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CONSTRUCTION LEGISLATION – CURRENT AND FUTURE IN THE LEGAL SYSTEM OF THE SLOVAK REPUBLIC

STAVEBNÁ LEGISLATÍVA – SÚČASNOSŤ A BUDÚCNOSŤ V PRÁVNOM SYSTÉME SLOVENSKEJ REPUBLIKY

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I. Introduction

The subject of this paper is the analysis of the legal aspects of the new legislation in the field of spatial planning and construction within the Slovak Republic. The fundamental element of the newly approved and currently effective legislative intent is the division of the original Act No. 50/1976 Coll. on spatial planning and building regulations (Building Act) in the wording of subsequent regulations (hereinafter "Building Act") into two separate substantive and procedural components, namely the process of spatial planning and the construction process. This legislation significantly alters the procedure for permitting constructions, as well as other procedures with a similar subject, and fundamentally reorganizes the concept of the original Building Act. We agree with the assertion made by Slavík, Grác and Klobučník,[1] who stated that the exercise of construction competence is highly problematic, chaotic, and requires change.

In this article, the authors work with the approved text of the new legislation, although it should be noted that a significant portion of

1 Slávik, Grác and Klobučník (2010).

Abstract (EN)

The importance of addressing the effective functioning of competence execution in the construction sector primarily lies in its impact on the efficiency and quality of these competences. Currently, in Slovakia (SR), municipalities exercise the competences of spatial planning and building regulations within their transferred competence from the state. Through the government's program statement for the years 2020–2024, the SR government committed to abolish municipal building authorities. With the new legislation that becomes effective on April 1, 2024, there will be a reverse transfer of construction competence from municipalities to state administration, to the newly created Office for Spatial Planning and Construction of the Slovak Republic and regional building authorities.The authors take a critical approach to the original construction legislation (de lege lata) as well as to the newly adopted laws on construction and spatial planning in terms of substantive and procedural provisions, noting the exclusion of the application of Administrative Code in spatial and building proceedings. Through our research on this issue, we suggest de lege ferenda two alternatives regarding the exercise of construction competences at the municipal and state levels and the preservation of dual jurisdiction in building proceedings according to the current administrative procedure.

Keywords (EN)

municipalities, construction sector, competences, construction legislation – de lege lata – current and de lege ferenda – future

Abstrakt (SK)

Význam riešenia efektívneho fungovania výkonu kompetencií v sektore stavebníctva spočíva predovšetkým v jeho vplyve na efektívnosť a kvalitu týchto kompetencií. V súčasnosti obce na Slovensku (SR) vykonávajú kompetencie v oblasti územného plánovania a stavebného poriadku v rámci pôsobnosti prenesenej zo štátu. Vláda SR sa programovým vyhlásením vlády na roky 2020 – 2024 zaviazala zrušiť obecné stavebné úrady. S novou právnou úpravou, ktorá nadobudne účinnosť 1. apríla 2024, dôjde k spätnému prechodu stavebnej pôsobnosti z obcí na štátnu správu, na novovytvorený Úrad územného plánovania a výstavby SR a krajské stavebné úrady. V príspevku autori kriticky pristupujú k pôvodnej stavebnej právnej úprave (de lege lata), ako aj k novoprijatým zákonom o výstavbe a územnom plánovaní z hľadiska hmotnoprávnych a procesných ustanovení, berúc na vedomie vylúčenie aplikácie Správneho poriadku v územnom a stavebnom konaní. Na základe výskumu problematiky navrhujeme de lege ferenda dve alternatívy výkonu stavebných kompetencií na úrovni obce a štátu a zachovania dvojitej príslušnosti v stavebnom konaní podľa súčasného správneho poriadku.

Kľúčové slová (SK)

obce, stavebný sektor, kompetencie, stavebná legislatíva – de lege lata – súčasná a de lege ferenda – budúca

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it will only become effective on April 1, 2024. The authors focus on the way the new legal framework is structured and evaluate the changes incorporated in the new legislation, especially from a substantive and procedural perspective. Based on the above, the authors declare that the purpose of their article is to answer the question of whether the "new regulation of legal relations in the field of spatial planning and construction will be a modern and straightforward legislation compared to the previously applicable Building Act."

1 Government Program Statement of the Slovak Republic

The new legislation in the field of spatial planning and construction is based on the document: "Government Program Statement of the Slovak Republic for the years 2020–2024." The Government of the Slovak Republic, as the collective body of executive power according to Article 113 of Act No. 460/1992 Coll. The Constitution of the Slovak Republic, as amended (hereinafter "Constitution of the SR"), presents a program statement.

The article discusses the legal aspects of new legislation in the field of spatial planning and construction within the Slovak Republic, which is based on the "Government Program Statement of the Slovak Republic for the years 2020–2024." The Government of the Slovak Republic, as the collective executive authority according to the Constitution of the SR, presents a programmatic statement to the National Council of the SR, seeking a vote of confidence.

