

ON THE PREVENTIVE REVIEW OF THE SUBJECT OF LOCAL REFERENDUMS IN THE SLOVAK REPUBLIC¹

O PREVENTÍVNEJ KONTROLE PREDMETU MIESTNEHO REFERENDA V PODMIENKACH SLOVENSKEJ REPUBLIKY

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ABSTRACT

The article examines the issue of preventive review of the subject matter of local referendums in the Slovak Republic. It identifies gaps and deficiencies in the statutory regulation of local referendums under the Local Government Act, in particular with respect to the definition of their subject matter and the availability of ex ante review of their legality and constitutionality. The authors analyse potential review mechanisms and the entities that may participate in this process, including the municipal council, the referendum commission, the mayor, the public prosecutor's office, and the administrative courts. Consideration is also given to the jurisdictional limits of the Constitutional Court of the Slovak Republic. The aim of the article is to identify and systematise the existing possibilities of preventive control of the subject matter of local referendums, for which no explicit and precise legal regulation exists, with particular regard to the nature of the prerogatives of the entities involved.

ABSTRAKT

Článok sa zaoberá problematikou preventívnej kontroly predmetu miestneho referenda v podmienkach Slovenskej republiky. Poukazuje na medzery a nedostatočnosť právnej úpravy miestneho referenda v zákone o obecnom zriadení, najmä pokiaľ ide o vymedzenie jeho predmetu a možnosti ex ante kontroly jeho zákonnosti a ústavnosti. Autori analyzujú potenciálne kontrolné mechanizmy a subjekty, ktoré môžu do tohto procesu vstupovať, vrátane možností obecného zastupiteľstva, referendovej komisie, starostu obce, prokuratúry a správnych súdov. Pozornosť je venovaná aj limitom pôsobenia Ústavného súdu Slovenskej republiky. Cieľom článku je identifikovať a systematizovať existujúce možnosti preventívnej kontroly predmetu miestneho referenda, ktorej výslovná a exaktná úprava absentuje, s osobitným zreteľom na charakter prerogatív jednotlivých do úvahy prichádzajúcich subjektov.

I. INTRODUCTION

In Slovak time-space relations, it is widely recognised that the legal-normative regulation of local referendums⁴ contained in the Act on Municipalities⁵ is relatively

¹ This article presents the results of the VEGA project No. 1/0474/25 - Referendum and the material core of the constitution in the context of the case law of the Constitutional Court of the Slovak Republic - evaluation, critical reflections and proposals *de constitutione ferenda*.

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⁴ The term "local referendum" can be used in both a broader and a narrower sense. While in the broader sense it includes both referendums at the municipal level and referendums at the level of the self-governing region (higher territorial unit), in the narrower sense it refers to referendums under the Municipalities Act. In this article, we use the term "local referendum" and its variations in a restrictive sense, i.e. only in relation to referendums at the municipal level. However, given the many similarities between the regulation of referendums at the municipal and regional levels, this does not change the fact that the considerations presented in this article can also be applied *mutatis mutandis* to referendums as a form of self-government at the higher territorial level. For the outlined terminological differentiation, see in particular KRUNKOVÁ, A. Development stages of local referendums in the Slovak Republic. In TRELLOVÁ, L. – MÁČAJ, E. (eds.) *International and domestic legal*

insufficient and incomplete. Although the given deficit provides a relatively fertile ground for scholarly reflection and stimulating discussions (amicable transfer of knowledge and opinions) at various academic conferences, its more consequential effect is that it substantially limits the practical application of this instrument of local direct democracy. This is particularly regrettable, as M. Vernarský observes, “*the orientation of the addressees of local government, who are also the recipients of public administration, in the meaningful essence of participation in the management of public affairs is not reinforced and remains confined to rigidly separated spheres of authority on the one hand and the entities subject to that authority on the other.*”⁶ It is not without reason that local government is regarded as a veritable “laboratory” of democracy, given the close proximity of its members to their elected representatives and the immediate relevance of both groups to matters of local administration. Local referendums, in particular, can underscore the significance of this characterisation, as they provide a forum for residents to express their views—for instance, on issues where they question whether their elected representatives (representatives of local self-government) genuinely advance their interests.⁷ Local referendums therefore have the potential to effectively enhance citizen participation in governance, but their success depends on several conditions. In particular, two elements are decisive: (i) the citizens’ attitudes toward the issue submitted to the referendum, and (ii) their perceptions of the process itself, that is, their attitudes toward the use of referendums as a mechanism for decision-making,⁸ this undoubtedly also includes the appropriate establishment of legislative conditions for the conduct of local referendums. Best practices from various countries indicate that the effectiveness and credibility of this institution can be enhanced by reducing administrative barriers, ensuring adequate participation in local referendums, and reinforcing the binding nature of referendum outcomes.⁹ As regards the situation in the Slovak Republic, the legally unregulated or inadequately regulated aspects of referendums as a form of local self-government include, for example (i) the definition of the subject matter of the referendum,¹⁰ (ii) the specification of substantive (content-related) and formal (structural) requirements for referendum questions,¹¹ (iii) a substitute procedure in the event of the unlawful failure of the municipal council to announce a local referendum, if the prescribed conditions are met,¹² or

aspects of direct participation of residents in local self-government. Bratislava: Comenius University in Bratislava, Faculty of Law, 2020. p. 29, and also TRELLOVÁ, L. In TRELLOVÁ, L. – VRABKO, M. *Direct expressions of the right to municipal self-government in the context of public administration.* Prague: Leges, 2022. p. 146.

