THE RIGHT OF A MUNICIPALITY TO SELF-GOVERNANCE IN THE SLOVAK REPUBLIC

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Abstract

This written contribution is dedicated to the right of municipalities to self-governance in the conditions of the Slovak Republic. In the first part of this contribution, the authors analyse theoretical considerations and opinions related to the right to self-government in the environment of municipal self-government. They formulate the conclusion according to which the subject of the given right is the municipality and subsequently they clarify how this right is regulated in the Constitution of the Slovak Republic (hereinafter the Constitution of the Slovak Republic or the Constitution). The second part deals with the examination and evaluation of the content of the given right to the extent that it is enshrined in the Slovak constitution. In the third part, the authors analyse the constitutional guarantees of the right of the municipality to self-governance, while they perceive these on two different levels – in terms of substantive law (Article 67 paragraphs 2 and 3 of the Constitution) and at the procedural (judicial) level applied on the basis of a constitutional complaint.
The authors state that the right of a municipality to self-governance in Slovak conditions, despite its specificities, is comparable in form and content to the enshrining of such a right in the constitutions of other democratic states. At the same time, however, they point to problematic, or weak points of the current Slovak constitutional and legal arrangement, indicating the possibilities of their solution as a prerequisite for specifying the analysed law in the conditions of the Slovak Republic.

Keywords

municipal self-governance, Constitution of the Slovak Republic

INTRODUCTION

The Constitution of the Slovak Republic, like the constitutions of other democratic states, determines the municipality as the basis of territorial self-government. This constitutional anchoring has several reasons and contexts. Above all, this statement emphasises the direct and close relationship of the municipality to its residents, who are the source of public

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power in local conditions, and from whose will the municipal authorities derive their status. It is not by any chance that there are opinions according to which the importance of the municipal establishment and its democratic functioning is sometimes more important than the functioning and organisation of public power at higher levels (Mikule, 2003, p. 412). The good functioning of municipal self-government leads to effective and citizen-friendly administration, which is the main prerequisite for its effectiveness.

On the other hand, it is impossible to avoid the fact that the position of municipalities and their responsibility for development and quality of life in local conditions is largely determined by the state, by the extent to which it is willing to transfer the necessary range of competences to municipalities and create conditions for their real fulfilment by municipalities (Astrauskas and Gecikova, 2014, p. 153–182). At the same time, recent years have confirmed a trend (manifested mainly in the Scandinavian countries), according to which municipalities from their traditional position, the basic units of territorial self-government, are becoming more and more part of an integrated national management system, especially in the area of providing social services and the economic advancement of municipalities In the indicated sense, in the words of Baldersheim (Baldersheim, 1987, in: Hansen, 1997, p. 44–69), municipalities act as an "extended arm of the state" in local conditions, which, however, in our opinion, cannot weaken their self-governing functions, it only changes its content.

In the Slovak environment, the mentioned tendencies are gaining ground rather slowly, which does not mean, however, that they cannot be perceived as a programmatic and mainly systemic step in the development of municipalities in the coming years. At last, the history of joint Czecho-Slovak and later independent Slovak statehood confirms that the functioning of municipalities as self-governing units demonstrated great stability in the administration of matters entrusted to them. Even today, municipalities have, by making their own efforts and by creating the necessary legislative and financial conditions on the part of the state, the prerequisites for achieving not only stability in the approaches and implementation of self-government (and the transferred performance of state administration), but also the prerequisites for achieving the stability of the desired results. In this indicated sense, municipalities represent an element between civil society and a democratic state, and this position of theirs has the ability to influence not only the nature of local self-government in the future, but also the nature of society (Palúš et al., 2018, p. 10–11).

With the aforementioned understanding of municipalities (municipal establishment) and their roles, the right to self-government, more precisely the right of a municipality to self-government, is an often discussed issue, both from the point of view of its theoretical definition and constitutional-legal embedding. In accordance with this, the authors of the submitted paper aim to examine the right of a municipality to self-government in the conditions of the Slovak Republic, while focusing on three areas of problems related to this issue.

The first is the constitutional definition of the municipality's right to self-government in the context of its theoretical understanding as part of legal theory, especially the theory of territorial self-government. The second set of problems concerns the determination of the content of the municipality's right to self-government in the scope resulting from the Constitution of the Slovak Republic. The third area of our interest and efforts to clarify

it are represented by the constitutional guarantees of the right of the municipality examined by us.

The right to self-government – theoretical considerations and constitutional anchoring

The basis of the constitutional concept of municipal self-government as a form of public power in local conditions are two starting points:

- perception of the resident of the municipality (individual) as an active entity participating in the administration of public affairs,
- perception of the municipality as a certain community of people authorised, within the framework of the constitution and laws, to decide on their affairs through elected representatives directly or indirectly.

In accordance with this concept, municipal self-government is perceived by the founders as a specific social activity of a managerial and organisational nature, focused on public affairs and determined by the public interest in the conditions of the municipality. In the indicated sense, municipal self-government represents a special type of administration in which the governed govern themselves, i.e. the inhabitants of the municipality are not only objects of administration, towards whom the self-government is carried out, but they are granted the status of subjects of the administration themselves, which participate in the performance of the self-government of the municipality. It can be said that municipal self-government under these circumstances is an expression of the democracy of the administration of public affairs at the local (municipal) level and represents the basis of the democratic organisation of public power. The basic task of the municipality in the performance of municipal self-government is to take care of the all-round development of the territory, as well as to ensure and protect the rights and interests of its residents.

