

SURVEYING SERVICE IN NEW LEGAL SYSTEM

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Abstract

On the basis of the constitution and laws on local self-governing, state administration and public services, the suggestion is made to execute surveying service activities on the state level whereas individual tasks should be executed as a public service. Activities of the surveying service on the state level should be executed by the Republican Surveying and Mapping Administration and district surveying administrations with their branch-offices whereas certain tasks could be transferred to municipal surveying administrations.

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INTRODUCTION

In the new independent state Slovenia a new constitution and a series of laws have already been adopted and some are undergoing parliamentary procedures. These directly or indirectly influence the organization of the surveying branch. The new organization and competence of the surveying branch will be regulated in the new law on surveying service. In the introduction I would like to define my view of the „surveying service“ e. g. the „activity of the surveying service“. The main task of the surveying service is to provide standardized surveying spatial registers about position, form, land use, property and other elements of space. Among object surveying spatial registers (further on: surveying service registers) the following have to be reckoned: land cadastre, building cadastre, register of administrative territorial units, evidence of house numbers, evidence of surveying points and state boarder, topographic and general maps. In addition to basic tasks of the surveying service the surveying service should ensure the execution of certain surveying services having public character and having direct influence on registers of the surveying service e. g. can be managed only on the basis of these registers (further on: surveying services).

SURVEYING SERVICE ON STATE OR LOCAL LEVEL?

The answer to this question must be sought above all in the Republic Slovenia constitution (further on: constitution) and in new laws from the field of local self-governing, state administration and districts, which are in preparation. In spite of the fact that in contemporary stats self-governing is not regulated in a unique way it has one common feature: on a local level certain affairs are independently managed more or less irrespective of state administration. Consequently the inhabitants of a

local community have the decisive role as regards executing local affairs. They manage these affairs within the range of their needs and possibilities. Thus the state does not interfere in local affairs solving. In the same way this means that on the local level affairs, which are to be uniquely administered and uniquely performed for all citizens, are not performed. These affairs are within the competence of the state.

As far as local self-governing is concerned the constitution regulates only the most important issues (Article 9 and Articles 138 till 144), the rest will be regulated in a special law on local self-governing – this draft of bill to pass a statute is in the course of proceedings. The constitution regulates that a self-governing local community is a commune, which may make independent decisions about connecting into broader self-governing local community, even into a region if there is the case of regulating and managing local affairs of broader importance. A further regulation of the constitution is that a commune is competent for those local affairs, which can be independently administered by a commune and which concern only the inhabitants of a commune. A commune is financed from its own resources. With this the constitution has on general virtually defined affairs on the state and local level. The constitution regulates a possibility of a transfer of individual tasks from a state level to a commune one or to a broader self-governing local community. This can be done only in preceding accordance with a commune or broader self-governing community and under the condition the state provides the necessary means to perform the tasks. In this case there is state supervision not only of the regularity but also of the suitability and professional aspect of the work of a commune e. g. of a broader self-governing community.

In addition to these the state can turn over to broader self-governing local communities certain affairs from the competence of the state into their original competence; this is possible only in agreement with them. The state then determines the degree of participation of these communities at suggesting and executing certain affairs from the state competence. Principles and criteria for the transfer of competence are regulated by the law. In this case the state authorities carry out state supervision of the regularity, the necessary financial means for the execution of the affairs are provided for only by the broader self-governing local community. Besides a common the constitution defines also a municipal commune. By virtue of law certain tasks from state competence, regarding the development of cities, may pass to a municipal commune, which executes these tasks as her own ones. In this case, too, the state authorities carry out state supervision of the regularity of the performance of these tasks; for the necessary financial means the municipal commune alone is responsible.

The proposed first draft of the law about local self-governing provides that the state, in conformity with the law, may entrust the execution of individual affairs from state competence to a region. A region executes these affairs as state ones according to state instructions and with state means. The working material about shaping new communes in Republic Slovenia forecasts that Slovenia should have 230 communes according to less detailed division and 242 communes according to a more detailed one. The same material suggests the number of intermediary units between commune and the republic. In case the intermediary level would perform only tasks of the state administration, 22 to 25 districts would be rational; in case new regions

would be simultaneously an instrument of the state administration and would be bound to associate into broader self-governing units, 12 or 8 regions would do.

