

PARTICIPATION OF REPRESENTATIVES OF MUNICIPAL REPRESENTATION IN EXERCISING OF MUNICIPAL SELF-GOVERNMENT²

Abstract

The paper analyses the participation of the municipal representation's representatives in exercising of municipal self-government by their duties and powers resulting from the Act on Municipal Establishment. Author points out the problem sections of valid legal regulation, looks for and suggests possible solutions, which are based on the legal theory knowledge, the V4 countries experience, as well as the needs and options of the municipal self-governments.

KEY WORDS: municipal representation, representatives, municipal self-government

INTRODUCTION

Pursuant to Article 67 Subsection 1 of the Constitution of the Slovak Republic, the self-government is carried out by the municipality bodies, a local referendum and on the municipality inhabitants' assemblies. The most frequent form of the exercise of the municipal self-government is its implementation through the municipality bodies, i.e. through the municipal representation and the municipality mayor. The municipal representation consists of the representatives, the number of which is determined by the municipal representation in the given municipality before the elections and for the whole electoral term, within the framework of the limits given by Act No. 369/1990 Coll. on Municipal Establishment as amended (hereinafter referred to as Act on Municipal Establishment). Therefore, the municipal representation is a collective body the participation of which in the

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exercise of the self-government of a municipality is regulated particularly by the Act on Municipal Establishment (Section 11 Subsection 4).

In our paper, we deal with the matter, to what extent the representatives of the municipal representation as individuals, forming the component part of a collective representative body, can participate in the implementation of the municipality self-government. Dealing with the participation of representatives of the municipal representation in the implementation of the municipal self-government means making an analysis of their duties and powers, the legislative anchoring and resulting implementation, what the most clearly exemplify the position of a representative of a municipal representation in the system of municipal self-government and, in a broader context, about their position in the local democracy system.

On one hand, a representative's activity cannot be restricted by a universal template and it's impossible to regulate it by the legal regulations to the whole extent, but, on the other hand, the legislative regulation of representative's duties and powers must not be general and ambiguous. At the same time, it is necessary to realize that the Act on Municipal Establishment determines the duties and powers of representatives, but their implementation is, to the great extent, determined by a representative person, their human characteristics and professional skills, as well as by economic, social and cultural levels of the municipality, where the representative performs the mandate. In addition, the practice confirms that there is a difference between the implementation of a mandate in the cities/towns and the villages (especially in the small villages)³, from the point of view of a selection of the candidates for the representatives' offices, as well as from the point of view of their interest, ability and willingness to implement a representative's mandate.

In this paper, we will not examine the content of all duties and powers of the representatives, we will focus our attention on those of them, which considerably influence (can influence) an active participation of a representative in the governance of the municipal matters that form the content of the independent scope of a municipality. We will analyse the selected duties and powers from the point of view of their current legal regulation in the Slovak Republic, as well as from the point of view of the needs and options of a municipal self-government. We will utilize the experience of the V4 countries for the formulation of our conclusions and recommendations, since while we review the territorial self-government and its positions in the power system of a democratic country, it is necessary to perceive the territorial self-government from the point of view of the historical, national, political and social relations. In this aspect, the V4 countries

³ According to the data of the Statistical Office of the Slovak Republic about the settlement pattern to 31 December 2010, there was more than 1,150 municipalities in Slovakia (of 2,891) with less than 500 inhabitants, including almost 400 municipalities with less than 200 inhabitants. It is worthwhile to note that the number of the municipalities of this type is rather increasing, especially in Central and Eastern Slovakia.

have many common signs (they are comparatively close), what is clearly evident in the process of development of the municipal self-government under the national conditions.

