

SELECTED ISSUES CONCERNING THE ADMINISTRATIVE AND TERRITORIAL STRUCTURE OF BULGARIA

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ABSTRACT— *The article presents the procedures and requirements related to the establishment of administrative-territorial structures.*

Different cases from the Bulgarian case law have been analyzed.

There is a lack of certain procedures and misuse of terms that may create problems in the future.

Key words: administrative and territorial structure, districts, regions, municipalities, cities, villages

INTRODUCTUON

The territory of the country is that part of the land on which the sovereignty of the Bulgarian state spreads. It includes land, water, air and underground as well as other sites on which sovereignty extends. The territorial organization of the state is its administrative-territorial structure. The territory of the Republic of Bulgaria is divided into administrative-territorial units, delineated with precisely defined boundaries and territory. The special law governing this issue is the law on the administrative and territorial structure of the Republic of Bulgaria. The law regulates the establishment of administrative-territorial units and territorial units in the country, as well as the implementation of administrative-territorial changes. Administrative-territorial units are the districts and the municipalities, and the constituent administrative-territorial units in the municipalities are the mayoralties and the regions.

According to the law, the district, the municipality and the mayoralty have territory, boundaries, population, name and administrative center and the region - territory, boundaries, population and name. Territorial units include settlements and settlement formations.

The settlement is a historical and functionally defined territory, established with the presence of a permanent population, construction boundaries or land and construction boundaries and the necessary social and engineering infrastructure. The settlements are divided into towns and villages and are subject to registration in the Unified Classifier of the administrative-territorial and territorial units. The unified classifier of administrative-territorial and territorial units is maintained by the National Statistical Institute in coordination with the Ministry of Regional Development and Public Works by virtue of Art. 37, para. 1 of the Law on the Administrative and Territorial Structure of the Republic of Bulgaria.

According to the information in the unified classifier as of 19.1.2018 there are 5 256 settlements - 257 towns, 2 monasteries and 4 997 villages. The settlements are grouped in 28 districts, 265 municipalities, and in 3 187 mayoralties.

Settlement formations are territories outside the building boundaries of settlements designed to carry out specific functions that are defined with building boundaries but do not have a permanent resident population. The settlement and settlement formation have territory, boundaries and name. According to the law the district consists of one or more neighboring

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municipalities. The territory of the district is the territory of the municipalities included therein. The name of the district is the name of the settlement - its administrative centre.

What is important for the formation of the district is the physico-geographic distinctness of the territory and the existence of a city - a traditional cultural and economic centre with built social and technical infrastructure and transport accessibility to it from the settlements of the area.

The boundaries and administrative centres of the districts are approved by a decree of the President on a proposal of the Council of Ministers.

The municipality consists of one or more adjacent settlements. The name of the municipality is the name of the settlement - its administrative center.

The prerequisites for creating a new municipality are:

- a population of over 6,000 people in total in the settlements to be included in the municipality;
- presence of a settlement - a traditional unification center with built social and technical infrastructure providing the services of the population;
- inclusion of all adjacent settlements for which there are no conditions for the establishment of a separate municipality or which cannot join another neighbouring municipality;
- maximum road transport distance of the settlements from the centre of the municipality should not exceed 40 km;
- possibility to finance the expenses of the newly created municipality with revenues as per Art. 45, para. 1, item 1 of the Public Finance Act in the amount of no less than half of their average level for the country according to data from the last annual report on the implementation of municipal budgets.

The order for establishment of a municipality is:

- a request for establishment of a municipality from one or more settlements, expressed by a subscription of at least 25 per cent of the voters of these settlements to the respective municipal council. The request is supported by opinions of the mayors of the settlements on whether of the conditions necessary for the establishment of a municipality are met;
- the municipal council within one month assesses the existence of the conditions in the law establishing a municipality and pronounces it with a motivated decision, which it sends to the district governor;
- the district governor shall, within one month, verify if the request complies with the law and if the requirements of the law are met, propose to the municipal council to decide to hold a general referendum in the settlements that should form the new municipality;
- the referendum shall be held under the conditions and in the order defined by Law for the direct participation of citizen in the state authority and local self-governance;
- in case of a positive vote of voters, the district governor shall submit a written report to the Council of Ministers within two weeks;

- The Council of Ministers shall adopt a decision after a written opinion of the Minister of Regional Development and Public Works;
- The decision of the Council of Ministers to create a new municipality is sent to the President of the Republic of Bulgaria for approval.