⁵ Act of the Slovak National Council No. 369/1990 Coll. on municipal administration, as amended.

⁶ VERNARSKÝ, M. Alternative dispute resolution methods and public authority. In ADAMOV KRÁĽOVÁ, V. – VERNARSKÝ, M. – KRÁL, R. (eds.) *Possibilities for the use of alternative dispute resolution (ADR) methods in public administration. Peer-reviewed collection of papers from an international scientific conference, 16–17 October 2025.* Košice: Pavol Jozef Šafárik University in Košice, ŠafárikPress Publishing House, 2025. p. 13.

⁷ Compare KUDRNA, J. The Primacy of a Decision Taken in a Local Referendum over a Contract Concluded by Local Self-Government Bodies: the Example of the Czech Republic. In: *Prawo i Więź*, Vol. 55, No. 2, 2025. pp. 93–94.

⁸ KARV, T. – BACKSTRÖM, K. – STRANDBERG, K. Consultative Referendums and Democracy: Assessing the Short-Term Effects on Political Support of a Referendum on a Municipal Merger. In: *Local Government Studies, Taylor & Francis Journals*, vol. 49, No. 1, 2023. p. 154.

⁹ KOPÚNEK, G. – ŠVIKRUHA, M. – MIKUŠ, D. Local Referendums in the Czech Republic, Hungary and Poland as Starting Points for Legislative Changes to Local Referendums in Slovakia. In: *Croatian and Comparative Public Administration*, vol. 15, No. 1, 2025. p. 104.

¹⁰ See TOMAŠ, L. Reflections on the wording of Section 15 of the Act on Self-Governing Regions (or what can be improved in the legal regulation of regional referendums). In TRELLOVÁ, L. – MÁČAJ, Ľ. (eds.) *How to make the direct participation of residents in local self-government more effective in the context of smart cities and municipalities.* Bratislava: Comenius University in Bratislava, Faculty of Law, 2021. p. 86 et seq.

¹¹ See TOMAŠ, L. The construction of questions in local referendums in light of the decision-making practice of the Supreme Administrative Court of the Czech Republic. In TRELLOVÁ, L. – MÁČAJ, Ľ. (eds.) *International and domestic legal aspects of direct participation of residents in local government.* Bratislava: Comenius University in Bratislava, Faculty of Law, 2020. p. 72 et seq.

¹² See TOMAŠ, L. Replacement of the expression of will of the municipal council on the declaration of a local referendum by the administrative court. In MOLNÁR, P. – MACKO, L. – ROMANOVÁ, R. – KEREKEŠOVÁ, M. (eds.) *Košice Days*

the determination of the protective period of the results of a local referendum within the general regulation of the given institution in the Act on Municipal Establishment.¹³

In addition to the aforementioned deficiencies, another aspect warrants consideration, which has not yet received systematic attention in the literature, despite its potentially significant impact on the implementation and success of local referendums. This concerns the so-called preventive (preliminary) review of the legality and constitutionality of the subject matter of a local referendum, which, to some extent, is closely linked to the previously noted inadequacy in the regulation of the subject matter—particularly the optional issues—of a local referendum. In Under Section 11a(4) of the Act on Municipal Establishment, the legislator provides only a very general stipulation that a local referendum may be held “*prior to a decision on other important matters of local government*,” with a subsequent reference to the competencies of the local government under Section 4 of the Act on Municipal Establishment. In the case of an optional local referendum, the condition that the matter must be of common significance for the local government must always be satisfied. By applying the converse of this principle, it is not permissible to call an optional local referendum (i) on an issue of merely marginal importance to the specific municipality or (ii) on an issue that would interfere with the exercise of state administration delegated to the municipality. Theoretical approaches further indicate that matters reserved for specific administrative or tax proceedings, or for the resolution of complaints under the Complaints Act, cannot constitute the subject matter of an optional local referendum.¹⁴ The results of an optional local referendum cannot substitute for the decision-making functions of municipal authorities,¹⁵ as follows from an adequate interpretation of Section 11a (4) of the Act on Municipal Establishment. Finally, particularly in the case of a referendum initiated by petition, its interpretation may also be guided by the generally recognised limitations on the exercise of the right of petition under Article 27 of the Constitution of the Slovak Republic¹⁶ and also on Section 1(3) and (4) of the Act on the Right of Petition,¹⁷ according to which a petition may not interfere with the independence of the courts and may not call for the violation of the Constitution of the Slovak Republic, laws and legally binding acts of the European Union, or the denial or restriction of personal, political or other rights.¹⁸ However, even the negative definition of the subject matter, derived through methods of legal interpretation and legal theory, does not alter the fact that a local referendum may address a relatively wide spectrum of issues with varying forms and content. According to L. Trellová, this contributes little to legal certainty regarding the referendum agenda,¹⁹ which is also reflected by J. Drgonec, who draws attention on the potential for disputes arising from unnecessarily conducted local referendums, in which municipal residents would decide on issues that are not legally subject to referendum.²⁰

of Private Law III. Peer-reviewed collection of scientific papers. Košice: Pavol Jozef Šafárik University in Košice, 2021. p. 334.

