# SELECTION OF LABOUR LAW ISSUES AT THE LEVEL OF MUNICIPAL GOVERNMENT

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**Abstract**

The article is focused on specific features of employment relationships in municipal self-government with critical reference to key problems and their practical consequences in application practice. The author pays attention to the labour law claims of elected officials in municipal self-government, which in terms of current legislation are neither systematically nor comprehensively addressed. It points out the complexity of the mutual relations of the Labour Code as a lex generalis legal norm and special regulations that partially regulate individual labour law issues of elected officials, which causes opacity and variability in the interpretation of individual provisions of legislation. Attention is also paid to competency relations between the authorities of municipality.

**Keywords**

self-government, elected officials, labour law claims, employment relationships, competency relations

## INTRODUCTION

Public administration is a reflection of the maturity of the modern democratic political system. Modern public administration must go hand in hand with the dynamic development of society, technology, digitization and informatization. Existing global trends clearly require changes in the way of state administration, which will reflect the need for a new quality of approaches to solving the requirements of citizens, regional requirements, but also the whole state. A significant role and responsibility for the fulfillment of this goal lies not only with political elites, but also with top (management) managers, as well as ordinary employees, who are "precious assets" for the realization of executive power in the state (Žofčinová, 2021). It is therefore only to be expected that those appointed will also have adequate leadership competencies (Jankelová et al., 2021).

Territorial self-government represents the democratic basis for the organisation and management of public affairs in the conditions of modern democracies based on the principles of decentralisation and subsidiarity. *"As part of public administration, it is an expression of the effort to carry out tasks to secure the interests of the territorial*

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*community of citizens relatively independently and without direct involvement of the state and state bodies"* (Jesenko, 2015, p. 5). Territorial self-government is special precisely in that it is an expression of the community's interest in self-government, self-regulation or interest in self-decision. This is a type of administration where one entity – residents of a territorial self-government unit – is also in a dual position. On the one hand, they are the object towards which the report is directed and, on the other hand, they are in the position of the subject of that administration, they have the opportunity to participate in its performance. To put it simply, the managed manage themselves. Pernthaler (1986, p. 269) states that self-government is to be understood *"as a democratic organizational form of care 'for the own affairs' of the groups of citizens concerned, independent and under state supervision"*.

Holländer (2006, p. 207) points out that *"it is the aspect of independence combined with the aspect of state consideration in the area of its creation and implementation that makes territorial self-government specific, since it is nevertheless not subordinate to state bodies (meaning state administration bodies), i.e. it operates autonomously within a legally or generally legally defined framework"*.

As part of this paper, we present a critical analysis of duality and the resulting friction surfaces, unsystematic legal drawings towards municipal self-government. The current legal regulation of the labour law status of elected public officials of municipal self-government is neither systematically nor comprehensively addressed. Labour law issues in relation to elected municipal government officials raise several questions in practice, and it should be noted that quite rightly. The complex interrelations between the Labour Code and the special regulations governing the relations of elected officials make the situation seem unclear. At the same time, it is a fact that labour law regulation in some areas is very modest, far from being concentrated in one place and sometimes absent from generally binding legislation. This fact tempts the application practice and provides space for own, sometimes purposeful, legal interpretation of individual municipalities in the field of labor law. It is common ground that the examination of the issue of employment relationships in municipal government can be approached in different ways.

## The specifics of labour relations in municipal government

Labour law terminology is not unified in the definition of employment relationships. According to Section 1 of Act No. 311/2001 Coll. The Labour Code, as amended (hereinafter referred to as the "Labour Code") defines only the material scope of the Labour Code, i.e. "individual employment relationships in connection with the carrying out by natural persons of dependent work for legal entities or natural persons and collective employment relations". There is no further specification of the content.

From the point of view of the nature of legal relations in municipal self-government, we can define two different groups of legal relations. The first group is legal relations between the municipality and municipal employees in the context where the municipality has the legal status of an employer in relation to municipal employees. In this case, the subsidiary scope of the Labour Code applies, i.e. special legislation will be applied as a priority, and if they do not offer a solution to the labor law issue, then the legislation of the Labour Code

applies. The second group is legal regulation of legal relations in the case of elected representatives – municipal government officials.

