

ENVIRONMENTAL PROTECTION IN MUNICIPAL LEGISLATION

OCHRANA ŽIVOTNÉHO PROSTREDIA V MUNICIPALNEJ LEGISLATÍVE

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I. Introduction

In recent decades, there has been a growing societal need, even urgency, to ensure adequate environmental protection. This results mainly from the over-exploitation of natural resources or the pollution of various environmental components that accompanied industrial development. Such a trend would not be sustainable in the long term; it would undoubtedly lead to the very endangerment of human civilisation. In order to avoid such negative consequences, environmental protection becomes one of the foremost objectives. One of the tools to achieve this is the law.

Modern constitutions of democratic states include the right to a favourable environment among fundamental rights and freedoms. In the Constitution of the Slovak Republic No. 460/1992 Coll. (hereinafter referred to as the "Constitution of the Slovak Republic") this right is regulated in Art. 44. This right is also guaranteed in Section 35 of the Charter of Fundamental Rights and Freedoms, which was implemented in our

legal system by Constitutional Act No. 23/1991 Coll., which introduces the Charter of Fundamental Rights and Freedoms. As a result, we have two pieces of legislation in force which have the same legal force and which overlap in terms of their subject matter.

Based on Art. 51 para. 1 of the Constitution of the Slovak Republic to claim protection of the right to a favourable environment is possible only within the limits of the laws that implement these rights. For this reason, the constitutional regulation of this right is set only in the form of a certain state objective, which is in fact without content and without statutory legislation unenforceable.⁽¹⁾ On the other hand, it is possible to agree with the opinion of Š. Kseňák that the state is obliged to ensure the adoption of such a legal regulation that will ensure the thorough implementation of this right, therefore, its violation may occur even in the absence of a sub-constitutional

1 See in Majerčák (2011), p. 10. Bárány (1995), p. 15. Lipšic (1999), p. 152. Kresák (1999), p. 30.

Abstract (EN)

The right to a favourable environment is a constitutionally guaranteed right. It is also linked to the duty of every entity to protect and improve the environment. The rights and obligations related to this are further regulated in the legislation of parliament. However, the municipality has also its irreplaceable place in ensuring environment protection, including in the form of issuance of generally binding regulations. The purpose of this paper is the assessment of the municipality's competence in the field of environmental protection, taking into account its legislative competence. The aim is to examine the definition of the municipality's power to issue generally binding regulations in the previous decision-making activity of the Constitutional Court of the Slovak Republic, the subsequent legislative changes and the current state of the scope of these powers of municipalities.

Keywords (EN)

right to a favourable environment, legislation, municipalities

Abstrakt (SK)

Právo na priaznivé životné prostredie patrí medzi ústavne garantované práva. S ním je spätá aj povinnosť každého subjektu chrániť a zveľaďovať životné prostredie. Práva a povinnosti s tým súvisiace sú bližšie upravené v zákonnej úprave. No pri ich detailizovaní má svoje nezastupiteľné miesto aj obec v rámci svojej normotvorby, t. j. pri vydávaní všeobecne záväzných nariadení. Predmetom tohto príspevku je posúdenie pôsobnosti obce na úseku ochrany životného prostredia s prihliadnutím na jej normatívnu právomoc. Cieľom je skúmať vymedzenie právomoci obce vydávať všeobecne záväzne nariadenia v doterajšej rozhodovacej činnosti Ústavného súdu Slovenskej republiky, na to nadväzujúce legislatívne zmeny a súčasný stav rozsahu týchto právomocí obcí.

