where delimitation of competences is subject to the constitutional principle of subsidiarity (Bojanić, 2017: 180). Historically, the powers of provinces have varied, often shifting between broader and limited scopes, depending on the degree of independence of the central state authority or the authority of a federal unit (while Serbia was part of Yugoslavia) was willing or compelled, by ideology and political opportunism, to institute in the constitutional status of an autonomous province.

In theory, the quality of competence of autonomy includes legislation, public administration, and decision making in certain social areas. This type of autonomy can be referred to as political autonomy, in contrast to mere administrative autonomy (Benedikter, 2009: 18). Within the array of competences of autonomous provinces in the Republic of Serbia, one can identify three models of political decentralisation. The most advanced model is reflected in the empowerment of the provinces to regulate the organisation of their own, provincial government. With the existing constitutional limitations, these affairs are the exclusive (original) competence of the province, which derives from the Constitution and cannot be limited or otherwise regulated by the law (there is no provision 'in accordance with the law'). Of the same quality is the competence of the provinces to institute their symbols and determine their appropriate use.

The second model involves decentralisation that has both the source and limitations in the Constitution and the law in parallel. Autonomous provinces manage constitutionally conferred affairs that could initially be called exclusive (original); however, as 'matters of provincial interest', these competences are executed in compliance with the law. They refer to multiple social areas, including agriculture, industry, transport, education, etc. While these affairs originate from the Constitution, their authenticity is 'spoiled' by the provision that they must be "regulated in accordance with the law" (Article 183, Paragraph 2).

The most modest quality of autonomy granted to autonomous provinces in managing their affairs refers to delegated competences. One could call it merely a conditional decentralisation of a power created and terminated by law based on constitutional provisions (Article 178). The difference between these affairs and those of the second model is that these authorities are not, even generally, identified in the Constitution but are solely based on the law.

## *Delimitation of Competences*

In a complex, federal state, usually most of the public affairs are managed by federal units. In most states, there is a presumption of competence in favour of the federal unit, which is provided using the legislative technique of enumeration – the listing of individual author-

ities of the federation so that all the remaining public affairs (a substantial share) are to be handled by the federal unit. In decentralised unitary states, constitutions do not typically specify the competences of the state but areas and affairs handled by lower-level governments. In this respect, Serbia, while undoubtedly a unitary state, has an atypical constitutional solution in that its Constitution enumerates the affairs of the state (Article 97), only to subsequently also specify the competences of territorial autonomy (Article 183).

Provincial competences provide another example of inappropriate, parallel constitutional regulation, but one with less duplication of rules than the concept of autonomy. The Constitution first addresses the provincial competences and their delimitation and delegation along with those of the Republic and local entities, only to make a separate provision (Article 183) specifically outlining only the provincial competences. The section on competences, titled 'Delimitation of competences' (Article 177), proceeds from stating the competences of an autonomous province in general terms (Simović & Orlović, 2023: 917–8).

The constitutional formula for dividing competences between the Republic and the provincial level of government (here we omit local self-government) is general - it considers two criteria: negative, what must not exist, and positive, what must be fulfilled (autonomous provinces competent for the "matters that can be realised, in an effective way, within an autonomous province, and that shall not be the competence of the Republic of Serbia", Article 177, Paragraph 1 of the Constitution). The negative condition is that addressing the constitutionally enumerated provincial 'matters' (affairs) does not fall within the state's competence, while the positive condition for the provincial right to act is that those matters can be resolved in an 'effective way' within a province. 'Effectively' means reasonably, rationally, appropriately, or successfully, and it is, hence, useful and in the general interest to have the listed (later on) matters 'realised' through the work of provincial authorities.

