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THE MUNICIPAL COUNCILS' RULEMAKING IN TERMS OF BULGARIA'S MEMBERSHIP IN THE EU

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***Abstract**: Local self-government and local administration are priorities of the democratic development of the Bulgarian society. To realize this control, local authorities have the power to decide, in a generally binding way, every local issue that is not within the jurisdiction of another state body. This is the understanding on behalf of the legislator when awarding the rulemaking competence of municipal councils. Within the context of the conducted reforms in the Republic of Bulgaria, particularly administrative and judicial reform, the analysis of the current state and prospects of development of the rulemaking functions of local self-governments attract special attention. The role of local authorities in the state and society points to the effectiveness and legality of their rulemaking.*

Keywords: local self-government, municipal councils, normative administrative acts

1. Introduction.

Pursuant to Art. 2 para. 1 of the Constitution of the Republic of Bulgaria, the Republic of Bulgaria is a unitary state with local self-government. Local self-government, according to Art. 17, para. 1 of the Local Self-Government and Local Administration Act (LSGLAA), is expressed "in the right and the possibility of citizens and their elected bodies to decide independently on all matters of local importance, which the law has provided for their competence" in certain areas of public life.

Those constitutional and statutory provisions correspond to the European Charter of Local Self-Government (ECLSG), under whose provisions "Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population". It can be concluded that the Bulgarian municipal self-government is a manifestation of the principle of decentralisation of power. According to the Constitutional Court of the Republic of Bulgaria "The Constitution of the Republic of Bulgaria regulates local self-government as a form of decentralisation of state power in order to enhance the role of self-governing communities in addressing issues of local importance" [1].

Local self-government authorities in the Republic of Bulgaria are municipal councils. Their activity finds its legal expression in a number of legal acts that can be classified into many groups according to various ways of grouping them. According to their legal properties, one of the types of acts issued by the municipal councils is a normative one - rules, regulations and instructions. These are acts which regulate public relations

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arising in the process of the organisation and functioning of the local self-government. They have limited territorial effect.

In the Bulgarian legal doctrine the theory of the nature of normative administrative acts as administrative in a formal and material sense is supported [2]. Some of the authors proceed from the understanding that the law is a primary general provision and the administrative act of a normative nature - one derivative from the general provision act, others - from the difference in their power level, the nature of the authorities from which they originate, and from the theory of law as a formal act (act of a legislative authority). The dominant opinion is that rulemaking of local self-government authorities is not a "legislative function" in a formal and material sense, but a part of the overall enforcement activity of administrative bodies. The law is an expression of the primary, sovereign, originary power of the state - la volonte 'ge'ne'rale, which is not contingent on a higher ground or approval, but it is the beginning of any legal basis or legal affirmation, and has no normatively defined subject content. The regulatory normative act, on the contrary, is not an expression of that authority - it is an expression of an exercised right that is a normative derivative, which definitely has more or less statutory subject content.

Under the current Constitution of the Republic of Bulgaria since 1991 local self-government authorities are recognised only the authority for issuing regulatory normative acts that do not have the force of law, although they are equally mandatory to be implemented. They are not the law in a formal sense, because they do not come from a legislative body and are not the law in a material sense, because they do not create new, primary legal regulations.

Rulemaking of municipal councils is determined by the Bulgarian legal administrative theory as secondary, meaning the settlement of the matter, which is legally regulated, is specified for the second time through the issue of a regulatory normative act. Thus the definition of the activity of issuing regulatory normative acts starts from the basic function of their norms to grant a further feature of the general statutory rule in a way to facilitate its implementation. The normative administrative act does not specify the primary factual constituents as legal facts, which primarily connects the occurrence of rights and obligations, nor does it alter the initially created rights and obligations. It only adds gaps in defined by the statutory rule factual constituents as well as rights and obligations. In this sense, it is an administrative act on the implementation of the law.

2. Rules of municipal councils.

According to Art. 21, para. 3 of LSGLAA the municipal council establishes its internal organisation and procedures of dealing with rules.

The provision of Art. 7, para. 1 of LNA associates the rules for the organization of the activity of local authorities with regulatory normative acts. The rule is an act of a normative nature due to the character of its internal content. It reveals the existence of legal rules of conduct, some of which have certain characteristics, for example, they do not contain legal sanctions, but they are not a reason to exclude their normative nature. They are not the reason for the rules to be attached to the non-normative administrative acts and considerations that they regulate internal relations of the respective municipal council. In fact, a number of provisions of applicable rules of municipal councils are addressed to a wide range of legal entities and their scope of action is limited to their internal activities. Such are the provisions concerning the legal status of the various committees, provisions that create even the rights and duties of citizens and their organisations. But though rules (law enforcement and organisation)

are regulatory normative acts, they are administrative acts in a formal and in a material sense. The rule does not create a new primary legislation. Even when there is an issue regarding the application of a law or part thereof, the rules will not have "the power of law". On the one hand, it is a statement of an administrative authority. On the other hand, it contains secondary rules adopted on the basis, within and pursuant to an existing and acting law. The law is an expression of the primary, sovereign power in the state while the rule is not an expression of that authority – they are an exercised normative recognised right that has a normative subject content.

The doctrine distinguishes between two types of rules – those that elaborate the legal matters, and others - governing inter-professional matters.

