

Self-government and Autonomy of Statutory Municipalities in the Light of Historical Sources for the »Provincial Capital of Ljubljana«

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ABSTRACT Today, a municipality is automatically considered as a basic local self-governing (and autonomous) community. Nevertheless, we need to keep in mind that the contemporary understanding of the municipality and its regulations are the fruit of the long development that - in Central Europe - began over 150 years ago as the foundations for modern regulations were laid. This paper briefly illustrates the draft and legal bases for the modern concept of municipal administration. It focuses on the legal position of the most important statutory municipalities in the Habsburg Monarchy at which it uses the town of Ljubljana as an example. The paper also deals with the important issue of the relationship between the institutions of self-government and autonomy. Based on the analysis of the historical legal sources, it shows that local autonomy should not be equated, as is often the case, with the concept of local self-government. It further maintains that the old Austrian municipalities were at least formally autonomous and that their autonomy was limited in the interest of the state. On the basis of archive sources for Ljubljana, it ascertains that the municipality was autonomous only as far as it could choose the moment and mode of regulating certain municipal affairs and as far as it could take into account local specifics in adopting the norms, which proved to be quite sufficient under the given circumstances. Namely, the municipal autonomy was one of the factors that significantly contributed to the rise in the standard of living for the inhabitants of Ljubljana at the end of the 19th century. Last but not least, it also contributed to the victory in the struggle for the Slovenian national rights.

Key words: • municipality • statutory municipality • town • local government • self-government • autonomy • municipal self-government • municipal autonomy • independent sphere of activity • delegated sphere of activity • town charter • Austrian Monarchy • Ljubljana • Slovenia

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1 The Emergence of Municipalities as the Main Administrative Entities at the Local Level

In the territory of the present-day Slovenia, the municipality as the first-instance power was introduced by the French Government already in 1810. It merged several Joseph II's cadastral municipalities into the lowest administrative unit called "commune" or "mairie". By doing so, the French administration laid the basis for the development in subsequent periods.¹ When Austria re-established its authority after the French had left, it abolished the communal organisation. However, it based the new administration on the French administrative units. The Austrians created districts anew and, upon certain changes, subjected to them the entire French-Illyrian communes, which they called the main municipalities. These included several cadastral municipalities called sub-municipalities. We cannot yet speak about any independence and self-government of these municipalities because the Austrians assigned essentially fewer rights to mayors than appropriate French officials used to have at this level. In the pre-March period, the municipal administration's sphere of activity was, in general, very modest and legally non-defined (Polec, 1952-1953: 688).

The organisation of the Austrian state administration was significantly influenced by the March revolution demands from 1848. In the administrative respect, the abolition of serfdom caused the abolition of patrimonial power and thus widely opened the door to the new administrative regulation, which in modest outlines already showed earlier, especially in that part of the monarchy, which in the past belonged to the Napoleonic Illyrian provinces. A municipality designed as an independent, self-governing and first-instance administrative- political power became the cornerstone of the new administration.

Municipalities in the modern meaning of the word were established only after the March revolution.² The requests for such an administrative unit were not new at that time. They resulted from the idea of the innate rights of the municipality, which appeared already in the pre-revolutionary France and according to which local communities were supposed to have certain innate rights independent from the rights of the state, similarly as the innate rights of a man or citizen (Jellinek, 1922: 644). This idea strongly influenced all the Central European countries and Austria probably all the more, because a part of the Austrian territory, as already mentioned, actually enjoyed some of its fruits already at the time of the Illyrian Provinces.

The new municipal administration was introduced in Austria in a relatively short period of time. Among other things, the new administrative system was probably so rapidly introduced due to the central government's desire to abolish the patrimonial structures as soon as possible. In addition, the government probably also had some fiscal interests because municipalities were supposed to take care of

the financial burdens relating to the public administration themselves. The liberal views and practical experience of the Count Stadion,³ the Minister of Interior and the father of the idea for the new administrative changes, certainly contributed to the determined realization of the concept of local self-government. Upon the creation of the original draft of the new municipal legislation in 1849, the writer followed the motto "a free municipality is the foundation of a free state". It is interesting that the motto was enforced as a programme provision under Item 1 of the general provisions of the Provisional Law on Municipalities from 1849 (State Official Gazette of 1849, No. 170). Already in its bill, the Ministry of Interior declared »Autonomy, self-government of municipalities in all that concerns its interests and does not interfere in somebody else's sphere ... It is a natural right of the municipality that must not be arbitrarily limited" as the supreme guiding principle in the organisation of municipalities. (Polec, 1952-53: 694, op. 15, 696).