The program statement highlights that one of the government's priorities in the field of construction is to prepare and submit new building regulations for approval by the National Council of the SR, taking into account the needs of the 21st century, with a focus on simplifying and expediting construction and promoting transparency. The government has committed to considering Slovakia's international obligations in terms of European legislation on sustainable land use and public participation.(2) As part of this effort, the recodification of construction law, which is part of civil law relationships, is a significant component. The government has also committed to strengthening the importance of spatial planning, expanding the obligation for municipalities to have spatial plans, streamlining the procurement processes for spatial planning documentation, and specifying procedures for their procurement and approval. At the same time, the government is planning to transfer the state administration functions to other entities, allowing regional planning authorities to focus on their competences.

The goal of the new recodified construction and spatial planning process should be to streamline the preparation and implementation of buildings and investment projects while respecting environmental legislation and including relevant stakeholders in such a way that motivates them to participate constructively. As part of the presented Government Program Statement, the Slovak government has committed to abolish municipal building authorities. Municipal competences will be retroactively delegated to state authorities. This move is in contrast to the principle of "closer to the people."(3) The government has also pledged to strengthen the position of specialized offices in analysing the impacts and interests of stakeholders in the construction sector and enhance the role of the Slovak Building Inspection in construction control. The government will retain the involvement of public administration in the process of spatial planning and construction through some competences in local self-government concerning spatial planning, project designers in the preparation and implementation of buildings, civic associations, various associations in overseeing public interests in environmental protection, and legal entities affected by civil law means. Although the approved legislation in the field of spatial planning and construction does not have a direct impact on construction and environmental impact assessments (EIA), it's evident that a legislative initiative will aim to streamline and improve the EIA process as part of the changes in construction and spatial planning legislation.

The Government Program Statement assumes the preparation of construction projects with a focus on an analytical process that simultaneously considers environmental impacts and public interests monitored by public administration bodies (local self-government in the area of spatial planning, specialized state administration defined by law). The Program Statement strengthens the role of project

2 Government Program Statement of the Slovak Republic for the years 2020–2024.

3 Treisman (2007).

designers, to whom the state has delegated part of the responsibility in the field of state administration, thereby enhancing the competence of project designers according to the current legislative framework.

The Government Program Statement specifically addresses infrastructure projects as well as projects of interest to towns, municipalities, and regional governments (tourism, sports, education, housing, culture). This is closely related to the legislative process concerning a fast and efficient yet fair expropriation process and the removal of legislative and practical obstacles. The authors do not delve into the details of this process in the article since it has been designated as a separate procedural procedure. In addition to other commitments, the Government of the Slovak Republic has pledged to simplify and streamline legislation in the field of spatial planning and construction by establishing a data foundation through the digitization and digitalization of construction management, including the construction process. This is considered one of the key components of the new construction legislation. However, it remains to be seen how effectively this premise can be fulfilled, as the digitalization of nearly the entire process in the field of spatial planning and construction is not the same as digitizing a public service for citizens, which involves a simple procedural process with a small number of legal acts. The digitalization of the new construction legislation involves the implementation of a complex set of public services in an electronic environment through elements of electronic processing. One of the key elements is the development of a comprehensive information system in which the process of spatial planning and construction will take place, involving numerous users and impacting the availability of public services.

From a legal perspective, the authors of the article positively evaluate the way the legislative intent to change construction legislation was formed, especially since the essence of the conceptual character was defined in the Government Program Statement from 2020. The authors view it positively that the initiative resulted in the approval of legally binding regulations that will become effective in a short period. From a constitutional and legislative technical perspective, the preparation and adoption of the Law on Spatial Planning and the Law on Construction were in accordance with the legislation of the Slovak Republic. The change in the concept of the spatial planning and construction process was conceptually incorporated and declared in the Government Program Statement, and subsequently, this concept was implemented in the approved legal regulations, specifically in Act No. 200/2022 Coll. on Spatial Planning (hereinafter "Spatial Planning Act") and Act No. 201/2022 Coll. on Construction (hereinafter "Construction Act").

In the following sections of the article, the authors evaluate the nature of both new legal regulations. Regarding the systematics of the new legislation, they note that the chosen approach of changing the legislative concept in the field of spatial planning and construction was necessary. While a comprehensive change to the original Building Act might have been viewed more positively from the perspective of users, including the public and building authorities, the implementation of such significant changes would likely have been more challenging than in the current situation where two new legal regulations were adopted to replace the previous legal framework.

2 Material Legal Aspects of Spatial Planning and Construction

The authors chose to use the method of systematic analysis of legal regulations and their assessment when writing this article, and therefore followed the procedure outlined for dividing it into individual thematic sections. From the perspective of the legislation of the Spatial Planning Act and the Construction Act, it is crucial to point out the change in the concept of the structure of the new legislation.

