MUNICIPAL LEGISLATION IN THE CZECH REPUBLIC AND THE SLOVAK REPUBLIC (COMMON AND DIFFERENT)

OBECNÁ NORMOTVORBA V ČESKEJ REPUBLIKE A SLOVENSKEJ REPUBLIKE (SPOLOČNÉ A ROZDIELNE)

Igor Palúš
Marie Sciskalová

Abstract

The paper examines the normative power of municipalities in the Czech Republic and the Slovak Republic with a focus on common and different elements. The authors gradually pay attention to the constitutional and legal basis of municipal legislation, characterize generally binding legal regulations of municipalities as sources of law, analyze the procedural side of their adoption, as well as the exercise of state supervision over this activity of municipalities. They point out the problem areas of the current legislation and suggest possible solutions.

Keywords

the right of the municipality to self-government, municipal legislation, municipal legal regulations, state supervision

Abstrakt

Príspevok skúma normotvornú právomoc obcí v Českej republike a Slovenskej republike so zameraním na prvky spoločné a rozdielne. Autori postupne venujú pozornosť ústavnoprávnym východiskám obecnej normotvorby, charakterizujú všeobecne záväzné právne predpisy obcí ako pramene práva, analyzujú procesnú stránku ich prijímania, ako aj výkon štátneho dozoru nad touto činnosťou obcí. Poukazujú na problémové miesta súčasnej právnej úpravy a naznačujú možnosti riešenia.

Kľúčové slová

právo obce na samosprávu, normotvorba obce, právne predpisy obcí, dozor štátu

Introduction

The Constitution of the Czech Republic and the Constitution of the Slovak Republic – as well as the constitutions of other democratic states – determine the municipality as the basis of territorial self-government. There are several reasons and contexts for this constitutional grounding. Above all, this statement emphasizes the direct and close relationship of the municipality with its inhabitants, who are a source of public power in local conditions, and from the will of which the municipal authorities deduct their position. It is no coincidence that there are opinions that the importance of the municipal establishment and its democratic functioning is sometimes more important than the functioning and organization of public power at higher levels (Mikule, 2003, s. 412). The good functioning of municipal self-government leads to efficient and "close to the citizen" administration, which is the main prerequisite for its effectiveness. The indicated concept of municipal establishment follows the historical origin of municipalities and their more permanent character in comparison with other territorial-self-governing units.

The history of the joint Czechoslovak and later independent Czech statehood and Slovak statehood confirms that the operation of municipalities as self-governing units has shown great stability in the administration of matters entrusted to them. At present, municipalities, with their own efforts and the creation of the necessary legislative and financial conditions by the state, have the prerequisites to achieve not only stability in the approaches and implementation of self-government and delegated performance of state administration, but also prerequisites for achieving stability of results. In the indicated sense, municipalities represent an element between civil society and a democratic state, and this position has the ability to influence not only the nature of territorial self-government in the future, but also the nature of (Palúš et al., 2018, s. 10–11). In the light of this context, it is natural that the constitutions of the two states, which are the subject of our interest, grant municipalities the right to self-government, albeit in different ways. The Czech Constitution guarantees within the Fundamental Provisions of the first Chapter in Art. 8 "self-government of territorial self-governing units" and subsequently in Art. 100 par. 1 states that "territorial self-governing units (ie also municipalities – authors' note) are territorial communities of citizens who have the right to self-government".

In Slovak conditions, the right of a municipality to self-government belongs to the implied constitutional norms, which the constitution does not explicitly enshrine, but it can be derived by a logical interpretation of constitutional norms governing territorial self-government, especially if we interpret them in relation to the principles on which the constitution is based (Palúš, 2017, s. 391). This was also confirmed by the Constitutional Court of the Slovak Republic, when it stated: "Unlike the constitutional norms of other European countries, the Constitution does not explicitly state the right to self-government, but in the opinion of the Constitutional Court it is from Art. 64 and 64a ("Independent ... self-governing") of the Constitution in connection with the democratic character of the Slovak Republic resulting from Art. 1 deducible" (Judgment of the Constitutional Court of the Slovak Republic of 10 May 2017, file number PL ÚS 4/2016).

Undoubtedly, one of the most important rights of municipalities deriving from the content of the right to self-government is their right to adopt generally binding local legislation,

which legal theory classifies among the formal sources of law. If we perceive municipal self-government as a form of public power, then we must evaluate the normative power of municipalities as an irreplaceable part of their activities, among other things, because municipal self-government should guarantee the unity of the legal order through its normative but also individual legal acts., or more precisely to provide legal certainty for natural and legal persons so that they operate in the same legal environment at the level of the state and municipalities, especially in terms of principles and application of law. That is also why the legislative regulation of municipal normative activities deserves precision in terms of its content and process.

In accordance with this statement, the authors of the presented paper aim to provide a brief, but at the same time concise, analysis of the normative activity of municipalities in the Czech Republic and the Slovak Republic, focusing on common and different elements. They focus their attention on the evaluation of the constitutional and legal basis of municipal legislation, the characteristics of generally binding legal regulations of municipalities as sources of law, the procedural side of their adoption, as well as the exercise of state supervision over the mentioned activities of municipalities. The authors will also point out the problem areas of the current legislation and offer possible solutions.

Constitutional basis of municipal legislation

The issuance (adoption) of legal regulations of municipalities in both states has its basis directly in the constitution, but the legislator chose a different approach, which is probably also related to the structure of municipal bodies. On the other hand, in the constitutions of both republics, the division of municipal legislation is based on two types of municipalities power – independent and delegated.

The Czech Constitution in Art. 104 par. 3 states: "councils may, within the limits of their competence, issue generally binding decrees". It follows from the content of Art. 79 par. 3 of the Constitution that "local self-government bodies may issue legal regulations on the basis of and within the limits of the law, if they are authorized to do so by law".

