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The current and new legal regulations of spatial planning in the legal conditions of the Slovak Republic with an emphasis on spatial planning documents and spatial planning documentation*

Summary

The subject of the presented article is the analysis of the spatial planning legislation that is currently valid and effective and its comparison with the spatial planning legislation that will come into effect on April 1, 2024, in the legal conditions of the Slovak Republic. The authors of the article focused primarily on the comparison of two basic spatial planning tools – spatial planning documents and spatial planning documentation. The issue of the spatial plan of the municipality is elaborated in more detail, while the article points to changes in its legal regulations in connection with the process of land consolidation and the battle against climate change.

Keywords: spatial planning, new Spatial Planning Act, spatial planning documents, spatial planning documentation, spatial plan of the municipality

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Introduction

The period of the last few years has been relatively hectic in the Slovak Republic, not only at the political level, but also in legislation, and that includes the area of spatial planning, which this article deals with. Currently, Act no. 50/1976 Coll. on Land-use Planning and Building Order (Building Act), as amended (hereinafter: Building Act) is still valid and effective, even though its first version was adopted in 1976 in a completely different country and under completely different legal and societal conditions. The wording of the Building Act itself had to be amended numerous times, and despite the active efforts of the legislator, adequate change of the original basic framework was not achieved and it still contains an outdated legislative construction, outdated arrangements of legal relations, terminology and forms through which public administration is carried out in this area. The year 2022 brought the long-awaited, and we can say almost inevitable, recodification of the legislation in the field of spatial planning and building regulations in the form of the adoption of two new legal codes – Act no. 200/2022 Coll. on Spatial Planning (hereinafter: Spatial Planning Act) regulating the issue of spatial planning, while the areas of construction and construction processes are included in the Act no. 201/2022 Coll. on Construction (hereinafter: Construction Act). This act brings shortening of permitting processes, improvement of the functioning of building authorities and their professionalization and reduction of bureaucracy. The related processes will be clearer and simpler, avoiding the emergence of so-called grey areas where corruption is breeding ground. The aim is to streamline and professionalize the sphere of spatial planning and construction.¹ The legislation in question will enter into force on April 1, 2024, therefore, from our professional perspective, it is appropriate to analyze also the current regulation and, following that, also the legal regulation that will come into effect shortly. The aim of this article is to provide an overview of the current legislation and at the same time overview of the already adopted but still ineffective legislation in the area of spatial planning in the legal conditions of the Slovak Republic.

The legal regulation of spatial planning according to the Building Act is the subject of the first section, while special attention is paid to the two, in our opinion, most important instruments of spatial planning. The first of them is the collection of spatial documents, which represent sets of documents and data developed for the purpose of spatial planning through spatial planning methods. The current legislation enshrines an exhaustive list of the four types of spatial

¹ E. Marišová et al.: *Prerequisites for cooperation between self-government and state administration in the construction sector of the Slovak Republic in the light of the new legislation*. “Eastern European Journal of Transnational Relations” (EEJTR) 6, 2 (2023), pp. 199–208.

planning documents, which are urban studies, territorial general, territorial prognosis, and territorial technical documents. The second important spatial planning tool is the spatial planning documentation, which under the Building Act, comprehensively resolves the spatial arrangement and functional use of the territory, harmonizes interests and activities and establishes regulations for the spatial arrangement and functional use of the territory. Current hierarchy of spatial planning documentation is divided into four levels: national, regional, municipal, and pertaining to part of the municipality.

The legislation contained in the newly adopted special legislation – the Spatial Planning Act is the subject of the second section, in which the main legislative changes in the subject area are identified and analyzed. As a follow-up to the previous parts of the article, we focus primarily on legislative changes that affected spatial documents and spatial documentation. We also focused on one specific and very important type of spatial documentation – the spatial plan of the municipality. This type of spatial planning documentation is interesting in that, according to the new legislation, all municipalities will have to have an adopted municipal spatial plan, whereas up until now small municipalities have been generally exempt from the obligation to have it. This change and the change in the lawmaker's attitude towards the municipality's spatial plan itself forced us to think about its impact on two specific areas of our interest – the process of land consolidation and the process of adaptation to the adverse consequences of climate change.