The first group of legal relations represents employment relations between the municipality as an employer and municipal employees. We agree with Thurzová, Dudor and Mezei (2016, p. 99), who state that "there are specificities of some positions of employees occupied by appointment and election", e.g. the Act on Municipal Establishment expressly provides for appointment as a prerequisite for performing work in the public interest in the case of the head of the municipal office who is an employee of the municipality. His appointment is a prerequisite for concluding an employment contract. A specific position in the structure of municipal employees is also occupied by the head (director) of budgetary and contributory organizations, which he appoints and removes to the position pursuant to Section 11, Subsection 4 Paragraph l) of Act No. 369/1990 Coll. on Municipal Establishment, as amended (hereinafter referred to as the "Act on Municipal Establishment") by the municipal council on the proposal of the mayor of the municipality. Again, the appointment is a pre-contractual prerequisite for the conclusion of an employment contract with the relevant director. According to Tekeli and Hoffmann (2013, p. 59), an employee in a job position – the chief controller of the municipality – has a unique position in the conditions of municipal self-government, which in the conditions of the Slovak municipal government is the only position in the circle of employees that is filled by election pursuant in Section 11, Subsection 4 Paragraph j) of the Municipal Establishment Act and whose municipal council elects and removes, determines the scope of performance of the office of the Chief Controller and his salary, approves the remuneration of the Chief Controller. According to Section 5 of the Municipal Police Act, the municipal police consists of municipal police officers who are also municipal employees with the status of a public official in the performance of tasks defined ex lege and within its framework a generally binding municipal regulation.

The existing legal regulation of employment relations of municipal employees cannot be considered appropriate. Also critical are Thurzová, Dudor and Mezei (2016, p. 116), who argue that the Labour Code, which is still largely applied to these employees (to an insufficient extent), reflects the public character of these legal relations, which raises practical problems. There is also a lack of flexibility of employees, stability of employment relationships due to political rivalries between parties in municipal bodies.

One of the powers of municipalities, which municipalities internally, within their management and competence, occupy and fully exercise, is the position of the municipality as an employer. According to the Labour Code, an employer may be (Section 7 of the Code of Civil Procedure) *"a legal entity or a natural person who employs at least one natural person in an employment relationship and, if provided for by a special regulation, also in similar employment relationships"*. Subsequent to Act No. 40/1964 Coll. The Civil Code, as amended, defines who has the status of a legal entity and includes among these also units of territorial self-government. *"This position is irreplaceable in the sense that human capital constitutes a key source of the vast majority of activities carried out by municipalities"* (Žofčinová and Král, 2014, p. 42).

In view of the above-mentioned subsidiary scope of the Labour Code, the key law regulating the status and competences of municipalities in the field of personnel provision is the Act on Municipal Establishment. The municipal authority has not been granted legal personality,

therefore only the municipality as a legal entity has the right to act as an employer. Based on Section 9 of the Labour Code, legal acts of an employer who is a legal entity are performed by a statutory body or a member of a statutory body. In connection with Section 9 of the Labour Code as well as from the Act on Municipal Establishment in Section 13, Subsection 5 follows 'that the statutory body is the mayor of the municipality'. The mayor of the municipality, as the statutory body of the municipality, has the status of an employer in employment relations. We consider that the tasks arising from this position are of such a serious nature that the regulation is inadequate.

The question of introducing an educational assumption: "obtaining at least secondary education" is positive, but we are not convinced that it is sufficient even in today's advancing society. The impact of modernisation, flexible forms of employment, new technologies, all legal (European and international) regulations is advancing. The mayor of the municipality, as a statutory body, does not have such a professionally extensive apparatus – a team of employees – to be able to easily face this progress in the field of labor law. Possibilities of employing agency employees, project employment, employment within employment services, all these are only partial signalling areas that the mayor of a municipality (even a small municipality) must manage as an employer. Where organizational units operate in larger municipalities, towns, but also in state administration, this fact is alarming in small villages and individual tasks and activities placed on the shoulders of small municipalities are often unmanageable in terms of organizational support, personnel and finance.

If we continue to consider, this power is limited by the power of the municipal council (in both creation and legislative areas). According to Thurzová, Dudor and Mezei (2016), *"all legal restrictions must be understood in such a way that if a legal act (in our case an employment act, e.g. if the mayor himself determines or changes the amount of his salary) that belongs to the municipal council, was made by the mayor of the municipality, it would be considered invalid for lack of competence"*. It is desirable to pay wider attention to the issue of municipalities in the position of employers, but this is the subject of separate examination.

