

The functioning of local self – government in the Slovak Republic in the context of the principle of transparency (constitutional perspective)¹



Funkcjonowanie samorządu terytorialnego w Republice Słowackiej w kontekście zasady transparentności (perspektywa konstytucyjna)

Summary: The chapter will deal with the functioning of local self-government in the Slovak Republic in the context of the principle of transparency. The element of transparency will be rigorously connected with the issue of the possibility of the public to influence the decision-making of local self-government bodies. The chapter will consist of two parts. The first focuses on the definition of constitutional basis, whereas the second on the analysis of the possibilities of the inhabitants of the municipality and the public to intervene in the decision-making process in selected local governments. Given the scope of the chapter, its goal will be based on the identification, summarization and explanation of only selected forms of public participation in the decision-making process by the authorities. The chapter also focuses in a complementary way on the identification of shortcomings with the offer of possible perspectives of development and effective solutions at the level of cooperation between the society and local authorities.

Keywords: transparency, local self-government, effectivity.

¹ This article was prepared with the support of the project VEGA n. 1/039/20 „Ústavodarná činnosť Národnej rady Slovenskej republiky (právo-politologická analýza – hodnotenie – perspektívy)”

Streszczenie: Rozdział dotyczy funkcjonowania samorządu terytorialnego w Republice Słowackiej w kontekście zasady transparentności. Element transparentności jest ściśle związany z kwestią możliwości wpływania przez społeczeństwo na podejmowanie decyzji przez organy samorządu terytorialnego. Rozdział składa się z dwóch części. Pierwsza z nich skupia się na definicji podstawy konstytucyjnej, druga natomiast na analizie możliwości ingerencji mieszkańców gminy i społeczeństwa w proces decyzyjny w wybranych samorządach. Biorąc pod uwagę zakres rozdziału, jego cel opiera się na identyfikacji, podsumowaniu i wyjaśnieniu tylko wybranych form uczestnictwa społeczeństwa w procesie podejmowania decyzji przez władze. Rozdział skupia się w sposób komplementarny na identyfikacji braków z ofertą możliwych perspektyw rozwoju i efektywnych rozwiązaniach na płaszczyźnie współpracy społeczeństwa i władz lokalnych.

Słowa kluczowe: transparentność, samorząd terytorialny, efektywność.

Introduction

Public participation in the decision-making of local self-government bodies is one of those topics that concerns each of us and always has an up-to-date dimension. Regardless of our relationship with the community (inhabitant, business, family, etc.), the administration of public affairs is directly connected with us. Our attention will be focused primarily on conditions in the Slovak Republic with a special focus on selected local self-governments. The thematic purpose of the article has two key levels. First of all, we will necessarily deal with the constitutional basis of the institute, as there is a clear connection with strict legal limits, the second aspect will be related to the possibilities of the public to intervene in the decision-making process of local self-governments in selected municipalities. However, the article will not examine the elements of indirect democracy (active and passive right of vote), we will focus on direct forms².

² T. Alman, *Possibilities of the public to influence decision-making of local self-government bodies*, „Political Science Forum = Politologické Fórum” (2020), pp. 53–54; T. Alman, S. Farkašová, V. Kráľová, *Transparentná samospráva, Metodický manuál*, UPJŠ v Košiciach, Košice 2021, p. 26; S. Farkašová, *Transparentnosť a verejnosť pri výkone obecnej samosprávy*, „Grant journal”, vol. 9, no. 2 (2020), pp. 15–22.

The paper is secondarily focused on the presentation of selected results of the VVGS-2020-1416 project entitled Transparent Self-Government, which was created by the funds of the Internal Scientific Grant Scheme of the Pavol Jozef Šafárik University in Košice. The research took place in the years 2020-2021. The meritorious part of the presented paper and the mentioned project consists of analysis and statistical processing of data in several Slovak municipalities, within which we examine selected areas related to the subject. The work conceptually follows up on the study “Open Self-Government”, which was prepared under the auspices of Transparency International Slovakia (hereinafter: TIS)³.