The idea of the natural rights of a municipality was most explicitly manifested in defining the municipalities' scope of work, which was divided into the municipality's own sphere of activity and the delegated sphere of activity. The municipality's own sphere of activity included the matters, which ranked among the »innate or natural rights of the municipality«. The municipality was allowed to regulate them independently. Therefore, the Provisional Law on Municipalities uses the term »natural sphere of activity«. This sphere of activity included all the issues that referred to the interests of municipalities and could be regulated within their boundaries and by using own municipal funds. This included: free management of municipal assets, the care for the maintenance of the municipal infrastructure, safety and unimpeded traffic on roads and waterways, the care for the safety of persons and their property, certain police matters, and the maintenance and allocation of funds for folk schools. The delegated sphere of activity contained the public administration affairs, which the state delegated to the municipality and the latter only carried them out by its bodies, such as promulgation of laws, tax collection and the care for military recruitment. Since a distinction was made between the state (bureaucratic) and municipal (self-governing) structure, we speak about the two-tier system of the state administration. In the light of the idea of an autonomous and self-governing municipality, its own sphere of activity can be ranked into the framework of municipal autonomy, whereas the delegated sphere of activity ranks into the framework of its self-government.⁴

2 Local Autonomy and Self-government – the Basic Distinctions

The fundamental difference between the concepts of autonomy and self-government is that in autonomy, emphasis is on the adoption of rules for a particular community, whereas in self-government, emphasis is placed on the enforcement or own implementation of rules. Autonomy (from Greek: *avtos nomos*) can thus be understood in its literal meaning as the right of a specific

entity to issue its own laws. In this context, only the state is completely autonomous. The unlimited legislative right is one of the fundamental elements of national sovereignty. The state may also grant the legislative right to its smaller territorial subsidiary units, however, their autonomy is limited by the state legislation. It's the case of shared legislative right. If the legislative right is shared between the state and the local community, we speak about the local or municipal autonomy.

Local autonomy should not be completely equated, with the concept of local self-government, as it often happens. Local self-government is part of the common state or public administration, which the state leaves to the citizens in local communities to manage it through its elected bodies. The essence of local self-government is that certain public affairs are carried out by a special from the state independent legal entity, which is governed by public law and is also responsible for them. The municipal (communal) self-government may therefore be defined as an authority, with which the municipality as a body governed by public law carries out common (state) affairs of local importance under its own liability. In the subsequent political development the division was preserved except that in its justification the German administrative theory leaned on the idea of decentralization. The basis of the decentralisation theory is the comprehension of the initial unity of the whole sphere of authority, represented by the central state bodies. The state delegates a part of this power to a lower administrative unit, or in our case, to the local community.⁵

3 A Brief Chronology of the Legal Bases for the Municipal Autonomy and Self-government

The Kroměřížki draft of the Austrian Constitution of 4th March 1849 provided autonomy and self-government of the municipalities in all the affairs, which were solely about the interests of municipalities and were within the limits set by the state municipal law and by the provincial municipal rules. On the basis of the March Constitution (State Official Gazette of 1849, No. 150), which guaranteed autonomous management of municipal affairs and the option for the municipal representation body members to be elected, the Provisional Law on Municipalities was issued by the imperial patent on 17th April 1849 (State Official Gazette 1849, No. 170). The law provided for the municipalities full self-government in their internal affairs, in the management of their assets, in setting up municipal bodies and in local police enforcement. Even though the adoption of regulations on municipalities under the state law was left to provincial legislation (primarily the determination of the autonomy content, self-government and mechanisms for their implementation, for example, municipal representation body and the right to vote), the provincial municipal laws were not published. The new administration was introduced on the basis of the state law and its official amendments and official interpretations (State Official Gazette 1850, No. 116, 127; Provincial Official