DISCUSSION AND RESULTS

The fundamental duty of a representative is to attend the meetings of and take part in the work of the municipal representation and its bodies (the municipal council, commissions). The participation of a representative in the work of the municipal representation is particularly important, since the municipality independent competence and its self-government (see Section 4 Subsections 3 and 4 of the Act on Municipal Establishment) is implemented particularly through the municipal representation activity. Whereas the municipal representation is a collective self-governing body, the level of its sessions and subsequent quality of the implementation of the conferred competence depends on two factors mainly. The first one is the quality preparation of the sessions, in particular, by the mayor and the municipal council as the initiative, executive and control body of the municipal representation (in the municipalities without a municipal council, the quality of sessions is the responsibility of the mayor). The second factor determining the quality of sessions of a municipal representation is formed by its representatives themselves. They should come to the sessions prepared, appropriately oriented in the matters that is to be discussed at the session, able to discuss factually and to form the specific proposals. However, the practice shows that both expectations have more or less reserves.

Admittedly, the act does not associate a fulfilment of the analysed duty to its quality or the quality of preparation for the sessions of the municipal representation and its bodies. Although it sounds paradoxically at first sight, the attendance, even though the inactive one, of representatives at the representation sessions is very important for the functioning of the municipal representation and fulfilment of its tasks (for the implementation of its competence), since the representation is qualified for being in session and making the resolutions only at the presence of more than half of all its members (Section 12, Subsection 7 of the Act on Municipal Establishment). The experience of the municipal self-governments' practice in the Slovak Republic brings sufficient number of the examples, how the protracted inability to reach a quorum in the municipal representation can affect the municipality functioning and development (Palúš, 2013).

Pursuant to the Act on Municipal Establishment [Section 25 Subsection 1 Paragraph d)] a representative is obliged to protect the interests of the municipality and its inhabitants. This declaratory, and at the first sight, explicit stipulation is of complicated, and from the point of view of its fulfilment, sometimes controversial, nature. Building on the theory of municipal self-government, it is possible to agree

with the opinions that the term “municipality” includes implicitly “municipality inhabitants” (Verdal – Váňa – Břeň - Pšenička, 2008), who are, along with “the municipality territory”, to be considered as one of the fundamental features of the conceptual definition of a municipality. In other words, considering the material level, it is difficult to accept the definition of the term “municipality” without “municipality inhabitants”. However, it therefore follows that when a representative protects the municipality interests, he/she protects the interests of the municipality inhabitants as well. Even the conclusion like this is simplified to a certain extent, since the Act on Municipal Establishment does not regulate the content of the term “municipal interest”, or “municipality interest”, neither explicitly with relevant content and scope determination (e.g. by the diction...”for the purposes of this act, the term municipality interest means”), nor generally, without a more specified content determination (Průcha, 2011).

We believe that the legislature, using the term “interest of municipality inhabitants”, had in mind the interest of “the majority of the municipality inhabitants” not a summary of individual interests of individual inhabitants. Based on this conclusion we conclude that the municipality interests can be perceived as the interests of the majority of its inhabitants and vice versa, although also this consideration may not be of the absolute nature. However, the legislature confirms the acceptability of this explanation through the provisions of the Act on Municipal Establishment by the option offered to the municipal representation (or to the representatives) to apply the institute of a local referendum (Section 11a Subsection 4) or the institute of public assembly of the municipality inhabitants (Section 11b) in that case that the municipal representation (or the representatives) is not quite clear about the assessment whether the act, they carry out, certainly expresses the interests of the majority of the municipality inhabitants. Furthermore, the local referendum can be initiated by the municipality inhabitants themselves [Section 11a Subsection 1 Paragraph c)]. Protecting the interests of the municipality and its inhabitants, a representative must preferably take the content of the provisions of the Act on Municipal Establishment as a base and at the same time, they must bear in mind the content of all the provisions of this Act that specify their legal status, especially the scope of their duties and powers.

