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The Reliability and Responsibility of a Local Council Deputy in Belarus: Legal Problems

A local Council deputy's guarantees and responsibilities play a great role as inherent auxiliary components of his/her legal status as a member of the local representative authority. According to the current legislation of the Republic of Belarus, the local Council deputy's guarantees and responsibilities provide an effective mechanism for securing proper exercise of powers (rights and obligations) of such a local representative.

As rightly noted by Professor G.A. Vasilevich, '(...) a deputy's guarantees granted by the current legislation constitute the mechanisms necessary to protect the deputy's rights in a democracy'.¹ According to the legal philosophy of the above researcher, a local Council deputy's guarantees must be understood as a system of means and conditions to actually secure effective exercise of powers (rights and duties) of that representative set out by the Constitution and the current legislation. All the guarantees granted to people's representative and, consequently, to a local Council deputy are divided into two interrelated groups: organisational and legal.

Thus, the interrelated structural elements of organisational guarantees include procedural and material guarantees granted to a local Council deputy as well as their guaranteed right to employment. The procedural guarantees granted to a local Council deputy are as follows: as instructed by the Council chairperson or deputy, all Council deputies are provided with all the documents approved by the Council as well as other information and reference materials pursuant to the established procedure. The representatives take precedence in reporting their activities in the mass media run by the Council. The materials submitted by Council deputies as instructed by the Council and its agencies are subject to mandatory publication or dissemination by the respective mass media within the approved period. The materials submitted by Council deputies cannot be edited without their consent. It should be noted that the Council chairperson, its Presidium, the corresponding local executive and regulatory agencies and other public authorities and organisations

¹ G.A. Vasilevich, *Trudovyye prava deputata garantiruyutsya zakonom*, „Kadrovik. Upravleniye personalom” 2004, Vol. 7, pp. 7–8. The author's own translation of the quotations.

located in the Council's jurisdiction (except for national government agencies) are obliged to provide a Council deputy with every opportunity to use the staff area, library stock and archives, communication facilities and office equipment and other facilities required to perform their duties as well as the requested materials and other information needed to hold meetings with the general public or report to the electorate, except for materials and other information that contain State secrets or other data protected by the Belarusian legislation. Above all, the respective local executive and regulatory authority provides a room for the Council deputy's meetings with the general public or reporting to the electorate, notifies them in good time about the date, time and venue of the event and assists Council deputies on duty in obtaining transportation and hotel accommodation.

As regards their activities, Council deputies enjoy full access to the respective local executive and regulatory authority and other agencies located in the Council's jurisdiction together with the priority right to be received by their officials. Only the procedure of a Council deputy's access to public authorities and other organisations the admission to which is restricted by statutory acts of the Republic of Belarus is regulated by specific provisions of the Republic of Belarus. It goes without saying that the above list of procedural guarantees may play an important role in increasing the efficiency of a local Council deputy's representative activities, provided the deputy demonstrates responsibility in performing his/her duties. However, in order to achieve maximum efficiency of a local Council deputy's performance, one more mandatory guarantee should be added to the regulatory catalogue of the procedural guarantees provided for their activity, namely: allowing the Council deputy to have up to three volunteers to assist them in performing their deputy functions (in which case individual screening of assistants, the assignment of duties and responsibility for their actions will devolve upon the people's representatives themselves).

Furthermore, to increase the quality and to allow deputies to exercise all their vast and diverse powers to the full extent, compulsory advanced training for deputies should be introduced, mainly in law and economics. In that respect, it should be noted that such a routine is already applied in many European countries. Specifically, '(...) in Austria deputies' training is the domain of the parties and their educational institutions, while in Italy such courses may be arranged by social and private institutions'.² It is also important that '(...) the technique presented by the United Nations Human Settlements Programme (UN-Habitat) is the most interesting of all known programmes and methods of people's representatives' training. It concentrates on workshop activities as a means to master various roles performed by deputies in their practice'.³ Such forms of training may be arranged for local deputies by national or regional institutions of higher education

² V.I. Lysenko, *Vybory v predstavitel'nyye organy v novoy Evrope: politologicheskii opyt i tendentsii 80–90-kh godov*, Moskva 1994, p. 266.

³ A.A. Kocherga, *Munitsipal'no-pravovaya otvetstvennost' glav munitsipal'nykh obrazovaniy i deputatov predstavitel'nykh organov mestnogo samoupravleniya v sub'yektakh Rossiyskoy Federatsii na territorii Yuzhnogo federal'nogo okruga*, Stavropol' 2006, p. 13.

supported by the Office of Cooperation with local authorities under the Presidential Administration of the Republic of Belarus as well as the commission of the House of Representatives and the Council of the Republic of the National Assembly of the Republic of Belarus that deal with the issues of local government and self-government.