The third section of the article analyzes spatial plan of the municipality in the context of the process of land consolidation. The latter part of the second section deals with spatial plan of the municipality while focusing on the battle against climate change. The methods of analysis, comparison, and synthesis were used in writing the article.

1. Legal regulation of spatial planning *de lege lata*

The Building Act is, at the moment, considered to be *lex generalis* in the area of spatial planning and building regulations in the Slovak legal order. This piece of legislation has been amended more than 40 times since its adoption and some of the biggest amendments aimed to bring the legislation in this relevant section of public administration closer to the new social conditions and new constitutional conditions based on the market economy, the equality of ownership

types, the rights of individuals, and the deconcentration and decentralization of public administration in this area. Interestingly, all changes to this act have been adopted since 1990, while the 2007 amendment² must be considered the most extensive one. The Building Act contains two basic issues, that is Spatial Planning, which is contained in part I of this act, and the Building Order included in part II of this act.

Spatial planning itself can be understood in a broader sense as well as in a narrower sense. As stated by M. Píry, in the narrower sense of the word, it can be defined as the process of adopting a normative legal act, which is a spatial plan.³ On the other hand, the Building Act in §⁴ 1 describes spatial planning in a broader sense, when it stipulates that spatial planning systematically and comprehensively addresses the spatial arrangement and functional use of the territory, determines its principles, proposes substantive and temporal coordination of activities affecting the environment, ecological stability, cultural historical values of the territory, territorial development and creation of the landscape in accordance with the principles of sustainable development.⁵ In the above-mentioned sense, it is necessary to understand spatial planning as a continuous (i.e., not time-limited) and comprehensive activity of public authorities in the area of spatial planning. The purpose of spatial planning is to create prerequisites for the permanent compliance of all activities in the specified territory, while it is necessary to pay special attention to the care of the environment, achieving ecological balance and ensuring sustainable development, to the careful use of natural resources and to preserve natural, civilizational and cultural values.⁶ The Building Act in its wording exhaustively enumerates the tasks and activities of municipalities and higher territorial units that are included in spatial planning and stipulates three basic tools of spatial planning: spatial planning documents, spatial planning documentation, and zoning decision.

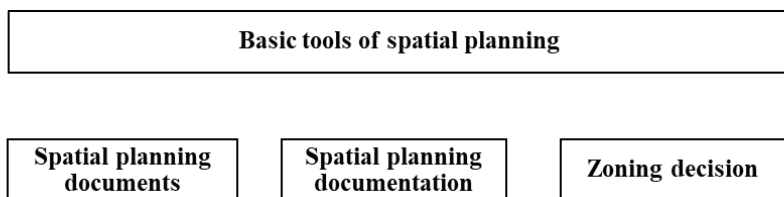


Figure 1. Three basic spatial planning tools

Source: the authors' own work.

² See Act no. 237/2007 Coll. which amends Act no. 50/1976 Coll. on Land-use Planning and Building Order (Building Act), as amended, and on amendments to certain acts.

³ M. Píry: *Stavebný zákon. Veľký komentár*. Žilina: Eurokódex, 2020, p. 6.

⁴ The “§” represents a section in the Slovak legislation.

⁵ Provision of § 1 of the Building Act.

⁶ Ibidem.

In the following subsections, the legal regulation of spatial planning documents and spatial planning documentation, as the two most important legal tools of spatial planning, are subject to analysis. The current section focuses on the still effective wording of the Building Act, while in section 2 we deal *in extenso* with the newly adopted legal regulation contained in Spatial Planning Act.

