The Municipality Rulemaking Problem and the Position and Competences of the Local Self- Governing Bodies

Júlia Ondrová, Michal Úradník

https://doi.org/10.33542/VSS2023-1-1

Abstract

On the base of the legal regulation interpretation, the authors have provided the analyses of the stated limits that are given to the local self- governing rulemaking activities. Particularly, the attention has been given to the legal proceeding concerning the congruence of the assessment of the local self-governing generally binding legal regulations delivered by the municipalities and the higher territorial unit. Based on the syntheses of the essential data, the authors try to highlight the probable problems that might occur in the applicable practice caused by the absence of the legislative consistency. At present the comparative evidence is equally given by the absence of the local self- governing powers to initiate a procedure by means of the communal constitution complaint as regards the legal regulations compliance by the Slovak Republic Constitution Court.

Key words: *local self-governing, rulemaking, proceeding, communal constitution complaint.*

Introduction

By Article 64 and consequently by the Slovak Republic Constitution, the municipality is the core basis of the territorial self-governing. In the Slovak Republic, the local self-governing is created by the municipality and the higher territorial unit, and they both stand for the territorial self-governing and the local self-governing entities gathering all people who have the permanent residence in their localities. It should be pointed out that both of them have an equal posture the municipality, and the higher territorial unit as well. In relation towards municipalities the higher territorial unit, in other words the local self-governing region, constitutes the public corporation of the higher territorial self-governing level. It should be furthermore underlined that its responsibility for the maintenance rests in such areas which are not capable to be maintained by an individual municipality or by the inter-municipal cooperation, and if the maintenance is more advantageous to be provided by the higher territorial unit. Therefore, the higher territorial unit serves as a kind of the intermediate stage in the territorial organization of the public administration. However, on the other hand, the significant coordination functions fulfilment does not mean that the higher territorial unit administrative position creates the reasons for its directive supremacy over all municipalities (Jesenko 2017, p. 21).

In spite of the fact that the territorial self-governing does not fulfil the criteria bound to the executive, legal and legislative powers, it should be underlined that the existence of the

territorial self-governing is caused by the state own self-limitations pro bono the territorial corporation. Within the tripartite distribution of power, the territorial self- governing must be understood as an institute defined as a unique type of power penetrating into all of the other parts of power. The mentioned definition of the territorial self-governing affirms the reality that the self-governing has been established under the state conditions and the representative democracy (Trellová 2018, p. 61, Ondrová 2020, p. 6), anyway it must be highlighted that the local self-governing fulfills the significant and challenging tasks. Exempli causa, the municipality provides the construction and maintenance of the local communication means and all the public places, cultural, sport and further public areas and zones. Besides that, the municipalities participate in the protection of cultural memorials. Besides that, they are looking after the environmental care and the healthy human living conditions. Moreover, the municipalities organize the local referendum and many other activities connected with the everyday municipality life. Further on, they provide rulemaking activities and issuing the generally binding regulations.

1. The Local Self-Governing Rulemaking Activities

The municipalities and the higher territorial unit rulemaking activity is one of the essential powers defined by the Slovak Republic Constitution legislative foundations. By Article 68 of the Constitution the local self-governing bodies are authorized to make the so-called original ruling regulations concerning the local territorial administration matters, and besides that to maintain the obligations that are authorized to them by law. The legal adjustment stated by the Constitution indirectly includes the existence of a certain legal authorization preconditions, even if it does not mean the explicit empowerment, and thus enabling the local self-governing bodies to deliver the generally binding regulations regarding the fulfillment of the execution of their obligations in a definite area (Article 71 paragraph 2 of the Constitution). In these cases, the rulemaking activity of the municipality and the higher territorial unit is implemented on the base of law and within its limits. In abstracto, the original generally binding regulations represent a certain kind of the legal authorization of the lower legal power enabling municipalities and the higher territorial units to exercise powers authorized them by the given legal regulations (Sotolář 1996, p. 21). As an example, it might serve the Act No. 582/2004 as amended on the local taxes and fees regarding the communal waste and the small construction waste valid for the stating the taxable amount and the rate amount together with the affirmation of the payment methods. In this way the municipalities are obliged to lay down the needed generally bounding regulations (Kubincová 2019, Kubincová – Jamrichová 2022, Úradník, 2020). The Slovak Republic Constitution Court in its court finding No. p. II. US 362/2019 April 2nd 2020 judicated that according to the enactment No.59 paragraph 2 of the Constitution, the constitution fuse is applied in order to hamper the executive power to implement tax and any other charging obligations to natural persons and legal entities on the base of their own

discretion. The authorization of such obligations is unquestionably the privilege that is granted to the legislative power, and that 'why such an authorization can be only provided by Act based on the law.