Gazette 1852, No. 66, 72). It is interesting that in rural area, the reform was accepted with great mistrust because people were afraid of the reintroduction of serfdom.⁶

Emperor Franz Joseph abolished the March Constitution and thus in fact reintroduced absolutism (State Official Gazette 1852, No. 2) on 31st December 1851. "The Principles for Organisational Regulations in the Crown Lands of the Austrian Empire", issued on the same day, limited the autonomy of municipalities extensively because they anticipated a strictly centralised administration (State Official Gazette 1852, No. 4).⁷ Again, individual provincial municipal rules did not entail. In practice, the administrative reform was carried out directly on the basis of the organisational order provisions. Only as late as more than seven years later, on 24th April 1859, a new municipal law was published and drawn up (State Official Gazette 1859, No. 59) according to the principles of the patent with which the emperor abolished the March Constitution. After the fall of absolutism, the principles of the Provisional Law on Municipalities from 1849 revived. Most of them were included into the new framework law from 5th March 1862 (State Official Gazette 1862, No. 18), "which outlines the fundamental provisions for the regulation of municipalities". In the following years, it was used as the basis, on which municipal rules and municipal election provisions were issued for individual lands. More or less amended, they remained in force until the disintegration of the Monarchy. Carniola received its own municipal order among the last lands in 1866. (State Official Gazette 1866, No. 2).⁸

According to all the mentioned state laws on municipalities, the competences in municipal affairs were shared between the state and provincial legislation. Division of powers was suspended by the December Constitution in 1867 that entrusted the municipal legislation entirely to provincial assemblies (State Official Gazette 1867, No. 141).⁹

4 The Specifics of Statutory Municipalities

Already the Provisional Law on Municipalities from 1849 provided in Article 6 that some important towns receive their statutes.¹⁰ Since 1862, when the Basic Law on Municipalities was adopted, the provincial legislation had complete freedom in choosing which towns would be granted the statutes. Such towns, called statutory towns, had a special legal status of statutory municipalities (*Statutargemeinden*). By using this term, the Austrian legislation denoted the municipalities that did not fall under the provisions of the general municipal legislation applicable for an individual land. Their organisation and functioning were regulated by special statutes. The statutory municipalities had the status of political district authorities of the first instance and were directly subsidiary to the land. Statutory municipalities primarily distinguished from other municipalities in matters of the delegated sphere of activity because they were directly subsidiary to

the provincial governments and not to the district boards. In Austrian literature, such a special position of the statutory municipalities is called "*Landesunmittelbarkeit*", which means that there is no intermediate governmental level between the statutory municipality at the local level, autonomous level as well as state bodies at the provincial level.¹¹ Only the town of Trieste was the so called "*Reichsunmittelbar*" in the sense that there was no intermediate level between the municipality and the state; or to be more specific, there was no intermediate provincial assembly between the municipality and the national assembly.¹²

The described characteristics show one more distinction regarding the statutory municipalities in relation to other municipalities. The delegated sphere of activity is essentially broader in the statutory municipalities because it includes also the matters usually carried out by district boards. The statutory municipality must therefore deal with the matters, which all municipalities are responsible for as well as for those that fall under the municipalities in their role of political governments of the first level. As elected municipal heads, the mayors therefore had a whole range of tasks that in principle belonged only to the district chief officers. The elected mayors of statutory towns had to be appointed by the Emperor himself, which significantly affected the proclaimed municipal self-government.¹³

The introduction of special statutes for selected towns and the related differences that *de iure* and *de facto* occurred between the non-statutory and statutory municipalities, as well as between statutory municipalities themselves, violated the doctrinal proclamation on the legal equality of all municipalities. This occurred wilfully, mainly for political reasons. In the background of the idea of granting special municipal statutes, there was a desire to adapt the municipal legislation to the political specifics of individual towns and thereby, with regard to specific circumstances in the management of the most important towns, guarantee the dominance of a certain national or social group. In this respect, provisions regarding the election of the municipal representation bodies were particularly relevant.¹⁴

