

THE PRACTICAL SETTLEMENT OF ISSUES FOR LEGAL REGULATION OF LOCAL SELF-GOVERNMENT OF THE REPUBLIC OF LITHUANIA IN CONTEXT OF ENSURING POLITICAL MINORITY (OPPOSITION) RIGHTS

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Abstract. Taking into account the problematic aspects of the legal regulation of local self-government of the Republic of Lithuania identified by the author's previous researches (<https://orcid.org/0000-0002-7020-5314>), related to the realization and protection of the rights provided for the minority (opposition) of the municipal council in the Constitution of the Republic of Lithuania, the Law on Local Self-Government of the Republic of Lithuania, the Law on Administrative Supervision of Municipalities of the Republic of Lithuania, the Law on Temporary Direct Management in the Municipality of the Republic of Lithuania and other legal acts – this paper will present innovative solutions to the identified problems. In order for the results of the empirical study to be of benefit to the improvement of the national legal framework and to maximize practical applicability, the aim of this paper is to submit as specific proposals as possible to the legislator, which would ensure the protection of the rights of local government political minorities (oppositions) at the local government level of the Republic of Lithuania.

Keywords: local self-government; political minorities rights; opposition

INTRODUCTION

The council of each municipality approves the regulations of the activities of the municipal council - the main internal legal act of the municipal council, for the term of office, which, in accordance with the valid Law on Local Self-Government of the Republic of Lithuania, establishes the procedure and forms of activities of the municipal council, the mayor, the deputy mayor, council committees, commissions and individual council members. The procedure for the accountability of the mayor, the director of the municipal administration, the municipal ombudsman to the council and the population, as well as the council and the individual members of the council to the population and the main forms and methods of communication with the population are also established.

In order to guarantee political democracy - the freedom of the opposition, Articles 14 and 15 of the Law on Local Self-Government of the Republic of Lithuania provide for exclusive minority (opposition) rights (Bakaveckas, 2004). The municipal council shall form an Ethics Commission, an Anti-Corruption Commission and a Control Committee for the term of office, the chairpersons of which shall be nominated by the legislature on the proposal of the minority (opposition) of the municipal council in accordance with the regulation.

Part 19 of Article 3 of the Law on Local Self - Government of the Republic of Lithuania defines the minority (opposition) of the municipal council as “A faction of the members of the municipal council and/or a group of members of the municipal council, at the first or next meeting of the municipal council, by a public statement served on the chairman of the meeting, declaring that they are not nominating their candidate for the formation of the municipal executive body, have not delegated their candidates for the position of Deputy Mayor and have submitted their activities.” As shown in the author's previous researches (Kaklys, 2019-2021) - such wording provided for in the Law on Local Self-Government of the Republic of Lithuania, under certain circumstances (having an absolute majority in the council), provides a practical opportunity for the majority of the municipal council to eliminate unfavourable members of the opposition from the statutory minority (opposition) chairpersons of the council (Ethics, Anti-Corruption Committees and Control Committee), creating a self-loyal “majority opposition” that is identical both ideologically and in decision-making for the majority.

Contrary to the Statute of the Seimas of the Republic of Lithuania, The Law on Local Self-Government of the Republic of Lithuania does not impose any more requirements for declaring a minority of the council (opposition) than provided for in Part 19 of Article 3 of the Law on Local Self-Government of the Republic of Lithuania. It follows that any group or faction of the members of the council (i.e. at least three members of the council) may declare itself an opposition group at any time. An example could be the extraordinary situation in Druskininkai municipality, when all positions guaranteed by law to the opposition are held by the representatives of the majority.

It is clear that in situations where the majority of the municipal council *de facto* holds both managerial positions (decision-making and implementation) and opposition positions (control and supervision) – there is a real threat to the democratic order in such municipalities. The imperfection of legal acts creates preconditions for political groups to abuse the right of self-government guaranteed by the Constitution of the Republic of Lithuania.

In this case, the intervention of a higher authority, i.e. the entity performing the administrative supervision of municipalities (representative of the Government of the Republic of Lithuania) is necessary.

The Law on Administrative Supervision of Municipalities of the Republic of Lithuania establishes the powers of the representatives of the Government of the Republic of Lithuania performing the administrative supervision of the activities of municipalities provided for in the Constitution of the Republic of Lithuania. There are three forms of implementation of the activities of a representative of the Government:

- 1) Reasoned submission;
- 2) Written request;
- 3) Going to court.