It follows from the above provisions that the legislator in the Czech Republic distinguishes two types of legal regulations at the municipal level: generally binding decrees adopted by the municipal assembly (hereinafter also municipal council) within the independent competence of the municipality, while the title of the decree is determined directly by the constitution, and legal regulations adopted by the council of the municipality (not municipal council), while the title of the legal regulation is determined by Act no.128/2000 coll. on Municipalities (Municipal Establishment), as amended – hereinafter referred to as the Act on Municipalities or the Act on Municipal Establishment. While the constitution in the seventh chapter, entitled "Territorial self-government", refers to generally binding decrees, and to the legislation adopted by the council of the municipality, the constitution is mentioned in the third chapter, which is devoted to executive power, which also structurally suggests that this type of legislation (municipal regulation) represents the exercise of executive power, it is linked to the delegated powers of municipalities (delegated performance of state administration), which is ultimately managed and controlled by the government.

In this context, a few words are needed to say about the council of the municipality, all the more so because its Slovak equivalent, council of the municipality is not a municipal body in the conditions of the Slovak municipal self-government, but only a body of a municipal council and the scope of its powers is incomparably narrower than of the council of the municipality in Czech Republic. In the Czech conditions, council of the municipality acts as the executive body of the municipality in the area of independent competence, which is elected by the municipal council from among its members and is also responsible to it for the performance of its function. It is also a municipal body that maintains the continuity of the functioning of municipal self-government in situations where the municipal council is dissolved by continuing its activities until the creation of a new council of the municipality after the election to the municipal council. In municipalities where the municipal council has less than 15 members, the council of the municipality is not created, so in practice that applies to municipalities with less than 10,000 inhabitants. However, the legal limit on the number of deputies, even for the smallest municipalities, allows them to appoint 15 members of the council and thus create a council. In other words, in municipalities with less than 10,000 inhabitants, it only depends on the political choice of the previous municipal council whether the council of the municipality will be established (Koudelka, 2007, s. 195). In municipalities where the council of the municipality does not exist, its powers are divided by law between the municipal council and the mayor of the municipality. In terms of the content of our contribution, it is essential that in such cases the municipal regulations are adopted by the municipal council, or vice versa in municipalities where no council of the municipality is created, both types of legislation, i.e. generally binding decrees and regulations of the municipality are adopted by the municipal council.

Even in the Slovak Republic, the starting point of the constitutional regulation of municipal legislation (municipal normative process) is the distinction between the independent and delegated powers of the municipality. Based on Art. 68 of the Constitution of the Slovak Republic in matters of territorial self-government and to ensure the tasks arising for the self-government of the municipality from the law, the municipality may issue generally binding regulations (exercise of territorial self-government – independent competence). According to Art. 71 par. 2 of the Constitution of the Slovak Republic, with the exercise of state administration, a municipality may issue, within its territorial competence and on the basis of a delegation within its law and within its limits, a generally binding regulation (exercise of state administration – delegated competence).

At first glance, two differences from the constitutional regulation in the Czech Republic are visible, the first is the entity implementing the norm-setting of the municipality, in both cases it is the municipal council. The second difference is more serious and problematic, the Constitution of the Slovak Republic and the legal regulations do not distinguish in the title of the legal regulation of the municipality, whether it is a legal regulation issued by the municipality by exerecising it's delegated or independent competence, which in practice often brings problems and this situation must be considered from the legislator point of view as an unfortunate solution (Orosz a kol., 2009, s. 136). It is true that in legal theory and in pedagogical activities (Machajková a kol., 2012, s. 181; Drgonec, 2018, s. 292), but also in the practice of municipalities, a distinction is used, namely: self-government regulation, according to Art. 68 of the Constitution and the administrative

regulation according to Art. 71 par. 2 of the Constitution. Personally, we are of the opinion that this distinction could also be used in legislation, but it would require a change in the constitution, and it is difficult to assume that in the spirit indicated.
It is also possible to agree with the opinions as to whether the labeling of legal regulations issued by municipalities by a "generally binding regulation" is not unnecessarily long or unnecessarily complicated (Jesenko a kol., 2015, s. 34). If we proceed from the general characteristics of each legal regulation, or a normative legal act, features such as generality and legal binding are its immanent and inseparable part. This comment can also be applied in relation to generally binding decrees adopted by municipalities in the Czech Republic, all the more so because municipal regulations do not have any other legal attribute, which does not mean that they are not legally binding, or more precisely that they would not be of a general nature in relation to the administrative district of the municipality which issued them.
Challenging in terms of unambiguous interpretation is the problem of defining the normative activity of municipalities, which means identification of the range of issues (matters) that may be subject to normative regulation from the level of municipal councils within their independent competence. The constitutional regulation in both countries is in this respect general, which is quite natural, as it is contained in the basic law of the state and is therefore supplemented by the relatively broad case law of the relevant constitutional court.
From the content of Art. 104 of the Constitution of the Czech Republic, according to which "councils issue generally binding decrees within the scope of their competence", from the point of view of our contribution, several interrelated connections follow. The entity authorized to issue generally binding decrees is the municipality (municipal council/ municipal assembly), to whom the constitution grants the right to self-government, and which also has legal personality. The very authority of a municipality to issue the said legal regulations is a manifestation of its right to self-government, and thus to the autonomous organization of its affairs within the scope of the law. It follows from the systematic inclusion of the analyzed article in the seventh chapter of the Constitution entitled "Territorial self-government" that binding decrees have the nature of legal regulations issued within self-government. The Municipal Assembly may issue them in matters belonging to territorial self-government, according to legal terminology in matters of independent competence of municipalities, which are defined in the Act on Municipalities, either by calculation of various activities or by general determination of their tasks (Kopecký, 2010, s. 140–144). In accordance with the constitutional rule that obligations may be imposed only on the basis of the law, within its limits and in the manner provided by law (Article 2 par. 3 of the Constitution of the Czech Republic and Article 4 par. 1 of the Charter of Fundamental Rights and Freedoms) and subsequent case law of the Constitutional Court of the Czech Republic, municipalities may impose obligations in the form of generally binding decrees only if they are authorized to do so by law (Klíma, 2010, s. 579). In accordance with § 10 of the Act on Municipalities, a municipality may impose obligations in its independent competence by a generally binding decree in the cases specified under letter a) to c) of the said paragraph and also "if so provided by a special law" (letter d) of the cited provision.

