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## **DISPUTES IN LOCAL SELF-GOVERNMENT ARISING OUT OF THE MAYOR'S POWER OF SUGGESTION<sup>3</sup>**

### **Abstract**

The paper presents an analysis of a specific problem of disputes in the functioning of municipal self-government in Slovakia. It examines possible disputes caused by the clash of conflicting interests of the municipal council and the mayor in such votes of the council, the content of which is conditioned by the mayor's proposal. Through critical analysis, the article presents possible situations of this type of dispute. At the same time, the paper presents the views of the professional public on this topic and, with further use of the methods of synthesis and scientific abstraction, provides insight into the impact of the existence of this type of dispute on the functioning of municipal government. The authors conclude by offering *de lege ferenda* proposals that could contribute to improving the existing situation. They present ways of changing the scope of competences of municipal authorities and, finally, they draw attention to the possibility of alternative ways of resolving potential disputes, through mediation.

**Key words:** dispute, local self-government, municipality, competence, mayor, council

### **INTRODUCTION**

This Local self-government is a key player in meeting the needs and solving the problems of local communities. In the Slovak Republic, municipalities are the basic unit of local self-government. Important for the quality of life of the inhabitants of municipalities is the smooth and trouble-free performance of local government, which is carried out through the municipal authorities. These

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are the mayor and the municipal council.

There may also be problem areas in the relationship between these municipal bodies. In the literature, we can find many examples where the mutual functioning of these bodies can be described as problematic, sometimes unclear, ambiguous, or even contradictory (Dudor and Hašanová, 2013; Palúš, 2009; Palúš, 2013; Šúrek, 2008; Tekeli, 2016). In many cases, the courts have had to provide answers to contentious and ambiguous situations in the exercise of competencies in the management of the municipality. Even though local government in the modern concept after 1989 has been functioning for several decades, this topic seems to be still alive and offers many surprising situations. The purpose of this paper is to identify a specific type of dispute that may arise between a mayor and a municipal council. It is a dispute arising from the mayor's design competence. Therefore, we can speak of a certain type of competency conflict that can ultimately cause problems in the functioning of municipal government.

The intention is to analyze in detail the current legislation that allows for the emergence of a conflicting position of municipal authorities. Furthermore, it seeks to highlight the negative effects that the existence of a conflict can have on the municipality and the entities established or created by it. In the context of the identified problem, an attempt will be made to consider the possibilities of using alternative means of dispute resolution. At the same time, we will try to propose *de lege ferenda* solutions to promote thinking on the improvement of the current state of legislation.

## METHODOLOGY

To fulfill the objective of this paper, several research methods were used in the research work. Their combination and balanced use helped to formulate the research questions. At the same time, the methods were a means for conducting the actual research based on data collection, study of background documents, verification of findings, etc. Finally, they were fully utilized in formulating the conclusions and opinions of the present paper.

For our work, the methods sought and used mainly in the social science branches of research were used as key. This group of methods was honestly supplemented and supported using a group of methods having a technical or technological character.

The selection and use of individual methods was also influenced by our efforts to link the theoretical-analytical investigation of this administrative-legal issue with the possibilities of translating the research results into concrete recommendations for legislative amendments. These possibilities of amending the legislation could to some extent improve the implementation of practical

activities in the conditions of municipal governments in Slovakia.

The starting point for the development of the paper was the use of a reasonable degree of scientific abstraction and a degree of selection to identify areas of social relations in which areas of public administration are unclear, imprecise or otherwise unexplored. Consequently, the method of basic analysis of the legal regulation regulating the identified social relations in the *de lege lata* plane was used. Inevitably, we had to proceed to the application of methods of interpretation of the legal norm. The analysis was also present in the identification of the opinions of other authors, quoted in the article, who bring a special perspective on the issue under study. When searching for legislative, book or Internet sources of information, methods of work with information and communication technologies were used, again supported by the necessary degree of verification and selection. The knowledge gained from the analysis of relevant legislation and literature was synthesised into a coherent text of the paper. Using the methods of legal logic and critical analysis, new proposals and themes have been developed in *de lege ferenda* terms. These are suggestions that could inspire further academic and professional debate or provide a direct basis for changes in legislation.

