

Assoc. prof. JUDr. Radomír Jakab, PhD.

ORCID: 0000-0003-2074-8676

e-mail: radomir.jakab@upjs.sk

Faculty of Law

Pavol Jozef Šafárik University in Košice

The municipality as a Building Authority in the conditions of the Slovak republic: current status, planned changes, considerations about optimal model¹

**Gmina jako organ budowlany w Republici Słowackiej: stan obecny,
planowane zmiany, rozważania na temat optymalnego modelu**

Abstract

In the paper, the author examines the current model of the performance of the building agenda by municipalities, while assessing both the advantages and disadvantages of such a model. Subsequently, he also analyses the proposed changes in the transfer of competences of the building authority from municipalities to specialized bodies of local state administration, which should be effective in the Slovak Republic from 1.04.2024. He also defines the advantages and disadvantages of such a model. In conclusion, the author examines an optimal model for the performance of the building authority's agenda, which would respect the application of the principle of subsidiarity, but would eliminate the current problems in the performance of this agenda by municipalities.

Keywords: Building authority, municipality, local state administration.

Streszczenie

W artykule autor analizuje obecny model realizacji agendy budowlanej przez gminy, oceniając zarówno zalety, jak i wady takiego modelu. Następnie analizuje również proponowaną zmianę w przekazaniu kompetencji urzędu budowlanego z gmin do wyspecjalizowanych organów lokalnej administracji państwowej, która ma wejść w życie w Republice Słowackiej od 1 kwietnia 2023 roku. Określa też zalety i wady takiego modelu. W konkluzji autor zastanawia się

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nad optymalnym modelem realizacji agendy organu budowlanego, który respektowałby stosowanie zasady pomocniczości, ale eliminowałby dotychczasowe problemy w realizacji tej agendy przez gminy.

Słowa kluczowe: urząd budowlany, gmina, lokalna administracja państwowa.

1. Introduction

Building administration includes both urban planning administration aimed at ensuring urban arrangement and functional use of the territory, and administration of building order consisting in coordinating the processes of permitting construction, use of buildings and their removal in order to protect the public interest. The purpose of this administration is therefore to ensure that the land is used rationally and efficiently and that its processes are territorially and temporally coordinated.

In order for the tasks of the building administration to be properly performed, there must be an adequate system of public authorities charged with providing them. When creating an adequate system of bodies, it is necessary to take into account various factors that affect the real possibility of performing these tasks. These include, for example, personnel and material conditions of the activities of individual authorities, their accessibility to the addressees, existing relations and links between individual authorities, or negative external influences affecting such bodies. It should also be noted that the structure of authorities in a given section does also change over time. Indeed, at different periods of time, special circumstances may exist which will influence the need to create another system.

This was also the situation in the territory of the Slovak Republic. In the period before 1990, during the communist regime, public power was concentrated within the state administration. Self-government did not exist *de facto* and also *de jure*. Thus, building administration was carried out only by state administration authorities, while this agenda was largely centralized, subordinate to the central state administration (ministries). As a rule, the tasks of the building authority were performed by district national committees for the territory of the entire district². After the change of regime starting in 1990, there was a change in the performance of the agenda of the building authority. At first, this agenda

² Derivations could be applied in relation to the capital city of Prague and Bratislava, where the building authority was the district national committee or the local national committee as determined by the national committee of that city. Similarly, derivations could be applied in relation to other large cities, such as Brno, Ostrava, Pilsen and Košice. However, the prerequisite was that these alternative building authorities had sufficient professional apparatus to carry out the building agenda.

was carried out by regional authorities and later by district authorities, while they were representatives of local state administration. The change occurred only in 2003, when the activities of building authorities were transferred to the municipality.

Thus, within the development of the organization of building administration, it can be seen that before 1989 the agenda of the building authority was usually carried out by district national committees as representatives of only existing state administration (there was no self-government), while their activities reflected national and political policies on local conditions³. After 1989, although there was a qualitative change and relative depoliticization of the activities of building authorities, this agenda continued to be carried out by local state administration authorities directly subordinated to the relevant central state administration authorities. This system of building administration through local government authorities was criticised for the fact that decision-making authorities are 'far away' from their addressees, that they are not aware of the local circumstances on which they decide, and that, in line with the new tendencies of decentralisation and delegation of state administration, these activities would be more effectively carried out by municipalities. This led to a gradual strengthening of municipalities' competence in building administration. Finally, there was an overall transfer of this competence to the municipalities.