Kľúčové slová (SK)

právo na priaznivé životné prostredie, normotvorba, obce

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regulation that is supposed to establish the details of the right to a favourable environment.⁽²⁾ The factual activity of the Constitutional Court of the Slovak Republic is such that such a right is not protected without a basis in statutory legislation.⁽³⁾

Environmental protection is the task not only of the state, but also of the entities derived from the state, in particular the entities of local self-government. Based on the principle of subsidiarity as defined in the European Charter of Local Self-Government⁽⁴⁾, municipalities in particular are the ones concerned by environmental problems and are closest to their consequences. Therefore, municipalities should have sufficient tools both in their application and legislative activities. In the decision-making activity of the Constitutional Court of the Slovak Republic in the previous period, a tendency of restrictive perception of the municipality's power to regulate certain areas within its self-governing competence in a legislative manner has developed. This undoubtedly also applied to various aspects of environmental protection. As a result, there was a change of the Act on Municipality Establishment in 2018 that sought to loosen such a restrictive perception of municipalities' legislative authority. Therefore, the aim of the research, the results of which are materialized in this article, is to examine the definition of the power of a municipality to issue generally binding regulations in the previous decision-making activity of the Constitutional Court of the Slovak Republic, the subsequent legislative changes and the current state of the scope of these powers of municipalities.

This research mainly uses basic research methods typical for legal sciences. First of all, the method of analysis is used, especially in the form of analysis of the decision-making activity of the Constitutional Court of the Slovak Republic, as well as the legal regulation contained in the statutory regulation⁽⁵⁾. Based on the results of the analytical stage, the obtained knowledge is synthesized into certain units in the form of concluding the definition of the legislative power in the decision-making activity of the Constitutional Court, and the subsequent impact of legislative changes on this definition. In addition, it is necessary to apply the methods of explanation and description to describe more adequately the institute under research.

1 Municipal competence in environmental protection

Within their activities, municipalities exercise not only their independent self-governing competence, i.e. autonomous self-government, but also delegated competence, i.e. defelated state administration. In the field of environmental protection, a municipality can act both within its independent competence (exercising self-government) and within its delegated competence (which represents a certain part of the local state administration).⁽⁶⁾ The group of original competence – own competence should include primarily those matters that directly affect the life of the inhabitants of the municipality, while their importance does not go beyond this scope. For this reason, the legal order leaves relatively independent decision-making in these matters to the municipality (always in accordance with the Constitution, laws, and possibly other legal regulations).⁽⁷⁾

On the other hand, the scope of competences performed by the municipality in the delegated exercise of state administration includes those matters which are carried out by municipalities on behalf of the state and the state bears full responsibility for the quality of the exercise of this competence. The reason for the transfer of local state administration tasks to municipalities is primarily the requirement of rationalisation and efficiency, as well as bringing the performance of state administration closer to the citizen. The financial costs incurred by the municipality in connection with the performance of the delegated competence are paid by the state, while the actual performance of the state administration delegated to local government units is managed and controlled by the government. When exercising the delegated competence, municipalities are fully governed by the will of the state, therefore they are obliged to respect and observe not only laws and other generally binding regulations, but also internal regulations, methodological instructions of the government (government resolutions), ministries and other central government bodies.⁽⁸⁾

The original self-governing competence is defined by Act No. 369/1990 Coll. on Municipal Establishment, as amended (hereinafter referred to as the "Municipal Establishment Act") in Art. 4. Accordingly, the municipality independently decides and carries out all acts related to the administration of the municipality and its property, all matters that are regulated as its self-governing competence by a special law, unless such acts are performed by the state or another legal

2 Kseňák (2009), p. 12.

3 See in Constitutional Court of the Slovak Republic, Case No. IV. ÚS 178/09, II. ÚS 216/03, II. ÚS 182/08, III. ÚS 93/08, I. ÚS 287/09.

4 Kukliš – Virová (2012), pp. 7–19.

5 For the purposes of this article the term "statutory regulation" means "regular act issued by parliament" (in slovak language "zákon").

6 Kadečka – Červená (2011), p. 32.

7 Sotoľár (2011), p. 78.

8 Jesenko (2010), pp. 74–75.

entity or natural person according to the law. The Slovak legislator thus defined the self-governing competence of the municipality in a negative way. In Art. 4 para. 3 exemplarily enumerated the tasks to be performed and ensured by the municipality. The list of authorisations is only demonstrative and authorises the performance of other necessary tasks, taking into account the limits laid down in Art. 4 para. 1 of the Act.⁽⁹⁾ For the avoidance of doubt, with effect from 2002, the so-called interpretative competence rule laid down in Art. 4 of the Act on Municipal Establishment, according to which, if the law does not stipulate that the municipality's competence is the exercise of the delegated competence of the state administration, it applies that it is the exercise of the municipality's self-governing competence. However, the rule applies only in relation to the competences specified in the Act as from 1 January 2002. The competences of the municipality legally defined before that date must be assessed in the light of Art. 4 para. 1 of the Act on Municipal Establishment (according to their content and purpose).⁽¹⁰⁾