From the content of § 10 letter a) to c) it follows in general that the municipality may impose obligations in matters of public order in the form of a generally binding decree by specifying activities that could disrupt public order in the municipality or would be contrary to good morals, protection of health and property, and therefore these activities may be carried out only in the places and at the times determined by a generally binding decree. It is also possible to stipulate that such activities are prohibited in some publicly accessible places. Obligations may also be imposed for the implementation of publicly accessible sports and cultural events, dance parties and discos, but also to ensure the cleanliness of streets, environmental protection, or the protection of local greenery, etc.

We believe that this method of legislative definition of the municipality's ability to impose obligations through its legislation is clearer in terms of clarity and subsequent implementation and in terms of legal certainty than the one that can be encountered in Slovak conditions (see below).

In the Slovak Republic, the basis of the normative activity of municipalities in the area of independent competence, can be found in the already mentioned Art. 68 of the Constitution of the SR. It follows from its content that municipalities can adopt a generally binding regulation of two kinds: "in matters of territorial self-government" and "to ensure the tasks arising for self-government from the law". The latter reason was not in the original text of the constitution, it became part of it on the basis of the constitutional amendment in 2001. This happened because in practice disputes arose due to the fact that laws establish certain tasks for municipalities in the field of territorial self-government, while state authorities (prosecutors' authorities) often considered these legal tasks to be a legal authorization under Art. 71 par. 2 of the constitution and subsequently assessed them as exceeding the normative activity of municipalities. In the interest of removal/ restriction on interpretative disputes, the legislator amended Art. 68 of the Constitution of the Slovak Republic to its current form (Trellová, 2018, s. 193).

Legislative power according to Art. 68 of the Constitution, may therefore be applied by the municipality at any time and without authorization in law, but it cannot apply it to an unlimited extent and to regulate all social relations existing in its territorial district. In accordance with the case law of the Constitutional Court of the Slovak Republic, the municipality may apply norm-setting only in that part of the administration of internal affairs which implements the municipal self-government pursuant to Art. 65 of the Constitution of the SR. In addition to this constitutional article, the municipality may regulate other relations by its regulation, but only if its legislator grants a mandate for norm-setting activities (Judgment of the Constitutional Court of the Slovak Republic of 13 May 1997, file no. II. ÚS 19/97). This is a narrow interpretation of the independent competence of municipalities when issuing regulations, which is probably based on the fact that the Constitution of the Slovak Republic explicitly guarantees municipalities independence only through the legal personality granted in Art. 65 par. 1 of the Constitution, in matters of management of their own property and their own financial resources. The above interpretation of the Constitutional Court raises several reservations in legal theory (Jesenko a kol., 2015, s. 64–65; Kanárik, 2001, s. 38–41).

As in the Czech Republic, general legislation is limited by constitutional restrictions related to the protection of fundamental rights and freedoms (Article 2 (2) and (3), Article 13 (1)

and (2) of the Constitution of the Slovak Republic). Although the Constitutional Court recognizes that the municipality may, by its generally binding regulation pursuant to Art. 68 of the Constitution, set obligations even without explicit legal authorization, the condition is that it is a concretization, a more detailed regulation, an obligation that is otherwise supported by law, i.e. it is established as a basis by law (Judgment of the Constitutional Court of the Slovak Republic of 6 June 1998, file no. II. ÚS 60/97). The Slovak Act on Municipal Establishment (Act No. 369/1990 Coll. On Municipal Establishment, as amended) does not enshrine the range of obligations that municipalities could impose by their generally binding regulation (as is the case in Czech conditions), so in practice we can observe situations where a municipality imposes an obligation that has no basis in law (this happens mainly in the case of small municipalities). There is a legislative procedure to correct such a situation, but it would be much more effective if the legislation prevented such situations from occurring.

As for the normative activity of municipalities in the area of delegated competence, it follows from its constitutional definition that municipalities in both republics may implement it only on the basis of authorization by law and within its limits within the delegated exercise of state administration. The implementation of this form of municipal norm-setting does not bring with it such problems in terms of its content and its interpretation as we mentioned in the norm-setting of municipalities at the level of their independent competence. Which is not to say that no problems accompany it.

In Slovak conditions, the performance of municipal legislation in the analyzed area is associated with a lack of professional competence of some municipalities, especially in the field of environment, education, building regulations or roads/infrastructure (Decision of the Constitutional Court of the Slovak Republic of 22 March 2017, file no. PL ÚS 18/2014, which also includes an analysis of the exercise of public power in Slovakia within the exercise of self-government and delegated exercise of state administration). This applies mainly to small municipalities, of which there are many in Slovakia, as evidenced by the fact that out of the total number of municipalities, which is around 2,900, 800 are those with less than 500 inhabitants.