At the end of the last millennium and the beginning of this millennium, many European countries (especially the Nordic countries), Sweden, Denmark, the United Kingdom of Great Britain and Northern Ireland, but also Australia and New Zealand underwent territorial reforms, during which central governments transferred to municipalities many competences⁴, especially in the field of economy, urban planning, building agenda, education, culture, health, civil registry and others⁵. This process did not bypass the Slovak Republic either; As part of the process of decentralization of public administration taking place at the beginning of the millennium, many competences were transferred from the state to municipalities and higher territorial units, either as an original competence or as an indirect state administration. It was based on the strict application of the

³ More detailed in V. Hutta, J. Plos, *Základy stavebného práva*. Bratislava: Eurokódex, 2011, s. 37.

⁴ E. Laamanen, A. Haveri, *Size, Efficiency and Democracy – How Local Government Bonaries Affect Performance* [online]. Oeiras: EGPA Conference on Public Law at the Modernising State, 2003 [access: 21.10.2021], <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.196.972&rep=rep1&type=pdf>.

⁵ V. Nižňanský, M. Hamalová, *Spravodlivé rozdelenie politickej moci (rozdelenie kompetencií)*. Collection of Scientific Papers. Piešťany: KOM – Bratislava 2014: VŠEM VS., 130 p.

principle of subsidiarity, requiring the greatest possible devolution of responsibilities to those authorities that are closest to their addressees. While within the state administration there should remain tasks that are not suitable in terms of scope and importance to be decentralized to lower levels, namely the exclusive competences of the state (defence, foreign policy, etc.), tasks that go beyond the borders/possibilities of lower levels that are more appropriate to perform nationwide (construction of motorways, railways), as well as tasks requiring high expertise that exceeds the possibilities of lower levels⁶. This process also affected the performance of the building administration. As mentioned above, with effect from 1st January 2003, the municipality became the building authority, which exercises this competence as an indirect state administration⁷.

The effectiveness of the performance of building agenda activities by municipalities has long been subject to professional criticism, while there has also been a long-term effort to adopt a change in the legislation of both the institutes and processes themselves within the building code, as well as a change in the organization of the performance of this administration. When examining the given issue, we start from the initial hypothesis that the current status of public administration organization in the building agenda is not suitable with regard to the requirements of application practice.

The aim of this paper is therefore to examine the current organisation of this competence and, consequently, to focus on the currently proposed changes in this area. The result of the examination should be to identify shortcomings in individual regulations, while also taking into account the needs of application practice. Furthermore, it will be also important to examine how to eliminate those shortcomings in order to improve organization of the organization of the building administration.

In the elaboration of this paper, basic research methods were used. First of all, it was necessary to apply the analytical and synthetic method associated with the examination of individual elements of the acquired knowledge with their subsequent merging into a uniform whole. In addition, the method of historical comparison was applied, consisting in comparing legal regulations in different periods. Finally, it was necessary to apply the explanatory method and the method of description.

⁶ *Ibidem*, p. 14.

⁷ The text in the previous section is taken from the work R. Jakab, E. Berníková, *Organizácia výkonu kompetencií obce vstavebnej agende: súčasný stav a perspektívy* [in:] *Obecné zriadenie – interpretácia kompetencií*, ed. V. Žofčinová, R. Král, V. Kráľová, Pavol Jozef Šafárik University in Košice, Faculty of Public Administration, Košice 2021, p. 116–132.

2. Current state of organization of building administration

As mentioned in the introductory chapter, it is possible to include under the building administration both the agenda of urban planning (solution of urban and functional use of the territory) and the agenda of the building regulations (permitting of buildings, their use, removal of buildings, performance of buildings supervision).

In the conditions of the Slovak Republic, the central body of state administration for the given area is the Office for Urban Planning and Construction of the Slovak Republic, which was established on 1st January 2023 and took over the given agenda from the Ministry of Transport and Construction of the Slovak Republic. Thus, at the central level, there was a deconcentration of competences from the ministry to a special central body of state administration⁸.

State administration at the local level is carried out by district offices with regional competence (i.e. a total of 8 such offices), while they have an instance superior position in relation to municipalities in the performance of this agenda (they control municipalities, decide on appeals). In some cases stipulated by law, they have the status of a building authority (technically difficult buildings, etc.)⁹.

At present, however, since 2003, the municipality has had its irreplaceable place within the building administration. First of all, it should be noted that tasks in the field of urban planning are among its original self-governing competences. As part of this, the municipality prepares and approves municipality urban plan and the zoning urban plan, thereby having a decisive influence on the urban arrangement and functional use of the territory. In addition, the municipality also has a decisive influence in the section of building order, where it has the status of a general building authority (in relation to all buildings, unless some types are entrusted to other authorities). It performs activities in the field of building order as delegated tasks of state administration (delegated tasks). As the result the municipalities finance the performance of these tasks, but also supervises and bears responsibility for their performance.

