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COOPERATION BETWEEN THE STATE AND MUNICIPALITIES IN THE TRANSFERRED EXECUTION OF STATE ADMINISTRATION

Abstract

The present paper is focused on the cooperation of the state and municipalities in the context of the transferred execution of state administration. The paper has two parts; in the first part we draw our attention to the current legislation in the selected area, the second part of the paper highlights selected problems and shortcomings. The paper aims to identify selected aspects of the issue, evaluate the situation, take a critical position, and offer proposals and solutions by analysing selected information sources and application practice of local self-government.

Key words: state, municipality, transfer of competencies, state administration, elections

1 INTRODUCTION

The relationship between the state and municipalities in the execution of transferred state administration is a subject which is always topical, controversial, and provoking discussion of lay and scientific communities, as well as in the application practice. Since this subject involves the management of public resources, the dialogue is all the more intense. In addition to economic impacts, other specific aspects influencing this relationship are currently apparent. The present and the recent past are associated with the reservations of the representatives of municipalities and towns regarding the “weak” and inadequate financial coverage by the state. In the broadest sense of the word, in many cases this criticism results in paying the price from their

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own resources and reserves. Another problematic point is associated with the transfer of new competencies (including the area of transferred execution of state administration) to municipal self-government without specially allocated funds, or with increased expenditure and reduced revenue due to the state regulation of revenue from personal income tax (Alman, 2020).

A special category with real and yet unpredictable factors entering this topic is also the COVID-19 pandemic, which has also unprecedentedly affected the relationship between the state and self-governments. Logically, the pandemic also brings consequences for the transferred execution of state administration.

However, the present paper focuses on selected problems of this cooperation. The aim of the paper is, by analysing selected information sources and practice, to identify and underline the aspects that are associated with the requirements for the professional performance of municipalities and the financial resources to cover their competencies. Subsidiarily, we try to assess the situation, take appropriate positions, and offer our views on the issue. Complementarily, we try to find a model example of a balanced relationship, which could also become a good example for other areas of transferred execution of state administration. As a potential model example, we present below the relationship between the state and municipalities in providing for the organization of elections and referendums (Alman, 2020).

2 MUNICIPALITY AND EXECUTION OF STATE ADMINISTRATION IN ORGANIZING ELECTIONS AND REFERENDUMS

Direct and indirect democracy has been the subject of long-term examination from various perspectives. Elections and referendums are a phenomenon that can be analyzed on the basis of several criteria. Several authors, such as Alman (2020), Kráľová (2020) or Volochová (2019), examine the law theory and financial aspects of this institution, but in direct connection with selected aspects of self-government, public administration reform, etc. According to Alman (2020) or Švikruha (2014), when looking at the basic terms of the issue, it is necessary to focus on the historical development of the possibility of participating in local and regional governance. Last but not least, it is also necessary to pay attention to ethical and other dimensions, which have also recently been proclaimed by the international environment (Mitaľ, 2016; Kráľová, 2020).

Elections and referendums form the basic pillars of a modern democratic state governed by the rule of law. Also, in the light of this fact, the overall

legal regulation is contained in a number of national and international laws of various legal and political force. In addition to the Constitution of the Slovak Republic No. 460/1992 (“the Constitution of the Slovak Republic”), other generally binding legal regulations also deserve attention. The provision for elections is regulated, in particular, by Act No. 180/2014 on the conditions for exercising the right to vote, amending certain acts (“the Electoral Code”). The Electoral Code regulates the conditions for exercising the right to vote and organizing elections to the National Council of the Slovak Republic, elections to the European Parliament, elections of the President of the Slovak Republic, a plebiscite regarding the removal of the President of the Slovak Republic, elections to local self-government bodies, and the process of holding a referendum called in accordance with Articles 93 to 99 of the Constitution of the Slovak Republic. The Electoral Code was put into practice on January 1, 2015 and has been amended several times since its adoption. The Electoral Code establishes the competencies, powers, and tasks of municipalities in holding and organizing elections and referendums. We consider that these requirements place relatively high demands on their professional performance (Alman, 2020).

According to the Electoral Code, municipalities, for example, establish electoral districts and determine polling stations, compile, maintain and make changes in permanent voter lists, prepare voter lists for individual electoral districts, provide voters with information about facts connected with elections (under the conditions laid down by a special regulation also in the languages of national minorities), provide for the equipment of polling stations, provide for the safekeeping of electoral documents after elections and such electoral documents become a part of the municipality’s registry, issue voter certificates, enter citizens of other Member States in voter lists, publish the number of a municipality’s inhabitants and a list of registered candidates for deputies and mayors, prepare ballot papers for elections to municipal self-government bodies, submit to the Ministry of Interior of the Slovak Republic (“the Ministry”) applications for calling elections to municipal self-government bodies in case of termination of office of a municipal council deputy if there is no alternate for this office or in case of termination of office of a municipality mayor. Furthermore, for example, a mayor appoints and removes the recorders of district electoral commissions, appoints members of a district electoral commission if the number of its members falls below five and there is no alternate, convenes the first meeting of a district electoral commission, provides for the delivery of ballot papers to district electoral commissions, etc.

For the purposes of this paper, Section 218(2) of the Electoral Code is also relevant; it stipulates that the tasks executed by local self-government

in accordance with this Electoral Code are the transferred execution of state administration.

