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Constitutional Rights of Local Government

Lithuania

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CONSTITUTIONAL RIGHTS OF LOCAL GOVERNMENT

The formation of local government and the improvement of territorial administrative organization were initiated in Lithuania prior to the restoration of independence. Two tiers of government were established: lower-level units (regional towns, urban settlements, localities) and upper-level units (regions and cities). This system was criticized from its very introduction because it was based on the territorial division that existed during the soviet period. Therefore a new law was adopted in 1995, replacing the former system of two levels and five categories of 581 administrative units with a system of two levels and two categories of administrative units. Consequently, the structure currently functioning in Lithuania includes:
1) 10 higher administrative units or counties (apskritis), the activities of which are assigned and supervised by the state government;
2) 60 lower level administrative units – municipalities (savivaldybės); depending on the type of residential area, the unit may be designated as rural (44) or urban (12), though there is no difference concerning their competencies.

There are also around five hundred neighborhoods, which do not have status of territorial administrative units (these communities had the rights of local governments before the reform).

Experience of Lithuanian local government shows that municipalities here are too large (just a few of them have less than 30 thousand population). Therefore one alternative proposes to increase the number of municipalities in order to increase residents’ participation in managing local affairs and increase access of residents to local government administrative institutions; the second alternative solution could be increasing the competencies and power of neighborhoods.

Pursuant to the Local Self-government Act, municipality means an administrative unit of the territory of the State, which has the status of a legal person and the right to self-governance guaranteed by the Constitution of the Republic of Lithuania and implemented via a municipal council. Lithuanian municipality has a directly elected council, which implements the right to self-governance. The municipal council may, for the term of the powers thereof, set up a municipal council’s board from among the councillors; the council shall elect municipal mayor. Financial and
performance audit in the municipal administration, administering entities of a municipality, and undertakings controlled by a municipality is carried out by municipal controller; municipality also establishes centralised municipal internal audit service.

Local self-government is based on the following principles:

1) accountability to voters;
2) participation of the population in the management of public affairs of a municipality;
3) adjustment of municipal and State interests when managing public affairs of municipalities;
4) freedom and independence of the activities of local authorities when they, while implementing laws, other legal acts and obligations to the community, take decisions;
5) transparency of activities;
6) adjustment of interests of the community and individual residents of a municipality;
7) publicity and response to residents’ opinion;
8) lawfulness of the activities of a municipality and decisions taken by local authorities;
9) ensuring and respect for human rights and freedoms.

The Constitution gives local governments the right to draft and approve their own budgets, to establish local dues and to levy taxes and duties. Local governments also must have a reliable financial basis.

The constitutional framework of local self-government in Lithuania comprises 6 articles in the Constitution (Chapter X (Art. 119-124))\(^1\) and the European Charter on Local Self-government, which was ratified in 1999.

\(1\) CHAPTER X
LOCAL SELF-GOVERNMENT AND GOVERNANCE

Article 119
The right to self-government shall be guaranteed to administrative units of the territory of the State, which are provided for by law. It shall be implemented through corresponding municipal councils.
The members of municipal councils shall be elected for a four-year term, as provided for by law, from among citizens of the Republic of Lithuania and other permanent residents of the administrative unit by the citizens of the Republic of Lithuania and other permanent residents of the administrative unit, on the basis of universal, equal and direct suffrage by secret ballot.
The procedure for the organisation and activities of self-government institutions shall be established by law.
For the direct implementation of the laws of the Republic of Lithuania, the decisions of the Government and the municipal council, the municipal council shall form executive bodies accountable to it.

Amendments to the Article:

Article 120
The State shall support municipalities.
Municipalities shall act freely and independently within their competence defined by the Constitution and laws.

Article 121
Municipalities shall draft and approve their budget.
Municipal councils shall have the right, within the limits and according to the procedure provided for by law, to establish local levies; municipal councils may provide for tax and levy concessions at the expense of their own budget.

Article 122
Municipal councils shall have the right to apply to court regarding the violation of their rights.

Article 123
The Constitution provides municipalities for state support, inviolability of municipalities' territories, freedom and autonomy of territorial communities and their local governance bodies within the limits of Constitution and laws, limited supervision by government representatives, judicial protection of the rights acquired, etc.