2.1 Material Legal Aspects of the Spatial Planning Act

The Spatial Planning Act aims to systematize and create conditions for balanced and sustainable spatial development. This means that the territory should be used efficiently, economically, aesthetically, ethically, and democratically, taking into account natural and cultural heritage, as well as the quality of the environment and the well-being of the population.

Spatial planning must reflect the goals of spatial planning. The other activity in this area dates back to 2013 when the Ministry of Transport, Construction, and Regional Development of the Slovak Republic commissioned a research task titled "Creating Conditions for Establishing Principles and Rules of Spatial Planning." Based on this task, a Proposal of Principles and Rules of Spatial Planning was developed to create a fundamental framework

for establishing urban and spatial planning principles, widely accepted principles and rules for various levels of spatial planning documentation. The effectiveness of applying these principles in practice is questionable, and the absence of a universally binding instrument has led to excessive diversity and confusion in current spatial planning documentation. The new Spatial Planning Act sets the goal of significantly strengthening research in the field of spatial planning and transferring research results into principles of spatial planning that will be issued as universally binding in procurement and preparation of spatial planning documentation. Additionally, the new legal framework aims to digitalize and integrate data related to spatial planning and construction, as well as the integration of spatial decisions into the process of building permits[4].

In the field of spatial planning, it is also valid that a unified methodology for creating spatial plans should be established, allowing the creation of a unified, heterogeneous spatial plan of the Slovak Republic, which will consist of partial spatial plans. The reason for this step is the lack of consistency in the currently valid spatial plans, both in terms of form and content, which makes it very difficult for both public administration and the public to understand spatial planning. Not to mention the fact that the service, which should provide access to the spatial plan, is often nonexistent.Key changes in the field of spatial planning, apart from material law, include a change in the concept of the Spatial Planning Act, to the extent that the new Spatial Planning Act clearly defines the goals of the law, the principles of spatial planning, and the terminology of spatial planning. The Spatial Planning Act then identifies the exercise of public administration in the field of spatial planning, within the naming and competence of the self-governing region, municipality, and, in particular, the Office for Spatial Planning and Construction of the Slovak Republic (hereinafter referred to as the "Office"). The Office, established as the central body of state administration in the field of spatial planning and construction, assumes all strategic, legislative, methodological, and coordination powers.

The Spatial Planning Act cleverly replaces some complicated and outdated terms of the original legal regulation with new terms. According to Section 40 (8) of the Spatial Planning Act, from April 1, 2024, spatial studies, spatial concepts, and spatial forecasts will be replaced by a spatial study. This is not a unique element, but the Spatial Planning Act often simplifies complicated formulations and definitions. In terms of spatial planning documentation, the law, effective from April 1, 2024, introduces the obligation to have at least a municipal spatial plan, and this obligation applies to every municipality, except when the municipality is part of a micro-region and has its spatial plan approved. Micro-region is an absolute novelty in the Spatial Planning Act and represents a part of a region or multiple regions with common boundaries characterized by the needs of spatial development of multiple municipalities or other specific areas, especially in terms of the environment, tourism, landscape protection, cultural heritage, or economy. In any case, it represents a new element in the field of spatial planning, which can be seen positively, considering that it can combine several municipalities in the creation of a micro-regional spatial plan.

A fundamental element of the new legal framework in the field of spatial planning will be the digitization of spatial planning processes in a unified methodology and in a single information system for spatial planning and construction (referred to as the "IS"). In this IS, relevant data and information from spatial planning background materials, spatial planning documentation, selected decisions of authorities, and verified project documentation for buildings will be stored and published. A unified view of data and integrated systems through standard data exchange interfaces will be provided by the IS, which will be accessible to all participants in spatial planning and construction processes, subject to their respective permissions. It will offer the necessary services to participants in the various phases of spatial planning, construction, and building operation. The IS designated for this purpose will serve as a means of digitizing the processes in the field of spatial planning, as well as in various types of construction proceedings. Section 25 of the Spatial Planning Act addresses the IS and its legal framework, providing a detailed definition of the role of the cross-sectoral information system of public administration, its technical and non-technical components, and its future functionality.

4 Government Program Statement of the Slovak Republic for the years 2020 – 2024.

2.2 Material Legal Aspects of the Construction Act

The goal of the new legal regulation in the field of construction is to professionalize the state administration in construction, reduce administrative burdens related to construction activities, simplify permitting processes, especially through the digitization and digitalization of construction-related processes. From a legislative and terminological perspective, the term "building code" is replaced with the term "construction" representing a more conceptual arrangement than was found within the framework of the Building Act. The Construction Act further replaces the concept of "building permit" with the term "decision on a building intent."