In addition to the above-mentioned basic individual employment relationships, e.g. employment relationships of municipal employees, in the case of the second group of employment relations in municipal self-government, the method of legal regulation of legal relations in the case of elected representatives – functionaries of municipal self-government is different. On the basis of Section 2, Subsection 2 The Labour Code applies to legal relations arising from the performance of public office if it expressly provides for this itself or if provided for by a special regulation. In this context, it is the elected representatives of the municipal self-government and their legal relations that arise in connection with the performance of public office that are specific to labour law, for example, regarding the scope of the Labour Code in liability for damage to a public official. It is also important to note that the mayor of the municipality participates in social and health insurance as an employee during the performance of his duties (despite the fact that the function of mayor of the municipality is not performed in an employment relationship). According to Section 25, Subsection 5 of the Act on Municipal Establishment, members of the municipal council perform the function of a deputy in principle without interruption of employment or similar relationship. The legal relations of elected municipal officials

end in relation to the municipality upon termination of their office and therefore also all employment claims related to the performance of their function. This is just an outline of specific situations that arise in the context of legal relations in the performance of public office in municipal government.

## "Competency friction surfaces" between the authorities of municipality

Despite the fact that there is no relationship of superiority and subordination between municipal bodies, the division of competences between municipal bodies in the field of labour law causes competency "friction surfaces". According to Palúš, Jesenko and Krunková (2010, p. 20), *"self-government at both levels is constitutionally independently and separately, which does not exclude, rather presupposes, their mutual cooperation in ensuring self-governing functions"*. We largely share this statement, but quite the opposite in many situations. Discussions across the social spectrum around the issue of the status and competences of municipal bodies (in our case in the field of labour law), especially in their collision form and in certain friction surfaces, increasingly go beyond the standardized legislative established framework. Palúš (2017, p. 15) believes that *"good functioning of municipal self-government leads to effective administration close to the citizen, which is the main prerequisite for its effectiveness"*.
Relations between the authorities of municipality are becoming the object of not only legal confrontation, but also a critical attitude on the part of the lay public. "The existence of conflicting areas of competence in the field of labour law reflects one of the essential features of law, namely that the rule of law cannot be inconsistent. The legislator cannot and cannot foresee all possible application situations that arise in the process of applying the relevant standards. The question arises as to whether the principle of De minimis non curat lex is applicable to competences between the autorities of municipality in employment relations" (Tekeli, 2016, p.10).
According to Section 13 of the Act on Municipal Establishment, the mayor of a municipality is a representative of the municipality and the highest executive body of the municipality. The terminus technicus "representative" is a term difficult to grasp and define in the field of law. We believe that if the term representative is synonymous with the term representative – bearer, then it is an entity that represents a certain social whole, i.e. a municipality. However, even in this statement, from the point of view of labour law, there is no precise terminological certainty in relation to the competences of the employer (which the mayor of the municipality has) in relation to municipal employees.
According to Tekeli (2016, p. 170), *"the mayor represents the municipality externally, both in external administrative-legal relations, in private-law relations and in protocol relations"*. If it is also the highest executive body of the municipality, then the question arises which other body of the municipality (out of the two possible ones – the mayor and the council) is still the executive body of the municipality. Although the Act on Municipal Establishment permits the operation of an executive body, e.g. the municipal council is the executive body of the municipal council, but not the executive body of the municipality. Based on the above, we consider the designation of the mayor of the municipality as the highest