The right to define matters that can effectively be realised within an autonomous province was vested in the lawmaker ("what matters shall be of […] provincial […] interest shall be specified by the law", Article 177, Paragraph 2 of the Constitution). The affairs managed by an autonomous province are regulated by the Act establishing the Competences of the Autonomous Province of Vojvodina (2009), further asserted in the Statute of AP Vojvodina, and finally shaped by the Constitutional Court Decision (IUz-353/2009 of 10th July 2012). Additionally, the matters that "can effectively be realised within an autonomous province" are also defined in the Constitution (Article 183, Paragraph 2), but not by spelling out the concrete matters (affairs) but through enumerating the areas that cover also the 'matters of provincial interest'. Some of the formulated 'matters of provincial interest' are specified in subsequent constitutional provisions (Article 183, PP 3–5) as "exercising human and minority rights", "establishing provincial symbols and their use", or "the right to manage the provincial assets".

### *Delegation of Competences to the Intermediate and Local Level of Government*

The Constitution contains provisions on the delegation of competences, which means that, within the vertical power-sharing system, the written list of affairs distributed among the central, regional, and local levels of government is not fixed. Notably, the Constitution mentions delegation of "particular matters within its competence" (Article 178, Par-

agraphs 1 and 2) and "delegated competences" (Article 178, Paragraph 3), considering them identical in meaning while they are not so because 'competence' is a broader term encompassing more of the 'particular matters'.

There is a possibility for the higher-level government to transfer, under specified terms, its original affairs to the lower level, for the latter to manage them temporarily. Those delegated affairs do not become the original competence of the autonomous province or local self-government but a temporary assignment (even when no time limit is specified). A higher-level entity can, by its own will (act), take the delegated affairs back (for instance, through amendments to a law that allows transferring particular matters to the competence of the autonomous province).

One can identify several elements of delegation of affairs from the central to the provincial level (Simović & Orlović, 2023: 919–23). Delegation can be effected only through a law – the issue also addressed by the Constitutional Court – but not also through other acts of general character ("The Republic of Serbia may, in accordance with the law, delegate particular matters within its competence to autonomous provinces […]", Article 178, Paragraph 1 of the Constitution). Subject to delegation are particular matters, which means that the Republic retains the administration of most of the affairs in a given social area. Those particular matters remain the original competence of the Republic (enumerated under Article 97 of the Constitution), while the province is acting upon them for some period.

The province, acting as the intermediate level of government, can delegate certain matters from its original competence to local self-government units (Article 178, Paragraph 2). It does so by means of a decision, that is, the provincial assembly decision (typically concerning the "matters that directly, based on the Constitution, fall within the competence of AP Vojvodina or those determined, by the law, as matters of provincial interest", Article 19 of the Statute of AP Vojvodina). The province can delegate to a municipality or a city on its territory ("The territory of AP Vojvodina shall comprise the territories of local self-government units […]", Article 3, Paragraph 1 of the Statute of AP Vojvodina) only some matters from a given social area but never all or even most of them. Delegation of competences, as a constitutional possibility (though no such cases are found in practice), is limited only to AP Vojvodina since AP Kosovo and Metohija formed no provincial institutions, and some local self-government units' authorities, set up under Serbian laws, ceased to exist. Delegation of competences has also been the subject of Constitutional Court decisions (IUz-882/2010 of 16th January 2014.).

The financial burden of executing delegated affairs cannot fall upon the authority assuming the respective affair. "Resources to execute the delegated competences shall be provided by the Republic of Serbia or an autonomous province, depending on who the competences are delegated by" (Article 178, Paragraph 3 of the Constitution). This provision protects the lower-level government against potential rights abuses by a higher authority, which could lead to further economic burden and blocked budget resources. From the Republic or the provincial budget, there must be a transfer of special-purpose funds to the delegated authorities to compensate for employee (contractors) salaries and equipment costs.

Political-territorial units assuming the competences delegated by a higher authority have, in this connection, certain rights and obligations. Their rights, regulated by the law, include, for example, the right to handle transferred matters and the right to receive funds for that. On the other hand, the obligations of a province, municipality, or city, also reg-

ulated by the law, include, for example, handling the transferred matters, reporting on its work, following the guidelines related to the respective work, etc.