1.1. Legal regulation of spatial planning documents *de lege lata*

As part of the preliminary preparation for the procurement of spatial planning documentation, spatial planning documents are usually procured. The Building Act establishes four basic types of spatial documents, which are: urban study, territorial general, territorial prognosis, and territorial technical documents. Among the main objectives of their provision, we can include determining the need and extent of changes to the spatial plan, solving problems in the territory, planning new solutions for the given territory, and the development of the spatial plan itself.⁷

The urban study solves partial problems in the territory.⁸ It is processed during the preparation of the spatial plan as a draft of the concept of spatial arrangement and functional use of the territory, or for detailing or verifying the spatial plan and when amending and supplementing the spatial plan, or for solving some specific territorial-technical, landscape-ecological, environmental, urban or architectural problems in the territory as a basis for spatial decision-making, or if it is stipulated by a special regulation. The interesting thing is that the urban planning authority can procure the urban study, but under the conditions of the Slovak Republic, it is possible for anyone who shows interest and participates in its financing to procure it through a professionally qualified person. This only applies to this type of spatial planning documents, others can only be obtained exclusively by spatial planning authorities.

Territorial general is a document that solves in detail the problems of individual components of settlement in the territory, especially the partial problems like housing, industry, agriculture and forestry, transport and other public technical equipment of the territory, nature and landscape protection, recreation and sports. It is used to deepen knowledge about a certain component of the settlement when procuring a spatial plan or when updating it. These documents should serve as a basis for spatial decision-making, especially in matters of areas of city-wide, supra-city, regional and all-Slovak significance, up to the equipment of civic amenities centers and residential areas.

⁷ M. Píry: *Stavebný zákon. Veľký komentár*. Žilina: Eurokódex, 2020, p. 21.

⁸ Provision of § 4 para. 1 of the Building Act.

Territorial prognosis deals with the possibilities of spatial organization and functional use of the territory in the long term. Under ideal conditions, it should serve as a reliable forecast, an estimate of the development of the territory of any municipality, derived from scientific knowledge and the results of systematic analytical activities, serving as a temporal and spatial anchoring of spatial planning documentation.

Territorial technical documents, *de lege lata*, represent purpose-oriented and continuously supplemented sets of data characterizing the state and conditions of the territory, they are processed for the entire territory of the Slovak Republic and for selected territorial units. It serves mainly for the processing of spatial planning documentation, for assessing and creating the concept of investment construction, for continuous monitoring of changes in the conditions of the territory, its organization and use, and for spatial decision-making, if the relevant spatial planning documentation has not been processed.⁹ Since this type of spatial planning document, albeit in a changed form, was included in the new legislation, we will focus on it in more detail in section 2.

1.2. Legal regulation of spatial planning documentation *de lege lata*

The term spatial planning documentation is a summary expression of the existence of hierarchically linked spatial planning documentation, which represents the second set of legal tools of spatial planning. The reason for this solution is that all spatial planning documents in their summary refer to the same territory or parts thereof but in varying degrees of detail. The levels of spatial planning documentation according to the provision of § 8 para. 2 of the Building Act are:

- a) the concept of territorial development of Slovakia,
- b) the spatial plan of the region
- c) the spatial plan of the municipality,
- d) the spatial plan of the zone.

The concept of territorial development of Slovakia is being developed for the entire territory of the Slovak Republic. It deals with the spatial organization and functional use of the territory of the country and establishes the framework of social, economic, environmental, and cultural requirements of the state for territorial development, care for the environment and creation of the landscape of the Slovak Republic and its regions.¹⁰ Currently, in the Slovak Republic, the Concept of Territorial Development of Slovakia 2001 as amended by the

⁹ Provision of § 7 para. 1 of the Building Act.

¹⁰ Provision of § 9 para. 1 of the Building Act.

Concept of Territorial Development of Slovakia 2011 – Amendments and Supplements no. 1¹¹ is valid and effective.