The Construction Act changes the perspective on the concept of a "building" and defines it differently than in the legal framework of the Building Act. A significant change is the omission of the phrase "firmly attached to the ground" when defining a building. This marks a significant shift in the definition of a building itself. There is also a significant shift in the division of structures, where the original classification into "above-ground structures" and "engineering structures" is replaced with the division into "simple structures" and "exclusive structures," with engineering structures being a subset of exclusive structures. The concept of "minor structures" and the process for minor structures remain largely unchanged. Regarding advertising structures, these are replaced with the term "information structures," which has a more extensive character and can regulate not only advertising structures exclusively.

The Construction Act departs from the previous procedures and processes of assessing building intentions in two-stage administrative proceedings, namely in territorial proceedings and building proceedings, where in many cases, the relevant authorities and participants in the proceedings expressed their opinions on the subject matter in a duplicative manner, simplifying and shortening the approval process for buildings. The new legal regulation changes decision-making authority into permitting buildings. The central administration in the field of building permits is transferred to the newly established Office.

A key change in this regard involves the transfer of powers from the previous building authorities, which were municipalities by law, directly ex lege, to regional building offices, which will be the so-called workplaces of the Office. The number of regional building offices will correspond to the region's seat. The competencies of the former special building offices will be retained by the newly adopted legislation, except for specialized building offices in the construction of highways, railways, and airports, which will transition to the regional workplaces in accordance with the territorial districts of the regional building offices.

3 Procedural Legal Aspects of the Spatial Planning Act and the Construction Act

3.1 Procedural Legal Aspects of Spatial Planning

The procedural legal aspects of the Spatial Planning Act have a significant impact for two main reasons. First, according to Section 26 of the Spatial Planning Act, the entire process of spatial planning will be conducted exclusively electronically, except for cases where a special regulation provides otherwise. This means that the entire process of document preparation, commenting, and approval will take place electronically, which is a crucial aspect of the new legislation. However, it can also be seen as a risk because the exact nature of the information system and its practical implementation is not yet clear. The second reason why the impact of the Spatial Planning Act is significant is that, in accordance with Section 37, the Administrative Procedure Act, Act No. 71/1967 Coll., in its current wording, applies to proceedings under the Spatial Planning Act to a limited extent. Its application is limited to provisions related to building restrictions, public notice delivery, and the imposition of fines.

The proposed legal framework simplifies the process of spatial planning, which is significantly contributed to by the simplification of procedural steps (abolishing the concept of non-negotiated assignments, harmonization with environmental impact assessment processes), as well as by significant digitization based on the gradual digitization of data about the territory and new spatial planning documentation in a unified format. The procedural process will be carried out through the information system, and the simplicity of procedural steps will depend on the type of spatial planning documentation and the requirements imposed on it, which will be regulated by an implementing regulation.

The Spatial Planning Act also systematically changes the nature of territorial proceedings. "Territorial proceedings" in the sense of the previous legal regulation are abolished as individual proceedings and are integrated into other processes, with an emphasis on the process of preparing spatial planning documentation by self-governing regions, municipalities, or micro-regions.

The law also addresses problems in practice, where territorial planning authorities often handle small changes and additions individually, several times a year, resulting in process overlaps and an overall lack of conceptual coherence. The conceptual approach of the contracting authority to potential changes in approved spatial planning documentation aims to transform the valid spatial planning documentation into a relatively stable binding document. The law aims to eliminate this negative practice by specifying and improving the preparation of individual spatial planning documentation, effectively "locking" them for a legislatively defined period with the possibility of amendments under specific, taxonomically defined conditions.

3.2 Procedural-Legal Aspects of Building Permits and Decision-Making by Administrative Authorities in Construction Matters

The procedural-legal aspects of the construction law can be considered more or less fundamental when it comes to the need for new legislation to simplify the entire process of building permits. The key aspect is the permitting process, which will be significantly simplified, thanks to the streamlining of procedural steps and the digitization of the process, which will, among other things, stem from the digitalization of territorial data. One of the benefits, both legislatively and technically, as well as in practice, is the consolidation of various procedures into a single process, encompassing territorial planning assessment, building permit issuance, and environmental impact assessment. This does not mean bypassing any of the originally existing institutes but simplifying and consolidating them into a single procedural process. The existence of multiple procedures in the past has been known to cause problems, with each procedure being dependent on one another, leading to undue delays in the permitting process.

The process of granting construction permits will be carried out through an IS by qualified individuals responsible for overseeing the permitting process for the builder. The simplicity or complexity of the procedural steps will depend on the category of the construction, with it being evident that the complexity of the construction will increase the level of difficulty. The authors of the article consider positively the fact that the constructian act includes simplified construction permitting process and the so called „notification of the construction" institute is being kept unchanged as an important part of the legislation. In general, the permitting of constructions will be based on the issuance of a decision on the building intent, which will be issued by the respective regional construction authority. The issuance of this decision will be preceded by the discussion of the building intent proposal with all affected state administrative authorities, legal entities, the municipality where the construction is planned, and the owners of neighboring buildings and lands. In the process at this stage, there will be an integration of processes with the environmental impact assessment authority when discussing the building intent proposal and its impact on the environment. The discussion and consultation process on the building intent proposal involving all relevant parties will be facilitated by a qualified person, a designer, on behalf of the builder. Their role will be to handle the entire procedural aspect of approving the building intent proposal for the builder. The verification of the construction project will follow the decision on the building intent. The completed construction will be subject to certification through a "occupancy permit" The relevant regional construction authority will certify the suitability of the construction for its intended purpose. Regarding this certification, the authors note that there is a change in the terminology used, given that, according to the current and effective legal regulations, the construction authority issues decisions for the certification of the construction, while in the new legal framework, there will be a shift in terminology. However, it's important to emphasize that, the certification will still be a decision and will retain all the characteristics of an individual legal act, despite the change in name.

