

PROBLEMS WITH THE AFFILIATION OF A DYSFUNCTIONAL MUNICIPALITY IN SLOVAKIA: THE LAW THAT THE STATE IS AFRAID TO APPLY

PROBLEMAS COM A AFILIAÇÃO DE UM MUNICÍPIO DISFUNCIONAL NA ESLOVÁQUIA: A LEI QUE O ESTADO TEM MEDO DE APLICAR

Article received on: 8/5/2025

Article accepted on: 10/6/2025

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The authors declare that there is no conflict of interest

Abstract

The submitted study addresses the restriction of the constitutional right of municipalities to self-government in Slovakia. This was caused by the implementation of a new institution into legislation - the affiliation of a non-functional municipality into another, neighboring municipality. The authors' goal is to offer an alternative solution to this new institution, which is ineffective in practice. When processing the issue of the institute of a dysfunctional municipality, a combination of analytical-descriptive and case research approaches was chosen. The methodology is based on a detailed analysis of the legal framework concerning the status and functioning of local government in the Slovak Republic. The empirical level of the study is represented by a case study of the municipality of Ondavka, which has been struggling with a state of objective dysfunction in recent years. Based on a comparison and analysis of how the problem has been solved in other European countries, the authors propose a solution for Slovakia – not the forced merger of municipalities, but the joining of smaller municipalities into larger, economically stronger administrative units.

Keywords: Affiliation of The Municipality. Dysfunctional Municipality. Municipal Right to Self-Government. Municipal Reform.

Resumo

O estudo apresentado aborda a restrição do direito constitucional dos municípios ao autogoverno na Eslováquia. Tal restrição foi causada pela implementação de uma nova instituição na legislação - a afiliação de um município não funcional a outro município vizinho. O objetivo dos autores é oferecer uma solução alternativa a esta nova instituição, que é ineficaz na prática. Ao tratar da questão da instituição de um município disfuncional, foi escolhida uma combinação de abordagens analítico-descritivas e de investigação de casos. A metodologia baseia-se numa análise detalhada do quadro jurídico relativo ao estatuto e ao funcionamento do governo local na República Eslovaca. O nível empírico do estudo é representado por um estudo de caso do município de Ondavka, que tem enfrentado uma situação de disfuncionalidade objetiva nos últimos anos. Com base numa comparação e análise de como o problema foi resolvido noutros países europeus, os autores propõem uma solução para a Eslováquia - não a fusão forçada de municípios, mas a união de municípios menores em unidades administrativas maiores e economicamente mais fortes.

Palavras-chave: Afiliação de Município. Direito dos Municípios ao Autogoverno. Município Disfuncional. Reforma Municipal.



1 INTRODUCTION

The Constitution of the Slovak Republic guarantees the right of a municipality to self-government. The inhabitants of the municipality participate in the exercise of this right through the constitutional right to participate in the administration of public affairs. The strong fragmentation of the residential arrangement of the Slovak Republic between 1990 and 2002 has also led to the emergence of small municipalities which, due are today struggling to fulfil their basic functions. In 2018, the Slovak Parliament approved an amendment to Act No. 369/1990 Coll. on Municipal Establishment to solve the long-standing problem of inoperable of small municipalities. This amendment to Act No. 70/2018 Coll. changed the rules for merging two or more municipalities into one self-governing unit. The affiliation of a municipality to another municipality has become a new element of the legislation. In contrast to the institution of merger of municipalities, which could only take place after a successful local referendum of the inhabitants of the municipalities concerned, in the case of affiliation, the decision is already taken by the state administration and the authorities of the municipality to which the dysfunctional municipality is to be affiliated.

The reason for the adoption of the amendment to the law was the long-standing unsolvable situation in the municipality of Ondavka, where no one has stood election to the local government bodies since October 2012.¹ Therefore, the municipality did not perform its tasks under the law. The purposefulness of the adoption of this amendment to the law, which was intended to immediately solve the problem of only one municipality, brought about a number of uncertainties. The author of this paper has already pointed out the threat of limiting the constitutional right of citizens to decide on public affairs in his previous article “Lex Ondavka as insufficient solution of the problem of disintegration process of municipalities after 1989 in Slovakia” from 2019 (Kopúnek, 2019). He was also vindicated by various other legal analyses of this law, which speak of several shortcomings for the application of the legislation in practice. Since the process of the affiliation the municipality of Ondavka was started and also completed during the years 2019 and 2022, the authors analyses the different steps of the implementation of the new legislation and its results.