Constitutional core

The possibility to influence the decision-making of the municipal council (not excluding other bodies) by the inhabitants or the general public (usually most often by speaking at meetings) is only one of the forms of direct performance of local self-government. In this regard, the local referendum, the assembly of the inhabitants of the municipality, the right of petition, complaints, institutes of the right to free access to information etc. In this context, the field we researched is often overlooked. Underestimation of interest is also on the part of the legislator and local self-governments, because there is no more comprehensive legal regulation of the material and procedural aspect of the participation of the persons in the decision-making of the municipal council or other bodies. From the perspective of national legislation, the cardinal constitutional basis of inhabitant participation in the administration of public affairs can also be identified directly in Act no. 460/1992 Coll. The Constitution of the Slovak Republic (hereinafter referred to as the Constitution or the Constitution of the Slovak Republic), specifically in Art. 30 par. 1, according to which “Citizens have the right to participate in the administration of public affairs directly or by free choice of their representatives ...” and in Act no.

³ Transparency International Slovensko, 2018. Otvorená samospráva 2018. Bratislava: Transparency Internaional Slovensko. Available at: <http://samosprava.transparency.sk/about/mesta> [Accessed: 25.10.2020].

369/1990 Coll. on Municipal Establishment, as amended (hereinafter: Act on Municipal Establishment). However, the mentioned legal regulation is only fragmentary in this context, the rules of procedure of municipal councils, statutes or other local legal acts are also insufficient and non-reflective. This issue has other attributes such as the ethical, sociological, political, economic, etc. dimension. We focus mainly on the practical level⁴.

The absence or insignificance of the legal regulation of the institute then shows a number of problems in practice and also several “stalemates”, where it is not clear what procedure to choose and what are the adequate rights of the chairman and similarly the person who wants to talk on council, commission, municipal committee to present their opinion or observation. We think that the possibility for the inhabitants of the municipality and in certain situations also the general public to influence the decision-making of the municipal council, mayor, municipal committee or to participate (not only as members) in municipal commissions is an elementary part of the principle of democracy⁵.

The municipality citizens who have a permanent residence in its territory. This person is an inhabitant of the municipality as a determining subject of the whole self-government. An extensive interpretation of the relevant provisions of the Municipal Establishment Act (especially § 3-4) implies that the right to participate in local self-government is linked to permanent residence and not to the citizenship of the Slovak Republic. The inhabitant of the municipality

⁴ I. Palúš et al., *Formy uskutočňovania obecnej samosprávy*, Fakulta verejnej správy, UPJŠ v Košiciach, Košice 2018, pp. 252; J. Voločová, J. Iné formy účasti obyvateľov na samospráve obce, „Ius et Administratio : Facultas Iuridica Universitatis Ressoviensis : pravo konkurenciji w procesie zmien : publikacja pokonferencyjna” (2018), pp. 1–13; O. Mitaš, *Conflict of Interest: Legal and Ethical Aspects in Local Self-Government in Slovakia*, „Central European Public Administration Review” (2019), vol. 17, no. 1, pp. 69–91; T. Alman, *Possibilities of the public to influence decision-making of local self-government bodies*, „Political Science Forum = Politologické Fórum” (2020), pp. 53–54; J. Voločová, J. *Referendum as a medium (demonstration) of freedom and democracy*, „Central European Papers” (2018), vol. 6, no. 2, pp. 78–90; L. Tomaš, *Aktuálne k zhromaždeniu obyvateľov obce*, „Justičná revue”, vol. 70, no. 8–9 (2018), pp. 1006–1014.

⁵ T. Alman, *Spoluúčasť obyvateľov obce a verejnosti na rozhodovaní obecného zastupiteľstva*, [in:] *Verejná správa v súčasnom demokratickom a právnom štáte*, Univerzita Pavla Jozefa Šafárika v Košiciach, Košice 2018, pp. 218–219; I. Palúš et al., *Formy uskutočňovania obecnej samosprávy*, Fakulta verejnej správy, UPJŠ v Košiciach, Košice 2018, pp. 252.

adjusts the widest calculations of possibilities for direct participation in the implementation of local self-government (also *vis-à-vis* self-government bodies), even though there are still several shortcomings or ambiguous places in the legislation⁶.

