



Journal of Geography, Politics and Society

2016, 6(3), 59–63

DOI 10.4467/24512249JG.16.020.5807

THE RIGHT TO TAKE PART IN THE CONDUCT OF PUBLIC AFFAIRS IN THE CONTEXT OF TERRITORIAL SELF-ADMINISTRATION

Jana Neuschl

Faculty of Law, Comenius University in Bratislava, Šafárikovo nám. 6, P. O. BOX 313, 810 00 Bratislava 1, Slovakia,
e-mail: neuschl.janka@gmail.com

Citation

Neuschl J., 2016, The right to take part in the conduct of public affairs in the context of territorial self-administration, *Journal of Geography, Politics and Society*, 6(3), 59–63.

Abstract

The paper deals with the constitutional right of the residents of municipalities and territorial units, which entitles them to take part in the conduct of public affairs within the Slovak republic. The citizens can directly or indirectly participate in sustainable development and good governance due to legal arrangements, in particular, such as the local referendum, the municipality inhabitant's assemblies, the right to petition, the right to file motions, suggestions and complaints with the municipality bodies, and etc. It focuses on the rights of the residents to comment and to be heard within the activities and actions of the municipal authorities, but not only within the administrative procedures, but also within the decision-making processes, which have the impact on the performance of their other rights.

Key words

Constitutionality, right to take part in the conduct of public affairs, the right to governance, the self-governing region, municipal authorities and territorial unit bodies, local referendum.

1. Introduction

The right of citizens to take part in the conduct of public affairs is one of the elementary political rights enshrined directly in the Constitution of the Slovak Republic (hereinafter referred to as the "Constitution"). This right is declared by Article 30 paragraph 1 of the Constitution: "Citizens shall have the right to participate in the administration of public affairs directly or through freely elected representatives," and specified by the decision of the Constitutional Court of the Slovak Republic: "In case of citizens' fundamental right to participate directly in the administration of public affairs under Article 30 paragraph 1

of the Constitution, this is one of the fundamental political rights of citizens in a democratic society, while the administration of public affairs shall mean the participation of citizens in the political life of the State, the administration of the State and public affairs in municipalities" (II. ÚS 9/2000). In the context of the execution of the administration of public affairs in the territory of self-governing units such as municipalities and higher territorial units, this right is specified by Article 67 paragraph 1: "Municipality inhabitants' assemblies shall realize a 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 overall and more specific regulation of the right of the administration of public affairs in the context of self-governing units is contained in Act No. 369/1990 Coll. on Municipalities, as amended (hereinafter referred to as the “Act”) and Act No. 302/2001 Coll. on the Self-Government of Higher Territorial Units (hereinafter referred to as the “Act on Self-Governing Regions”).

2. Execution of self-administration – direct and indirect participation of entities of the right to take part in the conduct of public affairs

First of all, it is necessary to make it clear, to whom the right to take part in the conduct of public affairs in the local and regional authorities of the Slovak republic belongs. In accordance with Article 1 paragraph 1, the municipality getting together persons having permanent residence in its territory and thus the person having permanent residence in the territory of the municipality is a municipality resident (Article 3 paragraph 1). “A self-governing region is an independent territorial, self-governing and administrative unit of the Slovak Republic,” and “the resident of the self-governing region is a person who has permanent residence in the municipality in its territory”¹. The right to participate in the administration of public affairs in the municipality or the higher territorial unit is therefore not bound to the Slovak nationality, but to permanent residence, and the right to administer public affairs rests with the municipality residents who may also be citizens of other countries. In case of application of the right to take part in the conduct of public affairs, special entities within self-administration are actively legitimized that are the persons who “have their real estate located in the territory of the municipality, pay local taxes or local charges, have temporary residence registered in the municipality or enjoy the right of permanent residence in the higher territorial unit or have honorary citizenship in the municipality”², or persons who work, carry on business or pursue other activities in the territory of the municipality, stay often in the territory of the municipality, or come from the municipality and the like. These may also be legal persons

carrying on business or pursuing other activities in the territory of the municipality. The Act on Municipalities does not define these persons explicitly, but implicitly their right to participate in the administration of public affairs arises to them from the universal nature of fundamental human rights and freedoms enshrined in the Constitution. However, these persons do not have the right to vote or to be elected to self-administration bodies of municipalities and to self-administration bodies of higher territorial units and do not also have the right to vote in a local referendum, and therefore, their rights consist in the mere possibility of active participation in the form of participation in municipality inhabitants’ assemblies and meetings of the municipal council, or they may file motions, complaints, comments with self-administration bodies and thus exercise, for example, their constitutional right to petition.