Using the selected methods, we formulated two basic research questions for our area of investigation: I: Does the current legislation in Slovakia allow for the emergence of a conflict situation between the mayor and the municipal council arising from the mayor's drafting competence? II: Are there legislative possibilities to resolve a potential dispute between the mayor and the municipal council using alternative tools, e.g. mediation?

Through the above-mentioned, but also less used other complementary, methods, we have tried to seek an adequate answer to the formulated questions.

## **1 THE MAYOR'S UNIQUE RIGHT TO MAKE SPECIAL PROPOSALS**

The basic legal regulation for determining the competencies of the mayor and the municipal council is Act No. 369/1990 Coll. on Municipal Establishment, as amended (hereinafter also referred to as the "Municipal Establishment Act"). A detailed and consistent interpretation of the legal norms related to the determination and regulation of the mutual relations between the municipal authorities with each other can be found in the professional literature (Jesenko, 2017; Kráľová, 2022; Tekeli, Hoffmann, Tomáš, 2021; Tekeli, 2016; Palúš, 2018 and others). These are legal norms determining the rules according to which the competence of one or the other municipal authority in deciding on municipal affairs is determined.

The problem that we want to present and draw attention to in this paper lies in the situation where the council votes on a proposal that only the mayor of the municipality is entitled to put forward. It is therefore within his exclusive competence to propose the content of the resolution. At the same time, for the mayor's proposal to be put into practice, the council must agree with the mayor's proposal and for the proposal to be approved by a vote of the requisite number of members.

This situation is foreseen by the Municipal Act when filling senior positions in organizations of which the municipality is the founder. According to Article 11(4)(1), "the municipal council shall decide on the basic issues of municipal life, in particular, it shall establish, dissolve and control budgetary and contributory organizations of the municipality and, on the proposal of the mayor, appoint and dismiss their heads (directors), establish and dissolve commercial companies and other legal entities and approve municipal representatives to their statutory and control bodies, as well as approve the municipality's participation in a legal entity". We think that when filling statutory and controlling bodies of companies and other legal entities, the law does not require that the proposal submitted for these positions must necessarily be submitted by the mayor of the municipality.

In the case of budgetary organizations, it is necessary to mention an exception to the general rule described above, and more precisely in the case of primary schools, of which municipalities are the founders. The process of election of a candidate for school director is regulated by a special legal regulation No 596/2003 Coll. on State Administration in Education and School Self-Government and Amendments and Additions to Certain Acts (hereinafter also referred to as the "School Act"), which provides that "the principal shall be appointed for a term of office and dismissed by the founder of the school or by the founder of the school establishment" (§3(1) of the School Act)". In the present case, the appointment of the future headmaster is a matter for the mayor of the municipality, since the *lex specialis*, in this case the Education Act, *ex lege* precludes the application of the provisions of Article 11(4)(1). The appointment of the principal of the school thus remains entirely within the competence of the mayor of the municipality.

Another proposal power of the mayor concerns the mayor himself, where the mayor himself may propose to the municipal council to shorten the scope of his duties. According to article 11(4)(i) of the Municipal Establishment Act, "the municipal council shall decide on the fundamental issues of municipal life, in particular, it is reserved ..... to change the scope of the mayor's office during the term of office on the mayor's proposal." The Municipal Establishment Act does not give any reasons why this could be done. This could be for example personal reasons, health reasons, but also a situation where there is not enough

money in the municipal budget to cover the mayor's salary and other municipal needs at the same time. In this case, the municipal council may also reject or not approve the proposal.