Among the basic tasks and activities of the municipal government, the legislator also included tasks of an environmental nature, because the area of environmental protection has a significant and serious impact on the development of the municipality and the life of its inhabitants. Among such environmental tasks of the municipality falling within its self-governing competence are the following: Provision of public utility services, management of municipal waste and small construction waste⁽¹¹⁾, maintenance of cleanliness in the municipality, management and maintenance of public greenery and public lighting, water supply, sewage disposal, management of sewage from cesspools, the creation and protection of healthy conditions and a healthy way of life and work for the inhabitants of the municipality, the protection of the environment, as well as the creation of conditions for the provision of health care, education, culture, awareness-raising activities, artistic interest activities, physical culture and sport.⁽¹²⁾

However, according to the established case law of the Constitutional Court of the Slovak Republic, the list of self-governing functions of the municipality referred to in Art. 4 para. 3 of the Act on Municipal Establishment should be interpreted restrictively in such a way that the municipality's self-governing competence includes only those matters which by their nature

affect the territorial self-governing units (local interests of the population), for which municipalities can be independently responsible.⁽¹³⁾ It is also necessary to take a restrictive approach to the self-government competences defined in this way, taking into account whether any of the partial tasks have not been allocated to another state administration body or also to the municipality within the framework of the delegated state administration. For example, in the sense of § 4 par. 3 (g) of the Act on Municipal Establishment, the management and maintenance of public greenery falls within the municipality's self-governing competence. On the other hand, the protection of trees belongs under Art. 1 letter a) of Act No. 543/2002 Coll. on nature and landscape protection, as amended, within its competence, but within the framework of the delegated exercise of state administration. So there is a certain competition of competences. Therefore, although the management and maintenance of public green spaces falls within the municipality's self-governing competence, when deciding on the felling of a tree belonging to the public green space, the municipality will not act within its independent self-governing competence, but within the framework of the delegated exercise of state administration.⁽¹⁴⁾

The enumeration of the municipality's competences in the delegated exercise of state administration is scattered in a number of legal regulations. As an example, the municipality carries out the following activities related to environmental protection within the framework of the state administration: the aforementioned protection of trees, in the implementation of water administration (permitting the use of water, etc.)⁽¹⁵⁾, in the field of air protection (issuing consent for the operation of a small source of pollution, etc.), in the field of building regulations it ensures compliance with the regulations for environmental protection⁽¹⁶⁾, and many others.

It can be stated that the municipality has an irreplaceable place in the protection of the environment. To this end, it performs various tasks, many of which fall under its original self-governing competence and others under the exercise of delegated state administration. At present, problems arise in application practice in relation to the unambiguous differentiation of these competences. That is to say, different rules must be

9 Maslen (2011), pp. 93–94.

10 See in Sotolář (2011), p. 78.

11 See in Perduková (2011), p. 147. Valenčíková (2023), pp. 183–191.

12 See in Čigášová (2011), p. 17.

13 See in Constitutional Court of the Slovak Republic, Case No. I. ÚS 56/2000

14 For more details on the issue of nature and landscape conservation, see Tekeli (2009), pp. 129–143.

15 See in Jakab (2018), pp. 247–253.

16 See in Marišová et al. (2023), pp. 199–208, Berníková – Jakab (2021), p. 12.

respected in the application of each of them. This is especially problem in the legislative regulation of such areas by municipalities. In the following, I point in particular to the pitfalls in the legislative activities of the municipality aimed at environmental protection.

2 Municipal legislation and environmental protection

Legislative processes in local government represent the normative activity of self-governing entities, either acting on their own or through their bodies, which is more often the case. This legislative activity is a set of activities of self-government entities leading to the creation of legal norms that take the form of a normative legal act. In terms of local self-government, these forms have a uniform designation as a general binding regulation.

