



## **Prerequisites for cooperation between self-government and state administration in the construction sector of the Slovak Republic in the light of the new legislation**

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**Abstract.** Competences in the construction sector of the Slovak Republic (SR) under the current legislation are exercised at the local level of the state both by institutions of local self-government (municipalities) and state administration (district offices). The building authorities with the authority to decide on building permits are currently the municipalities to which the state has delegated building competences by Act No. 50/1976 Coll. on spatial planning and building regulations, as amended. However, the new construction legislation, effective from 1.4.2024, leads to a retroactive transfer of construction competences from municipalities to the state, to the newly created regional construction authorities. The long-awaited change in the legislation in the field of building regulations is expected to shorten the permitting processes and improve the functioning of building authorities. Municipalities will carry out the spatial planning, but the issuance of decisions on construction will be the responsibility of the state. The research presented in the paper, conducted through guided interviews with municipalities and district authorities in two selected regions of the SR, demonstrated the lack of state preparedness for the operation of the new state policy in the construction sector. We have come to a similar conclusion by theoretical analysis of the opinions of domestic and foreign authors. Optimal functioning of cooperation between state and local authorities would be possible with future legislative adjustments to the redistribution of construction proceedings between state and local self-government.

**Keywords:** self-government, state administration, cooperation in the construction sector, legislation.

**JEL Classification:** K23, K39.

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## INTRODUCTION

Every modern democratic society has developed its own system of governance - the regulation of individual and group interests. The concept of public administration encompasses the issues of organization and management of public affairs. Many European countries (especially the Nordic countries), Sweden, Denmark, the United Kingdom of Great Britain and Northern Ireland, as well as Australia and New Zealand, have been undergoing territorial reforms (Laamanen & Haveri, 2003), in which central governments have transferred many competences to municipalities, especially in the areas of: economy, spatial planning, construction, education, culture, health, civil registration and others (Nižňanský & Hamalová, 2014).

The territorial units of local government in the Republic of Finland are characterised by significant size disparities. Municipalities have an important role in terms of having a wide range of competences, including spatial planning and building regulations (Kováčová, 2016).

In 1970, the number of local government units in Finland was 518 (Chernenko *et al.*, 2017). However, this number has been gradually reduced. This was due to the challenges of being able to provide better services or financing them, but also due to the ageing workforce and the propensity of the population to migrate internally. The changes occurred within the framework of the project to restructure local government called "PARES" (Project to Restructure Local Governance and Services), which was prepared since 2005 and fully implemented in 2007 (Kováčová, 2016).

It was the most extensive local government (reform) project in Finland since 1989 (Meklin & Pekola-Sjöblom, 2013). Kováčová (2016) states that the reduction of municipalities continued after 2013, namely 317 in 2015 and only 313 in 2016.

The reform process of public administration in the Slovak Republic (hereinafter referred to as SR) began in 1990 and focused mainly on decentralisation, administrative reform and reform of the territorial and administrative division of the state. The main objective of this public administration reform was to improve the quality of services to citizens and to move from "management" to "care" and to devolve more competences to local governments. In the process of reforms, the Slovak Republic has adopted a number of strategies that support the environment, one of which is the Environmental Strategy, which imposes more efficient management on the Slovak public administration in line with the EU Green Deal. Valeníkova (2021) focuses on this strategy and states that this strategy emphasizes the need to modernize the current economy. A sustainable economy that does not harm the environment. In the context of the subsequent municipal reform in the territory of the Slovak Republic, the competences of public administration were decentralised by the adoption of Act No. 416/2001 Coll. on the transfer of certain competences from state administration bodies to municipalities and higher territorial units. By this law, the state administration authorities delegated to municipalities the exercise of more than 300 competences (Leška, 2015) falling into various areas.

In the construction sector, the objective of strengthening local governments with delegated competences was achieved by Act No. 416/2001 Coll. on the transfer of certain competences from state administration bodies to municipalities and higher territorial units. By § 2 of this Act, the construction competence was transferred from the State to the municipalities with effect from 1 January 2021. Act No. 50/1976 Coll. on spatial planning and building regulations was subsequently amended by the adoption of the Act No. 416/2001 Coll. In the wording of its provision § 117, with the transfer of competences, all municipalities became "building authorities" which are now obliged to provide all activities within the scope of the delegated competence related to it. However, many small municipalities would not be able to exercise this competence independently and therefore use the possibility of cooperation between municipalities in the exercise of building competence under the provisions of § 20 of Act No. 369/1990 Coll. on Municipal Establishment as amended.

A modern public administration should fulfil the generally applicable criteria, in particular the legislatively defined division of competences between public administration institutions and the high professionalism and ethics of public administration employees, so that the services provided to legal and natural persons are of high quality. Here we see an opportunity to set up an optimal cooperation between local government and local authorities.