Taking into account the above-mentioned legislation and other provisions, it is clear that this regulation raises a number of issues of various levels of importance. From a global perspective and together, however, they create a lot of controversy and problems in terms of practice. The legal regulation omits such institutes as the claim ability of giving the word to the participants of the municipal council, procedural rules for giving the word and withdrawing the word to the speaker, time intervals of discussion, the possibility of repeated expression, etc. Special categories in this regard are bodies such as the municipal (city and local) committee or the commission of the council, where the legislation is very brief. Based on this fact, the regulation is then left to the local self-governments, which regulate the given sphere through (if ever) local legal acts. The practice then points to the huge differences between local governments, arbitrariness and their own interpretation of legislation, sometimes chaotic procedural rules, etc.⁷.

Research results

The mentioned TIS study includes a ranking of transparency 100 in terms of the population of the largest municipalities (cities), it monitors various fields, but these will not be the subject of our research. We focus on other spheres of public direct participation in public administration, specifically on the possibilities of participation in decision-making of the municipal committee

⁶ T. Alman, *Possibilities of the public to influence decision-making of local self-government bodies*, „Political Science Forum = Politologické Fórum” (2020), pp. 53–54; T. Alman, S. Farkašová, V. Kráľová, *Transparentná samospráva, Metodický manuál*, UPJŠ v Košiciach, Košice 2021, pp. 26.

⁷ T. Alman, *Possibilities of the public to influence decision-making of local self-government bodies*, „Political Science Forum = Politologické Fórum” (2020), pp. 53–54; T. Alman, S. Farkašová, V. Kráľová, *Transparentná samospráva, Metodický manuál*, UPJŠ v Košiciach, Košice 2021, pp. 26.

(hereinafter: MR) and commissions of municipal councils (hereinafter: KMZ). We compare 18 municipalities in 33rd to 50th place in the ranking. Among these municipalities are cities as well as city districts of Bratislava and Košice. These 18 municipalities consist of Piešťany, Bratislava Ružinov, Brezno, Sereď, Bratislava Karlova Ves, Bytča, Levoča, Košice Juh, Moldava nad Bodvou, Bratislava, Senica, Zlaté Moravce, Galanta, Stará Ľubovňa, Liptovský Mikuláš, Krompachy, Košice Sídlisko KVP and Snina. The research was conducted from September to October 2020⁸.

Municipal committee

Four areas were monitored at the MR, the establishment/non-establishment of the MR, the existence of the MR Rules of Procedure, whether the regulation of the MR proceedings is part of the municipal council rules of the procedure and local council or city statute (at least in part) and giving the word to the public on the basis of the MR rules and municipal council rules or city statutes. 7 of the 18 cities and city districts do not have an established MR. Exactly half of the local governments do not have modified MR meetings with their own rules of procedure or statute. No data was found for Bratislava Ružinov, the remaining 9 local governments have an adjustment in the rules of procedure of the council, in the statute of the city or city district, or the adjustment is completely absent. As for at least a partial adjustment of the MR negotiations in these other legal acts, the result is 1: 1. Interesting results were also obtained within the criterion “giving the word to the public on the basis of the Rules of Procedure of the MR or the Rules of procedure municipal councils or statutes. 4 municipalities do not explicitly allow the word to be given to the public at the MR meeting, 3 allow, 9 municipalities do not have it regulated in any way and 2 do not explicitly regulate it, at the same time it is not even excluded. The latter case is linked to legislation in context: the meetings are public, or there

⁸ T. Alman, *Possibilities of the public to influence decision-making of local self-government bodies*, „Political Science Forum = Politologické Fórum” (2020), pp. 53–54; T. Alman, S. Farkašová, V. Kráľová, *Transparentná samospráva, Metodický manuál*, UPJŠ v Košiciach, Košice 2021, pp. 26.

are other participants in addition to the members of the MR. The exemplary cities in this regard are Piešťany and Levoča, where all questions are answered yes, so we can say that local legislation is in favor of public participation in MR decision-making⁹.