The legislative power of municipalities⁽¹⁷⁾, i.e. the power of municipalities to issue normative legal acts, derives from Art. 68 and Art. 71 para. 2 of the Constitution of the Slovak Republic, which is further specified in Art. 6 of the Municipal Establishment Act. According to Art. 68 of the Constitution of the Slovak Republic in matters of territorial self-government and to ensure the tasks arising for self-government from the law, the municipality may issue a general binding regulation. Under Art. 71 para. 2 of the Constitution of the Slovak Republic in the exercise of state administration, a municipality may issue general binding regulations within its territorial competence on the basis of the authorisation in the law and within its limits. This implies the legislative power of municipalities to issue general binding regulations for the purpose of fulfilling both self-government competence and competence in the delegated exercise of state administration.⁽¹⁸⁾

It follows from the preceding text that the only form of normative legal acts issued by municipalities are generally binding regulations. On the other hand, it can be stated that these legislative acts are internally differentiated and have a different legal quality.

An important distinguishing criterion relating to general binding regulation is the purpose of their issuance. On the one hand, general binding regulations may be issued for the purpose of ensuring the tasks arising for the local government from the law and in matters of local government, the so-called general binding regulation in the exercise of self-government competence. On the other hand, the purpose of their issuance may be the performance of the tasks of state administration,

the so-called general binding regulation in the exercise of delegated state administration.

As already stated, the right to a favourable environment (including the rights and duties to protect it) arises from Art. 44 of the Constitution of the Slovak Republic. Paragraph 6 of this Article then states that the details of the rights and obligations under paragraphs 1 to 5 shall be laid down by law. Therefore, the question arises whether the detail of the right to a favourable environment can be established exclusively by statutory regulation as a normative legal act issued by the National Council of the Slovak Republic, or whether the specification of this right can also result from another legal act, i.e., e.g., from a generally binding municipal regulation (which also occurs in practice). On a literal interpretation of this paragraph 6 of Art. 44 of the Constitution of the Slovak Republic, we could state that only the statutory regulation of parliament can regulate the right to a favourable environment, or the rights and obligations of subjects in its protection (i.e. not legal regulations of lower legal force). This conclusion could also be supported by the decision-making activity of the Constitutional Court of the Slovak Republic, which dealt with a similar problem with the right to do business. In relation to the right to do business, the Constitution of the Slovak Republic states that “the statutory regulation of parliament may lay down conditions and restrictions on the exercise of certain professions or activities”. In this regard, the Constitutional Court stated that the adoption of a generally binding regulation restricting the right to do business is not part of the municipality’s legislative power. The right to do business is guaranteed under the Constitution of the Slovak Republic with stricter protection, because the constitution-maker allowed only the National Council of the Slovak Republic to regulate the conditions for the exercise of this right in the form of a statutory regulation.⁽¹⁹⁾ Thus, according to this opinion, only the National Council of the Slovak Republic can regulate the right to do business by law, but not the municipality in the form of a generally binding regulation. If we translate this opinion into the interpretation of paragraph 6 of Article 44 of the Constitution of the Slovak Republic (Details of the rights and obligations under paragraphs 1 to 5 shall be established by statutory regulation), then even in relation to the right to a favourable environment, including the rights and obligations for its protection, the legislative power of the municipality would not be given. But I think that such an approach would be too restrictive, even formalistic.

17 See in Jakab (2009). pp. 383–391.

18 See also Fábíán (2003). pp. 542–558.

19 Constitutional Court of the Slovak Republic, Case No. II. ÚS 70/1997.

I believe that if the law defines a certain self-governing competence to the municipality (e.g. Art. 4 of the Act on Municipal Establishment), then in the implementation of this independent self-governing competence, it also has the legislative power within the meaning of Art. 68 of the Constitution of the Slovak Republic, i.e. the power to issue generally binding regulations, provided that certain constitutional limits are respected (not contrary to the law, not establishing completely new obligations, etc.). Thus, I am of the opinion that where the law confers certain matters to the self-governing competence of a municipality, it is not contrary to Art. 44 sec. 6 of the Constitution for the municipality to make a general binding regulation to regulate that area within its territory in respect of those matters. In other words, if the law entrusts municipality competence to protect the environment as its own self-governing competence, it includes also the possibility to regulate it by its own legislation in the form of generally binding regulation.