This is a formal aspect of the analysed duty of a representative, but the content of this duty (the material aspect), considering the implementation aspect, presents more difficult problem. The person of the representative, strictly defined, the nature of a representative mandate, based on which the office is carried out, is of key importance within the above indicated meaning. It results from the substance of this mandate that – according to the statement of E. Burke in his stump speech in 1774 – a representative is to serve to their voters and he/she is not obliged to do what his/her voters require, but what he/she consider to be the best for his/her voters (Heywood, 2005). We do not want to imply a polemic about the reality

of the abovementioned statement (neither about its origin), however, we believe that the Burke's message seems to be more related to the local conditions than to a parliamentary level, if we consider the number of voters and real chance to recognize their needs and interests. Therefore this is the reason why we believe that a representative of a municipal representation, as well as a representative of public authority in a municipality has to know (or should know) the interest of most of inhabitants of the municipality and thus of the municipality as a whole. If, however, the representative wants to acquire such knowledge, he/she must (should to) know the opinions of the municipality inhabitants since they are the spring of knowledge of both, the ways how to administer the allocated self-governing matters and the basis for the creation of the municipality development policy, as well as fulfilment of the country interests in the municipality mission (Gašpar, 1998). In order to join together two abovementioned requirements, a representative must possess the professional qualifications (or at least the appropriate knowledge of local conditions and the ability to solve them) and the background, especially the honesty and sense of responsibility.

The duty included in Section 25 Subsection 7 of the Act on Municipal Establishment, according to which a representative is obliged to inform the voters, upon their request, about the activities of the representative and about the activities of the municipal representation seems to be a problematic duty from the point of view of its legislative laying down as well as from the point of view of its practical implementation. We'll try to comment particular obscurities (imprecisions), which characterize this provision.

It results from the Act language that the representative is obliged to submit information upon request of the voters, i.e. if we carry out a literal construction, the requirement for information requested by one voter is not sufficient. However, the practice is different, what results in the conclusion made by several authors that it is sufficient if the request for information is submitted by legally relevant manner by only one voter (Stolář, 2003). In this context, we direct the attention to Article 27 Subsection 1 of the Constitution, which laying down the right to petition states: "Everyone shall have the right to address state bodies and local self-administration bodies in matters of public interest or of other common interest with petitions, proposals and complaints either individually or in association with others". Admittedly, the implementation of the right to petition does not consist in receiving the information from public authority bodies, or their representatives, however, it does not detract from the fact that if the constitution-maker had in mind the fact that the right to petition may be exercised by an individual (a natural person), this circumstance was clearly declared. We believe that such course of action of the constitution-maker would also be binding for the legislature in laying down the analysed duty of a representative of a municipal representation.

In addition, there is a questionable content of the given duty. It is possible

to accept that a representative will inform the voters about the activity he/she carries out, but we prove problematic if he/she is to inform about the activity of a municipal representation. Such information is usually subjective (depends on specific situation, e.g. what is the relation between informing representative and the municipality mayor or the most of representatives of the representation, which took certain decision), and thus it may even be (and the practice proves that our considerations are correct) false. It is questionable, whether the duty laid down in such a way and its possible implementation results in a trust of the municipality inhabitants in relation to the municipal representation. In addition, the minutes of the municipal representation session are available for the public (the municipality inhabitants).

As regards the form by which the analysed duty is implemented, the Act does not determine it, what means that it may be verbal or written form, while the practice proves that the former prevails. Since the Act does not address even the place where the duty could be fulfilled, the practice brings the cases that it may occur even at an accidental meeting in the street, at a sporting event, even in a local pub. The situation, where a representative provides information during the representatives' day is considered as the most transparent condition. It is, however, true that the representatives' days as the possible contact place for meeting the voters with a representative are not provided by all municipalities, it is rather implemented by towns/cities (urban parts) or larger villages.

The Act does not address the situation, if a representative does not provide any response to the request for information about his/her or municipality representation activities, or the representative intentionally fails to fulfil the duty. Probably, the only one sanction could be that the voter will not cast his/her vote for this representative in the next elections for the self-government bodies of the municipalities. Actually, it is the representative's political responsibility, the impact of which is considerably relative under the conditions of the Slovak municipal self-government.