The material guarantees granted to a local Council deputy can only be fully enjoyed by one local Council deputy, namely the chairperson, exercising their authority professionally, which is considered an essential feature of the guarantees. This conclusion is based on the fact that, as mentioned above, the said person is a public official whose activities are financed pursuant to the applicable national legislation. Meanwhile, '(...) in England local self-government bodies are entitled to pay monetary remuneration to deputies entrusted by the Council with additional duties as chairpersons of a committee, commission or another advisory body'.⁴ This distinguishing feature of English self-government process has certain advantages and deserves practical evaluation in the Belarusian context.

The right to employment also deserves attention as part of a local deputy's guarantees. As mentioned above, the local Council chairpersons perform their duties professionally. Therefore, after the end of the term of office, taking into account the fact that '(...) many elected officials who closely associate themselves with their previous professional activity pay special attention to the sound base, i.e. a guaranteed opportunity to return to the workplace they left when taking elected positions in local self-government',⁵ the Head of the Council will be provided with the previous workplace (position) within a month; if it is not possible – with another equivalent workplace (position). The local executive and regulatory authority is responsible for the employment and the period of work for the Council is included in the total years of service, the length of work (service) in the profession and the State service period. Thus, the length of the period within which the Head of the Council may apply for a job having completed their term of office is unlimited (the only requirement is for the respective authority to provide him/her with a workplace within a month). However, this solution is inefficient. In view of this, for example, '(...) in Belgium employment guarantees are only preserved for a month after the end of a deputy's term of office'.⁶ Not disregarding the altogether positive experience of European deputies, it should be considered reasonable to introduce a three-month term of the above employment guarantee for the said professional people's representative in the Republic of Belarus. This measure would significantly reduce the scope of corruption in the human resource area. Meanwhile, all other Council deputies perform their duties on a part-time basis, without discontinuing work (service). This releases a Council deputy from their work (service) during the period of Council sessions and their preparation for the term and according to

⁴ V.I. Lysenko, op. cit., p. 251.

⁵ V.I. Vasil'yev, *O polnote statusa munitsipal'nogo vybornogo litsa*, „Zhurnal rossiyskogo prava” 2005, Vol. 12, p. 130.

⁶ V.I. Lysenko, op. cit., p. 251.

the procedure set by the Council. In this case, the Council deputy maintains their average salary for the period of release from work (service), being entitled to the reimbursement of travel expenses at their work (service) location financed by the corresponding local budget. Note that a Council deputy cannot be dismissed at the employer's initiative or expelled from the educational institution without a prior consent of the Council. In view of the above, in order to increase the efficiency of a Council deputy's performance, the person should not be conscripted into the Army or called up for military training during the whole term in office.

Legal guarantees constitute another group of guarantees provided to a local Council deputy. They are embodied in the following provisions. Individuals are held liable if found guilty of violating the Belarusian legislation on a Council deputy's status. Such legal responsibility can be illustrated by the provision of Article 23.26 of the current Code of the Republic of Belarus on Administrative Offences, stating that an official who fails to give a formal reply to a deputy's request or application or consider them in good time or deliberately provides false, incomplete or inaccurate information will be subject to a fine of two to twenty base values. Besides, a Council deputy's honour and dignity are protected in accordance with the procedure laid down in the national legislation. The above regulatory provisions on violations of the Belarusian legislation concerning a Council deputy's status and protection of their honour and dignity should be supplemented with rules introducing legal responsibility for violence or a threat of violence against a Council deputy's family members as well as statutory protection of their honour and dignity immediately related to his / her activity as people's representative. The above measure would significantly enhance the representational potential of local deputies in the Republic of Belarus. Besides, considering legal guarantees granted to a Council deputy, one should mention a statement made by a prominent Russian researcher and lawyer A.A. Zhizhilenko in 1909: 'The need to establish a deputy's discharge from responsibility privilege arises from the very nature of representing people. Only then will people's representatives be at their best and in the position to fully perform their functions, when they know that no power outside the Parliament has the right to blame them for anything they say in the Parliament. Only then will people's representatives do their duty properly, when they feel free, when they account for their activities only to themselves, their conscience, the people who elected them and the House they are members of'.⁷ Although this famous theoretical statement mostly refers to discharge from responsibility for what is said by Members of Parliament rather than local representatives, legal support of activities performed by today's local Council deputies should also be manifested as the people's representative's indemnity for their words, except for, of course, defamation and insult. This measure implements the provision of the Belarusian Fundamental Law on the democratic nature of our State governed by the rule of law and will significantly increase the efficiency of a local deputy's performance. It is important to note that this practice has been applied by local representative