executive body to be terminological "uselessness" and it would be sufficient to define the status of the mayor of the municipality as the executive body of the municipality.
Election to the public office of mayor of a municipality does not establish an employment relationship. This cannot be regarded as a pre-contractual legal fact on the basis of which an employment relationship would be established between the municipality on the one hand and the mayor or deputy on the other.
The Act on Municipal Establishment expressly provides for the incompatibility of the office of mayor of a municipality or a member of a municipal council, among other restrictions, with the position of employee of the municipality in which he was elected. An employee of a municipality within the meaning of Section 11 of the Labour Code can be considered "a natural person who, carrying out dependent work form an employer under an employment relationship or, insofar as a special regulation so provides, simiral labour relationshop". In view of the fact that Section 11 of the Labour Code states ...'in an employment relationship', i.e. not only in an employment relationship, but also in terms of agreements on work performed outside the employment relationship. From the point of view of labour law, the post of mayor of a municipality is also incompatible with the service of a senior employee of a state administration body, i.e. a senior civil servant. However, despite the fact that the mayor of the municipality is not in an employment relationship with the municipality, in many employment matters this relationship is similar to an employment relationship. By this we can conclude that, in the case of an elected official of a municipal government, his activity undoubtedly has the character of participation in social work, but this fact alone does not in itself confirm that it is carried out within the framework of an employment relationship. In terms of assigned competences, the mayor issues the Working Regulations, the Organizational Order of the Municipal Office and the Order of Remuneration of Municipal Employees in the field of labour law. At the same time, it informs the municipal council about the issuance and changes of the organizational rules of the municipal office. It follows that the mayor of the municipality expressis verbis issues internal legal norms. These are norms of an internal nature directed to the interior of the organization of the municipality.
The issuance of the Working Regulations is a logical fulfilment of the position of the mayor of the municipality as a statutory body in labor relations. The Labour Regulations specify working conditions in accordance with the legal regulations of the provisions of the Labour Code according to the special conditions of the employer (Section 84, Subsection 2 of the Code of Civil Procedure). In relation to the municipality, the purpose is to further regulate the conditions of employment relations of municipal employees. Since it is an internal regulation of the municipality, the conditions specified by it apply to all employees in an employment relationship with the municipality (hence also "employees who carry out work under agreements on work outside employment").
Likewise, the remuneration order of municipal employees is an expression of the mayor's unequivocal authority in the field of labor relations. The basic legal norm that predetermines possible modifications within the internal legal norm, i.e. the relevant rules of remuneration of municipal employees, is Act No. 553/2003 Coll. on the remuneration of certain employees in the performance of work in the public interest, as amended. This modification in remuneration through an internal legal norm should reflect more favourable conditions in the remuneration of municipal employees.

Another legal norm is the organizational order of the municipal office. The amendment to the Act on Municipal Establishment in 2010 changed the competence and its issuance is in the competence of the mayor of the municipality according to the current legislation of the Act on Municipal Establishment (until 2010 – the competence of the municipal council). It was this change in competence that was and is one of the "competency crises". Opponents criticized the strengthening of the mayor's powers, her supporters supported the mayor's very position as the executive body of the municipality responsible for the organization and running of the municipality, which would be difficult to achieve without the possibility of influencing the organization of the municipal office. The mayor's day-to-day involvement in the administration of the municipality, its management and proper functioning cannot be matched by a periodic meeting of the municipal council in terms of assessing the correctness of the organisational structure of the office. In labour law matters in relation to employees of the municipal office, the mayor of the municipality is in the position of the so-called employer as a statutory body of the municipality. In this context, there may be some discrepancies between the municipal council and the mayor of the municipality precisely in the exercise of this competence. The mayor of a municipality is obliged to inform the municipal council about the issuance and changes of the organizational rules of the municipal office, while the approval of the municipal budget, its changes and therefore funds for the operation of the municipal office fall within the exclusive competence of the municipal council. This implies the mayor's limitations on the expansion, changes and other adjustments of the operation and organizational provision of the municipal office and the conclusion of various employment relations in relation to the municipality. Although it is a "representative", financial decision-making is a legal instrument of the municipal council within the framework of dual decision-making by municipal bodies. Issuing internal regulations in territorial self-government is one of the so-called shared competences. Their issuance is entrusted either to the competence of the municipal council or the mayor of the municipality, as mentioned above. In relation to the creation of internal municipal legislation, the rule is that if the municipal statute sets the powers of the municipal council differently from the Act on Municipal Establishment, the only diversification criterion for the division of competence between the mayor of the municipality and the municipal council is exclusively statutory regulation. In application practice, however, such division of competencies is not respected and some of the internal regulations are thus incorrectly applied.

Based on the above, according to Section 9 of the Labour Code, he "performs legal acts on behalf of an employer who is a legal entity, statutory body or member of a statutory body". In this context, within the meaning of Section 1 of the Act on Municipal Establishment, a municipality is a legal person. Therefore, legal acts should be carried out on its behalf by a statutory body – i.e. the mayor. On behalf of the municipality, it signals that it binds the legal entity, i.e. the municipality, by its actions. If the mayor of a municipality concludes an employment contract with a municipal employee, he manifests the will of the municipality externally. Starting from the basic institutes of civil law, the will as a significant feature of a legal act is the desire, the interest of the subject to enter into a legal relationship and thus produce concrete legal effects. The manifestation of will is an external presentation in relation to the addressee. In the case of employment

