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### **The legal status of deputy mayor in Slovakia**

#### **Abstract**

*The article is dedicated to relatively omitted topic in literature, and that to the legal status of deputy mayor. The application of legal norms regulating the status of deputy mayor in Slovak republic reports a lot of misstatements. The reason is the character of legal regulation. The legal regulation of institute of deputy mayor represents almost the most general legal regulation within the whole Act on municipal establishment in comparison with regulation of other institutes of municipal establishment. The emphasis is given to private law status of deputy mayor within interdisciplinary concept of topic, especially in the matter of his payment. The public law element is shown in decision activity of municipal bodies about particular aspects of legal status of deputy mayor.*

#### **Key words**

*self-government - deputy mayor - general status - specific status*

#### **1. Prologue**

Scientific research activity in law is obligatory characterized by purpose and object of research<sup>1</sup>. The purpose of represented article is to analyze and to assess the legal regulation of status of deputy mayor in Slovak municipal establishment in de lege lata level, to formulate own opinions to quality of the legal regulation and ultimately to creatively formulate proposals de lege ferenda. Because the theoretical basis of scientific-legal research has to come out inclusion of complex of research problem in the most general level, the object of our research should be realization of systematic organized scientific cognitive process with intention to get to the deep and nature of legal features, correlations and processes in the system of legal regulation of

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<sup>1</sup> M. Čepliková, *Základy sociológie pre právnikov*, Košice 2003. s. 98.

deputy mayor, from public and private law interdisciplinary point of view<sup>2</sup>. Within interdisciplinary topic concept, the emphasis is given to private law status of deputy mayor, especially to his payment. The public law element is shown in decision activity of municipal bodies about particular aspects of legal status of deputy mayor.

The legal regulation of deputy mayor status represents almost the most general regulation within the whole Act of Slovak national council No. 369/1990 Coll. on municipal establishment as amended (*hereafter „Act on municipal establishment“*) in comparison with legal regulation of other institutes of Slovak municipal establishment. However that general and very brief legal regulation cannot be subjected to significant criticism. From the law strictness point of view it is one of the most democratic regulation in the Act on municipal establishment. The legislator lets the regulation of deputy mayor status almost solely to internal regulation of municipal self-government, except the minimum number of legal limits. The legislator properly entrusts decision making about range of substitution of mayor, about person of deputy mayor, about his payment, to the competence of municipality, respectively to its competent body, with respect of diversity of Slovak municipalities consequent from fragmented settlement structure and thereby also from their different economic and administrative potential.

The limit is only the cogent legal regulation of Act on municipal establishment, which the municipal self-government cannot exceed in creation of own internal administration and in decision making activity of municipal bodies, respectively cannot get into conflict with<sup>3</sup>.

## 2. The legal claims of deputy arising from function execution

### 2.1 General status

According to § 13b Para. 1 first sentence of Act on municipal establishment “*The mayor is substituted by deputy mayor, who is designated by mayor generally for the whole term of office within 60 days from taking the oath of mayor, in case it is not done, municipal council elects the deputy mayor.* “

There is a rule valid for general legal status of deputy mayor: The deputy mayor stays always firstly member of municipal council, also after designation as deputy mayor by mayor,

<sup>2</sup> E. Bakošová, *Základy sociológie pre právnikov*, Bratislava 1999, s. 142.

<sup>3</sup> J. Tekeli, *Kompetenčné právo v obecnej samospráve. Konfliktné oblasti*, Bratislava 2016, s. 248.

according to § 13b Para. 1 of Act on municipal establishment, and he is subject to legal regulation of municipal council members status and of rights and duties of municipal council members<sup>4</sup>.

The abovementioned universal rule is valid also for deputy mayor payment sphere, i.e. the payment can be provided to deputy mayor for the execution of municipal council member in sui generis (specific) position of deputy mayor according Municipal council members payment rules. The payment can be provided to municipal council members according Municipal council members payment rules, which approving is in exclusive competence of municipal council according § 11 Para. 4 Letter k) of Act on municipal establishment. From normative acts categorization point of view, Municipal council members payment rules are internal legal act of municipality approved by standard resolution of municipal council, not by generally binding legal regulation of municipality<sup>5</sup>.

