

HOLDING AN MP'S OFFICE – A PRIVILEGE OR A RIGHT?

Vita Habjan Barborič,

Commission for the Prevention of Corruption, Slovenia

A prominent American statesman Franklin Knight Lane once said: "A public office is not a job, it is an opportunity to do something for the public."

Democracy should have only one master: the people themselves. However it seems that some leading politicians have not absorbed this lesson. Deriving from the Slovenian constitution the MPs have a representative mandate which means they are representatives of all people and not merely of those who voted for them. In a normal and democratic political culture it suffices that the MPs are aware they are not in the Parliament to serve themselves nor their political parties and that they genuinely and strongly thrive for subsystems of a society to function in a harmonised way and to develop successfully.

However, it often seems that this task is ignored by them and the public office is merely a tool, an opportunity for them to pursue their private interests. Abuse of office, unlawful lobbying in which they take part, presence of conflicts of interest when performing their duties etc. are often a reality in Slovenia.

When responding to allegations or even proof laid down before them the MPs usually resort to the old "I've been chosen by the people and only they can recall me." argument or the other also very popular argument "Until proven guilty in front of court I'm innocent."

Of course, the fact that the legislation does not allow for any recall of an MP and the fact that one will lose his or her office only if he or she is convicted and sentenced to more than 6 months imprisonment minimizes any possible influence voters and the public in general might have on the MPs. The only way of sanctioning an MP for any unethical or unlawful behaviour that usually goes unpunished anyway is by not giving a vote to that particular candidate at the next elections which proves to be inefficient, also due to the elections system we have in Slovenia.

One of the specific factors and fields which represent the systemic and administrative corruption in Slovenia is an overall decline of the public trust in the institutions of the state governed by the rule of law and in the public office holders as well as their credibility. Although this downward trend is present in other EU MS too, it is very much visible in Slovenia. This is not only due to the objective factors outside the scope of influence of the politics and the public office holders themselves, like for example the economic or social crisis, but it very much originates from facts, linked specifically to political, public and economic power holders, their actions, their political and legal culture or the lack of both.

Among them we can also include:

- denying any political, moral and ethical accountability and maintaining to hold an office or remaining in the public life until one has been found guilty of committing a criminal offence by a final judgement;

- the fact that a number of public office holders together with the former prime minister, a former leader of the biggest coalition party as well as with a number of mayors are being involved or investigated in criminal proceedings due to suspicions of abuse of office;
- the fact that more and more acts of unethical behaviour are revealed but do not have an epilogue of any kind.

The Integrity and Corruption Prevention Act adopted in Slovenia in 2010 introduced several measures and methods to strengthen integrity and transparency, to prevent corruption and to avoid and eliminate conflicts of interest. The most importantly, it introduced the concept of integrity being "the conduct and responsibility expected of individuals and organisations in the prevention and elimination of risks related to the use of any authority, office, mandate or any other decision-making power contrary to the law, legally admissible objectives and codes of ethics."

Integrity should therefore be an integral part of the MP's office holding as well as of the Parliament of which a member an MP is itself. As the Commission for the Prevention of Corruption (hereinafter: Commission) assesses their conduct and actions it uses this definition of integrity as a measure, as a standard.

The issue of whether a public office is one's right or merely a privilege emerged in 2011 and 2012 with a number of cases involving MPs that the Commission handled. The Commission has come across several cases where MPs and other public officials acquired their educational titles and certificates in an unethical or even unlawful manner or when they abused the monetary benefits to which they are entitled to as MPs to pay for expert advice by transferring money to their relatives and other individuals closely linked to the MPs who did not perform services in return. Mostly these cases were heavily debated in the public and additionally contributed to the decrease of public trust in the public institutions and the rule of law.

The Commission had to point out that when a public official or a high-level civil servant is suspected of plagiarism or other unethical or unlawful methods and at the same time persists in holding his/her office while unfoundedly using an argument of "presumption of innocence" which should be used exclusively for protection of a person in a criminal proceeding, the conduct with the expected level of integrity requires from such an individual:

- to respond to allegations with arguments and overrule them or
- to leave the public office immediately.