5 Self-government and Autonomy by Way of Illustration of the »Provincial Capital of Ljubljana«

On the basis of the Provisional Law on Municipalities from 1849, Ljubljana, like other primarily provincial capitals, received its statute already in 1850.¹⁵ It outlived neo-absolutism and remained in force until 1887 when a new statute was adopted.¹⁶ With some non-essential amendments from 1898 (Provincial Official Gazette 1898, No. 24) and 1910 (Provincial Official Gazette 1910, No. 31), it remained in force until the breakdown of the monarchy, and it even outlived it because, despite the political and administrative changes in the period of the post

WW I Yugoslavia, the statute remained in practical use until the adoption of the uniform state law on urban municipalities in 1934.¹⁷

The new Ljubljana Statute from 1887 was based on the outline state law on municipalities from 1862. It was also deeply rooted on the municipal rule for Carniola from 1866. According to the statute from 1887, the urban self-government is performed by the elected municipal council that makes decisions on municipal matters. The municipal council members elect the mayor among themselves. The mayor then chairs the municipal council.

The municipal sphere of activity is divided into own and delegated areas of work. The Ljubljana municipal statute defines the delegated sphere of activity as a duty of the municipality to participate "for the purposes of public administration", as it is provided within their jurisdiction by the general and provincial laws. The delegated municipal sphere of activity is very wide because it also includes the matters that are carried out by the district board. The tasks from the delegated sphere of activity are listed only by the temporary Ljubljana municipal order from 1850. Individual Articles include care for the promulgation of government legal acts, the collection of taxes, population census, recruitment, supply and accommodation of the army, marriage licensing, care for prosecution, craft authority, the obligation to inform the provincial governor of the events in the municipality, and the issue of domicile certificates. Within the framework of these public administrative tasks performed by the elected municipal bodies instead of the state ones, the Ljubljana City Municipality is a self-governing municipality in the narrow meaning of the word.

The true reflection of the municipal autonomy can be found in the municipality's sphere of its own activities. The new Ljubljana statute from 1887 includes here everything that directly concerns municipal benefits and what the municipality can supply and implement within its limits and by using its proper resources. Within this framework, the municipality may, »adhering to the existing state and provincial laws, command and order by free self-determination«. Here, the municipal order includes: free management of municipal property, local police matters, anything that concerns the poor and municipal charities, the influence on municipal secondary schools, care for establishing, maintaining and financing of folk schools, to mention only the most important tasks. Under the local police affairs, the order especially lists the care for the safety of persons and property, maintenance of urban infrastructure, police control over food and market turnover; field, health, moral, business, construction, and fire police. In the affairs of the local police, the municipal council is expressly authorized to issue regulations, if certain local police tasks from higher state interests are not assigned by law to imperial special bodies. The autonomy of the municipal council is also defined with regard to the internal functioning of the municipality and municipal institutions. The latter are limited with respect to the rule stating "if under

institution or contract, something else is not prescribed." In certain Articles, the city council's power for the adoption of norms linked to the functioning of municipal bodies is explicitly determined. In the fiscal area, the municipal council may introduce a municipal addition to current taxes and excise taxes when the municipality can no longer cover its expenses from the existing revenue. If the addition exceeds twenty-five percent of direct taxes or excise tax, the introduction of the addition must be approved by the provincial assembly. If the municipality wants to increase the addition in excess of fifty percent of direct taxes (or thirty percent of excise taxes), or if it wants to introduce new taxes and allowances (or to increase the existing ones) when this is not necessary to cover the municipal budget deficit, the municipality must negotiate the provincial law. In the context of the supervisory functions over the municipality, it is explicitly emphasized that the provincial assembly, through its committee, makes sure that the municipal property remains unabated.