3.3 Special Procedures in the Permitting Process

For simple constructions in accordance with the legal definition, a simplified process will apply, provided that the construction intent is prepared in detail as a construction project.

The decision on the construction intent will also serve as the verification of the construction project. Minor constructions or minor construction works will be subject to notification. This will involve a straightforward process, where the builder must comply with location conditions, and the construction authority will issue the builder a notification of construction confirmation.

The new construction law aims to address the current societal issue of reduced discipline in construction. The previous concept of a comprehensive legal framework in the areas of territorial planning and public construction law within a single law is changing into the regulation of two separate legal regulations. Constructions built without proper permits will not be possible to legalize after the effective date of the new construction law. The construction law also outlines the procedure for the construction authority in cases of unauthorized construction and their removal, particularly by precisely defining unauthorized construction work, the conditions and procedures for removal, taking into account the involvement of the constructor of the unauthorized construction in the violation of the law, and more.

4 Decision-Making Process by the Relevant Authorities in Matters of Spatial Planning and Construction

The new legal framework specifies the competencies of the Office. As the competence of spatial planning is the original jurisdiction of local self-government authorities, the Office will be responsible for developing the Concept of Spatial Development of Slovakia and acting primarily as a coordinator of a unified approach and processes of spatial planning, through methodological guidelines. The existing levels of individual spatial planning documents remain unchanged, and the proposed law adds a new type of spatial planning documentation, namely the microregion spatial plan.

Regarding competencies in the field of spatial planning, the authors of the article note that the new legislation delegates competencies in spatial planning to local self-government (municipalities and self-governing regions) through the Spatial Planning Act, which designates the following as authorities for spatial planning in Section 6:

- The Office.
- Bodies of local self-government:
  - municipality,
  - self-governing region.

The Spatial Planning Act emphasizes greater cooperation in public administration, meaning cooperation between municipalities, self-governing regions, and the Office, whose position is defined in Section 11 of the Spatial Planning Act. According to Section 11 of the Spatial Planning Act, the municipality, in particular:

- Prepares, deliberates, and approves the assignment and proposal for the municipality's spatial plan, the assignment and proposal for the zone's spatial plan, proposals for changes and additions to the municipality's spatial plan and the zone's spatial plan,
- Prepares and provides current spatial planning documentation for the preparation and processing of the microregion's spatial plan, in agreement with the self-governing region,
- Monitors the currency of the municipality's spatial plan and the zone's spatial plan,
- As an affected body of local self-government, gives its opinion on the proposal for the assignment and the proposal for the mandatory part of the Concept of Regional Spatial Development, including its changes and additions if it concerns a municipality in the area for which the preparation of a microregion's spatial plan has been agreed, and on the proposal for the mandatory part of the municipality's spatial plan, whose cadastral area is adjacent to it or whose proposal for the mandatory part of the municipality's spatial plan affects it,
- Ensures the alignment of the zone's spatial plan with the municipality's spatial plan,
- Ensures the alignment of the municipality's spatial plan and the zone's spatial plan with the Concept of Regional Spatial Development,
- When performing activities under letter (a), cooperates with the relevant authority for environmental impact assessment under the Act No. 24/2006 Coll. on Environmental Impact Assessment and on amendments to some laws (hereinafter referred to as the "Environmental Impact Assessment Act").

The self-governing region has identical competencies as the municipality, but with regard to the concept of regional spatial development. The provisions of the Administrative Code do not apply to proceedings under the Spatial Planning

Act except for Section 30 (building restrictions) and public notice delivery and imposition of fines. As for changes in the competence of building authorities, there is a change in the organizational form of performing building competence in the Slovak Republic (according to the government's Program Declaration idea) and a reduction in the number of building authorities. In the new Construction Act, the bodies of state administration in construction are:

- The Office,
- Special building authorities.

Building authorities are new regional building authorities in the territorial jurisdiction of which construction works are to be carried out, if there is no relevant special building authority. According to Section 38 of the Construction Act, the building authority decides on all discussed building intentions. The building authority issues the building permit.