⁷ A.A. Zhizhilenko, *O bezotvetstvennosti narodnykh predstaviteley*, Yaroslavl' 1909, pp. 20–21.

authorities of some European countries for quite a long time, which demonstrates the possibility of its successful introduction in Belarus. Thus, there is a general rule applied in Sweden, Denmark and Germany that denies legal immunity against lawful prosecution for offences but prescribes it against official statements made in the course of Council meetings (the same rule is applied in the Netherlands to 'statements' made by deputies of all local government bodies both in the Council and its committees, while in Italy the 'statement' immunity applies to regional Council members only).⁸

The responsibility of local deputies constitutes an integral part of their legal status as well. The grounds of the above-mentioned person's responsibility are quite diverse. In particular, books on law⁹ state that '(...) a deputy takes on responsibility to the electorate for: (a) timely and comprehensive representation of the electorate and protection of their interests if the latter are not in conflict with the basic principles of the Constitution; (b) implementation of their electoral programme, provided its provisions do not contradict the expressed intention of the voters; (c) exact and accurate performance of their duties prescribed by the deputy status legislation; (d) following the social code of ethics'. A local Council deputy in the Republic of Belarus is currently exposed to the following kinds of responsibility: legal constitutional and political. Criminal proceedings against a Council deputy are initiated in accordance with the Criminal Procedure Code of the Republic of Belarus. Individual measures of negative legal constitutional responsibility borne by a local Council deputy are as follows: early termination of their powers pursuant to a conviction taking force and as well as recalling the people's representative. Although T.G. Morschakova states that '(...) introducing an institution that regulates a deputy's being recalled by the electorate hardly ever helps avoid situations when a deputy with a relative majority vote at the election may be deprived of their mandate by voters who did not vote or voted for other candidates',¹⁰ this way to put the question is unreasoned; other researchers argue that '(...) recalling a deputy is at the same time a kind of direct (immediate) democracy institution. Setting the deputy recall institution increases people's opportunities to form a viable and reputed body of representative... authorities'.¹¹ Pursuant to the current Belarusian legislation, a Council deputy may be recalled if he or she loses the voters' confidence owing to a failure to perform their statutory duties, a violation of the Belarusian legislation or acting in a way discrediting the deputy. Note that the right to initiate the Council deputy recall procedure belongs to the voters of the respective electoral district. It is reasonable to increase the number of entities entitled to initiate the people's representative's recall in the democratic

⁸ V.I. Lysenko, op. cit., p. 257.

⁹ M.A. Krasnov, *Otvetsvennost' v sisteme narodnogo predstavitel'stva*, Moskva 1992, p. 74.

¹⁰ *Osoboye mneniye sud'i Konstitutsionnogo Suda Rossiyskoy Federatsii T.G. Morshchakovoy: [ob otzyve deputata]*, „Rossiyskaya gazeta” 14 yanvarya 1997, p. 5.

¹¹ *Osoboye mneniye sud'i Konstitutsionnogo Suda Rossiyskoy Federatsii N.V. Vitruka: [o svobod. mandate deputatov]*, „Rossiyskaya gazeta” 14 yanvarya 1997, p. 5.

Belarusian state of law by including one more entitled entity, namely the respective local Council. This approach is based on the fact that... we cannot tolerate deputies who fail to attend the sessions, committee meetings or accept the faults at their focal areas¹².¹² Meanwhile, pursuant to the current Belarusian legislation, if a Council deputy regularly fails to attend the Council sessions or the meetings of its bodies he / she is elected to or belongs to by virtue of his / her position without due cause, or violates a deputy's ethical standards, the Council *only informs* the voters of the respective electoral district with no right to discipline the person who disturbs its consistency and efficiency. In view of the above, it is practicable to grant the local Council, as well as the voters, the right to initiate a Council deputy recall process in the case of deliberate repeated failures to perform their statutory duties (being absent from the Council sessions or the meetings of its bodies the deputy is elected to or belongs to by virtue of his / her position without due cause more than once or a flagrant breach of a deputy's ethical standards more than three times).

The dissolution of the Council is a way of collegial negative constitutional responsibility of the Council deputies. It is worth noting here that a Council may be prematurely deprived of its powers by the Council of the Republic of the National Assembly of the Republic of Belarus on the following grounds: (1) repeated or gross violation of the Belarusian legislation by the Council; (2) failure to hold a Council session owing to the deputies' absence without a valid excuse more than three times in a row; (3) failure to form the Council bodies within two months after its first session. In view of the above, special attention should be paid to the first of the above grounds for early termination of the Council's powers, the regulatory wording of which requires clarification. As Professor G.A. Vasilevich rightly notes, '(...) to solve all the issues arising in relation to the dissolution of the local Council of People's Deputies, we need to set the period within which a "repeated" violation is committed (e.g. a year) as well as the period the penalty is applicable after the said violation is revealed (e.g. three months). Besides – and, perhaps, first and foremost – the above penalties should be applied if the violations committed have not been remedied within the term set by the current legislation. Violating the foundations of the constitutional order, including the citizens' rights and freedoms that entailed drastic consequences for them, shall be regarded as gross violation'.¹³ The resolution of the Upper Chamber of the Belarusian Parliament on Council dissolution should be preceded by a compulsory written address to the people's representatives of the said Council on the potential opportunity that the respective collegial negative constitutional responsibility may be applied. It is important to emphasise the fact that the right to claim such responsibility (Council dissolution) may also be granted to the voters of the Council whose powers may be prematurely terminated if the voters express distrust to it by holding a referendum.