From the point of view of legal theory, especially the theory of territorial self-government, it is necessary to find an answer to the question of who is the subject of the right to self-government – the municipality, the inhabitants of the municipality forming its personnel base, or representatives elected by them, or does this right belong to the individual residents of the municipality, which, although the constitution does not grant them such rights, but it is possible to work towards it through theoretical construction? Opinions on answering the raised question and their argumentative justification are diverse; we will take a brief position on three of them, which can be encountered most often in professional and scientific literature.

We consider the alternative based on the construction of municipal self-government based on the right of citizens (inhabitants) to self-government to be considerably problematic from the point of view of possible acceptance. Its proponents are based on the premise that the right of citizens (inhabitants) to self-government manifests itself mainly in the right to participation, and its significance is the participation of citizens in deciding public affairs in local conditions (Matula, 2017, p. 30). However, some authors go even further when creating a theoretical construction. Eremin, loosely speaking, perceives the subjective right of citizens to self-government as a complex of three rights – the right of the local community (inhabitants) to municipal self-government, the right of individual members

of this community to participate in the implementation of municipal self-government, as well as the right of local (municipal) elected bodies to exercise municipal self-government, which is part of public power (Eremin, 2016, p. 201).

Nothing against theoretical considerations, but we believe that the mentioned theoretical constructions (as well as others similar to them) are more considerations than statements based on specific provisions of constitutions or international documents on human rights and fundamental freedoms. It would hardly be possible to grant a subjective-legal character to the so-conceived, constructed, right of citizens (inhabitants) to self-government, i.e. the possibility of claiming it against the public authority, or of the state, when it is not explicitly enshrined in the constitution or in international treaties on human rights. It is not even contained in the European Charter of Local Self-Government, and as far as Slovak conditions are concerned, even the Constitutional Court of the Slovak Republic has not yet defined it in its interpretation. And it cannot be understood at all as a subjective right having a natural law character, among other things because territorial self-government – in the sense of the national theory – historically arose as a result of the self-limitation of the state and its willingness to decentralise the exercise of public power to non-state corporations, in this case municipalities, or other territorial-administrative units; but not on citizens, residents of these territorial-administrative units.

The content of the right of citizens to self-government, which its supporters move to the level of participation of the inhabitants of the municipality in the administration of public affairs in local conditions, also sounds problematic. We would like to remind you that the content of the given right as perceived in this way follows directly from the Constitution of the Slovak Republic, its Art. 2 par. 1, which says: "State power comes from citizens who exercise it through their elected representatives or directly". In addition, Art. 30 par. 1. and Art. 64a in conjunction with Art. 68 of the Constitution, they extend the right to participation (voting and being elected to municipal self-government bodies, participating in local referendums and assemblies of the inhabitants of the municipality) also to foreigners who have permanent residence in the territory of the Slovak Republic, or in the territory of the relevant municipality. Considering the mentioned facts, it seems to us "redundant" to construct, even if only theoretically, the right of citizens (municipality residents) to self-government as their independent constitutional right.

We underline this statement all the more because the implementation of the right conceived in this way is (could be) problematic in practice in those municipalities where the municipal authorities do not function, i.e. in municipalities where no one is interested in performing the function of the mayor of the municipality, or members of the municipal council, which also means that the residents of these municipalities cannot use even a local referendum, or an assembly of the inhabitants of the municipality, which is declared (convened) by the municipal council (or the mayor of the municipality, if it is an assembly of the inhabitants of the municipality) in accordance with the law.

The problem could be solved by the so-called institute non-functional municipality, which the legislator brought into existence in 2018. Its essence lies in the fact that a municipality in which municipal self-government bodies were not elected in two consecutive elections becomes non-functional and, according to the law, it is incorporated into a neighbouring municipality within the region in which it is located. However, the said institute shows

legislative and financial deficiencies of such a nature that it has not been applied in practice even once, although there were reasons for it (Palúš, 2020, p. 108 et seq.).

We also consider as problematic opinions according to which the holders of the right to self-government are the residents of the municipality as a whole, or representatives elected by them (Dušek, 2012, p. 37–38). We believe that such a claim does not hold up not only from a legal point of view, but also from a political-institutional point of view. We believe that the existence of a legal entity, which is different from its personal "substrate", is a necessary prerequisite for the exercise of the right to self-government. Indeed, if a certain community (in our case, the inhabitants of a municipality) wants to jointly participate in the administration of public affairs, it must create a sufficiently effective entity that is capable of entering into legal relations in its own name, and that has internal mechanisms in place to regulate its behaviour. This subject is not the inhabitants of the municipality as a whole, nor their elected representatives. In our opinion, this entity is the municipality itself.