District authorities exercise competences in the construction sector mainly through the departments of construction and housing policy and environmental care. They acquired these competences by Act No. 180/2013 Coll. on the organization of local government and on amending and supplementing certain acts, as amended, details of which are subsequently regulated in the Directive of the Ministry of Interior of the Slovak Republic no. 14/2018 Coll. regulating the details of the internal organization of the district office, as amended. The financial provision of the delegated competences of the state administration to municipalities in the conditions of the Slovak Republic is established by Act No. 523/2004 Coll. on the Budget Rules of the Public Administration and on Amendments and Supplements to Certain Acts, as amended, namely in the provisions of § 6 par. 2 states as follows: "The state budget law for the respective budget year shall budget the chapter's expenditure for the reimbursement of the costs of the delegated state administration to municipalities and the chapter's expenditure for the reimbursement of the costs of the delegated state administration to higher territorial units as binding indicators of the state budget." Financial security of the delegated state administration to municipalities is guaranteed by the provision of § 5 par. 1 of Act No. 369/1990 Coll. on Municipalities, as amended, where it is stated: "With the delegation of tasks to the municipality, the State shall provide the municipality with the necessary financial and other material resources".

We agree with Slávik *et al.* (2010), who have argued that the exercise of construction competence is very problematic, chaotic and its provision needs change.

The Government of the Slovak Republic in its Program Declaration for the period 2020-2024 in the area of spatial planning, construction and building planned the abolition of building offices and thus strengthening the position of specialized district offices, to which the building competences of the abolished building offices will be transferred. In other parts, public administration will be left to non-state actors, such as local authorities in the field of spatial planning, designers in the preparation and implementation of buildings, environmental associations in the control of public interests in the protection of the environment and others affected by civil law means (Program Declaration of the Government of the Slovak Republic for the period 2020-2024).

## AIM OF THE PAPER

The aim of the paper is to evaluate the cooperation of public administration bodies in the construction sector of the Slovak Republic in the light of the currently valid and new construction legislation. This assessment is based on the existing laws in the construction sector and at the same time new laws - the new Act No. 201/2022 Coll. - the Construction Act and Act No. 200/2022 Coll. on spatial planning. The newly adopted laws will enter into force on 1 April 2024. We critically analyze the current and new legislation and rely on a qualitative method of guided interviews with municipal representatives in the Nitra region (NR) and Košice region (KE), which we carried out in 2021 and we continue this research in 2022, which also included district offices in the regional seats.

From the results of the research we formulate the optimal cooperation between local government authorities - newly established regional building authorities and local self-government authorities - municipalities.

## METHODS OF EXAMINATION

The main object of the study are questions what issues the representatives of municipalities must solve when exercising the competences of the municipality at the level of the building code. In this paper we analyze problems related to the performance of building competence on the selection set of municipalities — building offices within the Nitra and Košice regions

We use the method of guided interviews with the top representatives of municipalities - building authorities and district offices - Departments of Construction and Housing Policy and Departments of Environment to investigate the problems of cooperation between the current district offices, which represent the local state administration, and the municipalities, which represent the local self-government in the above-mentioned regions of the Slovak Republic. At the same time, we also apply selected methods of sociological research; namely, the diagnostic method, the field research method and the empirical research method. We used the diagnostic method as a "pre-survey" method to find out partial information about the issue. The field research was conducted to collect primary data through structured interview. The empirical research method was used in order to test the hypotheses. On the basis of the prepared structured interview we set the following hypotheses:

**H1:** The current building legislation appropriately regulates the exercise of building competences by local self-government

**H2:** New construction legislation will improve the services of the state administration in the field of construction

The empirical results of the investigation are based on primary data collection. We used a guided, structured interview method to collect primary data through a constructed questionnaire. Subsequently, we subjected the obtained data to statistical inference.

Hypothesis 1 is solved by analyzing the current construction legislation and theoretical opinions of domestic and foreign experts, as well as by qualitative research on a selected sample of municipalities in two regions of the Slovak Republic.

In the case of **H2** we consider the hypothesis of homogeneity between two variants of the categorical variable (yes-no) on a sample of municipalities from the Nitra and Košice regions. We test the above hypothesis using the  $\chi^2$ -test of goodness-of-fit. In this case, we assume that the null hypothesis assumes that the probability distribution of the categorical variable (the level of government services in the field of building regulations) is the same in different populations (municipalities of the Nitra and Košice regions). In the first step, we determine the so-called expected abundances  $m_{ij}$  assuming that the null hypothesis holds. Formally entered:

$$m_{ij} = \frac{n_i \cdot n_j}{n} \text{ For } i = 1, 2, \dots, r \text{ and } j = 1, 2, \dots, s. \text{ we calculate the test statistics } \chi^2$$

$\chi^2 = \sum_{i=1}^r \sum_{j=1}^s \frac{(n_{ij} - m_{ij})^2}{m_{ij}}$  (1.0), where  $\chi^2$  statistics measure the overall dissimilarity of the numbers  $n_{ij}$  and  $m_{ij}$ . The larger the differences in observed and expected frequencies, the larger the test statistic  $\chi^2$ . We compare the  $\chi^2$  value with the critical value of the  $\chi^2$ -distribution at the degrees of freedom  $(r - 1)(s - 1)$  at the chosen significance level ( $\alpha = 0.05$ ). If the absolute value of the  $\chi^2$  statistic exceeds the tabulated value (critical value) of the  $\chi^2$  distribution, we reject the null hypothesis and accept the alternative hypothesis, and vice versa.