Nor is it a violation of the aforementioned article of the Constitution of the Slovak Republic if the law stipulates that certain matters in connection with rights and obligations in the field of environmental protection are within the scope of the exercise of the delegated state administration of the municipality and at the same time empowers the municipality to adopt a general binding regulation in this area. However, unlike the entrustment of these matters to local self-government competence, in the case of delegated competence, specific statutory authorization is required to issue a general binding regulation.

As mentioned above, the differentiation of municipal competences – self-governing and delegated – is also justified in the field of environmental protection. Therefore, the general binding regulations regulating this area are also of a dual nature.

The first type of general binding regulation is issued in matters of local self-government. These are matters relating to the administration of the municipality and its property. In the field of environmental protection, the municipality's self-governing competence was demonstrated in the previous chapter. In relation to this type of municipal regulations, they must not contradict the Constitution of the Slovak Republic, constitutional laws, statutory regulations and international treaties to which the National Council of the Slovak Republic has given its consent and which have been ratified and promulgated in the manner provided by law. A contrario, these general binding municipal regulations do not have to conform with government regulations and normative legal acts of other state administration bodies.

Municipalities have a constitutionally enshrined general mandate to regulate normatively the matters

belonging to their territorial self-government and to ensure the tasks arising for the self-government from the law. The mantles of this power can only be set by laws (or the Constitution of the Slovak Republic, constitutional laws and international treaties). This type of regulation is also for this reason of the nature of primary, non-derivative normative legal acts.⁽²⁰⁾ At first glance, it might appear that a municipality can regulate social relations in the sphere of its self-government in an arbitrary legislative manner. However, the Constitutional Court's decision-making has defined the limits of the legislative activity of a municipality. First of all, a general binding regulation, even within the self-government competence of a municipality, cannot regulate "local matters" in contravention of existing statutory regulation of parliament.⁽²¹⁾ At the same time, the municipality cannot impose a new obligation that is not provided for in the law.⁽²²⁾ Failure to respect that rule is a de facto negation of the sovereignty of the law, and thus of the rule of law itself.⁽²³⁾ Furthermore, general binding regulations cannot impose obligations or confer rights on entities that are not administratively subordinate to the municipality (e.g. state administration bodies, etc.). In such a case, the municipality would be overstepping the limits of its personal and territorial jurisdiction.⁽²⁴⁾

However, the above interpretation by the Constitutional Court significantly limited the possibilities of legislative regulation of relations by the municipality in matters entrusted to it by law. Strictly adhering to the boundaries set out in this way, the adoption of general binding regulations, even in the field of local government, would be bound to a kind of legal authorisation. However, what goes beyond the original intentions regarding the position of the municipality in the legislative regulation of the relations within its territory in its own affairs. Therefore, in response to this, the 2018 amendment to the Municipal Establishment Act⁽²⁵⁾, which

20 In certain cases, this type of regulations may also have the character of derived normative legal acts. In particular, where such a regulation implements another general binding regulation of a municipality or a higher territorial unit issued within the scope of self-government. However, in practice this is not justified, as both regulations are adopted by the same body of the municipality or higher territorial unit.

21 Constitutional Court of the Slovak Republic, Case No. I. ÚS 53/2000.

22 Constitutional Court of the Slovak Republic, Case No. IV. ÚS 154/05.

23 Jesenko. 2009, p. 64.

24 Jakab. 2010, p. 72.

25 Act No. 70/2018 Coll., amending and supplementing Act No. 369/1990 Coll. of the Slovak National Council on Municipal Establishment, as amended.

provided explicit statutory mandates for the adoption of general binding regulations on defined matters of local government (sec. § Art. 5 (a) of the Act), as well as established a general mandate for the legislative regulation of the matter of local self-government in other issues (Art. 4 para. 5(b)). Thus, within the defined matters in the field of environmental protection, there are: i) establishment of rules for the maintenance of cleanliness in the municipality and the protection of public green spaces, and ii) specification of activities the performance of which is prohibited or restricted for a certain period of time or in a certain place. This legislative change has untied the hands of municipalities with regard to their power to issue general binding ordinances regulating also the above mentioned areas of environmental protection. On the other hand, this does not mean that the municipality's legislative activity in this area is unlimited; it remains bound by constitutional limits and the need to respect the legal force of another law.