The authors of the article point out a significant fact concerning the decision-making process and possible remedies. The Administrative Code allows for the review of decisions made by municipalities through the institute of appeal proceedings and the reopening of proceedings. In contrast, the Construction Act does not allow submission of a remedy which is also the reopening of proceedings. The Construction Act explicitly states that oral appeals cannot be filed[5]. The newly adopted construction legislation in Slovakia is based on the transfer of building competence from municipalities to newly established building authorities, and thus, municipalities will no longer be building authorities. These steps, in line with the Government Program Declaration for the years 2020–2024, represent a "unique intervention in public administration" aiming to centralize the performance of building competence[6]. This change, according to the explanatory report, also stems from a financial analysis of the transfer of competencies, assuming that the legislative preparation was thorough. However, only practical application will determine whether the economic impact analysis of the new legislation was correct. The effectiveness of the performance of building authority activities by municipalities has long been subject to professional criticism, and there has been a long-term effort to make changes in the legal framework, both in the institutions and processes within the building regulations, and in the organization of the administration[7].

As the authors mention, the previous powers of municipalities as building authorities will be transferred to a newly established central state administrative body with defined territorial jurisdiction. Within its jurisdiction, the Office will establish its workplaces, the main task of which will be to perform the duties of the former building authorities. The list of the Office's workplaces, which will serve as building authorities for the territorial districts of counties in the seat of regional capital cities, is set out in Appendix 1 of the Spatial Planning Act. There will be a total of 8 regional authorities, namely regional authorities with headquarters in Bratislava, Banská Bystrica, Košice, Nitra, Prešov, Trenčín, Trnava, and Žilina[8]. In the new Construction Act, the authors see the involvement of local self-government, especially municipalities, with the newly established building authorities as state administration institutions in the negotiation of building intentions in accordance with Section 36, paragraphs 1(a) and 1(b) of the Construction Act. This involves the so-called institute of discussing building intentions. Section 38, paragraph 1 of the Construction Act states: "The building authority decides on all discussed building intentions. The building authority issues the building permit." Administrative proceedings in construction consist of two parts:

- Negotiation of building intentions.
- Issuing the building permit.Začiatok formulára

According to the newly adopted legal framework, participants in proceedings regarding a construction intention are:

- The builder,
- The owner of the land on which the construction is to take place, the owner of the building, and anyone with property rights to these properties through an easement, if not the builder,
- The owner of adjacent land and the owner of adjacent buildings, whose property rights, legally protected interests, or obligations can be directly affected by the decision,
- Affected members of the public if the construction intention affects a specially protected part of nature and the landscape.

5 Vrabko et al. (2009).
6 Rys (2010).
7 Berníková, Jakab (2021).
8 Explanatory report on Building act No. 201/2022 Coll.

In relation to the role of municipalities, their competencies are linked to the institute of participants in permitting proceedings. The competencies of municipalities mainly involve issuing binding opinions, rather than being participants in the proceedings. They provide these opinions as a basis for issuing a decision on building permission and for determining whether the construction intention aligns with the municipal spatial plan.

According to the authors of the article, municipalities should have at least the status of interested parties in accordance with the Administrative Code. The municipality receives the proposal for the construction intention for the purpose of obtaining a binding opinion on whether the construction intention aligns with the municipal spatial plan. This demonstrates partial cooperation between state administration (the newly established building authorities) and local self-government, but it lacks the relevant status as a participant in the proceedings, which the authors consider a weakening of the municipality's rights.Mederly et al.[9], argue that the state does not need to allocate significantly higher financial resources than before to ensure competence at the level of building regulations. At the same time, no one investigates how much financial resources municipalities allocate (in violation of legal regulations) to perform this competence.

The authors also critically view Section 38 of the Construction Act, which regulates the decision on building permission: "The building authority decides on all negotiated building intentions. The building authority issues the building permit. In the case of a construction requiring an environmental impact assessment or a construction under the integrated permitting and control of environmental pollution regime, in the proceedings on the construction intention, the relevant environmental impact assessment authority decides and issues the building permission." Here again, the competence is provided to state environmental authorities, and municipalities, just as in the case of the construction intention, do not participate, they only provide a binding opinion on whether the construction intention aligns with the municipal spatial plan. The municipality and the higher territorial unit are informed about the proposal for a construction intention based on Section 36 of the Construction Act, which imposes an obligation on the builder or the authorized designer to deliver the proposal for the construction intention through an information system to:

- The municipality within whose territory the construction works are to take place, for the purpose of obtaining a binding opinion on whether the construction intention aligns with the municipal spatial plan.
- The higher territorial unit in whose territorial district the construction works are to take place, for the purpose of obtaining a binding opinion on whether the construction intention aligns with the Concept of Regional Spatial Development, if the municipality does not have a municipal spatial plan, or the municipal spatial plan is not in line with the Concept of Regional Spatial Development, or if the construction intention affects multiple areas of the municipality.