## 2.2 Special status

Specificities of payment of deputy mayor are shown only in two situations:

a) The situation according § 25 Para. 8 of Act on municipal establishment: “*The appropriate salary from municipality instead of salary or other payment at work belongs to the deputy mayor, who is fully long time released from work for execution of deputy mayor function. His employment relationship in present employment is retained according to specific law regulations conditions.*”

In this situation it is not payment, but salary.

By used formulation “*the appropriate salary belongs to him*”, legislator wanted to differentiate this situation by determination of obligatory legal claim to salary of deputy mayor fully long time released from work in difference to facultative payment for the function execution of municipal council member in general. The salary is not facultative (possible), but obligatory, i.e. deputy mayor has legal claim to salary in this legal situation.

Although the salary is obligatory, “appropriateness” of height of salary is on self-government consideration of municipal council. As regards the competence of municipal bodies for determination of height of salary, it is valid, that not mayor, but the municipal council is

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<sup>4</sup> M. Hoffmann, *Zastupovanie starostu*, [w:] J. Tekeli, M. Hoffmann, *Zákon o obecnom zriadení. Komentár*, Bratislava 2014. s. 776.

<sup>5</sup> R. Jakab, *Normotvorný proces v územnej samospráve*, „Justičná revue“ 2009, roč. 61, č. 3.

eligible to determine not only the payment to deputy mayor, if not fulfilled conditions according to § 25 Para. 8 of the Act on municipal establishment (i.e. member of municipal council is not long time released), but also appropriate salary to deputy mayor long time released for the function execution, in Municipal council members payment rules.

The appropriateness of salary of deputy mayor will be objectively determine in conditions of concrete municipal self-government, mainly by range of tasks, which deputy mayor should fulfill by defined written mandate according to § 13b Para. 3 of the Act on municipal establishment and by economical potential of concrete municipal self-government. According to § 13b Para. 3 of the Act of municipal establishment: “*The deputy mayor substitutes the mayor in range determined by mayor in written mandate.*” The question of appropriateness of salary does not come out the legal regulation. As the appropriate salary of long time released municipal council member is necessarily considered that salary, which does not shorten the rights, which would belong to him at employer, if he was not released for the deputy mayor function<sup>6</sup>.

In application practise the appropriate salary of deputy mayor long time released for the function execution is the most often determined in Municipal council members payment rules

- By certain percentage of salary of mayor (e.g. 75% of salary of mayor) counted according to § 3 Para. 1 and § 4 Para. 2 of the Act on legal status and salary rates of mayors or
- By percentage of basic salary of mayor (e.g. 75% of basic salary of mayor) counted according to § 3 Para. 1 of the Act on legal status and salary rates of mayors or
- By fixed monthly amount<sup>7</sup>.

From the deputy mayor long time released for the function execution point of view, according to our opinion, the most convenient is the connection of appropriateness of his salary to the salary of mayor, i.e. percentual determining from the salary of mayor. The reason of this convenience is legal valorization of salary of mayor according salary growth in national economy, of which the result is subsequently ipso facto automatic valorization of salary of deputy mayor long time released for function execution. In that case the salary of deputy mayor long time released for function execution is automatic *ex lege* valorized according salary growth in national economy counted by Statistical office of the Slovak Republic without need of

<sup>6</sup> M. Thurzová, L. Dudor, J. Mezei, *Pracovnoprávne vzťahy v územnej samospráve*. Bratislava 2016, s. 160.

<sup>7</sup> J. Tekeli, *Nové pravidlá odmeňovania v obci po 1. januári 2016*, Bratislava 2016, s. 64.

adoption of municipal council resolution. Normative base for the payment method of deputy mayor can be only the Municipal council members payment rules<sup>8</sup>.

Empirical experiences demonstrate also the fact, that in many municipal self-governments decisive factors for salary determining of deputy mayor are not abovementioned objective determinants (mandate range, economical situation) or professional erudition of person of deputy mayor and quality of his work, but significant is subjective status of distribution of “political power” in representative municipal body. In simple terms, the salary appropriateness of deputy mayor long time released for the function execution is dependant on, how much of congenial political support in the municipal council has the “municipality leadership”, i.e. mayor and by him designated deputy mayor.