The second type of general binding regulations are those issued by municipalities in connection with the performance of delegated tasks of state administration. The existence of this type of regulation has its constitutional basis in Art. 71 para. 2 of the Constitution of the Slovak Republic, according to which in the exercise of state administration a municipality may issue general binding regulations within its territorial competence on the basis of the authorisation in the statutory regulation and within its limits. This type of regulations is subsequently specified in the Municipal Establishment Act (Section 6).

The first requirement for such regulations is that they regulate matters of state administration that have been delegated to municipalities by law. With regard to the tasks of state administration delegated to municipalities, it is valid that these are those tasks which are also designated in special laws as tasks of the municipality in the exercise of state administration. Other tasks entrusted to the municipality by law fall within its self-governing competence (Art. 4 par. 4 of the Municipal Act). However, this rule is only fully applicable to competences given by law since 2002. For the competences given to the municipality before that date, their substance is relevant for the purpose of assessing whether they are self-governing tasks or those in the delegated exercise of state administration.

Another requirement applicable to general binding regulations in the delegated exercise of state administration is that they may only be issued on the basis of and within the limits of a specific statutory authorization. A similar principle applies

as in relation to general binding legislation of other state administration authorities. The law must empower the municipality to enact such a regulation. The legislative action of this regulation can only move within the framework of the statutory regulation of social relations. That is, these regulations serve to regulate in more detail the relationships that are primarily defined in the statutory regulation. Entrusting a certain part of the state administration to a municipality by law does not in itself establish the municipality's authority to issue generally binding regulations in this area of state administration. The delegation of the power to issue generally binding regulations in a given area of state administration requires explicit statutory authorisation.⁽²⁶⁾ For this reason, general binding regulations issued in the delegated exercise of state administration have the nature of derived normative legal acts.

Related to the above requirements is the third one: such generally binding regulations must not be in conflict not only with the Constitution of the Slovak Republic, with constitutional laws, with international treaties to which the National Council of the Slovak Republic has expressed its consent and which have been ratified and promulgated in the manner provided by law, with statutory regulations, but also with government regulations (both types) and other generally binding regulations of ministries and other central government bodies (Art. 6 para. 2 of the Act on Municipal Establishment). This conclusion of the legislator is quite logical and obvious, because if the performance of state administration is transferred to the municipality as a result of closer proximity to the citizens, it is unthinkable that the procedures regulated by a government decree or a decree of the ministry, the municipality should modify or regulate in its general binding regulation differently.⁽²⁷⁾

The Act on Municipal Establishment defines one more requirement for the issuance of generally binding municipal regulations in the delegated exercise of state administration. Pursuant to Art. 5 par. 1 it is possible to delegate tasks of state administration to a municipality only if their performance in this way is more rational and efficient. Undoubtedly, this also applies to the area of issuing normative acts. Therefore, the legislative regulation of social relations by the municipality within the state administration must be more rational and effective. This means that the desired objective can be achieved more easily, more accurately, more

26 Constitutional Court of the Slovak Republic, Case No. III. ÚS 1/2000.

27 Sotolař. 1993. p. 22.

economically and more quickly by means of municipal legislation.⁽²⁸⁾

In ensuring environmental protection, the municipality acts in some cases within its self-governing competence, in others within the delegated state administration. Related to this is the fact that the general binding regulations adopted by the municipality in this area also have a dual character. However, if a municipality regulates environmental matters within the framework of the delegated exercise of state administration, it necessarily needs statutory authorisation to do so. At the same time, such general binding regulations must also be consistent with the sub-legislative regulations of the state administration.