The delegating entity, the state or an autonomous province, is empowered to oversee the execution of delegated competences. The right to oversight entails the control of legality – whether the respective tasks are performed in compliance with the law, and the control of appropriateness – whether the delegated matters are decided in the most appropriate way possible. The purpose of oversight is to ensure legality, efficiency, and safety in executing delegated tasks, preventing or eliminating harmful effects on protected goods, rights, and interests. Non-compliance is typically identified through inspection oversight. Sanctions for non-compliance can include, for example, revocation or annulment of an individual act, compensation for damage, or criminal liability. The control of appropriateness does not have to be explicitly stated as a right of a delegating authority but is considered immanent to the very act of delegation. The only potential consequence of establishing inappropriately resolved transferred matters could be revocation of the delegated competence, which would be enforced by repealing or amending the delegating act.

### *Right to Self-Organisation*

"Autonomous provinces, in accordance with the Constitution and the autonomous province statute, shall autonomously regulate the organisation and competences of its bodies and public services" – almost word for word, this provision, the part concerning the autonomous province, was unnecessarily repeated in the Constitution (Article 183, Paragraph 1), however, with a slight difference in the syntaxes relating to the same issue. Thus, the "autonomous regulation of the organisation" (Article 179) became the "regulation […] of the election, organisation, and work" of the provincial bodies and services (Article 183, Paragraph 1); "autonomous regulation" (Article 179) became "regulation" (Article 183, Paragraph 1); "autonomous regulation of the organisation and competences" (Article 179) became "regulation of competences" (Article 183, Paragraph 1); "its bodies and public services" (Article 179) came to be designated as "bodies and services established" (Article 183, Paragraph 1) by autonomous provinces, while the "autonomous province statute" (Article 179) was renamed into "their statutes" (Article 183, Paragraph 1).

By definition, territorial autonomy must enjoy a degree of political autonomy because otherwise, it would constitute a form of administrative or cultural unit rather than political. Of the provincial authorities, the Constitution highlights the assembly, which does not deviate from other autonomous entities in comparative law, since each, universally, has a representative (legislative) body, although with a varying degree of legislative (normative) powers, and the designation: parliament, council, legislative authority (Hannum & Lillich, 1980: 865).

One of the constituents of the autonomy of autonomous provinces is the right to regulate the organisation of their government – authorities and public services and their respective competence. This right encompasses the organisation and competences of provincial authorities and public services (Simović & Orlović, 2023: 924–5). Given that the Constitution was scarce in detail in regulating provincial authorities and services, it was left upon the province to, almost originally, regulate its authorities and services in the statute, complying with the Constitution. Within the Constitution, we can find just a few determinants

of the provincial assembly (Article 180), public services, and "services they (provinces) establish" (Article 137, Paragraph 4 and Article 183, Paragraph 1), and not more than a bare mention of the provincial government (as "the executive council of the autonomous province", Article 126, Paragraph 1).

AP Vojvodina used its granted self-organisation right and regulated, through the Statute (2014), the provincial authorities, specifically the status and competence of the Assembly of AP Vojvodina, the Provincial Government, the Provincial Administration, and the Provincial Protector of Citizens – Ombudsman, having their status further elaborated in provincial assembly decisions. However, the original right of the autonomous province to self-organisation is not ideal because the state participates in the Statute adoption and amendment process. The National Assembly grants prior consent to the Statute of the autonomous province, which can be adopted or amended only afterward (the Assembly of AP Vojvodina endorses the proposal for the Statute by a two-thirds majority vote of the total number of deputies and submits it to the National Assembly for consent, and then, by the same majority, it enacts the act adopting the Statute, Article 63 of the Statute of AP Vojvodina).