The second type of the generally binding regulations is adjusted by Article 71 permitting to confer some specific duties to be exercised by municipalities or the higher territorial units. As regards the execution of the state administration, the municipality and the higher territorial unit are allowed to deliver the generally binding regulations but only within their own local territory and only in case if it is authorized by law and within its exact definition. Consequently, the municipalities and the local territorial units are allowed to make the generally binding regulations, but only on the base of the expressly authorized by law and strictly within it force as it defined by the derivative regulations in the Article 71 paragraph 2 of the Constitution.

By the legal opinion of the Slovak Republic Constitution Court based on the finding No. p. III US 1/2000 published 25th May 2000, the general binding regulation represents the normative and legal act containing the legal norms, that means the obligation behavior code imposing duties and conferred rights. Therefore, it cannot be understood only as the informative resource, but primarily it has to be comprehended as a normative document.

That 'why, in the Slovak Republic the generally binding regulations have their place among the formal law sources and their contents create the legal norm bound for all natural persons and the legal entities having the residence on the territory of a definite municipality or the higher territorial unit. Besides that, with what was said, the certain basic legal norms characteristics are connected with it, more precisely speaking, they contain their legal obligatoriness and the general validity accompanied by the material, temporal, territorial and personal competences. Moreover, the validity of the local self-governing legal norm is of a fundamental character but only after fulfilling the delivering of the generally binding regulation`s full wording, and consequently its coming into force (Jesenko 2017, pp. 105-107). More precisely said, the generally binding regulation becomes valid only after being placed on the official notice board and its becoming in force, usually after expiring a certain period of time covering more or less at least15 days since its turn out to be public.

In conclusion of what was said, it must be necessary to draw attention to the fact that the constitution imperative is equally obligatory for the rulemaking activities of the local self - governing as it is stated by Article 2 paragraph 2 of the Constitution. It declares that all state bodies can only act on the base of the Constitution, within its bounds and contents, respecting the ways of procedures which are stated by law. The Slovak Republic Constitution Court in its finding No. p. I. US 53/2000 dated 25th April 2002 emphasized that the extent of the original rulemaking activities of the municipality and the higher territorial unit even in connection with their exercised rulemaking activities have to follow their conferred authorization delegated to them by the state administration which must be always based on respecting the basic human rights and freedoms guaranteed by the Constitution, and that is the constitution imperative which must be valid and esteem by all levels of the local self-governing.

Therefore, the regulations of all sociable relations occurred in their localities cannot be provided and regulated only by municipality or the higher local territorial unit. according to the Article 152 paragraph 4 of the Constitution: "*The Commentary and the exercising of the constitutional acts, acts and other generally binding legal regulations must be in accord with the Constitution*." It means that the Constitution does not authorize municipalities and the higher territorial units to exercise an absolute limitless rulemaking power, it can be executed only within the scope of the implemented obligations which are delegated to the local self-governing according to the Article 65 of the Constitution. Beyond the stated constitution provision, the local self-governing can regulate only some public relations by the generally binding regulation. More precisely said, there are only those ones which are allowed to be provided by the legislator expressed authorization as regards the rulemaking activity made by the territorial self-governing.

Besides that, theory and practice are consistent concerning the exercising the municipality powers by the generally binding regulations to modify the social relations which until now have not been adjusted by the legal regulations. But on the other hand, as it has been already mentioned, certain limits must be respected as it is declared by the Slovak Republic Constitution Court in their finding No. p. II. US 19/97 dated 13th May 1997. Here it is underlined that the municipality position as a legal entity is prohibited to restrict the fundamental human rights and freedoms guaranteed by the Constitution. If the local self-governing body set up conditions restricting the basic human rights and freedoms by the generally binding regulation, then it is not only beyond the limits of Article 68 and 71 of the Constitution, but at the same time such an application of the rulemaking is in contradiction with Article 2 paragraph 3 and Article 13 paragraphs 2 and 3 of the Constitution. The argument rests in the fact that the generally binding regulation is not permissible to amend issues that can be regulated only by the Constitution.

2. Research of the General Binding Regulation

In case, when the municipality or the territorial self-governing unit generally binding regulation displays the evidence of its inadequacies, e. g. the infringement of the fundamental human rights and freedoms, or if it is in contradiction with the legal regulation of the higher legal power, then as a result of these adequacies the several legal institutes come into the effect.

