

THE GEODETIC SERVICE BETWEEN THE STATE AND THE COMMUNES

Tomaž Kocuvan, Franci Bačar, M.Sc.
*Surveying and Mapping Authority of the Republic of
Slovenia, Novo Mesto District Surveying and Mapping
Authority*

Received for publication: 16 July 1996
Prepared for publication: 4 September 1996

Abstract

The paper discusses the transfer of competencies of the former communal geodetic administrative bodies to the state, and the possibility of the transfer of certain competencies in the field from state bodies to local self-managed communities and other contractors.

Keywords: *commune, competencies, geodetic records, geodetic service, legislation, state*

The course of attaining independence in the Republic of Slovenia, which in several respects meant a break with the former constitutional order, did not take a revolutionary path; the adoption of the new Constitution took an evolutionary path, and the forming of the new legal system is still in progress. Constitutional changes began with the decision of the Presidency of the Socialist Republic (SR) of Slovenia of 16 December 1989, when it appointed a work group for the preparation of starting points for a new Constitution of the SR of Slovenia. The starting points for the new Constitution, which were published in Delo on 16 December 1989 and served as guidelines for the appointed work group, announced a new constitutional orientation which would be characterized by democracy and a legal state in the broadest sense, pluralism, a market economy, etc. The first post-war democratic elections, which took place in April 1990 and in which in accordance with a proportional election system nine parties gained seats in the National Assembly, were an important step in the construction of the new legal order.

The plebiscite of 23 December 1990 holds a special place in Slovenia's attaining of independence and forming a new constitutional order. The majority of participants (over 88%) voted for an independent Republic of Slovenia. The adoption of the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia and the Constitutional Law for the Implementation of the Sovereignty and Independence of the Republic of Slovenia were parts of the procedure for the final formation of the Slovenian state. The new Constitution of the Republic of Slovenia was adopted at the Assembly of the Republic of Slovenia on 23 December 1991 by a two-thirds majority of all delegates.

The continuity of Constitutional norms and the legal system is demonstrated by the fact that the new Constitution was adopted by the Assembly of the Republic of Slovenia, which had been elected according to the provisions of the old Constitution and Electoral Law. The new Constitution was adopted in the procedure for the revision of the Constitution and it retained certain regulations from the previous constitutional order. The preservation of the validity of federal regulations and their use as republic regulations, and the resulting continuity of the legal order, are prescribed with the provision of the first paragraph of Article 4 of the Constitutional Law for the Implementation of the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia: "Until the issuance of appropriate regulations by the Republic of Slovenia, the federal laws which were in force in the Republic of Slovenia at the time this law came into force shall be reasonably applied as republican laws in the Republic of Slovenia, if they are not in conflict with the legal order of the Republic of Slovenia and unless otherwise determined in this law."

As state administration was organized for the performance of administrative tasks as part of the executive branch with the passing of the Law on Administration. The transfer of administrative tasks from communal administrative bodies to state administrative bodies was prescribed with the provisions of Article 101 of the stated law, which prescribes that: "On 1 January 1995 the state shall assume all administrative tasks and competencies from communes in the fields for which individual ministries have been established, and all other administrative tasks of authoritative nature from the competencies of the communes as determined by law.

Administrative tasks in the fields from the previous paragraph shall be performed by administrative units, except for the tasks of the geodetic service, tasks of administrative supervision and tasks in the field of defence and security, which shall be performed directly by the competent ministries."

Article 99.a of the Law on Local Self-Management prescribes that: "The regulations of former communes with which the matters in state competence listed in Article 101 of the Law on Administration are regulated shall be valid from 1 January 1995 onwards as state regulations and shall be implemented by state bodies and replaced with their own regulations within the boundaries of their competence.

The parts of regulations of former communes from Articles 21 and 22 hereinabove in which local matters are regulated shall be valid from 1 January 1995 onwards as communal regulations and shall be implemented by communal bodies and replaced with their own regulations.

The competencies of bodies of former communes determined by laws and other state regulations in arranging and executing matters in state competence shall not be passed to the bodies of new communes."

The assumption of administrative tasks from communal administrative bodies, which were bodies of executive authority and were organized according to the principle of decentralization of state (social) authority in the communes as social-political communities, is a logical consequence of Article 139 of the Constitution of the Republic of Slovenia, which prescribes in its first paragraph that

communes are local self-managed communities, and in Article 140 that local matters which communes can regulate independently and which concern only the inhabitants of the commune fall under the competence of communes. The above-mentioned articles of the Constitution, the Law on Administration and the Law on Local Self-Management do not provide an answer to the question of what are state competencies and what are local matters which fall in the competence of communes as local self-managed communities. At the request of the Executive Council of the Krško commune and the National Council, the Constitutional Court passed Decision No. U-I-285/94-105, dated 30 March 1995, in the procedure for assessment of constitutionality of Article 101 of the Law on Administration, which states: "The first paragraph of Article 101 of the Law on Administration (Official Gazette of the RS, No. 67/94) and the third paragraph of Article 99a of the Law on Local Self-Management (Official Gazette of the RS, Nos. 72/93, 57/94 and 14/95) shall be annulled. This annulment shall come into force on 1 June 1995."

In the explanation of its decision, the Constitutional Court emphasized that they had stated very clearly already in their Decision No. U-I-13/94, dated 20 January 1994 (Official Gazette of the RS, No. 6/94) that upon the transition to the system of local self-management, the National Assembly must delimit and determine the competencies of the state and local communities. According to the decision of the Constitutional Court, the assumption of competencies with the general provisions of Article 101 of the Law on Administration is in conflict with the principles of a legal state and the separation of powers, which require normative regulation of competencies in individual areas of administrative functions and tasks through one or more laws, since the provisions about competencies mean the authorization of certain bodies to pass decisions regarding individual administrative matters.