The Ljubljana statute from 1887 also offers an option for narrowing the autonomy in the provisions on the supervision. In the matters of its own sphere of activity, the municipality was subsidiary to "the provincial committee or provincial assembly". Regarding the delegated sphere of activity, it was subsidiary to the "political provincial authority" (i.e., to the provincial government). The general right of control over the municipality is determined by Article 82: "The state administration exercises control over the municipality through the political provincial government so that the municipality does not exceed its area and that it does not act against the existing law. For this purpose, the state administration may request the decisions of the municipal council and the necessary explanations to be presented to it." More specific provisions on the control can be found in Article 67, which imposes a duty of the mayor to withhold the execution of the decision of the municipal council, if he finds out that it exceeds the municipal area, opposes the law (or the statute) or if it is adopted to the apparent detriment of the municipality. In these cases, the matter must be re-submitted to the municipal council. If the municipal council insists on its decision, the mayor must immediately submit the matter for assessment to the provincial committee, if it is about the matter from its own sphere of activity where no law has been violated. Alternatively, it must be sent to the political provincial head if it is about the matter from the delegated sphere of activity where the law was violated. As it appears from the last part of the norm, the political provincial authority (i.e., the central state body) may also intervene in its own municipal area. To do that, it is generally authorized by Article 79, which says that the political provincial government, »in accordance with the provisions of this municipal rule, has the right to intervene also in the matters of own municipal area«. The political provincial chief is entitled and obliged to prohibit the execution of the decisions of the municipal council if the decisions exceed the municipal sphere or violate the law.¹⁸ For well-founded reasons, the political authority may even dissolve the municipal council.¹⁹ The Ljubljana statute determines the supervisory function of

the state particularly in the matters of the local police. In these cases, the right of control and "influence" is reserved for the provincial government. When the Provincial Government ascertains that certain matters "cannot be postponed" for the successful operation of police forces, it even may issue injunctions in the interest of public safety, and may eventually also execute them through its own bodies.

As we can see, the Ljubljana municipal autonomy within its own sphere of activity is formally limited by the existing legislation, which means that the municipal council may adopt the norms in accordance with a pre-defined framework, but they must comply with the state and provincial laws. The state has the right and duty to exercise direct control over the legality of the adopted norms. It must make sure that the municipal council does not exceed its competences and that the issued norms are in accordance with the existing legislation. In the context of the supervisory function, the government (state) bodies may also directly intervene in the area of the municipal autonomy and self-government (e.g., prohibition against the execution of the decision, the issue of provisional regulations, the enforcement of certain matters in the municipal sphere of own activity through the state bodies, the dissolution of the municipal council). The powers of the state are quite broad, especially if we take into account the fact that the conditions of when the state may intervene in the autonomy are lax and undefined (e.g., "when it seems that the matters cannot be postponed", "for well-founded reasons").

Besides, the Ljubljana municipal statute also mentions the duty to submit the decisions of the financial nature for senior approval to the provincial assembly (or committee). From the second paragraph of Article 24 of the State Municipal Law from 1862, it could be inferred that such a duty also existed for all other important decisions. Practice shows that norms were not submitted for approval just to the provincial assembly (or to its appropriate committee), but also to the provincial government and even to the provincial presidency.

From the viewpoint of the state, such regulation of control is understandable because it provides uniformity and consistency of legal order. In practice, however, it represented a fundamental basis for the politically conditioned, sometimes even voluntary limitation of the municipal autonomy. In case of a disagreement between the municipality and the provincial assembly, the provincial assembly simply enforced its own will over the expressed will of the municipality. The proclaimed municipal autonomy on the one hand and the wide-ranging powers of the state on the other, thus led to strained relations and frictions between the municipal and state bodies. The area of the police was particularly conflicting because, it is by its nature in the state's sphere of activity, but it was assigned to the municipal own sphere of activity. Thus, the own sphere of activity was very increased thereby putting the Austrian municipalities in an awkward position with regard to the state authorities. In the course of time, this had caused

that the relations between the municipalities and the state became even more strained. Often disputes arose over competence and supervisory rights.²⁰

The study of the archive sources for Ljubljana showed that the norm-giving activity of the Ljubljana Municipal Council prior to the year 1895 had been rather modest. The turning point was the earthquake in 1895. The fact that in order to raise Ljubljana from the rubble, to restore and modernize it led to an increased norm-giving activity. Practically all the urban development after the earthquake, new constructions, organisation and modernisation of the transport, electrification as well as activities of the city authorities and institutions, were based on the legal rules adopted by the municipal council within the context of its municipal autonomy.²¹ The vast majority of norms date at the beginning of the mayoralty of Dr. Ivan Hribar.²² Being a hard-working, dynamic and resolute personality, full of ideas and care for the town, he was well merited for the development of normative activities, and of course, for the results that have followed. He often initiated a norm-giving procedure, and as a Municipal Council Chairman, he usually took an active part in it.