The first one of them is the prosecutor protest. After the submission of protest the prosecutor applies the control concerning the respecting of laws and any other generally binding legal regulations released by the public administration bodies. According to the Act on prosecution § 23 section. 1 Act No. 153/2001 Coll. as amended (further on used only Act No. 153/2001 Coll.), the prosecutor is justified to submit the protest under the condition when the local self-governing bodies generally binding legal regulations are against the law. Proceedings regarding the prosecuting attorney protest is arbitrated in cases when the law infringement was made by the generally binding legal regulation or if any other generally binding legal regulation had been violated. In case when the

municipality or the higher territorial unit accepts the justification of the prosecuting attorney protest, then it is obligatory without any needless delay, at least up to 90 days from delivery of the prosecutor protest to annul the generally binding regulation, or according to the nature of the matter, it must be replaced by another generally binding regulation which will be in accordance with law, or eventually likewise with other generally binding rulings. Concerning the justification of the protest regarding the generally binding regulation, its canceling or amending or the failure to comply with the prosecutor protest, the municipality or the higher territorial unit are notified about the mentioned facts and the time of improvement, and that is usually 90 days after the delivery of the protest.

In case when the municipality or the higher territorial unit do not comply with the filed protest, then the prosecuting attorney is justified to lay down the lawsuit to the regional court as it is declared by § 6 section 2 letter h) Act No. 162/2015 Coll. (further on used only Act No. 162/2015 Coll.)., following the valid wording of the Administrative Court Order. By laying down the lawsuit the prosecutor initiates the proceeding of the generally binding regulation made by the municipality, city, city district or the autonomous region with the law compliance, government authorization compliance, and the compliance with the ministries generally obliged legal rulings and other state administration official central bodies. By § 357 Act No.162/2015 Coll., the procedure in matters, such as the breaking of public interest concerning the environmental area where the public is interested, the prosecuting attorney is likewise justified to require the regional court to pronounce the verdict on the discrepancy of the generally binding regulation delivered by the municipality, respectively by the higher territorial unit. By the procedure following the Aarhus agreement as well, it concerns the following cases:

a) whether the local territorial self-governing is in concord with law,
b) if the duties fulfillment of the state administration are in accordance with law, government regulations, and with the ministries generally binding regulations and other official central bodies of the state administration.

What ‘more, the objectionable discrepancy can rest not only in the contents of the generally binding regulation, but it might be occurred in breaking its procedure just at the beginning of its acceptance. The lawsuit in question stands for the second legal institute providing the foundations for the investigation of the generally binding regulation.

In case when the regional curt declared that there is a discrepancy between the general binding regulation of the local self-governing and law, or in case of the state administration obligations accomplishment is found out the contradiction with the government enactment, or if there is a contradiction with the generally binding legal regulations delivered by ministries or any other central state administration bodies, then the general binding regulation lost its force as a whole or in some of its enactments, respectively in one of its parts. The court verdict becomes in force since the time when the court judgement has been pronounced. The

municipality, which has made such a generally binding regulation, is obliged to furnish its contents in such a way as to be in accordance with the objected legal regulation up to the time of six months since the court decision force pronouncement. If the municipality in question has not apply the mentioned objections, then the generally binding regulation or one of its parts or some of its enactments lost their validity after the time of six months when the proclaimed court authorization became in force. The mentioned provision is equally valid for the generally binding regulations released by the higher territorial unit.

The third tool rests in the generally binding regulation examination by the Slovak Republic Court proceeding as it is stated by Article 125 paragraph 1 letter c) and d) of the Constitution. Within the sense of the stated Constitution Article, the Slovak Republic Constitution decide on the compliance of the original generally binding regulation with the Constitution, or with the constitution acts, and the international agreements approved by the Slovak Republic National Council having been ratified and declared by means as it stated by law and laws, but only in case when there are not judged by any other court. Concerning the derivative provisions, the Constitution Court resolves likewise on their compliance with the governmental rulings and the generally binding ministries legal rulings, and accordingly with other central official administrative bodies in case if any other court does not resolve otherwise.

Considering the subject proceeding specification at the Constitution Court stated by Article 125 paragraph 1 letter c) and d) of the Constitution and in connection with the pronouncement *„if they are not judged by any other court",* we can consider the justified question if it is at all necessary to judge the compliance of the generally binding regulations made by the local self-governing bodies, e. g. with acts, respectively any other legal regulation of the lower legal power. The raised question comes out from the mutual overlap of the proceeded subject in this area. The Slovak Republic Constitution Court as well as the regional court (§ 357 Act No. 162/2015 Coll.) can examine the compliance of the generally binding regulation released by the municipality or the higher territorial unit with laws and other legislative rules of the lower legal power. In this connection, the authors express the reasonable conviction concerning a certain legal duplicity of the legal amendment, and that`s way it calls for the more precise investigation.