A reasoned submission is written when municipal institutions adopt legal acts that are in conflict with the Constitution, laws or decisions of the Government; a written request is written when the requirements of the adopted law or the decision of the Government are not implemented; going to court when laws are not implemented, normative legal acts that are in conflict with the Constitution, laws or decisions of the Government are not repealed or the public interest is violated (Bakaveckas, 2004).

The research formulates *a problematic situation* when the insufficient guarantee of the minority (opposition) rights of the municipal council causes violations of the rule of law and the development of autocratic governance tendencies in the local government system of the Republic of Lithuania. Although democratic institutions of local self-government are formally enshrined in Lithuanian legislation, however, different demographic situation, different emerging municipal management traditions, different work regulations of municipal councils, poor control of decisions and administrative actions of municipal councils, incorrect treatment and application of statutory legal norms creates conditions for the formation of situations where democratic values, the principles of law declared by international organizations and the protection of civil rights and freedoms in the fields of activity of municipalities are endangered.

In view of the relevant legislation listed above and the circumstances discussed, this scientific research is divided into three subsections, which discuss, in detail, the totality of national legal acts that significantly affect the protection of the rights of local government political minorities (oppositions) in Lithuania, and specifically:

- 1) Control Committee: its importance in ensuring the rights of the opposition of the municipal council and the peculiarities of its formation;
- 2) Ethics Commission and Anti-Corruption Commission: their importance in ensuring the rights of the opposition of the municipal council and the peculiarities of its formation;
- 3) The role of the representative of the Government of the Republic of Lithuania in the aspect of ensuring the minority rights of the municipal council.

The object of the research. The object of the research is the influence of social-political and social-administrative factors on the process of legal regulation of local self-government in forming the standard of protection of the minority (opposition) rights of the municipal council in the Lithuanian local self-government system.

Taking into account the topic, goals and objectives of the paper, both: empirical and theoretical *methods of the research* in the social sciences were chosen: the method of document analysis; Systematic, comparative and logical analysis; the observation method; the generalization method was used to summarize the collected and analyzed research data and to formulate conclusions and suggestions.

In this research paper it was chosen to formulate a *purposeful* (Charles, 1998) *hypothesis*, aimed at proving that the protection of the minority (opposition) rights of municipal councils will be effectively ensured by the comprehensive improvement of the existing legal institution of local government in the Republic of Lithuania, the processes of autocratic governance will also be avoided and an effective “checks and balances” mechanism will be created at the level of local government in Lithuania.

The aim of the research is to develop the protection of the minority (opposition) rights of municipal councils as a complementary mechanism of local self-government (regulation) by ensuring the balanced functioning of the system of “checks and balances” between the majority and the minority of municipal councils in municipalities.

In order to achieve the set aim, the following objectives are to be addressed in the research:

1) *To analyze* the effectiveness of the local government legal acts of the Republic of Lithuania regulating the rights of the minority (opposition) of municipal councils to participate in the management of public affairs on equal terms together with the majority of the municipal council;

2) Based on empirical research data *to determine* (identify) gaps in legal regulation and/or legal uncertainty, which limits the possibilities of implementation and protection of minority (opposition) rights of municipal councils and causes uncertainty of the system of checks and balances between the majority and minority of municipal councils in local government of the Republic of Lithuania.

3) *To draw some research-based solutions* for issues identified related to these analyzed questions of better protection of minority rights of municipal council for Lithuanian legislator in order to improve national regulatory mechanism.

CONTROL COMMITTEE: ITS IMOPORTANCE IN ENSURING THE RIGHTS OF THE OPPOSITION OF THE MUNICIPAL COUNCIL AND THE PECULIARITIES OF ITS FORMATION

The importance of the control committee is noted by the legislator:

1) Part 2 of Article 14 of the Law on Local Self-Government of the Republic of Lithuania, which imperatively states that a Control Committee *must* be formed in each municipality;

2) The exclusive competence of the municipal council is provided for in Item 6 of Part 2 of Article 16 of the Law on Local Self-Government of the Republic of Lithuania – “formation of municipal council committees, commissions, other structures necessary for the organization of the work of the municipality and other commissions provided for by law and approval of their provisions”;

3) The powers of the Control Committee are determined by the municipal council taking into account Part 4 of Article 14 of the Law on Local Self-Government of the Republic of Lithuania; Part 4 of Article 14 of the Law on Local Self-Government of the Republic of Lithuania provides an exhaustive list of the functions of the Control Committee, enabling the minority (opposition) of the Council to function effectively.