¹ Lack of interest and lack of staff capacity has long caused Slovakia to have several municipalities without mayors, and a number of incomplete municipal councils (Klimovský, 2013; Brix, 2023).

The presented paper thus focuses on a critical analysis of the institute of the dysfunctional municipality. It points to the problematic areas of the legislative embedding of this institute. The dysfunctionality of a municipality in this context lies in a situation where a municipality is unable to realize its right to self-government if none of its inhabitants are interested in holding elected office. This so-called stalemate has not been solved for many years even by the Act on Municipal Self-Government. In this context, Palúš (2020, p. 111) points out that “the legislation in force did not address the question of the exercise of the independent competence of the municipality in the given situation - since the delegated exercise of state administration passed under the law to the district office in whose territorial district the municipality was located - in which there were no elected bodies of municipal self-government”.

2 METHODS

When processing the issue of the institute of a dysfunctional municipality, a combination of analytical-descriptive and case research approaches was chosen. The methodology is based on a detailed analysis of the legal framework concerning the status and functioning of local government in the Slovak Republic, focusing on the provisions of Act No. 369/1990 Coll. on municipal organization, as well as other legal regulations. Furthermore, court decisions were systematically analyzed, especially the decision-making activities of the Constitutional Court of the Slovak Republic, general courts and the Supreme Administrative Court of the Slovak Republic, which reflect the situation of a dysfunctional municipality in Slovakia. The research is based on the study of professional literature, drawing on relevant domestic and foreign publications, scientific articles and analytical studies that address crisis phenomena in local government, problems of its administration and public administration in general. Full-text electronic databases of legal and academic sources (e.g. ASPI, JURIS, Scopus, Web of Science, Google Scholar) were also used, as well as freely available electronic sources, including official websites of municipalities, the Ministry of the Interior of the Slovak Republic, the Prosecutor General's Office of the Slovak Republic and the Statistical Office of the Slovak Republic. The empirical level of the study is represented by a case study of the municipality of Ondavka, which has been facing a state of objective dysfunction in recent years. This municipality serves as a concrete model example for identifying systemic

weaknesses in the legal regulation and practice in the field of self-government. The case was subjected to qualitative analysis in order to illustrate the practical consequences of the absence of an effective legislative solution to the institute of a dysfunctional municipality. The chosen research design allows for linking normative and legal knowledge with practical impacts, thus ensuring the complexity and maintaining the scientific integrity of the outputs.

3 THE AMENDMENT ADOPTED ON PURPOSE HAS SHORTCOMINGS

The territory of the Slovak Republic is highly fragmented. According to the 2021 population census, the Slovak Republic has 5 449 270 inhabitants, almost 47 percent of whom (2 550 796) live in rural areas in 2 749 municipalities. Less than one percent of the population (50 135) lives in 412 municipalities with less than 200 inhabitants². Such municipalities have a problem with the exercise of legal competences, not only those delegated from the state administration, but also original ones related to the administration of the municipality and its property. This is most pronounced in municipalities whose population is at or below 20. The most serious problem of such “micro” municipalities is the creation of self-government bodies - the mayor and the municipal council, which have management (executive) or decision-making powers. Self-governing bodies are created by direct election, while the inhabitants of “micro” municipalities elect by law not only the mayor of the municipality, but also three members of the municipal council. According to Brix, there are several reasons why mayoral candidates do not want to run for mayor in the category of the smallest Slovak municipalities. Many mayors work in this position without the right to a salary, or part-time, also from the point of view that the municipality could not afford to pay the claimed salary according to the law and the given size category of the municipality. The reasons are not only financial, as many municipalities face intractable problems such as unsuitable roads or almost zero chance of obtaining income other than tax (Brix, 2023).

² Between 1989 and 2002, the number of municipalities increased by almost 200, while the intensity of the disintegration process varied in different regions of Slovakia. For more details see ISTOK - TEJ, 2004.

