

Mayoral committees

The mayor appoints

The mayoral committee is appointed at the discretion of the executive mayor. It therefore need not include other parties on a proportional basis. In *DA v Amos Masondo No 2002 JOL 10476 (CC)* the Constitutional Court finally put the mayoral saga to rest.

The requirement of section 160(8) of the Constitution for proportionality of political parties applies only to committees appointed by council. As the mayoral committee is a committee of the mayor and not council, it is exempted from this requirement.

Facts

After taking office in December 2000 the executive mayor of Johannesburg Metropolitan

municipality, Amos Masondo, appointed a mayoral committee in terms of section 60 of the Municipal Structures Act. The African National Congress (ANC) holds 59% of the seats in the council and the mayor appointed only members from the ANC to the mayoral committee. The opposition party in the council, the Democratic Alliance (DA), launched proceedings in the Witwatersrand High Court arguing that the mayoral committee was appointed unconstitutionally because minority parties were not represented on it. The Court found that the mayoral committee was constitutional and the DA appealed against the decision to the Constitutional Court. (See *Local Government Law Bulletin*, vol 3. no.4.)

Issue

The main issue before the Constitutional Court was whether minority political parties in a municipal council are entitled to representation on

key points

- Mayoral committees are not committees of council for the purposes of section 160(8) of the Constitution.
- Fair representation is not a requirement for mayoral committees.
- Mayoral committees are appointed by the mayor and dissolve if the mayor ceases to hold office.

a mayoral committee. The DA argued that section 60(1) of the Structures Act read with section 160(8) of the Constitution requires fair representation of minority parties, although the subsection does not expressly state this. Masondo argued that a mayoral committee is not a committee of the municipal council and thus falls outside the ambit of section 160(8) of the Constitution.

The DA argued that a mayoral committee is a committee of the council since the executive authority vests in the council, and on that basis minority parties should be represented on the mayoral committee.

Court

In answering this question the Court looked at the primary function of the mayoral committee, which is to render assistance to the mayor in the exercising of his/her authority. This is to ensure effective and efficient government at local level. Although representation of minority parties in the deliberative processes of government is important, the need for effective and efficient service delivery is equally important. Furthermore, the Court looked at the delegations of powers and functions by a municipal council. When a council delegates authority to a city manager or an executive mayor, section 160(8) of the Constitution has no application. Nor does it apply to a committee appointed by the mayor to assist and share responsibilities in the office of the mayor.

Furthermore, the Structures Act does not describe the mayoral committee as a committee of council. On the contrary, there is a clear distinction between committees of council and mayoral committees. First, in terms of section 60(1), all powers to appoint, dismiss and delegate are given to the executive mayor. The municipal council can only remove the executive mayor from office in terms of section 58 of the Structures Act. Importantly, the mayoral committee dissolves if the mayor ceases to hold office. Second, there is a clear distinction between the executive committee system, which expressly requires

proportionality, and the mayoral committee system, which does not. Third, there is a clear distinction between section 79 (committees appointed by council) and section 80 (committees appointed by the executive mayor or Exco). In terms of section 80(3) there is a direct link

between members of the mayoral committee and the executive mayor. The distinction that the Structures Act makes between mayoral committees and committees appointed by the council is a clear indication that the committees are different and that no proportionality is required in terms of mayoral committees.

The majority of the Court decided that mayoral committees do not fall under the scope of section 160(8) of the Constitution and do not require minority party presentation.

Assessment

The mayoral committee is thus equated to the national or provincial cabinets. They are appointed by the President or Premier and their composition is entirely at the discretion of these individuals. Where there is an executive mayor we now have a cabinet-style mayoral committee.

Although the need for representation of minority parties in the deliberative processes of government is important, the need for effective and efficient service delivery is equally important.

Geraldine Smith
Local Government Project
Community Law Centre, UWC