The jurisprudence of the Constitutional Court outlines the conception of local self-government. The Court stated that Constitution distinguishes two systems of public power: state administration and local self-government. Under the Constitution, local self-government is self-regulation and self-action of the communities of the administrative units of state territory, in accordance with the competence defined by the Constitution and laws, which are provided for by law (i.e. territorial or local communities), and which are composed of permanent residents of these units (citizens of the Republic of Lithuania and other permanent residents). The Constitution determines local self-government as a local public administration system operating on the basis of self-action principles, which is not directly subordinate to state power institutions. Local self-government is the power of territorial communities of administrative units that are provided for by law, which is formed and functions on other constitutional grounds than state power. The Constitution does not identify self-government with state administration. However, the fact that the Constitution does not identify local self-government with state administration does not mean that there is no interaction between state administration and local self-government; state administration and local self-government, as two systems of implementation of public power, are related, still, each of them implements the functions which are characteristic of it only. The interests of municipalities and the state are coordinated. The principle of coordination of the interests of municipalities and the state manifests itself not only in the support of municipalities by the state in various ways and forms or in the supervision by the state of the activities of municipalities in the forms prescribed by law, but also in the coordination of common actions when important social objectives are sought.²

The provision of the Constitution that municipalities shall act freely and independently within their competence, which shall be established by the Constitution and laws, is to be assessed as the guarantee of the participation of these communities in the governance of these territories.

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The content of right to self-government consists of five elements: 1) freedom to select members of representative institution (i.e. population of territorial administrative unit must have a real possibility to decide in free democratic elections on the composition of the representative municipal body); 2) freedom to comprise executive institutions; 3) principal freedom of actions and decision making; 4) principal financial and economic capability; 5) principal judicial protection of rights.

All of those aspects are analyzed in Court’s jurisprudence. The Court defined main principles of self-government, its rights and powers, the margins of discretion of legislator regulating self-government issues. Extensive Court’s jurisprudence on different aspects of local self-government, explaining general constitutional norms, had a crucial impact on the reform of local governments, directed legislative choices defining principles of local self-government, ensuring real autonomy, defining functions and internal division of local institutions, their relations with state institutions.

Talking about elections to municipal councils, quite recent Court’s ruling of 9 February 2007 should be mentioned. The Court ruled, that the proportionate system of elections, chosen by the legislator, does not mean that it is constitutionally justifiable to limit the lists of candidates only to the lists formed by political parties. Court stated that the legislator, when regulating by means of a law the relations of elections to municipal councils, is bound by the requirement that stems from the Constitution not to establish any such legal regulation, where a person, who wishes to use his passive electoral right in elections of members of municipal councils, would be compelled to seek membership in a political party or to become bound with a certain political party by relations that are other than formal membership. Having chosen proportional system of elections of municipal councils, one must ensure the possibility for the members of territorial communities to implement their passive electoral right by being included in other lists, not only those of political parties (and individually, in case the legislator decides so). The societies (associations) which enjoy under the law the right to draw the said lists, may be formed for the period of particular elections to municipal councils, but they may also be of permanent activity, if this is established by the law. The legislator enjoys broad discretion to establish requirements, which are to be met by the said lists drawn not by political parties, *inter alia* to establish as to how many persons should be included in such list, whether anyone should support such a list in order to register it for the elections to municipal councils, and if so, how many persons should do that, the time when such list should be submitted for registration and under what procedure it should be done, etc. The legislator must pay heed to the obvious circumstance that elections are a political process. Therefore, the legal regulation, where not every union (established not for any type of objectives) (*inter alia* not every association, public organisation, community) can make a list of candidates to members of municipal councils.
and submit it for registration for the elections to municipal councils, would not be constitutionally groundless.

This ruling of the Court opened the possibility for the members of territorial communities to implement their passive electoral right by being included in other lists, not only those of political parties (and individually, in case the legislator decides so).

The Constitutional Court also adjudicated on certain limitations, imposed on council members due to their position, division of functions between representative and executive bodies of municipalities. Court’s jurisprudence could be summarized as follows:

- the same persons may not discharge functions implementing the state power and at the same time be members of the municipal council through which the right of self-government is implemented, that the principle of prohibition of a double mandate is established in the Constitution, that the state officials who, under the Constitution and laws, enjoy powers to control or supervise the activities of municipalities may not be municipal council members, also that the officials of institutions accountable to the municipalities may not be municipal council members;

- relations between municipal councils and their executive bodies are based on the constitutional principle of accountability of executive bodies to the representation; under the Constitution, the executive bodies accountable to municipal councils may not be formed from among members of the municipal councils which establish them; executive bodies which are accountable to municipal councils may not be treated as ones through which the right of self-government is implemented by territorial communities, i.e. as self-government institutions; it is not permitted to establish the legal regulation whereby the executive bodies accountable to municipal councils would be equated to the municipal councils which have established them, let alone the legal regulation whereby the powers of the executive bodies established by and accountable to municipal councils would restrict the powers of the latter, or under which municipal councils would lose an opportunity to control the executive bodies established by and accountable to them; under the Constitution, the executive bodies accountable to municipal councils do not have the right to adopt decisions which are not grounded on laws, decisions of the Government and/or corresponding municipal councils, also such which, by their legal power, would compete with those passed by the municipal councils; under the Constitution, it is not permitted to establish any such legal regulation whereby the decision on the issues attributed expressis verbis by the Constitution to the municipality would by adopted not by municipal councils but by the executive bodies established by and accountable to them.

