

DECISION ACTIVITY OF MUNICIPALITY WITHIN THE FRAME OF ENVIRONMENTAL MAINTENANCE

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environment, territorial self-government, municipality, environmental maintenance, unlawful act, environmental damage, decision-making of municipality within the frame of environmental maintenance, local roads as artificial part of environment, responsibility for damage, compensation of damage, administrative-legal responsibility, executive title

The article points out the unfavourable relation of nowadays society towards environment. It is a global problem of whole society, whose consequences are visible on each regional level – the local as well. Territory self-government meets the unlawful act on many places. Slovak municipalities have to deal with excessive expansion of „black waste dumps“. Among other problems belongs damage of local and tertiary roads owned by municipality, whose administration is provided by municipality, as well as sewerage water discharge to surface and subsurface waters, washing the cars and mechanisms in surface waters or in uncovered subsurface waters, or in places from which the leaked fuel could get to surface or subsurface waters, etc. In all such cases it is environmental damage. Municipalities fulfil tasks in the field of environmental protection according to the Act No. 369 / 1990 Zb. of communal establishment as well according to special regulation, f. e. The Act No. 50 / 1976 Zb. of land-use planning and construction regulation, the Act No. 543 / 2002 Z. z. of nature and land protection, the Act No. 223 / 2001 Z. z. of waste, the Act No. 23/ 1962 Zb. of hunting, etc.

Municipality within the frame of environmental maintenance realizes its competences by:

- a) normative activities – by issuing the directions of binding force
- b) signing up the public legal agreements – mainly agreements regarding municipality establishment

c) decision-making on rights and duties of natural and legal persons in administrative procedure – by the decisions of mayor

d) other public acts – by issuing the attitudes and statements, conceptual instruments approval.

The article focuses on competences of municipality in the field of issuing the individual legal acts regarding environmental maintenance, what means that it focuses on decision of municipality signed by its mayor. Empirical experiences point out that mainly municipalities and smaller cities are often not able to deal with realization of their competences in the field of individual application of law related to environmental maintenance.

The article presents the model situation, which points out the possibilities of municipality to perform tasks in the field of environmental maintenance by its own decisions, in the concrete related to local roads as artificially created part of environment. It points out as well the possibilities to make decisions constrainedly by municipality in the given field. By course of the Act No. 135 / 1961 Zb. of land roads as amended by later statutes: “Local state administration related to the local roads and purpose-built equipment is performed by municipalities as transferred state administration activity ...” Municipality, in relation to local roads and purpose-built equipment, acts as the state control within the frame of keeping the duties and conditions of using the roads.

Crucial is the question of how the municipality, in relation to contravener of law, should set up a claim to reimbursement of costs, which have been spent by unlawful act of this person. The main problem is whether the municipality is legitimated to make decision, by which it would lay an obligation to recompense the damage arising out of unlawful act of violator in relation to environment by violator of law. Mentioned damage presents the most often spent cost of municipality related to reinstatement of given part of environment. The question is also, whether such a decision of municipality is able to become an executive title in the case of not voluntary payment by violator of law. Counter solution is that in such a situation the municipality has to apply to the court of general jurisdiction with action for damages caused by law breaking which rose out as the consequence of unlawful act of violator. By such a solution it is of course first the enforceable decision of court as qualified executive title.

In spite of the diction of the Act No. 233 / 1995 Z. z. of judicial executors and executive activity as amended by later statutes according to which: “It is possible to perform the execution also on the base of enforceable decision of public administration and territorial

local self-government”, if we do not find legal enabling clause, which would justify the public administration body to issue the objective decision, the act of public administration body can not act as the qualified executive title and executive court already by decision making regarding issuing the commission for performing the execution on the base of such act has to condemn the request by resolution. The village thus has to apply to the court of general jurisdiction with the action for damages caused by law breaking.

The article also points out to concurrence of legal liability for damage and administrative-legal liability related to breach of duties imposed by the rules of environmental protection. It points out already § 29 of the Act No. 17 / 1992 Coll. of environment as amended by later statutes, according to which: “The fines or other measures according to those rules are inflicted for the breach of duties appointed by special rules of environmental protection; thus according to general legal regulations, the potential criminal responsibility as well as liability for damage is untouched”. Municipality will thus set up a claim to compensation of damage by civil trial and can inflict a fine for this unlawful act up to level appointed by law. Such a decision has already its legal base, so in the case of not voluntary acquittal imposed by decision of municipality on infliction of a fine for violation or other administrative tort, after the decision become enforceable; the ... decision becomes executive title according to Act No. 233 / 1995 Z. z. of judicial executors and executive activity, as well as according to Act No. 71 / 1967 Zb. of administrative procedure as amended by later statutes.

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