We consider the municipality as the subject of the right to self-government (in a broader sense, the concept of territorial self-government, as well as a higher territorial unit), but not as part of the constitutional institute of fundamental rights and freedoms, but as a historically formed and developed form of public power in the state under democratic conditions, or as part of a wider mechanism of the democratic organisation of the state. The municipality's right to self-governance has the nature of a public subjective right, as its constitutional enshrinement gives the municipality the possibility to behave in a certain way, i.e. a possibility expressed and guaranteed by objective law and related legal norms (Boguszak, Čapek and Gerloch, 2004, p. 115). Its content results from the right of the municipality to exercise public authority, or of local self-government, which the state recognizes and guarantees.

The inhabitants of the municipality participate in the exercise of this right through the constitutional right to participate in the administration of public affairs. In other words, the elementary importance of the right to self-government should be seen in the recognition of the right of individual residents of the municipality to participate in the administration of public affairs, because the effectiveness of the performance of municipal self-government depends to a significant extent on the participation of the residents of the municipality in its implementation (Kiurienė, 2012, p. 67–68). Residents' participation, however, should not be limited only to the act of elections and participation in a local referendum, or in meetings of residents of the municipality, but it should also include other possible forms of participation realised through constitutional institutes – the right to information, or freedom of speech, but also legal possibilities , such as e.g. participation of the inhabitants of the municipalities in the meetings of the council, which are open to the public, work in the commissions of the municipality, use of the so-called parliamentary days and so on.

One can agree with Blaug's opinion when he states that "representative democracy requires participatory democracy that cultivates and strengthens it" (Blaug, 2002, p. 116–128). However, we would like to add that the truth of this statement is largely determined by the human element, on the part of the elected bodies of the municipality – their willingness to listen to the opinions of the residents, discuss with them and accept their comments, but also on the part of the residents of the municipalities – their initiative

and constructive approach to solving the problems of the municipality. The practice of Slovak municipal governments brings many cases where the residents of municipalities would welcome public municipal authorities to decide in their interest and according to their needs, but preferably in such a way that they themselves do not have to be involved in such decision-making. Even in the light of these experiences, Kjellberg's thesis (which undoubtedly has its reasons) to replace the concept of "local self-government" with the concept of "local democracy" in Slovak conditions seems more like a programmatic vision than an approaching reality (Kjellberg, 1991, p. 68).

The right of a municipality to self-government has different expressions in the constitutions of democratic states. We do not have the opportunity to focus on this issue in more detail, we will only state that in the Central European area there are states whose constitutions explicitly enshrine the right of municipalities to self-government (e.g. Article 28, paragraph 2 of the Basic Law/Constitution of the Federal Republic of Germany; Article 100, paragraph 1 of the Constitution of the Czech Republic), or indirectly (e.g. Article 16 paragraph 2 of the Constitution of Poland).

In its content, the Constitution of the Slovak Republic does not explicitly enshrine the right of municipalities to self-governance, despite the fact that such an expression of the analysed right was attempted in the draft amendment to the Constitution enacted under Constitutional Act No. 90/2001 Coll. – the so-called "major amendment to the constitution", according to which Art. 64a as follows: "Municipalities and higher territorial units have the right to self-government. The details will be established by law". Even though the aforementioned amendment to the constitution created the prerequisites for a fundamental reform of territorial self-government – especially by completing the second level of territorial self-government, i.e. by constitutionally enshrining higher territorial units, as well as enshrining the protection of territorial self-government before the constitutional court through the newly included art. 127a of the Constitution (see below) – the proposed wording of Art. 64a was deleted from the constitutional amendment during the legislative process (Jesenko, 2017, p. 61).

Even if the Constitution of the Slovak Republic does not explicitly enshrine the right of a municipality to self-government, it can be deduced by a logical interpretation of the constitutional norms governing territorial self-government, especially if we interpret them in a mutual context and in accordance with the principles on which the constitution is based, or from which its content is based. The right of a municipality to self-governance belongs to the implied constitutional norms that fulfil the conceptual features of every subjective right, i.e. the authorisation of the municipality to exercise territorial self-government, the authorisation of the municipality to demand certain behaviour from other entities (including the state), as well as the authorisation of the municipality to seek legal protection from the state in the event of an unauthorised interference with the right to exercise territorial self-government (Palúš, Jesenko and Krunková, 2010, p. 30–31).

The correctness of such a procedure was also confirmed by the Constitutional Court of the Slovak Republic in one of its decisions in 2017 (it is a pity that it did not do it earlier, because there were several opportunities for the doctrinal interpretation of the constitutional foundations of territorial self-government), when it stated: "Unlike the constitutional standards of other European states, the constitution does not explicitly formulate the right

to self-government, however, according to the opinion of the Constitutional Court, it is from Art. 64 and 64a ("independent... self-government") of the Constitution in connection with the democratic nature of the Slovak Republic from Art. 1 paragraph 1 of the Constitution can be deduced" (Decision of the Constitutional Court of the Slovak Republic dated May 10, 2017, file no. PL ÚS 4/2016).