In terms of Article 4 paragraph 2 of the Act, the self-administration of municipalities shall be executed by inhabitants in the form of direct or indirect democracy. The indirect form of exercising the right of citizens to take part in the conduct public affairs is the exercise of the active and passive rights to elect and to be elected members of the bodies of a municipality, which are the municipal council and mayor. The active and passive voting rights are regulated by the so-called “Election Code” (Act No. 180/2014 Coll. on Conditions of Exercise of Voting Rights and on amendments and supplements to certain acts) – the active voting right have the inhabitants of the municipality – Slovak citizens having permanent residence in the municipality who have reached 18 years of age no later than on the election day. The right to be elected as the member of the municipal council is limited only by age, namely 18 years of age. It is contrary, for example, to the age limit for the candidate for a member of the National Council of the Slovak Republic – only the Slovak citizens who have reached 21 years of age may be elected thereto. In fact, in the case of the election to municipal or self-governing region councils, there is no difference between the active and passive voting rights. However, the age limit applies to mayors or self-governing region chairmen. A mayor may be elected only a resident of the municipality who has reached 25 years of age no later than on the election day and met other specific requirements laid down by special law. Analogous provisions governing the exercise of the active and passive voting rights also apply to the elections to the bodies of self-governing regions, which are the council and self-governing region chairman.

The application of direct forms of democracy and thus the direct participation of citizens in the

¹ Act No. 302/2001 Coll. on the Self-Government of Higher Territorial Units (hereinafter referred to as the “Act on Self-Governing Regions”).

² Act No. 302/2001 Coll. on the Self-Government of Higher Territorial Units.

self-administration of municipalities can be realized in the form of a local referendum, the municipality inhabitant's assemblies or through universal constitutional rights such as the right to petition, the right to file motions, suggestions and complaints with the municipality bodies, the right to information, and the like. All universal constitutional rights directly result from the right of citizens to participate in the administration of public affairs, which is, in accordance with Article 27 paragraph 1 of the Constitution, declared as follows: "The right to petition shall be guaranteed. 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." The right to petition is also regulated by Act No. 85/1990 Coll. on the Right to Petition, as amended, which indicates that the right to address the municipal bodies with petitions, proposals and complaints in the context of the respective contribution is not only the right of inhabitants of the municipality, but of all natural or legal persons, irrespective of their permanent residence. In our opinion, the respective act only minimally regulates the right to petition in the execution of self-administration and contains only basic principles for handling submitted petitions. For example, Article 5c of the above act states: "If the subject of the petition is the activity of the local self-administration bodies, their members or the statutory body of the organization founded by the local self-administration body, the petition shall be handled by the relevant local self-administration body." In terms of Article 9 of Act on the Right to Petition, the right to petition in the execution of self-administration shall not be subject to administrative proceedings: "The general regulation on administrative procedure shall not apply to the handling of petitions under this act," but Act No. 9/2010 Coll. on Complaints, as amended, shall apply thereto, in which it is declared that "... the public authority shall regulate the handling of complaints by its internal regulations". We can infer from the context of the respective provision that the internal regulations of the municipalities or higher territorial units should then have the character of binding internal regulations governing clearly the rules for the handling of petitions or complaints and comments filed by the residents of the municipality or the higher territorial unit, and they should be published on the official boards and websites of the municipality so that the participation of citizens through the respective institute is as effective as possible.

A referendum is another important element of direct democracy in municipalities and higher

territorial units. A local referendum is regulated in the Act on Municipalities, from which it follows that in terms of the Act the municipal councils are obliged to declare the local referendum in case of "the legal merger of municipalities, the division or cancellation of municipalities, as well as the change in the name of the municipality, removal of a mayor from office, the petition of at least 30% of eligible voters, the change in labelling of the municipality or as provided by special law." The local referendum may obligatorily be declared if important issues regarding the life in the municipality and its potential further development are to be discussed. In terms of Article 11a of the Act on Municipalities, the announcement, dealing with and checking of particular documents for the application of the referendum in practice shall be the responsibility of the municipal council. Under the Act on Municipalities, details regarding the organization of local referendums shall be "stipulated by the municipality upon a generally binding regulation". Successful adoption of the results of the referendum shall be subject to the presence of at least half of the eligible voters of the municipality, and the decision which is the content of the referendum must be taken by at least an absolute majority of valid votes. The local referendum carried out in the territory of self-governing regions is governed by Article 15 of the Act on Self-Governing Regions, which defines the requirements of the announcement and the conduct as well as validity of the referendum, which, in terms of grammar, can be described as almost identical compared to the requirements of validity of a local referendum in a municipality.