Because the salary of deputy mayor long time released for the function execution is determined by Municipal council members payments rules, which are adopted in form of resolution by municipal council, municipal council has also reserved the possibility to change the rules of determining of salary of deputy mayor adopted by it anytime regardless of number of repetition of this change, i.e. to revise the rules by amendment adopted in form of municipal council resolution.

In general we state that the legal status of deputy mayor long time released for the deputy mayor function execution is regulated unsatisfactorily in the Act on municipal establishment. Extremely brief legal regulation invokes big amount of interpretative questions about possible range of deputy mayor mandate in administrative law municipality relationships on one side, and in private law municipality relationships on the other side. In the same way essential questions about legal claims of deputy mayor long time released for the function execution consequent from his work performance (i.e. quasi “labour law rights”) arise. The municipal council member not even by his fully long time work release for the deputy mayor function execution “does not become mayor”, and principally he does not become a proprietor of administrative rights and private law rights consequent from function of mayor. To the deputy mayor position, even long time fully released for the function execution, cannot be related legal regulation in the Act of Slovak national council No. 253/1994 Coll. Act on legal status and salary rates of mayors as amended.

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<sup>8</sup> L. Briestensky, *Určenie platu zástupcu primátora*, „Právo pre ROPO a obce“ 11/2014. s. 1.

b) The situation according to § 13b Para. 4 of the Act on municipal establishment: *“The salary, according to the Act. 253/1994 Coll. on legal status and salary rates of mayors as amended, belongs to the deputy mayor, who fulfils the tasks of mayor fully, because the mayor’s office is terminated before expiration of term of office.”*

In this situation it is not payment, but salary.

In addition it is not appropriate salary, which appropriateness would be determined by municipal council in Municipal council members payment rules according rules listed below point a), but it is the same salary, which belongs to the mayor according to the Act No. 253/1994 Coll. on legal status and salary rates of mayors as amended<sup>9</sup>. The salary of deputy mayor, who fulfils tasks of the mayor fully, because the mayor is terminated before expiration of term of office, is not facultative (possible), but obligatory, i.e. the deputy mayor has legal claim to salary in this legal situation. The deputy mayor, who fulfils the tasks of mayor fully, because the mayor’s mandate is terminated before expiration of term of office, has the legal claim to the so called basic salary according to § 3 Para. 1 of the Act No. 253/1994 Coll. on legal status and salary rates of mayors as amended, counted by multiplying the average monthly salary of employee in national economy counted on the base of facts of Statistical office of the Slovak republic for the previous calendar year and by multiplying according to the population. The salary in proportional part (minimum 0.3), corresponding to the range of executed function, belongs to the deputy mayor fulfilling fully the tasks of mayor, who did not execute the function fully ( part time mayor ) and whose mandate terminated before expiration of term of office. The salary of deputy mayor, who fulfils the tasks of mayor fully, because the mayor’s mandate is terminated before expiration of term of office, cannot be lower than by abovementioned way counted basic salary. The only exceptions are the municipalities with population lower than 500, where the municipal council can reduce 1,49- multiple of salary to 0-multiple during term of office, with consent of deputy mayor, who fulfils the tasks of mayor fully, because the mayor’s mandate is terminated before expiration of term of office. The municipal council of any municipality can increase the basic salary of mayor and also of deputy mayor, who fulfils the tasks of mayor fully, because the mayor’s mandate is terminated before expiration of term of office, by the decision (in form of resolution) by 70% by procedure according to § 4 Para. 2

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<sup>9</sup> M. Thurzová, L. Dudor, J. Mezei, *op. cit.*, s. 160.

second sentence of the Act No. 253/1994 Coll. on legal status and salary rates of mayors as amended<sup>10</sup>.

The only legal fact, to which is bounded the payment of deputy mayor, by salary according to § 13b Para. 4 of the Act on municipal establishment, is premature termination of mayor's mandate because of taxative listed reasons in 13a Para. 1 of the Act on municipal establishment.