Proceeding on the compliance of the generally binding regulation adjudicated by the regional court was included among the special proceedings of the administrative justice having been already in force since the 15th of October 2008 by means of the amendment to Act No. 99/1963 Coll., The Civil Procedure Code (further on Act No 99/1963 Coll.) provided by Act No. 384/2008 Coll., at that time, the authorized provision § 250zfa Act No. 99/196 3 Coll., was based on the above-mentioned Article 125 paragraph 1 letter c) and d) of the Constitution. By this it was constituted the alternative rested in the fact that the compliance of the rulemaking activities provided by the municipality and the higher territorial unit have been able to be

adjudicated not only by the Constitution Court but likewise by the general court, in this case it was the regional court (§ 250zfa paragraph. 3 Act No. 99/1963 Coll.). According to the explanatory report accompanied to the Act No. 384/2008 Coll., the change had been called by the demand to adjudicate preferably the most substantial cases by the Constitution Court. The presented argumentation of the lawmaking body seemed to be logically acceptable and reasonable. As a matter of course, the adjudication was motivated by the determination to diminish the number of cases which have to be judged by the Slovak Republic Constitution Court. On the other hand, it must be taken into consideration several theoretical and applicable problem-questions connected with the mentioned legal amendment.

Enactments of the Article 125 paragraph 1 letter c) and d) of the Constitution had been supplemented into the constitution text coming into the force 1st January 2001 by the Constitution Act No. 90/2001 Coll. as amended. In this way the Sloak Republic Constitution has been modified and changed by Article 460/1992 Coll. as amended. The wording of the subparagraph 58 of the explanatory report concerning the mentioned Constitution Act resulted in the aim of the constitution maker to create a constitution base as it is expressed by the changed wording of the Article 125 of the Constitution. The aim enabled the legislator to bestow the powers to the local self-governing bodies to make decisions on the compliance of the generally binding regulations with the legal regulations of the higher legal power in order to be in accordance with law.

On the foundations of what was said, it is necessary to comprehend that by the amended marked articles the legislator followed not only the authorization of the new powers delegated to the Slovak Republic Constitution Court, but what`s more, the legislator wanted to create, and we have to say that they have managed to do it, the constitution foundations which would be valid for the further legal amendment regarding the evaluation of the conformity of the local self-governing generally binding regulations. By the new amendment it was decided to entrust primarily the powers to the general courts to scrutinise the generally binding regulations delivered by the municipalities and the higher territorial units. Besides that, the mentioned realities are in consensus with the above-mentioned Civil Court Order amendment and the administrative justice.

The presented facts lead us to the logical considerations what would be the most appropriate procedure as regards the evaluation of the generally binding regulations made by the municipality and the higher territorial unit.

Having in mind the principle of subsidiarity regarding the proceeding at the Constitution Court, the authors are of the opinion that the prosecutor should primarily act by implementing the prosecutor protest institute as regards the examination conformity of the generally binding legal regulations released by the local self-governing bodies. In case when the protest was not accepted, then the prosecutor should submit the lawsuit addressed to the administrative

court in order to initiate the proceeding as it is declared by § 357 and subsequently by Act No. 162/2015 Coll. Under the conditions in such a case, it is firstly submitted to be proceeded by the Slovak Republic Constitution Court on the matter of conformity following the Article 125 paragraph 1 letter c) and d) of the Constitution, afterwards it can result in the refusal on the grounds of the lack of its powers as it is stated by § 56 paragraph 2 letter a) Act No. 314/2018 Coll., regarding the Slovak Republic Constitution Court as amended, as it is evident by its clear and valid formulation (Act No. 314/2018 Coll.) More specifically expressed, we can add that it can be rejected in the part of the assessment compliance with laws or any other legal regulations of the lesser legal power.

Subsequently, the Slovak Republic Constitution Court would adjudicate the objected general binding regulation released by the local territorial self-governing bodies only within the optics of its conformity with the Constitution, constitution laws and the international agreements approved by the Slovak Republic National Council, ratified, and declared in congruence with law. However, if the Constitution Court pronounced the discord of the objected general binding regulation with the Constitution, constitution laws and the international agreements approved by the Slovak Republic National Council, ratified, and pronounced by law, then it is without saying that the occasional conformity or discord with laws, and any other legal regulations of the lesser legal power is absolutely pointless (Ondrová - Úradník 2022, p. 111). Besides that, the mentioned application is closely connected with the implemented doctrine concerning the constitution conformity of the legal regulations of the lesser legal power and the Constitution as well.

