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GOOD GOVERNANCE AT THE LOCAL LEVEL - RESPONSIBILITY OF EXECUTIVE AUTHORITY IN SOME COUNTRIES OF SOUTHEAST EUROPE WITH SPECIAL REFERENCE TO THE INSTITUTE OF REVOCATION

Abstract:

Good governance is an unanswered area, the eternal search for optimal social order. Throughout time, good governance changed its appearance depending on many elements (political, economic, social, legal, moral, etc.). Good governance implies a responsibility of authority at all levels, respecting guaranteed rights and freedoms.

The paper analyses executive authority in some countries of Southeast Europe. And how they exist concerning executive power at the local level and towards citizens. The normativity, comparative, historical method and methods of analysis and synthesis were used.

Keywords:

Good Governance; Executive Authority; Revocation

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Introduction

Citizens need to act at the local level, where through the electoral system, direct forms of democracy, and participation in the legislative process, they contribute to policymaking. However, citizens do not participate sufficiently, and one of the reasons is the irresponsibility of the authorities. First of all, we think of the political irresponsibility of the leaders. Citizens feel betrayed and played out by government officials who behave irresponsibly in their duties because they do not have sufficient resources available to influence the outcome of particular political decisions. On the other hand, resources are available that seem unattainable in implementation. Each state's legal system needs a mandate revocation and a realistic and enforceable recall. The legal system needs measures to allow its citizens to influence the power holders. The legal system needs measures that will prevent local sheriffs and their arbitrariness. The legal system needs steps to restore citizens' trust in politics and the political system because democracy is unsustainable without trust in political parties and the political system. A historical review of the Croatian legal system was also made, as was the development of the revocation institute and whether the current situation is in line with the European Charter of Local Self-Government. Ultimately, recommendations and improvements were presented to make a transformation from a local sheriff to a local servant.

Administration implies a group of people working together to achieve goals. The people make up the administration, and the quality of any administration/self-government (state, local, regional) depends on the relationships established between individuals. There are two types of relations in "administrations": the relationship between political potentates and administrative systems and, on the other, the relationship between administration and individuals and social groups. [1] Various modalities of connections are possible within administrations for the entire administrative system to function in the best way possible. For this reason, several organizational theories have evolved that allow us to "organize our thoughts and experiences, offer meaningful explanations and find the logic behind an event, identify existing behaviours, or enable us to anticipate future business challenges better". [2] According to Frederick W. Taylor, and greater worker efficiency is achieved via job simplification and more detailed division of labour. In this way, it is possible to expect efficiency: to divide a complex task into simpler ones and assign them to individuals.

Every community unit wants to be self-sufficient simultaneously and be democratic, economical and efficient. By satisfying these postulates, we would create a perfect team. However, we have not calculated the mathematical formula for it so far. An aggravating circumstance for creating an efficient and cost-effective self-government unit is the number of teams in the individual legal system. It is difficult for the state apparatus to

control self-government units in such a legal system. The horizontal and vertical authority relationship does not have to manifest itself in control as much as in a reciprocal relationship. The state apparatus is unable to handle the too large number of units. Only poor legal and political communication can be created in such a legal structure.

Each unit arrangement matches the needs of society at a given moment. Today's culture at the European level has recognized the needs of individuals, communities, and ultimately the state and supranational organizations. The European Charter of Local Self-Government (in the future: The Charter) has set out the basic principles on which "European Local Government" should rest. The focus of decentralization can be mentioned as a starting point. The second article of the Charter states the obligation to accept the principle of subsidiarity in constitutional texts of the Member States. In the following article, local self-government is defined as the right and ability of local units to manage public affairs based on their responsibility and in the interest of the local population. Local self-government exists through local or regional representative bodies elected in free and direct elections by secret ballot based on universal and equal suffrage. Besides, the representative rule does not exclude the immediate forms of democracy. Article 4, paragraph 3, lays down the principle of subsidiarity, which advocates the exercise of public authority at the level closest to the citizen. When granting public authority, account must be taken of the nature and breadth

of the task and cost-effectiveness and efficiency. Also, Article 5 prescribes the protection of the boundaries of self-government units, i.e., every change requires the opinion of the local population. The principle of autonomy is laid down in Article 6, where local teams can independently regulate their internal organization. The criteria of expertise and professionalism should guide the recruitment of civil servants and employees. The principle of constitutionality and legality is evident in Article 8. However, in the same article, paragraph 2, the focus on practicality in situations of delegated tasks is also enabled. The principle of financial autonomy is described in Article 9, with the aspiration of introducing the regulation of economic equilibrium in paragraph 5. "The protection of financially weaker local units requires adopting appropriate procedures or measures of financial equalization to correct the effects of the unequal distribution of possible sources of financing or the financial burden that local units have to endure. Such actions or measures shall not restrict the free decision-making of local units on matters within their competence." [3]