Peculiarities of formation of a control committee: The Law on Local Self-Government of the Republic of Lithuania provides for an exclusive procedure for the formation of the Control Committee, regardless of the proportionality of the number of members of the council factions or council groups. It should be noted that Part 2 of Article 14 of the Law on Local Self-Government enshrines the principle of equal representation of all groups and factions of the council (regardless of whether it is a majority or a minority). The Chamber of Judges of the Supreme Administrative Court of Lithuania, interpreting the principle of proportional representation of the majority and the minority enshrined in Part 2 of Article 14 of the Law on Local Self-Government, has noted that that its main purpose is to safeguard the interests of a minority in the council (case no. A-552-718/2014). The Law on Local Self-Government of the Republic of Lithuania stipulates that “The Control Committee includes an *equal* number of delegated representatives of all factions of municipal council members and groups of municipal council members, if it consists of at least 3 members of the municipal council”. At first sight, only in theory can the above-mentioned legal norm give the first impression that the above-mentioned legal norm establishes counterweights to the minority of the council and from the point of view of democracy ensures the freedom of the opposition to perform its essentially basic function – in opposition, to control the validity and transparency of most decisions taken. However, it should be borne in mind that without the approval of the majority of the Board, the Control Committee cannot be definitively formed.

Moreover, in Part 3 of Article 14 of the Law on Local Self-Government of the Republic of Lithuania, the legislator established the right of the opposition to nominate a candidate for the chairman of the Control Committee, and the Kaunas Regional Administrative Court has clarified that “The activities of municipalities and their institutions, including the Council, fall within the scope of public law, and the rules of public law are mandatory and enforceable for all participants in the legal relationship, so only the action specified in the legislation is possible. <...> In this case, the legislator grants the option to nominate one or another candidate to the Control Committee to factions and groups of members of the municipal council, and to nominate the opposition as the chairman of the Control Committee to the opposition, whereas, in the meantime, the Council, as an institution and an individual member of the Council, is required (obligated) to nominate candidates.” (case no. eI-1676-554/2016). The same interpretation was upheld in this part by the Supreme Administrative Court of Lithuania (case no. I-7-822/2018).

The Supreme Administrative Court of Lithuania has also noted that factions of the municipal council (both majority and minority), as collective associations of members of the municipal council seeking to

implement the political orientation of their members, are free to submit their desired candidacies to committees or commissions, to which its representatives may be delegated *ex lege* (case no. eAS-1232-602/2015).

Moreover, the presence of a functional opposition in every municipal council is not only a normative phenomenon, but also a necessary expression of democracy, so in the presence of legal regulation that does not guarantee the rights and functioning of the political opposition, there are potential threats to democratic and constitutional values. In order to curb the possible arbitrariness of local government and maintain the constitutional model of government, it is necessary to properly ensure the implementation of the rights of the political minority (opposition) provided by law. The possible oppression of the opposition by the parliamentary majority (ignoring the legal principle of equality) has been identified as one of the difficulties facing modern democracy in applying the majority principle (Beinoravičius, 2007).

The Constitutional Court of the Republic of Lithuania (case no. 10 and case no. 3/99) has also emphasized the minimum requirements for the protection of the political opposition and the fact that the recognition of the parliamentary opposition is a necessary element of a pluralistic democracy. In the jurisprudence of the Constitutional Court of the Republic of Lithuania, the recognition of the parliamentary opposition and the obligation to defend it to ensure pluralist democracy are to be noted as one of the main essential elements of democracy. The term pluralist democracy in the current jurisprudence of the Constitutional Court of the Republic of Lithuania is not only related to the diversity of opinions, but has been mentioned more broadly: in the political, ideological and cultural context (Ragauskas, 2016).