The basis for issuing a decision on building permission includes the binding opinions of the relevant authorities, the binding opinions of the municipality or the higher territorial unit, the binding statements of affected legal entities, and the opinions of the participants in the proceedings. The new Construction Act does briefly and inadequately regulate the acceleration of the construction proceedings:

The building authority is obliged to issue a decision on building permission within 15 days from the delivery of the complete application for the issuance of a decision on building permission and in the absence of discrepancies; otherwise, the building authority will decide within 15 days from resolving the discrepancies. Greguš believes that the fundamental problem in the Construction Act is the length of the building permit process.[10] The exercise of building competence is administratively demanding. The authors of the article state that according to a World Bank analysis, Slovakia ranks 154th out of 190 countries in the world in terms of the speed of processing building permits. The process of issuing building permits will depend on whether the application for a decision was complete, as was previously regulated in the Construction Act.[11] The new legal framework of the Construction Act is intended to contribute to shorter deadlines for issuing permits.Section 39 of the Construction

9 Mederly et al. (2019).

10 Greguš (2020).

11 The World Bank (2021).

Act establishes methods for amending and canceling building permission decisions. Among other things, it regulates the fact that the builder can request the cancellation of a building permission decision until the issuance of the occupancy permit for the building. The building authority will decide within 15 days from the submission of the application. There is no right of appeal against a decision to change a building permission decision or to cancel a building permission decision. When deciding on the extension of the validity of the decision, there is no need for a new binding opinion from the municipality within whose territory the construction works are to take place.

No appeal is allowed against such a decision. This appears to be in contradiction with the current Administrative Code, which governs administrative procedures in public administration in Section 53 and following: "The participant in the proceedings has the right to file an appeal against the decision of the administrative authority unless the participant in the proceedings has expressly or orally waived the right of appeal."The authors of the article agree with the concerns raised by the public during the consultation process for the Construction Act that appeals against decisions of public administration authorities should, in principle, be possible before resorting to judicial review. They also concur with the objections raised by the Office of the General Prosecutor, which pointed out that the review of decisions regarding a construction intention, as an extraordinary remedy in its essence, does not have a suspensive or devolutive effect and is only triggered by a request from the builder, so it is not possible to initiate it at the initiative of the building authority or the Office, or at the initiative of another entity, especially not at the initiative of landowners and other interested parties regarding the land and building or adjacent land and building. As a result, the possibility of rectifying an unlawful decision from the perspective of entities other than the builder will be limited to filing a regular lawsuit. Many other comments, particularly from Via Iuris and ÚMSR, were accepted.

The new Construction Act specifies its relationship with the Administrative Code in Section 61 by stating that the Administrative Procedure Code applies to it with the exception of provisions related to participants in proceedings, involved parties, forgiveness of missed deadlines, and extraordinary remedies[12].

According to Section 61, paragraph 1, point b) of the Construction Act, the Administrative Code does not apply to:

- Determining the competent building authority for actions under this law.
- Determining whether it concerns a change in the construction intention or a change in the construction project.
- Verifying the construction project and issuing the occupancy permit for the building.
- Reporting minor constructions or minor construction works and reporting the removal of unauthorized information structures.
- Verifying the documentation of the actual construction of the building.
- Providing data and information to relevant authorities to assist the designer in preparing the construction intention.
- Issuing certificates of compliance.

The specific provisions outlined in Section 61 of the Construction Act explicitly define when the Administrative Procedure Code does not apply to the relationships governed by the Construction Act. Along with the provisions in Section 61, paragraph 1, point a), these are a type of provision where the application is excluded from the entire construction process, likely with the aim of expediting and simplifying the permitting procedures. However, it is evident that this intervention comes at the expense of the rights of entities that would normally be participants in the proceedings. As for the new legislation establishing the powers and jurisdiction of the new Office, the authors of the article believe that this is neither necessary nor essential. The changes brought about by the new legislation are of a conceptual nature and are, of course, necessary. However, the authors argue that the transfer of competencies to the Office is inappropriate, and the Office's powers as a second-degree authority should be carried out by existing district authorities, namely, the environmental departments and the construction and housing policy departments. In the case of environmental departments, the authors refer to the proposed actions of the Office that are intended to expedite the decision-making process regarding construction intentions[13].

12 Marišová et al. (2023).

13 Piri (2020).

The statement about the Office's unnecessary existence, however, does not change the fact that the authors welcome the new conceptual changes in the legislation. For example, the newly defined concept of the construction intention marks the beginning of the construction process, and it should conclude with the occupancy permit for the new construction (or modification of a construction) or the removal of an existing construction. If the construction process precedes an environmental impact assessment, the construction intention should be part of the application for environmental impact assessment in the specified scope. The subject of these proceedings is, in terms of content, the same intention, so there will be no need for a re-negotiation with the entities that have already assessed the intention. The resubmission of the construction intention documentation (submitted for the construction intention proceedings at the building authority) for assessment will not be required. This is another very positive change, where various activities are consolidated into one proceeding, which will require an increase in expertise when assessing construction intentions. After the necessary environmental impact assessment, the construction intention would be promptly forwarded from the district office's environmental department to the relevant municipality, which would issue a decision on the construction intention.