The state administration law should define also administrative-territorial organization of the state administration. For a decentralized execution of state administration tasks administrative districts (further on: districts) are suggested. A district should be organized for more communes, as a rule for an area of a region. Areas of districts will be defined by law. Tasks of a district will be executed in inner organizational units for individual fields e. g. areas, defined by documents of an organization, issued by a region's head. According to volume, nature and method of performing tasks of internal organizational units for a district, branch-offices for the area of one or more communes may be organized. The law should define on general also tasks of a district. So a district should take decisions on the first stage in administrative affairs from state competence providing the law does not define this in some other way. Further on districts should perform certain tasks from the competence of ministries as to a supervision of regularity of the work of local communities' bodies e. g. supervision about adequacy and about professional aspect of their work as to matters from state competence, carried over to a local community. In addition districts execute also other administrative tasks from state competence according to legal provisions of certain fields.

The law on state administration should also define that regions' authorities should be entrusted with performing tasks which fall into a competence of a district in case a district and a region are organized for the same area. A region may be entrusted with performing tasks with its preceding consent and according to the procedure, defined by law. The law on state administration plans also the organization of regional units of individual ministries to perform specialized tasks in the sphere of work of a ministry, which can not be performed in districts. As a rule a regional unit can occupy more communes or more regions. The law on state administration should also define that the state takes over from the commune also administrative tasks on the field of the surveying service. This is to happen in 3 months after the law is put into force. The law will define also areas of regions. These tasks, except tasks concerning administrative supervision, will be performed by districts.

According to all that was said so far on the subject of the question of this chapter there can be but one answer: the tasks of the surveying service belong to the competence of the state. There is also no doubt that the execution of the tasks of the surveying service has to be divided among the ministry (e. g. between the Republican Surveying and Mapping Administration) and districts. To suit best the requirements of citizens e. g. parties the execution of certain tasks has to be organized in district branch-offices. The detailed definition of the contents of tasks of the surveying service and dividing the execution of these tasks among the ministry, district and branch-offices, which will have to be defined in the law on surveying service, is far less clear. Individual tasks, especially professional operational works e. g. surveying measurement technical works as regards the set up and surveying service registers maintenance, which have administrative character e. g. would be wise to be performed jointly on one place for the whole state, should be carried out by public firms e. g. public institutions as a public service. Other tasks of setting up and maintaining registers would be carried out according to market principles. A detailed definition of

the tasks of the surveying service in the field of state competence and dividing these among the ministry (Republican Surveying and Mapping Administration) and a region and their units should be defined in the surveying law. This law will have to define a possible turn over of the surveying service tasks to a commune, a broader local community e. g. to a municipal commune. It is most probable that the turn over to a commune e. g. to a broader local community is not significant whereas the turn over to a municipal commune may make sense especially when regarded as a higher level of surveying service registers within state competences e. g. individual registers, which are important above all for the development of cities.

SURVEYING SERVICE AS PUBLIC SERVICE?

Until there are by special laws defined public services, the law on establishments defines that services are activities e. g. affairs, which are by law defined as activities e. g. affairs of special social significance. Due to the fact that the law on surveying service defines that affairs, performed by surveying services in accordance with this law, are affairs of special social significance, the professional-operational work in connection with setting up and maintaining surveying services registers is defined as a public service. But this does not give a final answer to the asked question. Namely the law of establishments states that this is valid only till public services in special laws are defined. Consequently the law on surveying service has to define whether certain tasks of the surveying service will be performed as a public service or not. Before giving a precise definition of the surveying service as a public one let's have a look at some general characteristics of a public service.

In a developed legal system two administrative systems are established – the territorial and the functional one. Through a territorial administrative system a state executes its power through its institutions like ministries, administrations, inspectorates, administrative institutes and alike. Through functional administrative systems e. g. public services, above all the performance of those public services is ensured, which main aim is not the function of state authority. This is achieved through public firms, public institutes etc. Through functional administrative systems – public services the performance of affairs important to the state is ensured – affairs which can not be let to blind forces, spontaneity, mere accidents, market laws etc. Among the forms of public services also concessionary systems, in which a state by an administrative document grants a license – a permission e. g. to perform a public service to certain organizations and individuals which fulfill requested conditions. A state may seize the concession and give it to other organizations or individuals. The concessionary system is characterized by a high grade of independence of organizations and individuals.