The authors support the opinion based on the reference to the finding of the Slovak Republic Constitution Court PL. US 2/2013 dated 12st November 2014 regarding the presented legal estimation concerning the secondary investigation of the self-governing bodies and its generally binding regulations. By the Constitution Court formulation *"if they are not judged by another court"* Article 125 paragraph 1 letter c) and d) of the Constitution, the constitution maker had an intention to establish the subsidiarity of powers of the Constitution Court to decide on the compliance of the generally binding regulations according to the Article 68 and Article 71 paragraph 2 of the Constitution, it means that the general courts might be delegated the mentioned powers by law. By enactments No. 125 paragraph 1 letter c) and d) of the Constitution, it is implicitly expressed the constitutional entrustment to allow the legislator to set up by law the general courts right to adjudicate cases in the stated areas.

In conclusion of what was said, we can summarize that the generally binding regulations made by the municipalities and the higher territorial units in relation to the assessment compliance with law, or the legal regulation of the lesser legal power primarily belongs to the administrative justice and to the regional courts' authorities. Only if the objected compliance of the generally binding regulation is in contradiction with the Constitution, the

constitution laws and the international agreements approved by the Slovak Republic National Councill and ratified and proclaimed by means of law, then subsequently the Slovak Republic Constitution Court powers come into the force to open the procedure as it is stated by Article 125 paragraph 1 letter c) and d) of the Constitution. Only under the situation when in the proceeding by Article 125 paragraph 1 letter c) and d) of the Constitution the objection arises concerning incompatibility of the general binding regulation not only against the Constitution, but e. g. against laws, or legal regulations of the lesser power, then the principle of the proceeding economic efficiency comes into consideration, the authors assume that by § 56 paragraph 2 letter a) Act No. 314/2018 Coll., the Constitution Court should not exclude their power. Contrariwise, the Constitution Court should screen the objected generally binding regulation ad effectum the submitted motion including its compliance with laws and the legal provisions of lesser power as well.

And besides that, the authors point to the enactment of the Slovak Republic Constitution Court Collection of Laws IV. US 248/2012 dated 10th May 2012 as regards the reginal court authorization to adjudicate on the base of the prosecutor attorney`s submitted motion on the discordance of the municipality or the higher territorial unit generally binding regulation with the Act having been in force at that time by § 250zfa Act No. 99/1963 Coll. According that Act declaration of the Constitution Court powers to adjudicate on the delay bills has to be provided following the Article 125 paragraph 1 letter c) and d) of the Constitution. Besides that, the reason rests in the fact that authorization of certain subjects to initiate proceeding at the Constitution Court comes out directly from the Constitution, in connection with the Act on the Constitution Justice (at present § 74 Act No. 314/2018 Coll.), by the ordinary act the mentioned power cannot be deprived.

In case when the regional court conclude that the examined local territorial body generally binding regulation is not in compliance even with the Constitution, then the process follows § 100 paragraph 1 letter b) Act No. 162/2015 Coll. Afterwards, the procedure is interrupted and the motion to start the proceeding is laid down to the Constitution Court following the Article 125 of the Constitution. The question of the legal consideration arises, how to continue in case when the generally binding regulation of the local territorial self-governing is at the same time the legal proceeding object of the Constitution Court and the reginal court as well. By the estimation of the authors the previously mentioned principle of the legal proceeding economy should be applied, and accordingly accompanied by the interruption of the procedure hold by the regional court. The mentioned fact arises mainly from the assumption that in the legal proceeding provided by the Constitution Court the objected unconstitutionality is considered, too. The foundation of the regional court proceeding interruption is acceptable by § 100 paragraph 2 letter a) Act No. 162/2015 Coll. If the administrative court does not apply any other suitable measures, the proceeding can be

interrupted by passing the resolution, e. g. in case of the court proceeding deciding on the question which might be important for the judgement made by the regional court. Further on, it means that when it is investigated not only unlawfulness but likewise the unconstitutionality concerning a certain generally binding regulation, then subsequently the Constitution Court should proceed and pronounced the final verdict. Assuming that the unconstitutionality has been declared as regards the generally binding regulation, the proceeding at the regional court in case of the examination "just" the accordance with law, then it seems finally to be superfluous. However, every legal regulation of the lesser power must be in accord with the legal regulation of the higher-level power. Under the conditions of the lawful state all legal regulations must be suapte natura in compliance with the Constitution.