The task of the spatial plan of the region is to develop the goals of spatial planning set out in the concept of territorial development of Slovakia and project and concretize them in the conditions of a higher territorial unit. The Building Act provides an option to create a spatial plan of the whole region or only a specified part of it. The territorial plan of the region determines, *inter alia*, the principles and regulations of the settlement structure, spatial organization and functional use of the territory from the point of view of its sustainable development and the development of urbanization, industry, agriculture, forestry, water management, environmental studies and tourism, principles and regulations for the organization of public transport and technical equipment, principles and regulations of care for the environment, a territorial system of ecological stability, landscape formation and protection of cultural monuments, monument reserves and monument zones and others.¹²

At the local level, the spatial plan of the municipality is the most important spatial planning documentation among all of them. Each spatial plan of the municipality establishes, *inter alia*, the principles and regulations of the spatial organization and functional use of the territory of the municipality in connection with the surrounding territory, permissible, limited and prohibited functional use of areas, principles and regulations of environmental care, the territorial system of ecological stability and landscape formation, including green areas, principles and regulations for the protection and use of natural resources, cultural-historical values and important landscape elements and others.¹³ Under the legal conditions of the Slovak Republic, there is a legal obligation to adopt a spatial plan for municipalities and cities with more than 2,000 inhabitants. In addition, this obligation also exists for municipalities and cities in which it is necessary to solve the concept of their spatial development, to carry out large-scale new construction and reconstruction in the municipality or to place public buildings, as well as in the case if this results from the binding part of the spatial plan of the region, in particular, to fulfill international obligations or to place public transport and technical equipment in the territory of national importance.¹⁴ The Building Act in the provision of § 11 para. 4 provides an option for other muni-

¹¹ The Government of the Slovak Republic approved the Spatial Development Concept of Slovakia by resolution no. 1033/2001 Coll. and its binding part subsequently adopted by the Regulation of the Slovak government no. 528/2002 Coll., while its update was approved by Resolution of the Government of the Slovak Republic no. 513/2011 of 10 August 2011 as COURSE 2011 – amendments and additions no. 1 COURSE 2001, the binding part of which was declared by SR Government Regulation no. 461/2011 Coll.

¹² Provision of § 10 para. 2 of the Building Act.

¹³ Provision of § 11 para. 5 of the Building Act.

¹⁴ Provision of § 11 para. 2 of the Building Act.

icipalities to voluntarily adopt a territorial plan while offering an exception and stipulating that the spatial plan of the municipality can be processed with the detail of the spatial plan of the zone.

The spatial plan of the zone is based on the spatial plan of the municipality and details it to the level of distinguishing parcels. The Building Act stipulates the obligation to adopt the spatial plan of the zone in cases where the approved spatial plan of the municipality provides for the provision of a spatial plan of the zone for a defined part of the municipality or provides for the delimitation of land or a building for public purposes.¹⁵

We also consider it necessary to add that individual spatial planning documentation is divided into a binding part and a guiding part. The spatial planning document of a lower level must be in accordance with the binding parts of spatial planning documents of a higher level within the hierarchy. “The binding nature of the spatial plan means that it is a generally binding legal regulation that must be observed within individual proceedings, the subject of which is the resolution of the territory, and not only in the context of proceedings under the Building Act.”¹⁶

Individual details of spatial planning documents and spatial planning documentation are regulated in the legal order of the Slovak Republic in the Decree of the Ministry of the Environment of the Slovak Republic no. 55/2001 Coll. on zoning documents and zoning documentation, as amended.

2. The spatial planning according to the Spatial Planning Act

The first noticeable change is that instead of being one of the parts of the Building Act, spatial planning is, for the first time in the independent history of the Slovak Republic, regulated comprehensively by a stand-alone legislation – the Spatial Planning Act as *lex specialis* in the area of spatial planning. This new legal regulation, which enters into force on April 1, 2024, has set itself the goal of significantly strengthening research in the field of spatial planning and the transfer of research results into spatial planning principles, which will be issued as generally binding in the process of procurement and processing of spatial planning documentation. In addition, it also aims to professionalize the state administration, and reduce the administrative burden in activities related to spatial planning, especially its digitization, in particular of data serving as inputs related to spatial planning and construction, and the subsequent

¹⁵ Ibidem.

¹⁶ M. Píry: *Stavebný zákon...*, p. 38.

integration of spatial decisions pending the construction plan procedure.¹⁷ The Spatial Planning Act explicitly defines the structure of public authorities with their specific competencies, such stipulation in the Building Act was missing.