This current model of organising the performance of building administration by municipalities undoubtedly has its advantages. First of all, it should be noted that it reflects to the greatest extent the desire to bring the performance of state activities as close as possible to the citizen, which was the main objective of the

⁸ § 2 of Act No. 608/2003 Coll. on the State Administration for Urban Planning, Building Regulations and Housing and on Amendments to Act No. 50/1976 Coll. on Urban Planning and Building Regulations (Building Act), as amended.

⁹ *Ibidem*, § 3.

public administration reform at the beginning of this millennium. Local matters are decided at local level with knowledge of local circumstances. This corresponds to the greatest extent to the principle of subsidiarity as set out in Art. 4(3) of the European Charter of Local Self-Government. According to that provision, *'As a general rule, the administration of public affairs shall be carried out primarily by those authorities closest to the citizen. The assignment of competence to another body should take into account the scope and nature of the task and the requirements of efficiency and economy'*. Related to this is undoubtedly another advantage of this model, which is that within this constellation the local public interest is most protected. Thus, the interest of the inhabitants of the municipality in the development of its territory. On the one hand, this is ensured by the fact that the urban planning itself within the municipality is entrusted to the municipality as a self-governing competence. This is subsequently followed by the performance of the municipality's activities as a building authority, when it can ensure that the intentions of urban planning are fully reflected.

At the same time, it should be noted that the current model of performance of building administration by municipalities also has its negatives and disadvantages. In the period from 1970 to 1990, the political regime of that time tried to artificially merge municipalities into larger administrative units. But after 1990, the opposite trend applied. Individual municipalities began to become independent. Finally, there are currently almost 2,900 municipalities in the territory of the Slovak Republic, which have from a few dozen inhabitants to almost 500,000 inhabitants. Regardless of population, each municipality performs essentially the same tasks, both self-governing and delegated (indirect) state administration. As part of this, each municipality is also a building authority. In this context, it is not surprising that small municipalities with a few inhabitants do not have sufficient personnel, professional and, above all, financial capacity to perform all tasks¹⁰. In the case of small municipalities, it is also not unusual that they cannot staff even the basic bodies of the municipality, namely the position of mayor and members of the municipal council.

Smaller municipalities are trying to eliminate the problem of lack of professional, personnel and financial capacities by creating so-called joint municipal offices. Joint municipal offices are thus created opaque and chaotically. However, even if the administrative agenda within the activities of the building authority is carried out by a joint municipal office, each municipality remains a building

¹⁰ Similarly in I. Lichnerová, E. Marišová, *Kompetencie obcí na úseku stavebného poriadku vSR – nutnosť novej legislatívnej úpravy* [in:] *Sociálne vedy z perspektívy mladých vedeckých pracovníkov IV*. Collection of papers. Trnava: UCM in Trnava, 2019, p. 206. DOI: 10.34135/svpmvpIV.191025.

authority and an administrative authority; Thus, it also bears the relevant legal responsibility for the performance of the activities of the building authority. In order to minimize costs within the joint municipal offices, the activities of the building officer are performed only by the necessary number of employees who can handle the basic agenda, but not difficult procedures or even administrative delicts¹¹. Thus, not all activities within the building agenda, which should be carried out by law by the building authority, are performed.

The problem also arises if the municipality is itself a builder, which is not unusual. Thus, the municipality should be both a building authority on the one hand and a party to the proceedings whose rights and obligations are decided. Such a state of affairs would certainly be unacceptable. Therefore, there is a legislative rule according to which, if the above situation occurs, then the building authority will be another municipality, which will be determined by the district office, i.e., as a rule¹² a neighboring municipality. It is possible to argue about the correctness of this solution. The competence to decide on such matters could have been entrusted directly to the district office, since it is a performance of state administration¹³.

3. Proposed status of organization in building administration

With effect from 1.4.2024, the new Act on Urban Planning¹⁴ and the new Act on Construction¹⁵, enter into force, which also affect the organizational system of public administration authorities within the building agenda. At the central national level, the Office for Urban Planning and Construction of the Slovak Republic will continue to exercise its competence. However, change is happening at the local level.