II Conclusion

Environmental protection is not only a matter for the state, but also for all other entities, whether natural or legal persons, including municipalities. A number of instruments are used to ensure this goal of effective environmental protection, law being one of them. Proper legislation, but also its subsequent effective application, is a prerequisite for achieving this goal.

Not only the legislator – the National Council of the Slovak Republic is obliged to regulate in detail the rights and obligations in the protection of the environment, but also the local government is obliged to ensure a favourable environment for its inhabitants by adopting general binding regulations in this area, which regulate those areas that are not regulated by statutory regulation and fall within their competence. Thus, “within the limits of the statutory regulation” for the purpose of defining the content of the right to a favourable environment, is also the specification of this right in a sub-statutory legislation on the basis of the statutory regulation. That is why municipalities also shape the content of the concept of the right to a favourable environment in the conditions of that municipality by their general binding regulations.

Municipalities must consider various factors when exercising their legislative competence in the field of environmental protection: first of all, it is necessary to clearly specify whether in a particular case the competence is the municipality's own – self-governing – competence, or whether it is a competence within the framework of the delegated exercise of state administration. This is also related to whether or not a municipality needs a specific statutory authorisation

to issue a general binding regulation (it is sufficient according to Art. 68 of the Constitution of the Slovak Republic). Consequently, the municipality must take into account the so-called constitutional limits of legislative activity defined directly by the Constitution as well as by the case law of the Constitutional Court of the Slovak Republic.

The previous case-law of the Constitutional Court of the Slovak Republic defined the legislative powers of municipalities very restrictively, which significantly narrowed the possibility of issuing generally binding regulations to regulate individual areas of environmental protection, which were within the competence of the municipality. The 2018 amendment to the Municipality Establishment Act responded to this situation by defining the specific areas in which a general binding regulations may be issued, as well as by generally setting out the legislative power in other matters. However, even in these circumstances, the municipality must respect its legislative limits as defined by the Constitution.

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References

1. Bárány, E. 1995. Uplatniteľnosť druhej a tretej generácie ľudských práv podľa Ústavy Slovenskej republiky. In *Právny obzor*, vol. 78, 1995, no. 1.
2. Berníková, E. – Jakab, R. 2021. Organizácia výkonu kompetencií obce v stavebnej agende: súčasný stav a perspektívy. In *Obecné zriadenie – interpretácia kompetencií*. Recenzovaný zborník príspevkov z vedeckej konferencie 9. 11. 2021, Košice : Univerzita Pavla Jozefa Šafárika.
3. Čigášová, L. 2011. Úlohy územnej samosprávy pri ochrane životného prostredia. In *Ochrana životného prostredia v podmienkach územnej samosprávy*. Zborník príspevkov z vedeckej konferencie konanej v Košiciach dňa 18. 2. 2010, Košice : Právnická fakulta Univerzity Pavla Jozefa Šafárika.
4. Fábián, A. 2003. Kommunale Satzungsgebung in Ungarn. In *Osteuropa Recht*, 2003, no. 6, pp. 542–558.
5. Jakab, R. 2009. Normotvorný proces v územnej samospráve. In *Justičná revue : časopis pre právnu prax*, vol. 61, 2009, no. 3, pp. 383–391. ISSN 1335-6461
6. Jakab, R. 2018. Vodoprávne konanie. In *Správne právo procesné*, 2018.

²⁸ For more on the constitutional limits of the legislative activity of the municipality, see Jesenko 2009, p. 64.