We believe that if the given duty of a representative of a municipal representation is to be a means of his/her participation in the exercise of the municipality self-government, it would require a precision taking the abovementioned notes or recommendations into account. The precision of the representative duty indicated above would result in the more efficient utilization of that duty. However we have no statistical data (if exists any) about the extent to which the institute we analyse herein is applied, however we tend to believe the information from the municipal self-governments environment that the utilization of this duty is rather occasional than regular and efficient (Tekeli – Hoffmann, 2014).

While the duties of the representatives included in Section 25 Subsection 4 Paragraphs a)-f) of the Act on Municipal Establishment are oriented inwards the municipality, to its bodies and inhabitants, the powers of the representatives are

oriented diversely, considering the subjects the utilization of the powers is attached to. As a consequence, it is possible to encounter the classification of the duties in the specialised and scientific literature, which distinguishes the internal duties (e.g. to submit proposals to the municipal representation and to other municipal bodies) and the external ones (e.g. to request the explanations from state bodies in the matters needed for duly exercise of the representative's office) (Paluš – Hencovská, 2013). We consider the classification of powers based on their content and contribution for the exercise of the representative's activities to be more up-to-date and in this context, it is possible to speak of the initiative powers, through which the representatives are capable to influence directly the operation of the self-governing bodies of a municipality; the control powers, which are the significant tool for the application of the principle of the separation of powers under the local conditions and the powers that are directed towards obtaining the information, which enable the representatives to obtain more comprehensive knowledge for the performance of their activities. Of course, even this classification has its strengths and weaknesses and it is possible to have reservations about or comments to it. It is crucial that the general legal regulation, which puts the efficiency of the practical utilization of all powers of the representatives and thus their possible contribution for development of the democratic components in the municipal self-government is characteristic for almost all the powers of the representatives.

The basic power of a representative, which belongs to the first group is the power to submit proposals to the municipal representation and to other bodies. Since the Act does not specify the content of these proposals, nor their form or place of their application, the given provision can be interpreted extensively in favour of the representative. The proposals would relate, in a broader sense, to the municipality self-government and thus to the scope of action of the municipal representation, or the scope of action of other municipality body, to which they are directed. The representative may exercise them verbally or in written at the session of the given body or to convey (address) them to the municipality mayor who leads the session of the representation and municipal council or to the chairman of respective commission.

The Act on Municipal Establishment does not mention anything about treating a representative's proposal by the municipal representation or by other municipal body, i. e. whether it is even necessary to deal with this proposal and if it is the case, by which deadline, whether the municipal representation or other municipal body is to inform the representative about the result (negative or positive one) and by which deadline it is necessary to deal with it, The municipality statute or the municipality representation rules of procedure could include certain rules for handling such proposals of the representatives, but there is a risk of a different approach in particular municipalities. Under the current circumstances, at application of this representative's power, it is only possible to rely on a political

culture, which characterizes the operation of the self-government in the given municipality.

The classical control power of a representative is to pose questions to the municipality mayor and members of the municipal council in the matters related to the exercise of their work [Section 25 Subsection 4 Paragraph b) of the Act on Municipal Establishment]. Also the wording of this power include no form of the questions posing nor the place of its implementation. Therefore, also in this case, it is possible to admit the extended version of the given provision content at its interpretation as meaning that the representatives may exercise this power verbally or in written and the answer provided by the municipality mayor or a member of the municipal council may have the same form as well. Unfortunately, the Act does not lay down the obligation of the subject questioned to answer the question, nor does not specify a deadline for the provision of the answer to the representative's question. It occurs in the practice that the representative does not obtain any answer to his/her question and the matter is forgotten over time what means that the given power of the representative loses the real significance.

