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EFFECTIVENESS OF COMMON AGRICULTURAL POLICY IMPLEMENTATION IN SLOVAKIA – – EUROPEAN PROJECT IMPLEMETED BY THE ASSOCIATION OF AGRARIAN AND ENVIRONMENTAL LAWYERS

EFEKTÍVNOSŤ IMPLEMENTOVANIA SPOLOČNEJ POĽNOHOSPODÁRSKEJ POLITIKY NA SLOVENSKU – EURÓPSKY PROJEKT IMPLEMENTOVANÝ ASOCIÁCIOU AGRÁRNYCH A ENVIRONMENTÁLNYCH PRÁVNIKOV

Lucia PALŠOVÁ - Zuzana BOHÁTOVÁ - Norbert FLORIŠ*

I. Introduction

The Common Agricultural Policy is the first and most extensive of the Community's integrated policies[1]. It belongs to the most important policies, takes the majority of the EU budget and represents the majority of the EU legal regulations. The agro-food industry accounts for 6% of the EU's GDP and provides 46 million jobs, which even strengthens the importance of the policy[2]. The CAP was the 1st policy where most of the competencies have been transferred to the European level. The CAP can be described as having three dimensions: market support, income support and rural development. The three dimensions are interconnected, and overall sustainability depends on the ability of the three dimensions to act collectively. Farm policy in the EU can have significant implications not just for producers, consumers and other market actors domestically, but also at the international level[3]. The CAP departed from the traditional market support to create more sophisticated intervention related to the changing macroeconomics conditions

[1] Rogoznicki et al. (2018).

[2] Schwarcz (2017).

[3] Matthews (2018).

Abstract (EN)

The Common Agricultural Policy (CAP) is the oldest EU policy and is one of the supranational areas and policies of the European Union (EU). CAP introduced diverse legal and economic tools for comprehensive and smart restructuralisation of the Slovak agriculture and rural areas. With the purpose to improve the CAP implementation in Slovakia, the project "Effectiveness of Common Agricultural Policy implementation in Slovakia" (CAPE) was prepared and submitted by the Association of Agrarian and Environmental Lawyers. The project was approved by the Education, Audiovisual and Culture Executive Agency and it has been granted from September 2019 (Decision Nr. 2019–1802/001.001, Project Nr. 611792–EPP–1–2019–1–SK–EPPJMO–SUPPA). The idea to submit project proposal aroused from the need to contribute to improving the Common Agricultural Policy implementation in Slovakia. The main aim of the project is to perform the interdisciplinary research in the field of the effectiveness of CAP implementation in Slovakia with the specific objectives to discuss and advise local, regional, national policymakers and decision–makers on different aspects of the CAP implementation, transfer the research results and the expertise to the practice and to disseminate the project outcomes among interested target groups and civil society.

Abstrakt (SK)

Spoločná poľnohospodárska politika (SPP) je najstaršou politikou EÚ a tiež jednou z nadnárodných oblastí a politík EÚ. SPP zaviedla rôzne právne a ekonomické nástroje na komplexnú a inteligentnú reštrukturalizáciu slovenského poľnohospodárstva a vidieckych oblastí. Za účelom zlepšenia implementácie SPP na Slovensku pripravila a predložila Asociácia agrárnych a environmentálnych právnikov projekt Efektívnosť implementácie spoločnej poľnohospodárskej politiky na Slovensku (CAPE). Projekt bol schválený Výkonnou agentúrou pre vzdelávanie, audiovizuálny sektor a kultúru od septembra 2019 (rozhodnutie č. 2019–1802 / 001.001, projekt č. 611792–EPP–1–2019–1–SK–EPPJMO–SUPPA). Myšlienka predložiť návrh projektu vyvstala z potreby prispieť k zlepšeniu implementácie SPP na Slovensku. Hlavným cieľom projektu je vykonať interdisciplinárny výskum v oblasti implementácie SPP na Slovensku. Špecifickými cieľmi je viesť dialóg a radiť miestnym, regionálnym, národným tvorcom politík a rozhodnutí v rôznych aspektoch implementácie SPP, prenášať výsledky výskumu a odborné poznatky do praxe a šíriť výstupy projektu medzi cieľovými skupinami, ktoré prejavia záujem, a tiež občianskou spoločnosťou.

* Slovak University of Agriculture in Nitra, Slovakia

and expectations of the society[4].

Although membership in the European Union implies many advantages, the period after joining this community can be quite economically unstable for some "new" countries[5]. Before the "Eastern enlargement of the CAP" discussion focused on the question whether the system of direct transfers should be granted to the new member countries and whether sufficient funds would be available[6].

Slovakia joined the EU in 2004, thereby assuming the rights and commitments under the CAP. During this period, the CAP introduced diverse legal and economic tools for comprehensive and smart restructuralisation of the Slovak agriculture and rural areas. Beside these facts, Slovakia as a post-communist country has significant problems that violate the proper CAP implementation for diverse target groups.

With the purpose to improve the CAP implementation in Slovakia, the main aim of the project "CAPE" is to perform the interdisciplinary research in the field of the effectiveness of CAP implementation in Slovakia with the specific objectives to discuss and advise local, regional, national policymakers and decision-makers on different aspects of the CAP implementation, transfer the research results and the expertise to the practice and to disseminate the project outcomes among interested target groups and civil society.

The project was prepared and submitted by the Association of Agrarian and Environmental Lawyers (AAEP), which associates both natural and legal persons, and its objective is promotion of agrarian and environmental law and educational and scientific activities in this field. The AAEP was registered on 15th May 2018 at the Ministry of the Interior of the Slovak Republic. It is a civic non-profit organization established under Act no. 83/1990 Coll. as amended. AAEL was accepted as a full member of the European Council for Rural Law on 13th October 2018 (CEDR from the French title „Comité Européen de Droit Rurals", established in 1957). It is a unique pan-European organization representing lawyers and experts working in the field of agrarian law.

As CEDR has a significant and specific consultative role in relation to FAO (Food and Agriculture Organization of the United Nations) as well as the role of the observer vis-à-vis the Council of Europe, which regularly provides advice and assistance to the EU institutions, the membership of AAEP in CEDR, reflects the quality and importance of the most important national associations in the EU as well as lawyers and experts from outside the EU working in the field of legal relations in agriculture and rural areas.

[4] Stepien and Czyzewski (2019).
[5] Stojanovic (2019).
[6] Fischler (2001).

Keywords (EN)
Common Agricultural Policy, implementation, Association of Agrarian and Environmental Lawyers, research, European Union

II. Objective and methodology

Project objectives are based on the fact that an effective way of addressing these needs is through the high quality of research activities that will be transferred to specific target groups-policymakers, decision-makers, stakeholders (farmers, food processors, professional groups), potential stakeholders (students, young graduates) and civil society. Long-term agricultural research could help address a number of pressing national agricultural research priorities, especially those questions requiring a long-time frame at field and larger spatial scales[7].

The objective of the paper is analysis of the importance of project implementation in order to broaden knowledge of students, policymakers and researchers who are considered as the main project target group.

The methodology used was determined according to the objectives set.

The project activities were designed to achieve the project objectives as follows:

- Research activities - will create a unique research board platform for gathering and exchange existing research information and strengthen the cooperation in multidisciplinary aspects of the CAP. Senior researchers, young researchers and PhD. students will be involved in research. Research results will be transferred to all other project activities and they will promote European integration processes in the field. Common research results will be presented in the scientific papers and posters in scientific journals and at international conferences.
- Deliverables are designed to transfer information from the research to target groups. All activities will be visible, transparent and accessible in order to ensure efficient achievement of dedicated objective and with the impact to raise awareness of the land value.
- Events will properly supplement the achieving of the project objectives. Events are designed to exchange practices and to foster open dialogue between professional decision-making authorities, politicians, civil society. Events will bring synergic understanding about the need for more effective CAP implementation in Slovakia and could have an impact to adjust helpful measures in the field.

III. Expected Results

1. Common Agricultural Policy

Common agricultural policy (CAP) is the most extensive and complex European policy. It was created as a partnership between agriculture and society, and between Europe and its farmers. It aims to:

1. support farmers and improve agricultural productivity, so that consumers have a stable supply of affordable food;

[7] Roberton et al. (2008).

Kľúčové slová (SK)
Spoločná poľnohospodárske politika, implementácia, Asociácia agrárnych a environmentálnych právnikov, výskum, Európska únia

2. ensure that the European Union (EU) farmers can make a reasonable living;
3. help tackling climate change and the sustainable management of natural resources;
4. maintain rural areas and landscapes across the EU;
5. keep the rural economy alive promoting jobs in farming, agri-foods industries and associated sectors.

To manage a wide scope of the agriculture, agri-environment and rural development, the CAP belongs to the common European policy implying that legal regulations have a direct effect in all EU member states. Common policy brings advantages in particular to promoting competitiveness, administrative simplification and equality before the law; on the other hand, several external factors may cause its incorrect implementation.

CAP introduced in Slovakia diverse legal and economic tools for further restructuralisation of the Slovak agriculture and rural areas. Beside these facts, Slovakia as a post-communist country has significant problems that violate the proper CAP implementation for beneficiaries as follows:

6. land fragmentation and the slow realisation of land consolidations;
7. unsettled ownership and use relationships;
8. weak awareness of the value of land causes the undeveloped land market;
   an uncoordinated extension system for farmers.

Persistent problems cause dissatisfaction, especially among small, medium-sized and family farmers. To solve a situation presupposes a systemic solution involving an interdisciplinary approach that hampers the lack of expertise in the field and weak state interest in solving problems in agriculture.

The project arises from the above-mentioned problems. There is a strong need to perform the interdisciplinary research on the effectiveness of the CAP implementation in Slovakia and based on the research results to improve the implementation of CAP in Slovakia.

2. Project activities

The AAEP will organise in the framework of the project CAPE following events:

a) series of workshops will be organised to build knowledge in the field and to encourage cooperation between academics and practice. The workshops will use front lessons and debate about the discussed topics.
b) series of roundtables will be organised to foster political debate between academics and politicians/decision-makers to contribute to the possible improvements of the CAP implementation at the local/regional/national level.
c) international conference will be organised to exchange research results of the experts on the field in order to improve governance and integrated implementation of the CAP.

Activities of the proposed project will be realized through the following outputs:

- project website updated continuously during and after project lifetime;
- six thematically practical manuals related to the CAP published during project lifetime;
- report about the research results published once a year;
- six thematically workshops for stakeholders and interested students and graduates organized during project lifetime;
- three roundtables for policymakers, decision-makers, academics organized during the project lifetime;
- five scientific papers/posters published each year;
- international conference for academics, stakeholders, policymakers and decision-makers organised once per project lifetime;
- participation of researchers in the international conferences in Portugal
- study visit of researchers to the Council for Rural Law in France.

Outcomes of the proposed project are:

- reinforced research activities related to the CAP implementation in Slovakia;
- improved proper implementation of the CAP by the stakeholders (farmers, food processors and professional groups) and potential stakeholders (students, graduates);
- improved policy and decision-making processes in the field of agricultural policy at the local, regional, national level;
- increased recognisability and visibility of the association in the international professional environment.

3. Target groups

Research activities will be covered by PhD. students, young researchers and senior researchers from different scientific fields. Research results will be published in the scientific journals and/or at the scientific conferences and will be included to all project activities.

Gathered information, knowledge and research results will be transferred to all relevant target groups by the following project activities:

1. Deliverables will build scientific or practical knowledge to various target groups as follows:

- the project website will provide information about the project activities and provide the latest knowledge about diverse aspects of the CAP implementation in Slovakia and other EU member states.
- six thematically practical manuals will improve the professional knowledge about the various topics related to the CAP implementation and related national agricultural legislation for stakeholders (farmers, food processors, professional groups), students and young graduates interested in agriculture.
- the report will provide research results for the policymakers and decision-makers at the local, regional, national level, stakeholders, academics, students.

Accessibility of the deliverables published in the project website will raise awareness in this area for civil society.

2. Proposed events are designed to build professional knowledge and exchange practice and experiences between academics and

practice:

- six thematically workshops will explain and trained selected topics of the CAP implementation in order to improve knowledge and skills for stakeholders (farmers, food processors, professional groups) and potential stakeholders (students and young graduates interested in agriculture);
- three roundtables will be organised to discuss possible improvements of the legal regulations at the local/regional/national policy in accordance with the CAP and to strengthen cooperation between practice and the AAEP.
- conference attendance and study visit will ensure the visibility of the AAEP in the international environment.
- international conference – encourage experts on different aspects of the CAP to discuss the readiness of the EU member states for implementation of the CAP in the programming period 2020–2027.

3. Dissemination activities will improve the awareness of the importance of the integrated agricultural governance of the EU in civil society.

Project activities will affect the following target groups:

1. Young researchers will have an opportunity to work alongside the senior researchers and experts, which will deepen their professional skills in the field. Research activities will give them the possibility to work in the multidisciplinary teams, to cooperate across diverse scientific fields and thus building the occasion to present their progressive approaches in the concrete issues of the Common Agricultural Policy.
2. Stakeholders (farmers, food processors, professional groups) – the project activities will provide the latest information and building knowledge of different aspects of the CAP and will encourage dialogue between the AAEP and the practice. The cooperation could have an impact on understanding and improving the implementation of legal regulations of the CAP in Slovakia.
3. Policymakers and decision-makers at the local, regional national level – the project activities will encourage the political debates about the improvement of the implementation of the CAP which will have an impact on the efficiency of the decisions related to agricultural land management at the local, regional and national level.
4. Potential stakeholders (students and young graduates interested in working in agriculture) – the project activities will enhance their professional capacity to solve the issues related to agriculture in a wider multidisciplinary perspective. Supported events and deliverables will bring additional information and practical skills for the target group. Project activities may allow better employability in the labour market.
5. Civil society – transparency and availability of the project activities will have an impact on the proper understanding of diverse aspects of the CAP and increasing awareness of the agricultural land value for civil society.
6. Association of Agrarian and Environmental Lawyers– project activities will enhance its recognisability and confidence for the relevant stakeholders.

4. Project impact and sustainability

Impact at the national and international level:

- promotion of excellence of research in the field of the CAP;
- understanding of the CAP as a socio-economic and environmental instrument directed to the sustainable food and agriculture in Slovakia and the EU;
- harmonization of policies and actions related to agricultural management in Slovakia and the EU;
- increasing awareness of diverse target groups of the importance of agriculture and its proper governance in the EU.

The continuity of the project activities will be ensured through interactive website updated also after the project lifetime and cooperation of AAEP and target groups in continuing teaching, research and further project activities.

VI. Conclusion

The CAP has undergone several reforms and at the moment CAP meets big challenges related to the economic prospects for agriculture and rural areas, care for the environment, health and safe food production, action over climate change, circular economy and sustainability. Research and educational institutions can play an important role in these issues by transferring latest research knowledge to decision makers, policy makers, farmers and students.

The CAPE project activities were designed to advice stakeholders at following levels:

- the local/regional/national level – the building knowledge about the policy implementation and the adjustment of dysfunctional legal regulations will improve the coherent CAP implementation in Slovakia.
- EU level – the integrated policy implementation in the EU Member States ensure sustainable agriculture, which will contribute to developing the land footprint of the EU.

Activities proposed in the CAPE project can significantly contribute to understanding the CAP measures and their implementation at all above-mentioned levels.

References

1. FISCHLER, F. et al.: Reform of the Common Agricultural Policy. In: Intereconomics. Volume 36, May/June 2001, Number 3. 2001.
2. MATTHEWS, A.: The EU's Common Agricultural Policy Post 2020: Directions of Change and Potential Trade and Market Effects. In: Agriculture. November 2018. Available online: https://www.researchgate.net/publication/329075466_The_EU's_Common_Agricultural_Policy_Post_2020_Directions_of_Change_and_Potential_Trade_and_Market_Effects_Geneva_International_Centre_for_Trade_and_Sustainable_Development
3. ROGOZNICKI, D. et al.: Common Agricultrual Policy as a determinant of transforamtion in Polish agriculture. In: Proceedings of the 2018 International Scientific Conference: Economic Sciences for Agribusiness and Rural Economy. No 1, Warsaw, 7-8 June 2018, pp. 168-174. DOI: 10.22630/ESARE.2018.1.23
4. ROBERTSON, G. P. et al.: Long-term Agricultural Research: A Research, Education, and Extension Imperative. In: BioScience, Volume 58, Issue 7, July 2008, Pages 640-645, https://doi.org/10.1641/B580711

5. STEPIEN, S. – CZYZEWSKI, A.: Quo vadis Common Agricultural Policy of the European Union? In: Management 2009, Volume 23: Issue 2, Published online: 21 Dec 2019, Pp: 295-309. DOI: https://doi.org/10.2478/manment-2019-0032 Available online: https://content.sciendo.com/view/journals/manment/23/2/article-p295.xml
6. STOJANOVIC, I.: The impact of the Common Agricultural Policy of the European Union on the general price level of countries that joined in the period from 2004 to 2007. Economic Themes . 2019, Vol. 57 Issue 2, p233-255. 23p.
7. SCHWARCZ, P.: Direct payments as a tool of Common agricultural policy..In: Podnikanie na poľnohospodárskej pôde vo väzbe na rozvoj vidieka. -Nitra : Slovenská poľnohospodárska univerzita, 2007. ISBN 978-80-8069-872-0. p. 191-194.

Other sources

- Detailed project description of the project „Effectiveness of Common Agricultural Policy implementation in Slovakia“ submitted under Jean Monnet Activities, Erasmus+, Call 2019
- www.aaep.uniag.sk
- www.cape.uniag.sk

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Contact address/ Kontaktná adresa

Doc. JUDr. Lucia Palšová, PhD.
SUA in Nitra, Faculty of European Studies and Regional Development, Department of Law, Tr. A. Hlinku 2, 949 76 Nitra
e-mail: lucia.palsova@uniag.sk
Ing. Zuzana Bohátová, PhD.
SUA in Nitra, Faculty of European Studies and Regional Development, Centre of International Programmes, Tr. A. Hlinku 2
949 76, Nitra
e-mail: zuzana.bohatova@uniag.sk
Ing. Norbert Floriš
SUA in Nitra, Faculty of European Studies and Regional Development, Centre of International Programmes, Tr. A. Hlinku 2, 949 76 Nitra
e-mail: norbert.floris@uniag.sk

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DEVELOPMENT OF THE LEGAL REGULATION OF THE COOPERATIVE IN SLOVAKIA

VÝVOJ PRÁVNEJ ÚPRAVY DRUŽSTIEV NA SLOVENSKU

Zuzana ILKOVÁ – Zuzana LAZÍKOVÁ – Anna BANDLEROVÁ – Jarmila LAZÍKOVÁ*

I. Introduction

Emphasizing the historical development and importance of agriculture for the national economy, it can be argued that social relations in the area of regulating the forms of farming on land have always been in the focus of the whole society. The social interest aimed at regulating the legal relations of entities farming on agricultural land has been reflected in many legislative adjustments in recent decades. Since the end of 1940s, "The cooperative legal standards" have become the basic formal sources of the rights and obligations of entities active in the field of agriculture.

However, it should be stressed that the development of formal sources of law, as well as the subject of their regulation, reflects and materializes the social conditions in which the relevant legislation is created, i.e. in the material sources of law.