Systematic assessment of the above-mentioned legal acts and relevant case law which provide for the rights of theoretical minorities (opposition), it could be argued that there is a formal system of balances between the majority and the minority of the council. However, it should be noted, that the legislature has left the need for a majority approval for each candidature proposed by a group or group of members of the council. It is clear that a minority opposing the majority of the council loses the opportunity to assert its proposed candidacy without the consent of the political opponents (the majority of the council), which, according to established case law, has a duty to approve the majority. Such a gap in legal regulation not only creates a conflicting situation between the principle of free mandate and performance of duties of a member of a municipal council, but also leaves a legal uncertainty in the system of checks and balances between the majority and the minority of the council. Such uncertainty makes it a practical possibility for the majority of the board to exclude disadvantaged minority members from the composition of the control committee, therefore, it is considered that the requirement of the legislator to approve the candidacy proposed by the opposition by the majority of the municipal council is excessive in terms of ensuring the rights of the minority.

The current problem of legal regulation is solvable by eliminating the need for delegated representatives of groups of council members or factions to form a member of the control committee, leaving them free to decide which member is most suitable to hold statutory positions in the control committee. In this case, the principle of separation of powers could also be followed, where different functions are delegated to different authorities, prohibiting the acquisition of foreign functions.

Threat of the introduction of temporary Direct Management in the municipality without the establishment of a Control Committee: Article 123 of the Constitution of the Republic of Lithuania and Item 3 of Part 3 of Article 2 of the Law on Temporary Direct Management of the Municipality of the Republic of Lithuania provide that direct management may be temporarily introduced in the territory of the municipality if the municipal council does not form a Control Committee within the time period established by the Law on Local Self-Government of the Republic of Lithuania.

Part 6 of Article 11 of the Law on Local Self-Government of the Republic of Lithuania provides, that within two months from the date of convening the first meeting of the newly elected municipal council or from the date of taking the oath of office of the directly elected mayor, committees of the municipal council *must be* formed and the chairmen of these committees appointed.

Part 2 of Article 14 of the Law on Local Self-Government of the Republic of Lithuania provides that a Control Committee must be set up in each municipality. The same legal act stipulates that the Control Committee includes an equal number of delegated representatives of all factions of municipal council members and groups of municipal council members, if it consists of at least three members of the municipal council.

Assessing both linguistically and systematically, this provision of the law presupposes that the Control Committee is considered to be formed from the moment when delegated representatives of all factions of municipal council members and groups of municipal council members (consisting of at least three municipal council members) are appointed to the Control Committee.

After a wide analysis of the application of the above-mentioned legal norms in practice, it should be noted, that in situations when the municipal council did not form the Control Committee and did not appoint

the chairman of the Control Committee within the term provided by law, temporary direct management in the territory of the municipality during the history of independent Lithuania was not introduced. Moreover, the Government of the Republic of Lithuania takes the position that the introduction of temporary direct management in the territory of the municipality, in which the Control Committee is not established as provided for in Part 6 of Article 11 and Parts 2 and 3 of Article 14 of the Law on Local Self-Government, would not be a proportionate measure. Again, an example could be the extraordinary situation in Druskininkai municipality, when the Control Committee was not formed during the 2015-2019 term of the Municipal Council (without the approval of the candidates proposed by the majority) for more than two years (case no. eI-24-822/2018).

ETHICS AND ANTI-CORRUPTION COMMISSIONS: THEIR IMPORTANCE IN ENSURING THE RIGHTS OF THE OPPOSITION OF THE MUNICIPAL COUNCIL AND THE PECULIARITIES OF ITS FORMATION

Peculiarities of formation of ethics and anti-corruption commissions: Part 1 of Article 15 of the Law on Local Self-Government provides that the Municipal Council form an Ethics Commission and an Anti-Corruption Commission for the term of office. These commissions are formed in accordance with the principle of proportional representation of the majority and minority of the municipal council. The composition of the commissions, maintaining the principle of proportional representation of the majority and minority of the municipal council, must be changed no later than within 2 months after the change of the majority and minority of the municipal council. The chairman of the Ethics Commission and the Anti-Corruption Commission is delegated from the members of these commissions - members of the municipal council - by the opposition of the municipal council in writing, signed by more than half of all members of the municipal council opposition and served on the chairman of the municipal council. The chairmen deputies of these commissions are appointed by the municipal council from among the members of these commissions - members of the municipal council - on the proposal of the mayor. If the opposition of the municipal council does not delegate the chairmen of the Ethics Commission and the Anti-Corruption Commission within two months from the date of convening the first meeting of the newly elected municipal council or from the date of taking the oath of office of the directly elected mayor or delegates members of the municipal council who do not meet the requirements established in Part 1 of Article 15 of the Law on Local Self-Government of the Republic of Lithuania, or if the opposition of the municipal council has not been announced, the chairpersons of the ethics commission and the anti-corruption commission shall be appointed by the municipal council on the proposal of the mayor from among the members of these commissions - members of the municipal council. The duties of the executive secretaries of the commissions shall be performed by civil servants appointed by the director of the municipal administration, and these functions shall be entered in their job description.