relations, the mayor of the municipality thus manifests his will, whereby this expression of will and the conclusion of an employment relationship with a specific natural person is bound by the municipality as a whole, as a legal entity. By this expression of will, without the participation of the municipal council, the mayor demonstrates the will of the municipality, since he is in the position of an employer and this competence arises ex lege. Controversial situations arise in application practice when the mayor hires "his acquaintances, friends, etc.", i.e. natural persons who may be morally, professionally and ethically unacceptable for the municipality as a whole. A different situation arises if the will is expressed by another body of the municipality, i.e. the municipal council. In employment relations, this is the case, for example, with the election of the chief controller of a municipality by the municipal council, which forms the will of the municipality externally and the mayor has to express the will and conclude an employment contract with the elected chief controller. In this situation, when the mayor refuses to conclude an employment contract with a candidate (he delays), even though the law imposes such an obligation, we are again convinced that, as in many other legal regulations of the legal order of the Slovak Republic, the legal obligation is not supplemented by a sanction for non-compliance with this obligation. We believe that in this particular case, such behaviour of the mayor could, for example, be an incentive for the municipal council to initiate a local referendum on his removal, referring to the grounds mentioned in Section 13a, Subsection 1 of the Municipal Establishment Act. However, even this institute, defining the reasons for calling a referendum, brings many pitfalls which, in our opinion, complicate their actual application in practice. In the context of these ideas, the procedure for exercising accountability to the mayor also plays an important role. The aim in this case should not be to punish the responsible mayor, but above all to provide for a legally enshrined mechanism or method to resolve a situation where the employment relationship of the legally elected chief controller of the municipality did not arise due to a violation of the law. The proposed solution could also be to legally enshrine the establishment of the Chief Controller's employment relationship directly ex lege. This would apply if, within the statutory period, after the final election of the controller by the municipal council, the mayor had not concluded an employment contract with the elected candidate, and provided that the procedure or outcome of the election of the controller was not challenged by the prosecutor by one of the instruments of prosecutorial supervision or by an administrative action before a court.

The competence of the municipal council is determined by its authority and competence within the limits of Section 11 Subscetion 4 of the Municipal Establishment Act. In the field of labour law, the competence of the municipal council is to determine the salary of the mayor of the municipality. The salary of mayors, as well as certain other related requirements, is regulated by Act No. 253/1994 Coll. on the Legal Status and Salaries of Mayors of Municipalities and Mayors of Cities (hereinafter referred to as the "Act on Legal Status and Salary"). Approval of the salary of the mayor of a municipality is a very powerful tool in the hands of the municipal council with room for political tactics in order to achieve so-called municipal interests. The mayor of a municipality is legally entitled to a salary, but the provision of Section 4, Subsection 2 the Law on Legal Status and Salary, according to which 'the municipal council may, by decision, increase this

salary by up to 60%. The provision of Section 4, Subsection 6 of the Law on Legal Status and Salary is particularly incomprehensible, according to which the municipal council in a municipality with a population of less than 500 may at any time, with the consent of the mayor, reduce 1.65 times his salary up to 0 times during his term of office'. There is merit in our criticism of this provision of the law and we share the opinion of Tekeli (2016, p. 110), i.e. *"the mayor of a small municipality, without a significant administrative apparatus with the same scope of devolved state administration, the exercise of self-government is subject to political pressure and favor of the municipal council not to use this legal instrument as an attempt to appeal to the mayor for the purpose of "municipal welfare" to perform the office of mayor for a low salary, or even free of charge"*. If this legislation were to be "fair", it should apply to mayors of all municipalities with no link to population. There is also no incentive component in the form of rewards for mayors of municipalities (in the historical context, the rewards were legislatively enshrined), who significantly contributed to the improvement of the municipality, or to obtaining various grants, projects, etc. Application practice in municipal government also deals with this fact "in its own way" and solves this situation by temporarily increasing the salary for a strictly defined time. In any functioning remuneration system, motivation in the form of a purposeful one-off reward for better performance of social work is an important tool. Although it is legally acceptable to increase the basic salary, it should reflect the number of inhabitants in the village and not the distinctiveness and effort in the development and construction and operation of the village.

## Labour law claims of the mayor of the municipality

As mentioned above, the complex interrelations of the Labor Code and the special regulations that regulate the relations of elected officials cause limited clarity. "At the same time, it is a fact that labour law regulation of some affairs is very modest, far from being concentrated in one place and sometimes absent from generally binding legislation" (Briestenský et al., 2011, p. 25). If we assume that the performance of public office does not take place in an employment relationship, the employment rights of elected officials are tied to the manner in which they are released from office (Žofčinová, 2017). It is important whether it is a release for public office in addition to the performance of professional duties (i.e. for the necessary time) or a release for public office has a long-term character. We note that the term "long-term", "short-term" is not precise and legislatively defined and causes terminological chaos in application practice. As stated above, the performance of the public office of the mayor of a municipality does not take place in an employment relationship. Nevertheless, during the performance of his duties, the mayor of a municipality is considered an employee for exhaustively specified purposes. Such a legal situation is eo ipso 'peculiar' for labour law.