The salary of deputy mayor is followed by rules of payment of mayor in the Act No. 253/1994 Coll. on legal status and salary rates of mayors as amended, only in case if “ the mayor is prematurely not any more mayor” because of reasons:

- he denies the oath or takes an oath with proviso,
- he resigns,
- he is rightfully sentenced for intentional criminal act or rightfully sentenced for criminal act, if the sentence of imprisonment was not conditionally postponed,
- he was deprived of contractual capacity or the contractual capacity was restricted
- by announcement of the result of municipal referendum about recalling of mayor , by which it was decided about recalling of mayor,
- he changed the permanent residency outside the municipality territory, in the cities with self-government of city parts, also in a case he changed permanent territory outside the city part, in which he executes the function,
- in a case of incompatibility of function of mayor according to § 13 Para. 3 of the Act on municipal establishment and mayor did not perform relevant act to rectify the conflict within 30 days from the day of origin of incompatibility,
- the mayor died<sup>11</sup>.

Below the provision of § 13b Para. 4 of the Act on municipal establishment, i.e. to admit the salary to the deputy mayor according rules of the Act No. 253/1994 Coll. on legal status and salary rates of mayors as amended, cannot be subsumed various situations, when the mayor do not execute the rights and duties from mayor's mandate for a long time, but mandate is not terminated. The most often there are situations, when mayor is for long time and seriously sick leave, but also extraordinary situations, when he is not present for a long time or he arbitrarily denies to realize tasks of his mandate.

The application practise often proceeds incorrectly in relation to these cases.

<sup>10</sup> L. Briestensky, *Schvaľovanie platu starostu*, „Právo pre ROPO a obce“ 7-8/2012. s. 8.

<sup>11</sup> J. Sotolář, *Samospráva obce. Obecné zriadenie na Slovensku*. Košice 2011, s. 317.

In all these cases, “the mayor did not stop to be mayor” and he only do not execute, or cannot execute his mandate from objective or subjective reasons. The salary according to § 13b Para. 4 of the Act on municipal establishment, does not belong to the deputy mayor, who de facto “substitutes” the tasks of mayor, whose mandate did not terminate. It is possible to provide to him only a payment on a base of Municipal council members payment rules according to 25 Para. 9 of the Act on municipal establishment, if he is not fully long time released for the function execution, or appropriate salary on a base of Municipal council members payment rules according to § 25 Para. 8 of the Act on municipal establishment in a case he is fully long time released from his work for the function execution.

In these situations, it is appropriate the municipal council reevaluates current payment height or appropriateness of salary of deputy mayor this way, they reflect changed range of tasks, which deputy mayor fulfils instead of mayor during his disability for the function execution, by eventual change of Municipal council members payment rules.

Long time keeping of that provisory status of substitution the function of mayor is not appropriate. During existence of mandate of mayor, deputy mayor cannot be designated by fully realisation of tasks creating mandate of mayor, as a result of he is not able to organize complex administrative law and private law municipality agenda. Not mentioned the extreme situations, which the application practise brings, when the mayor subjectively denies to adjust range of mandate of deputy mayor, e.g. because of disrupted relationships of municipal bodies, or the mayor objectively cannot adjust the range of mandate of deputy mayor, e.g. because he is in a coma or at unknown place.

Long time situations of disability of mayor to execute his mandate are needed to solve according to character of reason of disability, either by resignation of the mayor’s mandate, or by announcement of municipal referendum about recalling the mayor according to § 13a Para. 3 Letter a) point 2 (ref. “The *municipal council announces municipal referendum about recalling the mayor, if he grossly or repeatedly neglects duties of mayor, brakes the Constitution of Slovak republic, constitutional law, legal rules and the other generally binding legal rules.*”) or according to § 13a Para. 3 Letter b) (ref. “*The municipal council can announce the municipal referendum about recalling the mayor, if absence or disability of mayor for the function execution last longer than 6 months*”)<sup>12</sup>.

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<sup>12</sup> A. Krunková, *Verejná moc a priama demokracia*, Košice 2010, s. 140.



### 2.3 Subsidiary legal claims

The basic premise mentioned in the chapter 2.1, that the deputy mayor stays also after his designation of mayor according to § 13b Para. 1 of the Act on municipal establishment always the member of municipal council in the first place and it is not possible to relate automatically the legal regulation of mayor to him, has influence also to many other, with payment related “labour law” rights of deputy mayor.