If we perceive the questioning within its traditional constitutional and legal perception, i.e. as a qualified question (Stolář, 2013; Olexa, 2013), then the representatives would exercise it in written in relation to the subject under control and its written answer should be the subject of discussions at the municipal representation session or the municipal council session. The absence of such perception of the questioning seems negative, especially in relation to the municipality mayor. The municipality mayor and the representatives of the municipal representation are directly elected by the municipality inhabitants and in this connection, the questioning presents the significant control instrument of the members of the representative body in connection to the mayor as the municipality highest executive body. This statement is actual despite the fact that the municipality inhabitants as the original holder of the public authority under the local conditions are authorized to remove the mayor from office by local referendum pursuant to the Act on Municipal Establishment. Because, it is not possible to neglect the fact that an authority is always tending to concentrate (and subsequently to cumulate) (Posluch – Cibulka, 2003; Klíma a kol., 2007; Palúš – Somorová, 2008) and therefore any weakening of the monitoring mechanisms in the interest of the functional implementation of the separation of powers as one of the basic principles of a democratic state, not only at the central, but also at the local level.

Actual legal regulation of the questioning under the conditions of the Slovak municipal self-government appears to be archaic compared with its legislative setting in the neighbouring states. In the Czech Republic, the form of questioning (a question, a comment, a suggestion) of the a representative of a municipal representation is not laid down by law – it may be verbal or written – but the

answer of the questioned subject (a member of a municipal council) must be written and the respective representative must obtain it within 30 days (Verdal – Váňa – Břeň - Pšenička, 2008). Even more precise regulation of the questioning exists in the Republic of Poland. The questioning of a member of a municipal representation (municipal council) must be written and if it is delivered to the municipality mayor (directly or to the municipal office) 7 days before the session of the municipal representation (municipal council), the mayor is obliged to provide the written answer, which will be discussed at the next session of the municipal representation (municipal council). In case that the written question is delivered to the municipality mayor at any other times, the mayor is obliged to provide a written answer within 14 days (Bárány, 1997; Cuthbertson, 1968).

- The third group includes the powers of the representatives, the common feature of which is requesting the explanations and information from the subjects and by the reasons specified in the Act on Municipal Establishment. They include:
 - The explanations provided by directors of the legal persons established or founded by a municipality in the matters related to their activities [Section 25 Subsection 4 Paragraph c)],
 - The information and explanations from the natural and legal persons performing their business activities in the municipality, in the matters related to the consequences of the business activities in the municipality [Section 25 Subsection 4 Paragraph d)],
 - The explanations provided by the state bodies in the matters needed for duly exercise of representative office [Section 25 Subsection 4 Paragraph f)].

All three powers have the common feature – exercising them, the representatives may use the verbal or written form and the questioned subjects may use the same forms in their answers. The Act specifies no deadlines for the powers, within which the questioned subjects would be obliged to answer upon the representatives' request. In order to develop the democratic elements in the practice of municipal self-governments, all three powers would require more precise legal regulation while, also in this case, it is possible to use the experience of other states (Szewc – Jyž – Plawecki, 2012).

CONCLUSION

Based on the abovementioned, it is possible to formulate three scopes of statements – proposals (recommendations). The first one is a personality of the representatives who came from the elections for the municipal self-governments (representations). The elections, under our conditions, are held according to standard rules, that are intrinsic to the democratic state and therefore it is difficult

to change or to modify legislatively in this sphere. Within the indicated meaning, the selection of candidates for the representatives is still actual. Certainly, it is possible to consider its improvement, but at the same time it is needed to note that the framework of such considerations is limited by the selection options, which are considerably restricted, especially in small villages. We refer especially to the known requirement, which the candidates or elected representatives would meet – to know, to want and to be able. We believe that not only the present but also the near future will not add nothing new in this sphere. The second conclusion relates to the current legal regulation of the duties and powers of the representatives of the municipal representations. There is still room for improvement. The analysed legal regulation must be legislatively more detailed, more legally and factually explicit and not allowing for wide and, in particular, various interpretation from the point of view of its implementation. The lawmaker cannot ignore the addressees of the legal regulation and disregard their options and abilities to make real use of it. This task cannot be fulfilled by internal rules of villages and towns/cities – if it is the case, it will relate only to the cases stipulated by the law and within the scope specified by that law.