Content of the municipality's right to self-government

Talking about the content of the municipality's right to self-governance means taking into account two facts. The first is the content and scope of the municipality's independent competence defined in the constitution and laws, the second is the range of subjects and the determination of the conditions under which municipalities exercise their independent competence. Subsequently, it can be concluded that the content of the right of a municipality to self-government in a democratic state is a summary of all rights granted by the constitution and laws to municipalities in connection with the exercise of territorial self-government, while these rights, i.e. independent powers are exercised by municipal self-government entities (municipal bodies, but also its residents through forms of direct democracy at the municipal level) in their own name, on their own responsibility and without material interference from the state) but the latter retains supervision over the performance of municipal self-government from the point of view of constitutionality and legality).
In general, it can be said that the independent jurisdiction of the municipality includes those matters that directly affect the lives of the inhabitants of the municipality and their significance usually does not go beyond the scope of its territory. The anchoring of the independent authority of the municipality in the constitutions of individual states is also different, basically it ranges from the so-called negatively limited "general competence" known from the environment of the Scandinavian states, through the generally determined independent competence specified by laws, to the exhaustively defined competence of local governments (Palúš et al., 2018, p. 19–20).
The Constitution of the Slovak Republic does not explicitly mention the scope or content of the right to self-government, but it in Art. 65, 66 and 68 of the Constitution, it enshrines three spheres of competence of the municipality (subjective rights of the municipality), which can be considered as the core of the municipality's right to self-governance. Other municipal rights constituting the content of the right to self-government are contained in Act. no. 369/1990 Coll. on municipal establishment, as amended (hereinafter the Act on Municipal Establishment).
Both groups of rights are equal, and what they have in common is that the constitution grants them, through the institution of a constitutional complaint, the same regime of legal protection in connection with the exercise of territorial self-government. On the contrary, they are different in the sense that the rights of the municipality enshrined in the constitution have the nature of a universal clause, since the legislator is bound by them, i.e. he can expand or specify them, but he cannot limit or cancel them, because by doing so he would effectively deny the right of the municipality to self-government arising from the constitution. In the next part, we will try to characterise the content of the subjective rights that the municipality derives directly from the constitution.

The right of the municipality to independently manage its own property and financial resources (Article 65 of the Constitution)

Property and financial independence of the municipality is the basis of its independent status as a public corporation. It is not by chance that the constitution in connection with this right of the municipality grants it the position of a legal entity.

The legal status of a municipality as a legal entity is important especially from the point of view of the constitutional regime that applies to its actions. If the municipality has the status of a public authority in the implementation of its tasks, or carries out delegated state administration, the content of the provisions of Art. 2 par. 2 constitutions, i.e. it can act only on the basis of the constitution, within its limits and to the extent and manner established by law. If the municipality acts as a legal entity under private law (e.g. concludes a purchase, rental or other contract), its actions are subject to the regime expressed in Art. 2 par. 3 of the constitution, according to which everyone can do what is not prohibited by law and no one can be forced to do something that is not required by law. In this context, the Constitutional Court of the Slovak Republic stated: "The municipality as a legal entity has a privileged status only in matters of territorial self-government" (Decision of the Constitutional Court of the Slovak Republic of July 15, 1999, II. ÚS 17/97).

Art. 65 par. 1 of the Constitution of the Slovak Republic ensures the independent action of the municipality as a legal entity, but not on a general level, only in matters of managing its own property and financial resources. The Constitution guarantees that as long as the actions of the municipality in these matters are in accordance with the law, neither the state nor third parties can interfere in this area of competence (of its bodies). In other words, in matters that are subject to regulation in Art. 65 par. 1 of the constitution, no other public authority can make a decision, and moreover, the municipality is not bound by the opinions of such a body, as long as it makes decisions about its property and financial resources (Čič et al., 2012, p. 415).

The property of the municipality and its financial resources are regulated by special laws. It follows from their content that the property of the municipality is the things owned by the municipality and the property rights of the municipality. The property of the municipality can be used mainly for public purposes, for business activities and for the exercise of municipal self-government.

The municipality finances its needs primarily from its own revenues, which include all municipal budget revenues with the exception of state subsidies, funds from the European Union and other foreign funds provided for a specific purpose, as well as funds obtained on the basis of special legal regulations. Local taxes and fees are an important source of the municipality's income, while the municipality can only impose (collect) taxes and fees that are established by law, and the state also determines which local taxes belong to the municipality and which to the higher territorial unit.

The state can provide municipalities with a state subsidy to finance their needs. The Constitution does not talk about the conditions for the provision of this subsidy, nor does it specify the cases that would exclude municipalities from the provision of the state subsidy. Subsidies from the state budget are administered by the State Budget Act for

the relevant year. This law will also determine the amount of the municipality's income from taxes administered by the state.

The right of municipalities to associate with other municipalities to ensure matters of common interest (Article 66 of the Constitution)

The municipality has the right to associate with other municipalities to ensure matters of common interest. The purpose of the constitutional law conceived in this way is not only mutual cooperation, but also experience and a joint procedure in securing some things that make up the content of municipal self-government, as well as creating a platform for the joint defence of interests related to the operation of municipal governments. In the indicated sense, the analysed municipal law acquires the meaning of political law.
The Constitution empowers the legislator to establish by law the conditions for the realisation of the given right. In relation to municipalities, such a law is the Act on Municipal Establishment, according to which municipalities can cooperate on the basis of:
- a contract concluded for the purpose of carrying out a specific task or activity,
- contract on the establishment of an association of municipalities,
- the establishment or foundation of a legal entity under a special law.