4 THE RIGHT OF THE MUNICIPALITY TO SELF-GOVERNANCE

Like the constitutions of other democratic states, the Constitution of the Slovak Republic establishes the municipality as the basis of territorial self-government, thereby emphasising the direct and close relationship of the municipality to its inhabitants. The inhabitants of the municipality are the source of public power in the municipality and delegate this power to the municipal bodies through elections. The municipality is not only the basis of territorial self-government, but is an important part of the stability and development of a democratic and rule of law state. Municipalities represent an important segment between civil society and the democratic state. They represent a space within which citizens can directly decide on issues of public life (Šramel, 2022).

According to Act No. 369/1990 on municipal government, the basic task of every municipality is to provide for the all-round development of its territory and the needs of its inhabitants. The municipal council, as one of the two bodies of municipal self-government, decides on the basic issues of municipal life. The second representative of the municipality and the highest executive body of the municipality is the mayor. He decides on all matters of the administration of the municipality which are not reserved to the municipal council by law or the statutes of the municipality³.

The right of a municipality to self-government is perceived as a historically formed and democratically developed form of public authority in the state, or as a part of a broader mechanism of the democratic organization of the state. (Alman - Volochová, 2020) say that the inhabitants of the municipality participate in the exercise of this right through their constitutional right to participate in the management of public affairs. The forms of this participation are directly regulated by the Constitution of the Slovak Republic in Article 67 (1) to (3) (Alman, Volochová, 2020). But what to do if none of the inhabitants of the municipality is interested in exercising elected functions in the municipal self-government, which will naturally make it impossible to use even direct forms of democracy in the conditions of the municipality? For several years, the legislation on the municipal system has not offered a solution to this situation in terms of the exercise of the municipality's right to self-government. The legislation in force did not address the issue of the exercise of the municipality's autonomous powers in the given

³ Act 369/1990 Coll. on municipal establishment.

situation, since the delegated exercise of the state administration was transferred by law to the district authority in whose territorial area the municipality in which the municipal self-government bodies had not been elected was located. This situation was changed by the aforementioned amendment to the Act on Municipal Establishment, which introduces a new institute into the environment of municipal establishment - the affiliation of a municipality (§ 2aa of the aforementioned Act) (Palúš, 2020).

Until 2018, the Slovak legislation did not radically address the situation that arose when elections to the municipal self-government bodies were not held in a municipality due to the fact that no candidate ran for the office of the mayor or member of the municipal council. The standard procedure was to organise by-elections to self-governing bodies twice a year, which were repeated until the inhabitants of the municipality had elected the mayor of the municipality or the statutory number of members of the municipality council. “The solution to this situation is the announcement of new elections to self-government bodies, whether it is the election of the mayor of the municipality or the election of the missing number of members of the municipal council”⁴.

5 THE INACTIVITY OF THE VILLAGE PREDICTS ITS DEMISE

Usually, the inhabitants of the municipality have additionally elected the municipal authorities in the first half of the four-year election cycle. However, an exception was the municipality of Ondavka in the northeast of Slovakia with 15 inhabitants, where elections to the municipal self-government bodies were not held for 20 long years due to lack of interest in public functions, since the mayor of the municipality resigned from his mandate on 1 February 2012 due to the poor economic situation of the municipality (Korzár, 2012).

Until 2018, it was a common practice in Slovakia that if no new mayor was elected in the elections or no candidate ran for the post, the post of mayor continued to be held by the mayor elected in the previous election period. However, the latter could resign, which led to a stalemate and the municipality was left without a mayor. However, the law did not provide for such a situation. However, Draškovičová reminds that if the current mayor of the municipality does not want to continue to perform this function, he or she

⁴ Act 180/2014 Coll. About the conditions for exercising the right to vote.

can resign from the office, and then his or her competences will be performed by the deputy mayor (Draškovičová, 2018). However, this rule is already more difficult to apply in municipalities with up to 40 inhabitants, where the municipal council consists of a maximum of three Members.

Municipal inactivity was dealt with by Act No. 369/1990 Coll. on Municipal Establishment (until its amendment is approved by Act No. 70/2018 Coll.) only in relation to the delegated tasks of state administration to the municipality. After a period of at least six months, when the municipality did not exercise its competence in the delegated exercise of the state administration, these returned to the administration of the nearest state administration body. If the self-government bodies were restored, the State again delegated the delegated tasks to the municipality, with the proviso that it could claim financial compensation from the municipality for the performance of those delegated tasks.