According to Section 2, Subsection 3 of the Law on Legal Status and Salaries *'shall be considered by the mayor as an employee in employment during the performance of his duties for the purposes of creating and using the social fund and for the purpose of providing meals and contributing to meals'*. In these cases, the municipality acts as an employer

in relation to the mayor of the municipality. This is also the case for health insurance, sickness and pension insurance, unemployment benefits or unemployment insurance contributions. According to Section 215, Subsection 1 of the Labour Code applies to the same claims in the case of damages. Thus, the municipality acts as an employer in relation to the mayor for these purposes. According to Section 215 of the Labour Code , *"Where a natural person performing public office incurs damage in carrying out the office or in dierect connection therewith, such damage shall be the liability of the organisation for which the person worked. The natural person shall be liable for damage caused to that organisation"*. The provision of Section 215 of the Labour Code regulates the legal regulation of the institute of liability for damage in the performance of public office. In this context, according to Barancová (2017), *"this refers to all types of liability for damage in labour law, which applies even if there is no employment relationship (the case of the mayor of the municipality)"*.

In connection with the performance of the function, the mayor of the municipality is legally entitled to a salary. The substance of the legislation consists primarily in setting a minimum monthly salary for mayors, which is derived from the number of inhabitants of a municipality or city who have permanent residence in their territory and also lays down other requirements relating to the performance of their duties. According to Section 3 of the Act on Legal Status and Salary, the mayor of a municipality is entitled to "a salary that is the product of the average monthly salary in an employee in the national economy calculated on the basis of data from the Statistical Office of the Slovak Republic and a specific multiple set by the above-mentioned Act".

The power of the municipal council to determine the salary of the mayor of a municipality arises from the provision of Section 11, Subsection 4 Paragraph i) of the Municipal Establishment Act. From a grammatical point of view, the concepts of "determine" or determine are understood as deciding on something or someone, making a conclusion. Thus, the concept of 'determining the mayor's salary' is precisely defined, comprehensible, without doubt as to its meaning and refers only to the determination of the mayor's salary. It shall in no way apply to the determination of the mayor's working time as a possible pre-stage to determining the mayor's salary; Therefore, the competence of the municipal council to determine the mayor's salary does not subsume the determination of the mayor's tenure. With regard to the power of the municipal council to determine the mayor's salary, we note that this power is also limited by the Act on the Legal Status and Salaries of Mayors of Municipalities and Mayors of Cities, which sets the minimum monthly salary of a mayor corresponding to the number of inhabitants of a municipality or city who have permanent residence in their territory. The municipal council may not determine a lower salary than that provided for in the law in question.

In Section 2, Subsection 2 The Act on Legal Status and Salaries also regulates the entitlement to leave for all mayors, regardless of the extent of their time under a special regulation, i.e. Section 103 of the Code of Civil Procedure, or a collective agreement by which the municipality is bound. The current legislation is thus aligned with the legislation on holiday entitlement of a municipal employee. We only note the entitlement to leave. The problem is the actual taking of leave. According to Section 111 of the Code of Civil Procedure, *"the use of leave is determined by the employer after consultation with the employee according to the vacation plan determined with the prior consent*