Thus, the Electoral Code very precisely defines the tasks of individual actors involved in the process of preparing and holding elections, including municipalities and mayors. It is therefore clear in advance what is expected of them in the process of preparing and holding elections. The method for funding the process of preparing and holding elections also corresponds to this one-off nature and is significantly different from providing for the execution of other transferred competencies. Municipalities receive advance payments from the Ministry for executing their tasks; such advance payments are subsequently cleared, and the Ministry reimburses all costs connected with the tasks defined in the Electoral Code in full (Alman, 2020).

3 ORGANIZING AND FUNDING ELECTIONS AND REFERENDUMS

It is clear from the Electoral Code that a municipality is an electoral body. From the viewpoint of the implementation of that Code, the competencies and tasks of self-government can be divided into universal (general) ones, which apply to all types of elections, and specific ones, which the self-government executes depending on the type of election.

The following part of the paper is based on the applicable legislation, as well as on a 2019 study on “Execution and Funding of Transferred Competencies” p. 89–93, which was prepared under the auspices of the Association of Towns and Municipalities of Slovakia. It can be confirmed on the basis of these information sources that there are general tasks of municipalities in connection with providing for elections and referendums that are typical for all types of elections, as well as for referendums. In this respect, specific tasks of municipalities appear to be particularly interesting in terms of their content. For example, for elections to the National Council of the Slovak Republic, the European Parliament, elections of the President, and referendums, municipalities issue a voter certificate at a voter’s request. The voter certificate forms are provided by the Ministry. The so-called postal voting is a special category, which is typical only for elections to the National Council of the Slovak Republic and referendums.

The funding of all types of elections and referendums is also regulated by Ministry Decree No. 308/2015 of November 4, 2015 on election-related costs. The Decree defines in 30 points what is considered as election-related costs, so it is possible to determine quite precisely eligible and non-eligible costs that should be reimbursed from the state budget. Election-related costs are reimbursed from the chapter of the Ministry and the chapter of the

Statistical Office of the Slovak Republic; election-related costs reimbursed from the chapter of the Ministry are paid directly, through district offices, through self-governing regions, and through municipalities. To cover election-related costs, municipalities are provided with advance payments, which are subsequently cleared by the municipalities against actually incurred eligible costs. An exception is by-elections to municipal self-government bodies, for which no advance payments are provided and municipalities will clear the election-related costs subsequently.

The costs of printing and reproduction of voter lists and announcements of the time and place of an election, delivery of announcements of the time and place of an election and delivery of the list of candidates listed on registered candidate lists, operation of motor vehicles allocated to electoral bodies and transport costs, including transport of election materials, forms and minutes of election results, rents for polling stations, operation and necessary minor modifications of polling stations, the national flag and the national emblem for polling stations, utilities, electronic communication equipment for municipal electoral commissions and district electoral commissions, postage, training courses, provision of materials for municipal electoral commissions and district electoral commissions, travel allowances for the members and recorders of municipal election commissions, district electoral commissions and persons providing for the process of preparing and holding elections, refreshments and meals for the members and recorders of municipal electoral commissions, district electoral commissions and persons providing for the process of preparing and holding elections, remuneration or compensation of wages or salaries of the members and recorders of municipal electoral commissions and district electoral commissions, wages, salaries, service income, and other personal settlements and remuneration of persons providing for the process of preparing and holding elections, compensation of wages or salaries to the employers of the members and recorders of municipal electoral commissions and district electoral commissions, and compensation of income to self-employed persons who were members or recorders of municipal electoral commissions or district electoral commissions, including insurance contributions, remuneration under contracts for work concluded for providing for elections, and compensation for court costs related to the registration of candidates.

In connection with providing for elections, no specific indicators are monitored on the basis of which performance would be assessed or funds would be allocated to provide for the transferred execution of state administration in this area. The provision for the process of preparing and holding elections is a specific type of competency, where the state finances all costs connected with its execution, and its output is an election held on an ordinary or extraordinary

date according to the exact procedures specified by law (Alman, 2020).

4 CONCLUSION AND FUTURE RESEARCH DIRECTIONS

The transferred execution of state administration is an example of the existence of the relationship and cooperation between the state and the municipal self-government in governance. Theory and practice have long shown that this relationship is demanding in terms of professionalism and funding and therefore not always ideal. It is more than desirable to look for solutions that ultimately pursue the most important goal – the satisfaction of the addressees of governance. It often happens that self-governments pay the price for the execution of state administration, despite the fact that under generally binding legal regulations the state has an exclusive payment obligation here. The situation is different when self-governments are given new competencies, while new financial coverage is absent. A long-standing problem is that competencies are established on the “virtual” principle of democracy, i.e., a competency is established without a real evaluation of whether or not self-governments are able manage it in terms of funds, personnel and professionalism. However, in the transfer of competencies we can identify sections that could be a good example for the others, which are subject to criticism. The paper deals with a selected section – providing for the organization of elections and referendums – which, from the perspective of theory and practice, is not associated with considerable reservations. This statement is not negated by the demands for its implementation. The provision for the process of holding elections and referendums is a regularly recurring activity, but it has an obvious one-off nature. Each election is specific in this respect and the costs of its preparation and holding are difficult to estimate in advance. Despite these facts, an analogy is possible to improve the unfavorable situation also in other areas (Alman, 2020).

The pandemic caused many problems and highlighted and confirmed several things. It is extremely important that the state and local self-government cooperate properly together, as it is always a matter of the well-being of the people in this regard. Apart from the tragic aspect, the pandemic has caused problems in the health sector, in the social field, in education, and last but not least, it has enormous economic consequences. Local self-government sometimes had to replace the tasks of the state, consumed its own funds, and involved its human resources. It is evident that there should be an in-depth audit and evaluation of the facts after the end of the pandemic.

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