II. Material and Methods

Legal form of the cooperative underwent complicated development. At present, according to the applicable legislation, the cooperative is a business entity traditionally active mainly in the field of agricultural business.

The aim of the paper is to point out, on the basis of a legal analysis, the development of the cooperative law from the end of the 1940s and on the basis of the comparison and logical method of cognition point out the positives and negatives in the development of agricultural cooperatives and the advantages of current legislation. The paper uses logical methods, formal legal methods, and sociological methods, especially the methods of examining various documents that preceded or accompanied the creation of normative legal acts. The basic material on which the paper is based is legislation, legislative documents accompanying their creation, and professional articles and publications of experts focusing on the history of agricultural cooperatives in Slovakia.

On the basis of available statistical data on the development of the structure of agricultural cooperatives and on the basis of legal analysis of legal regulations, which were the basic starting point for the regulation of cooperatives, we would like to emphasize in this paper the legitimacy of the cooperative business form in Slovakia under current market conditions.

Abstract (EN)

The paper analyzes the development of the legislation of cooperative law since the late 1940s. It points out the positives, but also the negatives in the development of agricultural cooperative in Slovakia. The number of cooperatives, as well as the area of their farmed land decreased significantly after 1989 and the number of legal entities operating on the land has expanded. In spite of this, however, according to the collected data, it can be stated that in 2018, cooperatives managed 34,25% of agricultural land in Slovakia. Based on the available statistical data on the development of the structure of agricultural cooperatives and on the basis of legal analysis of the legislation, the authors wish to emphasize the merits of the cooperative form of business as well as the advantages of the cooperatives as a separate form of business under current market conditions. The cooperative, as a separated form of business, is still advantageous for all areas of business including the agricultural business. The advantage of a cooperative form of business is highlighted by its flexibility, relative simple and more liberal than other legal form of business.

Keywords (EN)

cooperative, legal form, legal relations, development of legislation, agriculture

Abstrakt (SK)

Príspevok analyzuje vývoj legislatívy družstevného práva od konca štyridsiatych rokov, pričom poukazuje na pozitívne, ale aj negatívne stránky vývoja poľnohospodárskych družstiev na Slovensku. Počet družstiev, ako aj rozloha nimi obrábanej pôdy, sa po roku 1989 výrazne znížili, avšak počet právnických osôb hospodáriacich na pôde sa zvýšil. Napriek tomu však podľa zozbieraných údajov možno konštatovať, že v roku 2018 družstvá spravovali 34,25% poľnohospodárskej pôdy na Slovensku. Na základe dostupných štatistických údajov o vývoji štruktúry poľnohospodárskych družstiev a na základe právnej analýzy príslušnej legislatívy by autori chceli zdôrazniť podstatu družstevnej formy podnikania, ako aj výhody družstiev ako samostatného podniku za súčasných trhových podmienok. Družstvo ako samostatná forma podnikania je stále výhodné pre všetky oblasti podnikania vrátane poľnohospodárstva. V porovnaní s ostatnými formami podnikania majú družstvá výhodu najmä v ich flexbilite, relatívnej jednoduchosti a liberálnosti.

Kľúčové slová (SK)

družstvo, právna forma, právne vzťahy, vývoj legislatívy, poľnohospodárstvo

* Slovak University of Agriculture in Nitra, Slovakia

III. Results and Discussion

Historical development of cooperatives in Slovakia

In 2019, we commemorate the 174th anniversary of the beginning of the cooperative movement in Slovakia with the foundation of the Association *Gazdovský spolok* in the village Sobotište (founded on February 9, 1845), which was the first credit cooperative in the world and it was initiated by teacher Samuel Jurkovič. The guiding principles of this Association were voluntary entry, self-help, reciprocity and self-government. According to its model, other cooperatives and associations were established in almost all of Slovakia. Although, due to the complex socio-political relations in the Austro-Hungarian Monarchy, this Association only operated for 6 years (its activity ceased on January 28, 1851), it had far-reaching significance for the beginnings of the cooperative movement and the realization of cooperative ideas. Credit cooperatives were the holders of the basic ideas of the cooperative movement, namely self-help and mutual support. They were non-profit associations aimed at solving the social and economic problems of their members, which spontaneously arose from the initiative of the founders and not by the top-down normative regulation of the state.

One of the first legal regulations of cooperatives in our territory, as stated by, can be considered the Hungarian Commercial Code, legal article XXXVII/1875, supplemented by the Cooperative Law, the legal article XXIII/1898 on economic and trade credit cooperatives [(1)]. The general regulation of cooperatives was enshrined together with trading companies in the first part of the Hungarian Commercial Code (§1 – 257). A cooperative has been set up as a form of trading company, consisting of an indefinite number of members, created for the purpose of joint business management or other economic purpose. The regulation distinguished the founding of the cooperative, the creation of the cooperative statutes and the creation of the cooperative by registration in the register court, further differentiated cooperatives with unlimited liability – solidarity liability of members through the entire property beyond the possibilities of cooperative assets, if it was not enough to cover debts, and cooperatives with limited liability, members are only liable to the extent of their business share. The Hungarian Commercial Code remained valid in Slovakia even after the establishment of the Czechoslovak Republic on the basis of Act no. 11/1918 Coll. (Reception Law) of 28.10.1918, according to which: "in order to maintain the continuity of the existing legal order with the new situation, to avoid confusion and to adjust the undisturbed transition to a new state life, orders the National Committee on behalf of the Czechoslovak nation, as executor of state sovereignty (Article 2), preservation of all existing provincial and imperial laws and regulations at that time".

In addition to the Hungarian Commercial Code for legal regulation of cooperative, the Act no. 210/1919 Coll. on regulation of cooperative conditions in Slovakia has been adopted. Section 2 of this Act imposed an obligation on all cooperatives established under legal article XXIII/1898 or according to the legal article XXXVII/1875, by resolutions of the General Assembly adopted by the end of July 1919, to terminate membership in *Országos központi hitelszövetkezet* in Budapest, or any other cooperative headquarters located outside the territory of the Czechoslovak State.

Despite the unification efforts in the period of the first Czechoslovak Republic, the commercial law failed to unify [(2)]. During the entire existence of the first Czechoslovak Republic, the second Czechoslovak Republic and the Slovak State, the former Austrian Commercial Code of 1863 still applied in the Czech lands and the Commercial Code of 1875 still applied in Slovakia. This means that the legislation of the cooperative was also split into two commercial codes. The legal situation lasted until 1950, when the Civil Code no. 141/1950 Coll. has been adopted, which repealed both commercial codes, except for the provisions governing cooperative law. Figure 1 is an overview of the number of cooperatives in the mid-1920s throughout the Czechoslovak Republic. From most of the total number of 14 924 cooperatives, 3 479 were agricultural, purchasing, selling and production cooperatives and 5 852 were agricultural credit cooperatives[(3)].

The legal norms adopted at the end of the 1940s and the beginnings of the 1950s are a reflection of the socio-economic changes that took place in the Czechoslovak Republic[(4)], which means in the material sources of law. The constitutional development after "February 1948" was influenced by the political conditions of its origin and the changes that occurred in all areas of the state's social life. The Constitution of the Czechoslovak Republic , established a people-democratic establishment where the people are the source of all power in the state. In particular, cooperatives concern Article IV, Section 3 of the Constitution: *"For procurement of the public things and for the exercise of its democratic rights, the people create voluntary organizations, in particular political, trade union, cooperative and cultural, women's and youth organizations and sports organizations"*.

In Chapter 8, Section 146, the Constitution enshrines an economic establishment in which the means of production are either of national property or property of people's cooperatives, or are privately owned by individual producers. The Constitution of the Czechoslovak Republic regulated people's cooperatives (§157 Section 1 and Section 2) as associations of working people to work together in order to increase the standard of living of members and other working people, but not to achieve the highest possible profit from invested capital. According to the Constitution, the state supports people's cooperatives in the interests of developing the national economy and general welfare. Furthermore, the Constitution declared the private ownership of small and medium-sized enterprises up to 50 employees (§158), the private ownership of land by farmers who work on it up to 50 hectares (§159), adding that the details will be regulated by the special law. The state constitutionally undertook to govern agricultural policy (§ 160) with the involvement of the farmers in order to gradually increase the technical and technological level of the villages and to balance the social and cultural differences between the urban and the rural areas.

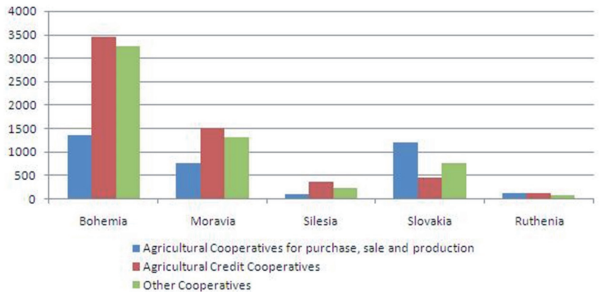
(1) Šúbertová (2004)

(2) Gábriš (2012)

(3) Demo et al. (2001)

(4) Constitutional Act no.150/1948 Coll., approved and issued on May 9, 1948

Figure 1: Overview of cooperatives in the Czechoslovak Republic in early 1924



Source: own processing at the Department of Law according to Demo et al.: History of Agriculture in Slovakia (Table 12.1 p. 444)

The empowering provisions laid down in the Constitution of the Czechoslovak Republic concerning the ownership of agricultural land were elaborated in Act no. 69/1949 on Common Agricultural Cooperatives (hereinafter referred to as the CAC Act or the Act). On 23 February 2019, there was the 70th anniversary of the adoption of the aforementioned Act by the National Assembly of the Czechoslovak Republic. The CAC Act constituted and established a normative regulation of the rebuilding of agriculture by the association of individual farmers. From a formal point of view, it was a simple framework regulation that within 14 paragraphs enshrined and brought substantial changes in the life of farmers and substantial changes in land management. The Regulation of the Ministry of Agriculture no. 75/1949 Coll. with effect from 26 March 1949 has been issued to implement the CAC Act. The aim of the legal regulation was to eliminate the existing fragmentation of cooperative activities in agriculture, to unite various agricultural cooperatives by voluntary establishment of common agricultural cooperatives. The subject of the activities of the common cooperative pursuant to § 2, Section 1 was in particular:

a) land consolidation;
b) mechanisation of agricultural work (pursuant to Act no. 27/1949 Coll. on Mechanisation of Agriculture);
c) cooperation in establishing, scheduling and fulfilling production tasks in agriculture, in particular the conclusion of contracts on manufacturing of agricultural products;
d) cooperation in establishing, timing and delivering of agricultural products, in particular the conclusion of contracts on the purchase and supply of agricultural products;
e) participation in the purchase of agricultural products and in the acquisition of agricultural needs;
f) taking care of the improvement of crop and livestock production;
g) taking care of the organization of work to increase the production of agriculture;
h) taking care of increasing the cultural and social level of the countryside;
i) taking care of facilitating the work of a rural women.

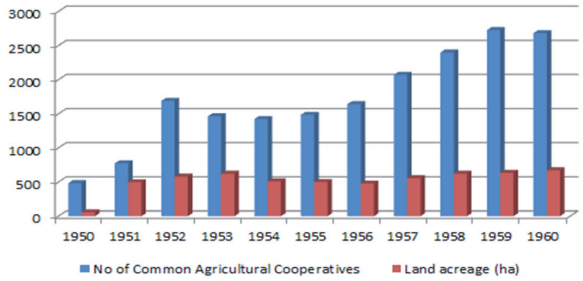
According to the Act, the activities of CAC cannot be the activities that are the tasks of financial institutions, i.e. the activities of a credit cooperative. However, consumer, craft, trade and housing cooperatives could continue to operate in municipalities. In the provisions of §4, §5, §6, the Act stipulated the method of establishing an common cooperative, either by establishing a new cooperative in a given municipality, or by transforming an existing cooperative into an common cooperative, or by merging multiple cooperatives existing in the municipality. The Act was based on the regulation that only one common cooperative would be established in each municipality. In addition to the CAC Act, the internal legal relationships of the founding cooperatives were regulated by the Model CAC Statutes, the Rules of Procedure and the Operating Rules, which regulated differentially the legal relations of the four types of cooperatives. In the first type there was a simple cooperation in some seasonal work; in the second type the boundaries of land plots were ploughed; in the third type, besides crop production, they also carried out livestock production; and in the fourth type they were rewarded according to work merit and not according to associated land[5].

The first stage of searching for a suitable type of cooperative and collective founding of common cooperatives represented by Act no. 69/1949 Coll. ends with the adoption of Act no. 49/1959 Coll. on CAC (with effect from 1 October 1959), by which begins the second stage of development of agricultural cooperatives, namely the stage of consolidation and development of common agricultural cooperatives (§1 of the Act). By its modification and content, the second CAC Act is the holder of all socio-economic conditions for the development of Czechoslovak society at that time. The matter of act formally embedded in 63 paragraphs is divided into twelve parts. The first part of the guiding principles of the agricultural cooperative provides the principles such as voluntary establishment, cooperative democracy, the joining of interests of farmers, cooperative and whole society, the principle of planning of cooperative's activity, cooperatives as an inseparable part of the socialist establishment. In the second part (§8 - 16), the establishment of the cooperative and its nature are regulated: the cooperative is formed by a resolution of the establishing membership meeting; is approved by the council of the district national committee; the cooperative is a people's cooperative and a socialist legal entity whose main activity is socialist large-scale agricultural production and forestry and taking care of cooperative's members. In the third part, the cooperative bodies are appointed, namely the membership assembly as the supreme body; the board managing the day-to-day activities of the cooperative; and the chairman conducting day-to-day activities and acting on behalf of the cooperative. The review committee is the control body responsible only towards the membership assembly. In the fourth part we can find for the first time the regulation on the association of land and other means of production. The members of the cooperative were obliged to associate the lands, including forest lands, for the cooperative management in the scope and under the conditions determined by the Statutes, while the ownership of the associated land remains intact and the cooperative acquires the right to cooperative use. This legal regulation gave preference to the right of use before the right of the owner. Although the ownership of the land belonging to the cooperative was retained to the members, they lost one significant ownership

[5] Štefanovič (1982, p.16)

right, namely the right to dispose with the land, because the Act stipulated the restriction of the owner of the associated land to be disposed of or burdened (§23 Section 2). On the other hand, the right of the use by cooperative strengthens the legal status of cooperatives, because the Act transfers from the owners to the cooperative the right to use the land to the same extent as the owner. The cooperative had the right to change the nature of the land, draw on it, construct buildings on it and the cooperative could also rent the land. However, the content of the right of cooperative use was not the right to alienate and burden agricultural land. In addition to land consolidation, the Act in this part provides the regulation of the association of other production means into the cooperative. This means that live and dead inventory, seed, feed and farm buildings have been transferred to the cooperative provided that the amount of compensation and billing should be regulated by Model Statutes. In the fifth part of the Act governing the organisation of work and remuneration for work, the personal conduct of all work by the cooperative's employees was embedded, while the remuneration for work was governed by the quantity, quality and social importance of the work done. The sixth part was focused on the regulation of cooperative funds and the seventh part on the mutual cooperation of cooperatives. Mutual cooperation between cooperatives could be carried out by leaving the use of means of production to another cooperative, or by providing works and services (lower form of cooperation of cooperatives), or by setting up a joint cooperative enterprise by several cooperatives (higher form of mutual economic cooperation of cooperatives). The eighth part on the protection of cooperative management and cooperative assets was based on a precautionary clause by enshrining the obligation to protect cooperative assets, respect for cooperative democracy, regulation of liability for damage caused, modifying an agreement to entrust values to be accounted and regulating disciplinary measures. The ninth part included the regulation of relations between cooperatives and the state by the following the regulation: *"socialist cooperative agriculture forms an integral part of our socialist economic system"* (§48 Section 1). *Cooperatives adapt their production and economic activities to the needs of planned economic development, their production and supply of agricultural products ensure increasing supply of food to working people and raw materials to industry* (§ 48 Section 2 and Section 3). The state supervised cooperatives' activities by applying a method of persuasion, approving the statutes and their amendments, approving long-term and year-round plans, financial statements, important resolutions on cooperative measures, granting prior consent to measures required by the applicable regulation, additional review of important cooperative documents after their approval by the cooperative body. In the tenth part of the law, we find the regulation of the extinction of the cooperative only because the cooperative loses permanently the possibility of farming for the loss of the soil base, whereas the consent of the district national committee is necessary for the extinction of the cooperative. The eleventh part was aimed at regulating "property cessation" between a cooperative and a cooperative member when membership ceased to exist. Under this regulation, the cooperative shall bill and terminate all mutual claims within one month of the approval of the annual accounts by 1 April of the following year at the latest with cooperative members who have been withdrawn from the cooperative or have been expelled, or with the heirs who have not become members. Return of land, farm buildings, live and dead inventory, adequate amount of seed and feed will only be carried out after harvesting so that the excluded or expelled cooperative member could carry out the field works in time. The second Act on Common Agricultural Cooperatives (Act no. 49/1959 Coll.) significantly contributed to the development of the cooperative movement in agriculture, to the consolidation of the cooperative form of farming on agricultural land and to the development of legal relations in cooperatives. The legal regulation reflects the then existing political, social and production relations, which were also reflected in the newly adopted Constitution of the Czechoslovak Socialist Republic (Constitutional Act no. 100/1960 Coll.). In addition to the legal regulation itself, cooperative legal relationships significantly influenced other normative acts, in particular the Model Statutes, which were adopted by national CAC congresses and published as government regulations, and according to which each cooperative drew up its own statutes as an important internal rule of the cooperative. Figure 2 is an overview of the common agricultural cooperatives over the ten-year period 1950 - 1960. In 1960, the number of cooperatives increased to 2 683, which were farming on 65.8% of agricultural land.

Figure 2: Establishment of common agricultural cooperatives (CAC) of the type III and IV in Slovakia until 1960



Source: own processing at the Department of Law according to Demo et al.: History of Agriculture in Slovakia (Table 12.6 s.462)

The CAC Act was effective for 15 years until the adoption of the new statutory regulation by Act no. 122/1975 Coll. on Agricultural Cooperatives, by which starting a new stage of development of agricultural cooperatives, namely the stage of development of agri-food complex and concentration of production based on specialization and merging of cooperatives. It can be said that the Act on Agricultural Cooperatives was a detailed regulation of legal relations in agriculture, which sets out the basic rules for cooperatives' activities in the twelve sections elaborated in 118 paragraphs. The legal regulation emphasized the importance of the socialist agricultural cooperative and its state management and the nature, tasks, subject of activity and management of the cooperative have been established. In the legal regulation of the subject of the cooperative activity, the Act distinguishes the main subject of activity, namely agricultural large-scale production and associated production to ensure year-round employment of members, use of means of production, own and local material resources. The Act regulated in detail the formation and termination of membership

in the cooperative, the organization of the management and administration of the cooperative, the association of land and the association of other means of production.

