

UDC 342.2.1

DOI <https://doi.org/10.24144/2307-3322.2026.93.1.46>

LOCAL SELF-GOVERNANCE PROTECTION WITHIN THE SCOPE OF THE COMMUNAL CONSTITUTION COMPLAINT CONTEXT

Ondrová J.,

*Doctor of Law, University Associate Professor,
The Constitutional Law Department,
Faculty of Law,
Matej Bel University Banská Bystrica
ORCID: 0000-0003-2954-6907*

Úradník M.,

*Doctor of Law
The Financial and Administrative Law Department
Faculty of Law,
Matej Bel University Banská Bystrica
ORCID: 0000-0002-1748-6399*

Ondrová J., Úradník M. Local self-governance protection within the scope of the communal constitution complaint context.

The organization and implementation of public activities on the levels of municipalities and parishes are of special importance for every citizen's life. Local self-governance is very closely interconnected with civil society configuration, and besides that the local self-governing stands for the signified element and an integral part of the democratic civil society, and at the same time it is coherent with the lawful state awareness. Within the sense of the Local Self- Governance European Charter, the protection and strengthening of the local self-governing in the European countries represent a signified contribution directing towards the Europe based on the principles of democracy and the power decentralization. The local municipal bodies constitute one of the most important bases of every democratic system. According to Article 11 of the Local Self-Governance European Charter, the local self-governing bodies have the right to apply judicial remedy tools in order to safeguard the free and equal enforcement of their powers, and thus to achieve respect for the self-administration principles grounded by the intrastate legislation. The local self-governance signifies an integral part of the Slovak Republic constitutional system resulted from the processes of democratization and decentralization. Consequently, in this way the constitutional legal amendment regarding the local self-governing rights and activities are protected. In contradiction to the state infringements into the local self-governance accomplishment, enquiring about the constitutional and judicial protection is entirely legitimate and judicious. The contents of the presented scientific contribution aim at the institute of the local self-governing bodies complaint which is often denoted as the communal constitutional complaint as it is stated by the Article 127 of the Slovak Republic Constitution. The methodological procedure advances from the general descriptive sources and the legal amendment that is further based on the analysis and comparison. The special accent is put on the partial comparison of the constitutional communal complaint with the similar institute of complaints presented by the natural person or the legal entity as stated by Article 127 of the Constitution. The presented facts are added and completed by judicial judgements, and in this way the theoretical foundation exceeds the theory and finally outgrows into practical application practice.

Key words: Local Self-governance, constitutional complaint, protection, powers, unconstitutional, unlawful

Ондрова Й., Урадник М. Охорона місцевого самоврядування в рамках механізму комунальної конституційної скарги.

Вказується, організація та здійснення публічної діяльності на рівнях муніципалітетів та парафій мають особливе значення для життя кожного громадянина. Місцеве самоврядування

тісно пов'язане з конфігурацією громадянського суспільства, і крім того, місцеве самоврядування є значущим елементом та невід'ємною частиною демократичного громадянського суспільства, і водночас воно узгоджується з правовою державною свідомістю. У розумінні Європейської хартії місцевого самоврядування, захист та зміцнення місцевого самоврядування в європейських країнах є значним внеском, спрямованим на Європу, засновану на принципах демократії та децентралізації влади. Місцеві муніципальні органи є однією з найважливіших основ кожної демократичної системи. Згідно зі статтею 11 Європейської хартії місцевого самоврядування, органи місцевого самоврядування мають право застосовувати засоби судового захисту для забезпечення вільного та рівного здійснення своїх повноважень, а отже, для досягнення поваги до принципів самоврядування, заснованих на внутрішньодержавному законодавстві. Місцеве самоврядування є невід'ємною частиною конституційної системи Словацької Республіки, що виникла в результаті процесів демократизації та децентралізації. Отже, таким чином захищаються конституційно-правові зміни щодо прав та діяльності місцевого самоврядування. На відміну від державних посягань на здійснення місцевого самоврядування, питання про конституційний та судовий захист є цілком законним та обґрунтованим. Зміст представленого наукового дослідження спрямований на інститут скарги органів місцевого самоврядування, який часто називають комунальною конституційною скаргою, як це визначено у статті 127 Конституції Словацької Республіки. Методологічний процес виходить із загальних описових джерел та правових змін, які далі базуються на аналізі та порівнянні. Особливий акцент робиться на частковому порівнянні конституційної комунальної скарги з аналогічним інститутом скарг, поданих фізичною або юридичною особою, як це визначено у статті 127 Конституції. Наведені факти доповнюються та доповнюються судовими рішеннями, і таким чином теоретична основа перевершує теорію та зрештою переростає у практичну практику застосування.

Ключові слова: місцеве самоврядування, конституційна скарга, захист, повноваження, неконституційний, незаконний.

Problem Proclamation. Coming out from Article 1 section 2 of the Slovak Republic Constitution, it can be ascertained that the Slovak Republic acknowledges and respects the general international law rules, international agreements that are bound to our republic, and besides that our republic is bound to its additional commitments and the application of the local self-governance that is implemented by the international document the Local Self- Governance European Charter that has become valid in the Slovak Republic since the 1st June 2000. The Local Self- Governance European Charter is not a classical international agreement on human rights as it does not concern individuals but, on the other hand it is founded on the collective citizenry rights and their community. The Local Self- Governance European Charter is the document issued by the European Council having the aim to safeguard the optimal criteria of the political, administrative and financial independence necessary for the good and effective local self-governing function. For that purpose, the European Charter has assigned principles that have to be respected, and from the point of view of the European Council they are considered to be the most key-accounted base concerning the local self-governance intranational legal amendment. In spite of the rather general formulation, the mentioned constructive element of the Local Self- Governance European Charter has created the basis for its wide acceptance by all its contracting parties [1, p. 23]. According to Charter Article 3, the local self-governance denotes the law-right and the capacity of municipal bodies to provide the management of the substantive public matters that are within the range of legal law and the municipal citizenry interest. In the first place, the management of public matters is mostly provided by the bodies that are closer to the citizens, but nevertheless by Article 4 of the Charter the local municipal bodies basic rights and duties must be legally stated by the Constitution or Law.