¹³ See TOMAŠ, L. Comparative context of local referendums and regional referendums (problematic aspects). In BREZINA, P. – CVRČEK, F. (eds.) *Alfeus and Augean Stables. Collection of contributions from the conference Metamorphoses of Law in Central Europe VIII*. Plzeň: University of West Bohemia in Plzeň, 2024. pp. 338 – 339.

¹⁴ Act No. 9/2010 Coll. on complaints, as amended.

¹⁵ For more details, see TOMAŠ, L. In TEKELI, J. – TOMAŠ, L. – HOFFMANN, M. *Act on Municipalities. Commentary*. 2nd edition. Bratislava: Wolters Kluwer, 2021. p. 488.

¹⁶ Constitution of the Slovak Republic No. 460/1992 Coll. as amended by subsequent constitutional laws.

¹⁷ Act No. 85/1990 Coll. on the Right of Petition, as amended.

¹⁸ TRELLOVÁ, L. *Constitutional Aspects of Local Government*. Bratislava: Wolters Kluwer, 2018. p. 141.

¹⁹ TRELLOVÁ, L. Local referendums and their legislative potential in smart cities and municipalities. In TRELLOVÁ, L. – MÁČAJ, E. (eds.) *How to make direct participation of residents in local government more effective in smart cities and municipalities*. Bratislava: Comenius University in Bratislava, Faculty of Law, 2021. p. 8.

²⁰ DRGONEC, J. *Constitution of the Slovak Republic. Theory and practice*. 2nd revised and expanded edition. Bratislava: C. H. Beck, 2019. p. 1124.

The explicit possibilities for *ex ante* oversight of the legality of a local referendum remain fairly vague and lacking clear definition. This ambiguity pertains both to the identification of the entity authorised to seek control over the subject matter of a referendum, the body competent to decide on such a proposal, and, finally, the procedural rules governing the control process and its potential outcomes. In this regard, the objective of this article is to identify and examine the possibilities offered by the existing legal regulation (*de lege lata*). To this end, a range of methodologies commonly employed in social, humanities, and legal research are applied. In particular, analytical and synthetic methods are utilised, through the examination of findings issued by law enforcement authorities, which are then generalised in a broader context using the method of abstraction. In addition to these approaches, both inductive and deductive methods are employed, alongside descriptive methods to a limited but necessary extent, appropriate to the objectives of the study.

II. PREVENTIVE CONTROL OF THE SUBJECT OF A LOCAL REFERENDUM (CONSIDERATIONS AND POSSIBILITIES)

With respect to the range of entities involved, in various capacities, in the preparation and announcement of a local referendum, several institutional bodies may be vested with powers of control over its subject matter.

First and foremost, there is the commission vested with responsibilities related to the preparation of voting in local referendums, which may be established by the municipal council through a generally binding regulation on the details of organising local referendums. Such a regulation must be issued pursuant to the authorisation provided in Section 4(5)(a), point 4, of the Act on Municipal Establishment.²¹ Such commissions, composed of several—or even all—members of the relevant municipal council, or in some cases the mayor of the municipality, exist in practice. The prerogative powers of these commissions are grounded in the Act on Municipal Establishment and the Act on the Right of Petition. When a local referendum is initiated by a petition of the municipality's residents, the commission may be authorised to disregard incomplete, false, or illegible information provided by persons supporting the petition [Section 4a(7) of the Act on the Right of Petition]; to manage the publication of a mass petition in periodical press or other mass media [Section 5b of the Act on the Right of Petition]; to decide whether the petition should be discussed at a council meeting, provided it fully complies with formal requirements [Section 5d(4) of the Act on the Right of Petition]; to call upon representatives of the petition committee for necessary cooperation in processing the petition, as well as to require similar cooperation from other public authorities and organisations [Section 6a of the Act on the Right of Petition]; and to postpone consideration of a petition if the deadline for remedying deficiencies in the mandatory formal requirements expires without result [Section 5(4) of the Act on the Right of Petition]. The commission's responsibilities typically include the obligation to receive a petition (or to assign it in the event of not being competent to act), to invite the representative of the petition committee or the petitioner to remedy any deficiencies in the formal requirements within 10 working days of receipt where such deficiencies are identified [Section 5(1) of the Act on the Right of Petition], and to examine and process the petition with a view to establishing the factual circumstances and assessing its conformity or non-conformity with applicable legal regulations and with the public or other common interest [Section 5(5) of the Act on the Right of Petition]. Moreover, the commission is required to process the petition within 30 working days from its service or from the removal of identified deficiencies, or, in particularly complex cases, within 60 working days, with a written

²¹ In the case in question, this is a commission different from the commission for voting and counting votes in a local referendum, which is a mandatory collective body with a legal basis objectified in Section 11a(6) of the Act on Municipalities.

notification of this fact to be provided to the representative of the petition committee [Section 5(5) of the Act on the Right of Petition]. It is further obliged to publish the outcome of the petition on the authority's website and on the electronic official notice board, where technically feasible, within 10 working days of its processing [Section 5(7) of the Act on the Right of Petition]. Where a petition is addressed to the municipal (city) council and has been supported by at least 1,000 persons or at least 8% of persons entitled to vote in municipal elections, the commission must ensure that the petition is placed on the agenda of a council meeting and that the representative and members of the petition committee are granted the right to be heard during its consideration. The powers and responsibilities of the commission to be established should appropriately be regulated by an internal regulation governing the handling of petitions (including those directed, *inter alia*, toward the calling of a local referendum). Although this requirement is not expressly provided for in the Act on the Right of Petition, Section 7(2) thereof refers to the analogous application of the legislation on complaints, which stipulates in Section 11(1) that the handling of complaints by a public authority must be regulated by an internal regulation.