In the fifth part, working relationships in the cooperative were established. Each member was ordered to work personally in the cooperative, and the rights and obligations between the member and the cooperative in the performance of the work were further regulated by a work agreement. In addition to the Act, the working relations of the members were governed by the Model Statutes [6], by the cooperative's work order and, supportively, by the Labour Code. The following parts of the Act provide the regulation of cooperative discipline, liability for damage and settlement of disputes between the cooperative and members by conciliation. The ninth part governed cooperation in agriculture by negotiating cooperative associations and establishing joint agricultural enterprises. The law encouraged merging of cooperatives into larger economic units in favour of further effective development of agricultural production. There were three reasons for the extinction of the cooperative: (1) the transition to the state agricultural organization; (2) the permanent loss of the soil base and (3) the division. The last provisions of the Act provide the regulation of the supervision of state over activities over cooperatives and other organisations.

The effectiveness of the Act on Agricultural Cooperatives lasted until July 1 1988, when the new Act no. 90/1988 Coll. on Agricultural Cooperatives entered into force repealing 21 implementing regulations in addition to the previous Act. The new Act on Agricultural Cooperatives does not bring major changes compared to the previous regulation. It is more transparent in the regulation of the legal status of the members of the cooperative, because in one part it regulates both the member and labour relations of the members, the cooperative discipline and the disciplinary measure. In addition to this Act, the labour relations of the members were governed by an amendment in their own statutes and, supportively, by the Labour Code.

Same as the previous regulation, the Act is based on the regulation of the right of cooperative use of associated land, which provides it for free and in unlimited time and entitles the cooperative to use land for fulfilling all its tasks. The Act no longer mentions the association of other means of production. For the first time, the Act provides for the pursuit of foreign-economic activities and the establishment of a foreign exchange fund when regulating the cooperative's subject of activity.

On 15 May 1990, the third Act on Agricultural Cooperatives (Act no. 162/1990 Coll.) adopted by the Federal Assembly of the Czech and Slovak Federal Republic entered into force. The provisions of the Act reflect the social, economic and constitutional changes of the "velvet revolution". Compared to the previous two Acts, this Act lacks a preamble, a statement on agricultural cooperative as part of the socialist agriculture under the leadership of the Communist Party. In the first and the second part of the legal regulation, in addition to the conceptual definition of the "cooperative", the formation of the cooperative and the requirements of the statutes were modified. The statutes stipulate among the mandatory requirements for the first time a provision on the amount and manner of determining the amount of a member's share, or basic membership fee or other ownership interest, the types and methods of their creation, use, evaluation or amortization, the method of subscription and their arrangement at cessation of membership (§ 4 Section 1 e). In addition to this regulation, the Act documents the effort to transform existing cooperatives into share cooperatives in § 56, which stipulates: "*Cooperatives that have not yet had membership shares may grant members the rights in their statutes that are related to member shares, based on associated land as well as the performance of work in the cooperative.*"

The legal regulation of membership, its formation and the ways and reasons for its extinction are governed in the Act depending on whether it is a membership with work participation or a membership without work participation. In its third part, the Act obliges the members to associate the land they own at the time of entering the cooperative to the extent determined by the statutes. To these lands, the cooperative acquired the right of cooperative use, which was free of charge and authorized the cooperative to use the associated land for all tasks, in particular to ensure agricultural production. Based on the requirements of the given period, the emerging social and economic relations on the principle of market relations, the Act contains a regulation of an agreement negotiated between the cooperative and members or other citizens on joint production. The Act also allows the establishment of self-help cooperatives of farmers (§54), which can be set up by citizens carrying out agricultural activities. The third Act on Agricultural Cooperatives was repealed by the Commercial Code, which entered into force on 1 January 1992.

Opinions on the development of cooperatives and its legal regulation, especially after 1948, vary and depend on how individual persons or their family members were affected by these changes.

Throughout its existence, the Department of Law of the Slovak University of Agriculture in Nitra in its research activities, in cooperation with practice, consulting and advisory activities, has gained much knowledge on past development from former self-employed farmers, members of cooperatives, cooperatives' managers, students and their family members as well as other citizens for whom the development of agriculture was not indifferent. Opinions and findings can be divided into two groups: (1) the group whose opinions condemning the development and its negative impact on private farmers and (2) the second group of views on the development of the cooperative as well as on the development of the relevant co-operative legislation, which understands this process positively. Critically assessed is the violation of the voluntary principle when entering the cooperative in the first stage of the cooperatives' establishment, either directly, e.g. by criminal prosecution of many resistant farmers, their displacement, various forms of intimidation of family members, or indirectly, by burdening private farmers with high mandatory supplies of agricultural products, so-called contingents in order to provide enough food for the post-war period, which actually forced the farmers to enter the CAC. Negatively assessed are the right of association of agricultural land and the creation of a new original right of cooperative land use, which prevailed over the land ownership right of individual cooperative members. Part of

[6] Government Regulation no. 137/1975 Coll

the right of use of the land was free of charge. According to the opinions, the cooperatives, in particular in the late 1950s and early 1960s, were economically stabilized and had sufficient funds to pay the rent for land use. From the 1970s, the process of merging agricultural cooperatives violating the principle that one agricultural cooperative should be established in each municipality is critically perceived. Although the large complexes have been created by merging cooperatives, where large-scale technology has been used more effectively, at the same time, the immediate relationship, the daily care of members for "their municipal cooperative", has disappeared and the merged cooperatives themselves have invested more in the development of the municipality in which they had they seat.

The second group of views on the development of the co-operative as well as on the development of the relevant co-operative legislation understands this process positively. According to these opinions, cooperatives have made a significant contribution to the development of agriculture and thus to rural development. Cooperatives have played a positive role in ensuring self-sufficiency in the production of plant and animal products, and the share of agricultural cooperatives in the development of rural employment is also important.

Development of agricultural cooperatives after 1990

The social and economic changes after 1989 also meant serious property and organizational impacts for cooperatives.

The basic regulation governing the legal status of cooperatives was the Commercial Code adopted in 1991 (Act no. 513/1991 Coll.), which established a common legal form of a cooperative regardless of the subject of activity. In terms of legislation, a cooperative is a business entity, a community of open number of persons, established for the purpose of carrying out business or providing for its members' economic, social or other needs. It differs from trading companies by the special regulation of internal relationships between the cooperative and members and between individual members. In its provision § 765, the Commercial Code imposed on cooperatives that were established prior to its entry into force (1 January 1992) to be converted into companies or cooperatives governed by the Commercial Code by a procedure governed by a separate act. This act was Act no. 42/1992 Coll. on the regulation of property relations and settlement of property claims in cooperatives.

In addition to the Commercial Code, other legislation was gradually approved in the legislative process to implement structural changes in agriculture, through which the transition from a centrally planned economy to a market economy should be carried out. These changes were enshrined in the Constitution of the Slovak Republic no. 460/1992 Coll. as amended.

Land-based business activities have been significantly affected by property restitution: Act no. 403/1990 Coll. on mitigation of some property injustice; Act no. 87/1991 Coll. on Extrajudicial Rehabilitation; Act no. 229/1991 Coll. on regulation of ownership relations to land and other agricultural property as amended (the First Restitution Act); Act no. 503/2003 Coll. on restitution of ownership to land (the Second Restitution Act). The privatization of state-owned enterprises was regulated by Act no. 92/1991 Coll. on conditions of transfer of state property to other persons (Act on Large-Scale Privatization).

Even before the process of cooperative transformation, the cooperative regulation mentioned in Act no. 427/1990 Coll. on the transfer of state ownership of certain entities to other legal entities and physical persons (Small Privatization Act), which blocked cooperatives from obtaining shares in privatized food production and commercial establishments. This avoids the connection between primary production represented by agricultural cooperatives with processors and trade.

The process of transformation of agricultural cooperatives itself was carried out on the basis of Act no. 42/1992 Coll. on the regulation of property relations and settlement of property claims in cooperatives (the so-called Transformation Act), up to now amended by eleven Acts, of which the most significant changes were introduced into the transformation process by Act no. 264/1995 Coll. (In practice referred to as the 1. Amendment to the Transformation Act) and Act no. 3/2005 Coll. (the so-called 2. Amendment to the Transformation Act). The Transformation Act established:

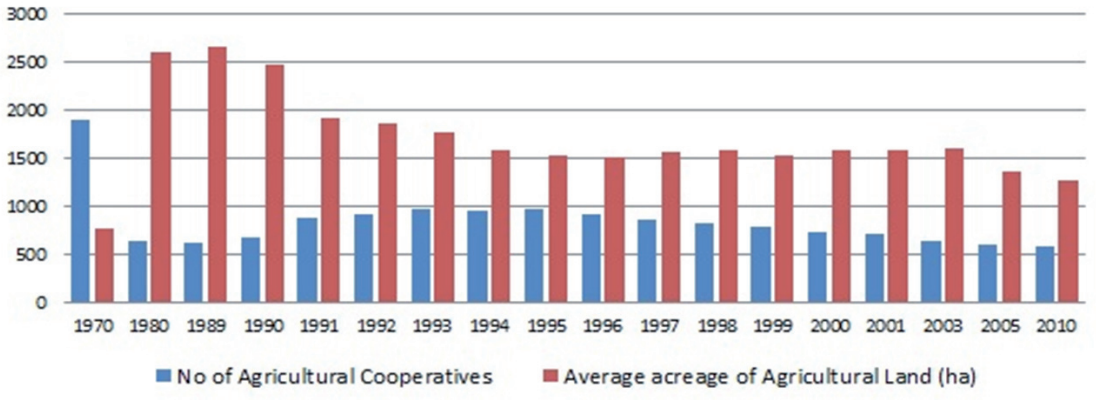
1. Method of regulation of the property relations and settling property claims in cooperatives by designating eligible persons, evaluating cooperative assets, quantifying net worth, determining the ownership shares of beneficiaries, developing and adopting a transformation project.
2. Method of adapting the internal legal conditions of the cooperative to the Commercial Code.
3. Eligible persons could also opt for a different form of business than the cooperative; therefore the Act also stipulated the method of converting cooperatives into other business forms under the Commercial Code.

As a result of the transformation of the cooperative, a transformation project was approved, which included a decision on the further existence of the cooperative or its transformation into a trading company (public company, limited partnership, Limited Liability Company and Joint Stock Company)

If the eligible natural persons did not become participants in the legal entity according to the transformation project and decided to carry out agricultural production, their ownership interest had to be issued within 90 days of the day when the authorized person applied for the extradition (§ 13 Section 2). The Transformation Act ensured to the other owners of the transformation share the issue of this share 7 years after the approval of the transformation project. Relying on available information sources, it can be stated that the number of self-employed farmers grew during this period (e.g. up to 7 572 in 1994). In the following years, the number of self-employed farmers stabilized, so in 2016 the number of registered natural persons engaged in agricultural production was 5 935. The reason for the increase of the number of self-employed farmers in those years was probably also the effort of the beneficiaries to obtain the calculated equity share within ninety days, many of whom tried to exercise their right in court.

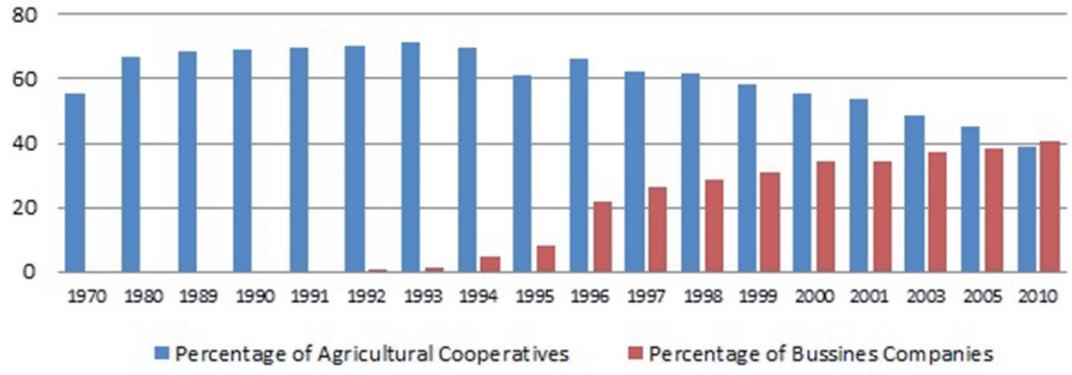
The transformation of agricultural cooperatives by adopting a transformation project should be done within the legal one-year period until 28 January 1993. According to the explanatory report to Act no. 264/1995 Coll.: *Since Act no. 42/1992 Coll. did not specify in detail the rights of shareholders of non-members of cooperatives and that the settlement of their property claims by issuing a matter or monetary compensation on a carrier*

Figure 3: Development of agricultural cooperatives



Source: Green Report, MARD SR, 1996 – 2010; Structural Census of Farms 2010; Statistical Yearbook 1970 – 2010; processing: SUA in Nitra, Department of Law

Figure 4: Percentage of cooperatives on land



Source: Green Report, MARD SR, 1993 – 2018; Structural Census of Farms 2010; processing: SUA in Nitra, Department of Law

scale proved to be unrealistic (property claims of eligible persons for settlement after 7 years amounted to SKK 12 290 million), the Act no. 264/1995 Coll. have been adopted, which amended Act no. 42/1992 Coll., according to which it was the duty of agricultural cooperatives to issue cooperative share certificates for the calculated shares as a special type of security. In this Act, the rights of shareholders incorporated in these securities, including their sale on the public securities market, were exhaustively determined.

Against this amendment to the Transformation Act, a group of deputies of the National Council of the Slovak Republic filed a petition for the Constitutional Court of the Slovak Republic to declare non-compliance of §13a, §17a – 17f and § 33b par. 1 and para. 3 second sentence with the Constitution. According to the petitioners, the pending property rights of beneficiaries calculated in the process of transformation have been retrospectively converted into another property right, namely the right to a share certificate as a security. They also objected to the unconstitutionality of the regulation (§17f), which obliges cooperatives to accept as members the eligible persons, non-members and owners of cooperative share certificates (hereinafter referred to as CSC), if they so request. The Constitutional Court in its judgment published under no. 218/1997 Coll. decides that Section 17f, third sentence of the Amendment to the Transformation Act does not comply with the Constitution of the Slovak Republic: the obligation of the cooperative to accept an eligible person of the CSC owner as a member of the cooperative. The other parts of the petition were not accepted. About 980 agricultural cooperatives were obliged to issue CSCs (Green report, 1999, Securities Centre of the Slovak Republic). As of July 1998, 521 issuers and issues were registered. In 2002, 640 CSC issues were registered, the number of which has not changed significantly in the coming years. Approximately 65% of cooperatives fulfilled the obligation to issue CSCs.

In order to complete the process of transformation of agricultural cooperatives, Act no. 3/2005 Coll. has been adopted,

which obliged the cooperatives that did not issue share certificates to eligible persons to do so by 31 May 2005. If the cooperative fails to comply with this obligation, the calculated shares of the eligible persons become a claim, which the cooperative is obliged to satisfy by 31 August 2005.

Despite the efforts of the legislator to amend and strengthen the legal status of transformed cooperatives and eligible persons by amendments to the Transformation Act, their legal status and entitlements were influenced by other factors, namely internal socio-economic development, state aid to agriculture and the economic results of cooperatives. The chances of many eligible persons to acquire a property transformation were failing in particular in those cooperatives that were not able to economically secure the production tasks in a complex competitive environment, and at the same time capitalizing share certificates. Many transformed cooperatives have been cancelled due to poor economic results, or a bankruptcy for their property have been imposed due to their decline, in which the eligible persons demanded their claims, but generally without any settlement for the lack of assets of the declined cooperative.

There are many contradictory views on the transformation process of agricultural cooperatives. According to remarkable and accepted opinion, there are two groups of cooperatives that exist in Slovakia since the 1990s [(7)]. There are (1) cooperatives that have not undergone a transformation process (cooperatives established after 1992), which already have a better starting point for doing business by not having started to act as indebted entities; and (2) cooperatives that have undergone a transformation process (cooperatives established before 1992). A special feature of transformed cooperatives is the fact that property rights in them have persons who are not their members. This situation is disadvantageous for both parties. On the one hand, there are eligible persons who are not members of the cooperative but have property rights in it, but cannot interfere with the management of the cooperative as the members of the cooperative. On the other hand, there are the cooperative members, who are not the exclusive owners of the cooperative's assets.

Over the last almost twenty years, agricultural cooperatives have gone through complex changes, both in terms of normative regulations and structural changes in the agricultural sector. The following Figure 3 shows the development trend of the number of agricultural cooperatives in Slovakia, as well as the development trend of the average area of agricultural land that they farmed in 1970 – 2010.

As can be seen from Figure 3, the average area of agricultural land has declined over the period approximately the same as declined the number of agricultural cooperatives in Slovakia.

After 1994 (Figure 4), the share of trading companies farming on agricultural land started to increase and in 2010 it slightly exceeded the share of agricultural cooperatives.

The current legislation of the cooperative is enshrined in the provisions of §221 – 260 of the Commercial Code (Second Part. Trading Companies. Title First. Trading Companies. Title Second. Cooperative). It is a general regulation applicable to all cooperatives regardless the subject of their activity. There are three special provisions in the legal regulation applicable to a particular type of cooperative, namely §230, which regulates the transfer of rights and obligations associated with membership in the housing cooperative, §232 Section 2, according to which the board of directors' consent to acquire membership rights and obligations is not required if the member has acquired rights and obligations related to membership in the housing cooperative and §234 Section 2, which regulates the entitlement to return of agricultural land included into the cooperative. Compared to trading companies, the basic conceptual definition of a cooperative implies that a cooperative is a community established for the purpose of doing business or securing the economic, social or other needs of its members. Under such legal regulation, in many cooperatives the entrepreneurial activity, which is the source of income, is linked to social activity, the implementation and scope of which are determined by business income.

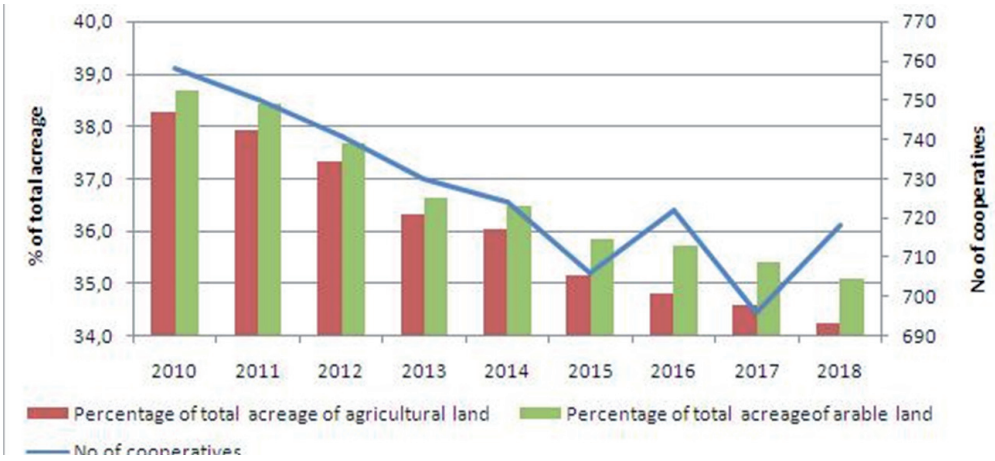
The current legal regulation of the cooperative is characterised by openness. New members can join the cooperative and current members can leave without having to change the basic document – cooperative statutes and Business Register entries. The openness of the cooperative is governed by the legal regulation of the capital, which is the sum of all member deposits (§ 223), but only a part of the so-called registered capital is recorded in the Business Register, which must be at least EUR 1,250.