The more complicated situation appears in case when the prosecutor attorney finds out that the generally binding regulation is not in accordance with the Constitution. The problem rests in the statutory regulation while to file protest by the prosecutor is explicitly bound in case of to the violation of law or any other generally binding legal regulation, it is usually concerning a legal regulation of the lesser legal power (§ 23 paragraph 1 Act No. 153/2001 Coll.). Within the mentioned context the authors point out to a certain deficiency of the legislative consistency. By law § 27 paragraph 4 Act No. 153/2001 Coll., the general prosecutor is justified to file a motion to the Constitution Court to start the proceeding on the compliance of the legal regulations. However, it concerns basically the generally binding legal regulations delivered by the state body (§ 27 paragraph 4 Act on Prosecution). Though, in spite of the mentioned commitment of the prosecutor as regards the discrepancy with law or legal regulation of the lesser power, the prosecutor can object the incompatibility with the Constitution (Article 125 paragraph 1 letter b) and by § 74 Act No. 314/2018 Coll. The stated general prosecutor power is not explicitly expressed in relation to the generally binding regulation made by the local self-governing bodies (§ 27 paragraph 5 Act No. 153/2001 Coll.), as the designed legal discrepancy cannot be found in Act on Prosecution until 1st July 2016. However, at that time it was declared by the valid § 25 paragraph 4 Act 153/2001 Coll., that if the public administration body had not met the prosecutor protest, the general prosecutor could file a motion to the Constitution Court to start the proceeding on the legal regulation compliance, while by the generally binding regulation it was mainly understood the generally binding regulation of the local self-governing (§ 22 paragraph 1 letter a) point 2 Act No. 153/2001 Coll.), as a possible solution might be to put forward the prosecutor procedure following § 74 Act No. 314/2008 Coll. After the supposed incompatibility of the local territorial self-governing generally binding regulation, the prosecutor informs the general prosecutor who is justified to file a motion to the Slovak Republic Constitution Court to start the proceeding on the compliance of the legal regulation according to the Article 125 of the Constitution.

3. Municipality and the Higher Territorial Unit as Unjustified Subjects

Since 1st January 2025, the Slovak Republic Constitution adjustment has been in force provided by the Constitution Act No. 422/2020 Coll., changing and modifying the Slovak Republic Constitution No. 460/1992 Coll. as amended (latter on used only Act No. 422/2020 Coll.). By the mentioned Act and the enactment Article 127 paragraph 1 of the Constitution, it is acceptable to lay down a complaint and the proposal by the natural persons and the legal entities to the Constitution Court Senate to initiate the proceeding on the compliance of the legal regulations following the Article 125 paragraph 1 of the Constitution. The requirement rests in the presumption that the objected legal regulation has to be in accord with the laid down constitutional complaint submitted by the natural person or the legal entity.

If the Constitutional Court Senate conclude that the subjected proposal and the constitutional complaint are justified, then they interrupt the proceeding regarding the complaint and submit the motion to start the proceeding by Article 125 paragraph 1 of the Constitution. In such a case, following the compliance with the enactment § 131a the Act No. 314/2018 Coll., and having been in force since 1st January 2025, the Constitutional Court Senate is bound by the extent of the claimant submitted proposal by § 123 section 4 of the mentioned Act, however, the Constitution Court Senate is not bound by the claimant`s arguments laid down in his proposal. The proposal to start the proceeding by Article 125 paragraph 1 of the Constitution is submitted to the Constitution Court General Assembly by the Judge Rapporteur. According to the diction of Act § 131a section 3 No. 314/2018 Coll. and coming into force 1st January 2025 on the proceeding of the legal regulation compliance, the Judge Rapporteur is that judge who is at the same time the Judge Reporter in the Constitutional Court Senate deciding on the case of the submitted constitutional complaint by Article 127 of the Constitution.

Within the sense of the explanatory report contents concerning the Act No. 422/2020 Coll., in case when the proceeding on the legal regulation compliance before the Constitution Court General Assembly cannot be understood as a conception if it is initiated directly by the complainant. Similarly, the Constitution Court Senate deciding on the constitution complaint have not the mandatory obligation to submit such a complainant proposal to the General Assembly of the Constitution Court.

However, the mentioned amendment of the Constitution has to be considered by taking into account several levels. The positive remains in the fact that the legislator has accepted the possibility of the natural persons and legal entities to file the constitutional complaint together with the proposal, afterwards the Constitution Court Senate deciding on the submitted complaint initiate the proceeding on the legal regulations' compliance by Article 125 paragraph 1 of the Slovak Republic Constitution. As a negative aspect can be the time displacement of coming into the force of that part of amendment which was approved. In spite of the fact that

the amendment was accepted sooner in December 2020, the mentioned part will come into force only 1st January 2025.