For a long time, the legal theory [2, p. 279] declares that the local self-governing is an inseparable part of the Slovak Republic constitutional system and appreciated as an organization that provides public matters on the level of cities, parishes and the higher territorial units, moreover it has a special significance for the live of every municipal citizen. Mentioning from the reference to the Slovak Republic Constitution Court judgment, it can be pointed out to the matter of fact that the territorial self-governance belongs unambiguously among the innermost democratic institutions. Besides that, there are the institutes based by the Slovak Republic Constitution as one of the principles by which the Constitution is interpreted. According to the legal opinion of Prusak [3, p. 547], the public self-governing is an enemy of being undemocratic, and at the same time he points to the fact that the idea

of self-governance is an inseparable part of pluralism that has to be applied in state and the political life of modern society. In this way, self-governance is closely interconnected with the public society creation, and besides that it represents an important element and an inseparable part of such a society which is coherent with the idea of lawful state. Along this line, self-governing stands for the distinctive arrangement of expressing the interests plurality that exist in certain society [4, p. 547].

Moreover, the territorial self-governing has its own substitutable place among the Slovak constitutional principles, and additionally, it represents inseparable component part of the democratic and lawful state modern understanding. Such a conviction is in accordance with the generally acceptable axiom meaning the free municipality creating the bases of the free state. The Slovak Republic Constitution declares the self-governing principle; however, its basic contents might be clarified not only by the introductory form of the Slovak Republic Constitution appropriate enactments, but they might similarly be explained by deduction of the general clauses of the Slovak Republic Constitution included in other parts of the Constitution [5, p. 7].

The territorial self-governing principle is equally a part of the legal theory and the Slovak Republic Constitutional Court practice as well, that's why, it is defined as the Constitutional principle. Therefore, it can be entirely ascertained that nowadays the local self-government is esteemed as one of the foundation attributes and pillars of the democratic state. Within the preceded comments mentioned above, it is evident that not only the local self-governance constitutional fixation and protection, or the real independence regarding the economy with its own means and their autonomy concerning creation of one's own legal norms and organizational structures are guaranteed, but at the same time, it is assured the minimalization of the state administrative control [6, p. 79].

On the long-term basis the legal theory declares that even if the Slovak Republic Constitutional amendment does not explicitly declare the territorial self-governing units right to provide accomplishment of the self-governance, it can be explicitly deduced from the Constitutional text [1, p. 45-46]. The Slovak Republic Constitutional Court itself adjudicated [7] that the Constitutional principle of the territorial self-governing is one of the fundamental democratic values of the democratic and lawful state, and that's why, it must enjoy the constitutional protection autonomously by the legal amendment. The Slovak Republic Constitution Court comment that the local self-governance can be characterized as the constitutional law that is guaranteed by the Slovak Republic Constitution and that it is appreciated as an independent territorial administrative units composed of their own community of people who have the right to decide on their own matters, but within the given autonomous space and stated by the Constitution and laws. Connected with the local self-governance contents and its localization within the Slovak Republic internal structure, the Constitutional Court have deduced that the legislator has accepted extremely important place of the local self-governing among the democratic and lawful state institutional structure. Besides that, the law-making creator has conveyed the particularly exclusive constitutional protection regarding the local self-governance provided by means of the constitutional complaint laid down by the local administrative body.

In such a way, the Slovak Republic Constitution considers the local self-governing administration to be one of the most fundamental democratic values, and therefore the legislator guarantees its privileged constitutional guardianship. What's more, the principle of the local self-government is undoubtedly interrelated with the demand of securing the basic rights and freedoms. It is without any doubt that in modern democratic and legal states the opinion that the protection of basic rights and freedoms is one of the most fundamental state duties. In the Constitution of the Slovak Republic the principle of safekeeping fundamental rights and freedoms is considered to be one of the set-forward points which defines the autonomous sphere of individual, and his/her dignity towards state, state power, respectively to the public power. From the mentioned point of view, bodies of the territorial self-govern units are holders of public power, and consequently, as the holders of public power, their powers are limited and restricted in their power execution by the Slovak Republic Constitution, they must respect Constitution and its guaranteed basic rights and freedoms. The right to local and territorial self-governance is not particularly stated by the Slovak Republic Constitution, but nevertheless, it can be concluded their right to administration by commentary explanation and thus coming to the result that the Constitution accepts municipalities and self-governing units right to self-government. The local self-governance constitutional guarantees based on the Constitutional proclamation can be divided into two groups.

The first group includes the security connected with the stated legal amendment defined by the Slovak Republic Constitution covering the specified areas, and further on it is not accepted that the mentioned questions have to be firstly amended by the lower legal force instruction.

The second group is covering the constitutional guarantees whose contents is delimited by the basic regulations of the Slovak Republic Constitution, besides that, they must be bound for the legislator and in their real contents law application, the legislator is obliged to respect them. In this connection it can be alleged that the Slovak Republic Constitution acknowledges the local self-governance, municipalities and the high territorial self-governing units, the following privileges: follow:

- constitutional guardianship of the implementation of the local self-governance stated by the Slovak Republic Constitution organizational procedures. The mentioned guarantee is provided mainly by means of the municipalities and the higher territorial units citizenry assemblies or by means of referendum. By means of the mentioned guarantee, the Constitution assigns the basic forms of the local self-governing implementation, while besides the direct forms, it constitutes and verifies the indirect forms of performance of the local territorial administration. Continuously, the Slovak Republic determines the character of the municipal and higher territorial units bodies and defines their official posture and the basis of their foundation, further on it defines

- guarantee of the non-state interference into the local self-governance execution. Local territorial self-governance accomplishment is a subjective right of the higher self-governing territorial units, and therefore they possess the constitutional and legal facilities regarding their protection against unauthorized infringement into the local territorial self-governance. The state infringement into the local territorial self-governance beyond the constitutional framework constitutes a significant supposition of the autonomous and independent posture of municipalities and the higher territorial units in connection with their performance, even if the Slovak Republic Constitution excludes the direct encroachment of the state bodies [8, p. 513].