6 Conclusions

Initially, the liberal concept of municipal autonomy and self-government, which resulted from the March Revolution demands, did not come to full life. Upon the introduction of neoabsolutism, the proclaimed values mostly remained unrealised. The reform of the Austrian state administration in the sixties of the 19th century had formally brought very broad powers to municipalities, which was more a great exception than a rule in the European continent at that time.

Since the first municipal statute was granted to Ljubljana prior to the restoration of absolutism, it, at least formally, offered the town great opportunities to enforce the proclaimed autonomy. Neoabsolutism, which legally and actually completely limited the municipal autonomy, did not explicitly annul the liberal Ljubljana statute. Absolutism thus offered a certain legal basis for autonomy however there was no favourable climate to encourage the municipal council to adopt the appropriate norms. Beside the fact that during the period of absolutism, the prevailing state doctrine rejected the idea of any autonomy, the general municipal legislation at the state and provincial levels was changing relatively quickly. Therefore, the municipal council did not take full advantage of its norm-giving competencies. On the basis of the statute, the town council adopted certain norms without submitting them for approval to higher authority (probably for the reasons mentioned before). Such rules therefore did not have a mandatory character of a legal act, but were considered as legally non-mandatory guidelines.

After the fall of absolutism, the new municipal legislation adopted in 1862 revived the liberal principles of the Provisional Law on Municipalities from 1849. On the

basis of this legislation, a new statute was granted to Ljubljana in 1887. It continued the tradition of the first statute only that it regulated the subject matter comprehensively and in more detail. Twenty-five years had to pass between one and another statute and this additionally proves the fact that the first Ljubljana municipal statute was already liberal enough and that there was no need to immediately adjust it to the new municipal legislation. The norms on the delegated sphere of activity defined the standards for the town self-government, while the provisions on own sphere of activity, at least formally, offered a broad basis for the town autonomy. A high degree of the proclaimed autonomy was strongly relativised by the provisions on the control over the municipality. In the matters concerning its own sphere of activity, the municipality was subordinated to the provincial assembly (or to its committee), which was an independent body at the provincial level. The control over the legality of the municipal work was left to the representative of the central state authority, i.e., to the provincial government. The norms that the municipal council adopted in accordance with the provisions on its own sphere of activity had to be submitted for approval to higher authority that ascertained whether or not the adopted norms were in accordance with the law, and whether or not the municipal council exceeded its area of work by adopting them. On the basis of the general provisions on the protection of legality, the political state authority could directly intervene in the municipal autonomous area. Ljubljana as a statutory municipality with its own sphere of activity was therefore actually more subordinated to the state administration than to its own self-government authorities.

The regulation of the matters from its own sphere of activity was, in principle, left to the initiative of municipalities that were sometimes utterly passive. Many municipalities, especially small ones, considered the tasks from their own sphere of activity (e.g., fire protection, maintenance of schools, the care for the poor) a heavy financial burden rather than their important right. That is why the state had to encourage municipalities to be more active in connection with these tasks.²³ Sometimes the state also intervened with the own sphere of municipal activities because it wished to unify the legal regulation of a certain subject matter, which further reduced town autonomy. In such cases, the state usually published guidelines and recommendations, which the municipal council had to follow in adopting the norms.²⁴

With regard to the above stated facts, many authors wonder whether such limited autonomy of municipalities in the norm-giving area can still be called autonomy. Restrictions are supposed to degrade autonomy to a mere technical level where autonomy loses its true nature and is shown only as a self-government service. Therefore, many rather speak of the Austrian municipal self-government than of autonomy.