In the Czech Republic, critical voices are linked to the categorization of municipalities in the exercise of delegated powers, especially to municipalities with extended powers. In essence, it is a question of whether it is legally acceptable for a municipal council with extended powers to issue regulations (Section 11 (2) of the Municipalities Act), which are also binding on the territory of other municipalities falling within the administrative district of such a municipality. There are consensual opinions (Sládeček, 2009, s. 61) expressing doubts (Kopecký, 2010, s. 152–153), but also those that reject the existing situation, claiming that it is in conflict with the constitutional order of the Czech Republic (Kadečka, 2003, s. 145). We ourselves are inclined to accept the given situation, if its implementation is connected with an increase in the quality of the transferred performance of state administration at the local level.

Legal nature of municipal legislation

The legal nature of municipal legislation can be deduced from its legal force, which is tied to the above-mentioned fact, i. e. whether it is a legal regulation of municipalities adopted by municipalities within their independent competence, or whether it is a legal regulation adopted by municipalities in the area of delegated performance of state administration. We will try to elaborate our thoughts in a more sense, albeit briefly.

In legal theory, we distinguish between absolute legal force and relative legal force. Absolute legal force is understood as different levels of legislation, higher and lower legal force, while the basic rule is that the legislation of lower legal force (level) must not contradict the legal regulation of higher level (force) (Kubu, Hungr, Osina, 2007, s. 42–43). Subsequently, legal regulations, ie also legal regulations of municipalities, can be divided in terms of absolute legal force and relative legal force (Jesenko, 2017, s. 116–117). From the point of view of absolute legal force, legal regulations can be divided into primary (legal) and secondary (by-laws). In the indicated sense, the legal regulations of municipalities, regardless of whether they are issued within their independent or delegated competence, are secondary legal regulations.

However, the situation is different if we look at this legislation in terms of relative legal force, within which we distinguish between original and derivative (derived) legislation. The original legal regulations may also regulate new – not yet regulated – legal relations, their content may also include new legal regulations. In contrast, derivative legislation can only be issued on the basis of the original legal norm, and only for its implementation. In other words, the subject-matter of the regulation of derivative legislation can, in principle, only be the specification of the legal regulation originally contained in the original legal regulation, which is the regulation secundum et intre legem (Knapp, 1995, s. 157).

In terms of relative legal force, we consider generally binding decrees of municipalities in the Czech Republic and generally binding regulations of municipalities within their independent competence in Slovakia to be original (primary) local legislation, binding on the territorial district of the municipality that issued them. However, we take note of and respect views that do not agree with our statement (Orosz, Mazák, 2004, s. 79–90). We base our opinion on the fact that the constitutions of both republics enshrine in municipalities a general power to regulate matters falling within their independent competence, the scope and content of which are specified in the case law of the constitutional courts in one and the other state.[1]

1 As of 01.01.2022, the system of publishing legal regulations is changing in the Czech Republic. Pursuant to Act No. 35/2021 Coll., On the Collection of Legal Regulations of Territorial Self-Government Units and Certain Administrative Offices, a new publicly accessible information system of public administration "Collection of Legal Regulations of Territorial Self-Government Units and Certain Administrative Offices" was launched.

As of 1 January 2022, the new legal regulations of territorial self-governing units (and non-central administrative authorities) come into force at the moment of publication in the Collection of Legal Regulations, ie at the moment when their originator (municipality) "inserts" them into the Legal Collection via a data box.

As soon as the administrator of the information system (Ministry of the Interior) promulgates the legal regulation in the Collection, he shall notify the territorial self-governing unit thereof. He is then obliged to publish it on his official notice board for at least 15 days from the date on which he was notified of the announcement by the administrator.

The aim of the published materials is to provide future users of the information system of the Collection of Legal Regulations with basic information on new legislation and obligations of municipalities, regions and competent public authorities when promulgating legal regulations or publishing certain other acts stipulated by law from 1 January 2022.

On the contrary, in matters where municipalities perform state administration tasks, they may issue legal regulations, regulations in the Czech Republic and generally binding regulations within the delegated performance of state administration in Slovakia, only on the basis of authorization by law and within its limits, which implies that they constitute derivative legal regulations linked to the territory of the municipality.
As the legal regulations of municipalities have a local character in terms of local scope and taking into account their position within the absolute and relative legal force, it is important to define their position in the system of the legal system within the two republics.
In the conditions of the Slovak Republic, the legislator addresses this requirement more comprehensively, when in § 6 of the Act on Municipal Establishment stipulates that generally binding regulations issued within the independent competence of municipalities must not contradict the Constitution of the Slovak Republic, constitutional laws, international treaties that have been ratified and declared in the manner prescribed by law, and the law. Generally binding regulations of municipalities issued within the scope of delegated performance of state administration may not be in conflict with all the above-mentioned legal regulations and, moreover, with government regulations and generally binding legal regulations of ministries and other central state administration bodies.
The Czech legislator has chosen a different approach, he does not exhaustively state the range of legal regulations to which legal acts of municipal legislation cannot contradict, but it follows from the provisions of the Municipalities Act that generally binding municipal decrees must comply with the law. Although the above-mentioned law does not state this, it follows from the nature of the matter that generally binding decrees of municipalities must not be in conflict with legal regulations which take precedence over the law in the system of sources of law (constitution, constitutional laws, international treaties determined by the Czech legal system). This statement also applies to regulations of municipalities, in the issuance of which, however, municipalities are bound not only by law, but since they have the nature of secondary implementing regulations within the meaning of Art. 79 par. 3 of the Constitution of the Czech Republic, as well as other legal regulations (§ 61 par. 2, letter a) and letter b) point 1 of the Municipalities Act). However, another legal regulation in this regard may also be a generally binding decree issued within the independent competence of a regional self-governing unit (Judgment of the Constitutional Court of the Czech Republic of 25 January 2005, file no. PL ÚS 9/04).