Although the provision of Art. 21, para. 2 of LSGLAA generally talks about rules as acts of municipal councils, which gives reason to carve them into two groups - the rules under art. 21, para. 3 of LSGLAA and those that the municipal council adopts pursuant to Art. 21, para. 2 regarding issues of local importance [3]; systematic interpretation of those two provisions gives rise to the conclusion that with the provisions of Art. 21, para. 3 of LSGLAA the legislator has restricted the matters that municipal councils can govern with rules. They regulate issues related to the organisation and functioning of municipal councils and their committees, municipal administration, interaction with other bodies, the association of municipalities and other organisational matters referred to in LSGLAA. They govern a matter that relates to the content of the work of municipal councils - rulemaking, inspection and so on. These features of the subject matter do not allow a shared opinion about the possibility of municipal councils to solve all issues of local importance by issuing rules within the powers of art. 21, para. 1 of LSGLAA. The subject of legal regulation through rules is strictly defined in Art. 7, para. 1 of LNA – for the implementation of the law in its entirety, for the organisation of state and local bodies or for the internal order of their activity. Law enforcement activity of the law in its entirety belongs to the central executive power, which is why municipal councils cannot accept other rules, but only those specified in Art. 21, para. 3 of LSGLAA, spatial for their activity and some of the bodies immediately formed by them. [4] So our constitutional theory defines the rule as a legal act with organisational purpose [5].

3. Regulations of municipal councils.

By using regulations municipal councils govern a range of public relations. They are issued for the implementation of certain provisions or subdivisions of a normative act of a higher level (Art. 7, para. 2 of LNA) or for the regulation of unsettled by normative acts social relations of a greater level and of local importance (Art. 8 of LNA) [6].

The regulations of the municipal councils of Art. 7, para. 2 of LNA are regulatory normative acts for the implementation of certain provisions or subdivisions of a normative act of a higher level and therefore secondary, constituting interference in public relations on behalf of the state. In this case the municipal council acts functionally like a typical administrative authority bound by the orders and instructions of higher bodies. What is specific about these regulations of the municipal council is that they are issued on the basis of the delegation of this power with normative acts of state authorities and any contained therein provision may be tacitly repealed by a normative act of another state body.

Regulations under Art. 8 of LNA are normative acts governing primary susceptible to permanent regulation public relations of local importance and are a manifestation of the local self-government. Through these regulations municipal

councils elaborate the legislation, without being tied to a particular law and without following a predefined content (that of the law). In this sense, they build on the regulation, without being able to contradict it. Therefore, the regulations of this type are primary rather than secondary normative acts that have their own subject of legal regulation. In formal terms, in view of the author, these regulations are administrative acts, but according to their domestic content, in material terms, they are tantamount to the law. What is more, the "primary" regulations may result both as a specific empowerment, and in exercising the powers conferred on municipal councils to address issues of local importance in the areas of their core activity of Art. 17 LSGLAA, including the means of issuing normative administrative acts [7]. This understanding is closer to the operational nature of the local self-government under the European Charter of Local Self-Government [8], in which the power of the municipal council to settle outstanding issues of local importance is a reflection of the direct contact with the everyday problems of the population.

Municipal councils' right to regulate primary public relations of local significance reflects the actual ability of local authorities to carry out self-management within the territorial communities (Art. 3, para. 1 of ECLSG). However, it should not be understood as absolute. The "autonomous" feature of local self-government authorities has a relative character, as, in all cases, these bodies are bound by legal provisions. This autonomy is limited by two things. On the one hand - material, in accordance with Art. 8 of LNA there cannot be settled a matter that is governed by legislation and is not prescribed by the law. Regulations under Art. 8 of LNA cannot be issued to regulate social relations of particular importance, whose normative regulation refers to the Constitution, to the exclusive competence of the National Assembly or for which the Constitution explicitly provides the issuance of laws. On the other hand - formal-legal - this right can only exist within the competence of local self-government in the listed in Art. 17 of LSGLAA specific areas [9]: municipal property, municipal enterprises, municipal finance, taxes and fees, municipal administration, planning and development of the municipality and the settlements there, education, health care, culture, public works and utilities, social services, environmental protection and rational use of natural resources, maintenance and preservation of cultural, historical and architectural monuments, development of sport, recreation and tourism. Therefore the jurisdiction of municipal councils in issuing significant legal acts is limited by two aspects: material - in accordance with Art. 8 of LNA municipal councils may regulate social relations that are not essential or do not defy durable regulation and formal-legal that can only regulate social relations in the field of guidelines for their activity [10]. This is understandable, because the opposite thing can lead to the transformation of the local self-government into autonomy, which is typical of federal state entities because the municipality and the state share sovereignty. Self-governance in the municipality is delegated.

4. Instructions of municipal councils.

The provision of Art. 21, para. 2 of LSGLAA explicitly indicates instructions as one of the legal acts of municipal councils. They are regulatory normative acts addressed to the authorities or services of the municipal councils, which give instructions on the application of the acts issued by the Council [11].

The legal nature of the instructions is subject to theoretical discussions, as opinions on their normative character are divided. Within the context of LNA it is to be accepted that the provision of its Art. 7, para. 3 lays down instructions as a regulatory normative act.

Depending on what act of the municipal council they refer to, the instructions can be divided into two types. One is related to the application of the normative act by governing the way for its implementation or the matter of the enforceable legal matter. Others are not associated with the use of a normative act and they settle only an official matter.

The instruction of the first type is an internal official act, but given its domestic content it is a regulatory normative act. These instructions normally lay down rules of conduct binding for the subordinate bodies and officials and in some cases for citizens. They lay down rules for carrying out certain actions and have a long-term use.

The instruction of the second type is a completely internal official act that does not govern a publicly mandatory matter and it is not a regulatory normative act.

5. Conclusion.

Rulemaking is the main form of activity of municipal councils, but one could not talk about a real legislative power on the ground. In its rulemaking local self-government authorities are not autonomous. They are limited by and within the law.

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