A cooperative must have a minimum membership base both at its establishment and throughout its existence representing by either five natural persons or two legal entities. Establishing a cooperative is easier and is not as formalized as establishing a trading company. In the presence of a notary who draws up a notarial deed, the cooperative shall be constituted by a constituent meeting, which determines the amount of registered capital, approves the statutes, elects the board of directors and the control committee. The persons who have submitted the application to the cooperative have the right to vote at the meeting. A cooperative as a legal entity arises on the date of its entry in the Business Register provided that half of the registered capital is paid. The legal regulation of the cooperative establishes the cooperative as a share cooperative, where the member's share expresses the participation rate of a member in the cooperative, the amount of which is determined according to the ratio of the member's deposit to the registered capital, unless the statutes of the cooperative regulate its amount otherwise. The amount of the membership deposit may be determined differently for individual members, for example for members as natural persons and members as legal entities.

The regulation of the different amounts of membership deposits, as well as the regulation of the payment obligation to cover cooperative losses, which can bind only some members, is enshrined in the statutes of the cooperative and breaks the principle of equality of members. However, in such regulation, attention must be paid not to discriminate the minority, which is prohibited by the Code (§56a) or to prevent abuse of the law (§265). Breaking the principle of equality of members may also be a modification of the voting of members in the statutes of the cooperative. Under the legal regulation (§240), the principle of equal voting rights applies – each member has one vote. It is possible to modify this principle by the statutes in ac-

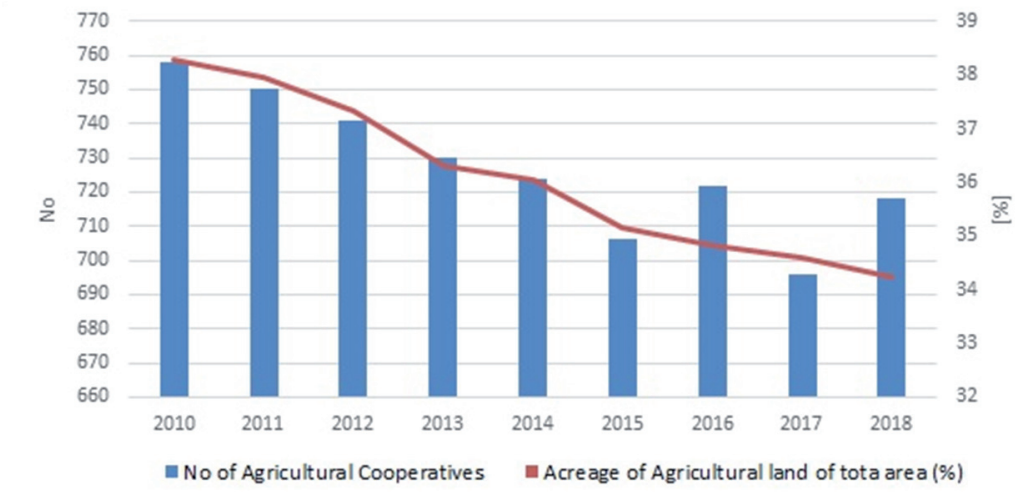
[(7)] Lazíková – Bandlerová (2005 p.130)

Figure 5: Development of cooperative form of business in Slovakia in 2010 – 2018



Source: The selection from the report OSEV 3–01, legal form 205 (cooperative)

Figure 6: Percentage of cooperatives on agricultural land



Source: Research Institute of Agricultural and Food Economics – based on a selection made from the report OSEV 3–01, legal form 205 (cooperative)

cordance with the different amount of members' property participation in the cooperative's registered capital. A member of a cooperative may be a natural or legal person. The formation of membership, its duration and its extinction are governed by the voluntary principle. It depends on the candidate's will to apply for a member, how long he/she stays in the cooperative, or decide to leave it. Membership may be modified in the statutes as a membership with employment relationship – in this case, only a natural person with a labour-law capability may become a member of the cooperative.

In its mandatory provision, the Act provides regulation that membership cannot be incurred prior to payment of the entry deposit. Legal facts that result in the extinction of membership are written agreement, withdrawal, exclusion, bankruptcy of a member's property, rejection of a bankruptcy petition for a member's lack of assets or the extinction of a cooperative. Membership ceases to exist upon termination of the member's employment relationship. Furthermore, membership is terminated by transfer of membership rights and obligations to another person. Membership of a natural person is terminated by his/hers death and membership of a legal entity is terminated by its extinction. The range of legal facts that result in the termination of membership cannot be extended in the statutes.

In terms of legal regulation, obligatory bodies of the cooperative are: a member meeting, a board of directors and a control committee. The statutes may stipulate and regulate that other facultative bodies shall be established in the cooperative. A member meeting as the supreme body includes all members of the cooperative who decide on the most important issues (exclusive competence of the member meeting). The board of

directors is the statutory and executive body, deciding on the current activities of the cooperative. Although the Act does not provide for a minimum number of members of the board of directors, they must be at least two in order to perform those legal acts for which a written form is required (§243 Section 3). The control committee has at least three members. It is entitled to control all cooperative activities and discusses complaints from members. As regards the regulation of the extinction of a cooperative, the cooperative as a subject of rights and obligations ceases to exist by deletion from the Business Register, which must be preceded by the extinction of the cooperative by liquidation or without liquidation (§254).

By incorporating the legislation of the cooperative into a special Title in the second part of the Commercial Code, its independence and separation from the regulation of trading companies is highlighted. In spite of the differences in the regulation of this business entity, the Act allows to apply on cooperative the general provisions on trading companies appropriately if there is no special regulation for the cooperative.

On the basis of the mentioned facts we can say that the cooperative, as a separated form of business, is still advantageous for all areas of business, it means also for agricultural business. By enshrining the legal form of the cooperative, the current legal regulation extends the range of business entities and offers to those interested in business a wider choice of forms of legal entities. The advantage of a cooperative form of business is highlighted by its flexibility, as there is no need to make changes in the business register every time a membership base is changed. Furthermore, it is the anonymity of members not enrolled in the business register. The cooperative conducts only a non-public list of its members. In comparison with a similar regulation of a limited liability company, the regulation of a cooperative as a business form is simpler and more liberal, given the dozens of dispositive provisions concerning the statutes (about 45 provisions) of the cooperative. The statutes of the cooperative, as the basic document approved by the members of the cooperative during its establishment, deal with the fundamental issues of the internal organization of the cooperative, the mutual relations between the cooperative and its members, the mutual rights and obligations of the members towards the cooperative, the legal status of the cooperative towards third parties. The statutes of the cooperative must contain seven obligatory elements (§226) prescribed by the Commercial Code. In addition, they must specify the other facts arising from the Commercial Code, namely: determining the amount of registered capital, the method of valuation of non-monetary deposits, determining the deadline for member's leaving, determining the time limits for member meeting, determining the manner of decision making and statutory body in the cooperative with less than five legal entities and term of office of cooperative's bodies. The statutes may optionally regulate other facts that the Commercial Code does not regulate sufficiently or does not regulate at all, but they are important for the activity of a particular cooperative, for its internal organization and the regulation of mutual relations.

Figure 5 illustrates the current state of development of agricultural cooperatives as well as the percentage of agricultural and, in particular, arable land for the period 2010 – 2018. In each of the years under review, there was a slight decrease in the number of cooperatives. Forty agricultural cooperatives ceased to exist in the eight-year period.

The decline in the number of cooperatives between 2010 and 2018 is also reflected in a decline of the share of the agricultural land on which they farm (Figure 6). In 2018, agricultural cooperatives farmed at 657 350 hectares representing 34,25% of total agricultural land in Slovakia.

IV. Conclusion

Based on the analysis of the development of the cooperative legislation, it can be stated that the cooperative as a special business entity has its place in the structure of business entities even under current market conditions. Unlike trading companies, a cooperative as a legal entity was established spontaneously during the history and in several countries almost simultaneously to deal with the economic situation of its members by mutual help and economic self-help of members. In the conditions of the Czechoslovak Republic, especially since 1949, the gradual acceptance of rigorous regulations to the cooperative as a legal entity operating mainly in the agricultural sector (CAC Acts, Acts on Agricultural Cooperatives) has weakened the core ideas of cooperative societies and a directive regulation has started to prevail. The current legislation has united all types of cooperatives. The regulation is uniform, regardless the cooperative's subject of activity, and represents therefore an appropriate form for carrying out business activities in any area, including agriculture.

References

1. BANDLEROVÁ, A. 2001. Podnikanie formou družstva na Slovensku. In: Zborník vedeckých prác Medzinárodné vedecké dni: Ekonomické a manažérske aspekty trvalo udržateľného rozvoja poľnohospodárstva, 2001, s. 263-268 ISBN 80-7137-867-4.
2. BANDLEROVÁ, A. – LAZÍKOVÁ, J. 2005. Some reasons that influence agrarian Land market development - Case of Slovakia. In: Development of Land Markets and Related Institutions in Countries of Central and Eastern Europe, Regional Workshop FAO, Nitra: SPU, 2005 ISBN 80-8069-515-6 3.
3. ČINTALA, P. 2007. O Európskom družstve. Žilina: PORADCA, 2007, no.11, pp. 52 ISSN 1335-1583.
4. DEMO, M. a kol. 2001. Dejiny poľnohospodárstva na Slovensku. Nitra: SPU, 2001. 662 s. ISBN 80-7137-894-1.
5. GÁBRIŠ, T. 2012. Právo a dejiny. Právnohistorická propedeutika. Kraków: Spolok Slovákov v Poľsku, 2012. 255 ps. ISBN 978-83-7490-490-2.
6. LAZÍKOVÁ, J.- BANDLEROVÁ A. 2007. Družstvo ako forma podnikania v poľnohospodárstve v podmienkach Slovenska. In: Podnikanie na poľnohospodárskej pôde vo väzbe na rozvoj vidieka, SPU: Nitra, 2007 s. 127 – 141 ISBN 978-80-8069 -872-0.
7. MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT. 2018. Report on agriculture and food industry. Green report. Bratislava: Ministry of Agriculture and Rural Development, 2018.
8. SUCHOŽA, J. a kol. 2003 Obchodní zákonník a súvisiace predpisy. Komentár. Bratislava Eurounion, 2003.1017s. ISBN 80-88984-51-3.
9. ŠKRINIAROVÁ, K.- BANDLEROVÁ, A.- ILKOVÁ, Z. 2012. Nezrovnalosti v počtoch poľnohospodárskych družstiev na Slovensku. In Ekonomika poľnohospodárstva č. 4 2012. s.35-47 ISSN 1335-6186.

10. ŠTEFANOVIČ, M. 1982. Právne vzťahy JRD. Bratislava: Príroda 1982 . 259s.
11. ŠÚBERTOVÁ, E. 2004. Družstevníctvo v procese globalizácie. Bratislava: KARTPRINT 2004. s.35 ISBN80-88870-34-8.
12. Act no. 513/1991 Coll. Commercial Code.
13. Act no. 69/1949 Coll. on Common Agricultural Cooperatives.
14. Act no. 49/1959 Coll. on Common Agricultural Cooperatives.
15. Act no. 122/1975 Coll. on agricultural cooperatives.
16. Act no. 90/1988 Coll. on agricultural cooperatives.
17. Act no. 162/1990 Coll. on agricultural cooperatives.

Contact address/ Kontaktná adresa

Doc. JUDr. Zuzana Ilková, PhD.
Department of Law, FESRD, SUA in Nitra, Tr. A. Hlinku 2, 949 76 Nitra
e-mail: zuzana.ilkova@uniag.sk
Ing. Zuzana Lazíková
Department of Law, FESRD, SUA in Nitra, Tr. A. Hlinku 2, 949 76 Nitra
e-mail: xlazikova@is.uniag.sk
Prof. JUDr. Anna Bandlerová, PhD.
Department of Law, FESRD, SUA in Nitra, Tr. A. Hlinku 2, 949 76 Nitra
e-mail: anna.bandlerova@uniag.sk
Doc. JUDr. Ing. Jarmila Lazíková, PhD.
Department of Law, FESRD, SUA in Nitra, Tr. A. Hlinku 2, 949 76 Nitra
e-mail: jarmila.lazikova@uniag.sk

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A NOTE ON THE CURRENT STATE OF LEGISLATIVE PLANT PEST PROTECTION IN EU LAW

POZNÁMKA K AKTUÁLNEMU STAVU LEGISLATÍVNEJ OCHRANY PRED RASTLINNÝMI ŠKODCA V PRÁVE EÚ

Martin ILLÁŠ*

I. Introduction

On August 31st 2019, the deadline for Member States of the European Union to transpose the Commission Implementing Directive (EU) 2019/523 of 21 March 2019 amending Annexes I to V to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ L 86, 28.3.2019) (hereafter "Directive 2019/523") expired. The Slovak Republic failed to meet this deadline for several more or less serious reasons. Nevertheless, the Slovak Republic transposed Directive 2019/523 into its law by Regulation of the Government of the Slovak Republic No. 21/2020 Coll. Amending Regulation of the Government of the Slovak Republic No. 199/2005 Coll. on protective measures against the introduction and spread of organisms harmful to plants or plant products, as amended.

The failure to comply with the deadline for transposing Directive 2019/523 was caused by a number of factors consisting in the considerable scope of the legislation and its complexity but also in the lack of clarity in certain parts of that legislation and in its relation to other legally binding acts of the European Union and the legal orders of the Member States.

The aim of this paper is to draw attention to the problematic developments in the current legislative protection against the introduction of plant pests both in terms of the quality of this legislation and in relation of the European Union law to the rights of the Member States of the European Union.

II. Results and Discussion

One of the factors mentioned is the considerable scope of the legislation, which follows directly from the scope of Directive 2019/523 and which, after transposition into the legal order of the Slovak Republic, amounts 183 pages of text. From the outset, this has been the reason for the lengthy nature of each stage of the legislative process in which the text underwent modifications, which was labour-intensive and time consuming.

Abstract (EN)

The current developments in the European legislative protection against the introduction of plant pests is problematic in terms of its quality and in relation of the EU law to the law of EU Member States. The quality of this legislation is significant by non-uniform wording used in Directive 2019/523 and in Council Directive 2000/29/EC, especially in geographical indications, names of taxonomic units of organisms and listing of requirements, conditions, states, plants, plant products and organisms. Another problematic phenomenon of the uncertainty of the EU Member states caused by very slow European law-making process regarding to adoption of implementing regulations, which needed to enter into force on December 14th 2019 based on Regulation 2016/2031 repealing the present legislation in plant pest protection covered by seven older directives. Despite of this fact, the EU amended simultaneously this older legislation only a very short time before the date of repealing.

Keywords (EN)

plant pest protection, European legislative process, non-uniformity of legislative terms

Abstrakt (SK)

Súčasný vývoj európskej legislatívnej ochrany pred zavlečením rastlinných škodcov je problematický pokiaľ ide o kvalitu legislatívy ako aj vzťah práva Európskej únie k právam členských štátov Európskej únie. Kvalita tejto legislatívy je poznačená nejednotnosťou textov smernice ĚÚ) 2019/523 a smernice rady (ES) 2000/29/ES predovšetkým v geografických označeniach, taxonomických názvoch organizmov a uvádzania požiadaviek, podmienok, štátov, rastlín, rastlinných produktov a organizmov. Ďalším problematickým javom je neistota členských štátov Európskej únie zapríčinená veľmi pomalým procesom európskej normotvorby pri prijatí vykonávacích nariadení, ktoré mali nadobudnúť účinnosť 14. Decembra 2014 v nadväznosti na nariadenie (EÚ) 2016/2031, ktoré zrušilo dovtedajšiu legislatívnu ochranu pre rastlinnými škodcami upravenú siedmymi staršími smernicami. Napriek tejto skutočnosti Európska únia zároveň novelizovala túto staršiu legislatívu iba veľmi krátko pred dátumom jej zrušenia.

Kľúčové slová (SK)

ochrana pred rastlinnými škodcami, európska normotvorba, nejednotnosť legislatívnych pojmov

* Ministry for Agriculture and Rural Development of the Slovak Republic, Slovakia

However, the more complex factor was the content of the legislation itself and in particular the vast number of non-uniform and ambiguous wording used both in the text of Directive 2019/523 and in Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ L 169, 10.7.2000) (hereafter "Directive 2000/29"). This has made it difficult not only to transpose Directive 2019/523 but also to assess the context with the current wording of Directive 2000/29, on which Directive 2019/523 is dependent as an amendment.

These difficulties mainly concerned the following areas:

Geographical indications

The problematic terminology in this area concerns both the reference English text and the Slovak language version.

The text of Directive 2000/29 (as a generally binding legislation) lacks, beside other definitions, a clear definition of the term "third country". This term and its definition is important for the whole of Directive 2000/29, since it lays down various prohibitions and restrictions on imports of plants, parts of plants or plant products originating in the "third countries". Although it is clear from the context of the legislation that it is a country, which is not a Member State of the European Union, we do not find an explicit definition in Directive 2000/29. Even the Treaty on the Functioning of the European Union is not able to help us because it does not define this important term. However, the legislation should undoubtedly provide a clear definition of such an important concept.

In the text of Directive 2000/29, the distinction between the terms "non-European" ("neeurópsky") and "other than European" ("mimoeurópsky" alebo "iný než európsky") is not clear. It is apparent from several instances of the use of these terms that the term "other than European" ("iné než európske") refers only to the so-called "third countries" (as opposed to "European third countries"), but in many examples this is not the case, since the "third countries" are not mentioned. It is therefore not possible to determine unequivocally whether these terms regard the countries outside the European Union, countries outside the European continent or only third countries on the European continent. This is particularly problematic in classifying the Russian Federation and the Republic of Turkey in either of these categories, as both Russia and Turkey are located on two continents – Europe and Asia – so they can be described as "other than European countries", as "other than European third countries" but also as "non-European" countries.

The content of the term "Mediterranean" ("stredozemské" or "stredomorské") countries is unclear because the Directive 2000/29 does not define whether a country's Mediterranean location is determined, for example, by having a coastline on the Mediterranean or belonging to a Mediterranean geomorphological area, the Mediterranean phytogeographical area or an otherwise designated Mediterranean geographical area. This is particularly problematic in the classification of countries such as Northern Macedonia, Serbia, San Marino or Andorra, which belong to the geomorphologically and phytogeographically demarcated Mediterranean area, but are not the coastal states of the Mediterranean.

In addition to this factual content of the term, there is also the problem of its translation into Slovak in two forms "stredozemské" and "stredomorské", where it is not at all clear what reason for this duality the translation service of the European Commission had.

The content of the term "American continent" ("americký kontinent") is unclear because, according to the normal geographical understanding of the number of continents, there are two American continents (North America and South America). For this reason, there is no clear distinction between the terms 'American' and 'North America', since the term 'American' may refer to both the continents mentioned, or only to one of them, what is not clear from the term itself.

The term "South Africa" is unclear, as the Directive 2000/29 does not indicate whether it is a geographical area (i.e. the south of African continent) or a Republic of South Africa (i.e. the state defined by its borders). If it should be a geographical area of the south of African continent, then it is not clear by what and how this area is defined, i.e. whether it is a South African geomorphological region, a South African phytogeographical region, or an otherwise designated South African geographical region (for example, south of a designated parallel line). If it is to be only the Republic of South Africa, it is not clear why the Directive 2000/29 does not affect the also the states which form a single land unit with Republic of South Africa, i.e. Lesotho and Swaziland (i.e. an area with identical plant species and their pests).