On 26 October 1994, the National Assembly adopted the Law on the Organization and Work Area of Ministries with which it determined ministries, administrative bodies and administrative organizations in their composition, and their areas of work. With the Decree on the Territorial Extent of Administrative Units in the Republic of Slovenia, the Government of the Republic of Slovenia determined the extent of administrative units for the territories of former communes and the territory of the city of Ljubljana, and listed settlements within the territories of individual administrative units, thus determining the local competence of individual administrative units. The material competence of administrative units in administrative matters is at the first instance level for all matters, with the exception of those which were transferred by regulations to other decision-making administrative bodies. According to the provisions of the second paragraph of Article 101 of the Law on Administration, administrative units are not materially competent to pass decisions about the tasks of the geodetic service, administrative supervision, or defence and security; these tasks are performed directly by the competent ministries. The reasons why the legislature considered the tasks of the geodetic service to be so important that they had to be performed directly by the competent ministry are not clear from the legal norm itself. However, the tasks of defence and administrative supervision are certainly of such nature that they should be centralized.

Regarding the annulment of the first paragraph of Article 101 of the Law on Administration, the National Council has adopted the Law on the Assumption of State Functions which were Performed by Communal Bodies until 31 December 1994. The stated law determined the material competence of administrative state bodies as competence determined by individual laws, all of which are listed in this Law. Also in this Law, the competence for decision-making in the field of the geodetic service, administrative supervision and defence and security, is excluded from the material competence of administrative units, which reflects the principle of decentralization of state authority. Contrary to the annulled provision of the second paragraph of Article 101 of the Law on Administration, inspection control is also excluded from the competence of administrative units. The tasks of the geodetic service were transferred to the Surveying and Mapping Authority of the Republic of Slovenia with the provision of Article 4 of this Law.

According to the provision of the second paragraph of Article 140 of the Constitution of the Republic of Slovenia, the state may transfer the performance of individual tasks from state competence to communes or wider local communities with their previous approval, if it also provides the funds required for it. It can be seen from this provision that it is possible to transfer tasks from state competence to communes or wider local communities, but this may only be done by law and with the previous approval of communes or wider local communities; this will certainly depend on the capabilities of individual communes (spatial capabilities, personnel, etc.); the state must provide funds for communes to perform the transferred tasks.

The transfer of tasks of the geodetic service, land cadastre and basic geodetic measurements which refer to professional-technical and administrative tasks for the needs of city communes is provided for in the sixth paragraph of Article 2 of the proposal for the Law on City Communes, which was published in Poročevalec No. 7 on 7 March 1996. It seems that the transfer of the tasks of geodetic service and other tasks stated in the sixth paragraph of Article 2 of the proposal for the Law on City Communes from state competence to all city communes by law is not in accordance with the provisions of Article 140 of the Constitution of the Republic of Slovenia, since such transfer of state competence to all city communes does not fulfil the condition of previous approval of individual city communes for such transfers. If any city commune does approve of the transfer of state competencies, they must be transferred to that particular commune or a wider local self-managed community by a special law and not by legal transfer of state competencies to all city communes. Transfer to all city communes through one law would be possible only with the approval of all city communes, and their approval would have to be explicitly stated in that law. In the sense of the above-mentioned constitutional provision and the second paragraph of Article 121 of the Constitution of the Republic of Slovenia, it would be reasonable to check whether certain tasks of the geodetic service and profession should be transferred to the competence of local communities, or, alternatively, to companies, other organizations or individuals by way of public authorizations:

- management of procedures which are declared as the performance of services in the field of land cadastre
- setting-up of new real-estate records (building cadastre)
- management of the cadastre of public utilities
- management and production of geodetic plans for the needs of site documentation
- laying out of buildings and facilities
- engineering-geodetic work
- aerial surveys and remote sensing
- publishing and production of maps and other products which are based on state maps or state databases.

In regulating the issues discussed above it will first be necessary to draw a line between the (state) geodetic service and the geodetic profession. The Surveying and Mapping Authority of Slovenia is certainly the bearer of the geodetic service, but the bearer of the geodetic profession is hard to define. The state administrative body is probably obliged to fill in the gap and gradually (but not chaotically) cede it to other qualified bearers:

- the faculty and other scientific institutions
- the Geodetic Chamber or interest groups made up of geodetic professionals
- geodetic engineers who are recognized experts in individual fields
- the Association of Surveyors of Slovenia
- other informal proponents.

Literature:

- Decision of the Constitutional Court No. U.I.285/94.105 (Official Gazette of the RS, No. 20/95)*
The Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia (Official Gazette of the RS, No. 1-4/91-I and correction no. 19/91-I)
The Constitution of the Republic of Slovenia (Official Gazette of the RS, No. 33/91-I)
The Constitutional Law for the Implementation of the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia (Official Gazette of the RS, No. 1/91-I and 54/1/94)
The Decree on the Territorial Extent of Administrative Units in the Republic of Slovenia (Official Gazette of the RS, No. 75/94)
The Law on Administration (Official Gazette of the RS, No. 67/94)
The Law on Assuming of State Functions which were Performed by Communal Bodies until 31 December 1994 (Official Gazette of the RS, No. 29/95)
The Law on Local Self-Management (Official Gazette of the RS, Nos. 72/93, 57/94 and 19/95)
The Law on the Work Area of Ministries (Official Gazette of the RS, No. 71/94)

Review: *Stanko Pristovnik*
Pavel Zupančič, M.Sc.