We apply the method of analysis to the currently valid and newly adopted legislative regulation of construction competences in the Slovak Republic and focus on the benefits of the new legislation in the transfer of construction competences from municipalities to the newly established regional construction authorities.

## **CURRENT AND NEW LEGISLATION OF THE SLOVAK REPUBLIC IN THE CONSTRUCTION SECTOR**

Slovak Constitution No. 460/1992 Coll. in the valid wording in Art. 64 states that the basis of local self-government is the municipality. Territorial self-government consists of a municipality and a higher territorial unit. The state may interfere in the activities of a municipality and a higher territorial unit only in the manner provided by

law. This is how the National Council of the Slovak Republic proceeded when adopting Act No. 416/2001 Coll. on the transfer of certain competences from state administration bodies to municipalities and to higher territorial units, to which construction competences were transferred from the state to local self-government, namely municipalities. This Act amended the basic building legislation - Act No. 50/1976 Coll. on spatial planning and building regulations, which designated municipalities as building authorities in the provisions of § 117. According to this amendment, each municipality is obliged to provide all activities within the scope of the delegated competence related to it. Currently, the Slovak Republic has 2.927 municipalities (Bačík, 2021).

Many, especially Scandinavian countries have reduced the number of municipalities through public administration reforms, e.g. as Lidström & Madell (2021) state, local government in Sweden consists of two tiers - 290 municipalities and 21 regions, each corresponding to the area of a county.

We agree with Klimovský (2010), who states that the currently used compensatory instruments (e.g. the institute of voluntary cooperation, which results not only in the creation of so-called micro-regional associations, but also in state-respected joint municipal authorities) bring partial successes, but several studies point out that these are still insufficient solutions (Klimovský *et al.*, 2014). That is why the long-awaited municipal reform should be implemented in Slovak conditions as soon as possible. Currently, this reform needs to be broadly acceptable, but at the same time not to be another partially distorted or unfinished initiative.

As we have already mentioned, in connection with the exercise of competences in the field of building regulations according to the Program Declaration of the Government of the Slovak Republic 2020-2024, the current building offices will be abolished and their competences will be transferred to specialized district offices.

The objectives of the current Government of the Slovak Republic, which are presented in its strategic documents, in particular in the above-mentioned Program Declaration of the Government of the Slovak Republic (2020), as well as in the strategy "Modern and Successful Slovakia (Ministry of Finance, 2020), which are aimed at changing the functioning of Slovakia for the better.

Building Act No. 50/1976 Coll., as amended, is still in force, but at present the new Act on Urban Planning No. 200/2022 Coll., Construction Act No. 201/2022 Coll. and amendment to Act No 575/2001 Coll. on the organization of the activities of the government and the organization of central state administration, which will enter into force from 1.4.2024.

The long-awaited change of legislation in the field of spatial planning and building regulations is to bring shortening of permitting processes, improvement of the functioning of building authorities and their professionalization and reduction of bureaucracy. The related processes will be clearer and simpler, avoiding the emergence of so-called grey areas where corruption is breeding ground. The aim is to streamline and professionalize the sphere of spatial planning and construction. As we have already mentioned, the original Act No. 50/1976 Coll. on Spatial Planning and Building Regulations was replaced in 2022 by two new acts, namely Act No. 200/2022 Coll. on spatial planning of 27 April 2022 and Law No. 201/2022 on construction of 27 April 2022. Both laws came into force on 7 June 2022 and will be effective from 1 April 2024.

There has been a change in relation to the construction procedure, mainly because on 1 June 2022 the Office for Spatial Planning and Construction of the Slovak Republic (further also Authority) was established, which will manage construction procedures instead of municipalities. Its main task will be to procure the Concept of Spatial Development of Slovakia and to act as a coordinator of a unified procedure and processes of spatial planning through methodological guidelines. The existing stages of individual spatial planning documentation remain and a new type of spatial planning documentation is added - the micro-region spatial plan. Regional offices will fall under the Authority and will have a defined territorial area of jurisdiction. There will be 8 regional offices in total, based in Bratislava, Banská Bystrica, Košice, Nitra, Prešov, Trenčín, Trnava and Žilina. The processing of building permits will also be accelerated thanks to digitalization.

The new legislation changes the decision-making power for the authorization of buildings. Building permits will be centrally managed by a newly established central government body. The powers of the existing building

authorities, which were held by the municipalities, will be transferred to the building authorities, which will be departments of the newly established authority with a defined territorial jurisdiction (Acs, 2022). Competence for the central authorization of buildings will be changed from 1.4. 2024, when the new Act No. 201/2022 Coll. on construction.

We agree with Bednarova *et al.* (2021) that many countries have shifted priorities in economic development and encouraged business where negative environmental impacts are limited. This fact is also reflected in the new construction legislation of the Slovak Republic.