However, it appears more pertinent to address the question of whether the municipal council committee involved in the preparation of a local referendum may also conduct a preliminary assessment of the (non-)compliance of the proposed referendum's subject matter with the law. In other words, it is necessary to consider (i) whether the commission responsible for preparing the local referendum is confined exclusively to a formal review of the petition, or (ii) whether the commission is additionally obliged to examine the wording of the referendum questions themselves—for instance, to determine whether they are discriminatory, whether they infringe upon the rights of municipal council members or third parties, and the like. The latter interpretation appears to be the correct one. Early in its history, the Constitutional Court of the Slovak Republic stated that *"Every decision adopted in proceedings concerning the exercise or protection of any fundamental rights or freedoms of citizens before any authority—be it state, local government, or otherwise—must therefore be preceded by a procedural process in which all material facts necessary for the decision are objectively established and evaluated, to the extent and in the manner specified above. A decision by the competent authority that is not preceded by such proceedings constitutes a violation of the fundamental right or freedom of the citizen that is the subject of the proceedings, irrespective of whether the authority directly and substantively adjudicates the exercise or protection of a fundamental right or freedom (as in proceedings before courts or state administration authorities) or merely decides on the fulfilment of conditions relevant to a subsequent substantive decision regarding the exercise of a citizen's fundamental right or freedom (as is the case with a decision of a municipal council under Section 11a(3) of the Act on Municipal Establishment)."*²² The cited opinion is intrinsically linked to the obligation of the public authority (commission) to examine and process the petition in order to establish the factual circumstances, as well as its compliance or non-compliance with applicable legal provisions and the public or other common interest. Given that the Constitution of the Slovak Republic and the Act on the Right of Petition delineate the matters that cannot constitute the subject of a petition, the public authority (commission) is required to systematically verify whether the relevant provisions have been observed. Accordingly, it must also examine the petition in terms of its content and substantive scope. This requirement is underscored by the directive already expressed in Section 5(5) of the Act on the Right of Petition, which obliges the public authority to ascertain the actual state of affairs, including any potential conflict with legal regulations and the public or other common interest. The commission is therefore obliged to assess the wording of the petition itself with respect to

²² Ruling of the Constitutional Court of the Slovak Republic, ref. no. II. ÚS 9/00 of 27 April 2000.

both the permissible and prohibited scope of the petition, which is naturally closely linked to the legality or illegality of the subject matter of the local referendum itself.

If the members of the commission responsible for verifying the validity of the petition are also members of the municipal council, they are required to discharge their duties with particular diligence and full accountability. Criminal procedural practice has already encountered cases in which liability was imposed for the negligent criminal offence of obstruction of the duties of a public official under Section 327 of the Criminal Code.²³ A pertinent case involved a petition submitted by persons entitled to vote in a local referendum regarding the dismissal of the mayor. Members of a commission appointed by the mayor, in violation of Section 11a of the Act on Municipal Establishment, failed to properly examine the petition in accordance with the requirements set forth in the Act on the Right of Petition and the Act on Municipal Establishment. In their opinion, they asserted that the petition committee had breached the Act on the Right of Petition by failing to allow citizens to familiarise themselves with the content and purpose of the petition prior to signing it, **as the petition allegedly did not clearly indicate its nature or the grounds for the mayor's dismissal**—assertions that did not correspond to the facts—and they additionally identified other unspecified deficiencies. The commission subsequently recommended that the municipal council declare the petition invalid, and during the council meeting, they obstructed the adoption of a resolution that would have validated the petition. Consequently, individuals entitled to vote in the local referendum on the mayor's dismissal were deprived of their constitutional right to participate directly in local governance. By their actions, the aforementioned councillors—acting as members of the referendum commission and thus as public officials pursuant to Section 128(1) of the Criminal Code—negligently impeded the fulfilment of a key function within the exercise of their powers, causing a particularly serious consequence and thereby committing the criminal offence of obstruction of the duties of a public official through culpable conduct.²⁴

The final determination of the referendum commission regarding the legality of the petition's subject matter—and, by extension, the subject of the local referendum—may be reflected in the actions of the municipal council as the body responsible for initiating the local referendum. Consequently, the municipal council constitutes another authority with both the capacity and the obligation to assess whether the subject matter of the local referendum complies with legal and constitutional requirements and, in the event of a negative assessment, to refrain from announcing the referendum. Should the municipality unlawfully fail to act on a valid petition and not announce a local referendum, the residents of the municipality would have several remedies available, ranging from filing a complaint with the public prosecutor's office to initiating proceedings before the administrative courts or submitting a constitutional complaint. This raises the question of delineating the legal powers of other entities involved in the preliminary review of the subject matter of a local referendum.

Conversely, if the municipal council unlawfully proceeded to hold a local referendum, the referendum would take place and be considered valid, with minimal legal consequences. The given scenario underscores a further deficiency in the normative regulation of local referendums, namely the absence of *ex post* review of the constitutionality and legality of their results. For example, the Constitution of the Slovak Republic and ordinary legislation do not allow the Constitutional Court of the Slovak Republic to examine the constitutionality of the conclusion of a local referendum. Neither the Act on the Public Prosecutor's Office,²⁵ nor

²³ Act No. 300/2005 Coll. Criminal Code, as amended.