However, the fact that the municipality had become dysfunctional due to the absence of municipal self-government bodies could no longer be clearly resolved by the legislation. Although the Municipal Government Act states in its wording that “the term of office of the mayor shall end with the taking of the oath of office of the newly elected mayor”, this term of office may also end before a proper elections has been held. The mayor's mandate may be terminated by resigning or by a change of residence outside the territory of the municipality, by removal of the mayor in a referendum or by a final conviction for a deliberate criminal offence or by a final conviction for a criminal offense if the execution of the prison sentence has not been suspended or if the mayor has been deprived of legal capacity or has had his/her legal capacity restricted.

The new wording of the section (§ 2aa) allows a dysfunctional municipality to be affiliated to a neighboring municipality. The law defines a dysfunctional municipality as one in which the municipal bodies fail to be elected in two consecutive elections. This means, for example, municipal elections repeated at four-year intervals and new by-elections called afterwards. In the case of the election of municipal councillors, a sufficient number of members must be elected to enable the council not only to open its deliberations but also to adopt resolutions. The law also provides that the Government may, by ordinance, affiliate dysfunctional municipality to a neighbouring municipality located in the same district as the dysfunctional municipality, if the neighbouring

municipality agrees. Unlike the process of merging municipalities, the affiliation of a municipality does not require a local referendum in both municipalities (Kopúnek, 2019).

“The intention of the proposed modification was to establish a mechanism, taking into account the democratic principles of local self-government, which will allow to solve cases of long non-functioning municipalities, i.e. municipalities unable to provide even basic self-government tasks and activities. However, in rare cases, it has happened that neither in regular nor in new elections did the inhabitants of a municipality run for the post of mayor or members of the municipal council. This created a situation where there was no one to act for such a municipality. The municipality no longer fulfilled one of the essential requirements for the status of a municipality under the Constitution. Given that such a dysfunctional municipality cannot even call a local referendum on the merger with another municipality, the amendment to the Act on Municipal Establishment on the institution of affiliation of a dysfunctional municipality entrusted the issuance of consent or disagreement with the affiliation of the municipality to the competence of the collective body, which is the municipal council of the neighboring municipality”⁵.

If the mayor of a municipality has not been elected in successive elections, this is a fairly straightforward matter. The problem of interpreting the wording of the law arises when the municipal council is not elected. In principle, there can be two situations – a clear one, where none of the inhabitants of the municipality is interested in being a member of the municipal council, and no elections has been held. The second one is – the elections was held but no member was elected or the number of elected members does not correspond to the required number within the meaning of Article 11 (3) of the Act on Municipal Establishment, e.g. three members should have been elected but in fact one or two were elected. It may also be the case that elections are held but are invalid for various reasons. The law does not take this into account either.

A municipality which has neither a municipal council nor a mayor after two consecutive elections has been held is a municipality which is dysfunctional within the meaning of the Act. However, the law does not address the situation where a municipality elects a mayor but does not elect a municipal council within the meaning of the law, or vice versa. According to the legislation, such a municipality is functional, but in fact it is not functional. A municipality can be fully governed only if both self-governing bodies

⁵ Explanatory report to Act 70/2018 Coll. About municipal establishment 2017.

of the municipality, i.e. the mayor and the municipal council, are elected and actually operate in the municipality (Palúš, 2020).

6 A DYSFUNCTIONAL MUNICIPALITY ONLY BRINGS ADDITIONAL PROBLEMS

Legislatively enshrining a dysfunctional municipality is after-the-fact solution. It has remedied the typical situation in the Slovak Republic in recent years, when the number of municipalities unable to establish municipal self-government bodies or unable to perform basic self-government functions has been increasing. At the same time, the amendment to the law has created positive pressure on the inhabitants of the municipality to take up the idea of running for public office. This is also confirmed by a comparing the results of the 2018 and 2022 municipal elections.