*of the employees' representatives so that the employee can usually use the leave in its entirety and until the end of the calendar year"*.
The mayor has no one to determine how to take leave. Thus, the Law on Salary Ratios allows the replacement of salary for unused leave only if he could not take the leave even by the end of the next calendar year and if the municipal council decided to do so. The question is who is competent to determine that the mayor of the municipality could not take vacation, whether there were and what were the reasons for the impossibility of drawing, whether there is a legal right to claim compensation, etc. If the municipal council decides on the reimbursement of the salary for unused vacation, it is a significant economic "improvement" for the mayor. At the same time, we argue whether the decision of the municipal council that does not comply with the mayor's will to compensate for unused vacation is an interference with his rights and legally protected interests, and whether the municipal council is obliged to decide in favor of the mayor.
According to Section 2, Subsection 2 The Act on the Legal Status and Salaries of Mayors during the Performance of Their Duties *'shall be entitled to leave to the extent permitted by a special regulation or to the extent permitted by a collective agreement binding on the municipality as an employer'*. Salary compensation for unused leave may be granted to the mayor only if he has not been able to take the leave by the end of the next calendar year and if the municipal council has decided to do so. On the basis of the above, in Section 2, Subsection2 of the Act in question, the second sentence of that law allows the possibility of replacing the salary for unused leave with the mayor of a municipality who could not take it even by the end of the next calendar year, but only on condition that the municipal council so decides. Thus, objective law recognises the right of the mayor of a municipality to reimbursement of his salary for vacation not taken, but makes its entitlement and applicability conditional on the decision of the municipal council. Thus, the right to reimbursement of the salary of the mayor of a municipality comes into the form of a judicially asserted claim only after a corresponding decision of the municipal council. If the resolution to Section 2, Subsection 2 of the Act on the Legal Status and Salaries of Mayors is not approved by the Municipal Council, the right to reimbursement of the salary of the entities concerned is not judicially applicable.
The acceptance of the formulated conclusion follows from the specific status of the mayor of the municipality, which is not an employee of the municipality (Section 2, Subsection 1 of the Law on Legal Status and Salary), leaving him to the extent provided for by labour legislation. At the same time, the mayor of the municipality is the statutory body of the municipality according to (Section 13, Subsection 5 of the Municipal Establishment Act). Based on the explanatory memorandum to the Act on the Legal Status and Salaries of Mayors, it aptly clarifies that since the office of mayor is not performed in an employment relationship and the mayor has no one under the Labour Code to determine the period of taking leave, it is stipulated that the municipal council decides on the reimbursement of unused leave. The mayor of the municipality, as the statutory body of the municipality, is not in the position of a "standard" employee, to whom the employer is obliged to determine the use of leave, with the understanding that in the event of failure to comply with this obligation, the employee is entitled to compensation for wages for unused vacation. In that regard, if the mayor of a municipality does not take his leave by the end

of the following calendar year, he runs the risk of not receiving compensation for the leave not taken. At the legal level, this risk is manifested precisely by the absence of entitlement to the right regulated by Section 2, Subsection 2 second sentence of the Law on Legal Status and Salary, which is linked to the wide discretion of the municipal council in considering the application for reimbursement. The Act on the Legal Status and Salaries of Mayors objectively regulated the right to compensation for unused vacation does not take the form of a legal claim of the particular mayor concerned without a decision of the municipal council. In that regard, the mayor of a municipality cannot seek judicial protection of that right, irrespective of whether it is a proposal to initiate civil proceedings or a proposal for judicial review of procedures or a decision of the municipal council based on arguments on the obligation to rule in favour of the mayor-applicant for reimbursement. On the basis of the foregoing, we conclude that, although there is a subjective right of the mayor of a municipality to reimbursement of salary for vacation not taken under the Salary Ratios Act, this subjective right is not judicially applicable in view of the absence of entitlement.
In addition to leave, the Act on Salaries enshrines the conditions under which the mayor is provided with a one-off financial remuneration for the performance of his duties – severance pay – after the end of his mandate. According to Section 5 of the Act on Legal Status and Salary, "after the termination of the mandate of the mayor of the municipality, the mayor of a municipality is entitled to severance payments from the municipal budget in the amount of (a) twice his average monthly salary if he has held office for more than six months; (b) three times his average monthly salary if he held office for one term; (c) four times his average monthly salary if he held office for two consecutive terms; (d) five times his average monthly salary if he has held office for at least three consecutive terms".
There will be no entitlement to severance pay if the mayor has been re-elected. The right to severance pay is maintained even in the event of the mayor's death. The legal title passes to the close persons who lived with him in the household and gradually passes to the spouse, children and parents if they lived with him at the time of death in the household. They become objects of inheritance if there are no such persons. The proposed new model is certainly fairer, as it takes into account (similarly to employees in an employment relationship) the length of their tenure, which is a difference from the previous legislation (until the adoption of Act No. 320/2018 Coll. amending and supplementing the Act of the National Council of the Slovak Republic No. 253/1994 Coll. on the Legal Status and Salaries of Mayors of Municipalities and Mayors of Cities, as amended).
Among other claims, the mayor is entitled to reimbursement of expenses in connection with the performance of his duties – travel allowances in accordance with Act No. 283/2002 Coll. on travel allowances, as amended.