The process of adopting municipal legislation

The process of adopting municipal legislation in both countries shows common but also different elements, which are more numerous and related to the different approach of the legislator to municipalities as subjects of law, but also to the different application of the division of power within the municipal self-government or its authorities. We will first mention the preparation and adoption of generally binding regulations of municipalities in the Slovak Republic, noting that even in this case, the legislator does not distinguish between the adoption of regulations within the independent and delegated powers of the municipality.

The legal regulation of general legislation contained in the Act on Municipal Establishment (Section 6, Paragraphs 3 to 9) is general rather than exhaustive. While the legislative process of adopting and legislative technique of creating legislation of higher legal force – laws, government regulations, generally binding regulations of ministries and other central state administration bodies – is regulated quite precisely (in the sense of detail), in the case of municipal regulations the legislator leaves to municipalities in their creation considerably wide space, which results in an undesirable diversity of regulations in general legislation. Municipalities, following the relevant provisions of the Municipal Establishment Act, regulate the process of adopting general legal regulations, either in the form of generally binding regulations or in the form of internal regulations (directives, principles, rules, etc.), which detail the legislative process to local conditions.

Current legal order does not address the question of which subjects the norm-setting initiative belongs to, i.e. who can submit a proposal for a regulation which the municipal council is obliged to deal with. It follows from the wording of the relevant provisions of the Municipal Establishment Act that they are deputies of the council and the mayor of the municipality. In practice, however, the circle of these entities is much wider, they include council commissions, the head of the municipal office, but also organizations in the founding powers of the municipality, and even legal entities developing business activities in the municipality. The preparation and processing of the text of the draft regulation is usually provided by the municipal office.

The legal regulation of the adoption of generally binding municipal regulations emphasizes the requirement for transparency and public involvement in this process. Its statement is a statutory organization of the comment procedure on the draft regulation, which the municipal council is to negotiate or accept it.

The comment procedure includes the obligation of the municipality to publish on its official notice board (but also on the municipality's website, if established) a proposal for a generally binding regulation of the municipality at least 15 days before the meeting of the council on this proposal. On the day of publication of the draft regulation, the 10-day period begins to run, during which natural persons and legal entities may submit comments on the draft in writing, electronically or orally in the report at the municipal office. It must be clear from the comment who submits it, but the law does not say anything about whether these persons should have any relationship with the municipality, in the form of permanent residence, registered office or activity. It follows from the nature of the matter and the application of the common sense method that in practice the fulfillment of this requirement is required, or at least it should be so.

A comment submitted within the set deadline may propose a new text of the regulation or recommend modification of the published text (addition, deletion, clarification). The draftsman of the regulation will evaluate the comments with the relevant commission, if it is established at the municipal level. It must be clear from the evaluation which comments were complied with and which did not comply and for what reason. The evaluation of the comments must be submitted to the Members in writing, no later than three days before the meeting of the Assembly (municipal council). It should also be added that in the event of exceptional circumstances (natural disaster, a need to prevent damage to property, etc.) no comment procedure on the draft regulation will take place.

Experience confirms that the comment procedure is accompanied by formalism on the part of its actors and a lack of interest on the part of the public. It happens, for example, that the evaluation part of the comment procedure submitted by the petitioner does not always have the content parameters required by law (e.g. insufficient justification of unaccepted comments) (the petitioner informs deputies of his opinion on comments only orally at the beginning of the council meeting). On the other hand, it is common that the inhabitants of the municipality are not interested in comment proceedings and in real life they become acquainted with the norm that regulates their behavior in the territorial district of the municipality only when the competent authorities start to apply it to them. Only then do they start to comment on her or disagree and demand a change.

However, Slovak municipal legislative norm-setting has long been accompanied by two other ailments. The first is the inappropriate legislative technique of creating generally binding regulations, consisting in the so-called "Rewriting" of the legal text (or another type of source of law) into the text of the municipal regulation. It is an approach that brings a number of problems manifested in the application practice of municipalities. Another negative phenomenon conditioned by freedom of information is the so-called "Copying" of generally binding regulations of other municipalities searched through internet search engines. It is the Internet search and uncritical download of the texts of regulations of other municipalities (usually larger or district municipalities) that is the cause of the mass expansion of the number of legally non-compliant generally binding regulations (Tekeli, Hoffmann, 2014, s. 224–225). It should be noted that the regulations of another municipality may be a suitable inspiration for the creation of a regulation of the municipality taking over it, but at the same time it should be borne in mind that the regulation of that municipality is primarily a concretization of the legislation on its conditions, than in the municipality that adopts the regulation.

The generally binding regulation of the municipality is approved by the municipal council by a 3/5 majority of the present deputies. It will then be signed by the mayor of the municipality no later than 10 days after its approval by the council.

The Czech legislator conceived the adjustment of the legislative process related to the adoption of municipal legislation in a completely different way than we analyzed it in Slovak conditions. The Act on Municipalities mentions this issue very briefly, but rather concisely, but it is regulated in detail in the "Rules for issuing legal regulations of municipalities and regions". It is a methodological tool developed by the Ministry of the Interior of the Czech Republic and published as an appendix in the magazine Verejná správa (en: Public Administration) (weekly of the Government of the Czech Republic), no. 14 of 2003. The content consists of three parts – introductory provisions, legislative process and legislative and technical rules. Although the methodological aid does not have the character of a legal regulation, its importance and the associated obligation is given by the obligatory nature of the control of the issuance of legal regulations by municipalities from the point of view of state supervision (see below).