The Supreme Administrative Court of Lithuania has stated in its case law, that the powers of the minority (opposition) of the municipal council are also reflected in the formation of the Ethics Commission regulated by Article 15 of the Law on Local Self-Government - although it is not *ex lege* that the Ethics Commission must include members of all factions or groups of the municipal council, a minority of the municipal council (opposition) has the exclusive right to nominate the chairman of the Ethics Commission in accordance with the said Article (case no. eAS-1232-602/2015). However, the realization of this right of the minority (opposition) of the municipal council is not discussed in more detail in the law.

It is important to note that the Supreme Administrative Court of Lithuania stated that the appointment of the Chairmen of Ethics and Anti-Corruption from the composition of the commissions already approved by the Municipal Council is not in conflict with the Law on Local Self-Government of the Republic of Lithuania (case no. eA-53-415/2018). This means that when delegating its members to commissions, the opposition should anticipate which of them will be nominated as chairman.

Insufficient legal certainty in the procedure for appointing the chairmen of Ethics and Anti-Corruption, the implementation of the minority (opposition) rights of the municipal council may be complicated. As mentioned above, there are cases where there are several minorities (opposition) in the municipal council, including a fictitious opposition created by the majority with the aim of eliminating unfavourable political opponents in the opposition from their statutory positions. This problem has already been noticed by the legislators, who registered the draft amendment (No. I-533) to the Law on Local Self-Government of the Republic of Lithuania on 02.11.2018, which provides for the nomination of the chairmen of Ethics and Anti-Corruption by a written proposal of a minority (opposition) signed by more than half of all members of the opposition of the municipal council. However, the law does not separately establish an obligation for the municipal council to approve the candidacy proposed by the minority (opposition), this

follows only from the imperative nature of the law and the jurisprudence formed by the courts, but does not work in practice because the administration of justice, i.e. litigation takes too long.

The importance of the ethics commission in the realization of the rights of the opposition: Part 3 of Article 15 of the Law on Local Self-Government of the Republic of Lithuania provides an exhaustive list of the functions of the Ethics Commission, enabling the minority (opposition) of the Council to function effectively, and specifically the Ethics Commission:

1) Supervises the compliance of the members of the municipal council with the requirements of this Law, the Code of Conduct for State Politicians, the Law on the Coordination of Public and Private Interests, regulations and other legal acts regulating the activities and conduct of the members of the municipal council;

2) Analyses the reasons for the non-participation of the members of the municipal council in the meetings of the municipal council, committees and commissions and the failure to perform the duties established by this Law;

3) Investigates and makes decisions regarding the compliance of the activities of the members of the municipal council with the provisions of this Law, the Code of Conduct for State Politicians, the Law on the Coordination of Public and Private Interests, regulations and other legal acts regulating the activities and behaviour of members of the municipal council;

4) Examines the proposals and remarks of the members of the municipal community, state institutions, communities of residential areas or community organizations regarding the transparency of the activities of the members of the municipal council;

5) Submits to the Central Electoral Commission a proposal regarding the termination of the term of office of a member of the municipal council if this member of the council has missed three consecutive meetings of the municipal council without a justifiable reason;

6) The members of the council, the mayor, on their own initiative, make recommendations to the members of the council on the implementation of the provisions of the Law on the Coordination of Public and Private Interests.

The importance of the Anti-Corruption commission in realizing the rights of the opposition: Part 4 of Article 15 of the Law on Local Self-Government of the Republic of Lithuania contains an exhaustive list of the functions of the Anti-Corruption Commission, which enables the minority (opposition) of the Council to function effectively, and specifically the Anti-Corruption Commission:

1) In accordance with the procedure established by the regulation, participates in the anti-corruption assessment of draft legal acts prepared by municipal institutions on the initiative of the municipal council or the mayor;

2) Participates in the preparation of anti-corruption programs and submits conclusions to the municipal council on these programs and their implementation;

3) Examines the proposals and remarks of the members of the municipal community, state institutions, communities of residential areas or community organizations regarding the implementation of anti-corruption measures;

4) Informs the public about its activities, measures taken to prevent corruption in the municipality, as well as about the results of the fight against corruption;

5) For the purposes of preventing corruption, it analyses public procurements carried out by the municipal administration, budgetary and public institutions owned by the municipality, and enterprises managed by the municipality, and informs the municipal council and the competent authorities or bodies about possible cases of corruption. The chairman and members of the Anti-Corruption Commission have the right to access all information on the procurements under analysis;

6) Performs other functions established in other legal acts related to the state policy implemented in the municipality in the field of corruption prevention.