What is interesting in this regard is Decision № 281 of 23.01.2001 of the Supreme Administrative Court in connection with Administrative Case No. 2882/2000. In the instant case, the mayor of municipality X appealed against the refusal of the Council of Ministers to form a municipality with an administrative centre - the municipality X. The first complaint, alleging that the Council of Ministers' decision refusing the creation of the municipality of X was not motivated and the lack of reasoning in the administrative act itself constituted an infringement is unfounded. The decisions of the Council of Ministers, which create or refuse the creation of a new municipality, are addressed to all residents of the settlements, which will be included in the municipality and therefore by their nature are general administrative acts. The requirement for duly motivated reasoning in the procedural law is only mandatory for individual administrative acts. This requirement does not apply to general administrative acts. Initially, general administrative acts need not be motivated except in cases where the law explicitly requires what is not the case here. According to the Supreme Administrative Court, as not motivating his decision to refuse to create a municipality X, the Council of Ministers did not commit any breach of the law. The second complaint about violation of Art. 9, para. 1, item 6 of the Administrative and Territorial Structure Act is also unfounded. According to this text, the Council of Ministers takes a decision creating or refusing to create a new municipality after a written statement of the Minister of Regional Development and Public Works. However, when the Council of Ministers has to adopt a decision on the creation of a new municipality, the law does not define anywhere. And because he did not determine the preconditions and circumstances to be taken into account in order to consider that the Council of Ministers should adopt a decision on the establishment of a municipality, it is obvious that the law has left this to be allowed on a case-by-case basis by the Council of Ministers discretion. Therefore, the question whether the Council of Ministers finds grounds for this in circumstances outside the opinion of the Minister of Regional Development and Public Works, as in this case or in other circumstances, constitutes an assessment of these circumstances and data in which the Council of Ministers acts sovereignly and its activity in this treatment is not subject to control by the court. The third complaint, which is also unfounded, is that the Council of Ministers should decide to set up a municipality if the opinion of the Minister of Regional Development and Public Works is positive. According to Art. 9, para. 1, item 6 of the Act, the issue of the creation of a new municipality is authorized by the Council of Ministers, but the decision itself will be taken, taking into account, on the one hand, the written report of the distinct governor and, on the other, of regional development and public works. The opinion expressed in one sense or another in the report of the district governor or in the opinion of the minister, who carries out preliminary studies and research, is not and cannot be obligatory for the Council of Ministers because its decision to set up a municipality is a question of appropriateness. After the decision to create or not establish a new municipality is granted at the discretion of the Council of Ministers, the execution of the action under Art. 9, para. 1, item 6 of the Act, the Council of Ministers is not obliged to accept and submit a report of the distinct governor or of the Minister's opinion and in this case the Council of Ministers, failing to comply with the opinion of the Minister and the proposal of the district governor and did not accept it, did not commit an offense. The fourth complaint, which claims that the Council of Ministers did not take into account the positive attitude of voters in the referendum in settlements wishing to be included in a new municipality, is also unfounded. From the comparison of items 3 and 4 of para. 1 of Art. 9 of the law shows that the holding of a referendum in the settlements precedes the report of the

regional governor for the establishment of a municipality from these settlements. Item 4 explicitly states that when the voters have approved the request for establishment of a municipality, the district governor must submit a report to the Council of Ministers. Consequently, the results of the referendum create an obligation only for the district governor, who is obliged to comply with it, because in a positive vote he has to prepare a report to the Council of Ministers for the establishment of a municipality. After the district governor submitted the report to the Council of Ministers, the legal significance of the referendum ends and therefore the holding of a referendum has no independent meaning but is only a preparatory stage for the preparation of the district governor's report to the Council of Ministers. Therefore, the results of the referendum are not decisive for the Council of Ministers and do not create any obligation for it to comply with the positive vote of voters for the establishment of a municipality. According to the court, having departed from the positive attitude of voters in the referendum on the establishment of the municipality of X, the Council of Ministers did not commit any violation of the law.

In the capital and in cities with population over 300,000, the regions are created according to the law. Regions can also be created in cities with more than 100,000 inhabitants, at the discretion of the municipal council. The territory of the region is part of the territory included in the building and land borders of the city. The name of the region is determined by the act of creation.