The answer to the question depends primarily on the understanding of the definition of self-government. The authors who deny the existence of autonomy of Austrian municipalities lean their theory mainly on the philosophical and sociological definition of autonomy. In their opinions, the relationship between the autonomous communities and the state in the old Austria was basically contradictory. Municipalities were autonomous only in theory and even that theoretical autonomy was very limited. Since the autonomy of local communities is supposed to root on a conflicting relationship, it is not considered as autonomy in a true sense. Taken from a narrow legal aspect, however, we have to conclude that the Austrian municipalities were at least formally autonomous. Their autonomy was limited in the interest of the state, which in itself is not negative. Therefore, the question is not whether the municipalities were entirely autonomous, but what level of autonomy they had under the given circumstances.

On the basis of a practical research of the Ljubljana municipal autonomy, we can establish that the town council extensively exploited the formal option of its own regulation of municipal affairs in the period from 1896 to 1900. The reasons for the norm-giving enthusiasm can be found in the ripe economic, political and social conditions of the time, while the earthquake put the Ljubljana municipal council before a demanding task of reconstructing the ruined town, which required practical regulation of all the vital spheres of life in town.

The most significant practical expression of limiting the autonomy was a non-approval of norms. The Ljubljana municipal council adopted several important norms which the senior authority did not approve immediately. In such cases, the municipal council had to amend individual articles in the manner recommended by the higher authority. The Ljubljana Municipal Council minutes of the meetings evidently show that the councillors paid close attention to the compliance of norms with the existing legislation already when adopting them. They often accepted already adopted and approved norms of other towns, which they merely modified according to local specifics. It was the most practical thing to do, but also the safest as it was very unlikely that the higher authority would not endorse the adopted norm.

As a matter of fact, the state allowed the municipality its autonomy until their interests crossed. Complications occurred largely because the boundary between the municipal and state interests was not clear and static. Among the most common reasons, for which the higher authority did not approve of a norm was the question of finances and the associated right to dispose of financial resources. This was also the most conflicting area in autonomy. The majority of norms were not approved of due to their financial terms. Sometimes a political reason was hidden under a formal reason for »non-approval«, which can be clearly seen in the case of rejecting the statute of the higher girls' school. The provincial school board formally disapproved of the norm due to its financial terms, but in reality it was

delaying the approval due to ethnico-political reasons. (ZAL, Cod. III/46, fol. 408).²⁵

We have already mentioned that only a state exercises a full autonomy. Since the municipality is subsidiary to the state, it cannot be absolutely independent. If the state granted unlimited legislative power to the lower territorial units, the state would fall apart and new sovereign states would emerge. In the background of many strivings for autonomy, we can actually anticipate centrifugal tendencies that are destructive to the state. The Habsburg Monarchy experienced such a provincial autonomy although the central government successfully kept it under control. There are also many examples nowadays when the struggle for the autonomy of local units has led to the ruin of a country. So, if we want to preserve the unity of the state and the consistency of its legal order, the state authority must limit the autonomy of the self-governing units in advance and simultaneously determine the supervisory mechanisms that will watch over the implementation of the autonomy granted. Taken from the viewpoint of the state, the restriction of local autonomy is therefore logical, necessary and positive. The degree of autonomy at the lower level of administrative units should always be considered in the context of the above mentioned statement.

On the basis of its statute, the Ljubljana municipality had limited autonomy, which it exploited to its advantage. This certainly was a case of autonomy (own legislation), at least taken from a formal and legal point of view, as the norms within the municipal own sphere of activity were adopted by the elected municipal body (town council). With regard to content, the municipality was basically autonomous only as much as it could by itself choose the moment and the mode of regulating certain municipal affairs, and as far as it could take into account the local specifics in adopting the norms. If the municipality wanted more freedom, the higher authority immediately limited it.

The result of municipal autonomy (though heavily limited) could be observed practically in all spheres of urban life. The Ljubljana Municipal Council with its care for infrastructure, police forces, traffic, lighting, electrification, water supply, sanitation, education, etc. was largely responsible for the change in the quality of life of the citizens at the end of the 19th century. Municipal autonomy was thus one of the factors that significantly contributed to raising the standard of living of the inhabitants of Ljubljana, and last but not least, also contributed to the victory in the struggle for the Slovenian national rights.²⁶

Notes

¹ The principle that an administrative municipality comprises the entire cadastral municipalities was given up in the Kingdom of Yugoslavia as late as 1933.