Act No. 200/2022 Coll. on spatial planning also affects the competences of municipalities and prepares the conditions for the implementation of construction procedures. It includes the definition of spatial planning authorities, spatial planning instruments and activities. The aim of the new law is mainly the computerization and digitization of data in this area by establishing a new information system, as well as simplification and acceleration of the spatial planning process by simplifying the processes (cancellation of the concept, non-negotiation of the assignment, harmonization with the environmental impact assessment processes) and computerization.

The municipality currently procures, discusses and approves the assignment and design of the spatial plan of the municipality and the zone, draft amendments and additions to the spatial plan of the municipality zone and at least once every four years draws up a report on the state of the municipality plan and the zone, on the basis of which it draws up the assignment, procures and ensures the current territorial planning documents for the acquisition and processing of the spatial plan of the municipality and the zone and monitors their actuality. As a competent authority of local self-government, it expresses on the draft assignment and on the proposal of the binding part of the documentation of higher levels and on the proposal of the binding part to the spatial plan of the municipality with which the cadastral territory adjoins or whose proposal of the binding part of the municipality plan has an impact on it. The municipality ensures compliance of the related stages of documentation. It provides for the publication and updating of the approved territorial plan of the municipality and the zone and issues the resulting binding opinion.

Based on § 20 and § 21 of Act No. 369/1990 Coll. on Municipal Establishment, municipalities may cooperate on the basis of a contract concluded for the purpose of carrying out a specific task or activity. Municipal cooperation is governed by the principles of legality, mutual benefit and consistency with the needs of its inhabitants. Municipalities, cities and regions are on an equal footing when working together. The most common forms of cooperation in the construction sector are Joint Building Offices (JBOs). This is also how Fandel *et al.* (2019) state: The joint building offices in Slovakia have been established by incidental contracts, concluded among municipalities.

The JBOs performs the tasks and activities of building authorities according to the Building Act No. 50/1974 Coll. as amended within the framework of the delegated performance of state administration for a number of municipalities on the basis of a cooperation agreement. This is due to the size and number of mainly small municipalities, where it would not be very efficient for each of them to carry out the performance of building authorities separately, which also allows for a more economical and efficient use of their funds, with which they have to make other provisions to the extent necessary. At the same time, it is a planned simplification of management by the current district authorities towards the building authorities. Despite this possibility of facilitating and optimizing certain competences, there are still unmerged building authorities which independently implement competences in the field of building regulations.

Amendment No.416/2001 Coll. of Act No.50/1976 Coll. - Building Act as amended on 1 January 2003, in §117, each municipality was defined as a building authority and "the competence of the building authority is a delegated power of the state administration, while the municipality that is the seat of the joint municipal authority shall notify the competent district authority of its establishment, as well as the list of municipalities for which JBO

performs tasks in the field of land use proceedings and building regulations." The main problem is that the delegation of the exercise of this competence by the State has been carried out without adequate staffing, material or financial resources to the almost 3 000 municipalities that exist today. The State, by Act No. 416/2001 Coll., as amended, has transferred the exercise of building competence from the state authorities to the self-government units and has undertaken to fully finance all the costs incurred by the building authorities in the exercise of this competence (within the meaning of Act No. 523/2004 Coll. on the budgetary rules of the public administration and on amendment and supplementation of certain acts, as amended), but the reality is quite different. The amount of the state subsidy received by the authorities for the exercise of this competence does not take into account the real costs of the building authorities at all. Even the Deputy Prime Minister for Legislation and Strategic Planning, Š. Holý agreed with this (TREND, 2021a).

### **COOPERATION BETWEEN STATE LOCAL GOVERNMENT AUTHORITIES - DISTRICT AUTHORITIES AND LOCAL SELF-GOVERNMENT - MUNICIPALITIES IN THE CONSTRUCTION SECTOR**

According to the valid and effective legislation in the Slovak Republic, only municipalities are the general building authorities. The district office may act in the subject area only as a special building office within the meaning of the provisions of § 120 of Act No. 50/1976 Coll. on Spatial Planning and Building Code, as amended. Such special construction authorities have their competence defined on the basis of "specific construction and technical characteristics of buildings, which are usually larger, especially linear buildings, with greater impact on the surroundings, sometimes located in the territory of several territorial units or administrative units (Škrobák, 2015). The content of the concept of special building authorities is not found in the Building Act, but must be sought in specific legislation.

The district office exercises the powers of a special building authority in cases where the construction of roads and water structures is concerned. Under the *de lege lata* legislation, the special building authorities do not have jurisdiction in matters of zoning and expropriation, which remains in the hands of the general building authorities.

According to the adopted and valid Act No. 201/2022 Coll. on Construction, which will enter into force on 1 April 2024, the district office as a special construction office is no longer envisaged. In the case of road construction, this competence will fall to the newly emerging state administration bodies in the relevant section - the Office for Spatial Planning and Construction of the Slovak Republic and the regional building authorities. In the case of water constructions, the competent authority acting as a special construction authority will become a state administration body within the competence of the Ministry of the Environment of the Slovak Republic, and it is assumed that it should be the Slovak Environmental Inspectorate. Individual changes in the competences of the authorities have been described by Berníková & Jakab (2021).