In addition, it should be noted that the importance of the Ethics Commission and the Anti-Corruption Commission in realizing the rights of the opposition manifests itself not only within the competencies provided for in Part 3 of Article 15 and Part 4 of Article 15 of the Law on Local Self-Government of the Republic of Lithuania, but also through procedural issues. According to the established practice and the regulations of the commissions approved by the municipal councils, the municipal commissions are represented by the chairman, which means that it is up to the sole chairman of the commission to appeal (or not appeal) against decisions taken by other entities on behalf of the commission.

Moreover, Part 10 of Article 15 of the Law on Local Self-Government of the Republic of Lithuania enshrines the right of both the chairman of the ethics commission and the anti-corruption commission to receive all information from state or municipal institutions, establishments and state or municipal enterprises.

Thus, by ensuring proper legal regulation and ensuring that the representatives of the ethics commissions and anti-corruption commissions are not artificially appointed by the majority, this would solve another practical problem, when municipal administrations formed on the basis of political trust and subordination, maliciously, do not provide information to members of the opposition.

THE ROLE OF THE REPRESENTATIVE OF THE LITHUANIAN GOVERNMENT IN CONTEXT OF ENSURING POLITICAL MINORITY (OPPOSITION) RIGHTS OF THE MUNICIPAL COUNCIL

The constitutional principle of a state under the rule of law includes many different interrelated imperatives, including the requirement of a hierarchy of legal acts, from which the principle of the supremacy of laws over by-laws derives (case no. 21/2008). This means that the constitutional principle does not allow the establishment of such legal regulation by by-laws that would compete with the one provided by law. By-laws may not change the law or create new legal norms of a general nature that would compete with each other, as this would violate the supremacy of laws over the by-laws enshrined in the Constitution of the Republic of Lithuania. The norms of the law must be implemented by a by-law, therefore it must be adopted on the basis of the law. A by-law is an act of application of the norms of law, regardless of whether the act is of single application or of permanent validity (case no. 43/01; case no. 51/01-26/02-19/03-22/03-26/03-27/03 and case no. 23/2003).

In accordance with the provisions of Parts two and three of Article 123 of the Constitution of the Republic of Lithuania and the Law on Administrative Supervision of Municipalities of the Republic of Lithuania, administrative supervision of municipalities is performed (i.e. supervises whether municipalities comply with the Constitution and laws of the Republic of Lithuania or implement Government decisions) by state officials appointed by the Government (Bakaveckas, 2004). The regulations of the activities of the municipal council are approved by the municipal council, the representatives elected by the local community (by a majority vote of the council), therefore, by regulating the legal norms enshrined in the Law on Local Self-Government of the Republic of Lithuania, there is a possibility to restrict the rights of political competitors - the minority of the council, which oppose the majority. Representatives of the Government (must perform) play an important role in this place, supervising whether the legal acts of the municipal collegial and non-collegial administrative entities do not contradict the laws, Government resolutions and other legal acts adopted by central state administrative entities related to law enforcement.

The principle of independence of municipalities is not absolute and it does not release the entity with the rights and duties of public administration (municipal council) from the obligation to comply with all the principles of public law, including the principle of legality. The municipal council, in implementing the functions assigned to it, has no discretion to establish legal regulation that does not comply with the provisions of higher legal acts (case no. A-737-552/2015).

It should be noted that a member of the municipal council, according to the law, does not have the right to individually defend the interests of the municipality in court and at the same time challenge the decisions of the municipal council as a collegial body. The same interpretation is consistently followed by the Supreme Administrative Court of Lithuania, which according to Part 1 of Article 15 of the Law on Administrative Proceedings of the Republic of Lithuania forms a uniform practice of administrative courts in the interpretation and application of laws and other legal acts (case no. A7-282/2004; case no. A4-535/2004; case no. AS822-339/2010; case no. AS-492-576/2011 and case no. AS-556-26/2014).

