

CONSTITUTIONAL REGULATION OF THE TERRITORIAL SELF-GOVERNMENT IN SLOVAKIA

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Résumé: La contribution résume et évalue le rétablissement et le développement de l'autonomie locale en Slovaquie, prévue par la Constitution de la République slovaque. Elle donne un aperçu du processus de décentralisation depuis 1993 avec l'accent sur les réformes du gouvernement local. Elle présente les fondements constitutionnels du statut des municipalités et des régions, la structure institutionnelle des collectivités territoriales, la relation entre les collectivités territoriales et l'administration de l'État, les formes de la démocratie directe et, également, les associations d'autonomie locale. L'accent particulier est mis sur les aspects problématiques de l'autonomie locale en Slovaquie.

Mots-clés: gouvernement local, municipalités, collectivités territoriales, décentralisation, droits, pouvoirs, responsabilités, autonomie.

Resume: The contribution summarizes and evaluates the reestablishment and the development of territorial self-government in Slovakia stipulated in the Constitution of the Slovak Republic. It gives the overview of decentralization process since 1993 and it is focused on local government reforms. It points constitutional basis of the status of municipalities and higher regional units, territorial self-government institutional structure, the relationship between self-administration and state administration bodies, forms of direct democracy and also territorial self-government associations. Particular focus is aimed to the problem areas, limits and issues of the territorial self-government in Slovakia

Key words: territorial self-government, municipalities, higher territorial units, decentralization, rights, powers, responsibilities, autonomy

INTRODUCTION

The Slovak Republic was established in 1993 as a result of the split of the former Czechoslovakia. The Constitution of the Slovak Republic No. 460/1992 Coll. (hereinafter referred to as the „Constitution“) has entered into force on the 1st October 1992, except some paragraphs.

Municipalities had an important position on the territory of present Slovakia since the early middle ages. Later the system of public administration was incorporated into Hungarian system and the position of municipalities was important as well. During the period of first independent Czechoslovak state, established in 1918, the management of public administration was relatively centralized, but built on democratic principles and again with a strong positions of municipalities. In the years 1948 to 1989 we can talk about a strongly centralized system of government. The structure of state authorities were formed on central level by the Federal Assembly, the Czech National Council and the Slovak National Council. Executiv power was exercised by the Federal President, the Federal Government, the Czech Government and the Slovak Government. On the local level the national commitees were established as the authorities of the state power and of the administration. Their system consisted of three levels, regional, district and municipal. (Nemec, J. – Berčík, P., Kukliš, P. 2000)

In 1989, still in the common state of Czechs and Slovaks, the process of gradual transition to a pluralist democratic public administration system started. It was based on a dual model of the public administration with two lines – the state administration and the self government. Upon the Constitution the model of territorial self-government consists of municipalities and higher territorial units.

Under conditions of the Slovak Republic, we can formulate the following definitions of:

- a) territorial self-government,
- b) government decentralization,
- c) dual model of public administration.

a) The definition of territorial self-government from the perspective of constitutional and administrative law may be based on static or dynamic approach. Territorial self-government is a part of the scope of public administration. It is exercised by the territorial authorities different from the state authorities. In the exercise of self-government, both territorial units care for the all-round development of their territory and the needs of their inhabitants.

b) Government decentralization consisted of political decentralization, administrative and fiscal decentralization. As a part of democratization process it included a territorial decentralization based on constitutional and statutory reforms and on deconcentration of decision-making from the central level to local levels of government.

c) Dual model of public administration is based on separated system of state administration (central authorities and deconcentrated local state administration) and of the autonomous local self-government (municipalities and higher regional units). The system of both separate parts of the public administration is supplemented by the principle of their mutual cooperation. The state may only intervene in the activities of municipalities and higher regional units under conditions laid by the law.

The two main objectives of the contribution are:

- to analyze the historical context and the current state of local and regional self-government in Slovakia and to point out the major changes since 1993 as a result of decentralization as a part of the democratization process,
- to identify the most problematic areas, limits and issues of the territorial self-government in Slovakia and on this bases to point out the conclusions.