As has been mentioned above, the public matters provided on the level of municipalities and parishes have a dominate significance for every citizen. It is without any doubt that the local self-governance is a part of different opinions expression plurality when citizens of the Slovak Republic are given an actual possibility to confront democratic principles of creating state as it is declared by the Slovak Republic Constitution and the genuine reality. Self-governance and the citizens "right to self-governing is one of the approaches of their participation in public administration" [9, p. 641; 10]. In this way, the local territorial self-governing means for citizens realization of their right to participate in public affairs administration, the right which is guaranteed by the Constitution itself [11, p. 6]. This reality is in accordance with the constitutional and legal amendment concerning the protection of rights, competence and activities of the territorial self-governing.

Purpose of study. The Institute of the local self-governance is anchored in the fourth Head, Articles 64- 71 of the Slovak Republic Constitution. According to Article 64 of the Slovak Republic Constitution the basis of the territorial self-governing is parish, municipality and the higher territorial unit. Article 64 of the Slovak Republic Constitution declares that "parish and the higher territorial unit are the autonomous territorial self-governing and administrative components of the Slovak Republic unifying people who have permanent residence". The details are stated by the law "With the reference to Article 64 and 64a of the Slovak Republic Constitution, the local self-governance is traditionally created by municipalities and the higher territorial units stated by the additionally laws as well. There are the following ones: Law No.221/1996 Call on territorial and administrative configuration of the Slovak Republic, current version of the Law. Law on general arrangement and Law No. 302/2001 on self-governance of the higher territorial units, law on self-governing regions, current version of law".

The legal arrangement of territorial self-governance included in the Slovak Republic Constitution and in the specific legal regulations have their sources in respecting the autonomous self-governing provided by municipal, parish and the higher territorial units and their bodies which in same way present a kind of "the above public" level administration, but not a superior one. The local territorial self-governance represents the so-called partitioned model of public administration [12], as it is evident from cited articles of the Slovak Republic Constitution, the details are defined by law, by the legal regulation respecting the level of Constitution. The parish can be characterized as the fundamental and significant subject of the public power execution on the regional level of the local territorial self-governance system. The parish considers to be the essential component-part of the local self-governing, it represents the non-state bodies where the state has transferred a part of its powers regarding the fundamental state duties. The core of the most important municipal activities rests in the management and administration of public matters provided by means of their own bodies, however they are allowed

to accomplish only those provisions that are given by the Slovak Republic Constitution, constitutional acts and other acts within their competences [13].

In connection with the intermutually relationship between parish and the higher territorial unit, it is necessary to point out that the higher territorial unit represents the statutory corporation of the local self-governance higher level in comparison to parishes in such areas that cannot be provided individually or within the parishes intermunicipal cooperation, or when the delivery of some services would be more advantages to provide by the higher territorial unit. In such a case the higher territorial unit represents the intermedium stage in the territorial organizational structure of the public administration. Besides that, it fulfils important co-ordinational functions, but it does not mean that the higher territorial unit has a kind of administrative dominance over the parishes. The higher stance of the higher territorial unit in the mentioned hierarchic structure does not create grounds for the mentioned dominance [14].

The higher territorial unit cannot be in a dominant position in relation to parishes, it can be ascertained that between parishes and the higher territorial unit, respectively between parishes bodies and the higher territorial unit, the co-operation principle and intermutually participation should be implemented. The real substance of self-governing has the origin in the idea that parish is the foundation base and its relation towards the higher territorial unit is not the relationship of the superior and subordinate, on the contrary, within the self-government the parish has the important public competence. Therefore, it is inevitable to provide the local self-governance “openly” that means transparently and in accord with the legal order. By course of Article 67 section 1 of the Slovak Republic Constitution “*the local self-governance is provided by assemblage of parish citizens, local referendum, referendum accomplished on the grounds of the higher territorial unit, referendum realized by the municipal bodies or the higher territorial unit bodies.*” Article 67 section 3 of the Slovak Republic Constitution comments that “*state is allowed to interfere into the parish or the higher territorial unit activities only in such a way as it is declared by law.*” Matters of the Local self-governance or the higher territorial unit are resolved as it is declared by Article 67 [15].

It is reasonable to assume that municipalities and the higher territorial units can claim their powers protection by law in cases of intrusion made by any other public power body. Protection in question is not arbitrary, but on the other hand, it has some limits given by law.

The status of the problem study. One of the proceedings in a Constitutional Court of Law of the Slovak Republic concerns the legal proceeding laid down by the local self-governance bodies. In the mentioned proceeding the Slovak Republic Constitutional Court decides on complaints of the local self-governance bodies in cases of unconstitutionality or unlawfulness judgement or any other unconstitutional or unlawful intervention or abuse¹ by course of Article 127a of the Constitution providing that the mentioned complaints on protection have not been judged by any other court.² The Constitutional Creator by means of the word-combination “*providing the protection has not been judged by any other court*” have expressed the constitutional precision of the subsidiarity principle of proceeding at the Slovak Republic Constitutional Court. The prior tempore has been noted by the Constitutional Court earlier decision-making by judicating the legal opinion of a claimer regarding the absence of direct violation into the infringed bodies as regards that their legally protected interests have not been compensated by fulfilment proceeding conditions at the Constitutional Court as is stated by law concerning the Constitutional Court. By course of paragraph 58b section 1 valid value No. 38/1993 as amended on organizational procedures of the Slovak Republic Constitution Court concerning the proceeding at Constitution Court and its judges posture.² Complaint by Article 127 and the Slovak Republic Constitution is not accepted when the claimer has not used up all other effective legal ways and means that are at the disposal in order to be protected against encroachment into the local self-governance matters. Moreover, a claimer is legitimate to use all the law potentialities that are authorized by the special regulations and law. In case, whether the assaulted procedure method of the public administration bodies creates a component part of the investigation power of the general court by the then course of paragraph 244 and further on Act No. 99/1963 Call. of the Code of Civil Procedure as amended,¹ and thus it can be a legally relevant way to decide explicitly factually by a certain relevant

¹ The Immanent Example for “different opinion” means the inaction of the public power body.