As for the positive constitutional responsibility of the Council deputy, its collegial measure is the voluntary dissolution by the Council. Despite the fact that

¹² M.A. Krasnov, op. cit., p. 183.

¹³ G.A. Vasilevich, *Konstitutsiya Respubliki Belarus'*, Minsk 2005, p. 449.

there are no regulatory grounds for such a decision, in this case there should be undue performance of the Council taking place. However, the Russian researcher S.A. Avakian criticises the institution of voluntary dissolution, stating that '(...) voluntary dissolution cannot be justified at any level – the representatives elected by the people shall follow its will in any case'.¹⁴ The above statement is too categorical in solving the issue in question as the representative body – and, consequently, its deputies – unable to duly and efficiently perform their duties cannot operate in the same manner, blocking the way to their prospectively more promising successors.

It must be mentioned that the current Belarusian legislation provides for another case of Council dissolution which does not entail any responsibility due to the lack of its characteristic features: changing the administrative and territorial division in accordance with the procedure set by the legislation of the Republic of Belarus. It should be pointed out that early termination of the Council's powers (dissolution of the Council) involves the termination of the Council deputy's powers on the day of the early termination of the Council's powers (dissolution of the Council).

Please note that all political responsibility measures, closely related to the legal constitutional ones and manifested in the person in question not being elected in the next elections by the voters who live in the respective electoral district, can be applied to a local Council deputy failing to (properly) implement the provisions of their electoral programme.

Another important fact is that the current Belarusian legislation does not stipulate any special disciplinary or financial responsibility measures applicable to just one Council deputy: the chairperson, who performs his / her duties professionally – or civil responsibility measures applied directly to each and every one of the Council deputies causing damage to a legal entity or an individual by unlawful activities in the course of their mandate implementation, which we consider a significant drawback that requires urgent introduction of relevant regulations. In this case, the financial component should prevail in the structure of the special disciplinary responsibility measures applicable to the Council chairperson and the civil responsibility measures applied to the Council deputies should be targeted and specific.

Thus, notwithstanding the still existing problems in both the legislation and the enforcement of laws, the guarantees and responsibilities granted to local Council deputies provide an important legal and political mechanism that secures effective exercise of powers – rights and obligations – of such local officials.

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¹⁴ S.A. Avak'yan, *Konstitutsionnoye pravo Rossii*, t. 2, Moskva 2005, p. 397.

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Abstract:

The existing Belarusian regulatory framework allowing the holding of a local Council deputy responsible is rather debatable. The article presents an assessment of those legal solutions. It discusses a broader issue of guarantees of the responsibility of local Council deputies as an urgent problem to be regulated in the Belarusian legislation. The main conclusion of this article is that the guarantees and responsibilities of local Council deputies, as integral elements of their legal status, provide an important legal and political mechanism that secures effective exercise of powers – rights and obligations – of such local officials.

Keywords: Belarus, local Council, local Council deputy, responsibility.

Gwarancje i odpowiedzialność zastępcy przewodniczącego samorządu lokalnego na Białorusi. Problemy prawne

Streszczenie:

Istniejące na Białorusi rozwiązania prawne umożliwiające pociągnięcie do odpowiedzialności zastępcy przewodniczącego samorządu lokalnego są dyskusyjne. W artykule przedstawiono ocenę tych rozwiązań prawnych. W tekście omówiono szerszy problem gwarancji odpowiedzialności deputowanych rad lokalnych jako jeden z pilnych problemów wymagających uregulowania w prawodawstwie białoruskim. Główne przesłanie artykułu jest takie, że gwarancje i odpowiedzialność zastępcy przewodniczącego samorządu lokalnego, jako integralny element jego statusu prawnego, stanowią ważny mechanizm prawny i polityczny, który zapewni skuteczne wykonywanie uprawnień – praw i obowiązków – przez wspomnianego urzędnika.

Słowa kluczowe: Białoruś, lokalna rada, zastępca przewodniczącego lokalnej rady, odpowiedzialność.