Through the Charter and the White Paper on European Governance, the demands of individuals and the community are set. In conclusion, an attempt will be made to set up an executive authority that fits the set principles. Numerous administrative reforms have taken place recently to achieve good governance. So far, under the influence of the new public management, the enormous emphasis has been placed on the

economic values of the governing system, and the legal, democratic and political components have been neglected. The critical point is the involvement of various stakeholders in the decision-making process, the weakening of the influence of the body at the national level and the participation of citizens in the decision-making process. "Instead of one sovereign government, the rule presupposes the existence of several actors depending on the policy area, interdependence on the axis society - politics - governance, common goals, blurred boundaries between the private, public and voluntary sectors, and multiple and new forms of action, intervention and control" [4]. The White Paper on the Governance System advocates more significant activity and citizen participation in shaping government. "The goal is to open the process of adopting political measures to make that process more inclusive and responsible." [5]

"Governance and local governance is characterized by cooperation between governmental and private organizations, joint policymaking, shared service delivery, etc. Local governance is to be juxtaposed to the local government." [6] Local self-government implies a higher level of cooperation because these are the closest organizational forms to the citizens. These are organizational forms of self-government units that directly contact the local population due to their legal status.

The paper is divided into five parts. The introductory part explains the general notion of good governance. The second part of the paper deals

with the possible formation of the executive power. The third part of the paper deals with the chronological status of the executive power in the Republic of Croatia with the possibility of revocation. The fourth part gives examples of other countries. Finally, the recommendations in the concluding reflections are explained. This paper aims to study the status of the executive power in the Republic of Croatia, considering all available possibilities for the election of the executive power. The aim of the paper is to study the relationship between the principle of subsidiarity and the status of the executive power regarding to the institute of revocation. The European Charter of Local Self-Government laid a different foundation for local self-government, invoking the principle of subsidiarity. The executive power, in most cases, is elected by the citizens. In accordance with the principle of subsidiarity, it is necessary to have an institute that would enable citizens to revoke the executive power, to revoke the executive power of their choice. The purpose of this paper is to study the state of implementation of the principle of subsidiarity in the Republic of Croatia and in some neighbouring countries. The normativity, comparative, historical method and methods of analysis and synthesis were used. Also, special attention has been paid to the institute of recall of the executive authority in some countries of Southeast Europe. The comparative method was used to analyze legal status between four countries - the Republic of Croatia, Bosnia and Herzegovina, the Republic of Srpska and Serbia. Also, the historical method describes the situation

in the Republic of Croatia - from the beginning to the current situation.

Possibilities of Appointing Executive Power in Self-Government Units

Most countries have organized their local self-government or administration in municipalities or local communities. The majority of countries have two levels of local self-government - lower and higher. Lower levels are municipalities and local districts, and the higher level is regional self-government. Besides, most countries have municipalities as local self-government units, but they differ in legal form. "Management system in local self-government unit (in the future: the local system) is a set of local institutions and organizations focused on performing public affairs, interconnected via the mechanism of government and operationally restricted to the territory of the local unit." [7] This model was introduced in Croatia 2007 with the relatively broad support of politicians and the public, and three cycles of local elections were held in this way: 2009, 2013 and 2017. It is time after which it is possible and desirable to compare the effects of this model with baseline expectations and forecasts, both optimistic. Those who abstained; adequately evaluated them and made proposals for improving the relevant legal framework and practice. [8] In terms of functions, two functions can be attributed to an executive body: initiative and executive. The initiative function manifests itself in proposing

acts to the representative body, while the executive function assumes responsibility after enacting the action in the representative body for implementation. According to typology, the executive function can be classified into three basic types:

1. monocratic type - one individual performs the function of executive power; or if more are foreseen, then there is a chief executor who directs and coordinates;
2. collegial type - multiple individuals perform the function of executive power as a singular collegial administrative body;
3. plural type - executive power consists of several collegial administrative bodies, each with its scope of work, and coordination is performed by an individual, executive body, representative body or a combination of the above.