² In the legal theory and the application practice the complaint in question is called the communal complaint.

³ The authors remark: paragraph 142 sec.2 Act No. 314/2018 Call. as amended regarding the Slovak Republic Constitution Court, further on used only “the act of the constitution court”, is contemporary valid and being in force.

local general court, and only then in fine the Constitutional Court as it is stated by paragraph 127 of the Constitution [16].

By Course of the mentioned Article 127a of the Slovak Republic Constitution, the claimer can lay down the grievance to the Slovak Republic Constitution Court in cases of the contradiction with the unconstitutional and unlawful judgement or any other unconstitutional and unlawful interference of the public power body, but not against the normative lawful action. By the opinion of the Slovak Republic Constitution Court, the intrusion into the public power body concerning matters of the local self-governance cannot be considered to be by the legislative activities if they have created no reasons even for the claimer's encroachment, meaning the body of the local territorial self-governance, and objected by the law [17]. As regards the accordance of the legal lower power act and directive of the higher legal power, it is required to initiate proceeding on the legal decrees consensus as it is stated by Article 125 of the SR Constitution.

Resulted from the mentioned context connected with the Constitutional Court jurisdiction, it can be subsequently acknowledged that not every infringement into the local self-governing activities must be inevitably a breach of the self-governing law, respectively that it is an encroachment of matters coming under the competences of the local self-governance [18]. By the course of Article 127a of the Slovak Republic Constitution the object of the proceeding on complaints is provided by resolving the unconstitutional or unlawful encroachment into the local self-governance competences. The breach of basic human rights and freedoms are above all regulated by the Second Head of the Constitution and ratified by international agreements as regards their violation, it is mainly undertaken by other authorized Constitutional Court proceedings. The communal complaint does not create possibility to cause offence of the legal decrees compliance, and further on, by Article 127 of the Slovak Republic Constitution a grievance cannot be aimed at the legal normative act as well [19]. In this way the specificity of the mentioned proceeding rests in the protection of matters that exclusively belong to the local self-governance, and at the same time, to evaluate accurately in case their powers have been violated by the unconstitutional and unlawful pronouncement or by unlawful intrusion.

Concerning the Slovak Republic Constitutional Court, the proceeding legitimacy to lay down a complaint in case of the local self-governance is precisely defined by the legislation, paragraph 136 Act No. 314/2018 Call. as amended. Following the mentioned Act on the Constitutional Court defined by Article 127 of the SR Constitution, the complaint against the unconstitutional or unlawful verdict or any other unconstitutional or unlawful encroachment into the local self-government matters and competences, the local territorial administration body complaint can be laid down by declaring the unconstitutional or unlawful verdict or any other unlawful and unconstitutional encroachment as it is specified by law, paragraph 136 section 2. The presented course of the advanced procedure safeguards mainly the municipal and the higher territorial unit authoritative competences and the scope of their power execution [20, p. 172].

In this connection, the Slovak Republic Constitution accentuate that for the mentioned procedural type the active procedure legitimacy has the local self-governance body and not a parish itself, for instance in the proceeding marked by sp. Zn. III.ÚS 84/02 the Constitutional Court has pointed out to the factual reality that in spite of the communal complaint laid down by the town Tvrdošín, it was not valid as the mentioned town was qualified as the subject missing the active factual legitimacy. By course of Article 127a of the SR Constitution the complaint had to be laid down by some of the town representative bodies, either the Tvrdošín mayor or the Tvrdošín Town Council. To lay down the mentioned constitutional complaint by the town itself ² [21] has not an active procedural legitimacy [22]. On the presented basis, it is evident that the needful procedural legitimacy requires to follow the provision of the Article 69 section 1 of the Slovak Republic Constitution. According to its contents the parish bodies are the mayor and the Parish Council. In addition to what has been declared, by the course of Article 69 section 4 of the SR Constitution, it is evident that the higher territorial unit bodies are the Higher Territorial Unit Council and the Chairman of the Higher Territorial Unit.

¹ The authors remark: at present it is meant Act No. 162/2015 Call. as amended, The Administrative Court Order regulating the field of administrative law.

² Remarks regarding the parishes and the higher territorial units proceeded at the Constitutional Court. See: OROSZ, L. – MAZÁK, J. Parishes and the higher territorial units proceeded at the Constitutional Court. Košice: Mayorgroup, s.r.o., 2004. 319 p.

By the legal opinion of the Slovak Republic Constitution Court concerning the communal complaint is acceptable in cases even if it is in contradiction with the mayor's interests then the Municipal Council can be substituted by its members, that means by the Municipal Council deputies but only in case when the lay down of such a complaint "*against the mayor*" is done by a relevant legal procedure as it is predicted by the municipal institutional establishment grounded by the Act No. 369/4990 Call. as amended. The acceptance of the relatively legal resolution of the Municipal Council is necessary to follow.

The Constitutional Council of the Slovak Republic allege that the Municipal Council has the right directly given by Article No.127a of the Slovak Republic Constitution to apply a special active procedural legitimacy exclusively for the purposes to submit a communal grievance to the Constitutional Court on behalf of parish. In one of their decisions the Constitutional Court declared that in a case when the Municipal Council are of an opinion that their right has been infringed by the Constitutional Court pronouncement, they can only file their communal complaint at the Constitutional Court, and they cannot claim their rights at the other state authorities. In the mentioned case when the complaint has been filed by claimers who are the members of the local self-governance, that means as the members-deputies of the Municipal Council in their own name and they objected their own "individual" rights being the members of the parish body, then the both institutes, the Slovak Republic Constitution and the Act on the Constitution Court do not comply with the complaint [23].