Until now, local state administration has been carried out by direct performers – district offices with competence within the region and indirect performers – municipalities. After this change, competence within the building regulations will

¹¹ See also M. Mičega, *Vývoj, súčasnosť a problémy stavebného práva na Slovensku*: diplomová práca. Trenčín University of Alexander Dubček in Trenčín, Trenčín 2013, 75–76 p.

¹² § 119 para. 3 of Act No. 50/1976 Coll. on Urban Planning and Building Regulations, as amended.

¹³ Other shortcomings of the current legislation on building law are listed in more detail in A. Barancová, M. Píry, *Budúcnosť stavebného práva* [in:] *Právne rozpravy on-screen III – sekcia verejného práva*. Matej Bel University in Banská Bystrica, Banská Bystrica 2021. DOI: 10.24040/pros.07.05.2021.sv p. 96–107.

¹⁴ Act No. 200/2022 Coll. on Urban Planning.

¹⁵ Act No. 201/2022 Coll. on construction.

be entrusted to regional building authorities with regional competence. Municipalities will no longer be active in the field of building order. However, their competence in urban planning will remain as a self-governing competence.

Thus, a significant change is that eight regional building offices will replace 8 district offices and approx. 2,900 municipalities that have provided the agenda of building order so far. It is obvious that regional building authorities will have to create their workplaces at least within the districts, as this agenda would be far removed from the addressees. Thus, municipalities within the building agenda will have competence only with regard to urban planning, i.e. preparation and approval of the municipal urban plan and zoning urban plan. Only through these tools will it be able to influence construction activity on its territory. However, its actual performance will be decided by the aforementioned regional building authorities.

The forthcoming proposal to change the organization of the performance of building administration therefore envisages the creation of a state administration body at the national level, which will centrally manage the activities of its regional offices with regional competence, as well as their workplaces, which will carry out the activities of the building authority within the area of their competence. The positive aspects of this model are that it is possible to expect an increase in professionalization of building agenda performance and greater expertise of employees, which will also be made possible thanks to a higher degree of specialization in individual procedures, including complicated ones, or in the performance of control and administrative punishment.

At the same time, it is also possible to see in it an opportunity to relieve municipalities from a considerably broad agenda and a relatively complex agenda. It can also be expected that certain local interests that may not be consistent with the public interest will be eliminated¹⁶.

On the other hand, this model contradicts the original concept of public administration reform consisting in the strict application of the principle of subsidiarity, i.e. that municipalities should carry out as many activities concerning their population as possible that can be carried out by them. Likewise, if we take into account that the agenda of the building authority will be carried out by regional authorities at the regional level, or at best their workplaces perhaps at the district level, this agenda will move significantly away from its addressee. It is therefore questionable whether and to what extent this model reflects the principle of subsidiarity as defined in the European Charter of Local Self-Government.

¹⁶ The text in the previous section is taken from the work R. Jakab, E. Berníková, *Organizácia výkonu kompetencií obce vstavebnej agende: súčasný stav aperspektívy* [in:] *Obecné zriadenie...*, op.cit., p. 116–132.

If the advantage of this model is the elimination of local interests, then this model carries the risk of implementing political or developers interests, which may also not be in compliance with the public interest. Finally, the model of central management of the building agenda existed in our conditions, at one time it was used to assert central political influences (during the communist regime until 1990) and in the next period it was nothing revolutionary (from 1990 to 2003).

4. Considerations about the optimal model

As mentioned above, the current model of organizing the performance of public administration in the building agenda has both advantages and disadvantages. To a certain extent those disadvantages are prevailing. Therefore, it is necessary to look for a more optimal model. However, it is at least controversial whether the proposed model of organisation of public administration in this area is the best one. I believe that its fundamental and biggest problem is the denial of the principle of subsidiarity under Art. 4(3) of the European Charter of Local Self-Government. Under the proposed model, decision-making on local issues in the building agenda will be transferred far from the citizen to regional towns, in ideal case only to district towns (if workplaces are set up). There is also a risk of increasing political influence on the decision-making of building authorities, and negative externalities cannot be ruled out, as it is easier to influence one officer than mayors accountable to their citizens.