In the cases mentioned above the Supreme Administrative Court of Lithuania has repeatedly stated, that the Law on Local Self-Government of the Republic of Lithuania, which establishes the exhaustive list of rights and obligations of a member of a municipal council, does not provide for the right or obligation to apply to a court for annulment of decisions adopted by the municipal council. All the more so as according to the Law on Administrative Proceedings of the Republic of Lithuania, a member of a municipal council is not granted such a procedural right.

Thus, the control of the legality of legal acts adopted by municipal administrative entities, according to the legislator, is assigned only to the competence of the representative of the Government (case no. A662-1429/2010). The representative of the Government, while supervising the observance of the Constitution and laws by the municipalities or the implementation of the decisions of the Government, proposes (must propose) to repeal or amend the illegal legal acts of the municipal administrative entities, and when the subjects of municipal administration do not agree to repeal or amend the disputed legal act, refuse to implement the law or implement the decision of the Government, they apply (must apply) to the court.

The powers of the representative of the Government of the Republic of Lithuania are defined in Article 7 of the Law on Administrative Supervision of Municipalities of the Republic of Lithuania. A representative of the Government of the Republic of Lithuania has a duty to supervise whether municipalities comply with the Constitution and laws or implement Government resolutions:

1) To check whether the legal acts of the municipal administration entities do not contradict the laws, Government resolutions and other legal acts adopted by the central state administration entities related to the implementation of the laws;

2) When the subjects of municipal administration do not comply with the Constitution and laws, do not comply with the resolutions of the Government, in accordance with the procedure established by this Law, demand that the Constitution be observed, the laws are implemented and the resolutions of the Government are complied with;

3) To propose to repeal or amend possibly illegal legal acts of municipal administrative entities in accordance with the procedure established by the Law on Administrative Supervision of Municipalities of the Republic of Lithuania;

4) When the subjects of municipal administration do not agree to repeal or amend the disputed legal act, refuse to implement the law or implement the resolution of the Government, the representative of the Government of the Republic of Lithuania must apply to the court.

The representative of the Government shall, in accordance with the procedure established in Part 3 of Article 8 of the Law on Administrative Supervision of Municipalities of the Republic of Lithuania, carry out preliminary supervision of draft legal acts prepared by municipal collegial administrative entities. After the representative of the Government has established that a transaction has been concluded on behalf of the municipality in accordance with the legal act of the municipal administration entity, which may not comply with the Constitution and laws, and that transaction may violate the public interest, as well as other grounds for invalidity of transactions, the representative of the Government has the procedural right to bring an action before a court of general jurisdiction for the protection of the public interest in accordance with the procedure established by the Code of Civil Procedure of the Republic of Lithuania.

Also, if the representative of the Government has established that legal acts or actions (inaction) adopted by a municipal administrative entity may violate the public interest, regarding such legal acts or actions (inaction), in accordance with the procedure established by the Law on Administrative Proceedings of the Republic of Lithuania, the representative of the Government must apply to the administrative court with a statement to protect the public interest.

In case of doubt, whether a normative administrative act (or a part thereof) adopted by a municipal administrative entity complies with a law or a Government resolution, the representative of the Government, in accordance with the procedure established by the Law on Administrative Proceedings of the Republic of Lithuania, has the procedural right to apply to the administrative court with an abstract statement to investigate the legality of a normative administrative act of the self-government.

When a proxy of the Government applies to a representative of the Government in the cases prescribed by the Law on Temporary Direct Management of the Municipality of the Republic of Lithuania, the representative of the Government, having established that the legal acts adopted by the administrative entities of the municipality may not comply with the Constitution, laws or resolutions of the Government of the Republic of Lithuania, applies to the court for the repeal of these legal acts.

If the administrative units of the municipality have adopted legal acts on the basis of which transactions contrary to the public interest may be concluded, or if the administrative units of the municipality have adopted legal acts which may violate the public interest, the representative of the Government shall, in accordance with the procedure established in Part 4 of Article 8 of the Law on Administrative Supervision of Municipalities of the Republic of Lithuania, suspend the execution of legal acts of such municipal administrative entities and the signing of transactions. It should be noted that the Law on Administrative Supervision of Municipalities of the Republic of Lithuania stipulates that the representative of the Government does not examine complaints of natural and legal persons regarding the inaction of municipal administrative entities or the adoption of individual legal acts, the procedure for appeal of which is established by the Law on Administrative Proceedings or laws regulating a specific area. Also, the Law on Administrative Supervision of Municipalities of the Republic of Lithuania stipulates that the representative of the Government does not evaluate legislation and draft legislation in terms of political or economic expediency.