Concerning the object of the proceeding, in concreto "*matter of the local self-governance*", there are mainly understood the municipality powers and the local self-governing regions, their field of actions together with the self-governing principles as it is stated by the Course of Act on the Constitutional Court, paragraph 136 section 2. In this connection, it is needing to refer to the legal theory which defines the power in accord with the Article 127a of the Slovak Republic Constitution. It refers to:

- 1) constitutionality of adjudication connected with the local self-governance matters,
- 2) lawfulness of judgments connected with the local self-governance matters,
- 3) constitutionality of other infringement into the local self-governance matters, and finally
- 4) lawfulness of any other encroachment into the local self-governance matters.

In spite of the fact that within the framework of the proceedings regarding the communal objection, the principle of subsidiarity is applied at the SR Constitutional Court. The proceeding observes not only constitutional protection but at the same time lawfulness. Et inde producitur sectam regarding the communal complaint and its admissibility to file against every decision made by the public power body [24, p. 1408] assuming that its judgement or any other interference shows the indicia of unconstitutionality or unlawfulness, and in such a way display the interference into the local self-governance matters.

The communal complaint must include the general essential requirements stated by paragraph 43 and paragraph 39 of the Constitution Court Law, further on it must have a written version and it must be indicated who has filed a complaint and which case does it is concerned. Besides that, the decision-making application must include to whom the complaint is addressed, moreover the complaint must be justified and added by the evident arguments, and it must be signed by the complainer or by the legal deputy. Regarding the local administration, the solution of the communal complaint must be resolved by the course of the Constitution Act, paragraph 137. The contents of the complaint data form must include the designation of the local administration matter which has been violated together with the indication of those who have interfered with the competence of the local self-governance. Accordingly, the lawful valid adjudication has to be chosen and in some other encroachments of the local administration performance, it is needful to classify any other encroachment of the local administration performance. The body of the local self-governing that has placed the grievance concerning the local administration has to attach to the complaint a copy of the genuine and valid legal adjudication or any other evidence of the encroachment of the local administration which might come about.

Within the intention of paragraph 39 dealing with the Constitutional Court Act, the participants in the proceedings of the so-called communal complaint are the complainer and that body of public power against whom the complaint is brought up. If it is needed, when the Constitutional Court in their preliminary hearing have accepted the complaint on the matters of the local self-governance to proceed further on, then according to the Constitution Court Act paragraph 140 provision, the person, who has participated in the proceeding at the public power body must be knowledgeable about delivering of the valid lawful pronouncement, or about if any another unconstitutional or unlawful encroachment has been appeared in the matters of local self-governance. The participant in the proceeding must be correctly

informed in case when the SR Constitution Court conclusion regarding the communal complaint might be in some way harmful for the person's legal position. The person-participant has the position of the concerned subject having the right to present reactions to complaint within the stated date given by the Slovak Republic Constitution Court.

Presentation of the Core Material. By the course of Article 127 of the Slovak Republic Constitution, like in the case of natural person and the legal entity the qualified file of communal complaint requires the lawful term of accomplishment to lay complaint down as it has equally the similar character of the procedural and legally stated due time. If the complainer returns back its complaint, the proceeding is returned back by means of the court ruling as it is stated by the Slovak Republic Constitution Court Act provision paragraph 141. Within the mentioned context in correlation with other procedures and due-time terms connected with the returning back of the motion to start proceeding, it is needed to put an accent that in a case of grievances regarding the local territorial self-governance competences, the complaint can be any time withdrawn, unless the exception is made by the precision modus of the Constitution Court Law pronouncement.

By the enactment of the Constitution Court Act paragraph 138, concerning matters of the local self-governance, it is conceivable to file a complaint within two months since the requirement of the legal force adjudication or by notification of other additional intrusion into the local self-administration competences. Concerning any other intrusion, the mentioned due date starts from the day when the public administration comes to know it. However, when in a case has been filed the exceptional legal remedy, the due time to file the communal complaint in relation to judgment which has been attacked by the exceptional legal remedy starts to pass since the submission of the exceptional legal remedy judgment.

Coming out of the similarity between the legal enactment and the local self-governance body complaint of proceeding, it can be analogically considered to contemplate the due time of the timely constitutional complaint lay down stated by the Slovak Republic Constitution Article 127. By the Decree sp. zn. I. ÚS 143/2018 dated from April 2018, the Slovak Republic Constitutional Court judicated that in case of the file legal remedy having the character of the appeals and motions and the parallel allocation of the constitution complaint, accordingly the constitutional complaint is considered to be acceptable only after the pronouncement of such a submitted legal remedy. Further on, by the Decree sp. zn. III. ÚS 674/2014 25th November 2014, the Constitution Court accented that in cases when the complainer makes the use of an appeal in the form of a legal remedy being able to secure the protection of the complainer's rights, and additionally refused by the Appeal Court on the ground of inaccessibility the due-time for filing of the constitutional complaint, in principle the complaint is well-preserved even in relation to the previous lawfully constitutional valid judgement. The same is not valid in cases where the inaccessibility appeals to review based on *ex lege* as, for instance regarding the Administrative Justice where the appeal to review cannot be considered to be an effective legal remedy [25, p. 58].