The cooperation of district authorities with municipalities as building authorities seems to be very important and necessary at present, especially in terms of ensuring the fulfilment of the delegated competences of the state administration in the field of construction. It is an expression of the fact that the so-called synergy effect can also be used in the field of cooperation between local self-government and state administration. As we have already mentioned in Part I, with effect from 1 April 2024 there is a new legislative regulation of the construction and spatial planning sector and therefore also of the cooperation between the state administration and local government. The newly adopted Construction Act will abolish the building authorities in the municipalities and the competences of the municipalities in the building regulations will be transferred back to the state with effect from 1.4.2024.

According to the currently valid Act No. 180/2013 Coll. on the organization of local state administration and on amendment and supplementation of certain acts, the status of the district office is defined as the status of a local state administration body. In practice, the state administration is carried out by a department of the district authority or an organizational unit of a department of the district authority.



Citizens of towns and villages can now deal with their official matters at the local district office in the client center of the relevant Department of Construction and Housing Policy. In matters in which the municipality acts as the building authority in the administrative proceedings in the first instance, the District Office, Department of Construction and Housing Policy, performs the state administration in the second instance.

The district office in the area of territorial planning currently performs the function of the town planning authority. Methodically directs territorial planning authorities in the village in the issue of complex solution of spatial layout and functional use of the territory, assesses the assignment for the urban plan of the municipality and the zone and also examines the design of the urban plan of the village and the zone. Exercises the powers of the first-instance building authority in matters of zoning proceedings and issues zoning permits for the construction of motorways and roads for motor vehicles according to special legislation. The Department of Construction and Housing Policy of the District Authority determines which building authority will carry out the procedure and issue the decision in the case of constructions or measures extending beyond the boundaries of the territorial district of one building authority.

The district office currently performs the function of a spatial planning authority. It methodically guides the municipal planning authorities in the issue of comprehensive solutions to the spatial layout and functional use of the territory, assesses the assignment for the municipal and zone master plan and also reviews the draft municipal and zone master plan. It coordinates activities with the spatial planning authorities at the self-governing regions, determines the decisive directions of the state policy in the field of spatial planning at the regional level.

On 28 April 2021, the Government of the Slovak Republic, by Resolution No. 228/2021, updated its original Program Declaration for 2020-2024 with corrections for 2021-2024.

In the section on 'Spatial planning, construction and building' in the updated government declaration, it has retained the original text, but removed the deadlines for completing the tasks it had set itself in the original declaration. In the updated declaration, the text on the priority of the Government of the Slovak Republic in the field of construction also with the participation of the professional public to prepare and submit to the National Council of the Slovak Republic for approval new building regulations corresponding to the needs of the 21st century with regard to simplification and acceleration of construction and, last but not least, the establishment of transparency in this area.

However, the text regarding the deadline for the approval of the new building regulations by October 2020 at the latest has been deleted. Similarly, the deadline of full digitization of the construction procedure by November 2021 at the latest, has been deleted. The general text has been retained in the updated Government Declaration: The Government of the Slovak Republic is also committed to the full digitization of the construction procedure.

The text in the section "Efficient public administration" was also retained, with the government's commitment to create a commission to analyze the possibilities of modifying the local and regional structure of local government, which will be a sub-commission of the Commission for the Structural Reform of Public Administration under the authority of the Deputy Prime Minister for Legislation and Strategic Planning. However, this commission has not yet been established, which has been criticized by the local self-governments in several statements, but the Ministry of the Interior, as the responsible for public administration issues, claims that it is working on its reform. It responded to the calls of the Union of Slovak Cities and the Association of Self-Governing Regions SK8, which are calling for reform and demanding an adjustment of the division of competences between the government, regions and municipalities.

The biggest response in the new draft of the Construction Act was the intention to remove the building authorities from the local self-governments. Holý (TREND, 2021b) explains this by claiming that cities and

municipalities are unable to do the construction agenda efficiently, which hinders the builders' business and may also be responsible for the high prices of flats.

We agree with Mura (2021) who states that territorial self-government is one of the important pillars of the functioning of public administration and the whole political system of our country. In the environment of territorial self-government, local and regional self-government bodies are closest to the citizens and know their daily needs.

However, the reality, according to a commentary by the Union of Slovak Cities (2021), is that it is not only municipalities that are to blame for slow construction procedures, but also the state. The decentralization of competences has not led to their separation from the State. For example, district authorities, which are state institutions, are also involved in the construction procedure, albeit only as an appellate body.

The Association of Towns and Municipalities of Slovakia points out that Act No.416/2001 Coll. on the transfer of certain competences from state administration bodies to municipalities and higher territorial units, as amended, has created almost three thousand building authorities that had to respond to the situation. In addition, the state has completely underestimated the funding of performance in its interest, as well as the investment in people in the construction offices.