The function of deputy mayor is public function, which is not executed in employment relationship. However in all cases: payments, appropriate salary or salary of deputy mayor, it is taxable income from dependent work according to § 5 Para. 1 Letter d.) of the Act on income tax (income for the function execution in bodies of territory self-government), which establishes the position of employee to the deputy mayor for the purposes of health and social insurance. This income enters to the assessment base for health and social insurance. The municipality is obliged to pay contribution and levy obligations for the deputy mayor<sup>13</sup>.

The specificity of legal status of deputy mayor is the most significantly shown in these following related institutes:

a) The legal claim to the redundancy pay of deputy mayor long time released for the function execution: The deputy mayor does not have the legal claim to the redundancy pay belonging to mayor according to § 5 Para. 1 first sentence of the Act No. 253/1994 Coll. on legal status and salary rates of mayors as amended: *“After termination of mandate of mayor because of expiration of term of office, redundancy pay from municipal budget belongs to mayor in amount of triple of his average monthly salary, if he executed the function longer than 6 months.”*

The deputy mayor does not have the legal claim to the redundancy pay belonging to the mayor neither in a case if he fully executed tasks of the mayor longer than 6 months because the mayor’s mandate terminates before expiration of term of office. Termination of substitution cannot be considered as termination of mandate of mayor, which is condition for the legal claim to the redundancy pay<sup>14</sup>.

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<sup>13</sup> I. Matlovičová, *Postavenie starostov, poslancov, členov komisií a hlavného kontrolóra v mzdovej učtárni (III)*. „Účtovníctvo pre ROPO a obce“, Bratislava 2016, 4/2016. s. 10.

<sup>14</sup> Methodical directive of The Ministry of Labour, Social Affairs and Family of the Slovak Republic file reference 6451/2015\_M\_OPV\_6260/2015 z 02.05.2015.

b) The legal claim to the meal providing for deputy mayor long time released for the function execution: The question of meal providing in case of mayor from the municipality side was after long time solved by the last amendment of the Act on legal status and salary rates of mayors, and that the Act No. 377/2015 Coll., by which changes and amends the Act No. 253/1994 Coll. on legal status and salary rates of mayors adopted on 20th of November 2015 with the effect from 1st of January 2016. According to the text of § 2 Para. 3 of abovementioned Act in version from 1st of January 2016: *“The mayor during function execution for the purposes ... of meal providing and contribution for meal is considered as an employee in employment relationship”*<sup>15</sup>.

We do not have this rule in the relation to the deputy mayor and ipso facto we cannot use it analogically for the deputy mayor, although he is also long time released from work for the function execution. On the law level we do not have satisfactory rules for solution of relationship of institute of deputy mayor (mainly long time released for the function execution) and meal providing to him from the municipality side as an employer. The abovementioned we assess as a lack. Although the deputy mayor is not employee of the municipality, i.e. public function is not executed in employment relationship, he executes the work in real time and in real conditions for the municipality the same as mayor and also his need for meal providing from the municipality side is natural, mainly in case of deputy mayor long time released for the public function execution. Because the direct legal regulation of meal providing absents in case of deputy mayor, it is needed to use the legal regulation § 152 Para. 8 Letter c) of Labour code No. 311/2001 Coll. as amended ( hereafter “Labour code”): *“The employer can after the negotiation with deputies of employees extend the group of persons, to whom he provides the meal and to whom he will contribute to the meal according Para. 3.”*

Because the cited legal provision of the Labour Code does not define, even does not limit group of these other persons, the decision about the group of other persons, on which in a case of consent of deputies of employees the employer extends the possibility of meal providing, is in competence of employer. The employer provides the contribution for meal in height according to § 152 Para. 3 of Labour Code to the persons, who fulfilled conditions specified in 152 Para. 2 of Labour Code, therefore also to the persons, to which it was extended of meal providing according to § 152 Para. 8 Letter c) of Labour Code. The legal claim for meal providing has the

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<sup>15</sup> J. Tekeli, *Odměňovanie starostu obce*, „Právo pre ROPO a obce“ Bratislava, 1/2016. s. 5-8.

person, who works more than 4 hours within work shift. If the work shift lasts more than 11 hours, the employer can provide another warm main meal. Negotiation as the legal form of the relationships of employer and deputies of employees conditions the regulation of conditions of meal providing, enabling the meal providing to persons working out of work shifts schedule and extension the group of persons, to whom municipality will provide the meal and to whom municipality will contribute for meal<sup>16</sup>. If there do not act deputies of employees at employer, the employer can decide on his own, in this case the municipality, respectively the city. In that case the municipality proceeds completely autonomously in extension of personal base of meal providing. Similarly the municipality has possibility to adjust the conditions, by which it will be provided a meal during vacation, obstacles at work or other excused work absence.