In the 2018 elections, five municipalities showed no interest in running for the office of mayor or for the position of municipal councillor. In six municipalities there was no candidate for the post of mayor of the municipality. In twenty-four municipalities, there were not enough candidates to fill the positions of members of the municipal council. There was not a municipality in the 2022 election whose residents were not interested in elected office. In March 2023, mayoral elections were repeated in only four municipalities and elections of members in eleven municipalities⁶.

7 THE COMPLEXITY OF APPLYING THE LAW

In the event that the March 2023 elections in the aforementioned municipalities are still invalid, the state should proceed in accordance with the applicable legislation and initiate the process of affiliation of the municipality. An important role in the process of affiliation of a municipality is played by the district office in the seat of the region in whose territorial district the dysfunctional municipality is located. It is the district office which, at the initiative of the Minister of the Interior, convenes an assembly of the inhabitants of the municipality in the municipality in question, at which it discusses the procedure for the affiliation of the municipality and draws up a record of the meeting. At

⁶ The Elections to the Bodies of Communal Self-Government.

the same time, the district office communicates with the neighbouring municipality, whose consent is required for the affiliation of the dysfunctional municipality. If that municipality does not agree to the affiliation, the district authority shall seek the consent of the other neighbouring municipality, if any. The wording of the Act (Section 2aa(1) to (3) of the Municipal Establishment Act) implies that the district authority, at a meeting of the inhabitants of the municipality to be affiliated to the neighbouring municipality, will discuss the procedure for affiliation, i.e. the Act does not require the consent of the assembly of the inhabitants of the municipality to the affiliation. A problem, which is not foreseen by the law, may arise if none of the residents of the municipality in question attends such an assembly. This is not an unrealistic situation. There are between 15 and 20 people aged 70 and over in the municipalities that are to be affiliated. Hence the lack of interest in public affairs. As an instrument of direct democracy, the municipal assembly is used by the municipal authorities to consult with the inhabitants of the municipality on a matter of public interest (Section 11b of the Municipal Establishment Act). However, in the process of affiliating a dysfunctional municipality to a neighbouring municipality, the institution of direct democracy does not play a consultative role. It is the place where the state, through the district authority, communicates its decision. However, this is not the purpose of direct democracy; it contradicts the theory of public authority and its constitutional and legal expression in a democratic and legal state (Palúš, 2020).

The law also requires the consent of the adjacent municipality to the affiliation a dysfunctioning municipality. This consent must be given by the municipal council of the neighbouring municipality. Since the law does not provide otherwise, it will apparently be sufficient if a supermajority of its members present give their consent. If no neighbouring municipality consents to the affiliation of a dysfunctioning municipality, the territorial change cannot be carried out under the proposed legislation (Alman, Volochová, 2020). A different problem arises in a situation where a dysfunctional municipality has debts. The question naturally arises, who will pay them? The municipality to which the defunct municipality has been affiliated or the State? The law does not give an answer to this legitimate question, but the application practice confirms that this very problem will complicate the whole process of affiliation of a dysfunctional municipality. Section 2aa(6) states that a one-off financial contribution may be made from the budget chapter of the Ministry to support the smooth exercise of self-government of the municipality to which the dysfunctional municipality has been affiliated. The

legislature apparently has in mind the increased financial costs that such a municipality will incur by affiliating a dysfunctional municipality. In this sense, the legislature's action is logical and rational. However, the state should also be able to bail out the debts of the dysfunctional municipality. If the Legislature wants to let a municipality dissolve, it should also be responsible for paying its debts. Regardless of how the municipality's debts were incurred, i.e., whether they are objective in nature and their creation was not a violation of law (they were incurred so that the municipality could survive), or whether they were caused by the unlawful actions of the municipality's elected officials, in which case the state should claim damages against them. In any event, however, the solution to this problem should have a clear legislative expression. The whole process of affiliation of a dysfunctional municipality would be accelerated and simplified (Palúš, 2020).

8 AFFILIATION OF THE DYSFUNCTIONAL MUNICIPALITY OF ONDAVKA

The Slovak Parliament approved an amendment to Act No 369/1990 Coll. On Municipal Establishment to solve the long-standing problem of the dysfunctional municipality of Ondavka. In the explanatory memorandum to the adoption of Act 70/2018 Coll., the legislator stated that in the next three years it is foreseen to use the institution of municipal affiliation in only one case, and that is the municipality of Ondavka. That is why in the previous post we called this law “Lex Ondavka”.