All three types of possible cooperation are based on the principle of voluntariness, but the fact remains that municipalities do not use the forms of possible cooperation in sufficient quantity. This is surprising especially in the case of small municipalities (and there are many of them in Slovakia), which cannot provide self-governing tasks at the required level, provide basic social services, and can only cope with transferred performance of state administration with problems. That is also why it would be wise for the state to motivate municipalities to cooperate with each other, or he was looking for possibilities and ways of such motivation (perhaps also financial), since the cooperation of municipalities in many areas often represents an increase in the efficiency of the use of public resources, or reduction of expenses for activities that are implemented on the basis of inter-municipal cooperation (Tekeli and Hoffmann, 2014, p. 77).
The Constitution binds inter-municipal cooperation to the territory of the Slovak Republic, but the Act on Municipal Establishment also regulates international cooperation between municipalities. The municipality may, within the scope of its competence, cooperate with territorial and administrative units or offices of other states performing local functions. Within the framework of international cooperation, the municipality has the right to become a member of an international association of territorial entities or territorial authorities. Cooperation is carried out on the basis of a written agreement or on the basis of membership in an international association. A cooperation agreement or membership in an international association must not conflict with the legal order of the Slovak Republic.

The right of a municipality to issue a generally binding regulation in matters of territorial self-government to ensure tasks arising for self-government from the law (Article 68 of the Constitution)

Norm-making of the municipality, i.e. the right to issue generally binding regulations is one of the basic manifestations of the municipality's right to self-governance. On the basis of Art. 68 of the Constitution of the Slovak Republic in matters of territorial self-government and to ensure the tasks arising for municipal self-government by law, the municipality may issue generally binding regulations (executive of territorial self-government – independent competence). According to Art. 71 par. 2 of the Constitution of the Slovak Republic, in the performance of state administration, a municipality may issue a generally binding regulation within its territorial scope and on the basis of authorization in the law within its limits (performance of state administration – transferred competence).

As you can see, the Constitution of the Slovak Republic, but also the legal regulations, do not differentiate in the name of the municipal legislation, whether it is a legal regulation issued by the municipality in the exercise of independent or delegated authority, in both cases the designation "generally binding regulation" is used, which in practice often brings problems and this state of affairs should be considered an unfortunate solution by the founder (Dobrovičová, 2009, p. 136). It is true that a distinction was used in legal theory and pedagogical activity, namely: self-governing regulation, according to Art. 68 of the Constitution and administrative regulation, according to Art. 71. par. 2 of the Constitution (Drgonec, 2018, p. 292; Palúš et al., 2016, p. 274). Personally, we are of the opinion that this distinction could be used in legislation as well, but it would require a change in the constitution, and it is difficult to expect it today in the indicated sense.

Normative authority according to Art. 68 of the Constitution can be applied by the municipality at any time and without authorization in the law, but it cannot be applied to an unlimited extent and to regulate all social relations existing in its territorial district. In accordance with the jurisprudence of the Constitutional Court of the Slovak Republic, a municipality can apply legislation only in that part of the administration of internal affairs, which implements municipal self-government according to Art. 65 of the Constitution of the SR. Beyond the scope of this constitutional article, a municipality can regulate other relations by its regulation, but only if the legislator grants it the power of attorney for rule-making activity (Decision of the Constitutional Court of the Slovak Republic dated May 13, 1997, file no. II. ÚS 19/97). This is a narrow interpretation of the municipality's independent authority when issuing regulations, which is apparently based on the fact that the Constitution of the Slovak Republic expressly guarantees municipalities independence only through the legal subjectivity recognized in Art. 65 par. 1 of the Constitution in matters of managing one's own property and financial resources. The aforementioned interpretation of the Constitutional Court raises several reservations and doubts in legal theory (Jesenko et al., 2015, p. 64–65; Kanárik, 2001, p. 38–41).

General rule-making is also limited by constitutional restrictions related to the protection of fundamental rights and freedoms (Article 2, paragraphs 2 and 3, Article 13, paragraphs 1 and 2 of the Constitution of the Slovak Republic). Although the Constitutional

Court recognizes that the municipality can, by its regulation according to Art. 68 of the Constitution, establish obligations even without explicit legal authorization, but the condition is that it is a specification, a closer adjustment, of an obligation that otherwise has a basis in the law, i.e. is established by law as a basis (Decision of the Constitutional Court of the Slovak Republic dated June 6, 1998, sp. .stamp ÚS 60/97). Since the Act on Municipal Establishment does not establish the range of obligations that municipalities could impose by their ordinance (as is the case in the Czech Republic), in practice there are situations when the municipality imposes an obligation that does not have its basis in law (this happens mainly in practice in small municipalities). Although there is a legislative procedure to deal with such a situation, it would be more effective if the legislation prevented the occurrence of such situations.