The communal complaint individual conclusion ways depend on a certain proceeding phase done at the Slovak Republic Constitutional Court. Concerning the preliminary reconsideration of the filed constitution complaint, the proceeding is advanced by the general criteria of the Act on the Constitution Court paragraph 56. Exactly speaking, the Constitution Court put a motion to start proceeding by preliminary closed reconsideration, and consequently without the claimer's attendance the motion can be refused by the resolution and without the re-hearing. The refusing reasons are definitely declared by the Constitution Court Act stating that the Constitution Court power absence to proceed regarding to lay down the motion without the proxy is provided as it is defined by paragraph 34 or paragraph 35 of the Constitution Court Act. If the Constitution Court did not meet the plaintiff's motion to appoint legal proxy, then the procedure is provided by the course of paragraph 37 of the Constitution Court Act. By Article 127 of the Slovak Republic Constitution another reason to refuse the complaint rests in the fact when the filed complaint failures to have the needful necessities stated by law, or if it is not prepared as it is defined by the course of paragraph 55 of the Constitution Court Act. The same is valid in cases when the complaint is filed by an unauthorized person, or if the complaint is evidently belatedly or baselessly laid down.

Besides that, the reasons for the complaint denial are precisely defined by the Constitution Court Act paragraph 142 in which the legislator once more expresses the proceeding subsidiarity valid at the Constitution Court. In case, when concerning the objected judgement or any other infringement into the local self-governance matters are decided by the other certain court, by the provision paragraph 142

section 1 of the Slovak Republic Constitution Court Law, the communal complaint is refused by means of the resolution due to the lack of powers to reconsider the complaint. It follows from the above, whether the procedure is dealt with at the other institute body or possibly by another court, the Constitution Court refuses the filed communal complaint. By the course of section 2 of the mentioned provision, the complaint concerning the matters of the local self-governance is considered to be unacceptable in case the local self-governance body filed such a complaint omitting to use all necessary legal measures before its lodging in such a way as is stated by the law, and thus to avoid to raise an objection against the judgement or any other breach into the local administration that would be not acceptable by law. The mentioned statement is not valid when the self-government body has laid down the complaint without making use of all legal means given by law in order to be protected against the objected judgement or any other breach of the local self-governing competence on the grounds of the acceptable special intention. However, the Constitution Court Act does not specifically define what is considered to be under the notion of being acceptable for special intentions. Therefore, in the application practice there might appear various commentary eventualities.

In case when the Constitution Court does not refuse the communal complaint, then it is accepted within the range of paragraph 56 section 5 of the Constitution Court Act. Accordingly, the complaint justness is assessed, in what way the unconstitutional proceeding or unlawful ruling were done or any other encroachment to the local self-governance matters have been provided. Even in the mentioned case, the Constitution Court has a legal option not to meet the filed constitution complaint following paragraph 143 section 1a *contrario*. It regards cases when no encroachment into the matters of territorial self-administration was found or in cases when an encroachment in the form of judgment does not touch unconstitutionality or unlawfulness.

Providing that the Slovak Republic Constitution Court meets the communal complaint it is done in compliance with the course of paragraph 143 section 1 of the Constitution Court Act even if by the findings is evidently clear where the unconstitutionality or unlawfulness have been found regarding decision. Besides that, in the case of the local self-governing encroachment, it is declared which constitution provision or constitutional act, or law act have been breached, and what's more, what kind of legal and lawful judgement has been violated or how any other commitment and breach have been done. If the local self-governance matters have been encroached by the judgment, then the judgement in question is abolished by the Slovak Republic Constitution Court. If it is necessary, the Constitution Court can return the case to provide additional proceedings. In the event of the valid judgement cancelation and its return for the additional proceeding, it must be stated who has decided on the case and who is obliged again to deliberate on the decided case and consequently resolve in the course of proceeding as it is stated by the legal opinion of the Slovak Republic Constitution Court. If the infringement into the matters of the local self-governing was of another character, subsequently following the Constitutional Court Act paragraph 143 section 4, the Slovak Republic Constitution Court imposes a ban to continue in infringement of the Slovak Republic Constitution, Constitution Act or law, and if it is conceivable, the Constitution Court decides to revive the circumstances before their infringement. The public power body, which has been given this obligation, is absolutely bound by the Slovak Republic Constitution Court decision.

By the enactment of the Constitution Court Act paragraph 144, the proceedings regarding the body of local self-governance complaint are adequately related to the enactments paragraph 128- 131 denoted of the Constitution Act concerning the complaint suspensory effect, suspensory enforceability and interim measure.

By the enactment made by paragraph 68 of the Constitution Court Act, in case of the communal complaint procedure by the course of Article 127a and the Slovak Republic Constitution, the Court judgement is delivered to the proceeding participants, the participant person or their legal delegates proxy, whereby within the sense of the enactment paragraph 70 regarding the Constitution Court, the judgement made by the Slovak Republic Constitution Court comes into force and enforceability by the day of its delivery to the last procedure participant taken place at the Slovak Republic Constitution Court.

In addition, it is needful to point to the fact that in comparing of the constitution communal complaint with the complaint of the natural person and the legal entity by Article 127 of the Slovak Republic Constitution appeared rather different contents. Being in force since the 1 January 2025 the amendment of the Slovak Republic Constitution approved by the Constitution Act No. 422/2020 *Call.*, the Slovak Republic Constitution has been in some way changed and amended. By the course of enactment Article 127

section 1 the Constitution accepts together with the natural persons and legal entities to file a motion to the Constitution Court Senate to initiate proceeding by the course of Article 125 section 1 of the Constitution that the generally bound legal rule, its part or its individual enactments concerning the filed constitutional complaint are in contradiction with the Constitution, Constitution Act, international agreement by Article 7 section 5 of the Constitution and law. Following the enactment paragraph 123 section 4 of the Constitution Court Act being in force since 1st January 2025, the definite submission must be laid down together with constitutional complaints including identification of the legal rule, its parts or its individual clauses against which the complainer makes an objection in connection with their discord with the Constitution, Constitution Act or international agreement or law as it is stated by Article 7 section 5 of the Constitution and law. The component part of the motion must be in the presentation of the appropriate justification of the stated reasons that lead the complainer to doubts regarding the particular legal ruling, its parts or one of its enactments with the Constitution coincidence, the constitutional act, international agreement as stated by Article 7 section 5 of the Constitution or by law. Besides that, the designation ruling of the higher legal power, its parts or some of its enactments have to be the component parts of the presented motion by the course of paragraph 123 section 4 letter b) Act on the Constitutional Compliance that according to the complainer the designated legal ruling is not in consent. Moreover, the complainer is obliged to prove that the designated legal ruling, its parts or some of its enactments are not in compliance with the Constitution, Constitution Act, international agreement by Article 7 section 5 of the Constitution or law, therefore they are put in a plea by complainer. In other words, the complainer is obliged to display that the objected legal ruling was used in a certain proceeding at the public power body where the complainer rights were, respectively it might have been violated even by the contradictory legal ruling. By constitutional complaint the complainer demands its own rights and freedoms.