In Slovenia the performance of public services is fundamentally settled in the law on establishments. This is the case for above all the so called „social activities“. On the basis of this law many public services have been founded, like culture and education, medical activity, apothecary activity. Another law, which will define economic public services on general and is in the final phase of adopting, is the law on economic public services. The law on establishments defines that in conformity with the law e. g. with a decree of a commune or a city, according to legal provisions, certain public activities may be performed as public services for which, in the public interest, the republic, a

commune or a city, ensures permanent and undisturbed execution. To perform public service a public establishment is founded. Yet a public service may be performed also by some other establishment, firm, society, organization or by individuals, who fulfill the conditions requested for executing a public service and who are granted a license to execute a public service. A license to execute a public service can be granted by law or by a decree of a commune or a city or by a decree of a competent agency according to law or decree. The concedent (agency granting licenses) and the concessionaire (establishment, firm ... which takes out a license) make an agreement about the license, which regulates the relations between them as to the execution of the public service. A license is granted for a definite or indefinite period of time, whereas the concedent may take away the license if the concessionaire fails to execute the public service as agreed by the regulations and by the agreement. The means to execute public service are gained by the concessionaire from the founder, by payments of the completed services on the market, and from other sources defined by law.

The law on economic public services should define economic public services to be administrative and other activities of service or production character, with which within the frame of defined regulations public material properties are ensured. Public goods are considered products and services and their permanent and undisturbed production is ensured to fulfill diverse public needs (the field of energetics, transport and telecommunications, water management, management of other kinds of natural resources, environment protection and other economic activities), in case they can not be ensured on market or if their ensuring by market principles would be contrary to public interests. There should be republic and local economic public services. They may be compulsory or optional. A compulsory and republic public service is founded and is regulated by law. The law anticipates that in cases, defined by law, the administration can order individuals products and services to be ensured in the mode, adopted for economic public services. The law should also define that the execution of economic public services is ensured by the Republic Slovenia or by local communities in a direct way (economic public services in overhead) or by granting licenses. Economic public services may be executed in overheads only when they can not be ensured by granting licenses; Republic economic public services are financed within the means of the Republic, whereas obligatory local services are financed by the Republic and local communities in the ratio and by the way defined by law.

For the task of direct executing economic public services the Republic and local communities may found overhead plants or public firms, whereas public firms can not execute activities which can be provided by market. A licensed economic public service is executed by a concessionaire on the basis of the authority of the concedent. A concessionaire may be a physical or a legal person in as much this person can fulfill conditions to execute these activities. A concessionaire is appointed on the basis of a public competition. In case a concessionary deed is a law or a decree of a local community, it can state that the selection is defined without a public competition. The concedent and the concessionaire make a concessionary agreement in which their mutual relations as regards the execution of the concessionary economic public service are regulated.

There no public service, defined in the law on establishments e. g. in the planned law on economic public service, directly applicable in the surveying service; yet

some services may be executed as a public service. A number of tasks of the surveying service can not be ensured by market. Consequently, if these are not to be given into direct execution of the state surveying administrative authorities, the need arises to execute certain tasks of surveying service as a public service. As a public service especially cyclical and other aerial survey, the set up and the maintenance of basic surveying networks of higher grades, topographic and general maps ... should be executed. These works are highly professional tasks and their execution does not need many executors. Within Slovenia the introduction of competition in these fields of work is not possible and the international competition as regards the special significance of these tasks from the state point of view is not acceptable. Also surveying services should be executed as a public service unless a special procedure to get a public authorization would be necessary for the execution of all services. The execution of certain surveying services can be classified as affairs belonging to the function of state administration and to execute such affairs a public authorization is necessary. A similar public authorization will be needed by concessionaires at executing certain administrative affairs in connection with the set up and maintenance of surveying service registers. The constitution provides the possibility of issuing a public authorization (Article 121) when defining, that self-governing communities, firms and other organizations and individuals, may be granted a public authorization for executing functions of state administration. By granting a public authorization the most sensible and effective execution of tasks in question should be achieved.

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