In terms of law, generally binding regulations of municipalities are normative legal acts. They are a formal source of law in the Slovak Republic and their content consists of legal norms that are binding for all natural persons and legal entities residing (having their seat) in the territory of the respective municipality. Their scope is therefore limited primarily territorially, i.e. they apply to the territory represented by the district of the municipality. This is a special source of law, which is not directly created by the state or state authorities, but is nevertheless recognized by the state as formal sources of law. An integral part of the state-recognized form is a separate process of their acceptance, as well as the result of this process and its publication.

The process of adopting municipal regulations is regulated, albeit very briefly (which is to the detriment of the matter), by the Act on Municipal Establishment, and municipalities specify it in their statutes, or in the rules of procedure of the municipal council, respectively in separate regulations regulating the process of municipal rule-making (Palúš, 2014, p. 188 et seq.). According to the law, a generally binding municipal ordinance is adopted by the municipal council with a majority of 3/5 of the members present. It is signed by the mayor of the village no later than 10 days after its approval by the council. The regulation must be announced, which is a condition for its validity. It is announced by posting its full text on an official board in the municipality, for at least 15 days. In exceptional cases (e.g. natural disaster, general threat, etc.), an earlier start of the regulation's effectiveness can be determined. The regulation must be accessible to everyone at the municipal office of the municipality that issued it.

Constitutional guarantees of the right to self-government

The initial constitutional guarantee of the municipality's right to self-governance is represented by Art. 1 paragraph 1 of the Constitution, which determines that the Slovak Republic is a democratic and legal state. In relation to municipal self-government in the sense of state law theory, it follows that the state, on the basis of its own discretion, entrusts a part of public power to municipalities as non-state entities, which have thus obtained authorization within the framework of the constitution and the autonomous space defined by law to act on their own affairs independently by their own bodies, respectively directly by residents, who are responsible for their decision-making.

In addition to this general guarantee resulting from the essence of a democratic and legal state, the constitution provides municipalities and their right to self-governance with two other specific guarantees, one of which has a substantive nature (Article 67, paragraphs 2 and 3 of the Constitution) and the other has a procedural (judicial) nature, as it is implemented on the basis of a constitutional complaint under Art. 127a of the Constitution. Constitutional guarantees conceived in this way correspond to the European Charter of Local Self-Government and are comparable to similar guarantees of the right of municipalities to self-government contained in the constitutions of other democratic states (Mikheev, 2014, p. 619–622).

The Constitution of the Slovak Republic in Art. 67 par. 2 guarantees to municipalities that obligations and restrictions in the exercise of territorial self-government can be imposed on them by law or on the basis of an international agreement according to Art. 7 par. 5 of the Constitution. Subsequently, Art. 67 par. 3 determines that the state can intervene in the activities of the municipality only in the manner established by law. Although both provisions define the relationship of the state and its bodies to local self-government, there is a difference in content and application between them.

When analysing the content of the provisions of Art. 67 par. 2, it is first necessary to distinguish between "obligations" and "restrictions" in the exercise of territorial self-government, and then between the sources of law by which obligations and restrictions can be imposed. If the founder of the constitution talks about the imposition of obligations in the performance of territorial self-government, he means new (additional) obligations than those resulting from the existing regulation of the territorial self-government. If the founder of the constitution talks about restrictions in the exercise of territorial self-government, in real terms it means he talks about narrowing the existing independent powers of the municipality given by the current legal regulation (Čič et al., 2012, p. 425).

From the point of view of the form of imposition of obligations and determination of boundaries in the exercise of territorial self-government, it is important that in accordance with Art. 67 par. 2 this can only be done by law or on the basis of an international agreement according to Art. 7 par. 5 of the Constitution. It is an alternative (not cumulative) determination of sources of law through which obligations or restrictions can be imposed in the exercise of territorial self-government. Common to both situations in terms of the sources used is that they are supported by the National Council of the Slovak Republic. The first time in the position of the legislator (when a law imposing obligations and restrictions on the exercise of territorial self-government is adopted), the second time in the position of the legislator (international treaties according to Article 7, paragraph 5 of the Constitution do have priority over the law, but at the same time they are sub-constitutional, they cannot contradict the Constitution of the Slovak Republic; should a problem arise in this sense, it is up to the National Council of the Slovak Republic to solve it by harmonising the constitution and the relevant international treaty).

Provision of Art. 67 par. 3 of the constitution is directed towards all public authorities, which can interfere in the activities of the municipality only in the manner established by law, i.e. not beyond its scope and only in the case (situation) with which the law links possible intervention (Drgonec, 2012, p. 938). Any legal intervention in the activities of the municipality, other than the investigated one, is a violation of its right to self-

government and allows the municipality to use all constitutional and legal means resulting from the legal order of the Slovak Republic in order to protect this right.

An important legal means of protecting the municipality's right to self-governance is a constitutional complaint (commonly referred to as a municipal complaint), which can, pursuant to Art. 127a of the Constitution to be filed by the municipal authorities – the municipal council and the mayor – against:

- an unconstitutional or illegal decision that interfered with matters of local self-government, or
- other unconstitutional or illegal intervention in matters of local self-government.