² An overview of the municipal autonomy development prior to that, see: Holcman, Kocher, 2005: 5-11, Grafenauer, 2000: 83-101, Šmidovnik, 1995: 145-148. These works quote other relevant literature in notes.

³ See: Apollonio, 1996: 31-98.

⁴ Municipal tasks were carried out by municipal bodies. The municipality was administered by the elected municipal representation body that consisted of a municipal committee as a decision-making and supervisory body, and municipal representation (mayor with a small number of councillors) as an administrative and executive body. According to the state law from 1862, the municipal bodies in the matters of their own sphere of activity were subsidiary (subordinated) to the representative of the provincial autonomy (to the provincial assembly or committee); in the matters from the delegated sphere of activity, they were subsidiary to the state body (to the district board).

⁵ More information on local self-government and its different models, see: Šmidovnik, 1995: 27-52. For an overall information on the issue of local (self)government in Slovenia, see: Grafenauer, 2000.

⁶ About the problems associated with the introduction of new municipalities see: Polec, 1951: 222-233,, 1952-53: 686-732.

⁷ The most important restrictions were: reduced sphere of municipal activity, supervisory function of the provincial governments, also in the matters from own sphere of municipal activity; the government reserves the right to approve municipal heads.

⁸ Amendments: Provincial Official Gazette 1868, No. 13; 1869, No. 5; 1876, No. 15; 1881, No. 7; 1882, No. 8; 1888, No. 14, 23; 1910, No. 32.

⁹ About the development of the Austrian municipal legislation in detail, see: Klabouch, 1968. A brief overview, see: Žontar, 1988: 88-103.

¹⁰ The position of statutory towns was granted mostly to places, which were urban autonomy holders already in the Middle Ages.

¹¹ See: Framework State Municipal Law (State Official Gazette 1862, No. 18), Article 23.

¹² See: Mischler, Ulbrich, 1909: 451-452.

¹³ The elected mayors were actually »not approved« in Ljubljana twice: M. Ambrož (already in 1850) and I. Hribar (in 1910).

¹⁴ Compare: Klabouch, 1968: 41.

¹⁵ "Temporary Community Law for Ljubljana" dated 17 June 1850 (Provincial Official Gazette 1850, No. 276); amendments: Provincial Official Gazette 1868, No. 14; 1876, No. 10.

¹⁶ Municipal Statute and Municipal Election Order for the Provincial Capital of Ljubljana (Provincial Official Gazette 1887, No. 22).

¹⁷ Detailed information on the Ljubljana city statutes, see: Drnovšek, 1981: 126-136.

¹⁸ The municipal council could file an appeal against the ban with the Ministry of the Interior.

¹⁹ Possible appeal against such a decision did not hold the execution.

²⁰ In Austria, the reasons for the tense relationship between local communities and the state bodies had deeper roots. According to Rutar, the basic problem lied in different historical and practical backgrounds of both structures. Namely, the Austrian state administration was supposedly dominated by the bureaucratic and German national spirit, whereas self-governments and especially municipalities introduced national language, considered national customs and established democratic manners of operating. Rutar, 1927: 31.

²¹ See: Minutes of Meetings of the Ljubljana Municipal Council. Historical Archives Ljubljana, Department Ljubljana (ZAL), Cod. III/45-56.

²² An overview of the normative activities and detailed information on individual norms, see: Kambič, 1989: 24-39 – Annex 1: Chronological overview of the normative activities of the Ljubljana municipal council from 1896 to 1900; Annex 2: An overview of the normative activities of the Ljubljana municipal council from 1896 to 1900 according to topics.

²³ The result of such a state has been defined as a »tied autonomous sphere of activity« ("gebundener selbständiger Wirkungskreis") by the administration theory, which clearly shows a contradictory situation. Compare: Klabouch, 1968: 98.

²⁴ See as an example: The Interior Ministry Order, which was supposed to unify notification in all major places (State Official Gazette 1857, No. 33).

²⁵ About the right aspects of certain segments of the national issue in the Monarchy see: Stourzh, 1985.

²⁶ This paper is a shortened, partially modified and supplemented text taken from my broader discussion, published in *Zbornik znanstvenih razprav Pravne fakultete v Ljubljani* (1995).

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