To achieve the intended objectives, the contribution is divided into two main parts containing the reestablishment and the development of territorial self government in Slovakia (I) and the current state of the territorial self-government in Slovakia (II).

I. THE REESTABLISHMENT AND THE DEVELOPMENT OF TERRITORIAL SELF-GOVERNMENT IN SLOVAKIA

In the first part of the contribution we will analyze the development of legal regulation, which in the conditions of Slovak Republic re-founded a system of territorial self-government. We will specially deal with the constitutional regulation focused on:

A. reforms of public administration and the legal system of territorial self-government based on the Constitution,

B. structure, tasks and competencies of municipality authorities,

C. structure, tasks and competencies of higher territorial units authorities.

A. Reforms of public administration and the legal system of territorial self-government

The most important changes have been made in accordance with the Constitution, which gave a great part of the power to the local self-government. According to Article 64 of the Constitution, municipalities were set up as basic units of territorial self-administration. The Constitution stipulated in the same article the creation of a higher level of regional self-government – higher territorial units, stating, that they would be defined in more detail by legislation. Their structure, rights, responsibilities and autonomy were established in 2001¹. By Act No. 302/2001 on regional self-government 8 higher territorial units were established.

Nowadays according to the Article 64a of the Constitution a municipality and a higher territorial unit are independent territorial and administrative units of the Slovak Republic, associating individuals permanently residing therein. According to the Article 65 of the Constitution both units are legal persons, which manage their own property and their financial means independently, under the conditions laid down by law. They shall finance their needs primarily from their own revenues and also from state subsidies. It shall be laid down by law, which taxes and fees shall be municipalities' and higher territorial units' revenue. State subsidies can be claimed only within the limits laid down by law.

By virtue of Slovak National Council (Parliament) Act 369/1990 on Municipalities a system combining local state administration and self-government was established. Both lines are separate but they are based on mutual co-operation. We can say, that in 1990 the first stage of public administration reform started. The decentralization was the main tool of the creation of modern and better governance. The conception was to let self-governing communities to execute the administration of public affairs to the greatest possible extent. Representatives of the local selfgovernment declared, they can carry out the complex administration of cultural, educational and social affairs in the case of appropriate funding.

¹ The first wording of the Constitution expressed only the basic political will to have a regional self-government, which shall be subsequently defined by the legislation.

The system of national committees has been replaced by:

- territorial selfgovernment – municipalities and
- state administration bodies – (38) regional offices and (121) district offices. Nowadays the local state administration consist of territorial bodies structure based on administrative division. The scope and the functioning of the local state administration is marked by many changes due to the constantly ongoing reform of the state administration. (Nemec, J. – Berčík, P., Kukliš, P. 2000)

The second stage of self-administration reform and the reform of public administration as well, initiated in 1996, was characterized by the parallel development of radical territorial and administrative restructuring of the state. The aim was to increase the effectiveness and quality of public administration and to create a customer friendly system. The reform continued with the third phase in 2003 and 2004, when the transfer of responsibilities from the state administration to the self administration was fully finished. The reforms of the public administration are still going on, but basically they relate to the state administration.

Two important laws regulated these changes. Act No. 221/1996 on the territorial and administrative subdivision of the Slovak Republic provided the legal framework for the execution of local self-government. It defines the municipality as the basis of independent and representative local government. It created 8 regions and 79 districts, which territorially limited the activities of the authorities of state administration bodies. Act No. 222/1996 on the organization of local state administration in principle limits the structure and authority of such bodies.

According to the Article 67 of the Constitution municipality inhabitants' assemblies shall carry out the territorial self-administration by local referendum, by referendum on the territory of the higher territorial unit, by municipality authorities or by higher territorial unit authorities. The manner of carrying out the local referendum or referendum on the territory of a higher territorial unit shall be laid down by law.