Commissions of municipal councils

We focus on areas such as the number of KMZ, the existence of a separate rules of procedure /statute of KMZ, whether the regulation of KMZ negotiations is part of the rules of the municipal council or city statute (at least in part), within the most important KMZ (financial or property) participation of non-deputies in KMZ were monitored and giving the word to the public on the basis of the rules of procedure of the KMZ or the rules of procedure of the municipal council or the statutes of the city. The number of KMZ in the surveyed cities and city districts ranges from 5 in the Košice Juh district to 11 in Moldava nad Bodvou. Most municipalities have adjusted meetings of all KMZ with one separate rules of procedure or principles, for Bratislava Ružinov, Bratislava Karlova Ves and Bratislava no data was found, Galanta and Bytča do not have such a separate legal act, the last local self-government, Sereď, has two individual rules of procedure for two KMZ, the others are regulated in the rules of procedure of the municipal council. As for at least a partial adjustment of the MR meeting in other local legal acts to the absence of the given adjustment, the result is in the ratio 10: 8. Again, interesting results were obtained within the criteria “participation of non-deputies in the KMZ” “giving the word to the public on the basis of the rules of procedure of the KMZ or the rules of procedure of municipal and local councils or statutes. In this case, we analyze the already mentioned financial or property KMZ. All municipalities except one (Bratislava Karlova Ves) also have non-deputies in KMZ. 9 municipalities do not explicitly allow giving the word to the public at a meeting, 2 allow, 4 municipalities do not have it regulated in any way and 3 do not explicitly regulate it, at the same time it is not excluded. The latter

⁹ T. Alman, *Possibilities of the public to influence decision-making of local self-government bodies*, „Political Science Forum = Politologické Fórum” (2020), pp. 53–54.

case is again linked to the legislation in context: the meetings are public or, in addition to the members of the commission, there are other participants. Piešťany is again an exemplary city in this respect, and the Košice Sídliisko KVP can also be assigned to Piešťany, so these local self-governments are again in favor of public participation in KMZ decision-making¹⁰.

Conclusions

The participation of the inhabitants and the public in the decision-making of the bodies is an undoubted cardinal aspect of local self-government. It is therefore more than desirable for the municipality to choose the appropriate approach to this value. In principle, the municipality has two alternatives for its position on public participation in the municipality. It can either take a passive approach to responding to the situation or it can actively try to create the best possible conditions for their participation in local government activities. For local governments, their elected and unelected representatives and employees, the evaluation of local self-governments analyzed by us should serve as a motivation and at the same time a kind of appreciation of their work and efforts to behave transparently and provide their citizens with quality information. This is also the way in which development in local self-government can be supported, including the inflow of investments and the improvement of the quality of life of its inhabitants¹¹.

The municipal committee and the commissions of the municipal council in general are also important in the context of the discussed topic of public participation in the meetings of the municipal council. Here, too, the active

¹⁰ T. Alman, *Possibilities of the public to influence decision-making of local self-government bodies*, „Political Science Forum = Politologické Fórum” (2020), pp. 53–54; T. Alman, S. Farkašová, V. Kráľová, *Transparentná samospráva, Metodický manuál*, UPJŠ v Košiciach, Košice 2021, pp. 26.

¹¹ J. Voločová, *Referendum as a medium (demonstration) of freedom and democracy*, „Central European Papers” (2018), pp. 78–90; T. Alman, *Priame formy demokracie na miestnej úrovni v Slovenskej republike – súčasný stav a perspektívy vývoja*, „Political Science Forum = Politologické Fórum” (2019), pp. 52–57; T. Alman, S. Farkašová, V. Kráľová, *Transparentná samospráva, Metodický manuál*, UPJŠ v Košiciach, Košice 2021, pp. 26; I. Florek, S.E. Eroglu (2019), *The need for protection of human rights in cyberspace*, „Journal of Modern Science”, vol. 3, no. 42, pp. 27–36.

approach of local governments can be chosen in favor of strengthening the public's ability to manage public affairs. The question is, is such a path appropriate and correct? Who should regulate it and how. If this area has long been neglected by the legislator, how should local self-governments proceed? We believe that the legislator, subsidiary local self-governments through local legal acts should expand the possibilities of the public to influence the decision-making of municipal self-government bodies as widely as possible, or define the already existing rules more clearly. Regardless of the form (law, rules of procedure, statute, principles...), the legislator and local self-governments should do their utmost to ensure transparency and strengthen the public in the administration of public affairs¹².

¹² T. Alman, *Possibilities of the public to influence decision-making of local self-government bodies*, „Political Science Forum = Politologické Fórum” (2020), pp. 53–54.

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