The new wording of Article 4 of the Law on Administrative Supervision of Municipalities of the Republic of Lithuania, which entered into force on 01.07.2019, provides that the representatives of the Government of the Republic of Lithuania are appointed on the proposal of the Prime Minister of the

Government of the Republic of Lithuania. In this way, the tender procedure provided for in the position of the representative of the Government of the Republic of Lithuania valid until then was abandoned. The representative of the Government of the Republic of Lithuania has become exclusively a citizen of political confidence, subordinate and accountable to the Government of the Republic of Lithuania and the Prime Minister. Because the government itself is a political entity in which political parties (Šarkutė, 2006) play a particularly important role, there is a clear risk that decisions on administrative control in individual municipalities will be taken selectively, not on the basis of legal arguments, but through political agreements. Following the adoption by the Seimas of the Republic of Lithuania of amendments to the Law on Administrative Supervision of Municipalities of the Republic of Lithuania, as well as in public sphere, many experts feared that administrative supervision would be carried out in accordance with political decisions, which will undoubtedly further complicate the implementation of minority rights in municipal councils in the future.

CONCLUSIONS

1) In order to effectively ensure the implementation of the rights guaranteed to the minority (opposition) by the municipal council in the Law on Local Self-Government of the Republic of Lithuania and to maintain the balance of the constitutional model of public power, it is proposed:

1.1.) The requirement of the legislator to approve the minority (opposition) candidacy for the members or chairmen of the Control Committee proposed by the majority of the municipal council is excessive in terms of ensuring the minority (opposition) rights of the municipal council. The existing gap in the legal regulation is to be solved by eliminating the need for the approval of the majority of the municipal council for the representatives appointed by the minority (opposition) of the municipal council to the Control Committee from the Law on Local Self-Government of the Republic of Lithuania, leaving it to the minority (the opposition) to decide which candidate is best placed to hold the statutory posts on the Control Committee, specifically, by reformulating Part 3 of Article 14 of the Law on Local Self-Government of the Republic of Lithuania.

1.2.) To nominate (approve) the candidates for the chairmen of the Ethics and Anti-Corruption Committees by a written proposal of the minority (opposition) of the municipal council, signed by more than half of all members of the minority (opposition) of the municipal council without additional approval of the majority of the council, specifically, by reformulating Part 1 of Article 15 of the Law on Local Self-Government of the Republic of Lithuania.

2) A detailed assessment of the practical situation and the legal framework leads to a reasonable conclusion, that the administrative supervision of municipalities is implemented differently in Lithuania due to political selectivity (including legal imperfection), as a result of which the principle of the rule of law is often ignored, and in particular: in some municipalities, real situations arise when by-laws issued at the municipal level create such legal regulation that contradicts Lithuanian laws and slightly restricts the exercise of the opposition rights of the municipal council.

In order to address the existing problems and to ensure impartial and administrative supervision of municipalities by law and not by political agreement, the representative of the Government of the Republic of Lithuania should not be a public official of political confidence. Also, the Law on Administrative Supervision of Municipalities of the Republic of Lithuania must provide the Government Representative with specific and proportionate disciplinary liability for improper performance of duties.

3) Such uncertainty of Part 2 of Article 2 of the Law of the Republic of Lithuania on Temporary Direct Management in the Territory of the Municipality creates preconditions for the majority of the municipal council to grossly abuse the right of the majority, eliminating the minority of the municipal council from its vital positions, performing the essential functions of the municipal opposition and not to have any consequences for this. The current problem of legal regulation should be solved by enshrining the introduction of direct management in the Law on Temporary Direct Management in the Municipality of the Republic of Lithuania if the Control Committee and the Ethics and Anti-Corruption Commission are not fully formed in the municipality within the time specified in the Law on Local Self-Government of the Republic of Lithuania. Such amendments to the law would ensure the democracy of the activities of the municipal council, based on the principle of separation of powers recognized by the Constitution and the philosophy of the rule of law.

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