The founder uses the term "matters of local self-government", although the term "right to self-government" would be more appropriate. This state of affairs is probably due to the fact that the constitution does not explicitly grant the municipality the right to self-governance. We consider that both terms (concepts) are identical from the point of view of the municipality as a subject of territorial self-government.

The intervention against which protection is provided must have an authoritative (power) form. It must be the intervention of another public authority, which may take the form of a decision or other intervention consisting of a procedure, omission or inaction, while violating the sphere of self-government defined by the constitution or law (Čič et al., 2012, p. 695).

A decision should be understood as an individual legal act by which a public authority decided on the matter in question based on a procedure regulated by law. As for the term "other intervention by a public authority", it is necessary to start from its negative definition in relation to the term "decision". For the purposes of proceedings under Art. 127a par. 1 of the Constitution, any other unconstitutional or illegal intervention must be understood as any legal act that was issued within the framework of legal proceedings or outside of it, which cannot be considered a decision, such as any action or omission of a public authority that occurs within the framework of legal proceedings or outside it, and which, according to the complainant (municipal self-governing body), unconstitutionally or illegally interfered with his rights related to the exercise of territorial self-government (Orosz and Mazák, 2004, p. 210).

From the content of Art. 127a par. 1 of the Constitution, it follows that a constitutional complaint can be filed not only for the purpose of protecting constitutionality, but also for the purpose of protecting legality. And it doesn't matter whether there was a violation of the rights of the municipality granted to it by the constitution or laws. A communal complaint cannot be considered a proper remedy, it cannot be used to challenge compliance with legal regulations, and it also cannot be directed against a normative legal act (Palúš et al., 2016, p. 395).

The authority of the Constitutional Court to decide on the constitutional complaint of the municipality is based on the principle of subsidiarity, i.e. the constitutional court will (may) act in the matter if the provision of protection for the municipality does not fall under the jurisdiction of another court. At the same time, the constitutional complaint of a municipality is admissible if the municipality has exhausted all legal means that the law effectively provides for protection against interference in the affairs of municipal self-government, and which the municipality as a complainant is entitled to use according to special regulations.

The Constitutional Court makes a ruling on the matter itself. In the event that the Constitutional Court upholds the complaint, it will state in the ruling what constitutes an unconstitutional or illegal decision, or an unconstitutional or illegal intervention in matters of local self-government, which constitutional law or law was violated, and by which decision or intervention this violation occurred.

If the intervention in the affairs of the local self-government occurred through a decision, the Constitutional Court will cancel this decision, while at the same time it can return the matter for further proceedings to the body that decided on the matter, which depends on the nature of the violated right of the municipality. This body is obliged to discuss the matter again, while it is bound by the legal opinion of the Constitutional Court expressed in the finding. If the violation of the right to self-governance of the municipality consisted of an intervention other than the decision itself, the Constitutional Court forbids the continuation of the violation of the right and orders, if possible, that the original state be restored. It should also be added that in this type of proceeding, the Constitutional Court cannot award the municipality as the complainant compensation in the form of adequate financial compensation.

As a legal entity, the municipality is entitled to claim protection of its fundamental rights granted by the constitution in proceedings before the constitutional court also according to Art. 127 par. 1 of the Constitution. Pursuant to this constitutional provision, the Constitutional Court decides on complaints by natural persons and legal entities, if they object to a violation of their fundamental rights and freedoms contained in the constitution, or of human rights and fundamental freedoms resulting from an international treaty that the Slovak Republic has ratified and was promulgated in the manner established by law (unless another court decides on the protection of these rights).

It is worth noting that municipalities more often use proceedings under Art. 127 par. 1, than proceedings under Art. 127a. In our opinion, one of the reasons for this state of affairs is the fact that proceedings under Art. 127a, i.e. on the basis of a classic municipal complaint, it is professionally and therefore financially more demanding for municipalities.

CONCLUSION

On the basis of what we stated in the contribution, we would like to state that the constitutional enshrining and implementation of the right of municipalities to self-government in Slovak conditions corresponds in terms of form and content to the legal regulation of this institute in other countries of the European Union. We consider our claim to be realistic, despite the fact that the Constitution of the Slovak Republic does not explicitly enshrine the analysed right, but the Constitutional Court of the Slovak Republic confirmed it with its ruling, which undoubtedly gave it the stamp of constitutionality.

However, our finding does not mean that the right of municipalities to self-governance in the Slovak Republic does not need to be improved legislatively, on the contrary, it is highly desirable. It is not by chance that in this paper we pointed out several weak (problematic) legislative points related to the right of municipalities to self-governance. If we perceive the Constitution of the Slovak Republic in a material sense, i.e. as part of it, we will consider not only the constitutional text, but also the content of the laws that brings it into existing,

we find space for specifying the right of the municipality to self-governance, especially the Act on Municipal Establishment, which is the most important from the point of view of the implementing laws of the right of the municipality examined by us.
A more perfect legal arrangement corresponding to the current knowledge of legal theory (or the theory of territorial self-government, but also the needs of the practice of Slovak municipal governments) would be particularly deserving to the content of the municipality's right to self-government. By that we mean for example – a broader definition of the legal subjectivity of municipalities, the possibility of their effective cooperation (especially from the point of view of small municipalities), a more complex and at the same time more detailed embedding of municipal legislation in terms of adjusting the process of adopting generally binding regulations (including distinguishing their name depending on the scope of the municipality's jurisdiction they are adopted), a clearer regulation of the municipal mayor's right of sistance in terms of the prohibition of its use in relation to municipal regulations, etc.
All the indicated problems (as well as other necessary legal adjustments) could be solved as part of the municipal reform (reform of the municipal establishment), which in Slovak conditions has been postponed for a long time, although everyone who understands territorial self-government knows well that it is necessary and from the point of view of the development of law municipalities it's also important for self-government.