Names of species, genera and other taxonomic units of plants and animals

Problems of this kind are caused solely by inconsistent and incorrect translation of Directive 2000/29 and Directive 2019/523 into Slovak.

In the Slovak language version, there is the designation "family nosáčikovité (*Scolytidae*)" and also the term "family podkôrnikovité (*Scolytidae*)". However, this is a mistake, because if it is to be a *Scolytidae* family it had to be translated as "podkôrnikovité". However, if it is to be a group of "nosáčikovité", it should be a subfamily *Scolytinae*. This discrepancy is not negligible since the *Scolytinae* subfamily includes about 6,000 species, while the Scolytidae family up to 60,000 species of beetles. However, the Directive 2000/29 in the English reference language contains only the designation of the family *Scolytidae*, what means "podkôrnikovité".

In the Slovak language version, the name of genus *Prunus* is used in many cases explicitly only for plum, although the genus *Prunus* also includes species such as cherry, sour cherry, peach, apricot, almond and others. It is therefore not clear in which cases all species of this genus *Prunus* should be concerned and in which cases only the plum. However, the Directive 2000/29 in the English reference language uses only the Latin generic name *Prunus* covering its all species.

Requirements for approval processes and other import conditions

This problematic texting concerns the individual conditions and requirements that have to be fulfilled when certain plants, plant parts and plant products are imported into the European

Union, respectively to specific areas.

In the English reference text of Directive 2000/29 as well as in its Slovak language version, the word "except" ("okrem") is used differently with connection with the words "but including" ("ale vrátane"). This includes the listing of various commodities, plant genera and species or pest organisms, the listing of the various countries of origin of these commodities or the occurrence of species and organisms, as well as the conditions and import requirements. In many cases, it is not at all clear from the wording of Directive 2000/29 what constitutes an exception to the established list or an established rule when introduced by the word "except" and what, on the contrary, is covered by an established rule or is included in an established list when introduced by the words "but including".

In a large number of different requirements and conditions, which are usually listed in the Annexes to Directive 2000/29 in the right-hand column [as a rule in points (a), (b), (c) ....] or points [(i), (ii) , (iii) ....], the conjunctions "and" ("a") and "or" ("alebo") are used opaque. In these cases, it is not possible to assess whether the stated conditions are to be met cumulatively or alternatively. This is particularly problematic in cases where part of the conditions or requirements stated are separated by the word "and" but some of them only by word "or". This brings chaos into the application of this legislation and collide with the legal certainty of the persons concerned who do not know whether they have or not have to meet the stated conditions at once or only some of them. Equally, the authorities are faced with the problem of requiring the fulfillment of all conditions together, or it is sufficient to fulfill one or only some of them, and if only some, which of them.

A very serious circumstance that the Slovak Republic had to take into account when transposing Directive 2019/523 is that a substantial part of the amended Directive 2000/29 including most of its annexes, as well as six other directives regulating plant pests and disease prevention measures and protection against their introduction into the European Union were repealed from December 14th 2019 by Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC (OJ L 317, 23.11.2016) (hereafter "Regulation 2016/2031"). However, Regulation 2016/2031 does not at all replace the numerous protective measures, lists of species and genera of organisms, plant commodities, the requirements and conditions laid down by the Directives repealed by it. Regulation 2016/2031 repealed these Directives almost without adoption or reception of their content (with the exception of some parts of the provisions of the repealed Directives), but did not oblige the Member States of the European Union to retain the existing legislative protection against the introduction of plant pests. The Member States of the European Union found themselves in a very uncertain situation, as they had to wait until the European Commission issues implementing regulations containing the legislation previously contained in the repealed Directives without any guarantee that it happens on December 14th 2019 at latest. These implementing regulations were published on December 10th and 13th 2019[1], i.e. at the latest possible moment. Nevertheless, the Member States should as a reason of repealing the seven Directives referred to above including the Directive 2000/29 (repealed in most of its text), have started the legislative process of removing the transposed legislation from their own legal systems. This was, of course, unthinkable, as it could possibly cause the legislative vacuum and consequently allow the spread of plant pests, including quarantine ones. Therefore, depending on the adoption of the relevant implementing regulations for Regulation 2016/2031, it was not in the public interest to repeal national legislation by which Member States of the European Union, including the Slovak Republic, have transposed the seven abovementioned Directives repealed from December 14th 2019 by Regulation 2016/2031.

Another interesting circumstance the Slovak Republic had to take into account was that although it has been known since 2016 that Regulation 2016/2031 should repeal a substantial part of Directive 2000/29 with effect from December 14th 2019, the European Union in 2019 adopted an amendment to Directive 2000/29 (i.e. Directive 2019/523) with effect from August 31st 2019. The Member States of the European Union therefore faced the task of extensively amending their national provisions transposing Directive 2000/29, although only three and a half months remained until the repeal of most of its provisions and annexes.

III. Conclusions

It is natural that if there is a need to regulate a particular area of social relations in a new or different way, irrelevant if in terms of content or form, or if the necessity and urgency of the situation requires, new legislation should be adopted. This applies to any legal order, i.e. also to European Union law. However, in the circumstances described above when the new legislation is in force for several years and its legisvacant period is just before its expiry, and despite of that a sudden and extensive amendment to the old legislation is adopted, the question arises what is the substance and practical purpose and meaning of such a European law-making and whether it is fair to all addressees of this legislation. It is clear that the impact this European law-making has on the legal certainty of the undertakers concerned and the competent authorities of the Member States is not positive. Not to mention the risk of the serious threat to the public interest in the protection against the introduction of plant pests into the European Union as a result of the uncer-

[1] Commission Implementing Regulation (EU) 2019/2072 of 28 November 2019 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2018/2019 (OJ L 319, 10.12.2019). Commission Implementing Regulation (EU) 2019/2148 of 13 December 2019 on specific rules concerning the release of plants, plant products and other objects from quarantine stations and confinement facilities pursuant to Regulation (EU) 2016/2031 of the European Parliament and of the Council (OJ L 325, 16.12.2019).

tainty in repealing of the old and adoption of the new legislative protection against this risk.

Therefore, the Slovak Republic as a Member State of the European Union, cannot be denounced for the breach of European law if, despite its obligation under the Treaty on the Functioning of the European Union, it proceeds very carefully and reservedly to transpose the Directive 5019/523, which will soon become invalid. Similarly, no Member State can be criticized if it does not intend to take the risk of creating a legislative vacuum in such an important area as protection against the introduction of plant pests because of the non-conceptual and slow European law-making process.

Contact address/ Kontaktná adresa

Mgr. Martin Illáš
Ministry for Agriculture and Rural Development of the Slovak Republic
Dobrovičova 12, 812 66 Bratislava
tel.: +421 599 266 404
e-mail: martin.illas@land.gov.sk

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THE ROLE OF LOCAL CONTRACTING AUTHORITIES IN GREEN PURCHASING OF PAPER PRODUCTS

POSTAVENIE MIESTNYCH SUBJEKTOV VEREJNEJ SPRÁVY PRI ZELENOM VEREJNOM OBSTARÁVANÍ PAPIEROVÝCH PRODUKTOV

Tomáš MALATINEC - Ján KYJOVSKÝ*

I. Introduction

In order to completely exploit the potential of Public Procurement to achieve the Europe 2020 objectives for smart, sustainable and inclusive growth, the environmental, social and innovative procurement also has to have a role in the EU. Green Public Procurement (GPP) currently represents a voluntary tool of public administration to support eco-innovations and sustainable economy. Public entities make up a significant group of consumers of products, and through their public contracts they are able to positively influence sustainable consumption. GPP can help stimulate a critical mass of demand for more sustainable goods and services which otherwise would be difficult to get onto the market(1).

(1) European Commission. (2019). Green Public Procurement. Available online: https://ec.europa.eu/environment/gpp/index_en.htm.

Abstract (EN)

Green Public Procurement is currently a voluntary instrument to promote Sustainable Consumption and Production and Sustainable Industrial Policy. Surveys in this field help to understand how individual States, Public Authorities and Organizations, are approaching this voluntary instrument and thus how far they support Eco-Innovations and Sustainable Economy. Our survey focuses on mapping of units of local self-governments in the Slovak Republic that carried out Green Public Procurement in the category of paper products through the Electronic Contracting System (ECS) in 2017. We consider local self-government units to be major consumers of paper products, especially because of their extensive administration, what makes them a target group to promote the use of Green Public Procurement in a given category in practice. The total number of contracts awarded through the ECS in 2017 was 471. As the results show, the share of Green Public Procurements in the total number of Public Procurements in the Slovak Republic in 2017 was not satisfactory. In order to improve the situation, it is necessary to further deepen the targeted dissemination of examples of good practice in Green Public Procurement.

Keywords (EN)

green public procurement, local self-governments, paper products

Benefits of Green Public Procurement are visible in particular in meeting specific environmental objectives and tasks (e.g. energy efficiency, conservation of natural resources, reducing CO_2 emissions); improving social and health conditions (e.g. improving quality of life, health protection); saving costs; strengthening the confidence of citizens, entrepreneurs and society toward public administration; promoting innovation; supporting the development competitive environmental goods and services; and expanding the market for such products.(2)

(2) Ministry of Environment. (2019). Strategy of the Environmental Policy of the Slovak Republic until 2030. Available online: https://www.minzp.sk/files/iep/greener_slovakia-strategy_of_the_environmental_policy_of_the_slovak_republic_until_2030.pdf.

Abstrakt (SK)

Zelené verejné obstarávanie v súčasnosti predstavuje dobrovoľný nástroj na podporu udržateľnej spotreby a výroby a udržateľnej priemyselnej politiky. Prieskumy orientované na túto oblasť pomáhajú porozumieť, ako jednotlivé štáty, orgány a organizácie, v súčasnej dobe pristupujú k napĺňaniu tohto dobrovoľného nástroja, a teda v akej miere podporujú eko-inovácie a udržateľnú ekonomiku. Náš prieskum sa zameriava na mapovanie jednotiek samospráv v Slovenskej republike, ktoré realizovali zelené verejné obstarávanie v roku 2017 v kategórií papierové produkty prostredníctvom Elektronického kontrakčného systému (EKS). Jednotky samospráv považujeme za významných spotrebiteľov papierových produktov, najmä vzhľadom na ich rozsiahlu administratívu, čo z nich vytvára cieľovú skupinu na podporu využívania zeleného verejného obstarávania v danej kategórii v praxi. Celkový počet zadaných zákaziek prostredníctvom Elektronického kontrakčného systému (EKS) v roku 2017 bol 471. Ako to z prieskumu vyplýva, podiel zelených verejných obstarávaní na celkovom počte verejných obstarávaní v Slovenskej republike v roku 2017 nebol uspokojivý. Za účelom zlepšenia danej situácie je preto potrebné naďalej prehlbovať cielené šírenie príkladov dobrej praxe zeleného verejného obstarávania vo verejnej sfére.

Kľúčové slová (SK)

zelené verejné obstarávanie, miestna územná samospráva, papier

* Technical University of Košice, Slovakia

Green Public Procurement can bring other benefits depending on sector of implementation.[3]

The EU Public Procurement Directives[4], [5], emphasize the application of strategic public procurement, which includes environmental, social and innovative elements and the promotion of small and medium-size enterprises. It is a horizontal tool of public procurement.

Act on Public Procurement[6] allows contracting authorities to develop a description of the object of the contract on the basis of performance and functional requirements, which may include environmental characteristics; technical requirements must be determined on a way to make clear all of the conditions and circumstances relevant to the elaboration of the offer. Contracting authorities may determine specific conditions relating to the performance of a contract. These specific conditions may include economic, social, environmental, innovation-related or employment-related aspects. The contracting authority may require the submission of a certificate certifying compliance with the requirements of the Environmental Management System Standards issued by an independent body.

According to the Strategy for the Environmental Policy of the Slovak Republic [7], Green Public Procurement will cover at least 70% of the total value of all public procurements by 2030. Green Public Procurement will be mandatory for the central government, self-governing regions and cities - initially only for selected product groups, later it will gradually expand to achieve the target by 2030. The Electronic Public Procurement will ensure simple and transparent procurement and monitoring of the Green Public Procurement.

The aim of the article is to evaluate the practice of contracting authorities in the implementation of Green Public Procurement in the group of paper products with emphasis on the position of local subjects of public administration.

II. Theoretical background

The concept of Green Public Procurement increases in promotion at the level of the European Union and its Member States. Green Public Procurement is an important tool for achieving environmental policy objectives, which are in connection with climate change, use of natural resources and sustainable consumption and production, especially seeing the importance of public sector spending on goods and services in Europe.[8]

Based on World Bank data, the EU28 average expenditures on goods and services of public sector have been around 20% with a slight downward trend since the crisis in 2007-2008. It should be noted, that it is mostly the consumption with a significant impact on the environment. At the same time in this context we are able to state that public sector has an important role to play in creating sustainable consumption. Public authorities have the potential to change the direction of overall production and consumption by promoting environmentally friendly products and services.[9]

We observe that GPP enjoys increased attention of leading institutions of the EU in recent years.

The European Commission has published voluntary EU GPP criteria for 19 product groups. *"Core GPP criteria address the most significant environmental impacts and are designed to be used with minimum additional verification effort or cost increases. Comprehensive GPP criteria are intended for use by authorities who seek to purchase the best environmental products available on the market and may require additional administrative effort or imply a certain cost increase as compared to other products fulfilling the same function"*.[10]

Paper products are one of the product groups, which environmental criteria are set for.

„Paper consumption is at unsustainable levels and globally it is steadily increasing. The industry has substantial climate change impacts, from its raw material sourcing in forests, through production, to the end of life of its products".[11] The most important environmental aspects of copying and graphic paper are related to pulp and paper production. The pulp and paper industry is one of the world's biggest polluters. They are the following:[12]

- *"Industrial logging linked to the paper industry is responsible for the substitution of functioning ecosystems with fast-wood plantations which can lead to a loss of biodiversity, disruption of local water cycles, loss of soil productivity and increased risk of pests and diseases.*
- *In pulping processes, sulphur compounds and nitrogen oxides are emitted to the air, and during pulp bleaching, chlorinated and organic compounds and nutrients are discharged to the wastewaters.*
- *The production process of paper, especially when mainly based on virgin fibre is associated with high levels of water and energy consumption.*
- *Pulp manufacture generates large quantities of solid waste, the most relevant of which are wood waste, pulp screening rejects and the sludge generated during wastewater treatment."*

GPP should bring positive benefits when contracting authorities will implement procurement of paper based on post-consumer recovered paper fibres (recycled paper) or paper from

[3] Yang, S., Su, Y., Wang, W., Hua, K. (2019). Research on Developers' Green Procurement Behaviour Based on the Theory of Planned Behaviour In: Sustainability. 11 (10). p. 1-23. Doi: 10.3390/su11102949.

[4] EU Directive No. 2014/24/EU on public procurement.

[5] EU Directive No. 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors.

[6] Act No. 343/2015 Coll. on Public Procurement and on Amendments to certain Laws as amended.

[7] Ministry of Environment. (2019). Strategy of the Environmental Policy of the Slovak Republic until 2030. Available online: https://www.minzp.sk/files/iep/greener_slovakia-strategy_of_the_environmental_policy_of_the_slovak_republic_until_2030.pdf.

[8] European Union. (2016). Buying green! A handbook on green public procurement. 80 p. Luxembourg, Publications Office of the European Union. ISBN: 978-92-79-56848-0.

[9] Fuentes-Bargues, J. L. et al. (2019). Green Public Procurement at a Regional Level. Case Study: The Valencia Region of Spain. In: International Journal of Environmental Research and Public Health. 16 (16). 24p. Doi: 10.3390/ijerph16162936.

[10] European Commission. (2019). Green Public Procurement. Available online: https://ec.europa.eu/environment/gpp/index_en.htm.

[11] Environmental Paper Network. (2018). The State of the Global Paper Industry. 90 p. Available online: https://environmentalpaper.org/wp-content/uploads/2018/04/StateOfTheGlobalPaperIndustry2018_FullReport-Final.pdf.

[12] European Commission. (2019). Green Public Procurement. Available online: https://ec.europa.eu/environment/gpp/index_en.htm.

legally and sustainably harvested wood, procurement of paper produced through processes characterised by low energy consumption and emissions and will avoidance of certain substances in paper production and bleaching.[13]

Several studies are devoted to assessing the status quo of Green Public Procurement extension and the potential impacts of Green Public Procurement in different sectors and countries.[14]

Renda[15] highlights the results of studies on how the EU countries use environmental criteria when awarding contracts. Finland makes the most use of it, which defines environmental criteria in 80% of all Public Procurements. The worst situation is in countries, where GPP does not even cover 20% of Public Procurements. Countries with such unsatisfactory results include: Bulgaria, Slovakia, Greece, Ireland, France and others.

GPP has been also considered by academic and practitioners as a tool useful to promote circular economy.[16]

In order to support positive impacts of GPP, organizations should foster a green identity by promoting pro-environmental values through training programs.[17]

However, Green Public Procurement does not appear to be a useful tool only for the public sector. As the results show of the Gosh's study[18], the use of green criteria in procurement had a positive impact on all observed indicators of selected enterprises. On the other hand, we have to add, that the study worked with a relatively small sample, and focused only on the manufacturing.

III. Methodology

The survey was carried out in 2019. The specifically created database contains data on 471 public procurements of paper products realized through the Electronic Contracting System (ECS) in 2017. The ECS is an information system of public administration and it is a tool for fully automated placement of orders. The ECS is central trading place obligatory for public procurement and voluntary for anyone, who registers for free. The ECS supports efficiency, effectiveness, removal of administrative burden, transparency and elimination of corruption behaviour.

The studied product group contains the following CPV codes:

- 30197620-8 writing paper,
- 30197630-1 printing paper,
- 30197642-8 photocopier paper and xerographic paper,
- 30197643-5 photocopier paper,
- 30197644-2 xerographic paper,
- 30197640-4 self-copy or other copy paper.

The order description includes:

- name and registered office of the public contracting authority,
- name and registered office of the contractor,
- number of tenders submitted,
- the best price of delivery,
- information, whether at least one environmental criterion established for paper products was included.

The environmental criteria were classified as follows:

- public procurement of paper made from recovered paper fibres (recycled paper) or paper from legally and sustainably harvested wood,
- public procurement of paper produced by processes with low energy consumption and emissions,
- avoidance of certain substances in paper production and bleaching.

The aim of the analysis is, in particular, to identify the number of Green Public Procurement and Public Entities, which implemented these contracts in the given product group through Electronic Contracting System in 2017.

IV. Results

The results of our survey show, that in 2017 - 471 (Fig.1) public procurements were carried out in product group paper products (CPV codes: 30197620-8, 30197630-1, 30197642-8, 30197643-5, 30197644-2 a 30197640-4) using the Electronic Contracting System (ECS). Public contracting authorities procured paper products through ECS with a total value of EUR 1,697,454.21, what is a few tens of per cent increase compared to previous years. The average contract value is EUR 3,603.94 and the median value is EUR 900.00.