In the opposite case, if the employer does not extend the group of employees by process according to § 152 Para. 8 Letter c) of Labour Code, the deputy mayor, who does not execute his function in employment relationship, does not have legal claim for meal providing for his person from municipality side, or city side as employer.

From the municipality point of view it is facultative possibility to extend the group of persons with meal providing also to other persons than employees. The condition of minimum duration of daily work for the legal claim to meal providing (mentioned in the text) is related also to the persons, to whom the meal providing was extended. The Labour Code in § 152 Para. 8 Letter c) distinguishes two categories in extension of personal range for the meal providing to other persons, and that the persons to whom employer provides meal and the persons, to whom he will contribute for meal<sup>17</sup>.

c) Social policy of municipality and deputy mayor: The relationship of mayor and social policy of municipality as employer was solved by the last amendment of the Act on legal status and salary rates of mayors, and that the Act No. 377/2015 Coll., by which changes and amends the Act No.253/1994 Coll. on legal status and salary rates of mayors adopted on 20th of November 2015 with effect from 1st of January 2016. According to the text of 2 Para. 3 of abovementioned Act in version from 1st of January 2016 “*The mayor during the function*

<sup>16</sup> V. Tkáč et al., *Zákonník práce. Komentár*, Bratislava 2014, s. 1028.

<sup>17</sup> H. Barancová, *Zákonník práce. Komentár*, Bratislava 2007, s. 1040.

*execution for the purposes of creation and usage of social fund... is considered as employer in employment relationship”<sup>18</sup>.*

We do not even have this rule in the relationship to the deputy mayor and ipso facto we cannot use it analogically for the deputy mayor, although he is also long time released from work for the function execution. On the law level we do not have satisfactory rules for solution of relationship of institute of deputy mayor (mainly long time released for the function execution) and social policy of the municipality as an employer. The abovementioned similarly we assess as a lack.

The Act No. 152/1994 Coll. on social fund as amended (*hereafter „Act on social fund“*) is related only for employees of employer. The deputy mayor, even long time released from work as public functionary, is not in employment relationship, similar employment relationship to the municipality and he is not considered as employee of municipality according to valid legal regulation. According to § 4 Para. 1 of the Act on social fund:” *The base for determination of yearly ration to social fund is sum of gross salaries or payments charged to employees for payment for calendar year. The base for determination of monthly ration to social fund is sum of gross salaries or payments charged to employees for payment for particular calendar month.* “It is excluded to include the salary of deputy mayor to creation of social fund, because he has not the status of employee. The § 7 Para. 2 of the Act on social fund determines the group of persons, in whose favor money accumulated in social fund can be used, there are mentioned also family members of employees, and that husband or wife and dependant children, and the recipient of old age pension, of early old age pension, of disability pension, pension for service in the police department or armed forces or invalidity pension for service in the police department or armed forces, whom employer employed in employment relationship or in similar employment relationship to the day of old age retirement, early old age retirement, disability retirement, retirement for service in the police department or armed forces, or invalidity retirement for service in the police department or armed forces.

### 3. Conclusion

We analyzed interdisciplinary problem of the status of deputy mayor in represented article, which connects elements of administrative law regulation and elements of labour law

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<sup>18</sup> J. Sotolář, M. Sotolář, *Zákon o právnem postavení a platových pomeroch starostov obcí a miest - odborný komentár s podrobnou judikatúrou pre samosprávy*, Košice 2016.

regulation. On the base of analysis performance and interpretation we generalize following conclusion. Although legal regulation of deputy mayor has to keep frame character on the law level with respect to exclusive self-government character of this institute, the current legal regulation is not satisfactory. The most unsuitable is legal regulation of private law elements of status of deputy mayor long time released from work for the function of mayor. There absent clear, respectively any legal rules about relationship of deputy mayor long time released from work for the execution of mayor function and about social policy of municipality as employer.