In particular, we want to highlight the section on legislative and technical rules – also taking into account the absence of a similar document in Slovakia – which form the cornerstone of the formal and content level of legislation. By observing them, the municipality as a subject of law is bound (Article 2 (1) of the Methodological Aid), the requested subjects also take

a position on their observance within the comment procedure, and their observance is subject to control as part of state supervision in relation to municipal legislation.
The methodological aid does not address the issue of the normative initiative, i. e. does not determine who can file a generally binding decree. It only stipulates that such a proposal will be factually prepared by the processor, who according to the nature of the matter (and also the size of the municipality) may be the relevant department of the municipal office, its employee or group of employees. The proposal must include an explanatory memorandum, which includes an assessment of the existing legal situation, the rationale for the proposed legislation, its financial and economic impact on the general budget, as well as the impact on the workforce and population of the municipality.
The comment procedure is provided by the processor, if it is the the individual, the comment procedure is provided by – according to local conditions – the secretary of the municipal office, or the mayor of the municipality. From the formal and content side of the comment procedure, two things are interesting. The first is the fact that only entities selected by the municipality (e.g. other departments of the municipal office, legal entities affected by the proposed legislation of the municipality, bodies designated by a special regulation, etc.) participate in the comment procedure, the second peculiarity lies in the fact that the comment procedure does not take into account natural persons, the inhabitants of the municipality, which seems to us to be a negative aspect of the legislative process, especially if we take into account that the inhabitants of the municipality are a source of power in local conditions but within the direct forms of municipal democracy.
The deadline for comment proceedings is usually 15 days, but it can be shortened or extended depending on the complexity and scope of the proposed legislation. If the addressed subjects take different positions on the proposed legislation, they need to be discussed with them and an attempt must be made to achieve a unifying procedure. However, the methodological material does not state who should do it, but it is clear from the nature of the matter that it should be the processor, or – depending on local conditions – the secretary of the municipal office or the mayor of the municipality. The course and results of the comment procedure are stated by the processor in the submission report, which will be delivered to the deputies of the municipal council together with the draft legal regulation of the municipality. It should be clear from the submission report with whom the processor discussed it and with what results.
The methodological material recommends that in the municipalities where the council of the municipality is established, it discusses the proposed legal regulation and informs the deputies of the municipal council (Assembly) about its opinion at the meeting at which they discuss the legal regulation or vote on it.
Generally binding decrees of the municipality are adopted by the Council (Assembly) by a majority of all its members. The municipal regulation is adopted by the council of the municipality with the same quorum, i. e. by a majority of all its members. In municipalities where the council of the municipality is not established, the municipal council (Assembly) adopts the municipal regulation. The legal regulations of the municipality are signed by the mayor and his deputy (vice-chairman), alternatively the mayor of the city and his deputy.

According to official data, more than 20,000 generally binding decrees were issued in the Czech Republic in 2020, of which up to 76% were related to local fees (which is probably also related to the amendment to the Local Fees Act), 10% were related to the municipal waste system and 14% concerned other issues related to the life of cities and municipalities in the Czech Republic. The identified shortcomings in the content of generally binding decrees also correspond to the above structure. They mainly concern local fees, e.g. insufficient definition of public space for local fees for the use of public spaces, provision of relief or exemption from fees, exceeding the permitted rate of fees, method of payment of local fees, etc.

Of the formal shortcomings, the most common were – non-disclosure of information about the meeting of the municipal council, shortcomings in the reports of the municipal council meeting (e.g. non-approval of the council agenda, missing record of the course and results of municipal council voting, missing mayor's signature, etc.), shortcomings in the registration of legal regulations of municipalities, but also non-dispatch and delayed sending of issued legal regulations of the municipality (all data are taken from the Information on the Activities of the Department of Public Administration, Supervision and Control of the Ministry of the Interior for 2020).

An important part of issuing municipal regulations is the institute of their publication. The publication of legislation generally consists in its publication in an official, predetermined manner. It is a necessary condition for its validity and application of the principle of ignoratia non excusat (ignorance of the law does not justify it). In other words, the importance of the principle of publicity lies in the fact that the legislation is not applied to its addressee before they have the opportunity to become acquainted with its content.

The method of publishing municipal legislation and the associated validity and effectiveness are very similar in both countries surveyed. It follows from their legal regulation that the legal regulations of the municipality must be promulgated, which is the conditions of validity. The declaration shall be made by posting it on the official notice board of the municipality (municipal office) for a period of 15 days. In addition, in the Czech conditions, the legal regulation of the municipality may be (subsidiary) published in the usual way, in Slovakia, a generally binding regulation may also be published on the municipality's website. For the sake of completeness, it should be added that in the Czech Republic, the regulation of a municipality with extended powers will also be published on the official notice board of municipalities operating in the administrative district of this municipality.

The legislation of the municipalities in both states shall enter into force on the fifteenth day after it is posted on the official notice board, unless they stipulate a later entry into force. In the case of a justified public interest, it is exceptionally possible to determine the earlier beginning of the effectiveness of the legal regulation of the municipality, but not earlier than on the day of its promulgation. The legal regulations of the municipalities must be accessible to everyone at the office of the municipality that issued them.