### *Joint Competences of Autonomous Provinces*

In one article (183), the Constitution aimed to summarize certain original and delegated competences (Simović & Orlović, 2023: 941–52). The undoubted original competence of autonomous provinces is reflected in the constitutional provision, virtually repeating the one from Article 179, that: "Autonomous provinces shall, under the Constitution and their statutes, regulate the powers, election, organization, and operation of the authorities and services they establish". The Constitution framer has thus granted, in two instances, full discretion to the provinces to self-organise their government system, the more so because the Constitution lacks more explicit determinations about it – it mentions only the assembly as the highest authority (Article 180) and the executive council, but in another context (Article 126). The designation of the assembly as the supreme authority in the province led to the shift in its system of government from parliamentary, as currently practiced in the state, to the assembly system. It does not mean imposing a constitutional obligation on the autonomous province to institute by a general act a model of assembly system founded on the principle of unity of power but making the provincial representative body stand out from other authorities, moreover, placing the representative body of the autonomy in a better constitutional and political position toward the executive power than the National Assembly. For example, by providing that the operation of the Provincial Government should be guided by the Assembly, to which it accounts for its work, under Article 44 of the Statute of AP Vojvodina. The definition of the provincial 'assembly system' was also subject to consideration by the Constitutional Court (IUo-360/2009 of 5th December 2013).

In the northern province, the authorities are regulated under the Statute of AP Vojvodina, specifically the competence and the methods of election of deputies to the Assembly of AP Vojvodina, the elections to the Provincial Government, the Provincial Administration, and the Provincial Protector of Citizens – Ombudsman, and, partially, also the organisation and operation of these authorities. The Statute provisions were elaborated in the provincial assembly decisions and other general acts, particularly the rules of procedure.

The first thing noted as an indirect limitation to this provincial competence is the republican form of government. Given that the state is a republic, the government in the province could not be a monarchy because it would contradict the principle of unity of the legal order (from Article 4 of the Constitution, although historical Vojvodina assumed monarchical traits already in 1848, with the election of the duke).

In addition to the above-stated, other constitutional norms also indirectly affect the provincial system of government. These norms implicitly determine what authorities the autonomous province cannot establish and what powers cannot be in the hands of provincial authorities. Of the three branches of power, the autonomous province cannot exercise that of establishing its own courts because the provision that "judicial power is unique in the territory of the Republic of Serbia" (Article 142, Paragraph 2 of the Constitution) implies that courts are the republican authorities. Designation of the National Assembly as "the holder of legislative power in the Republic of Serbia" (Article 98 of the Constitution) means that none of the other government authorities – whether central, provincial, or local – can make laws (hence, the Assembly of AP Vojvodina, under Article 30 of the Statute, "exercises normative function" rather than legislative power). The executive power is also unique – its holder is the Government, so the Provincial Government should not be considered the authority of the executive branch but "the executive authority of AP Vojvodina" (Article 44 of the Statute).

A territorial autonomy does not have a president or the chief of the province despite the absence of constitutional and legal impediments to establishing one. The role of the head of autonomy is partly exercised by the president of the Assembly. Constitutional norms concerning the "unique legal order" of Serbia (Article 4, Paragraph 1 and Article 194, Paragraph 1) and the Constitutional Court protecting this order, namely, the "constitutionality and legality" (Article 166), imply that constitutional judicial power rests with just one Constitutional Court. This tells us that an autonomous province cannot establish constitutional courts (it is not even typical of the autonomies). A similar conclusion can be drawn from the constitutional provision that "Public Prosecutor's Office shall be […] a state authority" – a province cannot establish the public prosecutorial office. This is all also acknowledged in the provisions of Article 97 of the Constitution empowering the state, not a lower-level government, to provide for and regulate the following: sovereignty, independence, territorial integrity, and security of the Republic of Serbia – constitutional and legislative power; international status and relations with other countries and international organisations – executive power; exercise and protection of freedoms and rights of citizens, and protection of constitutionality and legality – judiciary and constitutional judicial power.

A lower degree of autonomy of the province is identified in the empowerment to ensure the "exercise of human and minority rights, in accordance with the law" (Article 183, Paragraph 3 of the Constitution). The primary responsibility for ensuring the exercise and protection of fundamental human rights lies with the state. These rights are exercised as defined by law and, if necessary, by regulations, but so as not to interfere with the essence of the guaranteed right. The autonomous province ensures human and minority rights within social areas specified by the laws (for example, education and culture). Through its regulations, the province can only increase the extent and quality of what has already been guaranteed in the Constitution and the law. Ensuring human rights also means protecting

them (for example, in the second-instance administrative proceedings before the provincial administration), and a special form of human rights protection in AP Vojvodina is provided through the work of the Provincial Protector of Citizens – Ombudsman.