References

ASTRAUSKAS, A. and GECIKOVA, I. Similarities and Differences in Local Self-Government in Lithuania and Slovakia. *American International Journal of Social Science*. 2014, vol. 3, no. 5, p. 153–182. ISSN 2325-4149.

BLAUG, R. Engineering Democracy. *Political Studies*. 2002, vol. 50, no. 1, p. 116–128. ISSN 0032-3217.

BOGUSZAK, J., ČAPEK, J. a GERLOCH, A. *Teorie práva*. 2., přeprac. vyd. Praha: ASPI, 2004. ISBN 80-7357-030-0.

ČIČ, M. et al. *Komentár k Ústave Slovenskej republiky*. Žilina: Eurokódex, 2012. ISBN 978-80-89447-93-0.

DOBROVIČOVÁ, G. Ústavné základy tvorby práva de contitutione ferenda. In: *Ústavný systém Slovenskej republiky (doterajší vývoj, aktuálny stav, perspektívy)*. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, Právnická fakulta, 2009, s. 128–145. ISBN 978-80-7097-777-4.

DRGONEC, J. *Ústava Slovenskej republiky: komentár*. 3. vydanie. Šamorín: Heuréka, 2012. ISBN 80-89122-73-8.

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

DUŠEK, L. Co je obsahem práva na samosprávu a komu takové právo náleží. In: ANTOŠ, M. a WINTR, J. (eds.). *Výkonná a soudní moc v demokratickém právním státě*. Praha: Leges, 2012, s. 36–49. ISBN 978-80-87576-38-0.

EREMIN, A. R. Content and Guarantees of Implementation the Right to Local Self-Government in the Russian Federation. *European Research Studies Journal*. 2016, vol. 19, no. 3B, p. 187–209. ISSN 1108-2976.

HANSEN, K. The municipality between central state and local self-government: Towards a new municipality. *Local Government Studies* [online]. 1997, vol. 23, no. 4, p. 44–69. ISSN 1743-9388. DOI: 10.1080/03003939708433885.

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

JESENKO, M. et al. *Obec ako subjekt tvorby práva*. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, 2015. ISBN 978-80-8152-372-4.

KANÁRIK, I. Ústavnosť všeobecne záväzných nariadení obce. *Správní právo*. 2001, roč. 34, č. 1, s. 38–41. ISSN 0139-6005.

KIURIENĖ, V. The Legal Aspects of Participatory Governance in Local Self-Government. *Socialiniai tyrimai / Social Research*. 2012, vol. 3, no. 28, p. 62–75. ISSN 1392-3110.

KJELLBERG, F. Local Government Reorganization and the Revival of Local Democracy. In: KING, D. S. and PIERRE, J. (eds.). *Challenges to Local Government*. London: Sage Publications, 1991, p. 68. ISBN 978-0-8039-8320-8.

MATULA, M. Občan a samospráva – soulad nebo konflikt. In: *Formy uskutočňovania obecnej samosprávy*. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, Fakulta verejnej správy, 2017, s. 28–38. ISBN 978-80-8152-543-8.

MIKHEEV, D. S. Legal analysis of the European Charter of Local Self-Government in the light of the principle of publicity. *Life Science Journal*. 2014, vol. 11, no. 6, p. 619–622. ISSN 1097-8135.

MIKULE, V. K ústavním základům územní samosprávy. In: KYSELA, J. (ed.). *Deset let Ústavy České republiky: východiska, stav, perspektivy*. Praha: Eurolex Bohemia, 2003, s. 412–419. ISBN 80-86432-45-9.

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.

PALÚŠ, I. Nefunkčná obec – progres alebo ďalšie problémy? *Štát a právo*. 2020, roč. 7, č. 2–3, s. 108–117. ISSN 1339-7753.

PALÚŠ, I. Obecné zastupiteľstvo ako orgán verejnej moci. *Štát a právo*. 2014, roč. 1, č. 2, s. 180–197. ISSN 1339-7753.

PALÚŠ, I. et al. *Formy uskutočňovania obecnej samosprávy*. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, Fakulta verejnej správy, 2018. ISBN 978-80-8152-663-3.

PALÚŠ, I. et al. *Ústavné právo Slovenskej republiky*. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, Fakulta verejnej správy, 2016. ISBN 978-80-8152-442-4.

PALÚŠ, I., JESENKO, M. a KRUNKOVÁ, A. *Obec ako základ územnej samosprávy*. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, Fakulta verejnej správy, 2010. ISBN 978-80-8129-003-9.

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

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