²⁴ See the judgment of the Regional Court in Banská Bystrica, ref. no. 5To/52/2014 of 31 March 2015.

²⁵ Act No. 153/2001 Coll. on the Public Prosecutor's Office, as amended.

the Code of Administrative Court Procedure²⁶, provide for a process for reviewing the legality of the results of a local referendum.

The prerogatives of other entities potentially involved in the process of preventive control over the subject matter of a local referendum are linked to the interim period between the announcement of the local referendum and its actual conduct.

The mayor of the municipality may intervene in the matter by exercising the right, pursuant to Section 13(6) of the Act on Municipal Establishment, to suspend the implementation of a municipal council resolution announcing a local referendum if he or she considers it to be unlawful or clearly detrimental to the municipality. Undoubtedly, the assessment that the resolution is unlawful may be based precisely on the problematic nature of the questions submitted by the residents for consideration in the local referendum. Should the mayor suspend the implementation of the resolution, the municipal council may override the mayor's objection and confirm the resolution by a three-fifths majority of all council members, thereby effectively overruling the mayor's opinion regarding the deficiencies in the subject matter of the local referendum. An important exception to the mayor's preventive control power is a resolution to hold a local referendum on the dismissal of the mayor. Pursuant to Section 13(7) of the Act on Municipal Establishment, the mayor is not authorised to suspend the implementation of such a resolution, which can be regarded as positive and consistent with the principle of separation of powers in local government. Otherwise, the mayor would, in effect, be adjudicating on his or her own status.

Conversely, the mayor may not, on the basis of a subjective belief that the municipal council's resolution announcing a local referendum is invalid, fail to ensure that a notice of the referendum is sent to all residents entitled to vote. Nor is it permissible for the mayor to take any actions aimed at preventing residents from becoming aware of the announcement of the referendum—for example, by refusing to publish the notice on the official municipal notice board. Such “pseudo-control” effectively deprives the municipality's residents of their constitutional right to freely participate and vote in the local referendum, because, until an administrative court issues a ruling under Sections 348 et seq. of the Code of Administrative Court Procedure declaring the municipal council's resolution unlawful, the resolution remains valid and effective - in accordance with the presumption of correctness of public law acts. Accordingly, the mayor, as the statutory representative of the municipality, is obliged to respect the relevant resolution and to perform all acts required by law to enable the holding of the local referendum. Should the mayor demonstrably fail to fulfil this obligation, they expose themselves to a serious risk of committing the criminal offence of obstruction of a public official under Section 327(1) of the Criminal Code.²⁷ There has already been a case in municipal practice involving the lawful conviction of a mayor in criminal proceedings.²⁸

As regards other supervisory bodies that may be considered, the public prosecutor's office in particular has supervisory powers in relation to the activities and results of the municipal council, including in relation to the municipal council's resolution on the declaration of a local referendum. Should the supervising prosecutor consider that the subject matter of the announced local referendum is unlawful, they may file a protest against the resolution in accordance with the procedure set out in the Act on the Public Prosecutor's Office. This may be done *ex officio* (*ex offio -sua sponte*) or on the basis of a complaint. The prosecutor, however, does not possess decision-making authority over the formulation of referendum questions and cannot issue a final or binding determination that would prevent the local referendum from being held. Moreover, a prosecutor's protest does not have suspensive

²⁶ Act No. 162/2015 Coll. Administrative Court Procedure, as amended.

²⁷ According to this provision: “A public official who, in the exercise of his or her authority, through negligence, frustrates or substantially impedes the fulfilment of an important task shall be punished by imprisonment for up to two years.”

²⁸ See the resolution of the Regional Court in Trnava, file no. 3To/61/2017 of 6 February 2018.

effect on the conduct of the referendum. The prosecutor's prerogatives in this non-criminal supervisory context are therefore purely auxiliary and advisory in nature.²⁹ Provided the municipal council deems the prosecutor's protest to be well-founded, it may repeal the contested resolution or amend it in accordance with the nature of the matter. In so doing, the council essentially concurs with the prosecutor's assessment regarding the problematic nature of the subject matter of the local referendum—which it itself had announced—thereby creating an immediate impediment to its implementation.

If the municipal council considers that the protest is not justified and that the subject matter of the local referendum fully complies with legal and regulatory requirements, it will reject the protest by resolution. In such a situation, the prosecutor may turn to the administrative court and file a lawsuit against the relevant resolution in a special type of proceedings pursuant to Section 348 et seq. of the Code of Administrative Court Procedure. Preventive control of the subject matter of a local referendum is transferred to the jurisdiction of the public judiciary at the announced moment, as the legality—and, in effect, the constitutionality³⁰—of the subject matter will be assessed by the administrative court through a review of the initiating act. An action brought under Section 348 of the Code of Administrative Court Procedure does not, by operation of law, have *ex lege* suspensive effect, pursuant to Section 184 of Code of Administrative Court Procedure. However, this does not preclude the prosecutor from requesting suspensive effect either at the time of filing the action or at any subsequent stage of the proceedings, up until the administrative court issues its final decision regarding the request for suspensive effect. If the administrative court grants the request, the effect of suspending the execution of the contested resolution of the municipal council will be achieved,³¹ thereby creating a temporary impediment to the implementation of the local referendum. Should the administrative court, after hearing the case and reviewing the file, find the action to be well-founded, it may annul the contested resolution in its entirety pursuant to Section 356(3) of the Code of Administrative Court Procedure, or alternatively, annul only the portion of the referendum question that contravenes generally binding legal provisions.³² The consequence of the court's decision will be the removal of the legal basis for holding the local referendum, either in whole or in part, thereby bringing the preventive control process of the local referendum to a definitive conclusion and rendering the holding of the referendum impossible.