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3 Constitutional Court ruling of 19 January 2005.
4 Constitutional Court ruling of 24 December 2002.
Paragraph 2 of Article 120 of the Constitution provides that municipalities shall act freely and independently within their competence, which shall be established by the Constitution and laws. Thus the freedom and independence of municipalities are bound by their competence defined in the Constitution and laws. Under the Constitution, it is not permitted to establish the legal regulation whereby the opportunity for municipalities to realise their competence directly established in the Constitution would be denied.

The competence and functions of municipalities are established in the Law on Local Self-Government. The legislator, while defining the functions of municipalities, differentiated them according to the freedom, specific character and occurrence of grounds to adopt decisions and grouped them into independent, assigned (independent-limited), state (transferred to the municipalities) and contractual.

The constitutional provision that municipalities shall act freely and independently within their competence, which shall be established by the Constitution and laws, also means that in case the Constitution or laws attribute certain functions to municipalities, then municipalities discharge these functions to the extent that they are attributed such functions. It means that a certain part of the competence of municipalities must be implemented directly, that the implementation of decisions adopted by municipal councils within the limits of their competence must not be bound by decisions (permissions, consents, etc.) of certain state institutions or officials. However, it needs to be emphasized that even the functions which exclusively belong to municipalities are regulated by laws. Not a single one of these functions mean that in a respective area municipalities are absolutely independent.

In addition to the functions which belong exclusively to municipalities, they may be commissioned to discharge certain state functions; thus, a more efficient connection between state power and citizens as well as democracy of administration are ensured. In discharging these functions, the activities of municipalities are bound by corresponding decisions of institutions of state power and/or officials. Under the Constitution, such state functions must be transferred to municipalities by law.

In its ruling of 14 January 2002, while construing the provision of Paragraph 2 of Article 120 of the Constitution that municipalities shall act freely and independently within their competence, which shall be established by the Constitution and laws, together with the provision of Paragraph 1 of Article 121 of the Constitution that municipalities shall draft and confirm their own budget and the provision of Paragraph 1 of Article 127 of the Constitution that the budgetary system of the Republic of Lithuania shall consist of the independent State Budget of the Republic of Lithuania as well as the independent municipal budgets, the Constitutional Court held that the independence of the activities of municipalities, which is entrenched in the Constitution, and which is within the limits of the competence defined in the Constitution and laws, implies that if municipalities are transferred state functions by laws, or if they are given duties by laws or other legal acts, funds must be
provided for the implementation of these functions (duties), also, if, before the end of a budget year, municipalities are transferred additional state functions (are given duties), for this purpose funds must be allocated as well. Under the Constitution, municipalities must observe the laws, thus, also the laws whereby the municipalities are obligated to exercise the functions transferred to them by the state. Municipalities would be unable to exercise such duties unless their implementation was not guaranteed by financial means. The funds for the implementation of the functions transferred by the state to municipalities must be provided for in the law on the state budget. The independence of activities of municipalities within the limits of the competence established by the Constitution and laws and the support of the state for municipalities, coordination of the interests of municipalities and those of the state, which are entrenched in the Constitution, imply that funds (municipal revenues and their sources) must be provided for in the state budget, necessary for the ensuring of all-sufficient functioning of self-government and for the implementation of functions of municipalities.

If the state provides funds for the functions transferred to the municipalities, those funds must be used only for the purposes of those functions. Unused funds must be returned to state budget\(^5\).

The substance of the right to local self-government also includes the right of judicial defense of rights acquired. The Constitutional Court noted that in case municipal institutions cannot raise claims to protect the rights of consumers or economic entities or even their own rights, all-sufficient judicial protection is impossible\(^6\).

Nevertheless the right entrenched in the Art. 122 of the Constitution\(^7\) doesn’t include the right of municipal council directly challenge in court a decision of the legislator to liquidate certain municipality or change its boundaries.

Municipalities in Lithuania (contrary to Slovenia, Poland, Hungary and some other countries) have no right to initiate the proceedings before the Constitutional Court. This situation could possibly be explained pointing that a very narrow circle of subjects can directly apply to the Constitutional Court, that there is no institute of individual complaint etc., but in situation where Seimas has a constitutional right temporary introduce direct rule in the territory of a municipality and municipality has no right to challenge such decision – the situation could be assessed critically.

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\(^5\) Constitutional Court ruling of 8 November 2000.

\(^6\) Constitutional Court ruling of 17 March 2003.

\(^7\) Article 122

Municipal councils shall have the right to apply to court regarding the violation of their rights.