Prior to the adoption of the amended law, the last regular municipal elections in Ondavka were held in 2010. The elected mayor of the municipality resigned in 2012, when the municipality's debt to state institutions amounted to €23,000 and the municipality was placed in receivership by the state due to foreclosures. The bailiffs blocked the municipality's bank accounts and sold the municipality's assets at auction (Korzár, 2010). Ondavka was only able to elect a mayor in the second by-election in March 2013. He remained in office until the regular elections in 2014 and did not run again due to his high age of 75. According to the law, he should have held the post until a new mayor was elected. However, he resigned in January 2015 and the municipality reached an impasse. None of the residents were interested in running for elected positions in the municipality (Korzár, 2019 a). When no elections were held in the municipality even after the adoption of the amendment to the Law on Municipal Government, the state

administration started the process of affiliation of Ondavka to another municipality. However, it was not in a hurry.

It was only after a year after the amendment to the Act was passed in April 2019 that the Government of the Slovak Republic officially declared the municipality of Ondavka defunct and began preparations for its affiliation. The first step was to ascertain the amount of debt and the value of the municipality's assets and financial liabilities. In July 2019, a meeting was held between representatives of the state administration and the residents of Ondavka and the mayors of the neighbouring municipalities of Becherov and Vyšná Polianka. They explained to them the process of affiliation of the municipality. The majority of Ondavka residents expressed that they would prefer to be affiliated to the municipality of Vyšná Polianka, which has 109 inhabitants. State officials, however, wanted Ondavka to be affiliated to the municipality of Becherov with 281 inhabitants. The municipality of Becherov has a significantly larger budget than Vyšná Polianka and did not impose any conditions. Vyšná Polianka would only agree to the affiliation only if Ondavka was free of debts and foreclosures (Korzár, 2019 b).

The next step, which was to be ensured by the District Office in Prešov, was to call on the neighbouring municipality to secure consent to the affiliation of the village of Ondavka. The situation in which the municipality of Ondavka found itself was to be discussed by the municipal councils of the neighbouring municipalities and the members of the municipal council were to vote on the affiliation. However, the municipal councils did not discuss the affiliation of Ondavka, because they were not invited to do so by the state administration. The reason for this was the complex process of affiliation of the municipality, which was being carried out for the first time in Slovakia, and a number of documents and actions had to be provided. The affiliation of Ondavka to the neighbouring municipality was also connected with a territorial change, which could only take place only after the elections to the National Council of the Slovak Republic in March 2020. Therefore, none of the parties involved were in a hurry to proceed. “It is up to the discretion of the district office in the seat of the region, after considering all the decisive aspects, which municipality will be invited first to secure consent for the affiliation of a dysfunctional municipality,” explained the Ministry of the Interior of the Slovak Republic (Trend, 2020).

The procedure for the affiliation of the municipality was thus not initiated until after the 2020 parliamentary elections. However, the process of affiliation of Ondavka to

the municipality of Becherov was suspended by the state administration after candidates for both the mayor of the municipality and for members of the municipal council registered for the by-elections to the local government bodies in September 2020 (Korzár, 2020). The main motivation of the elected candidate for the mayor of the municipality, Lucie Vasilega, was mainly to prevent the disappearance of the municipality, as the residents ignored up to 11 regular or by-elections for local government bodies that had been called since 2015. “Nobody wants the affiliation. Yet, we were moving towards it. The majority of residents were in favour of Vyšná Polianka and one resident for Becherov, where access is problematic. Still, they wanted us to be affiliated to Becherov, but we didn't want to let that happen. Maybe that is also why 11 voters out of 15 people with the right to vote came to the polls. As a result, I was elected mayor and we also have three new members. So affiliation is no longer a threat,” the newly elected mayor said after the September elections. This fact was also confirmed by the Ministry of the Interior of the Slovak Republic, which stopped the process of affiliation of Ondavka (Nový Čas, 2020).