State supervision over the issuance and content of municipal legislation

In this area, the legislation in the two countries shows the most significant differences, especially in terms of the form of its implementation by the state. The Czech legislation is characterized by the obligation to control general legal regulations, which has its basis in the provisions of § 12 par. 6 of the Act on Municipalities, pursuant to which the municipality shall immediately after the promulgation of the general legal regulation send the given legal regulation to the designated state body – a generally binding decree to the Ministry of the Interior of the Czech Republic and the municipal regulation to the regional authority. The said authorities are entitled to assess whether the given legal regulation is in accordance with the law, or as for the regulation of the municipality, also with other legal regulations.
If a generally binding decree of the municipality contradicts the law, the Ministry of the Interior shall invite the municipality to take corrective action. If the municipality does not do so within 60 days, the ministry decides to suspend the effectiveness of the decree and at the same time sets a reasonable period of time for the municipality to correct it. If the municipality, or its Council (Assembly) will not carry out the remedy within the specified time limit and no appeal has been filed against the decision of the Ministry of the Interior, the Ministry shall submit a proposal to the Constitutional Court of the Czech Republic for the annulment of a generally binding decree of the municipality. If an appeal was filed against the Ministry's decision and the Ministry did not comply with it, the procedure is similar to the ones we mentioned above.
A similar procedure, especially in the first phase, is in relation to the control of the municipal regulation, with the difference that the main subject is not the Ministry of the Interior, but the regional office (§ 125 par. 1 of the Act on Municipalities). The difference is related to the second phase of the inspection, as the decision of the regional authority to suspend the municipality's order cannot be appealed, which means that if the municipality, its competent authority does not correct it, the director of the regional office within 30 days from the date of expiry of the deadline for the correction, sends the constitutional court a proposal to repeal the municipal regulation.
A special situation arises in the case of a clear conflict of general legislation (decrees, regulations) with human rights and fundamental freedoms. In such case, the Ministry of the Interior, or regional office, suspend the effectiveness of the decree/ municipal regulations without a prior call for redress. It is possible to agree with the opinion that the word "may" in these cases should be interpreted in terms of the competence of the Ministry of the Interior/ regional office as a duty, not in terms of their discretion (Pavlíček et al., 2011, s. 984). In the event of a breach of human rights and fundamental freedoms, it should be the responsibility of both institutions concerned to suspend the general legislation without undue delay as soon as they reach such a finding. The further process of establishing the rule of law is the same as we mentioned above, but shortened by 60 days.
The state's supervision over general legislation in the Slovak Republic is conceived on other basic grounds and seems more complicated, which is probably due to the structure of the entities that perform supervision, but also to the absence of its obligation as known by Czech legislation.

In the system of state supervision, the prosecutor's office plays an important role, which – unlike in the Czech Republic – is based on the Romanesque model and part of its competence is to supervise compliance with the rule of law in public administration and thus local self-government. However, its position in this process is specific, the prosecutor does not have the right to annul, change or correct the decision of a public administration body, nor does he have sanctioning powers against its entities in the event of a violation of the law. The prosecutor can implement the means of prosecutor's supervision in relation to public administration bodies (in our case municipal self-government) exclusively in the form of recommendations and proposals (Palúš et al ., 2016, s. 415–418).

In terms of the content of our contribution, such a legal remedy is mainly the prosecutor's protest (besides it, the prosecutor's warning, but we will not pay attention to it), which may file against a generally binding municipal regulation (it does not matter whether it is a regulation adopted within independent or delegated competence of municipalities) if he/she considers that it contravenes the law or other generally binding legal regulation. The prosecutor files a protest on the basis of the results of the review of the observance of legality in the territorial self-government, which he is entitled to carry out at his own discretion, or on the initiative of a natural person or legal entity. He is obliged to process the complaint within two months from the day when it was assigned to him, and he shall immediately notify the submitter of the method of handling. In other words, the control of the legality of general legal regulations (municipal regulations) is not obligatory in Slovak conditions.

If the municipal council against which the protest was filed finds that the protest is justified, it is obliged without undue delay, no later than 90 days from the delivery of the protest, to repeal the order or replace it with a generally binding municipal order in accordance with the law, or with other generally binding legal regulations. If the protest is not granted, the prosecutor is entitled to file a lawsuit in the administrative court.

If, after review, the administrative court finds that the action is well founded, it shall declare by order that the regulation, part or provision thereof is inconsistent, thereby rendering the regulation (part or provision) invalid. Subsequently, the municipality (its council) is obliged within 6 months from the entry into force of the administrative court decision to bring the relevant regulation issued in matters of municipal self-government, in accordance with the law and the regulation issued within the delegated powers in accordance with law, government regulation and generally binding regulations of ministries and other central state administration bodies. If it fails to do so, the regulation, part or provision thereof shall cease to be valid.

The Constitutional Court of the Slovak Republic acts in a subsidiary manner in matters of compliance with legal regulations in relation to generally binding regulations of the municipality, i. e. in the case of their compliance with the Constitution of the Slovak Republic, constitutional laws and international treaties, with which the National Council of the Slovak Republic gave its consent, the Slovak Republic ratified and declared them in the manner prescribed by law (Drgonec, 2019, s. 1135). The Constitutional Court acts on the basis of a proposal of an authorized subject (Article 130 (1) (a) to (f) of the Constitution).

In summary, in the Slovak Republic, the prosecutor's office and administrative courts take care of the legality of generally binding municipal regulations; the Constitutional Court of the Slovak Republic decides on their constitutionality.

Conclusion

We do not intend to assess municipal legislation in both countries in terms of where it is better or worse, not least because they are two separate systems that live – so to speak – their own legislative and application lives in their countries. We just want to briefly summarize the features common and differently related to the content of the issue, which was the subject of our interest in this article.

Both states consider municipal legislation as an important part of the legal order and try to guarantee its unity through it and thus provide legal certainty to natural persons and legal entities that they operate in the same legal environment at the state and municipal levels. That is why the basic starting points of municipal legislation are regulated directly in the constitutions of the republics and legal theory perceives them as formal sources of law.

There are significantly more differences, they are reflected in the titles of the municipal legal regulations and others are related to the division of power in municipal self-government, different forms of ensuring the legislative process of adopting municipal legislation and especially different organization of state supervision over normative activity of municipalities.