Compared to the total number of procurements in 2017, only 42 (8.92%) were executed as green tenders. This means, that only in 42 cases contracting authorities included the environmental criteria proposed by the European Commission for this product group in the procurement process. It means contracting authorities make use of the possibility of procuring paper products meeting the environmental criteria in a relatively small extent. In order to increase the share of green procurement in paper products, it is necessary to support the motivation of contracting authorities and to implement targeted interventions to raise awareness of the beneficial effects of using green public procurement of paper products.

Environmental criterion - public procurement of paper

(13) European Commission. (2008). Copying & graphic paper, Green Public Procurement Product Sheet - Training Toolkit.

(14) Piga, G., Tatrai, T. (2016). Public Procurement Policy. Routledge, New Yourk. 229 p. ISBN 978-1-138-92150-4.

(15) Renda, A. et al. (2012). The Uptake of Green Public Procurement on the EU27. CEPS, Submitted to the European Commission, DG Environment, Brussels. In: Fuentes-Bargues, J. L. et al. (2019). Green Public Procurement at a Regional Level. *Case Study: The Valencia Region of Spain. In: International Journal of Environmental Research and Public Health. 16 (16). 24p. Doi: 10.3390/ijerph16162936.*

(16) Marrucci, L., Daddi, T., Iraldo, F. (2019). The integration of circular economy with sustainable consumption and production tools: Systematic review and future research agenda In: *Journal of Cleaner Production.* 240 (10). Doi: 10.1016/j.jclepro.2019.118268.

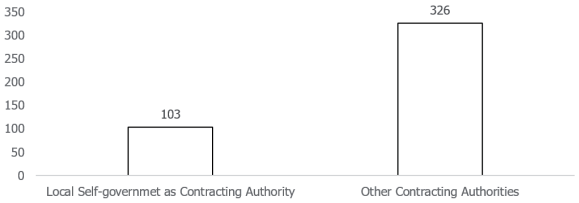
(17) Al Nuaimi, B., Khan, M. (2019). Public-sector green procurement in the United Arab Emirates: Innovation capability and commitment to change In: *Journal of Cleaner Production.* 233 (1). p. 482-489. Doi: 10.1016/j.jclepro.2019.06.090.

(18) Gosh, M. (2018). Determinants of green procurement implementation and its impact on firm performance. In: *Journal of Manufacturing Technology Management.* 30 (2). p. 462-482. Doi: 10.1108/JMTM-06-2018-0168.

Figure 1: Public Procurement of Paper Products in 2017 via Electronic Contracting System (ECS)

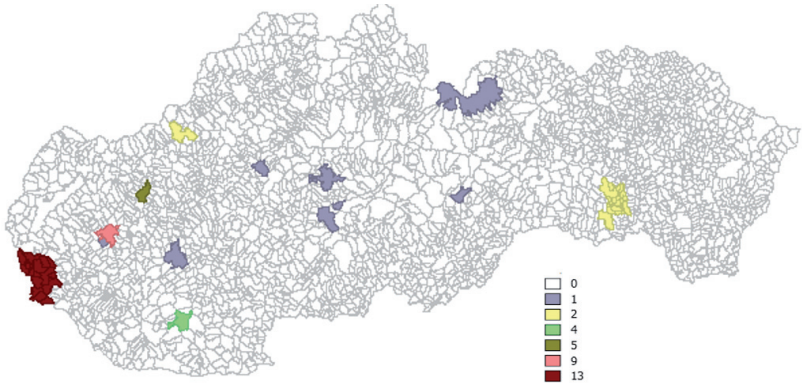
Source: own processing (2019)

Figure 3: Local self-government as Contracting Authority in 2017, ECS



Source: own processing (2019)

Figure 2: Spatial Allocation - Green Purchasing of Paper products in 2017 (unique values) via ECS



Source: own processing (2019)

made from recovered paper fibres (recycled paper) or paper from legally and sustainably harvested wood was used in 31 public contracts. Environmental criterion - avoidance of certain substances in paper production and bleaching was used in 22 public contracts. Environmental criterion - public procurement of paper produced by processes with low energy consumption and emissions was not used even once.

In the next section, we focused on the identification of administrative areas, in which the contracting authorities carried out green contracts to procure paper products via Electronic Contracting System in 2017. We are talking about the following administrative areas: Banská Bystrica, Bratislava, Hrnčiarovce nad Parnou, Košice, Nitra, Nové Zámky, Piešťany, Prievidza, Revúca, Vysoké Tatry, Trenčín, Trnava, Zvolen - these are mainly district towns (of which 6 are regional towns). Based on the spatial distribution, we cannot adopt conclusion, that contracting authorities prefer to carry out Green Public Procurement on the basis of their allocation. However, the results show, that there is a specific target group of entities (district towns) that could be supported to use the concept of Green Public Procurement more often, and thus they could contribute to developing the supply of products, which meet the environmental criteria.

Municipalities and towns (units of self-government) executed 103 (21.87%) contracts of the total number of public contracts to procure paper products using the Electronic Contracting System in 2017 (Fig. 3). Based on the results, it can be concluded that municipalities and towns are an important group of contracting authorities of paper products, and therefore they are also important consumers. The group of municipalities and towns, which include 2890 entities (Statistical Office of the Slovak Republic, 2019) in the position of contracting authority has a significant potential to increase the share of green contracts accomplished in economic practice at the local level in the Slovak Republic. Municipalities and towns should be more involved in finding and implementing environmentally appropriate solution. Green Public Procurement should become an important part of municipal environmental policy. They together could contribute to the cumulative positive effect of this green concept.

In addition to local self-government units - central government units, budgetary organizations, contributory organizations and universities were important contracting authorities in the paper product group, either.

An important finding is that out of the total number of public procurement of paper products carried out by local self-government units through the Electronic Contraction System in 2017, only one (Fig. 4) contract was accomplished as a green contract, what means it contained environmental criteria for the product group of paper products. This contract was realized by the city district of Bratislava - Nové Mesto. The contract was worth EUR 14,350.00

The conclusion is, that Green Public Procurement of paper products carried out by public contracting authorities, which include municipalities and towns, was not used at the desired level. A comparison of the average number of offers submitted under green procurement and those, in which the contracting authorities did not incorporate the environmental criteria of the paper products into the contract shows, that under green contracts, the average number of offers submitted was higher

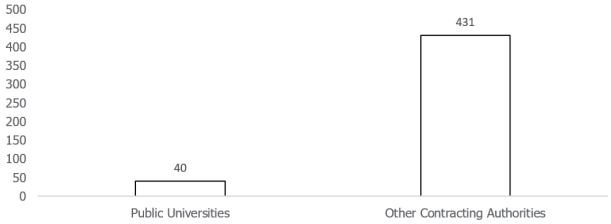
Figure 4: Local self-governments as Green Contracting Authorities in 2017, ECS

Source: own processing (2019)

Figure 5: Average Number of Offers in 2017, ECS

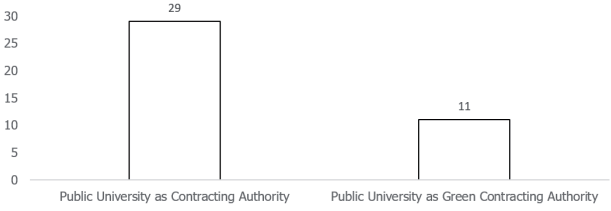
Source: own processing (2019)

Figure 6: Public Universities as Contracting Authorities in 2017, ECS



Source: own processing (2019)

Figure 7: Public Universities as Green Contracting Authorities in 2017, ECS



Source: own processing (2019)

by 18 (Fig. 5). At the same time, this fact supports the achievement of the best possible price for the contracting authority, because the higher number of offers submitted increases the competition of suppliers.

However, the results of the survey point out a significant role of public universities as contracting authorities of Green Public Procurement of paper products. This makes public universities as a good example of good practice in green procurement. There is no doubt that public universities belong to major consumers of paper products as well as local public authorities.

Of the total number of public contracts, public universities acted as contracting authorities in 40 procurements, what represents 8.49% (Fig. 6). Green Public Procurement was carried out in 11 contracts (Fig. 7). This implies, that public universities are another target group suitable for interventions to promote Green Public Procurement. It is testified by their activity in meeting environmental criteria in the area of procurement of paper products, especially in the phase of voluntary application of Green Public Procurement to this type of product group.

Results of the survey point to the use of Green Public Procurement of paper products procured via Electronic Contraction System in 2017. They enable public policy makers to evaluate the current situation, make informed decisions and identify appropriate target groups of entities in order to support the implementation of Green Public Procurement in the public sector.

V. Conclusion

In the survey, which was carried out in 2019, we focused mainly on identifying local self-government units (towns/municipalities) that implemented Green Public Procurement of paper products via Electronic Contracting System in 2017. We consider local self-government units as major consumers of paper products and thus a potential and important target group to promote the use of Green Public Procurement of paper products in practice.

The results of the survey show that out of the total number of public contracts for paper products in 2017 (471), environmental criteria proposed by the European Commission for the group of paper products were used within 42 (8.92%) public contracts. Out of the total number of contracts executed, local self-government units accounted for 103 contracts (21.87%), of which only 1 was executed as Green Public Procurement. Spatial distribution of green contracts for paper products realized via ECS in 2017 does not allow to identify more significant preferences for the implementation of green contracts, e.g. in more developed regions. However, we can conclude that entities who carried out Green Public Procurement of paper products were allocated in towns.

The results also show the significant role of public universities in the Green Public Procurement of paper products via Electronic Contraction System in 2017. Public universities accomplished 40 contracts (8.49%) in 2017, 11 of them were executed as Green Public Procurement (27.50%). The results show, that local self-government units (towns/municipalities) did not favour the possibility to include the EU environmental criteria in the public procurement of paper products accomplished via ECS in 2017.

We consider as a slightly unsatisfactory result that all the contracts awarded via ECS in 2017 for the group of paper products used the lowest price as the selection criterion, despite the fact, that Slovak legislation allows the selection based on the best value for money selection criterion, in which contracting authority could consider qualitative, environmental and social aspects related to the subject of the contract.

The results show the use of Green Public Procurement in

economic practice. On the other hand, it should be pointed out, that the absence of green criterion in the product specification when awarding a public contract does not automatically mean, that the product supplied does not meet the criteria of environmentally friendly product. Nowadays, many of paper products producers supply onto the market goods, that have been produced with little environmental footprint. They thus respond to the efforts of the European Union to create Sustainable Consumption and Production and Sustainable Industrial Policy. On the other hand, this cannot be seen as an argument, which relies the contracting authorities of their responsibility to try to increase the share of Green Public Procurements. After all, in general suppliers respond to consumers' needs, and not vice versa. If there will not be any improvement in the future, we cannot expect increased interest from suppliers to supply environmentally friendly products, which in the short term can be associated with higher costs.

In order to improve the situation, it is necessary to support tailor-made dissemination of good practices in Green Public Procurement, particularly in relation to municipalities and towns that have the potential to make more effective use of Green Public Procurement.

References

1. AL NUAIMI, B. ˜ KHAN, M. (2019). Public-sector green procurement in the United Arab Emirates: Innovation capability and commitment to change In: *Journal of Cleaner Production*. 233 (1). p. 482-489. DOI: 10.1016/j.jclepro.2019.06.090
2. FUENTES-BARGUES, J. L. et al. (2019). Green Public Procurement at a Regional Level. Case Study: The Valencia Region of Spain. In: *International Journal of Environmental Research and Public Health*. 16 (16). 24p. Doi: 10.3390/ijerph16162936
3. GOSH, M. (2018). Determinants of green procurement implementation and its impact on firm performance. In: *Journal of Manufacturing Technology Management*. 30 (2). p. 462-482. Doi: 10.1108/JMTM-06-2018-0168
4. ENVIRONMENTAL PAPER NETWORK. (2018). The State of the Global Paper Industry. 90 p. Available online: https://environmentalpaper.org/wp-content/uploads/2018/04/StateOfTheGlobalPaperIndustry2018_FullReport-Final.pdf
5. EUROPEAN COMMISSION. (2008). Copying & graphic paper, Green Public Procurement Product Sheet - Training Toolkit.
6. EUROPEAN COMMISSION. (2019). Green Public Procurement. Available online: https://ec.europa.eu/environment/gpp/index_en.htm
7. EUROPEAN UNION. (2016). Buying green! A handbook on green public procurement. 80 p. Luxembourg, Publications Office of the European Union. ISBN: 978-92-79-56848-0
8. MARRUCCI, L. - DADDI, T. - IRALDO, F. (2019). The integration of circular economy with sustainable consumption and production tools: Systematic review and future research agenda In: *Journal of Cleaner Production*. 240 (10). Doi: 10.1016/j.jclepro.2019.118268
9. MINISTRY OF ENVIRONMENT. (2019). Strategy of the Environmental Policy of the Slovak Republic until 2030. Available online: https://www.minzp.sk/files/iep/greener_slovakia-strategy_of_the_environmental_policy_of_the_slovak_republic_until_2030.pdf
10. PIGA, G. - TATRAI, T. (2016). Public Procurement Policy. Routledge, New Yourk. 229 p. ISBN 978-1-138-92150-4
11. RENDA, A. et al. (2012). The Uptake of Green Public Procurement on the EU27. CEPS, Submitted to the European Commission, DG Environment, Brussels. In: *Fuentes-Bargues, J. L. et al. (2019). Green Public Procurement at a Regional Level. Case Study: The Valencia Region of Spain. In: International Journal of Environmental Research and Public Health*. 16 (16). 24p. Doi: 10.3390/ijerph16162936
12. YANG, S., SU, Y., WANG, W., HUA, K. (2019). Research on Developers' Green Procurement Behaviour Based on the Theory of Planned Behaviour In: Sustainability. 11 (10). p. 1-23. Doi: 10.3390/su11102949

Legislation

1. Act No. 343/2015 Coll. on Public Procurement and on Amendments to certain Laws as amended
2. EU Directive No. 2014/24/EU on public procurement
3. EU Directive No. 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors

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Contact address/ Kontaktná adresa

Mgr. Ing. Tomáš Malatinec, PhD.
Department of Regional Science and Management
Faculty of Economics, Technical University of Košice
e-mail: tomas.malatinec@tuke.sk

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CONTRACTUAL COOPERATION OF MUNICIPALITIES FOR PERFORMANCE OF TRANSFERRED COMPETENCIES IN THE BUILDING SECTOR

ZMLUVNÁ SPOLUPRÁCA OBCÍ NA ZABEZPEČOVANIE VÝKONU PRENESENÝCH KOMPETENCIÍ NA SAMOSPRÁVU V STAVEBNOM SEKTORE

Eleonóra MARIŠOVÁ* – Ivana LICHNEROVÁ*

I. Introduction

Until 1st January 1993, the Slovak Republic and the Czech Republic were part of a federal state. Pursuant to Constitutional Act no. 542/1992 Coll., with effect from 1st January 1993, the Slovak Republic was declared an independent state by the Federal Assembly of the Czech and Slovak Federal Republic – Constitutional Act on the Dissolution of the Czech and Slovak Federal Republic (CSFR). The basis of the legal constitution of the Slovak Republic was the adoption of the Constitution of the Slovak Republic no. 460/1992 Coll[1].

The development of public administration in this newly established state had started to lean towards new direction, but it should be noted that the planned change in the functioning of public administration was recorded even before the decay of the CSFR. Both states began to undergo a reform of public

[1] Kováčová (2015).

Abstract (EN)

The reform of the self–governments in Slovakia caused the transfer of competencies from state authorities to municipalities. Every municipality is in accordance with Act no. 369/1990 Coll. on the Municipal Establishment obliged to ensure original and transferred competences for its inhabitants. However, for objective reasons, not all municipalities are able to perform them. Municipalities began to use the possibility of mutual contractual cooperation in accordance with the amendment to the Act on Municipal Establishment, under which municipalities can cooperate with each other for the purpose of carrying out a specific task or activity. Such cooperation between municipalities also exists for the purpose of exercising competence in the field of the building order. Pursuant to Act no. 50/1976 Coll. as amended, each municipality is a building authority. The aim of the paper is to qualitatively assess the reasons for contractual cooperation between the municipalities of the Nitra (NR) and Košice (KE) regions in the area of the building order (by using the method of structured interview). So far, 2 649 municipalities, which are a part of 189 joint building offices (JBO), have used the possibility of mutual contractual cooperation in the SR. Specifically, in the NR region there are 343 municipalities, which are part of 26 JBOs and in the KE region 391 municipalities, which are part of 28 JBOs. The qualitative method was used to find out the opinions of the building offices. Based on the obtained results, an optimal solution for problems of cooperation of municipalities was proposed by adopting new legislation, namely by the allocation of building offices to the seats of registry offices.

Keywords (EN)

municipal cooperation, transferred competences, building order

Abstrakt (SK)

Reforma samosprávy na Slovensku spôsobila prechod kompetencií zo štátnych orgánov na obce. Každá obec je v zmysle zákona č. 369/1990 Zb. o obecnom zriadení má povinnosť zabezpečovať pre svojich obyvateľov originálne a prenesené kompetencie. Nie všetky obce to však z objektívnych dôvodov dokážu. Obce začali využívať možnosť vzájomnej zmluvnej spolupráce v zmysle novely zákona o obecnom zriadení, v zmysle ktorej môžu obce medzi sebou zmluvne spolupracovať na účel uskutočnenia konkrétnej úlohy alebo činnosti. Takáto spolupráca medzi obcami existuje aj za účelom vykonávania kompetencie na úseku stavebného poriadku. V zmysle zákona č. 50/1976 Zb. v platnom znení je každá obec stavebným úradom. Cieľom článku je kvalitatívne skúmanie dôvodov zmluvnej spolupráce medzi obcami Nitrianskeho (NR) a Košického (KE) kraja v sektore stavebného poriadku, (formou riadeného rozhovoru). V SR doposiaľ možnosť vzájomnej zmluvnej spolupráce využilo 2 649 obcí, ktoré sú súčasťou 189 spoločných stavebných úradov (SSÚ). Konkrétne v NR kraji ide o 343 obcí, ktoré sú súčasťou 26 SSÚ a v KE kraji 391 obcí, ktoré sú súčasťou 28 SSÚ. Kvalitatívnou metódou boli zistené názory stavebných úradov a na základe získaného výsledku výskumu bolo navrhnuté optimálne riešenie problémov spolupráce obcí novou legislatívou, a to alokáciou stavebných úradov do sídiel matričných úradov.

Kľúčové slová (SK)

spolupráca obcí, prenesené kompetencie, stavebný poriadok

* Slovak University of Agriculture in Nitra

administration after 1989.

The idea of public administration reform of today's Slovakia and the Czech Republic was directed towards the efforts of the countries to become a part of the European Union, since the effective functioning of public administration was defined as one of the preconditions for membership[2].

In the Slovak Republic and the Czech Republic, the functioning of state administration and self-government administration gradually transformed in terms of more efficient provision and performance of public services, closer to the citizen.

One British author[3] has assessed public administration reform as follows: "The efforts of Central and Eastern European countries to become members of the European Union are another motives to address seriously public administration reform, as effective government is one of the conditions for membership set by the EU itself. However, rebuilding the public administration and redefining its role in society has proved to be an extremely difficult task in these states".