Besides that, it is the time inadequate determination regarding the examination of the peculiar complainant submission to enquire the Constitution Court Senate to initiate the proceeding on the legal regulation compliance. From the second sentence of the Article 127 paragraph 5 of the Constitution being in force 1st January 2025 it follows, if the Constitution Court Senate conclude that the mentioned submission is justified, then the proceeding on the constitution complaint is abandon in order to file a motion to start the proceeding according to the Article 125 paragraph 1 of the Constitution. Therefore, at first the Constitution Court Senate should consider and examine the constitution complaint, and only after its approval it is reliable for the further proceeding, or at least the part connected with the submitted complaint (§ 56 paragraph 5 Act No. 314/2018 Coll.). Besides that, the Constitution Court have to consider the submission of the reasons explanation as regards the submitted complaint. The authors have deduced the aforesaid realities by the contents aimed at the constitutional guarantee of the fundamental human rights and freedoms, and moreover, it is clear from the text wording of the first sentence concerning the submitted complaint articulated by Article 127 paragraph 5 having been in force since 1st January 2025. To express differently, if the objected legal regulation must pay attention to the constitutional complaint submission, then it had to be applied in relation to the claimant, and by the provided examination it was found out the reality that it was the application that led to the infringement of the basic human rights and freedoms whose protection now the claimant demands by the constitutional complaint. Finally, referring to what was said before, we can come to the logical conclusion to leave the submitted proposal to the destiny of the constitutional complaint. (Ondrová – Úradník 2022, p. 157-158).

However, by the Slovak legal amendment, being actual at present as well as effective since 1st 2025, the authorization of the communal complaint and the right of the local self-governing bodies to submit a proposal to the Constitutional Court Senate to initiate the proceeding on the legal regulations' compliance are absolutely omitted by Article 127a of the Constitution.

In this connection it is necessary to point out to the valid legal amendment effective in the Czech Republic. In order to enable individual people admission to the Czech Republic Constitution Court, the Czech Republic Legal Order introduced the right to submit the proposal to annual some legal regulations accompanied by the constitution complaint within the sense of § 74 Act No. 182/1993 Coll., on the Constitution Court as amended (further on used Act No. 182/1993 Coll.). According to the valid enactment, by the constitutional complaint it is achievable to submit a proposal to annual a legal regulation only under the condition that by its implementation appeared the reality which has become the object of the constitutional

complaint, it is in cases when the claimant asserts that the legal regulation or its enactment is in contradiction with the constitution act or any other regulations of the lesser legal power.

Considering the methodological law system expressed by Act No. 182/1993, it is necessary to draw attention to the fact that the mentioned Act does not strictly make difference between the so-called communal constitution complaint and the complaint laid down by the natural persons or the legal entities. By § 72 section 1 letter b) of the Act No. 182/1993 Coll., the municipal board or the board of the higher territorial unit are justified to submit the constitutional complaint correspondingly with the proposal to annual act or any other legal regulation (§ 74 Act No. 182/1993 Coll.).

Comparison of the Slovak and Czech legal amendment arises the question why the Slovak Republic National Council together with the right entrusted to the natural persons and the legal entities did not give the local self-governing entitlement to proceed their constitution complaint to examine the conformity of the applied legal regulation.

By the explanatory report as regards Act No. 422/2020 Coll., the proposed legal amendment, the so-called individual control of constitutionality, has to fill a legislative hole concerning the protection of constitutionality. As an example of the contemporary status quo might serve when the unconstitutionality is caused by the text wording of the legal regulation. More precisely, it means that it is not in coincidence with the explanation or application of the legal regulation as the priority has been more or less given to the constitutional conformal Legis interpretation. Therefore, in the proceeding carried out by the Constitution Court, it was decided to refuse the scrutiny of the legal regulation in connection with the laid down constitutional complaint as the complainant was not justified to submit a proposal. The reasons presented by the Constitutional Court were based on the contents of the Article 127 of the Constitution. The Constitutional Court recommended to complainant to refer to subjects that are justified to initiate the proceeding on compliance of the legal regulations declared by § 74 Act No. 314/2018 Coll. However, the explanatory report does not contain reasons why the permission was not justified to initiate the proceeding on the legal regulation compliance amended within the communal constitution complaint by Article 127a of the Constitution.