If types and methods are combined, the following formats are possible:

1. The monocratic type differs according to how the executive function is selected:
 - a political option where the executive authority is elected by a representative body (for example, in France);
 - an administrative one where the executive authority, in a professional sense, is appointed by a local representative body (for example, the governor of individual cities in the USA);
 - localization in which the executive authority is elected by the citizens (mayor in most cities in the USA);

- a centralist option where the central government appoints the executive authority (for example, in the Netherlands and Sweden).

2. Collegial type is distinguished by:

- the executive committee selects a local representative body among its members (for example, Croatian local governments);
- the board of directors consists of the President and members appointed as professionals (for example, in Norway and Finland),
- the communal committee consists of members elected by citizens (such practice is seen in, for example, most Swiss communes);
- the central government appoints a committee headed by the President (for example, in Belgium).

3. The plural type has three subtypes:

- a pluralistic system with no chief executor (for example, the committee system found in the UK);
- a pluralistic system coordinated by the local executor;
- a pluralistic system linked by the executive college (the Swedish council-committee system can be cited as an example). [9]

Progredior or regredior of Executive Authority in the Republic of Croatia

After adopting the Constitution of the Republic of Croatia, local self-government had an institutional form inherited from the former Yugoslavia. Only after the adoption of the Act [10] on December 29, 1993, municipalities and cities were defined as self-government units, while counties were

designated as local self-government and administration units. The executive power is exercised by the municipal mayor, the mayor and the county prefect, who the members of the representative body elect in the manner and procedure established by the rules of operation of the representative body. The election of the county prefect is confirmed by the President of the Republic of Croatia at the proposal of the Government of the Republic of Croatia. If the President refuses to approve the county prefect, then a new county prefect must be elected within 14 days of such refusal. Suppose the County Assembly does not elect another county prefect, or the President of the Republic of Croatia refuses to confirm again. In that case, the President of the Republic shall himself appoint a new county prefect within 14 days. The municipal, city, and county government exercise executive authority and are elected by a representative body by majority votes. The municipal mayor, the mayor and the county prefect are the presidents of appropriate governments. The members of governments are, as a rule, the heads of the self-government units' administrative departments. Amendments to the Constitution of the Republic of Croatia of 2000 [11] for local self-government have brought about crucial and significant changes. Since then, decentralization and strengthening of local and regional self-government institutions have begun. The county was no longer a unit of local self-government and administration. Still, it became a regional self-government unit, and the county was no longer a representative of the state government but a county official. The duality of the

executive power is still retained - at both individual and collegial levels. The representative body still elects individual executive power-holders. With further amendments to the Act [12] and by adopting the Election of Municipal Mayors, Mayors, County Prefects and the Mayor of the City of Zagreb Act [13], the manner of electing the executive power holders was changed entirely - municipal mayors, mayors, county prefects and the mayor of the City of Zagreb are elected in direct elections by secret ballot for a term of four years. "The direct link between the executive power holder and citizens should, to a certain extent, emancipate him from responsibility to the political party proposing his/her election (departmentalism)." [14] Powers from local governments have been transferred to individual officials elected in direct elections by secret ballot. The mandate is won by a candidate who receives more than 50% of the votes cast in the election. If no candidate wins a sufficient majority, two candidates with the most votes from the first round enter the second round. It was believed that such practice would break the link between political parties and the executive power because the citizens would directly elect the executive power.

The Local and Regional Self-Government Act [15] introduced the institute of recall as one way of controlling the work of the executive authority. There are direct (complete) and indirect (mixed) revocations depending on the initiative. In the case of an immediate recall, the citizens themselves have the enterprise. In the case of an indirect memory, the possibility of initiating is up to the

representative body. In both cases, the citizens make the final decision in a referendum. The institute of revocation is set up only as an element of democracy without the possibility of realization, i.e. realization is greatly hindered. Calling for a recall referendum may be proposed by 20% of the total number of voters in the unit in which revocation is demanded. A recall referendum may not be called before the expiration of a period of 12 months after the elections have been held or in the year in which regular elections are held. The municipal mayor, mayor or county prefect may be considered revoked if a majority of voters vote in favour of cancellation in a referendum. The majority amounts to at least 1/3 of the total number of voters registered in the unit. In the situation above, early elections are held. Until the elections are completed, the duty of the municipal mayor, mayor or county prefect is exercised by the Commissioner of the Government of the Republic of Croatia. According to legislative changes of 2017 [16] it is also possible that a representative body with a two-thirds majority of its members calls for a referendum on revocation. The somewhat achieved balance between the representative and executive bodies has been undermined by legislative changes of 2017 regarding budget adoption. Also, Klarić, in his work *Executive Bodies in Local Self-Government - Comparative Examples and Croatian Experience*, states that the institute of revocation is practically impossible due to the conditioning of the number of voters who are obliged to go to the referendum. [17]