The responsible approach of the representatives at the utilization of statutory opportunities of their active participation in the execution of the municipality self-government would be useful (the second recommendation) if the Act on Municipal Establishment would have explicitly declared that the office of a representative – like the office of the municipality mayor – is the public office, since it is important for day-to-day operation of the municipal self-governments so as the representatives of the municipal representations to realize that thus perceived office is connected with legal, especially criminal liability.

REFERENCES

- BÁRÁNY, E. (1997). *Moc a právo*. Bratislava: Veda, 1997, p. 22. ISBN 80-224-0982-9; CUTHBERTSON, G.: *Political Power. Monograph in Political*. Houston, Texas, 1968, p. 46.
- GAŠPAR, M. (1998). *Správne právo, Teória a prax*. Bratislava: Formát, 1998, p. 272. ISBN 80-967911-0-9.
- HEYWOOD, A. (2005). *Politická teorie*. Praha: Eurolex Bohemia, s. r. o., 2005, p. 201. ISBN 80-86161-41-4.
- KLÍMA, K. a kol. (2007). *Encyklopedie ústavního práva*. Praha: ASPI Wolters Kluwer, 2007, pp. 264 – 265. ISBN 978-80-7357-295-2
- OLEXA, L. (2013). *Povinnosti a oprávnenia poslancov obecného zastupiteľstva*. Košice: UPJŠ. Verejná správa a spoločnosť, roč. XIV, č. 2, 2013, p. 52. ISSN 1335-7182.
- PALÚŠ, I. (2013). *Uplatňovanie princípů delby moci v obecnej samospráve*.

Justičná revue, Vol. 65, No. 5, 2013, p. 252 a subs. ISSN 1335-6461.

- PALÚŠ, I. – HENCOVSKÁ, M. (2013). *Vzťah demokracie a odbornosti v obecnej samospráve z pohľadu starostov obcí*. In: Zborník príspevkov z medzinárodnej vedeckej konferencie „Teória a prax verejnej správy, Časť 1.“, konanej v dňoch 11. – 12. 9. 2013 na Fakulte verejnej správy UPJŠ v Košiciach, Košice, 2013, p. 260 a nasl. ISBN 978-80-89496-10-5.
- PALÚŠ, I. – SOMOROVÁ, Ľ. (2008). *Štátne právo Slovenskej republiky*. Košice: UPJŠ, 2008, p. 317. ISBN 978-80-7097-703-3.
- POSLUCH, M. – CIBULKA, Ľ. (2003). *Štátne právo Slovenskej republiky*. Šamorín: Heuréka, 2003, p. 229. ISBN 80-89122-07-08
- PRŮCHA, P. (2011). *Místní správa*. Brno: MU, 2011, p. 59. ISBN 978-80-210-5590-2.
- SOTOLÁŘ, J. (2003). *Zákon o obecním zriadení. Komentár*. Košice: Sotac, s. r. o., 2003, p. 309. ISBN 80-968-356-1-0.
- SOTOLÁŘ, J. (2011). *Samospráva obce, Obecné zriadenie na Slovensku*. Košice: SOTAC, s. r. o., 2011, p 162. ISBN 978-80-89446-23-0
- SZEWC, A. – JYŻ, G. – PLAWECKI, Z. (2012). *Ustawa o samorządzie gminnym. Komentarz*. 4. wydanie. Warszawa: LEX a Wolters Kluwer business, 2012, 325 -326. ISBN 978-83-264-3850-9.
- TEKELI, J. – HOFFMANN, M. (2014). *Zákon o obecním zriadení. Komentár*. Bratislava: Wolters Kluwer, 2014, p. 744. ISBN 978-80-8168-034-2
- VEDRAL, J. – VÁŇA, L. – BŘEŇ, J. – PŠENIČKA, S. (2008). *Zákon o obcích (obecní zřízení). Komentář*. Praha: C. H. BECK, 2008, p. 396 – 397. ISBN 978-80-7179-597-1.