Finally, at least at the theoretical level and in preliminary indications, there are considerations that the Constitutional Court of the Slovak Republic could be the body entrusted with the competence to conduct a preliminary review of the constitutionality, or possibly also the legality, of the subject matter of a local referendum. However, unlike the preventive review of the subject matter of a national referendum under Article 125b of the

²⁹ For example, I. Palúš and Ľ. Somorová state that a prosecutor may under no circumstances "*change or revoke unlawful acts on his own, or otherwise interfere in the activities of public authorities or replace them.*" See PALÚŠ, I. – SOMOROVÁ, Ľ. *State Law of the Slovak Republic*. 2nd edition. Košice: Pavol Jozef Šafárik University in Košice, 2002. p. 331. J. Mihálik and B. Šramel also characterise the powers of the public prosecutor's office in the non-criminal, non-judicial sphere in a similar vein in MIHÁLIK, J. – ŠRAMEL, B. Supervision of Public Prosecution Service over Public Administration: The Case Study of Slovakia. In: *Public Policy and Administration*, vol. 17, No. 2, 2018, p. 196.

³⁰ It should be borne in mind that the relationship between constitutionality and legality is hierarchical. Legality is derived from the principles of constitutionality and must be consistent with them (see, for example, the ruling of the Constitutional Court of the Slovak Republic, ref. no. II. ÚS 58/98 of 13 January 1999). I. Kanárik takes a similar view when he states that legality is not only synonymous with lawfulness, but also, in a broader sense, with constitutionality [KANÁRIK, I. *The Supremacy of Law (Current Issues in the Slovak Legal System)*. Košice: Pavol Jozef Šafárik University in Košice, 2003. pp. 6–7]. At the same time, it is precisely the courts and other "sub-constitutional" public authorities that fulfil the role not only of protectors of legality, but also of primary protectors of constitutionality (*mutatis mutandis*, see, for example, the resolution of the Constitutional Court of the Slovak Republic, ref. no. IV. ÚS 40/2020 of 4 February 2020).

³¹ For more details, see KRÁL, R. Suspension of the execution of a municipal council resolution. In: *Public Administration and Society*, vol. 21, 2020, no. 2, 2020. p. 118.

³² See the resolution of the Regional Court in Bratislava, ref. no. 2S/107/2016 of 10 April 2018.

Constitution of the Slovak Republic,³³ the Constitutional Court of the Slovak Republic does not have explicit competence or procedural rules on the basis of which it could decide whether the subject matter of a local referendum is contrary to legal regulations. It is therefore logical that there is no actively legitimised applicant who could refer the matter to the Constitutional Court of the Slovak Republic.³⁴ According to J. Drgonec, the Constitutional Court of the Slovak Republic could act in this matter if, "*with great difficulty and through an extensive interpretation of the law*", a legitimate petitioner could be found (unfortunately, Drgonec no longer provides even an example of who this might be), relying on the Court's powers derived from Article 124 of the Constitution of the Slovak Republic,³⁵ n proceedings whose rules and conditions, according to the cited author, the Court would "*also have to derive*" itself."³⁶ In conclusion, it appears that this matter is surrounded by considerable uncertainty and ambiguity. From the perspective of legal knowledge *de lege lata*, considerations of the Constitutional Court of the Slovak Republic as the body responsible for controlling the subject matter of a local referendum prior to its implementation remain largely in the realm of ideal or aspirational notions rather than realistically feasible procedural options. This assessment is further corroborated in practice by the Constitutional Court itself, which does not conduct a preliminary review of the subject matter of a local referendum, even with reference to Article 124 of the Constitution of the Slovak Republic, as noted by J. Drgonec. In constitutional procedural practice, there was a submission by a municipal mayor to the Constitutional Court of the Slovak Republic requesting a decision on the subject matter of a local referendum before it was held. The Constitutional Court, in accordance with Section 53 of the Act on the Constitutional Court of the Slovak Republic, postponed consideration of the submitted request,³⁷ stating that it was not a motion to initiate proceedings.³⁸ In its response, it essentially replied to the petitioner that the Constitutional Court of the Slovak Republic, as an independent judicial body for the protection of constitutionality pursuant to Article 124 of the Constitution of the Slovak Republic, provides such protection to the extent resulting from Article 124 – 140 of the Constitution of the Slovak Republic, under precisely defined procedural conditions, including a qualified submission – a motion to initiate proceedings, the requirements of which are specified in more detail in the Act on the Constitutional Court of the Slovak Republic. The Constitutional Court of the Slovak Republic, referring to the structure of the constitutional regulation of a nationwide referendum and the procedure for preventive review of its subject matter [Articles 125b(1), (2) and 95(1) of the Constitution of the Slovak Republic], as well as the detailed provisions contained in Sections 102, 103, and 104 of the Act on the Constitutional Court of the Slovak Republic, emphasised that the term "referendum," with respect to which the Constitutional Court may exercise jurisdiction, is understood to apply exclusively to a referendum concerning the entire Slovak Republic. Such referendums are regulated by Articles 93 to 100 of the Constitution of the Slovak Republic and may be initiated either by a petition signed by at least 350,000

³³ For a broader context, see TRELLOVÁ, L. – BALOG, B. The Material Core of the Slovak Constitution and Its Perspectives. In: *Balkan Social Science Review*, vol. 19, 2022. p. 143.