The competence of autonomous provinces for "establishing their symbols and the manner of their use" (Article 183, Paragraph 4 of the Constitution) is equivalent in quality to regulating the organisation of their own government, authorities and services, owing to the omission of the provision "in accordance with the law". As a result, the Act on the Design and Use of the Coat of Arms, Flag, and Anthem of the Republic of Serbia (2009) makes no reference to the provincial symbols. Moreover, the provinces enjoy even greater autonomy here, given that the Constitution, too, lacks the rules on the design and use of provincial symbols. Possibly, as a limitation, one could consider some prohibitions related to human rights, including, for example, that symbols must not be discriminatory (Article 21 of the Constitution), the inadmissibility of symbols denying the sovereignty of the Republic or those dating from the occupation period, etc. From their formal post-war establishment to the adoption of the 2006 Constitution, the autonomous provinces were not entitled to have their own symbols but used those of Serbia instead. Under its Statute, AP Vojvodina established its symbols, coat of arms, and flag, which were also subject to consideration by the Constitutional Court (IU-187/2002 of 9th May 2012, IU-137/2004 of 13th June 2012, and IU-187/2002 of 9th May 2012). It did not set up its own anthem as a ceremonial song, although there is no prohibition on doing so. Their uses are defined in the Provincial Assembly Decision on the Design and Use of Symbols and Traditional Symbols of AP Vojvodina (2016). The constitutionally envisaged symbols for AP Kosovo and Metohija are still non-existent.

One of the prerequisites of autonomy of political-territorial units is the existence of their own assets - hence the constitutional right of provinces to "manage the provincial assets in the manner stipulated by the law" (Article 183, Paragraph 5 of the Constitution). It suggests that autonomous provinces enjoy property rights and obligations, which they dispose of as their titular holders. Ownership rights (*usus, fructus* and *abusus*) hide in the syntagm "manage the provincial assets", and what comprises those assets is defined by law. To be able to decide on its assets, a province must have the status of a legal entity (Article 2, Paragraph 1 of the Statute: "AP Vojvodina shall be a legal entity".). The constitutional limitation to manage assets "in the manner stipulated by the law" concerns public property (Article 11, Paragraph 2 of the Statute reads: "The public property of AP Vojvodina shall include the assets used, under the law, by the authorities of AP Vojvodina, institutions, and public enterprises founded by AP Vojvodina, along with other movable and immovable items, in compliance with the law"), and those limitations are enshrined in the Public Property Act (2011).

Another feature essential to autonomy is the right of a political-territorial unit to raise revenues and thus acquire the resources to manage its affairs, in accordance with the Constitution and law. It encompasses the competence of provinces "to have direct revenues", "to provide funds" for affairs they delegate to municipalities and cities, and the right to have "their budget and annual balance sheet" (Article 183, Paragraph 6 of the Constitution). Direct revenues of a province consist of assets in the form of taxes and fees it levies. Additionally, direct revenues would also include any legally required funds transfers from the state, deriving from taxes and fees collected within the provincial territory.

The autonomous province provides funds to finance the tasks delegated to a local self-government unit from its own budget. The provincial budget is determined in relative terms by the Constitution and further articulated in the budget law (no specific law on the financing of AP Vojvodina has been adopted to date). As for budget spending, the province adopts the annual balance sheet at the end of each fiscal year.

A separate group of competences relates to affairs in over 20 areas (spatial planning and development, agriculture, water economy, forestry, hunting, fishery, tourism, hospitality, spas and health resorts, environmental protection, industry and craftsmanship, road, river, and rail transport and road repairs, organising fairs and other economic events, education, sport, culture, healthcare and social welfare, and public information at provincial level), which include all major public activities, except for affairs that fall within the exclusive competence of the state and characterise its sovereignty: defence, international relations, judicial and constitutional-judicial power, monetary and fiscal policy, customs, etc. (see Article 97 of the Constitution). The autonomous province will regulate, in the listed fields, the matters that are primarily in the interest of the province and the citizens who live in it, not of the state as a whole – for example, managing publicly owned forests in the territory of an autonomous province.