The state administration in the Slovak Republic aimed towards the ESO reform (Effective, Reliable and Open Public Administration), whose ambition was, through the creation of Client Centres, to streamline the functioning, ensure the quality, transparency and accessibility of public administration for the citizen[4]. The number of Client Centres in Slovakia is currently 56[5].

The position of self-government in Slovakia began to be shaped by the adoption of Act no. 369/1990 Coll. on the Municipal Establishment, which led to the rebirth of the self-governments[6]. In this Act [7], the municipality was defined as a territorial self-governing and administrative unit of the Slovak Republic, which associates persons with permanent residence in its territory. The law also states that a municipality has an obligation to provide original and transferred competences for its inhabitants that may be entrusted to it from the state authorities[8].

Based on that, territorial self-government is perceived as a democratic basis for organizing and managing public affairs in the conditions of modern democratic states, among which the Slovak Republic is currently included. In these perceived modern states, the emphasis is on the principles of decentralization and subsidiarity[9].

In the past, the Slovak Republic underwent a decentralization of competences, which was divided into different stages. According to the adopted Act no. 416/2001 Coll. on the Transfer of Some Competencies from State Administration Bodies to Municipalities and Higher Territorial Units, the competencies were decentralized in Slovakia. By that Act[10], more than 300 competences were transferred from the state authorities to the self-government[11].

Thus, municipalities usually providing the original competences such as managing their own property, deciding on local taxes, maintaining local roads, etc.[12] have been added additional ones. The following competences belong to the new competences transferred from state authorities to municipalities: environmental protection, social security, register keeping[13] and also competencies that are the object of the paper elaboration, namely competences in the area of building order.

In the past, Ministry of the Environment of the Slovak Republic was the Managing Authority for ensuring competence regarding the building order, while the Department of the Environment of the District Authorities was the implementing body[14]. The change occurred at the turn of 2002 and 2003. With effect from 1st January 2003, the competence in the building order section was decentralized to the self-governments. Pursuant to the Act on the Transfer of Certain Competencies from the State Administration Bodies to Municipalities and Higher Territorial Units[15], which can also be considered an amendment to the current Building Act[16], a municipality can be defined as a building authority[17].

Within the framework of decentralization, only employees of district offices, who were engaged in the exercise of this competence at district offices, were delimited to the municipalities. Thus, it is natural that these people moved from the district office to the municipal office, especially in the place of their residence, respectively where they have done the work until then. In fact, the ratio of the number of former offices where this competence was exercised to the new building offices was disproportionate, and this was related also to the number of available employees with the required professional qualifications and experience in the exercise of this competence. To ensure this competence, the state delimited to the municipal offices only such number of employees and volume of financial means that was needed until then[18].

The exact competence of the municipality in the exercise of this transferred competence is given in Act no. 608/2003 Coll. on the State Administration for Spatial Planning, Building Regulations and Housing and on the amendment of Act no. 50/1976 Coll. on Land-use Planning and Building Order (building order) as amended.

"The municipality within the transferred performance of state administration in the section of the building order: performs the powers of the building authority and ensures the state supervision"[19].

The transfer of this competence to self-government partially fulfilled the requirement of municipalities (inhabitants) to be able to independently decide on their development priorities, which is also the area of building law[20]. However, municipalities have gradually encountered problems in securing and im-

(2) Slavík (2003).
(3) Collins (1997).
(4) Ministerstvo vnútra SR (2020) – Ministry of Interior (2020).
(5) Ministerstvo vnútra SR (2019) – Ministry of Interior (2019).
(6) Chovanec – Palúš (2004).
(7) §1 Act No. 369/1990 Coll. as amended.
(8) §5 Act No. 369/1990 Coll. as amended.
(9) Jesenko (2017).
(10) Act No. 416/2001 Coll. as amended.
(11) Leško (2015).
(12) Jančí (2004).
(13) Gavenčiaková (2018).
(14) Hudec – Tolnayová (2002).
(15) Act No. 416/2001 Coll., as amended.
(16) Act No. 50/1976 Coll., as amended.
(17) §117 Act No. 50/1976 Coll., as amended.
(18) Mederly et al. (2019).
(19) §5 Act No. 608/2003 Coll., as amended.
(20) Mederly et al. (2019).

plementing this competence.

The Slovak Republic has 2 927 municipalities (the highest number of municipalities in the state is registered in Prešov, Banská Bystrica, Košice and Nitra regions)[21], which makes it to rank among the highly fragmented states of Europe (similar to the Czech Republic)[22].

The municipalities were established without any size criteria, which means that in Slovakia there is a municipality which has 7 inhabitants (village Príkra – Prešov region) but also 8 698 inhabitants (village Smižany – Košice region) [23].

Municipalities in Slovakia (especially small municipalities) face problems with financial and personnel sustainability of the provision of transferred competencies – municipalities do not have sufficient funds allocated by the state to perform competences in the section of the building order, even though the state is responsible for financing of the transferred competence in the building order section. Pursuant to the Act on the Budgetary Rules of Territorial Self-Government and on the amendment of certain acts, as amended[24], but also under the Constitution of the Slovak Republic[25], it is defined that the state pays all costs associated with the exercise of its original competence.

In many cases in Slovakia, however, municipalities pay from their own resources to ensure competence in the section of the building order, even though: the municipality is obliged under the Municipal Act[26] to finance only its original competences and not the competences entrusted to it by the state[27].

Until 30th November 2019, the amount of state transfer per transferred performance of state administration in the section of the building order was 1.11 €/inhabitant[28]. Since 1st December 2019, the amount of this subsidy has been adjusted and it will no longer be determined by the exact amount per capita. The amount of the subsidy per capita is determined as the ratio of expenditures of the approved budget or the modified budget of the Ministry of Transport and Construction SR of the relevant year assigned to the transferred performance of state administration in the section of the building order and the number of inhabitants with a permanent stay in the territory of the Slovak Republic. The specific amount of the subsidy for the municipality is then calculated as the product of the subsidy per capita and the number of inhabitants residing in the municipality[29].

Personnel ensuring the performance of competencies in the building order section, however, are subject to the required qualifications and education[30].

As small municipalities, with a small number of inhabitants, are unable to cover the personnel costs and the costs of material nature from the state transfer, they were forced to look for a different solution. Municipalities in Slovakia have started to use the possibility of mutual contractual cooperation – municipalities have the possibility to cooperate with each other for the purpose of performing a specific task or activity[31]. This resulted in a creation of the joint municipal offices in Slovakia and, in the case of exercising competence in the field of building regulations, of joint building offices.

Since every municipality in Slovakia is a building authority[32], contractual cooperation in the field of the building order allows them to: efficiently, economically and effectively provide this competence, as it has been stated that for objective reasons (financial, personnel) especially small municipalities face problems with providing transferred competences from the state.

This can be verified by various options. In our case, we consider the most appropriate way to communicate directly with the representatives of municipalities and to discuss the topic of the building order (cooperation between municipalities). It is essential that the representatives of municipalities comment on the given topic and point out the problems that arise for them in securing the transferred competences specifically in the section of the building order.

II. Objective and methodology

The objective of the paper is to analyse, by means of qualitative research, with respect to the valid legislation of the Slovak Republic, whether contractual cooperation between municipalities in the exercise of competence in the field of building regulations is an economical and more efficient option for exercising this competence. In the Slovak Republic, each municipality is a building authority[33]. Contractual cooperation between municipalities in exercising of competences in the field of building regulations is in our conditions the only way of more efficient implementation of this competence so far (more efficient from the point of view that especially small municipalities would have significant difficulties in securing this competence).

By conducting structured interviews with the representatives of municipalities, our aim was to obtain opinions on the cooperation between municipalities, which is allowed by law[34], and generally on the problems that municipalities face during ensuring this competence.

We conducted structured interviews at a sample of building offices in the NR and KE regions, which are divided into single building offices (SBO) and joint building offices (JBO). The research was carried out on a selected sample of building offices (joint building offices and building offices that perform this competence separately) within the Nitra and Košice regions.

[21] Bačík (2019).
[22] Klimovský (2010).
[23] Bačík (2020).
[24] Act No. 583/2004 Coll., as amended.
[25] Act No. 460/1992 Coll., as amended.
[26] Act No. 369/1990 Coll., as amended.
[27] NKU (2013) – Supreme Audit Office of the Slovak Republic (2013).
[28] Opatrenie Ministerstva dopravy a výstavby SR č. 06484/2018/SRF/21012-M zo 16. marca 2018.
[29] Opatrenie Ministerstva dopravy a výstavby SR č. č. 30153/2019/SRF/93297-M z 13. novembra 2019.
[30] §117 Section 3 Act No. 50/1976 Coll., as amended; §2a Section 3, Act No. 50/1976 Coll., as amended.
[31] §20 Act No. 369/1990 Coll., as amended.
[32] §117a Act No. 50/1976 Coll., as amended.
[33] §117a Act No. 50/1976 Coll., as amended.
[34] §20 Act No. 369/1990 Coll., as amended.

Table 1 Municipalities (Building Offices) in Nitra and Košice Region

	Number of Municipalities	Number of Joint Building Offices (JBO)	Number of Municipalities which are Member of JBO	Number of Single Building Offices (SBO)	Town Sections
Nitra Region	354	26	343	11	–
Košice Region	461	28	391	48	22
Total	815	54	734	59	22

Source: Ministerstvo vnútra SR1 (2019) – Ministry of Interior1 (2019)

III. Solution for personnel and financial securing of municipal performance of building competencies

The possibility of using contractual cooperation between municipalities in performing the transferred competence in the field of building regulations in the Slovak Republic has so far been used by 2 649 municipalities, which have voluntarily become part of 189 joint building offices[35].

In the paper we analyse the contractual cooperation that was established between the municipalities located in the Nitra (NR) and Košice (KE) regions.

The following Table 1 shows summary data on municipalities (building offices) located in the surveyed regions of the SR.

We carried out qualitative research at the building offices of the NR and KE regions, through conducting of structured interviews with employees of the building offices. The survey covered all building offices located in the NR and KE regions. The questions we asked the employees of the building offices concerned the issue of securing and executing the transferred competence in the section of the building order.

The initial question for the employees of the joint building offices was: What was the reason for concluding a contract for the purpose of performing a specific task or activity – according to §20 of Act no. 369/1990 Coll. as a result of which you became the Joint Building Office (JBO), but also why you agreed to be the leading community of the Joint Building Office? Were you forced to hire a new employee of the building office? We were also interested in whether the investments were made in their territorial district related to the construction of new buildings and civil engineering constructions and subsequently we asked about the issue of financing competences in the field of building regulations. We were also asking whether the state transfer to the building offices for performing competences in the section of the building order was sufficient.

We asked the employees of the building offices who exercise competence in the field of building regulations separately: whether it would be appropriate, according to them, to determine a legal obligation for municipalities to associate and create joint building offices. We also asked them about the issue of financing the transferred competence, as in the case of joint building offices, and about the investment activity in their territorial districts.

For the NR region, a positive approach towards the conduct of structured interviews was expressed by 24 JBOs out of the total 26 JBOs, which represents 92,31% and 9 out of 11 SBOs, which represents 81,81%. In the KE region, from the sample determined for the research, 9 out of 24 JBOs (37,50%) and 16 out of 45 SBOs (35,55%) were involved in the qualitative research.

The overall success rate of conducting the structured interviews concerning the building order issues in the NR region was 89,19% out of the total number of building offices and in the KE region it was 36,23% out of the sample. Together for both regions, the rate of managed interviews (from the sample) was 54,72% (58 building offices out of 106 interviewed building offices).

IV. Qualitative research analysis

In Slovakia "The conception of decentralization and modernization of public administration" was approved for the period 2000–2004 in which more than 300 competences were planned for transfer from local state governments (regional and district offices) to regional and local self-governments[36].

For small municipalities, the performance of all transferred competences was not possible; therefore the municipalities looked for other options. Municipalities began to organize voluntary associations with the aim to create joint municipal office (JMO) in the field of certain competences.

"The main aim of associating municipalities into the JMO is to create geographically larger units of local self-governments, which will allow higher effectiveness and optimization in providing of different public services"[37]. The current valid legislation at the territory of the Slovak Republic regulates the principle of volunteering by Act no. 369/1990 Coll. as amended in voluntary cooperation of municipalities and equal status of all municipalities in the context of the execution of all competences. According to par. 20 of the Act, municipalities may cooperate on the basis of a contract concluded for the purpose of carrying out a specific task or activity and on the basis of a contract establishing an association of municipalities, so called joint municipal office.

Qualitative research of the building order was carried out on a sample of 33 offices in the NR region (24 JBOs + 9 SBOs) and 25 offices in the KE region (9 JBOs + 16 SBOs).

In the research we used the method of structured interviews with representatives of municipalities (employees of building offices). The following tables: 2, 3, 4 and 5 are used to display the research results.

[35] Ministerstvo vnútra SR1 (2019) – Ministry of Interior1 (2019).

[36] Nižňanský (2005).

[37] Žárska et al. (2010).

Table 2 Answers of Employees of Joint Building Offices about the Issue of Building Order in the Nitra Region

Question		Answers
What was the reason for concluding a contract for the purpose of performing a specific task or activity – according to §20 of Act no. 369/1990 Coll. as a result of which you became a Joint Building Office (JBO) resp. why you agreed to be the leading municipality of the JBO?	The municipality was in the past a centre municipality. Capacity reasons of the municipal office. Meet citizens' needs. We have employees who meet the requirements for qualification of an employee of the building office. Due to capacity utilization of professional employees. The municipality had personnel, material and financial capacities for ensuring the quality, rational and efficient performance of the transferred competence in the section of the building order.	
Are there investments related to the construction of new building and civil engineering constructions in your area?	**Yes: 17** **No: 7**	Mostly it was the expansion of the premises of the original buildings. Building of the "Strategic Park Nitra".
Is the state transfer sufficient for exercising competence regarding the building order?	**Yes: 0** **No: 24**	Individual municipalities that are part of the JBOs pay 35–40% from their own funds to ensure the competence. Operating costs are too high, but could be reduced, e.g. in the case of delivery of notices of initiation by ordinary mail and not by registered e-mail. No, the municipality pays 1,15 € per inhabitant to the JBO.
Were you forced to hire a new employee of the building office?	**Yes: 8** **No: 16**	Yes, because of capacity reasons. For financial reasons, it is unrealistic to hire a new employee, even if it is needed. We were forced to hire a new employee, but the monthly salaries are paid by municipalities that are part of the JBO.

Source: Own processing, 2020

Table 3 Answers of Employees of Joint Building Offices about the Issue of Building Order in the Košice Region

Question		Answers
What was the reason for concluding a contract for the purpose of performing a specific task or activity – according to §20 of Act no. 369/1990 Coll. as a result of which you became a Joint Building Office (JBO) resp. why you agreed to be the leading municipality of the JBO?	In the past, the municipality (which is now the leading one) was the centre of the catchment area. Financially, the municipality would not be able to ensure the transferred performance of state administration in the section of the building order. Before concluding the contract, the municipality exercised its competence in the section of the building order without a qualified person. Natural catchment area.	
Are there investments related to the construction of new building and civil engineering constructions in your area?	**Yes: 6** **No: 3**	In the territorial district of municipalities, there are low-standard apartment buildings, apartment buildings up to 20 flats, sewerage systems, water supply system and other.
Is the state transfer sufficient for exercising competence regarding the building order?	**Yes: 0** **No: 9**	The amount of the government subsidy is insufficient. It does not cover the basic operating costs.
Were you forced to hire a new employee of the building office?	**Yes: 4** **No: 4** **Abstain: 1**	The municipality was forced to hire a new employee since the former one was not sufficiently qualified. The building office would also need to hire a new employee, but could not pay for it.

Source: Own processing, 2020

Within the conducted interview, the employees of the building offices in the NR and KE regions had also an option to freely comment on the implementation of the building order. Employees supplemented the above questions with the following information (Table 6).

Within the research we tried to investigate the reasons for contractual cooperation between municipalities and we also tried to identify problems that municipalities face in securing this competence and which force them to work together.

Part of the qualitative research was the question about the sufficiency of the state transfer for the execution of competences in the section of the building order and also the issue of investments related to the construction of new buildings and engineering constructions.

The issue of financial and personnel provision of this competence was among the most common reasons for cooperation between municipalities in the exercise of competence in the field of building regulations.

Within the answers to the question about the amount of state transfer for the exercise of competence in the section of the building order, we concluded in both regions that both the JBOs and SBOs consider the state contribution under the Act

Table 4 Answers of Employees of Single Building Offices about the Issue of Building Order in the Nitra Region

Question		Answers
Do you think it would be appropriate for the municipalities to be legally obliged to associate and create joint building offices?	**Yes: 2** **No: 5** **Abstain: 2**	Yes, due to quality assurance of the agenda.
Are there investments related to the construction of new building and civil engineering constructions in your area?	**Yes: 5** **No: 4**	Construction of new objects of various purposes.
Is the state transfer sufficient for exercising competence regarding the building order?	**Yes:0** **No: 8** **This factor is not monitored: 1**	The subsidy covers only part of the overheads. Even when taking into account the revenue of building offices from the administrative fees, the building offices cannot cover their expenses. Each operation/process is unique and has different level of difficulty. Funding should reflect the real number of operations, costs as in the register section.

Source: Own processing, 2020

Table 5 Answers of Employees of Single Building Offices about the Issue of Building Order in the Nitra Region

Question		Answers
Do you think it would be appropriate for the municipalities to be legally obliged to associate and create joint building offices?	**Yes: 3** **No: 12** **Abstain: 1**	No, as long as the municipality can provide a qualified employee to perform the competence. No, an independent municipality can respond more flexibly to ensuring performance in the section of the building order (this is also shown in practice). Yes, but they should be state administration authorities independent from the self-government. Yes, but only for small municipalities with few building procedures. Yes, this will ensure greater expertise for employees.
Are there investments related to the construction of new building and civil engineering constructions in your area?	**Yes: 11** **No: 5**	Those are mainly constructions of houses, but also civic amenities, parking areas and others.
Is the state transfer sufficient for exercising competence regarding the building order?	**Yes: 0** **No: 16**	More staff would be needed to carry out the competence, but the municipality cannot pay them. Financing does not reflect the intensity and scope of tasks in terms of material, technology and salaries.

Source: Own processing, 2020

on Budgetary Rules of Territorial Self-Government [38] insufficient.

The research also proved that individual municipalities that are part of the JBOs are forced to pay 35-40% from their own funds to ensure building competence. Even though as we stated in the introductory part of this paper, the use of funds from the municipal budget for this purpose is contradicting the Constitution of the Slovak Republic and the Act on Budgetary Rules of Territorial Self-Government.

The research shows that in the NR region 17 JBOs and 5 SBOs agreed with the fact that their territorial district is investing in the construction of new buildings and civil engineering constructions and 7 JBOs and 4 SBOs did not record any investment activity in their territorial districts. Remarkable was the note obtained in the survey in the NR region, which implies that in the NR region the investment activity is mainly focused on expanding the premises of the original buildings.

In the KE region, investment activity was recorded in 6 JBOs and 11 SBOs, while in their territorial districts there are mostly low-standard apartment buildings, apartment buildings up to 20 flats, sewerage system, water supply system and other buildings. No investment activity was recorded in 3 JBOs and 5 SBOs.