The conditions for creating regions in major cities are:

- population over 25 000 in the region concerned;
- the possibility of zoning on the territory of the respective cities according to their common urban development plans and in accordance with perennial natural geographic or infrastructure dividers;
- availability of built infrastructure of regional significance for satisfying administrative, social and sanitary-hygienic needs.

The order for creating a region is:

- the municipal council on a proposal of the mayor of the municipality discusses a project for dividing the city of regions and adopts a decision;
- the decision shall be sent for promulgation in the State Gazette through the regional governor who shall rule on its legality within 14 days from the date of its receipt;
- the decision shall enter into force on the date of its promulgation in the State Gazette;

The territorial division of the metropolitan municipality and of the cities with a population of over 300 000 is done by a law on the territorial division of the metropolitan municipality and the big cities. Cities with more than 300,000 people are Plovdiv and Varna.

In the order №5672 of 13.03.2013 of the Sofia City Court in civil case №6652013, the question is whether the region has a procedural competence. According to Art. 2, para. 2 of the Law on Local Self-Government and Local Administration, in connection with Art. 10 of the Law on the Administrative Territorial Structure of the Republic of Bulgaria, the municipality may create regions, under prerequisites established by law. In Art. 10, Art. 11, Art. 12 and Art. 13 of the Law on the Administrative Territorial Structure of the Republic of Bulgaria, it is not explicitly stipulated that the region is qualified under substantive law, from which, by the contrary

from Art. 27, para. 1 of the Code of Civil Procedure, it follows that the region is not procedurally competent.

Mayoralties as an administrative territorial unit according to Art. 14 of the law on the administrative and territorial structure of the Republic of Bulgaria may be established on the territory of the municipality by decision of the municipal council.

Mayoralty consists of one or more adjacent settlements. The territory of the mayoralty is the territory of the settlements included in it. The name of the mayoralty is the name of the settlement - its administrative centre.

The conditions for establishing a mayoralty are:

- a population of more than 350 people in the settlements forming the mayoralty. It is noticeable that the population requirement has varied over the years - in 1995, the requirement is for a population of over 100 people, in 1999 for more than 500 people, in 2003 the requirement is for a population over 250 people, in 2007 for 150 people, in 2011 for 350 people, in 2014 is for over 100 people, in 2016 is over 400 people
- capacity to perform functions provided by the municipality.

The order for the establishment of a mayoralty is:

- a request signed by at least 25 per cent of the voters in the affected settlements to the municipal council, stating the reasons and the possibilities for fulfilling the conditions for the establishment of a mayoralty;
- within one month, the municipal council examines the request and adopts a decision to consult the population through referendum or subscription of the population in the affected settlements;
- in a positive vote of the consultation, the municipal council decides on the establishment of a mayoralty;
- the decision shall be sent for promulgation in the State Gazette through the regional governor who shall rule on its legality within 14 days from the date of its receipt;
- the decision to establish a mayoralty shall enter into force on the date of its promulgation in the State Gazette.

Chapter Three of the Law establishes the order for the creation of settlements. The territory of the settlement is the settlement territory defined by its construction boundaries and the outlying area determined by the boundaries of the land. The name of the settlement is determined by a decree of the President of the Republic of Bulgaria. New settlements are created in the lands of existing settlements.

The conditions for creating a new settlement are:

- permanent settlement of a population in an existing settlement formation in a defined territory or a need for settling in it;
- the presence of a permanent resident population and a fully functional social infrastructure.

The order for creating a new settlement is:

- a request signed by at least 25 per cent of the voters or the mayor of the municipality to the municipal council to create a new settlement;

- the municipal council shall, within two months, discuss the request made and send its decision to the distinct governor. The distinct governor shall submit to the Council of Ministers, within one month, a motivated proposal for the establishment of a new settlement;

- the decision of the Council of Ministers to create a new settlement and the decree of the President of the Republic of Bulgaria on the designation of its name shall be promulgated in the State Gazette.

Pursuant to Art. 21 of the law restoration of deleted settlements shall be allowed under the following conditions:

- the reasons for deletion have been dropped;
- the territory in the construction boundaries and the constructed buildings and facilities are preserved;
- more than 50 people live permanently there.

The resettlement of settlements is done in the same order as the creation, with the request being signed by at least 25 people. The law, however, does not determine whether these 25 people should have electoral rights, which can be regarded as an omission of the legislator and give rise to different interpretations.