4.1 Proposals de lege ferenda

The authors of the article, despite their reservations, propose alternative ways for public institutions (state administration and local self-government) to cooperate in the construction proceedings in the future. They offer two alternatives, and here's the first one:

Alternative 1: the current district authorities based in the regional capital cities should remain the second-instance administrative authorities in matters of regular remedies filed by participants in the proceedings against the decisions of municipalities – construction offices regarding construction permits. Municipalities should stay as first-instance administrative authorities in the construction proceedings. Municipalities can, according to §20 of the Act No. 369/1990 Coll. in its current version, cooperate and establish common construction offices by entering into contracts for the purpose of performing specific activities or tasks. Collaboration between municipalities, especially smaller ones, exists globally, which is supported by Maaren et al. [14]Collaboration between municipalities reduces the costs of performing their common activities.[15]After the necessary environmental impact assessment, the construction intention would be immediately referred from the district office's environmental department to the relevant municipality, which would issue decisions on the construction intention and construction permit. The authors also propose maintaining the two-instance nature of the administrative proceedings, meaning that if a regular remedy is filed against the decision of the construction office, the municipality would forward it to the relevant district office – the department of construction and housing policy for a second-instance proceeding – a decision on the appeal. This would optimize the decision-making processes in public administration. District authorities, as state institutions, would ensure the flexible environmental impact assessment and the construction decision process would be carried out by municipalities as construction offices within the legally prescribed timeframes (30 or 60 days). However, this procedural cooperation between state and local self-government authorities would require an amendment to the Construction Act in the section "construction proceedings" (§31-§52) and the retention of §2, paragraph e) of the Act No. 416/2001 Coll. on the transfer of some powers from state authorities to municipalities and higher territorial units in its current version.

Alternative 2: The Office (Úrad) will be another central authority in the field of construction and spatial planning but will serve as the second-instance authority in administrative proceedings concerning ordinary and extraordinary remedies filed against decisions of regional construction offices. Remedies will be possible to apply by participants in the proceedings according to the Administrative Code.This procedural cooperation between state authorities would also require amending the Construction Act in the section "construction proceedings" (§31–§52). Regional construction offices will function as decentralized state administration bodies subordinate to the Office at the district offices in the regional capitals.

14 Maarten, Allers, de Greef (2018).
15 Gendźwiłł, Krukowska, Lackowska (2019).

Municipalities and self-governing regions (VÚC) as responsible self-government institutions will issue:

- binding opinions to the construction offices on whether the construction intention is in line with the municipal spatial plan.
- opinions on whether the construction intention is in line with the regional development plan.

Furthermore, municipalities will be informed about the decision to terminate the proceeding, which the construction office will deliver to participants in the proceeding concerned by the decision. The construction office will also deliver the decision to relevant authorities, legal entities concerned, and the municipality/self-governing region.
The authors note that municipalities should be informed about the termination of the proceeding.

II. Conclusions

The authors conclude by highlighting the challenges and the need to evaluate both the potential risks and benefits of the proposed legislation in the field of spatial planning and construction. They acknowledge the positive aspects of the legislation, such as the simplification of concepts and the streamlining of procedures. The primary goal of the legislation is to simplify, expedite, and improve decision-making in this area. However, the authors emphasize the importance of ensuring that these goals are aligned with fundamental legal principles, which they argue may be lacking in the proposed legislation in some instances.

In summary, the authors recognize the complexity of the upcoming legal changes and the absence of practical application at this stage. They stress the importance of evaluating the potential impacts of the legislation to address both its positive and negative aspects effectively.

Authors of the article express their concerns about certain aspects of the proposed legislation related to spatial planning and construction. They point out that while simplifying the procedures for land-use planning is a welcome step, the exclusion of the application of administrative law in certain areas may be problematic. Additionally, they highlight the absence of certain legal institutions, such as "participants in proceedings," and the limited advisory role of municipalities and self-governing regions. The transfer of construction competencies to the new central authority and regional construction offices is viewed negatively, as it introduces a new competency model into the construction evaluation process. However, the authors acknowledge that the actual application of these changes may determine their effectiveness. The authors also note the importance of electronic processes in spatial planning and permitting procedures, emphasizing that massive electronic transformation must respect fundamental principles necessary for quality e-government and electronic services. The extensive use of electronic processes could pose challenges, particularly if there is no provision for alternative paper-based procedures in exceptional cases. This could potentially impact the rights of participants in the process and lead to legal issues.

In conclusion, the authors express their belief in the positive impacts of the new legislation on spatial planning and construction. They acknowledge the potential negatives but hope that the actual implementation and application of these laws will provide clarity on their overall impact.

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