In turn, this means that in the Czech Republic, general legal regulations are adopted by two municipal bodies (Assembly (municipal council), council of the municipality), and in Slovakia by one (municipal council). The legislative process of adopting municipal legislation in the Czech Republic is centralized through the Methodological Instruction prepared by the Ministry of the Interior of the Czech Republic and its observance is part of state control; in the Slovak Republic, the legislative process is regulated by the municipalities themselves, either by their own regulation or in the form of internal regulations (principles, rules, directives), into which they reflect the relevant provisions of the Municipal Establishment Act. The state's supervision over the norm-setting of municipalities is different, in the Czech Republic it is simpler (implemented by state administration bodies – Ministry of the Interior, regional authorities) and due to the obligation of control probably more effective, in Slovakia more complicated from the point of view of entities performing it and to some extent less efficient as it is not mandatory.

However, differences could be a source of mutual inspiration wherever this could yield better results in an area other than those of the current legal situation. For example, the quality of municipal legislation in Slovak conditions would certainly benefit from the creation of a methodological tool for issuing municipal legislation, such as governing municipalities in the Czech Republic. At the same time, the use of this experience would not require any major legislative changes.

References

DRGONEC, J. *Ústavné právo hmotné*. 1. vydanie. Bratislava: C. H. BECK, 2018. ISBN 978-80-89603-57-2.

DRGONEC, J. *Veľké komentáre. Ústava Slovenskej republiky.* 2. vydanie. Bratislava: C.H. BECK, 2019. ISBN 978-80-89603-74-9.

Informace o činnosti odboru veřejné správy, dozoru a kontroly ministerstva vnitra za rok 2020. Praha, 2021. ISBN 978-80-7616-084-2.

JESENKO, M. a kol. *Obec ako subjekt tvorby práva*. Košice: UPJŠ v Košiciach, Fakulta verejnej správy, 2015. ISBN 978-80-8152-372-4.

JESENKO, M. *Právo obce na samosprávu a normotvorba obcí*. Košice: UPJŠ v Košiciach, Fakulta verejnej správy, 2017. ISBN 978-80-8152-539-1.

KADEČKA, S. *Právo obcí a krajů v České republice*. Praha: C. H. BECK, 2003. ISBN 8071797944.

KANÁRIK, I. Ústavnosť všeobecne záväzných nariadení obce. *Správní právo*. 2001, roč. XXXIV, č. 1. ISSN 0139-6005.

KLÍMA, K. *Ústavní právo*. 4. rozšířené vydání. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, s.r.o., 2010. ISBN 978-80-7380-261-5.

KNAPP, V. *Teórie práva*. Praha: C. H. BECK, 1995. ISBN 8071790281.

KOPECKÝ, M. *Právní postavení obcí a krajů – základy komunálního práva*. Wolters Kluwer, 2010. ISBN 978-80-7357-561-8.

KOUDELKA, Z. *Samospráva*. Praha: Linde Praha, 2007. ISBN 978-80-7201-665-5.

KUBU, L., HUNGR, P. a OSINA, P. *Teorie práva*. Praha: Linde Praha, 2007. ISBN 978-80-7201-637-2.

MACHAJOVÁ, J. a kol. *Všeobecné správne právo*. 6. aktualizované vydanie. Bratislava: EUROKÓDEX, s.r.o., 2012. ISBN 9788089447749.

MIKULE, V. K ústavním základům územní samosprávy. In: Kysela, J. ed. *Deset let Ústavy České republiky, východiská, stav, perspektívy*. Praha: Eurolex Bohemia, 2003. ISBN 80-86-432-45-9.

OROSZ, L. a MAZÁK, J. *Obce a samosprávne kraje v konaní pred Ústavným súdom Slovenskej republiky*. Košice: Mayor Group, 2004. ISBN 80-969128-0-1.

OROSZ a kol. *Ústavný systém Slovenskej republiky* (doterajší vývoj, aktuálny stav, perspektívy). Košice: UPJŠ, 2009. ISBN 978-80-7097-777-4.

PALÚŠ, I. a kol. *Ústavné právo Slovenskej republiky.* Košice: UPJŠ v Košiciach, Fakulta verejnej správy, 2016. ISBN 978-80-8152-442-4.

PALÚŠ, I. Právo obce na samosprávu. *Štát a právo.* 2017, roč. 4, č.4 ISSN 1339-7753.

PALÚŠ, I. a kol. *Formy uskutočňovania obecnej samosprávy*. Košice: UPJŠ v Košiciach, Fakulta verejnej správy, 2018. ISBN 978-80-8152-663-3.

PAVLÍČEK, V. a kol. *Ústavní právo a státověda*. II. Díl. *Ústavní právo České republiky*. 1. úplné vydání. Praha: Leges, 2011. ISBN 978-80-87212-90-5.

Pravidlá pro vydávání právních předpisů obcí a krajů. Metodická pomůcka. *Veřejná správa. Týdeník vlády České republiky*. 2003, č. 14 (príloha).

SLÁDEČEK, V. *Obecné správní právo*. 2. vydání. Wolters Kluwer, 2009. EAN 9788073573829.

TEKELI, J. a HOFFMANN, M. *Zákon o obecnom zriadení. Komentár*. Wolters Kluwer, 2014. ISBN 978-80-8168-034-2.

TRELLOVÁ, L. *Ústavnoprávne aspekty územnej samosprávy*. Wolters Kluwer, 2018. ISBN 978-80-8168-842-3.

Authors

prof. JUDr. Igor Palúš, CSc.
The Institute of Public Administration and Social Policy
Faculty of Public Policies in Opava, Silesian University in Opava
Bezručovo náměstí 885/14, 746 01 Opava, Czech republic
igor.palus@fvp.slu.cz

JUDr. Marie Sciskalová, Ph.D.
The Institute of Public Administration and Social Policy
Faculty of Public Policies in Opava, Silesian University in Opava
Bezručovo náměstí 885/14, 746 01 Opava, Czech republic
marie.sciskalova@fvp.slu.cz