In 2020, the municipality of Ondavka had a debt of € 30 000 and several foreclosures. In 2021, under the leadership of the new mayor, it managed to manage with a loss of € 56 and still had a debt of € 1 700. Currently, the municipality has 15 inhabitants - eight men and seven women. Six of the inhabitants are of retirement age, eight are of working age, including the mayor, who was also elected by the inhabitants of the municipality in the ordinary elections for the municipal authorities in October 2022 (Aktuality, 2020). However, the municipality failed to elect all three municipal councillors in that election. Therefore, elections will be repeated in Ondavka in March 2023 as well. If the elections fail to fill the required number of councillors, the municipality will again become dysfunctional. The State will thus have to re-initiate the process of affiliation of the municipality.

9 CONCLUSIONS

There are 12 municipalities in Slovakia with a population of up to 30 inhabitants. These municipalities are at risk of gradually becoming dysfunctional. They are located in an environment where the neighbouring municipalities do not have sufficient financial resources to cover the debts of a the dysfunctional municipality. The affiliation of a

municipality also brings the neighbouring municipality additional worries related to the assimilation of their inhabitants, since by law the dysfunctional municipality ceases to exist. If a municipality ceases to exist, its name ceases to exist, and its cadastral territory, which should become part of the neighbouring municipality, also ceases to exist. However, this brings a whole range of possible legal conflicts and it is questionable whether the reference to Article 2aa(5), according to which a dysfunctional municipality ceases to exist, will be sufficient to resolve them. We believe that a municipality that has existed for several centuries should not be *ex lege* but should cease to exist in a natural way. It cannot be the legislator's task to erase municipalities from the map of the Slovak Republic simply because, due to the age composition of the population, they are not capable of exercising their right to self-government. Palúš states that “The actual functioning of a municipality, which is given to it by its inhabitants, cannot be confused with the municipality's incapacity to perform its self-government functions under the law. The legislature went unnecessarily far in providing that a dysfunctioning municipality ceases to exist by affiliation. A statutory statement that the self-governing functions of the dysfunctioning municipality are transferred to the neighbouring municipality would have sufficed. That municipality would in that sense become the legal successor of the dysfunctioning municipality” (Palúš, 2020).

Even in the case of dysfunctional municipalities, Slovakia is suffering from the failure to implement municipal reform or lack of interest in solving the problem of excessive fragmentation of local governments. The reform could include a general merger of municipalities. Alternatively, the creation of union municipalities, within which small municipalities could be merged into larger territorial units in Slovakia (Konecny, 2016).

In their economic analysis, Černenko, Harvan and Kubala (2017) point out that the concentration of municipal administration into larger units will free up financial resources. Up to 92% of all municipalities in Slovakia have less than 3 000 inhabitants. Slovakia has more than 3.5 times the share of mayors and more than twice the share of municipal councillors per 100 000 inhabitants than the EU average. The fragmentation of local governments leads to inefficient administration, i.e. a high share of expenses on the administration itself. Municipalities with up to 250 inhabitants invest more than half of all expenses on administration, to the detriment of municipal development and quality service delivery. On the contrary, municipalities with a population of 20 thousand to 50 thousand inhabitants use only 10% of their expenses for administration. By creating joint

municipal offices, municipalities are addressing the lack of capacity to provide all their competences. The authors conclude that in the short term it seems most appropriate to concentrate the performance of administration in the registry districts. Such a concentration would free up €181 million per year for the further development of municipalities. They also state that in the medium term, however, it is advisable to consider the concentration of administration in micro-regions, which would bring up to 316 million euros per year.

Larger units of the municipal grouping would solve the issue of creation of municipal self-government bodies meeting the criteria for the proper performance of these functions. Thus, the institute of a dysfunctional municipality would be unnecessary. They would also be able to comprehensively perform tasks of a municipal nature, as well as the delegated performance of state administration. At the same time, the provision of all the services expected of a municipality as a basic unit of local government would be ensured, both financially and in terms of personnel. The merging of municipalities into larger units would save the state € 180 million a year. This was stated by the ruling party Sloboda a Solidarita (Freedom and Solidarity, SaS) in 2020 in the document “Recovery and Resilience Plan”. Currently, local governments in Slovakia are too fragmented, which costs them unnecessarily much money. The average municipality in Slovakia has 1 850 inhabitants. The average for OECD member countries is 20 times higher. Merging municipalities into larger units could reduce the number of local governments in Slovakia by up to two thirds. According to SaS, the money saved in this way could be used to improve the quality of services provided to citizens. The cost associated with the merger of small municipalities were estimated at € 540 million.