B. Municipality authorities

Municipal authorities are the municipal representation and the mayor of municipality. Mayor and the members of the municipal representation are elected directly by the inhabitants

of municipality and they decide on all matters of local administration. The mayor represents the municipality in all matters.

Municipal office is the executive body of the mayor and of the municipal representation, that manages administrative and organizational matters. Municipal office is managed and supervised by the mayor and in municipalities with large population, by the chair of municipal office responsible for administrative and organizational matters. The municipal representation determines the organization of the municipal office, remuneration of its staff and the technical facilities necessary for its activities.

The municipal representation may decide to establish advisory bodies:

1. the executive board and
2. executive committees or
3. commissions.

The executive board is an advisory body to the mayor. Executive committees are advisory bodies to the municipal representation.

A commission may be either permanent or temporary and serves as an advisory, administrative or regulatory organ of the municipal council. The municipal representation independently decides to establish or abolish commissions according to its needs and determines their composition and tasks. Members of commissions may be members of the municipal representation and inhabitants of the municipality.

Each municipality must have a chief auditor, who oversees local finances, accounts and the management of local property, assets and reports on the budget and final accounts.

Local government authorities may freely associate with other local government authorities and thus may form regional or other interest organizations. Such associations, however, may manage only the matters specifically referred to them by local governments.

Local governments independently decide and act on all matters pertinent to the administration of municipalities and their property, unless legislation specifically assigns such activities to the state or to other legal bodies. Pursuant to the law, municipalities exercise self-government functions concerning:

- management of movable property and real estate owned by the municipality and of property owned by the state and temporarily transferred to the municipality by law,

- creation and approval of municipal budgets and final accounts and the organization of public discussions on such issues,
- administration of local incomes,
- supervision of economic activities in the municipality,
- creation and protection of healthy living and working conditions of the municipal population, protection of the environment and provision of education, culture, personal interest programs, physical culture and sports,
- conceptualization and approval of the territorial planning of settlements and zones and of the development of the social sphere of the municipality,
- maintenance of public order.

According to the Article 71 of the Constitution the exercise of certain powers of state administration may be delegated on municipality (and on higher territorial unit as well) by law. The costs of the delegated exercise of state administration shall be covered by the state. Exercise of state administration transferred to a municipality (or to a higher territorial unit) by law shall be directed and controlled by the government.

Local state administrative bodies and local self-government bodies, when administering public matters, have strictly separated competences by virtue of law, which also determines principles of coordination on particular matters, such as territorial planning and emergency situations. Local state administrative offices are appellate bodies in municipal administrative proceedings.

There are three types of municipalities in Slovakia:

1. the standard municipality with a municipal representation (board of representatives) and mayor,
2. the city municipality with a city representation and „lord“ mayor,
3. two specific municipalities – the cities of Bratislava and Košice – which are city municipalities (with city representation and lord mayors) and the subdivisions of which are also municipalities (with city representations and mayors).

C. Higher territorial units authorities

As mentioned, higher territorial units and their authorities were established by Act No. 302/2001 on regional self-government. There are two main higher territorial unit authorities:

- the representation of higher territorial unit,
- the head of higher territorial unit,
- and the other authorities, like vice-chairperson, council commissions and executive office.

The key representative and decision-making body is the representation of higher territorial unit. It decides on principles of own property management, approval of the programme of economic and social development, regional territorial plans, budget and final account, establishing of legal entities of regional self-government and the membership of the higher regional units in associations. It also establishes commissions and elects their members, elects the chief auditor and establishes the office of the higher regional unit.

Commissions are the main working organizational units of the regional councils.

The head of higher territorial unit is elected directly by inhabitants and represents the higher regional unit toward other entities.

The office of higher regional unit is an executive body of the regional authority. It is managed by the director of the office. The internal structure of regional offices is not uniform and it depends on the decision of members of the representation. They usually have a departmental structure according to the main powers of the regions and management tasks (such as property administration, finance and human resources).