7. Jakab, R. 2010. Regulácia zastavenia a státia motorových vozidiel v obecnej normotvorbe. In Územná samospráva, vol. 6, 2010, no. 5.
8. Jesenko, M. 2009. Normotvorba obce. In Palúš, I. a i. Samospráva obce (vybrané problémy). Košice : Univerzita Pavla Jozefa Šafárika, 2009.
9. Jesenko, M. 2010. Pôsobnosť obce a dozor štátu. In Palúš, I. – Jesenko, M. – Krunková, A. Obec ako základ územnej samosprávy. Košice : Univerzita Pavla Jozefa Šafárika, 2010.
10. Kadečka, S. – Červená, K. 2011. Samostatná a prenesená pôsobnosť obcí v oblasti ochrany životného prostredia. In Ochrana životného prostredia v podmienkach územnej samosprávy. Zborník príspevkov z vedeckej konferencie konanej v Košiciach dňa 18. 2. 2010, Košice : Právnická fakulta Univerzity Pavla Jozefa Šafárika, 2011.
11. Kresák, P. 1999. Poznámky k obsahu Ústavy Slovenskej republiky a k obsahovému zameraniu už uskutočnených i zamýšľaných zmien Ústavy. In Ústava Slovenskej republiky a jej legislatívne perspektívy. Zborník z vedeckej konferencie, Košice : C-Press, 1999.
12. Kseňák, Š. 2009. Ústavnoprávny rozmer práva na priaznivé životné prostredie. In Tekeli, J. (ed). Právna úprava starostlivosti o životné prostredie. In Zborník príspevkov z vedeckej konferencie Košice 25. novembra 2008, Košice : Univerzita Pavla Jozefa Šafárika, 2009.
13. Kukliš, P. – Virová, V. 2012. Vybrané problémy miestnej samosprávy (v komparácii niektorých štátov Európskej únie) – prvé vydanie. Bratislava : EUROKÓDEX, s. r. o., 2012.
14. Lipšic, D. 1999. Niekoľko poznámok de constitutione ferenda. In Ústava Slovenskej republiky a jej legislatívne perspektívy. Zborník z vedeckej konferencie, Košice : C-Press, 1999.
15. Majerčák, T. 2011. Ústavnoprávny rozmer práva na priaznivé životné prostredie. In Ochrana životného prostredia v podmienkach územnej samosprávy. Zborník príspevkov z vedeckej konferencie konanej v Košiciach dňa 18. 2. 2010, Košice: Právnická fakulta Univerzity Pavla Jozefa Šafárika, 2011.
16. Marišová, E. – Štěpánková, R. – Michalovič, M. – Lichnerová, I. – Mariš, M. – Cifranič, M. – Ďurkovičová, J. 2023. Prerequisites for cooperation between self-government and state administration in the construction sector of the Slovak Republic in the light of the new legislation. In Eastern European Journal of Transnational Relations, vol. 6, 2023, no. 2.
17. Maslaen, M. 2011. Právne postavenie obce podľa Európskej charty miestnej samosprávy a jej právomoc v oblasti ochrany životného prostredia. In Ochrana životného prostredia v podmienkach územnej samosprávy. Zborník príspevkov z vedeckej konferencie konanej v Košiciach dňa 18. 2. 2010, Košice : Právnická fakulta Univerzity Pavla Jozefa Šafárika, 2011.
18. Perduková, V. 2011. Právna regulácia odpadového hospodárstva. In. Ochrana životného prostredia v podmienkach územnej samosprávy. Zborník príspevkov z vedeckej konferencie konanej v Košiciach dňa 18. 2. 2010, Košice : Právnická fakulta Univerzity Pavla Jozefa Šafárika, 2011.
19. Sotolář, J. 1993. Normotvorba obcí a miest. Košice: Calypso.
20. Sotolář, J. 2011. Samospráva obce. Obecné zriadenie na Slovensku. Košice : SOTAC, s. r. o., 2011
21. Tekeli, J. 2009. Ochrana prírody a krajiny v podmienkach Slovenskej republiky a Spolkovej republiky Nemecko. In Tekeli, J. (ed). Právna úprava starostlivosti o životné prostredie. Zborník príspevkov z vedeckej konferencie Košice 25. novembra 2008, Košice : Univerzita Pavla Jozefa Šafárika, 2009.
22. Valenčíková, M. 2023. Waste management development in Slovakia and selected european countries. In Teória a prax verejnej správy: Recenzovaný zborník príspevkov z 8. ročníka medzinárodnej vedeckej konferencie doktorandov 17. február 2023 [online], Košice : Vydavateľstvo ŠafárikPress UPJŠ, 2023.

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