"This proves that it was not the local self-governments that failed, but the state, which, firstly, did not set it up well, secondly, even in the process did not correct it, and thirdly, the local self-governments dealt with it by sponsoring the state, emphasizes the mutual communication and cooperation between the public authorities and the inhabitants of the state Michal Kaliňák, (2019) secretary of the Council of Experts.

Klimovský (2014) states that it is possible to conclude that although it seems that there is more intensive intermunicipal cooperation in the territorially fragmented countries like Slovakia, it does not mean at the same time that its performance is better (e.g. more efficient).

On the other hand, one can find there also highly fragmented countries - e.g. the Czech Republic, France, Slovakia - where local self-governments perform their tasks and deliver public services in the units with population that consists of much lower number of inhabitants (in some cases it is only several inhabitants) (Klimovský, 2009; Swianiewicz, 2009).

In connection with the current and newly adopted legislation in the construction sector, we must state that the procedure of the Government of the Slovak Republic in the regulation of the construction sector is non-conceptual, as the adoption of new construction legislation will result in the retroactive transfer of construction competences from local self-government - municipalities to the state administration - regional building authorities with effect from 1.4.2024. It is very difficult to assess the cooperation between the state administration and the local government in the construction sector as optimal, especially in view of the critical statements of the Association of Towns and Municipalities (2019) which commented on the new construction legislation, but their comments were not accepted.

The aim of our research, which we are conducting within the framework of the APVV project 20-0076 "Waste and Buildings - Modeling Efficiency of Alternative Opportunities for Public Authorities Cooperation", was to evaluate the cooperation between public authorities and during 2021 we conducted qualitative research consisting of guided interviews in municipalities of the Nitra region (12) and the Košice region (16) with the intention to find out the opinions of mayors and professional staff of building authorities regarding the planned transfer of construction competences from local government to specialized district authorities.

In order to find out whether mayors see the benefits of this solution, we obtained the opinion of 4 municipalities in the Nitra Region (NR), which partly support the transfer of these competences to the state because of the financial benefits for municipalities, since the subsidies for the performance of the competence are insufficient.

However, in the NR region, 8 municipalities disagreed in the guided interviews with the benefit of a retroactive transfer of construction competences from the municipalities to the state, although they partially expressed the possibility that if the competences of the construction office are provided by qualified, experienced staff in the district offices, it may be more efficient (shorter procedures, etc.). Building authorities should remain in the

competence of municipalities, in this way building authorities are much closer to citizens. It would be necessary to strengthen the current building authorities both in terms of personnel and technical capacity and to simplify the legal regulation, especially for simple constructions, to issue building permits, as long as the builder submits a complete application, without a building procedure. The current status in the construction procedure is satisfactory. In addition, the power of the state will be centralized by the new legislation.

In the Košice Region (KE) we conducted a guided interview in 16 municipalities, 10 of which agreed to the transfer of construction competences to the state, as they see the benefit of this solution as significant due to the fact that in small municipalities the construction office is only externally, a few hours, perhaps marginally. In municipalities that have a separate authority, the municipality must subsidize the activities of the building authority. They also see as a benefit of the solution that the funding and sufficient staffing of the office would be solved (often all construction tasks are solved by one person for all or any tasks). The only benefit of the solution is that the activity will be fully financed by the state. The municipality significantly contributes to the activities of the construction office, as the transfer from the state only covers the salary costs of the employees, even if not in full. It does not cover operating costs at all.

On the merits of the new building legislation, we also noted a view that change is needed. The benefits will be an increase in expertise and should also result in shorter timeframes and more rigorous compliance with the law in the permitting process. However, the mayors cannot quite imagine the staffing of such a centralized construction office.

We have recorded disagreeing opinions regarding the new building legislation in 6 municipalities in the KE region. The mayors in these villages do not see the benefit in anything, the administration will not be closer to the people. It is better when the building competences are with the municipality, as the mayor knows his area better and as it is now, it is more correct. The decision-making of the central authority may not be appropriate because it is not that close to the citizens of the municipality. The new building legislation was expected to be a professionally drafted building law with clear rules. In practice, it is not a question of who will implement the building regulations, whether the state administration or the local self-government, it is a question of how it will be implemented. The amendment itself does not have clear rules of procedure. The authorization process in the amendment is completely outside the process of administrative proceedings, thus it does not respect Act 138/2004 Coll. on administrative procedure as amended (Administrative Procedure Code), from the commencement of the procedure (zoning, building, building permit) by notification, to the issuance of the decision - no appeal is allowed, the decision immediately enters into legal force by its delivery. The new law somehow does not contemplate these procedural acts. Further, party status is absent. The current set-up of the existing building legislation is fine.

The results of the qualitative research to test the validity of the hypothesis  $H_2$  about the homogeneity of the attitude of local self-governments regarding the improvement of the state administration agenda in the field of building regulations after the adoption of the new building legislative regulation has been described in this Part II.