The mayor also uses the power of suggestion in the case of the appointment and dismissal of the chief of the municipal police. Act No 564/1991 Coll. on the Municipal Police, as amended (hereinafter also referred to as the 'Municipal Police Act') regulates the procedure for the appointment of the chief of the municipal police in such a way that, according to Article 2(3), "the chief of the municipal Police shall be appointed and dismissed by the municipal council on the proposal of the mayor". The chief of the municipal police manages the activities of the municipal police (Section 6 of the Municipal Police Act). In the absence of the chief, he is replaced by a deputy, whom the chief himself appoints from among the other rank-and-file members of the municipal police.

If it is a municipal police department whose organizational scope and especially the scope of tasks requires a full and permanent deputy chief, a permanent deputy chief may be elected according to the Municipal Police Act. In this case, however, the deputy chief will not be chosen by the chief himself, but the scheme of the mayor's power of proposal will again be applied. The mayor will propose the person of the deputy chief of the municipal police to the municipal council, which will decide on this proposal.

## 2 POTENTIAL SOURCE OF CONFLICT

In the situations described above, there is a specification of the activities of the municipal council. In these activities, the mayor creates the content of the resolution by which the council exercises its statutory competence in the administration and management of the municipality. The council effectively expresses its approval or disapproval of the proposal put forward. The council itself, namely the individual members (deputies), cannot propose the draft resolution and, in our opinion, cannot modify the proposal submitted by the mayor. If a proposal were to come from someone other than the mayor and the council were to approve it, or if the deputies were to modify the mayor's proposal without the mayor's additional consent to the change, it would be a null and void administrative act.

If we note a common feature of the statutorily contemplated situations in the mayor's proposal power, except for one situation, there are always personnel nominations to fill management positions. In one case, it is a modification of the scope of the position of mayor. However, it is always a matter of deciding on personnel issues concerning the administration or management of the municipality and its close organizations.

When filling management positions, these are positions in organizations

where the municipality has a direct influence and impact on their activities. The two-step, or perhaps two-round, confirmation of the appointment of a particular person to a management position increases his or her legitimacy for the performance of that position and has the ambition to be a guarantee of the selection of a capable and quality candidate.

It is the two-round confirmation of the approval process that can create situations where the interest in filling a position with a particular person can be ambivalent between the mayor and the council. This creates a mismatch in perceptions about the filling of the chief in organizations.

Non-compliance may be expressed by the mayor's motion not even being discussed by the council (by removing it from the agenda) or by not passing a resolution on the matter (i.e. a vote will be taken, but the necessary number of votes will not be reached). This will result in the position not being filled. This can cause complications for the running of the organization, particularly in situations where the organization does not have a new head (director) at the time of the appointment of the new head (e.g. the original head has resigned immediately or has died).

In practice, this time gap between the end of the mandate of the original head and the election of a new one is sometimes replaced by the granting of some type of delegation of authority (issued by the mayor), although we do not find, in our opinion, any support for this method of managing the organization in the Slovak legislation. Alternatively, the use of a system of substitution, based on the organisation's founding or internal regulations, may be used to overlap the time-space, if the substitution of the head is regulated by these documents. If we consider the same situation in terms of the municipal police, the situation there is slightly different, since the municipal police is a force, whose officers are governed either by the instructions of the chief or by the orders of the mayor (§7(a) of the Municipal Police Act). Therefore, if the mayor's proposal for the appointment of a person as chief of the municipal police is not accepted by the council, we could speak of the existing system of providing for the executive management of the municipal police force, whereby the force will be governed by the mayor's orders. However, the day-to-day management of the force, imposing tasks, and solving labor, technical, security, and other issues directly by the mayor seems to be an unsystematic and illusory solution.

Nor can it be forgotten that when the mayor's power of nomination is to nominate a person for an appointment to a position, the mayor may equally nominate the removal of that person from the position. A conflict may equally arise in proposing the removal of a person from a particular post.