The powers of higher territorial unit government have been expanding systematically since its introduction in 2002. This is especially the result of the wide-scale administrative reform. The regional self-government performed one of the key roles in this decentralizing shift. Many powers have been transferred in several stages, predominantly until 2004. The set of powers managed by the regional authorities is quite large now and includes such important fields as education, social services, regional transport, regional development and regional culture. Many powers are now executed by the regional authorities in partnership or on contractual basis. (Buček, Ján 2011)

II. THE CURRENT SITUATION OF TERRITORIAL SELF-GOVERNMENT IN SLOVAKIA

In the second part of the contribution we will pay attention to the basic problems related to public administration reforms and we will try to identify its limits. We will deal with the constitutional regulation focusing on:

A. Reforms of public administration in the field of division of powers between state administration and territorial self-government,

B. Specific conditions of the Slovak settlements in relation with the fulfilling their role and other problem areas of the territorial self-government.

A. Reforms of public administration in the field of division of powers between state administration and territorial self-government

Since 1989, after the major social and political changes, a first reform of the Public Administration started in the Slovak Republic.

The main ideas were:

1. to provide the division of powers under the Constitution and to create a „dual model“ of public administration.

This idea was fulfilled. The territorial units perform the self-governing tasks and the transferred state administration tasks as well. The state administration authorities can only control the transferred performance of the state administration. The competences that municipalities and higher territorial units exercise today, belonged in the past to the local and central state administration. For instance, in the field of education, the municipality is responsible for primary and preliminary schools and higher territorial unit for secondary schools. The central state bodies are responsible only for the universities.

2. the self-government means effective administration and execution of public matters.

After a good start, the other four phases of reform have been prepared quickly and without wider expert influence. The most serious and we can say persistent problems are:

a) several amendements of the municipal law and further legislation,

b) powers of territorial self-government units are too large and not well funded, especially in the field of performance of the transferred state administration, delegated by the law,

c) lack of communities – associations of municipalities for securing matters of common interest,

d) lack of interest of the population in the role of higher territorial units,

e) lack of expert background,

f) periodically ongoing public administration phases, often with inefficient results.

The reforms also encountered specific condition of the Slovak settlements as shown below.

B. Specific conditions of the Slovak settlements

We assumed that the objective of transferring the public administration closer to the inhabitants of the self-governing units was fulfilled as well as the objective to create a dual system of public administration. Despite these results we can identify one serious obstacle to efficient self-administration, which is typical for Slovakia.

A specific problem that links some of the problems mentioned above is a fragmentation of settlements in the Slovak republic. With about 5 million citizens, Slovakia has 2 933 municipalities and 14 cities. Two thirds of settlements have less than 500 inhabitants. For example, the smallest municipality in Slovakia – Harmanec, has only 11 inhabitants.

According to the Article 66 of the Constitution a municipality (and higher territorial unit as well) shall have the right to associate with other municipalities for securing matters of common interest. This constitutional right has been used by several municipalities, but not to such an extent as the fulfillment of the objectives of decentralization and the fulfillment of the tasks of the municipalities would require. Possible reason is the experience of the period of 1948 – 1989, when the merging of municipalities was obligatory.

This specific condition is satisfactory neither for the creation of municipal authorities nor for the performance of the tasks of each municipality.

CONCLUSION

Finally, on the basis of historical context and on the basis of constitutional and legal framework we can conclude, that territorial self-government in Slovakia has experienced radical changes, from strong centralized state to a decentralised one. The ideas of reforms were based on open, participatory, responsible and efficient territorial self-government as well as public administration.

As mentioned above, we can still identify a lot of problem areas and limits of the territorial self-government in Slovakia. On the other side, we can evaluate, that the current conditions of the structure of municipality authorities and higher territorial units authorities, its tasks and competences are in line with European standards. Some of the problems mentioned above remain open, but in the general perspective, the process of changes in handling of public affairs is successful.

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