The territory of the settlement formation is determined by its construction boundaries. The settlement formation is located on the territory of one or more settlements and does not have a separate land.

The name of the settlement formation is determined by the act of its formation. Settlement formations are of national and local significance. The Council of Ministers defines settlement entities of national importance.

The conditions for establishing a new settlement formation are:

- the necessity to meet emerging resort or industrial needs of local or national importance;
- the existence of a development plan or certain construction boundaries of the settlement formation.

The order for creating a new settlement formation is:

- for municipalities of local importance - by a decision of the municipal council on a proposal of the mayor of the municipality;
- for settlement formations of national importance - by a decision of the Council of Ministers after coordination with the respective municipal council;

The decisions enter into force after their promulgation in the State Gazette.

Chapter Four of the Act provides a procedure for administrative-territorial changes.

Changing the boundaries of the district can be done only at the borders of existing municipalities. The change is approved by a decree of the President of the Republic of Bulgaria on a proposal of the Council of Ministers. The change of the administrative center and the name of the district is approved by a decree of the President of the Republic of Bulgaria on a proposal of the Council of Ministers.

Changes leading to the closure, division, merger of municipalities, districts, settlements and settlement formations and mayoralities shall be carried out under the same procedure that is imposed for their establishment.

In Art. 33 of the Law establishes that for the designation of a village as a town it is necessary for the settlement to have a social and technical infrastructure and a population of not less than 3500 people, and in the resort settlements - no less than 1000 people.

The order to make the change is:

- at the proposal of the mayor of the mayoralty or of the mayor of the municipality, the municipal council shall, within two months, adopt a decision for making the change and send it to the district governor;
- the district governor sends the decision of the municipal council together with his opinion to the Council of Ministers within two weeks;
- the decision of the Council of Ministers for change comes into force on the day of its promulgation in the State Gazette,

It is noticeable that the law does not provide for the reverse procedure whereby a town becomes a village when it no longer meets the necessary conditions. It would be appropriate for the legislator to establish such a procedure in view of the demographic and social crisis and the depopulation of small towns.

A change of the name of the settlement is made by a decree of the President of the Republic of Bulgaria.

In connection with this issue a decision No. 8 of the Constitutional Court on Constitutional Case №7/96 was issued in 1996. According to the Constitutional Court the power of the President of the Republic of Bulgaria to "name sites of national importance and settlements" is explicitly regulated in Art. 98, item 13 of the Constitution. There is no doubt that legal and logical in this power is also the renaming (change of name) of already named objects. The Court has had the opportunity to give a ruling on this point in the reasoning of Decision No 9 of 13 May 1993 on Constitutional Case No 9 of 1993. With the provisions of Art. 34, item 1 of the Act a procedure is created to change the name of a settlement which is made by a decree of the President, but following a proposal by the Council of Ministers. The proposal of the Council of Ministers as it was settled in the provision is formulated as a prerequisite for exercising presidential power. Thus, the legislator places the exercise of the latter on the will of the supreme executive. According to the Constitutional Court such a legislative decision can not be constitutionally justified. The President of the Republic of Bulgaria is the head of state. The protection of the main presidential powers from the impact of the political situation and from their limitation by laws passed by the parliamentary majority is ensured by settling them at a constitutional level. The exercising of these powers may be subject only to the conditions laid down in the Constitution. The powers of the President are listed in the Constitution on the basis of the principle of explicit assignment. It is inadmissible to limit the constitutionally established powers of a law. For this reason, the Constitutional Court declares as unconstitutional the provision by which the President changes the name on a proposal by the Council of Ministers.

SUMMARY

The Law on administrative and territorial structure establishes the normative basis related to the creation and changes of the administrative-territorial units.

It is noticed that no process has been established for the transformation of a town into a village, in view of the demographic and social crisis in the country.

According to Art. 21 of the law, restoration of deleted settlements is allowed when there are more than 50 people living there, the request must be signed by at least 25 people. It is assumed that they must have electoral rights, although the legislator does not mention it. But in

this case the number of people making the request differs from all other procedures where a percentage is envisaged, namely 25 per cent of the voters.

Unexplained are the frequent changes in the number of the population as a prerequisite for the establishment of a mayoralty. Over the years, this figure has fluctuated continuously and, has no connection with demographic changes in the country and creates instability.

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