Another conflict may arise from the passivity of the mayor who does not bring a proposal to the council at all. Therefore, the council would not be able to apply its competence and decide on the matter.

An interesting topic, perhaps worthy of a separate study, would be the consideration of the dicta of responsibility of the municipal authorities in the cases described. We are thinking of inaction if the mayor fails to submit any proposal within a reasonable time. On the other hand, the mayor's failure to accept and frustrate the mayor's power of proposal by the council's failure to allow the council to discuss the item in question (the mayor's proposal is removed from the agenda).

### 3 CONFLICT RESOLUTION USING ALTERNATIVE METHODS AND DE LEGE FERENDA IDEAS

Disputes are and will be an inherent part of municipal self-government in Slovakia. In our opinion, the situations described in the text above do not have a clear legislative solution. This category of conflict also encourages us to consider the possibility of using alternative methods of dispute resolution. Both Slovak and foreign authors dealing with the issue of alternative methods of dispute resolution accentuate the advantages of using these methods in such situations in public administration, the legal solution of which is either unclear or too lengthy (Molitoris, 2016a; Molitoris, 2016b; Molitoris, 2013; Molitoris, 2018).

The basic effort in resolving even this type of conflict should be to try to reach a mutually agreeable agreement within acceptable timeframes. To minimize negative impacts on the performance of public administration in the municipality. Infighting, intolerance, and distancing between the mayor and the council are certainly not conducive to fulfilling the basic principles of good governance (Molitoris, Žofčinová, 2024; Ščensná, 2017).

Mediation can be a tool with the ambition to help resolve potential disputes in municipal self-government in Slovakia. The willingness to mutually discuss the root causes of a dispute, its impact, and the possibilities of resolution by involving an experienced professional, a mediator, can bring the desired result in the form of a constructive solution (Žofčinová, Molitoris, 2023; Chadimová, 2018a; Chadimová, 2018b; Tragalová, 2014).

In the context of the possibility of using mediation, negative elements also come to the fore, especially in the sense of the time and financial complexity and, above all, the uncertain outcome of the process. In this case, however, it is desirable to see mediation as an option, as a way, or as an opportunity for finding solutions that could help the municipality to overcome the disputed situation. In this situation, we perceive as very important, in particular, the willingness to discuss and negotiate the conflict and to support one's position with rational arguments.

If we were to think in terms of de lege ferenda legal changes that could to

some extent contribute to eliminating the emergence of disputes in the adoption of council resolutions under the mayor's power of proposal, the following four directions could be pointed out.

The first option is the absolute elimination of the mayor's power of proposal and thus the cancellation of the two-round system for the selection of leaders. This means that a proposal for a resolution on the election or appointment of managers, or of a chief of police, could also be made by the mayor, but also by another entity, particularly a member of the local council. The final decision-making power would remain with the collective body - the municipal council. This would eliminate the competence dispute. An indirect tax for such a solution could be that people with whom the mayor may not agree or may not be satisfied with their professional or personal profile will be elected to leadership positions. The legitimacy of filling the position would be diminished to some extent.

The second option is to transfer the competence of selecting (electing, appointing) leaders directly to the mayor. Without the need for further approval by the municipal council. This situation would again eliminate the competence design conflict. However, the election of leaders is explicitly defined in the Municipal Act as one of the competencies of the municipal council. Therefore, at this point, we would see this option as a more realistic option, especially for the situation concerning the chief of the municipal police. Our view can be supported by the fact that the Law on Municipal Police itself already contains dicta significantly subordinating the activities of the municipal police directly to the management and coordination activities of the mayor of the municipality. Therefore, it may not seem to be a completely irrational idea that the mayor should also be able to choose directly the person he trusts to carry out the tasks of an executive nature. The chief of municipal police is ultimately accountable to the mayor for the results of his or her work as well. Because even under the current legislation, if there is great dissatisfaction with the work of the chief executive, for example among the deputies, it must always be the mayor who proposes his dismissal.