## Labour entitlements of municipal councillors

The legislation is no longer as generous as that of municipal mayors. However, the provision of Section 25, Subsection 6 of the Municipal *Establishment Act 'A Member of the Municipal Council may not, by reason of the performance of his duties, be deprived of his rights or entitlements arising from an employment or similar relationship'*. His rights

and entitlements arising from his employment remain unaffected (i.e. cannot be influenced for this reason). It is about providing protection for municipal councillors.

According to Section 25, Subsection 5 of the Municipal Establishment Act *'In principle, the duties of a Member of the Municipal Council shall be performed without interruption of employment or equivalent. Members shall be entitled to reimbursement of actual expenses incurred in connection with the performance of their duties, in accordance with the special rules applicable to employed staff'*.

The employer is obliged to allow his employee to perform the function of a Member of the Municipal Council. According to Section 136, Subsection 1 of the Labor Code *"the employer shall grant the employee time off work for the time strictly necessary for the performance of public functions, civic duties and other acts in the general interest, if this activity cannot be performed outside working hours. Time off from work shall be granted by the employer without compensation of wages, unless otherwise provided by this law, special regulation or collective agreement or unless the employer and the employee agree otherwise"*. A Member who is not employed or equivalent is entitled to compensation for loss of earnings.

As regards the performance of the office of Deputy Mayor, the Act on Municipal Establishment with effect from 1 February 2019 is based on two situations listed in the provision of Section 25, Subsection 7 of the Municipal Establishment Act:

1. A Member of the Municipal Council who is on long-term leave from employment to perform the duties of Deputy Mayor shall be entitled to a salary from the municipality determined by the Mayor according to the material and time demands of the performance of the function, up to a maximum of 70 % of the Mayor's monthly salary. His employment in his previous employment is maintained, that is, it rests. A Member of the Municipal Council is considered to be an employed employee for the purposes of creating and using the social fund, holidays and travel allowances, and the municipality is considered to be the employer.
2. A Member of the Municipal Council who holds the office of Deputy Mayor and is not on long-term leave from employment shall be entitled to a monthly remuneration determined by the Mayor according to the material and time demands of the performance of the function, up to a maximum of 70 % of the Mayor's monthly salary, without an increase according to the respective salary bracket. Special rules apply to Members' social insurance and sickness insurance.

According to Section 136, Subsection 2 of the Labor Code *"it is the employer's duty to release an employee for a long-term period to perform a public office"*. However, he is not legally entitled to wage compensation from the employer with whom he is employed.

From Section 25, Subsection 8 of the Municipal Establishment Act implies the authority of the municipality to grant remuneration to a Member of the Municipal Council. At the same time, it lays down, in a non-exhaustive manner, the criteria for determining the level of that remuneration. The Act mandates that the criteria and issues related to the remuneration of deputies in question be determined by the municipality in a binding manner in the municipality's internal regulation – in the principles of remuneration of deputies.

## CONCLUSION

Public administration should be perceived, among other definitional parameters, as a service related to the fulfilment of the social function of the state. It is becoming a trend, but also a challenge, that more and more activities and tasks of public administration can be understood as a service to the public and the recipients of these services can be perceived as clients. The exercise of elected public functions in public administration should also be oriented towards a person in concreto with professional performance of work in providing services to the public. If in the private segment the provision of services on a pro-client approach is "self-evident", the area of public administration should also move in this direction in the provision of services, so that this activity is a public service not only de jure, but also de facto and is perceived as such by its addressees. In this article, we focused on the special character of employment relations in municipal self-government, we analyzed competency relations between municipal bodies in the field of labor law, which often cause friction surfaces. We also looked at the municipality as an employer and captured the discrepancies in the labor law claims of elected municipal officials, who in exhaustively defined cases are considered employees and the performance of their public function is considered an obstacle to work from the point of view of labor law.

## SUMMARY

For a long time, the problem of special characteristics of work in the sphere of local government was not given enough attention. The aim of this paper was to clarify labour law aspects of the legal status of elected officials and to point out the specifics of labor relations in municipal government. It is a topic that receives little attention and although it is only a marginal topic when examining various aspects of municipal government, it is a topic of equal importance. The author points out that this topic is resonant in the field of public administration and it is necessary for the legislator to pay more attention to it and to unify legislation so that there are no discrepancies in the interpretation of individual provisions of legislation. It also seems important to harmonise the legislation on labour law in the performance of the public office of mayors of municipalities, mayors of cities, members of municipal councils.

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