As regards the municipality inhabitants' assembly, which is further tool of direct democracy, and therefore further tool of the participation of citizens in the administration of public affairs, Article 11b of the Act on Municipalities states: "To discuss the municipality affairs, the municipal council may convene an assembly of inhabitants of the municipality or part thereof, and its further regulation shall be left to the discretion of the municipality." Despite the fact that the Constitution or the Act on Municipalities do not regulate the binding force of the institute of direct democracy in details, the municipality, through its council, may stipulate the requirements of the organization, conduct, control and binding force of the decisions and measures taken in the public municipality inhabitants' assemblies by internal binding regulations or general binding regulations so that the adopted conclusions of such municipality inhabitants' assemblies have definite legal effects and are legally binding on the municipal bodies without doubt on their legal nature and binding or non-binding force.

In accordance with Article 3 paragraph 2 subparagraph c) of the Act, the residents of the municipality have the right to participate in meetings of the municipal council. In view of publicity of the municipal council meetings, which is declared in Article 12 paragraph 9, any other persons shall be entitled to take part in such meetings, but the right to comment on the discussed items on the agenda or present views on certain items on the agenda does not directly result for them from the Act, and therefore, it is not legally claimable. "In this case, there is an asymmetry in the Act, namely in the wording of Article 12 paragraph 10 of the Act, between the status of residents of the municipality who may or may not be heard and the status of members of the National Council of the Slovak Republic, members of the European Parliament, representatives of the Government or any other public authority who must be allowed to speak at their request" (Dostál et al., 2013). In terms of Article 12 paragraph 12 of the Act, the details of the meetings of the municipal council may be directly regulated by the rules of procedure of the municipal council. Within the purview of the Act, the municipal council may establish initiative, executive and supervisory bodies and committees as its permanent or temporary advisory, initiative and supervisory bodies. Members of the municipal council may only be elected members of the municipal council, but members of the committees may also be other persons, even those who are not, for example, permanent municipality residents. "Membership in the committees of the municipal council is thus another possible form of public participation in the activities of municipalities. Alike the opportunity to speak in the meetings of the municipal council, the membership in the committees is not claimable and it depends only on the decision of the municipal council whether the persons who are not members of the municipal council are elected members of the committees or the committees consist only of the members of the municipal council" (Dostál et al., 2013). As regards the activities of the municipal council or the committees, the Act does not state and stipulate the requirements of publicity of their meetings, thus suggesting that this issue falls within the competence of the municipal council, which should regulate the publicity or non-publicity of the meetings of its advisory bodies by the rules of procedure and it should also regulate the opportunity to speak for other persons who are not members of these advisory bodies.

In our understanding, an important component to increase the direct participation of citizens in the administration of public affairs is the so-called raising of the awareness of citizens about the activities

of bodies of self-administration at all levels through necessary informedness implemented by means of disclosure of different kinds of information about activities and intended activities of the municipal council, its bodies, committees, about their agenda and materials to be decided, and about the decisions and activities of the mayor and the administrative staff of the respective municipal bodies. In our opinion, only transparent self-administration is the right way to increase real participation of citizens in the administration of public affairs.

3. Conclusion

As seen above, legislation in the field of regulation of participation of citizens in the administration of public affairs is left to the arbitrariness of individual bodies of self-administration, particularly of the members of municipal and self-governing region councils, which in our opinion should be changed and in many cases there should be statutory regulations of individual institutes of direct democracy so as not declared at the level of theory but used in practice. The citizens, especially residents of municipalities and territorial units should play the greater role within local government. The legislators, in particular, regional presidents, parliamentarians, mayors and county councillors, such as authorised representatives of the democracy, should take more account of the wider impact of its policy decisions to life of citizens and should allow for timely action to prevent the decrease in the efficiency of participatory democracy in their territories, because such democracy and civil dialogue are not empty slogan, but, rather essential principles on which the success of the modern, democratic, civic society and therefore of its future depends.

References

- Dostál O. Sloboda D., Kuhn I., 2013, *Právo na dobrú samosprávu. Štúdia*. Bratislava, <http://samosprava.institute.sk/uplatnovanie-prava-na-dobru-spravu-veci-verejnych-v-samosprave-2013.VjZHGiur6k> [15.09.2015]
- Ako má samospráva zverejňovať informácie*, <http://samosprava.institute.sk/ako-ma-samosprava-zverejnovat-informacie-o-svojej-cinnosti-na-webstranke-a-uradnej-tabuli> [22.09.2015]
- Ministry of Interior of the Slovak Republic*, <http://www.minv.sk/> [22.09.2015]
- Nález Ústavného súdu Slovenskej republiky, sp. zn. II. ÚS 9/2000, z 27. apríla. 2000.
- Zákon č. 302/2001 Z. z. o samospráve vyšších územných celkov v znení neskorších predpisov.

Zákon č. 369/1990 Zb. o obecnom zriadení v znení neskorších predpisov.

Zákon č. 85/1990 Zb. o petičnom práve v znení neskorších predpisov.

Zákon č.9/2010 Z.z. o sťažnostiach v znení neskorších predpisov.