The calculated test characteristic according to Equation 1.0 is  $\chi^2 = 43.45$ . In the  $\chi^2$  distribution table, the critical value for a given number of degrees of freedom at the  $\alpha = 0.05$  significance level is  $\chi_{krit.}^2 = 3.84$ . The calculated value of  $43.45 > 3.84$  far exceeds the tabulated value of  $\chi^2 > \chi_{krit.}^2$ , and therefore the null hypothesis about the homogeneity of the

attitude of the municipalities of the Nitra and Košice regions regarding the improvement of the state administration agenda in the field of building regulations after the adoption of the new Building Act can be rejected. This suggests that there are statistically significant differences between the surveyed municipalities within the two counties in their views on the expected benefits of the new Act on construction in one of its key aspects.

We supplemented this research in 2022 with research at district offices in NR and KE regions, where we contacted district offices in Nitra region (7) and in Košice region (8). We contacted especially the District Office in Nitra and the District Office in Košice, which are in the seats of the regions. In the seats of regional towns, construction competences are to be performed by the newly established regional construction offices in accordance with the new Construction Act and the amendment to the Act on the organisation of government activities and the organisation of the central state administration. In a guided conversation we discussed the fact that the competence of the existing building authorities (municipalities) will pass under the new Construction Act (formerly the Building Act) to the building authorities, which will be the workplaces of the newly established authority with a defined territorial competence.

We asked the current district offices whether they envisaged that the newly established office would be part of the existing district office.

The district offices in the region seats expressed the belief that a separate office would probably be set up, but certainly the district office in the region seat would not be the construction office. They were unable to answer the question of whether staff from the municipalities would transfer to the newly established building authority. The other district offices (12) responded in the same way, noting that they had no guidance from the Slovak Government or the relevant ministry and that the new construction offices would be established in the regional headquarters, not in the other district offices.

When asked whether the district offices are cooperating with the municipalities in ascertaining the interest of the municipal employees to transfer to the newly established building offices in the regions and whether they are already registering such applications, we received the answer that no, no action has been taken yet, no applications have been submitted.

The District Office in Rožňava commented in more detail in the sense that the law is not yet effective, it is not known, it is only assumed that detached workplaces of the newly established central government body - the Office for Spatial Planning and Construction of the Slovak Republic will be created and employees from the Department of Construction and Housing Policy of the District Office could be transferred to these workplaces in the seat of the regions.

It also commented that the district offices are state government and the municipalities are local self-government; they have not yet seen any requests from municipal employees to transfer to the newly established building offices.

We were also interested to know whether training is being prepared for newly recruited staff at the newly established building offices and were informed that the district offices are not aware of this, but will apparently receive guidance once the new Construction Act is passed.

Following these findings, we stated that we would continue our research at the district offices only in due course after the publication of the new Construction Act and the amendment to the Act on the Organization of Government Activities and the Organization of the Central Government, and thus the district offices - the staff of the Environment Departments, the State Construction Administration Department will be able to respond to our research questions. From the research carried out at the construction offices of municipalities it can be stated that mayors in the Nitra region (8 out of 12 mayors interviewed) mostly disagree with the new legislation in the construction sector and with the retroactive transfer of competences from municipalities to the state. The municipality is closer to its residents than the district office and the power of the state will be centralized with the new legislation. It is also expected from the new construction legislation that the construction procedure will be more time-consuming, citizens will have to go to district offices, which will be established in the seats of regional towns.

On the other hand, however, in the Košice Region, the vast majority of the mayors interviewed (6 out of 16 mayors) welcome the new Construction Act as the optimal solution for change in that the municipality under the

original Construction Act paid financially for the transferred competences and under the new construction legislation, the state will fully finance the exercise of construction competences.

## **PROPOSAL FOR OPTIMAL COOPERATION IN PUBLIC ADMINISTRATION IN THE CONSTRUCTION SECTOR**

Changes in the area of building regulations in Slovakia have been a much debated topic for a long time. The building authority in Slovakia has so far been the municipality, regardless of its size.

We agree with Mederly *et al.* (2019) that the building authorities would certainly accept the change. However, this change should be primarily based on the adoption of the new wording of the Construction Act and the subsequent way of exercising construction competence, which is not only advocated by municipal representatives.

The newly adopted Construction Act, effective from 1.4.2024, stipulates that construction competence will be transferred from the local self-government to the state. The newly created central state administration body for the construction industry will be the Office for Spatial Planning and Construction of the Slovak Republic with nationwide competence. Construction competences will thus be retroactively transferred from the local self-government - from municipalities to the state administration - to the construction authorities, which will be subordinated to this newly established central state administration body. The building authority will be in accordance with § 5 of the new Act on Construction No. 201/2022 Coll. the regional construction authority in whose territorial district the construction works are to be carried out, if there is no competent special construction authority.