³⁴ Similarly, TRELLOVÁ, L. In TRELLOVÁ, L. – VRABKO, M. *Direct Manifestations of the Right to Municipal Self-Government in the Context of Public Administration*. Prague: Leges, 2022. p. 155.

³⁵ According to this provision: "*The Constitutional Court of the Slovak Republic is an independent judicial body for the protection of constitutionality.*"

³⁶ DRGONEC, J. *Constitution of the Slovak Republic. Theory and practice*. 2nd revised and supplemented edition. Bratislava: C. H. Beck, 2019. p. 1124.

³⁷ Act No. 314/2018 Coll. on the Constitutional Court of the Slovak Republic and on amendments to certain acts, as amended.

³⁸ According to this provision: "*If the reporting judge finds from the content of the submission that it is not a motion to initiate proceedings, he or she shall postpone the submission. He or she shall notify the person who submitted the submission to the Constitutional Court in writing of the postponement.*"

³⁹ Notification of the Constitutional Court of the Slovak Republic on the postponement of the submission of 10 April 2019 (Rvp 597/2019).

citizens of the Slovak Republic or by a resolution of the National Council of the Slovak Republic. The subject matter of a nationwide referendum, within the meaning of Article 93(1) of the Constitution, concerns the ratification of a constitutional law regarding the accession of the Slovak Republic to a union with other states or its withdrawal from such a union, or, pursuant to Article 93(2), other important matters of public interest. By contrast, the subject matter of a local referendum, as provided for in Section 11a of the Act on Municipal Establishment and declared by the municipal council, does not fall within the scope of proceedings before the Constitutional Court of the Slovak Republic (pursuant to Article 125b of the Constitution).⁴⁰

On the other hand, it cannot be denied that the Constitutional Court of the Slovak Republic may indirectly express its opinion on the preventive review of the subject matter of a local referendum, that is, within the framework of one of the procedurally regulated types of proceedings. For example, if an administrative court, acting on the basis of a prosecutor's action, annuls a municipal council resolution declaring a local referendum, it is not precluded that the municipality concerned could file a so-called municipal constitutional complaint under Article 127a of the Constitution of the Slovak Republic. Through this mechanism, the municipality may seek constitutional protection against an unconstitutional or unlawful decision of the administrative court that interferes with matters of local self-government, given that a local referendum constitutes an (immediate) form of municipal self-government and its subject matter is limited exclusively to issues reserved for municipal self-governance. It is also possible for petitioners dissatisfied with the refusal to declare a local referendum initiated by a petition to submit a constitutional complaint under Article 127 of the Constitution of the Slovak Republic, requesting protection of the fundamental right to participate in the administration of public affairs as guaranteed by Article 30(1) of the Constitution of the Slovak Republic.⁴¹ The Constitutional Court of the Slovak Republic would apparently not be able to reach a final decision on the matter other than by materially assessing the conformity of the subject matter of the local referendum, which would give it the procedural possibility of interfering in the process of implementing the local referendum.

III. CONCLUSION

Although *ex ante* control over the content of local referendums is not regulated as precisely, explicitly, or in as much detail as that of national referendums, the appropriate application of several methodological and interpretative approaches allows for the identification of a number of bodies vested with control powers of diverse character. These include entities originating within local government, as well as transcendent entities external to the administration, that is, the organisational structures of municipalities and towns.⁴²

The first body to come into play is the *ad hoc* referendum commission of the municipal council, which may be authorised to exercise control over the content of a petition for the declaration of a local referendum. Another relevant structure is the municipal council itself, whose members may refuse to declare a local referendum if its subject matter is unlawful or unconstitutional. This constitutes a categorical power, as the municipality acts independently in matters concerning the declaration of a local referendum; however, this authority cannot be exercised arbitrarily or in a manner that is manifestly unjustified in failing to declare a local referendum.⁴³ The mayor of the municipality may challenge the declaration of a local referendum by exercising the so-called right of veto against the municipal council's

⁴⁰ Notification of the Constitutional Court of the Slovak Republic on the postponement of the submission of 10 April 2019 (Rvp 597/2019).

⁴¹ See the resolution of the Constitutional Court of the Slovak Republic, ref. no. III. ÚS 94/03 of 2 April 2003.

⁴² See NOVÁK, J. *Administrative Procedural Law*. Bratislava: Právnická jednota v Bratislave, 1943. p. 226.

⁴³ See the resolution of the Constitutional Court of the Slovak Republic, ref. no. III. ÚS 94/03 of 2 April 2003.

resolution declaring the referendum. The mayor's powers may, in principle, be final, but only conditionally, insofar as the veto is not overridden by the subsequent re-approval of the resolution by the municipal council. It should be noted that the mayor is not permitted to veto a resolution concerning a local recall, that is, a referendum on his or her own dismissal from office.