The potential transfer of additional competencies exclusively to the mayor only reinforces a long-emphasized theme and the need to fill this post with highly qualified professionals. People who are managerially skilled for management in public administration and whose natural leadership is directed towards protecting and fulfilling the public interest in the management of local government units (Molčan, Čajková, 2023; Jankelová et al., 2021; Čajková et al., 2023).

As a third alternative solution, some regulation of the mayor's design competence comes into consideration by setting deadlines for submission of proposals. In case there is a need to fill the position of the head of a budgetary

or contributory organization or the chief of the municipal police, there would be a statutory time limit within which the mayor would have to submit a proposal to the council to fill the position. Should the mayor fail to submit a proposal within this time limit, which should of course be reasonable, the possibility of submitting proposals would be extended to deputies of the council. The tabling of a motion would be understood as the submission of a specific proposal to the municipal council. In this way, the two-step approval process would be maintained, but there would be a legal possibility to react to possible inaction by the mayor.

The fourth and final suggestion, which would provide a means of eliminating the dispute described above, is a mechanism whereby, in addition to the mayor's proposal, the deputy's proposal to fill the leadership position would also be admitted. Provided that an increased quorum of valid votes would be required to pass such a motion. For example, 3/5 of those present or even 3/5 of all members. This would eliminate possible inaction by the mayor, but at the same time open the possibility for the council not to be dependent solely on the mayor's proposal.

In this sense, it is a legislative instrument that is unprecedented in the conditions of municipal self-government in Slovakia. This is because, given the origin of the proposal put forward, a different quorum of valid votes could be required to pass it when voting on the same matter. From a technical point of view, we do not see this solution as problematic. Rather, we wonder whether it would not lead to slight confusion and complication in the negotiation and the approval process in the council. Despite this concern, we offer this option as one of the options to address the problem described.

While we have presented several proposals that could help resolve the situation, each of these proposals would modify the current relationship between the mayor and the council. The professional debate among academics, mayors, deputies, and other professionals should, in our view, be directed toward whether any of the proposals put forward are so practical, pragmatic, and useful that it would be worth adjusting the mutual competencies between the municipal authorities.

## CONCLUSION

In this paper, we identify a potential source of conflict between the mayor and the municipal council in the use of the unique mayor's right to make special proposals. These are the cases of elections and appointments of leaders in municipal budget and contributory organizations and the post of chief of the municipal police. This is a dispute linked to the competencies of municipal bodies, which can make it difficult and disruptive for the continued operation

of organizations that are of fundamental importance to the municipality and its inhabitants. These may be retirement homes, health facilities, sports clubs, community centers, and many others that need to have people at their heads who will manage them and be accountable for their activities.

The presented analysis and description of conflict situations from the environment of municipal self-government, offers a positive answer to the first of the research questions, which was: I: Does the current legislation in Slovakia allow the emergence of a conflict situation between the mayor and the municipal council arising from the mayor's drafting competence? In the context of the second research question, we focused our attention on alternative ways of resolving the conflict, the possible emergence of which we identified. The second research question was: II: Are there legislative possibilities to resolve a potential dispute between the mayor and the municipal council using alternative tools, e.g. mediation? In the paper, we presented a reflection on the use of an alternative option to resolve a potential dispute through mediation. But with an awareness of the pitfalls that this method brings to practice. These are mainly the time and financial problems associated with the use of mediation, and particularly the uncertainty of its non-guaranteed outcome. In general, we are inclined to the opinion that the use of the institution of mediation in public administration in Slovakia is rather exceptional. Nevertheless, we see it as a good opportunity to seek a solution to disputes by mutual agreement of the disputing parties.

To improve the situation of potential conflict between the council and the mayor, we have made four concrete proposals in terms of *de lege ferenda* that could help to eliminate the emergence of the conflict described between the municipal authorities. These are legislative changes correcting the mayor's exclusive power of proposal.

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