However, the search for an optimal model of organization of public administration performance also within the building agenda has a broader context. The ideal solution would be to maintain the competences of municipalities also within the building order, i.e. to have the status of a general building authority. However, with the number of municipalities 2,900 to the total population of the Slovak Republic (approx. 5.5 million) it is not very ideal. Therefore, it will also be necessary to look at the possibilities of voluntary or even involuntary mergers of municipalities. Municipalities should be motivated by financial considerations for voluntary mergers. Both on the expenditure side, that they will save costs, and on the revenue side, i.e. that the state will provide a subsidy to the merged municipalities for this purpose. Involuntary mergers should apply where a municipality is unable to fulfil its statutory tasks or is unable to constitute its bodies. There is already an institute of municipal¹⁷ affiliation. However, it is limited only to municipalities that do not have a municipal council or mayor after conducting two consecutive

¹⁷ § 2aa of Act No. 369/1990 Coll. on Municipal Establishment, as amended.

elections to municipal bodies. I believe that the reasons for the involuntary merger of the municipality should be extended. Such reasons should also include the fact that the municipality is unable to properly and timely perform its tasks, whether self-governing or delegated from the state administration.

It would also be appropriate to change the approach of the state in transferring state administration competences to municipalities. Currently, the model is usually applied that the state transfers the competences of state administration equally to all municipalities. They carry them out on their territory and towards their inhabitants. However, the state could transfer these competences only to some municipalities (usually larger ones), which would also exercise them in relation to the territory and inhabitants of others, especially neighbouring municipalities. This would ensure that state administration tasks are carried out with sufficient staffing, professional and financial resources.

At this point, it is also necessary to draw attention to the results of research carried out under the leadership of E. Marišová¹⁸. As part of this research, the current model of building agenda performance by municipalities through joint municipal offices was compared with the model of civil registry agenda performance by municipalities. In fact, in the case of the performance of civil registry agenda, it is also a delegated performance of state administration, and not all municipalities are entrusted with this performance, but only exhaustively defined municipalities, while their territorial district also includes the territory of neighbouring municipalities. Thus, the boundaries of the territorial district of the registry office are clearly defined, it is unambiguous which municipality is the registry office. The published conclusions of this research show “However, the cooperation of municipalities at the level of building order arises chaotically, not as within the competence of civil registries, when municipalities belonging to the territorial districts of specific registry offices were established by Act No. 154/1994 Coll. on civil registers, as amended, and repeatedly by Decree No. 529/2001 Coll., establishing territorial districts of civil registry offices. [...] The paper pointed out the possibility of creating building offices, which was also supported by some authors, according to the territorial districts of civil registry offices. The approval of the new building code, which would specify the names of municipalities with building competences, similarly to civil registry offices, would prevent uncoordinated contracting between municipalities to ensure the performance of building order”¹⁹.

¹⁸ VEGA No. 1/0190/17 – Analysis of models of public service performance in the field of building regulations in terms of efficiency, effective size and spatial allocation of offices with a solution period 2017–2019.

¹⁹ I. Lichnerová, E. Marišová, *Kompetencie obcí...*, *op.cit.*, p. 216.

5. Conclusion

According to the current legal situation, the municipality exercises competences within the building agenda both as a urban planning authority (in relation to the preparation and approval of the municipal and zoning urban plan) and as a building authority authorizing buildings, their use or removal. This model has its advantages, which include, in particular, that local interests are decided by the authority closest to its inhabitants with local knowledge. But at the same time, it also has its disadvantages. These consist mainly in the fact that the building authority is every municipality, whether small or large, with the same competences. Therefore, especially small municipalities are struggling with financial, personnel and professional problems in carrying out this agenda. To this purpose, they must create joint municipal offices with other municipalities that ensure this agenda.

However, from 1.4.2024, a change in the organization of public administration in the field of building order is planned. The competence of the building authority is to be transferred from municipalities to so-called regional building offices operating in the territorial district of the region, while creating workplaces in smaller territorial units. This change can be expected to increase professionalism for the performance of this agenda. On the other hand, however, there is interference with the application of the principle of subsidiarity, which requires local matters to be decided primarily by the municipalities closest to its inhabitants. Thus, these matters will be decided by officials far away from the place on which they are deciding. It is also possible to argue whether this could lead to greater political influence on decision-making, or even influence by various developers.

Each of the listed models has its drawbacks, it is not ideal. If we wanted to think about the ideal model, it would be necessary to look at the issue from a broader perspective. The fundamental problem is the existence of a number of municipalities, while their number per total population is unsustainable. It is therefore necessary to consider a possible merger of municipalities, either on a voluntary basis or on an involuntary basis. Moreover, in the case of the transfer of state administration competences to municipalities, it is not necessary that they are transferred to all municipalities to the same extent. In this case, the state may determine that it will entrust certain competencies of state administration only to certain municipalities, which will also carry out the given agenda in the territory of other municipalities (especially neighbouring ones). This is nothing new. A similar model works, for example, in the field of civil registry agenda, so it is not excluded that it also could work in the field of building agenda.

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