Given the overlapping competences in these areas, with the state, and even with local self-government units, it was necessary to delineate the responsibilities of each, and it was achieved by mandating a province to regulate, within a given social area, "matters of provincial interest" (the notion mentioned in Article 177 of the Constitution). The provincial interest is actually the provincial concern, and what specific matters constitute the provincial interest is defined by law (the Act Establishing the Competences of AP Vojvodina, 2009, while such an act has never been adopted for AP Kosovo and Metohija).

Within the array of constitutional competences attributed to the provinces, it is imperative to differentiate between original and delegated (transferred) competences. Delegated affairs include those designated as "matters of provincial interest", "exercise of human rights", "management of assets", and revenue rights (Article 183, Paragraphs 2–3 and 5–6), as, ultimately, it is the lawmaker who determines and specifies them. Although the Constitutional Court grants these competences the status of original provincial affairs (IUo-360/2009 of 5th December 2013), they cannot be strictly defined as original. "The scope of original competences of the autonomous province can include only those that the constitution framer, excluding the possibility of influence of the legislative authority, constituted in favour of the autonomous province. According to Professor Simović (2013), the original scope of competences of the autonomous province includes regulating the provincial government authorities and establishing the symbols of AP Vojvodina, wherein the autonomy is limited only by the Constitution and the statute of the province (Article 183, Paragraphs 1 and 4)". They cannot be viewed as such because the provision "in accordance with the law" indicates that those competences are not established and defined by the constitutional authority alone but also by the legislative authority. Through the model of enumeration of areas of provincial competence – specified as matters of provincial interest – the Constitution "set up merely an elastic institutional model of territorial autonomy, leaving its final shape to the lawmaker". Thus, beyond the regulation of provincial government authorities and the establishment of provincial symbols, "we cannot speak of original competences because the final scope of competences of autonomous provinces derives from the legis-

lative authority" (Simović, 2013: 55). Therefore, this group of competences is not of the same quality, by the autonomy criterion, as the right to regulate provincial government and "establish provincial symbols" (Article 183, Paragraphs 1 and 4 of the Constitution) owing to the limitations imposed both by the Constitution and the law. While original competences are drawn from the Constitution and further specified in the provincial acts, delegated affairs are subject to regulation and limitations not only by the Constitution but also by the law.

## CONCLUSION

The Republic of Serbia belongs to the prevailing group of unitary states (as opposed to federal states), but exceptional ones, owing to its territorial organisation, characterised by the existence of autonomy – the intermediate level of government that enjoys some degree of political self-government. Its exceptional nature (yet not also one in the state's interest) is further amplified by the given political conditions that led to Serbia practically having just one province, AP Vojvodina, within its constitutional order. In comparative law, such instances of states with one (real) autonomy do not even exist. The other autonomous unit, AP Kosovo and Metohija, did not realise its full potential under the current Serbian Constitution (2006); instead, in coordination with the Western international community, a separatist republic was proclaimed in this territory.

The Constitution devotes significant attention to autonomous provinces (12 articles), thus making them primarily constitutional categories. Their status is, then, elaborated in the law and provincial acts – the statute and provincial assembly decisions. This provision indicates the intention of the constitution framer to retain, within its territorial organisation, a special political form – the autonomous province, thus establishing continuity with previous constitutions. Whether it is adequate for the autonomous provinces to become also a part of the constitutional identity of Serbia remains to be seen.

The very approach to the constitutional regulation of autonomies has faced severe nomotechnic criticism, which can be essential (to interpreting and applying the norms) – duplicate regulation of the same matters, as was previously described in detail. However, while indeed significant (distinct), it must not be the primary characteristic of constitutional norms on autonomy. Before it, we emphasize a balanced and for Serbian conditions appropriate degree of autonomy, evident in the institutions of concept and competences of autonomous provinces. The existing provinces, and some potential future ones, are no longer covert federal units but remain political entities with more rights than the local self-governments. This is all with a caveat that for almost two decades now, there have been no new details about the constitutionally proclaimed 'substantial autonomy' of Kosovo and Metohija.

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