The new amendments distinguished the dismissal of the representative body and the executive authority during budget adoption in favour of the executive. Failure to adopt the budget does not lead to a parallel release of the representative body and the administrative head. The executive authority is limited to proposing the budget as an act, and the representative body to the fact of adopting the budget. Therefore, if the municipal mayor, mayor or county prefect does not propose a budget, withdraws before the vote and does not propose a new version of the budget, the Government of the Republic of Croatia, at the proposal of the central state administration body responsible for local and regional self-government, is authorized to dismiss that municipal mayor, the mayor and county prefect, and their deputy.

The institution of recall in some countries of Southeast Europe

The Constitution of Bosnia and Herzegovina [18] is an integral part of the General Framework Peace Agreement for Peace, i.e. it is Annex No. 4 of the Dayton Peace Agreement. Signed on 14.12.1995. years in Paris. Bosnia and Herzegovina consists of the Federation of Bosnia and Herzegovina, the Republic Srpska, and the Brcko District. [19] The Constitution of Bosnia and Herzegovina does not concern local self-government, but the organizational structure is prescribed by the Constitution of the Federation of Bosnia and Herzegovina. [20] According to the Constitution, each municipality has a municipal council and a

municipal mayor. Councillors and mayors are elected by direct and secret ballot. The higher level of local self-government is a city consisting of two or more municipalities, and the bodies are also the city council and the mayor. Amendment No. 16 elects the mayor to the city council. The City of Sarajevo, as part of the Sarajevo Canton, is legally organized as a unit of self-government. As part of the Herzegovina-Neretva Canton, the City of Mostar is classified as a unit of government and local self-government. [21] According to the Statute of the City of Sarajevo, "Mutual relations between the City Council and the Mayor are based on mutual respect and cooperation, with individual responsibility for exercising their competence and joint responsibility for the functioning of the City of Sarajevo." [22] In addition, the mayor is obliged to regularly inform the city council about the implementation of city policy. He is also obliged to answer the councillors' questions within 30 days.

According to the Law on Local Self-Government of the Republic Srpska ("Official Gazette of the RS", no. 97/2016, 36/2019 and 61/2021), the mayor and the mayor are elected in direct general elections for a term of four years. According to the Election Law of the Republic Srpska, the duration of office of the mayor may be terminated if:

1. does not ensure the implementation of legal regulations;
2. does not ensure the implementation of strategic documents of national importance;
3. does not implement the decisions of the Assembly and strategic development documents;

4. material damage occurs to the municipality due to the adoption or failure to adopt acts within the competence of the mayor;
5. if he does not submit a report on his work to the Assembly;
6. fails to propose the municipal budget within the time limit provided by law. [23]

The revocation initiative can be initiated by one-third of councillors and 10% of voters registered on the voter list, and a majority vote decides to start all councillors. The recall procedure shall be carried out within 30 days from the day the decision to initiate the process for the recall of the mayor enters into force. Citizens decide to recall by direct secret ballot. The memory is considered successful if more than half of the voters who voted for it voted for it.

In Serbia, the mayor is elected from among the representative bodies. The mayor may be dismissed before the expiration of his term with a reasoned proposal from one-third of the councillors. The proposal for the mayor's dismissal must be voted on within 15 days from the day the bid was submitted. With the mayor's release, the mandate of the deputy mayor and the municipal council ends. (Law of Serbia)

Concluding Considerations

Healthy local self-government is also a guarantee of sound national policy. The political system needs to be created "bottom-up". In a short period, the Republic of Croatia decided to make its

local organization. From the introduction of local self-government and administration units through the identification of regional self-government units to the system in which the last legal changes strengthened local self-government, i.e. the executive authority official. Recent legislative changes have strengthened the executive authority with the merger of the state administration office with the county as a regional self-government unit.