However, the Ministry of the Interior has clearly rejected the abolition of smaller municipalities and their merging into larger units. This move is often cited as a way to streamline services to residents under the redistricting changes. These are not ruled out by the Ministry. Any changes should be made on the basis of functional spatial links, while respecting the natural movement of the population. “Another criterion is the quality of governance, which is conditioned by the capacity of institutions. And this is largely shaped by the architecture of public administration,” the ministry added (Euractiv, 2021).

Meanwhile, the solution to the issue can be drawn from other countries. Some federal states in Germany, but also the Scandinavian states of Denmark and Sweden and the Baltic states of Estonia and Latvia have good experience with municipal reform of

this kind In northern Europe, Estonia and Latvia joined Lithuania in the reduction of municipalities. Both countries recorded a relatively significant decrease in the number of municipalities. Municipalization did not bypass Ireland, where there was also a significant decrease in municipalities over the past decades. Even such a small state as Luxembourg did not avoid consolidation measures in terms of merging municipalities. From southern Europe, it is necessary to mention the Greek reform, where out of approximately 6,000 municipalities, approx. 1,000 remained. If we look at the countries of Central and Eastern Europe, both Polish and Bulgarian municipalities went through the consolidation process. The most significant consolidation reforms took place in the second half of the last century, but it is far from clear that the process of merging municipalities in Europe has stopped. If we look at the individual countries that have reformed their settlement structure in the sense of creating larger local governments, we come to a whole series of individual countries. The majority of voices opposing territorial consolidation are currently also being raised with the argument of the appropriateness of the time of implementation of the reform. In some countries, mergers have not brought significant changes in the average size of municipalities, or rather, these changes have been only moderate. Such examples are, for example, Iceland, Luxembourg, Estonia or Germany. On the other hand, Sweden, Denmark and Greece have radically changed the map of local governments. Summarizing territorial reforms, out of the 44 member states of the Council of Europe, 18 of them have undergone more or less radical territorial consolidation since 2000. The result was a reduction in the total number of municipalities in Europe by 5000 (Swianiewicz, Gendzwill, Zardi, 2017).

Inspiration can also be found in neighbouring countries that are members of the European Union. In the Czech Republic, a municipality with a designated municipal authority provides delegated state administration for a number of municipalities. In Hungary, the legislation allows neighbouring municipalities to form a joint municipal council, which exercises on behalf of the merged municipalities all or parts of the powers reserved to the municipal council as agreed by the municipalities. In Poland, on the other hand, the concept of municipal self-government is based on the premise that a municipality can ensure the proper exercise of its self-government functions if it has at least 1 000 inhabitants. In this context, municipalities in Slovakia do not agree with the ill-considered merging of municipalities. They are currently calling for more decentralisation and subsidiarity as part of the reform. They demand that competences

should be graduated. This proposed alternative is also supported by history (a similar approach was implemented after the establishment of the first Czechoslovak Republic (Konečný - Konečný, 2009) and European examples of good practice, e.g. in the already mentioned Czech Republic in the form of the local division of municipalities into the so-called Type I, II and III municipalities (Palúš, 2020). This means that the powers of local governments would be graded according to their size, population or other factors. Slovakia is the only country in the Central European region where the smallest municipality, the regional town and capital city have the same more than 4 300 competences.

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Authors' Contribution

Gabriel Kopúnek: writing original draft, investigation, writing - review & editing, visualization, conceptualization, supervision

Martin Molčan: methodology, formal analysis, investigation, writing - review & editing, validation

Data availability

All datasets relevant to this study's findings are fully available within the article.

How to cite this article (APA):

Kopúnek, G., & Molčan, M. (2025). PROBLEMS WITH THE AFFILIATION OF A DYSFUNCTIONAL MUNICIPALITY IN SLOVAKIA: THE LAW THAT THE STATE IS AFRAID TO APPLY. *Veredas Do Direito*, 22(3), e223394. <https://doi.org/10.18623/rvd.v22.n3.3394>