As we have already mentioned, in the sense of the amendment no. 172/2022 Coll. Act on the organisation of government activities and the organisation of the central state, as amended, a new central state administration body - the Office for Spatial Planning and Construction of the Slovak Republic - was established as of 1 June 2022 and the competence of the existing building authorities (municipalities) will be transferred to building offices, which will be departments of the newly established Office with a defined territorial competence and their main task will be to perform the competence of the existing building offices. The newly established building authorities will assess and decide on each construction project and issue decisions. This legislation will transfer so-called decision-making competences from municipalities to the state administration. In this amendment, we see the centralization of the state administration and move away from the proclaimed goal of reforms in the public administration of the Slovak Republic, which are to improve the quality of services to citizens and to move from "governance" to "care" (govern to governance) and to transfer more competences to local self-governments.

According to the current legislation, municipalities are the first-instance administrative bodies that issue decisions - building permits in the construction procedure. A party shall have the right to appeal against a decision of the administrative authority, or unless the party has waived the right to appeal in writing or orally on the record. In appeal proceedings, the principle of two-stage procedure applies (Vrabko *et al.*, 2009).

According to the new Construction Act, the decision of the administrative authority - the specialised district authority, which will be the regional construction authority, the construction decision becomes legally valid upon its delivery. The Authority may review the final decision on the construction plan at the initiative of the builder within a maximum period of 2 months, which is also set for filing an administrative action under the Administrative Court Code. In this provision we see an intervention into the currently valid Administrative Code of the Slovak Republic, which regulates the two-instance procedure, i.e. the admissibility of filing a proper remedy - an appeal of the builder against an invalid decision on the construction plan. The new wording of the Construction Act lacks a reference to the Administrative Procedure Code in the sense that the proceedings on the construction plan will no longer be subject to the two-instance regulation of the administrative procedure, nor will the so-called extraordinary remedies be admissible.

In the changing transfers of competences from municipalities to state authorities in the Slovak Republic we see the inconceivability of the new legislative solution. In our opinion, the new legislation in the Slovak Republic should not lead to the centralization of construction competences and their retroactive transfer to the state. This step will violate the principle of closer to the people, which was the basic idea in the process of decentralization of public administration.

In our opinion, the functioning of the cooperation between the state administration and the local government should be based on the Administrative Procedure Code (Act 138/2004 Coll. on Administrative Procedure as amended) and the construction procedure should be two-instance.

However, we agree with the new construction law, which is supposed to shorten the construction procedure, because according to the analysis of the World Bank, the Slovak Republic ranks 154th among 190 countries in the world (The World Bank, 2021) in terms of the speed of dealing with construction permits. The creation of a new information system Urbion, which will be used for the registration of building plans, is appropriate in the new legislation and supports the computerization of processes and digitization of data related to spatial planning and construction.

We also agree with the provision of the new Construction Act on the status of the construction contractor, who will have to be a person authorized to contractor to construct or remove buildings and to provide for this purpose the necessary construction works and other professional activities in construction by natural persons with authorization for a defined type of construction works or other professional activities. According to the current construction legislation, the construction contractor did not have to have such a status.

The new Construction Act does not allow additional legalisation of a building constructed without a building permit. As stated by Piri (2020), it is estimated that the number of such buildings is currently around 10.000.

## CONCLUSION

In the present paper we evaluated on the basis of the current construction legislation in the Slovak Republic and on the basis of qualitative research in the NR and KE region how the current cooperation of local and state administration in the construction sector of the Slovak Republic works and by the chosen methods we outlined the possible optimal cooperation between in the light of the new construction legislation. On the basis of guided interviews with mayors of municipalities and employees of district offices in these regions, as well as the findings of authors of domestic and foreign scientific articles, we subjected the existing and newly adopted construction legislation to constructive criticism. The new laws on spatial planning and construction regulate in a new way the cooperation between municipalities and regional building authorities, and from the research carried out within the APVV project we have evaluated our hypotheses as follows in terms of the opinions of mayors of municipalities and district authorities in NR and KE regions:

*H1:* The current building legislation appropriately regulates the exercise of building competences by local self-government. This hypothesis was only partially confirmed, as the state has the right to implement the budget according to the Act on Budgetary Rules No. 583/2004 Coll. as amended, provides municipalities with funds for the performance of delegated competences. However, municipalities have to partially cover the costs of implementing building regulations from their budgets, as confirmed by the NKU report (2015), as well as the mayors of municipal authorities. However, municipalities are able to ensure the construction agenda mainly by cooperating in the construction sector and creating joint construction offices according to Act No. 369/1990 Coll. on Municipal Establishment, as amended.

*H2:* The new construction legislation will improve the services of the state administration agenda in the field of construction. We tested the plausibility of this hypothesis on a sample of municipalities in the Nitra and Košice regions through interviews and formally subjected the results to the  $\chi^2$  goodness-of-fit test. The results showed a high level of disagreement between municipalities within the two counties, suggesting that there is insufficient

evidence to confirm or reject the null hypothesis, but it can be said that there is reasonable doubt at the municipal level about the benefits of the new building code legislation.

With the reservations that arise from our presented research and the acceptance of the new construction legislation, in our opinion, the cooperation between state and local authorities could work optimally.

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