The democratic, rational and professional move was the introduction of the direct election of a municipal mayor, mayor and county prefect. Following the European Charter of Local Self-Government and by all current postulates of the principle of subsidiarity, that was the only expected solution. The will of the citizens is respected, and the local population is left with the choice of a local official. At any time, that choice was considered justified. However, every society must be prepared for individual political moves and decisions. The political system has delved too much into the pores of the Croatian population. The Croat population abhors political power, political blackmailers and political manipulators. Thus, tremendous progress was made with the local elections in 2009 because, in addition to the representative body representing citizens, another institute was obtained - the institute of executive power, which is also directly elected by the citizens. However, the problem arises from the preparedness of society and the community to take such moves. From 2009 to 2012, two referendums on dismissal were held in the municipalities of Pribislavec and Pušića (Škarica, 261). In both cases,

there was insufficient voter turnout. Numerous reasons were tempting and seemed justified during the introduction of the direct election of the executive authority: greater confidence in the political system would emerge, more people would go to the polls, and a more excellent balance between the legislative and executive leaders would be possible. A lot of it turned out to be the opposite. In a paper titled "Evaluation of the direct election of municipal mayors and county prefects in Croatia after two terms: one step forward, two steps back" [22], it turned out that the direct election of the executive authority failed to affect voter turnout. It increased slightly (by 6%) from 2005 to 2009, while in 2013 and 2017, the turnout stagnated. The introduction of direct elections did not affect the number of referendums held. Besides, decisions had been made by an individual, which had led to a loss of professionalism among public servants (more on this topic can be found in a paper written by Koprić-Škarica). The number of independent candidates in elections for municipal mayor and county prefects was initially satisfactory. Of course, the success of independent candidates in the election was not acceptable. Consequently, the number of independent candidates decreased significantly by the next election. [23] The institute of recall is set at a level of untouchability. With the existing low voter turnout, a significant share of voters who voted for a specific individual as an executive power holder in direct elections should vote in favour of their recall.

The results of the research show the realization of the principle of subsidiarity in neighbouring countries as well. For example, the Republic Srpska has a direct election of the executive power, and the institute of recall is adaptable to the citizens because only 10% of voters are needed for the initiative. In Serbia, the mayor is elected from the ranks of the representative body, which is a significant deviation from the principle of subsidiarity. In any case, the institute of revocation requires a different approach and certain proposals will be made.

The Croatian local system tried direct and indirect election of the executive authority. We also had a collegiate executive officer. We also had confirmation from a government body. Some European countries have shown that there is not too much room for introducing new modalities. It would be crazy to go back to the models we have had. There is no third solution in European countries - either from a representative body (as a member or based on expertise), direct elections, or individual governing bodies. The only way out from this situation is to specify the prerequisites for the election of a municipal mayor, mayor and county prefect. Conditions that should affect the competencies of candidates. In such situations, the number of candidates would be reduced, and the candidates should be individuals who would expertly and professionally carry out the duties at the local level. A parallel can be drawn with the Commissioner of the Government of the Republic of Croatia, for whom a certain level of expertise is prescribed. This could lead to the withdrawal into

the policy system of younger individuals willing to take leading roles in local units. Unfortunately, nepotism is challenging to eradicate, but this recommendation would probably reduce the percentage of nepotism. As scandals (for example, domestic violence) have repeatedly occurred recently in the Republic of Croatia, the following recommendation refers to prohibiting individuals who are being prosecuted or who have been convicted of criminal offences charged *ex officio* from becoming candidates. The second recommendation would again narrow down the selection of candidates and leave room for younger individuals who have proven to hold specific social values. The third recommendation concerns leaving the political party - the municipal mayor, mayor and county prefect should not be members of any political party (modelled after the executive authority at the national level). In such a case, we would have all the components satisfied: we would retain the direct election of the administrative officer, maintain the principle of subsidiarity, and encourage direct election by creating appropriate criteria that should minimize the shortcomings of previous models. The only question is how to regulate the responsibility of the holders of executive power to perform their function as conscientiously and responsibly as possible. The legal changes set the institute of recall for citizens as a means by which they can "punish" the irresponsible exercise of power. Unfortunately, the institute is almost on the verge of the impossible. Today's institute of revocation is the tied hands of democracy. As an institute, it did not find its realization. The goal of democracy is to establish a

"check and balance", and in this case, there is no check between voters and the executive. It is recommended to make the institute of recall enforceable to voters so that the citizens could conduct an inspection of the executive branch and thus influence its accountability. The current situation under the favourable regulations is in deficit because the changes in the patent law have led to the creation of local sheriffs. An escape from democracy and the principles of good governance has been made in Croatian local self-government.

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