Subsequently, entities external to local government may also exercise influence. Foremost among these is the public prosecutor, who may apply a measure of prosecutorial supervision—a protest—against a municipal council resolution declaring a locally problematic referendum. However, the prosecutor does not possess categorical authority, as he or she cannot unilaterally annul an allegedly unlawful resolution. The prosecutor's role in relation to the municipal council is thus primarily advisory or signalling in nature, albeit with a relatively strong prospect of initiating a subsequent so-called prosecutorial lawsuit. As an independent, transcendent controller of public administration, the administrative court wields effective decision-making power, as it may revoke a resolution declaring a local referendum, thereby preventing the referendum from being held. It is precisely this derogatory competence of the administrative judiciary in relation to the preliminary assessment of the subject matter of a local referendum that appears both key and appropriate, in accordance with the principle of subsidiarity, and without departing from the prevailing philosophy of standards governing judicial control of local government. Indeed, the administrative judiciary, as a form of public-law adjudication, is entrusted by the legislature with analogous powers in other areas, including proceedings concerning the legality of local law, specifically generally binding regulations (Sections 357 et seq. of the Code of Administrative Court Procedure),⁴⁴ or proceedings on the constitutionality and legality of elections to local government bodies (Section 312a et seq. Code of Administrative Court Procedure).⁴⁵ Finally, the possibilities for the Constitutional Court of the Slovak Republic to directly influence the subject matter of a local referendum prior to its implementation are, at present, rather limited and relatively difficult to effect in practice. Although the implicit authority referred to in Article 124 of the Constitution of the Slovak Republic may be invoked in *hard cases*, it cannot, under any circumstances, be treated as a “blank cheque” to be exercised by anyone, at any time, and for any reason. Otherwise, the procedural framework would be disproportionately undermined or lose its justification entirely, as the derived powers of constitutional justice could be positioned as a panacea aimed at remedying every anomaly, deficiency, or unintended lacuna in constitutional procedural regulation. Nonetheless, this observation need not be regarded as a lamentable limitation, particularly in light of the correctly increasing tendency to exclude from the Constitutional Court's jurisdiction those proceedings that can be adequately addressed by lower public authorities.⁴⁶ This corresponds to the aforementioned principle of subsidiarity, according to which, in order to protect higher-level authorities from being

⁴⁴ See TOMAŠ, L. *Proceedings on the conformity of legal regulations in administrative justice*. Prague: C. H. Beck, 2024. 218 pp.

⁴⁵ See SUDZINA, M. Proceedings on the constitutionality and legality of elections to local government bodies. In ŠTENPIEN, E. – PIŠTEJOVÁ, L. – SVATUŠKA, I. (eds.) *World War I and its consequences in terms of constitutional law. Collection of scientific contributions from the international scientific conference Košice, 29–30 September 2022*. Košice: Pavol Jozef Šafárik University in Košice, ŠafárikPress Publishing House, 2022. p. 289 et seq.

⁴⁶ It is no secret that, in terms of the scope of its powers, the Constitutional Court of the Slovak Republic is one of the “busiest” constitutional courts in Europe and probably in the world. This is *unnatural*, but unfortunately, in its *unnaturalness*, it has the *natural* potential to have a negative impact on the results of its decision-making practice. For more details, see GAJDOŠIKOVÁ, L. – LUBY, J. – MOCHNÁČOVÁ, M. – OROSZ, L. – MACKO, R. Expansion of the powers of the Constitutional Court of the Slovak Republic and current problems in decision-making practice. In OROSZ, L. – DOBROVIČOVÁ, G. (eds.) *15 Years of the Constitution of the Slovak Republic. Collection of contributions from the scientific conference, Košice, 6–7 September 2007*. Košice: Faculty of Law, UPJŠ in Košice, Košice Self-Governing Region, 2008. p. 272, resp. OROSZ, L. Effective constitutional justice as a constitutionally protected value. In: *Studia Iuridica Cassoviensia*, vol. 7, no. 1, 2019. pp. 10–11.

overburdened, all competences that can be effectively exercised by lower public authorities using their own resources and capacities should be entrusted to them.⁴⁷

KEY WORDS

local referendum, subject of the referendum, preventive control, municipality, local government

KLÚČOVÉ SLOVÁ

miestne referendum, predmet miestneho referenda, preventívna kontrola, obec, územná samospráva

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⁴⁷ The content of the principle of subsidiarity, whose modern perception is based on papal social teaching (the "constitutional charter" or "*Magna Charta*" of the aforementioned principle is the first social encyclical *Rerum novarum* from 1891, written by Pope Leo XIII), is, simply put – the right of a lower unit (e.g. an administrative court) to do everything within its power, while the transfer of activities to a higher entity (e.g. to the jurisdiction of the constitutional court) should only take place if the "smaller" entity is no longer capable and competent to act as necessary. For more details, see JABLOŇSKI, J. A brief history of the principle of subsidiarity as a constitutional principle. An attempt at conceptualisation. In: *Prawo i Więź*, Vol. 46, No. 3, 2023. p. 77 et seq., or KUKLIŠ, P. On the principle of subsidiarity in public administration. In: *Právny obzor*, vol. 86, no. 6, 2003. p. 636 et seq.

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