There are similar institutes applied in the Czech Republic and the Federal Republic of Germany, according to the Act on the Federal Constitution Court § 91 (Bundesverfassungsgerichtsgesetz), the municipalities and the municipal associations can file a complaint in which they claim the fact that the Federal law or the law of a Federal country violate the right to administration guaranteed by Article 28 of the rudimentary law. The constitution complaint addressed to the Federal Constitution Court is not justified in case when it is possible to submit it to the Federal Country Constitution Court. By § 93 section 3 if the constitution complaint inclines against the law, then it can be submitted only within one year since the effectiveness of the objected act. If the constitutional complaint aims directly or

indirectly even against a certain legal regulation, afterwards the procedure is applied by the § 77 of the concerned act and the Constitution Court will ask for the legislator posture. In case, despite the occurrence of such situation when the constitutional complaint was laid down under the conditions aimed against the law, the Federal Constitution Court decide positively and meet the constitutional complaint, the Act is declared to be invalid as it is stated § 95 section 3 of the Act on the Federal Constitution Court. The same is valid if the constitutional complaint was met by means of declaring the contested decision annulled as it was based on the unconstitutional law.

Conclusion

The local territorial self-governing constitutes an indispensable institute, and its execution helps the fulfilment of the state functions and obligations. The local territorial self-governing belongs among the most basic lawful state principles expressed not only by the Slovak Republic Constitution but by the documents of an international character, such as, e. g. the European Charter of the Local Self-Governing (Ondrová 2020). The conception of the local self-governing has its sources in respecting the decision-making autonomy as regards the self-governing own territorial corporations. Besides that, the accent is put on the local self-governing responsibility and accountability for all-embracing growth of their localities, and at the same time for satisfying their citizenry needs. (Molitoris 2022, p. 55). The rulemaking activity belongs to the most fundamental capacities of the local self-governing powers. The constitutional and the legal base of the municipality and the higher territorial unit powers rest in issuing the generally binding regulations as it is declared by Article 68 and Article 71 paragraph 2 of the Slovak Republic Constitution. In this connection, it is necessary to note that besides the fulfilment of the constitution imperative, the generally binding regulations must meet the conformity criterium with the legal regulations of the higher level of power. As an example, might serve the interdiction for the rulemaking activity provided by the local territorial self-governing to abridge the fundamental human rights and freedoms beyond the law. That`s the reason why there are several institutes in the Slovak Republic Legal Order based on the intention to create a possible foundation for the review of the generally binding regulations made by the municipality or the higher territorial unit. The protest of the prosecutor is one of the used options. The problem of the applicable practise might display certain problems rested in the fact that the potential discovered negative findings placed by the prosecutor and detecting the unconstitutionality of the generally binding regulations delivered by the municipality or the higher territorial unit disable the prosecutor to initiate proceeding at the Slovak Republic Constitution Court according to the Legal Order. However, the only possibility comes into consideration, and that is the procedure of the prosecutor to inform about the findings the general attorney who is authorised to file a motion to the Constitution Court to start

the proceeding on the legal regulation compliance. Another eventually alternative procedure rests in the prosecutor course of action applied within the lawsuit justification addressed to the Regional Court by pronouncing the prosecutor 'assumption of the found unconstitutionality. In case of validation, the Regional Court can abandon the proceeding, and after the exploring the action of suit and fulfilling the legal conditions, the Regional Court can file a motion to the Constitution Court to act as it is declared by the Article 125 of the Constitution. The Court acknowledgement of the generally binding regulation incompatibility with the legal regulation of the higher legal power means the loss of the ruling validity. Besides that, at the same time, the municipality or the higher territorial unit are given the time space to make improvements within the six months since the validity of the declared court decision.

Despite the significant position of the local self-governing, a certain degree of its disadvantage can be found out as a result pronounced by the constitution maker. On the grounds of the above-mentioned facts, the justified question can be deduced why the local self-governing was not conferred the similar powers as the natural persons and the legal entities. Further on, the question arises why the local self-governing cannot submit the communal constitution complaint together with the proposal to the Constitution Court Senate to initiate proceeding on the compliance of the legal regulations. Therefore, the comparison of the chosen legal amendments evokes the authors` proposal de lege ferenda. The National Council of the Slovak Republic should approve the legal amendment to adjust the powers of the local territorial self-governing concerning the submission of the proposal together with the constitution complaint according to the Article 127 and the Constitution.

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Contact Address

JUDr. Júlia Ondrová, PhD.
ID ORCID: 0000-0003-2954-6907
Matej Bel University in Banská Bystrica
Faculty of Law, Department of the Constitution Law and Theory of Law
Komenského 20
974 01 Banská Bystrica
The Slovak Republic
E-Mail: julia.ondrova@umb.sk

JUDr. Michal Úradník, PhD.
ID ORCID: 0000-0002-1748-6399
Matej Bel University in Banská Bystrica
Faculty of Law, Department of the Commercial and Financial Law
Komenského 20
974 01 Banská Bystrica
The Slovak Republic
E-Mail: michal.uradnik@umb.sk