In case the Constitution Court Senate have come to the solution that the filed proposed submission combined with the constitution complaint is justified, then the complaint proceeding is interrupted, and the filed motion is started by the Constitution. Article 125 section 1. In the mentioned case by the provision paragraph 131a of the Constitution Court Act, being in force since the 1st of January 2025, the Constitution Court Senate is bound to act within the scope of the complainer proposal stated by paragraph 123 section 4 of the above-mentioned act, but on the other hand it is not bound by the motives stated by the complainer in its filed proposal. The motion to start proceeding by Constitution Article 125 section 1, the complaint is filed to the Constitution Court by the Judge Rapporteur. By the diction of paragraph 131a section 3 of the Constitution Court Act being in force since the 1st January 2025, as regards the proceeding at the Constitution Court by the course of Article 125 section 1 of the Constitution, the Judge Rapporteur remains the only judge of the Constitution Court who has the function of the authorized representative as the Judge Rapporteur in the Constitution Court Senate deciding in the case, and at the same time he/she is the authorized judge regarding the constitution complaint laying down.

The Constitution Court Senate continues in the interrupted procedure regarding the complaint laid down, but only if the Constitution Court decision is valid as it is stated by Article 125 section 1 of the Constitution. The Constitutional Court legal opinion within the sense of the judgement pronounced by the procedure Article 125 section 1 of the Constitution, it is obligatory for the Senate of the Constitution Court to deal with the constitution complaint according to the Constitution Article 127.

The positive aspect of the constitution amendment to act rests in the reality that the constitution creator has given an opportunity to natural persons and legal entities to lay down the constitutional complaint along with the proposal to initiate procedure on the legal rules compliance by the Constitution Court proceeding in the matter of the lodged complaint by the course of Article 125 section 1 of the Slovak Republic Constitution. On the other hand, the legislator does not give the mentioned specified opportunity to parishes and the higher territorial units object to the matter of the legal rules compliance and in case, together with the communal constitution complaint by Article 127a it would be possible and further on to initiate procedure by Article 125 of the Constitution. In this way, even if as the tax administrator by paragraph 4 section 1 Act No 563/2009 Call. as amended concerning tax administration by the so -called Tax Code, the parish is excluded to object unconstitutionality or unlawfulness of the judgement or any other intrusion into its powers, which is likewise the tax administration, and at the same time to initiate procedure by Article 125 of the Constitution.

Conclusion. Proceeding on the local self-governance bodies complaints by Article 427a of the Slovak Republic Constitution mostly resembles the complaint proceeding of the natural persons and legal entities within the intentions of the Constitution Article 127 whose procedures constitutes the

most decision-making agenda of the Slovak Republic Constitution Court. The common attribute of both proceedings is the demand for subsidiarity. The Slovak Republic Constitution Court constantly accentuate that they are not fundamentally justified to investigate and evaluate the legal opinions of the general court, and further on the truthfulness of ascertainment of facts as well.

Finding the facts and the legal conclusions of the general court might become the object of the constitutional and legal control on the provision of the concluded deductions appeared to be evidently unjustified or if it is an arbitration procedure,¹ and consequently, from the point of the constitutional view they appear to be unjustifiable and unsustainable, and at the end they would cause the breach of the rudimentary law or freedom [26]. Otherwise, the Constitution Court evidently considers complaints groundless [27, p. 96-135] by paragraph 56 section 2 letter g) of Constitution Court Act. That's why, connected with the proper providing protection of the local administration matters and competences, it is important to fulfill and present precisely the above-mentioned necessities by the constitutional communal complaint laying down.

Ipsa facto, by the resolution of the Slovak Republik Constitutional Court sp. zn. III. ÚS 709/2016 dated 18th October 2016 included in the Slovak Republic Constitution Court Collection of Findings and Resolutions in No. ZNandU 51/2016, the parish performs the powerful sovereign potion, but on the other hand it cannot be absolutely compared with the state as it is stated by the Slovak Republic Constitution. The Slovak Republic Constitution enables the state to encroach into the municipality activities as it specified by Article 67 section 3 of the Constitution, and besides that the state can impose obligations to parishes and enforce abridgement in their activities quantified by Article 67 section 2 of the Constitution. In spite of this fact, the parish is considered to be the basic unit of the local territorial self-governance itemized by Article 64 of the Constitution. Nevertheless, pursuing the protection claims by the juridical and constitutional process, they might be restrained by the above-mentioned state encroachment which is absolutely legitimate and justified. However, Article 1 section 1 of the Constitution the local self-governance constitutes one of the pillars of the democratic state, but the municipality as such cannot claim the mentioned protection in proceeding resulted from Article 127 section 1 of the Constitution. By Article 127 and the Constitution, the active legitimate placing a motion in order to start the procedure belongs only to the local territorial self-governing body. Generally speaking, it means that the communal complaint is authorized to be lodged only by the municipality mayor or the Local Council but not the parish as such being the subject, the holder of the territorial local self-governance.²

REFERENCES:

1. Dudor, L. *The Local Self-Governance in the Slovak Republic*, Bratislava: Polic Academy of the Slovak Republic, 2017, 145p. ISBN 978-80-8054-722-6.
2. Posluch, M., Cibulka, L. *The Slovak Republic State Law*, Second edition, Bratislava: Heuréka, 2006, 335 p. ISBN 80-89122-31-8.
3. Prusák, J. Self-Administration in Theory and the Self-Administration (Self-Administration Theoretical Questions) In: *The Slovak Law Review «Právny obzor»*. 73, No. 7, 1990, p 547.
4. Řehůřek, M. The Chosen Aspects of the Self-Governing Conception, In: *Právny obzor*. 1990, No.7, p. 547.
5. Palúš, I. The Territorial Self-Governance as the Principle of the Slovak Constitutionalism. In: *Public Administration and Regional Development, Economy and Management*, The Scientific Journal, Faculty of Economy and Management of Public Administration in Bratislava, Vol. 7, No. 2, p.7-17. ISSN 1337-2955.
6. Palúš, I., Somorová, E. *State Law of the Slovak Republic*. Košice: Pavol Jozef Šafárik University in Košice, 2010, 557p. ISBN 978-80-7097-787-3.

¹ "...one of the demands of the article 6 of the European Agreement on Human rights and Basic freedoms relating to the intrastate courts is to deal with the most important arguments placed by the proceeding participants and to state the reasons of acceptance or refugial of the mentioned arguments...evident negligence in dealing with the most significant arguments or pursuing the mentioned arguments arbitrarily is in contradiction with the idea of the justful process..."- the European Court for Human Rights verdict in case of Vetrenko against Moldavia dated 18th May 2010. As regards arbitrarily decision, see the point 37 of the Slovak Republic Constitution Court findings sp. zn. I. ÚS 51/2020 dated 9th June 2020.

² The Slovak Republic Constitutional Court Finding sp. zn. I. ÚS 630/2023 dated 16th of April 2024.

7. Result Finding of the Slovak Republic Constitution Court dated 19.12.2000, sp. zn.: I. ÚS 55/2000.
8. Jesenko, M. Remarks on the Conception of the Territorial Administration in the Slovak Republik. In: *Právny obzor*, 89, 2006, č. 6, p. 513-514. ISSN: 0032-6984.
9. Svák, J., Cibulka, Ľ., Klíma, K. The Slovak Republic Constitution Law. General Part, 3rd. Edition Bratislava: Eurokódex, 2009, 1072 p. ISBN 978-80-89363-33-9.
10. Svák, J., Cibulka, Ľ. *The Slovak Republic Constitution Law. Special part 5, updated current edition*, Bratislava: EUROKÓDEX, s. r. o. A Pan-European College. 2013. 712p. 978-80-8155-006-5.
11. Ondrová, J. The chosen Aspects of the Territorial Administration under the conditions of the Slovak Republic. 1. Banská Bystrica: Editor Univerzity Matej Bel - Belianum, 2020. 132 p. ISBN 978-80-557-1739-5.
12. Cepek, B., Hašanová, J., Horvat, M., Kaššák, R., Maslen, M., Skorková, V., Vallová, J., Zemková, J. *Administrative Substantive Law – general part*. Bratislava: Wolters Kluwer, 2018, 177 p.
13. Nesvadba, A. Legal starting points of the parish rule-making activities. In: *Police theory and Practice*, vol. 27, No.2, 2019, p. 22-34. URL: https://www.cepol.europa.eu/api/assets/website/Research_Science. ISSN 1335-1370.
14. Jesenko, M. *The Right of Parish to Self-Governance and the Municipal Rulemaking*. Košice : Univerzity Pavla Jozefa Šafárika in Košice, 2017, p. 21.
15. The Slovak Republic Constitution Court Finding sp. zn.: II. ÚS 39/1998 dated 3rd November 1998.
16. The Slovak Republic Constitution Court Resolution sp. zn. I. ÚS 74/02 dated the 10th of July 2002.
17. The Slovak Republic Constitution Court Resolution sp. zn. IV. ÚS 333/04 dated 27 th of October 2004.
18. The Slovak Republic Constitution Court Resolution sp. zn. IV. ÚS 130/2010 dated the 18th of March 2010.
19. The Slovak Republic Constitution Court Resolution sp. zn. IV. ÚS 333/04 dated th 27th of October 2004.
20. Ondrová, J., Úradník, M. *The Slovak Republic Constitution Court. 2. amended and elaborate edition*, Banská Bystrica: Publisher: Univerzity Mateja - Belianum, 2022. 262 p. ISBN 978-80-557-1967-2.
21. Orosz, L., Mazák, J. *Municipalities and the Self-Governing Regions at the Slovak Republic Constitution Court*. Košice: Mayor group, s.r.o., 2004. 319 p. ISBN 80-969128-0-1.
22. The Slovak Republic Constitution Court Resolution sp. zn. III. ÚS 84/02 dated 11th June 2002.
23. The Slovak Republic Constitution Court Resolution sp. zn. II. ÚS 435/2010 dated 20th October.2010.
24. Drgonec, J. *The Slovak Republic Constitution. Theory and Practice*. Bratislava: C.H. Beck, 2015. p. 1603 s. ISBN 978-80-89603-39-8.
25. Ondrová, J., Úradník, M. Legal and Constitution Aspects of the constitutional complaint. 1st Edition Banská Bystrica: Publisher Univerzity Mateja Bela – Belianum, 2024, 190 p. ISBN 978-80-557-2137-8.
26. The Slovak Republic Constitution Court Resolution sp. zn. II. ÚS 20/2013 dated 24th January 2013.
27. Korpáš, E., Super legislator? In: *Constitutionalism Principles*. Plzeň : Editor Aleš Čeněk, s.r.o., 2015. p. 96-135. ISBN 978-80-7380-586-9.

Дата першого надходження рукопису до видання: 22.01.2026
Дата прийняття до друку рукопису після рецензування: 20.02.2026
Дата публікації: 05.03.2026