The Commission pointed out several times that a public office is not an inalienable right or a private interest of an official nor a political "prey" of his/her political party. A public office is a job where an individual, while performing it "serves" in accordance with expected conduct and responsibility with regard to the basic values of a democratic society and the rule of law as well as in order to pursue the public interest for fulfilling of which the public office has been established in the first place.

When assessing whether a public official violated expected conduct and responsibility, that is the integrity of a public office and whether he/she is still suitable for this particular public office, it is less relevant what is his/her opinion. What matters is a question what are the

effects and consequences of his/her action for the reputation of the public sector as a whole and for the trust of the people in the institutions of the public sector.

Another issue that was indirectly pointed out by one of the previous speakers, Ms. Barbara Prammer, the President of the Austrian Parliament, was that it is expected of politicians to show a higher standard of ethics and that the majority of the MPs are above corruption and only due to a small number of corrupt MPs the trust of the people in the MPs is decreased and the reputation of the politicians is diminished. The Commission also addressed this issue, the issue of a response of political parties and MPs themselves to unethical or unlawful behaviour of a particular MP. A political party of which this particular public official is a member should, in the opinion of the Commission, according to its role in a democratic society and in the development of a political culture, react to such allegations by demanding clear answers from the individual in order to overrule them. If he/she is not able to do that the political party should withdraw its support and ask from him/her to resign from the office as well as to leave the political party or, if the possibility exists, to exclude him/her from the party.

Experience in Slovenia show that usually a soft encouragement of a political party is given to its member to leave the party which usually takes place after the public and the media pressure achieves its peak. Such an MP becomes an independent MP however it is evident that he/she continues to cooperate with the same political party as still being its member.

In several documents the Commission called upon the Parliament and stressed the need to adopt a code of ethics for the parliamentarians and to respect standards of public ethics and integrity in the legislative branch. In the opinion of the Commission some MPs, due to their incapability of taking responsibility for their unlawful, immoral and dishonest actions, dangerously jeopardise and lower the standards of honest, diligent and accountable performance of public office.

Another danger that appears to be forgotten is the fact that lack of or inefficient response of the majority of the MPs to morally unacceptable acts of their colleagues leads to certain unlawful and immoral acts becoming socially acceptable while at the same time, due to the fact that they are unwilling and incapable of appropriate reaction, contribute to the decrease of the public trust that the Parliament is capable to exercise its powers in the most optimum way needed for a sustainable development of democracy and the well-being of the people.

Situation in Slovenia triggered many public debates on the necessary change of legislation that would allow for a recall of public office holders. As the debate goes in the direction of what would be the necessary majority of the public to vote to recall a public office holder, arguments that they were elected by the people and only they could recall them shall become obsolete. These debates are even more encouraged by a debate held in the Parliament on whether a code of ethics would contribute to strengthening the integrity of the MPs and the Parliament itself. It appears that in the opinion of the MPs the current legislation gives sufficient tools to sanction an individual who diminishes the public trust by violating existing rules. Any ideas on possible implementation and sanctioning mechanism seem to be presented in vain.

To conclude: it seems that in an environment where political culture and readiness for transparent and accountable behaviour of public office holders are low and where

subsequently the public trust is at its constant decrease it is time to strengthen the integrity of public office holders. One way is by giving a more efficient tool to the people that will allow them to efficiently sanction those representatives of the people who do not deserve their support any longer. By doing that the trust in the rule of law and the elections system should and will improve.

On the other hand it is also important to give a similar tool to the MPs themselves, giving them the opportunity to react to either their unethical, immoral or unlawful behaviour or to such behaviour of their colleagues in the Parliament. A code of ethics with an efficient mechanism for its implementation is an appropriate tool that can show whether the MPs really pursue the public interest and act as representatives of all people. Implementing codes of ethics or not: either way the MPs will be forced to respond to inappropriate behaviour and their response will send a signal to the voters...whatever the signal will be!