Our research was also aimed at possible future legislation that would replace the latent cooperation of municipalities while associated in the JBOs. We found out that 5 SBOs in the NR region and 12 SBOs in the KE region would not favour the legal obligation of municipalities to associate and create joint building offices. The interviewees also supported the view that cooperation would not be necessary if the municipalities were able to provide a qualified employee to carry out the competence, but also to ensure the quality performance of the agenda in the building order section. In the KE region, 12 surveyed SBOs stated the preference of independent performance of the building order by municipalities. They believe that the municipality can respond more flexibly to ensuring performance in the section of the building order (this is also shown in practice).

[38] Act. No. 583/2004 Coll., as amended.

Table 6 Other Answers of Employees of Building Offices in NR and KE Regions

JBO Nitra Region	
Komárno	One of the serious shortcomings in the field of transferred state administration in the area of the building order is that since 2003 no or minimal attention has been paid to the financing of the competence. As this is a transferred competence of state administration, all costs should be financed by the state and should not be financed from the municipal budgets.
Nitra	Improved provision of the building order operations in municipalities and in the JBOs would be achieved by enhanced cooperation between state administration authorities and municipalities or JBOs.
Svodín – Topoľčany	Employees would welcome regular training of employees of building offices.
JBO Košice Region	
Štítnik	The superior authorities do not adequately guide the exercise of competence in the field of building order.
SBO Nitra Region	
Šaľa –	Employees emphasized the necessary improvements in material equipment and increased financial remuneration of the work of building office employees. Employees expressed a positive opinion on the creation of a new Building Act.
Komoča	Employees also noted that they record a lack of the required broadly specialized employees of the building offices.
SBO Košice Region	
Krásnohorské Podhradie – Buzica	Employees stated that the increase in the subsidy for the exercise of the competence should take into account real expenditures of municipalities: management of individual processes, postal costs, travel costs, costs of training and new technical equipment (PCs, printers, etc.)

Source: Own processing, 2020

In the NR region, 8 JBOs and in the KE region 4 JBOs were forced to recruit a new employee of the building office. On the other hand, 16 JBOs in NR region and 4 JBOs in the KE region did not hire new employees of the building offices due to the lack of finances, even though the situation would require that.

In most cases, municipalities considered cooperating with other municipalities for the exercise of transferred competence in the building order section because they would not be able to pay the qualified person who is authorized to exercise the competence. Personnel requirements for employees of the building office are strictly given in the valid legislation[39].

Regarding the question about the reasons why the municipalities agreed to be the leading municipality of the joint building office that was aimed for the current JBOs in the NR and KE region, we found out the following: past development (municipalities were in the past the centre municipalities), capacity reasons, the expertise of the employees who exercise this competence or the existence of premises for the implementation of the competence.

V. Suggested solutions for problems identified in the research

Research within the project of the Scientific Grant Agency of the Ministry of Education, Science, Research and Sport of the Slovak Republic[40] led us to propose solutions to the problems of cooperation between municipalities in the building order section based on the following conclusion: in the paper we talk about the possibility of municipalities to cooperate with each other in the exercise of competence transferred from the state to self-government, particularly the competence in the section of the building order. This possibility arose to municipalities within the valid legislation [41]. Municipalities cooperate with each other to form joint building offices. These offices are, however, often created chaotically without any controllability. Therefore, we believe that the legal stated seats of building offices should replace the voluntary cooperation of municipalities in the creation of JBOs, as it is the case with the registry offices.

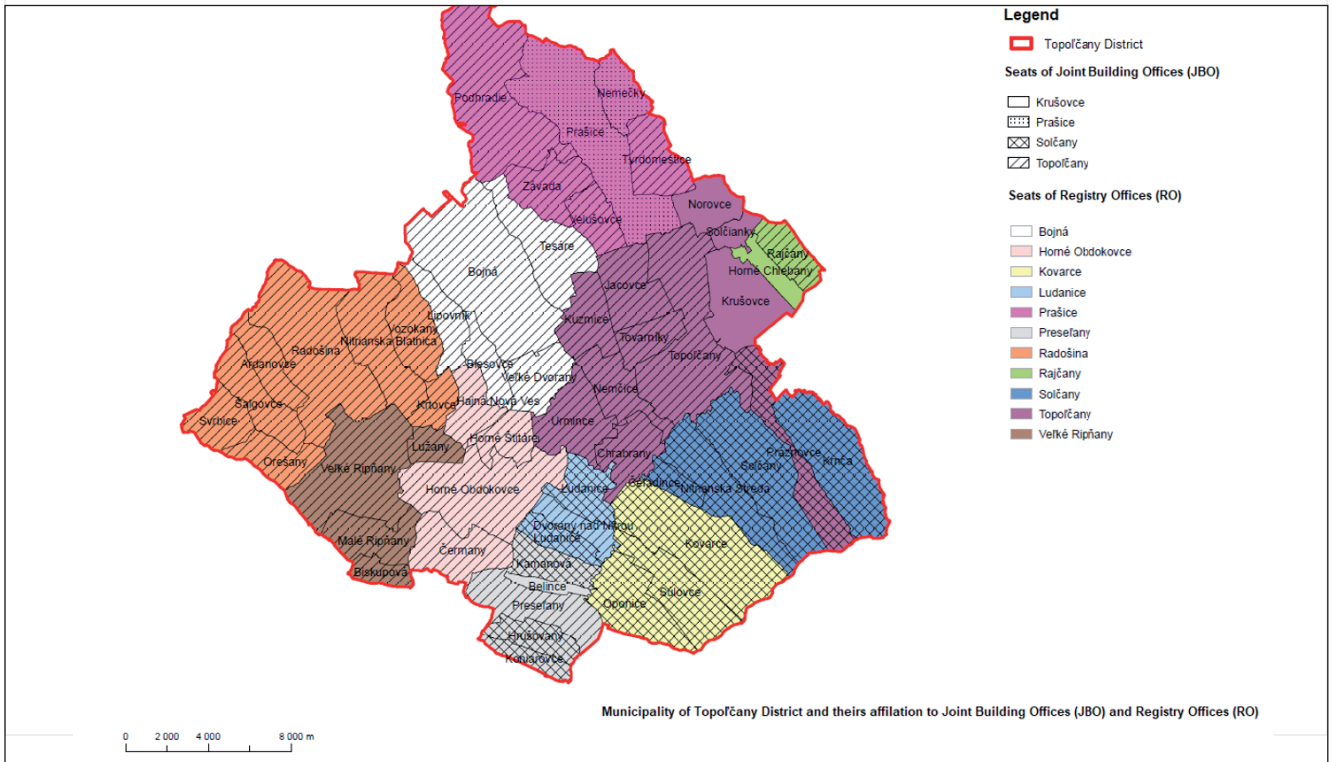
Registry offices and municipalities belonging to them in the territory of the Slovak Republic are precisely defined by legis-

[39] Act. No .50/1976 Zb. as amended.

[40] Project VEGA No. 1/0190/17.

[41] §20 Act No. 369/1990 Coll., as amended.

Figure 1 Map of Building Offices and Registry Offices in Topoľčany District



Source: own processing (2019)

lation – the Act on Registers, as amended[42], and the Decree establishing the territorial districts of registry offices [43]. The list of municipalities falling under the individual territorial districts of the registry offices is given in the above-mentioned Decree establishing the territorial districts of the registry offices.

The creation of the seats of building offices according to the current seats of the registry offices has been already mentioned within this paper (see chapter IV.).

In the described research, from the SBOs in the NR region, we gained the opinion of possible creation and also financing of building offices on the basis of a real number of operations of operating costs as in the register section.

Currently, there are 171 register offices in the NR region and in the KE region 92 + 5 (workplaces of town sections of Košice). In our opinion, these would also become the seats of the building offices.

Several authors[44] as well as experts [45] have already tackled the topic of creation of building offices according to the register offices (i.e. by legal regulation) in the past. Later, however, it was dropped.

The chaotic creation of joint building offices could be the main reason behind this idea[46].

The above-mentioned idea of the future creation of building offices is graphically portrayed in the Figure 1. Due to the limited scope of the paper, we give only example for one district located in the NR region (Topoľčany District). Figure 1 shows the current distribution of building offices within the district (in which there is no building office, which performs competence in the section of the building order itself – SBO) – the shaded part and at the same time the intersection of register offices in municipalities of the Topoľčany District.

Numbers of JBOs (4) and SBOs (11) in the district and their territorial arrangement in the administrative division indicate the territorial advantage of the allocation of building offices to the registry offices, since the registry offices are allocated in the territorial districts of neighbouring municipalities. Neighbouring municipalities provide convenient and economical cooperation for building offices and appropriate accessibility for their clients.

We propose that the future seats of the building offices should be identical to the current seats of the registry offices (within their territorial districts) and they should be determined by legal regulations.

The scope of the transferred competence in the building order section is directly linked to the Building Act[47]. This, almost 40-year-old, law is currently undergoing the process of preparing its amendment.

In the currently prepared new Building Act, in Annex 3,

[42] Act No. 154/1994 Coll., as amended.

[43] Regulation No. 529/2001 Coll., as amended.

[44] Hamalová – Papánková (2005); Černěnko-Havran-Kubala (2017).

[45] Experts from „Komunitného, výskumného a poradenského centra, n. o. Piešťany".

[46] Slávik – Grác – Klobučník (2010).

[47] Act No. 50/1976 Coll., as amended.

which is expected to be effective as of 1 January 2022, a proposal for the creation of building offices and their seats according to territorial districts is presented. From a practical point of view, this means that there would be a total of 72 building offices in the Slovak Republic. However, due to the low number of building offices under this prepared law, we propose identical seats for building and registry offices. This would prevent the creation of detached workplaces with the aim of bringing the highly frequented performance of the building administration closer to natural persons and legal entities within the territorial scope of the workplace, similar to the creation of detached workplaces of newly established district offices in the district territory according to the Act on the Organization of Local Government [48].

VI. Conclusion

According to the Act on Municipal Establishment[49], municipalities have the possibility to cooperate with each other. It is a voluntary cooperation that enables them to become part of the joint building offices in the area of performing the transferred competence of the building order. In the Slovak Republic, the JBOs arise mainly due to the high fragmentation of the territory and the fact that in accordance with the Building Act[50], each municipality is a building authority, regardless of its size. For objective reasons, especially financial, personnel or material-technical, municipalities use this possibility.

In the paper, we presented the results of an analysis that was conducted through qualitative research in a selected sample of building offices located in the Nitra and Košice regions by using structured interviews with experts of these offices. Through the research, we verified the reasons for cooperation of municipal authorities in the sector of building regulations.

The interviewed employees of the building offices mostly marked financial aspect as the basic problem of the exercise of competencies in the section of the building order. By transferring the competence of the building order from the state authorities to self-government in 2003, the state guaranteed its full financing. According to the employees of the building offices, this funding is insufficient, what causes problems in cooperation.

Pursuant to the valid Building Act, it is necessary that a qualified person exercise the competence in the section of the building order. On the other hand, there is a limited number of such qualified persons who are willing to provide this competence, what also encourages municipalities to cooperate with each other.

Under the conditions of the Slovak Republic, the cooperation of municipalities in the area of the building order – creation of the joint building offices is chaotic and there are no legal conditions for cooperation stated, only the option to cooperate.

The paper pointed out the possibility of creation of the building offices in the future, which was supported by several authors, but also employees of the building offices in the surveyed regions. Globally, it would be the determination of the seats of building offices to the seats of registry offices. The approval of the new building order, where the names of municipalities with building competences would be specified, similarly as in the case of the registry offices, would prevent uncoordinated conclusion of contracts between municipalities to ensure the execution of the building order.

[48] Act No. 180/2013 Coll., as amended.

[49] §20 Act No. 369/1990 Coll., as amended.

[50] §117 Act No. 50/1976 Coll., as amended.

References

1. BAČÍK, V. 2019. Slovenská republika – sumárne údaje. [online]. [cit. 2019-01-15]. Available on the internet: http://www.sodbtn.sk/obce/index_kraje.php.
2. BAČÍK, V. 2020. Slovenská republika – sumárne štatistiky. [online]. [cit. 2019-01-15]. Available on the internet: http://www.sodbtn.sk/obce/statistika_obce.php?fbclid=IwAR3drX95LYbxbHuSsOIolz6PE400Z8A9u7Q03bvYLHBoH6GlNQf4KQtst3g.
3. COLLINS, P. 1997. Public management reform: Comparative experiences from East and West, Brussels, 1997. Public Administration and Development 17: 549-50.
4. ČERNĚNKO, T. – HAVRAN, P. – KUBALA, J. 2017. Skrytý poklad v samospráve – Alternatívne možnosti sústredenia výkonu správy v samosprávach. Bratislava: Inštitút finančnej politiky MFSR – Ekonomická univerzita v Bratislave. 26 s. . [online]. [cit. 2020-01-22] Available on the internet: https://www.finance.gov.sk/sk/financie/institut-financnej-politiky/publikacie-ifp/ekonomicke-analyzy/41-skryty-poklad-samosprave-alternativne-moznosti-sustredenia-vykonu-spravy-samospravach-jun-2017.html.
5. GAVENČIAKOVÁ, Ľ. 2018. Originálne kompetencie v obci ROPO v roku 2018. Bratislava: Verlag Dashöfer – Odborná literatúra. [online]. [cit. 2020-01-14]. Available on the internet: https://www.vsonline.sk/33/originalne-kompetencie-v-obci-a-ropo-v-roku-2018-uniqueidmRRWSbk196FPkyDafLfWANzQUqvlI65521WsNngO-Jw-nIC2JL6npBg/.
6. HAMALOVÁ, M. – PAPÁNKOVÁ, S. 2005. K aktuálnym problémom komunálnej reformy v SR. In: Decentralizácia verejnej správy Slovenskej republiky – otvorené otázky. Bratislava: Ekonomická univerzita v Bratislave. s. 19-34. ISBN 80-89149-06-5. [online]. [cit. 2020-01-22] Available on the internet: https://library.fes.de/pdf-files/bueros/slowakei/04686.pdf.
7. HUDEC, M. – TOLNAYOVÁ, M. 2002. Kompetencie stavebného úradu. [online]. [cit. 2019-01-15]. Available on the internet: https://hnonline.sk/expert/92664-kompetencie-stavebneho-uradu-samosprave.
8. CHOVANEC, J. – PALÚŠ. I. 2004. Lexikón ústavného práva. Procom 2004. 261 s. ISBN 978-8085-717-136.
9. JANČÍK, Ľ. 2004. Čo patrí medzi kompetencie miest a obcí. Bratislava: Mafra Slovakia, a. s. [online]. [cit. 2020-01-14]. Available on the internet: https://dennik.hnonline.sk/servisne-prilohy/97792-co-patri-medzi-kompetencie-miest-a-obci.
10. JESENKO, M. 2017. Právo obce na samosprávu a normotvorbu obcí. Košice: UPJŠ. s. 7-8. ISBN 978-80-8152-539-1.
11. KLIMOVSKÝ, D. 2010. Samosprávy v EÚ – Česká republika. Košice: TÚ. Územná samospráva. 32-37 s. [online]. [cit. 2019-01-15]. Available on the internet: https://archiv.vlada.gov.sk/krajina/data/att/24361_subor.pdf.
12. KOVÁČOVÁ, E. 2015. Vývoj verejnej správy v podmienkach samostatnej Slovenskej repbuliky. Acta FF ZČU 2015, Roč. 7, č. 3. Banská Bystrica: UMB. 93-114 s. [online]. [cit. 2020-01-14]. Available on the internet: https://otik.uk.zcu.cz/bitstream/11025/17063/1/Kovacova.pdf.
13. LEŠKO, D. 2015. Formation of regional level of self-government in the process of transformation in Slovakia. In: Journal for universal excellence. September 2015, Vol. 4. Issue 3, p. A1-A11. [online]. [cit. 2020-01-14]. Available on the internet: http://www.fos-unm.si/media/pdf/RUO/2015%203/8.pdf.
14. MEDERLY, P. et al. 2019. Výkon a financovanie prenesených kom-

petencií. Bratislava: ZMOS. 130 s. [online]. [cit. 2020-01-15]. Available on the internet: https://npmodmus.zmos.sk/download_file_f.php?id=119319.1

15. MINISTERSTVO VNÚTRA SR1 - MINISTRY OF INTERIOR1. 2019. Prehľad spoločných obecných úradov v evidencií Ministerstva vnútra SR (stav k 30.9.2018) [online]. [cit. 2020-01-16]. Available on the internet: https://www.minv.sk/?prehlad_SOU.
16. MINISTERSTVO VNÚTRA SR - MINISTRY OF INTERIOR. 2019.V klintskom centre vo Vranove nad Topľou oficiálne spustili prevádzku. [online]. [cit. 2020-01-14]. Available on the internet: https://www.minv.sk/?tlacove-spravy-7&sprava=v-klientskom-centre-vo-vranove-nad-toplou-oficialne-spustili-prevadzku.
17. MINISTERSTVO VNÚTRA SR - MINISTRY OF INTERIOR. 2020. ESO - Efektívna, spoľahlivá a otvorená verejná správa. [online]. [cit. 2020-01-14]. Available on the internet: https://www.minv.sk/?eso-efektivna-spolahliva-otvorena-verejna-sprava.
18. NIŽŇANSKÝ, V. 2005. Decentralisation in Slovakia. Balancing the Never-ending Story (1995-2005). Governmental Office. Prague print. Bratislava, 2005.
19. NKÚ. 2013. Predbežná štúdia ku kontrolnej akcií - Kontrola procesu samointegrácie menších obcí SR (Z-006739/2013/1070/CMA). 95 s. [online]. [cit. 2019-01-15]. Available on the internet: https://www.nku.gov.sk/documents/10157/1153463/Predbe%C5%BEn%C3%A1+%C5%A1t%C3%BAdia+Samointegr%C3%A1cia+men%C5%A1%C3%ADch+obc%C3%AD+SR.
20. SLAVÍK, V. 2003. Reforma verejnej správy: Priestorové aspekty. Bratislava: Katedra humánnej geografie a demogeografie - Prírodovedecká fakulta. [online]. [cit. 2020-01-14]. Available on the internet: http://www.infostat.sk/vdc/pdf/slavikdoc.pdf.
21. SLAVÍK, V. - GRÁC, R. - KLOBUČNÍK, M. 2010. Reflexia k problematike fungovania spoločných obecných úradov v Slovenskej republike. In: Geographia Cassoviensis IV. 2/2010. [online]. [cit. 2020-01-22] Available on the internet: https://www.researchgate.net/publication/266514122_Reflexia_k_problematike_fungovania_spolocnych_obecnych_uradov_v_Slovenskej_republike.
22. ŽÁRSKA, E. et al. 2010. Public Administration I, Bratislava: Ekonóm. 176 p., 2010.

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Contact address/ Kontaktná adresa

prof. JUDr. Eleonóra Marišová, PhD.
Slovak University of Agriculture in Nitra
Faculty of European Studies and Regional Development
Department of Law
Tr. A. Hlinku 2, 949 76 Nitra
e-mail: eleonora.marisova@uniag.sk
Ing. Ivana Lichnerová
Slovak University of Agriculture in Nitra
Faculty of European Studies and Regional Development
Department of Law
Tr. A. Hlinku 2, 949 76 Nitra,
e-mail: xlichnerovai@is.uniag.sk