A noteworthy change should be considered the establishment of the new Office for Spatial Planning and Construction of the Slovak Republic (hereinafter: Office) which in the field of spatial planning will perform, *inter alia*, the procurement of the concept of territorial development of Slovakia, establishing standards and methodology processing of spatial planning documentation, establishes standards and methodology for processing spatial planning documentation, and methodically guides and provides professional assistance to spatial planning authorities, professionally qualified persons procuring spatial planning documents and spatial planning documentation and processors of spatial planning documents and spatial planning documentation. The changes also affected the subjects of interest of this article, so we present the analysis of the changes in spatial planning documents and the changes in spatial planning documentation in the following subsections.

2.1. The spatial planning documents according to the Spatial Planning Act

The new legislation regulates spatial planning documents while specifying that they are territorial technical documents and a territorial study. Both of these types have a textual and a graphical part, while it is spatial planning documents in graphical form, which are map documents and models, that are kept in binding geodetic reference systems. Territorial technical documents describe the actual state of the territory, contain data on the current state of use of the territory, its urban values, the state and values of the landscape, its components, restrictions on the use of the territory due to the characteristics and conditions of the territory, and intentions to make changes to the territory.¹⁸ In contrast to the definition of territorial technical documents expressed in the Building Act, the definition of this term in the Spatial Planning Act explicitly states that these documents should describe the real and current state of the territory,¹⁹ thus they will not be created only ad hoc as a reaction to a particular need. Territorial technical

¹⁷ National Council of the Slovak Republic: Special part to Explanatory report to the Spatial Planning Act, 32–34 [online], <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=505548> [access: 30.06.2023]. In Slovak language. English version is not available.

¹⁸ Provision of § 16 para. 3 of the Spatial Planning Act.

¹⁹ I. Poruban: *Komentár k zákonu č. 200/2022 Z. z. o územnom plánovaní: § 16 Územno-plánovacie podklady* [online], https://zakonovystavbe.sk/onb/33/komentar-k-zakonu-c-200-2022-z-z-o-uzemnom-planovani-16-uzemno-planovacie-podklady-uniqueidmRRWSbk196FPkyDafLfWAAfyAS-RqFH1coiL18aNiH2bU3s67vH1SdVFgUtlZCYC8/?uri_view_type=35 [access: 30.06.2023]. In Slovak language. English version is not available.

documents will represent an important basis for the processing of spatial plans. According to the explanatory report to the Spatial Planning Act, their procurement will be significantly accelerated and their financial burden will be reduced.²⁰ The Spatial Planning Act introduces a new term into the legal order of the Slovak Republic, namely the territorial study, which assesses the possibilities of sustainable spatial development, verifies the conditions of changes in the territory and proposes possible solutions to selected problems and phenomena in the territory that can affect or condition the spatial organization of the territory and the functional use of the built-up and unbuilt-up areas of the municipality or self-governing region.²¹ This new institution replaces the existing urban study, territorial general, and territorial forecast. In comparison with the current legislation, it is possible to identify an extension of the application of the territorial study, which will fulfill similar purposes as the three previous spatial planning documents. However, it will be up to the spatial planning authority to decide for what purpose it will procure it. The territorial study is a tool of urban development and serves to verify the basic urban concept during the preparation of the spatial plan or as a basis for changes and additions to the spatial plan. A territorial study can be used to check and assess any changes in the territory introduced without needing to meet the formal requirements for the procurement of spatial planning documentation. Its subject can be a solution of the selected functional component of the territory, which takes over the function of the previous territorial general, deepens the solution of individual functional components such as, for example, transport, housing, green infrastructure, technical infrastructure according to the conceptual intentions of the approved spatial planning documentation or checks the possibilities of development of functional components before the procurement of spatial planning documentation. It is important to state that the territorial study does not need to be discussed or approved. A significant change in comparison with the current legislation is that only the regional planning authority is the contracting authority for the territorial study. On the other hand, the new legislation does not prevent investors, and builders from processing various documents for their needs, for instance, an urban study, or give an incentive to procure a territorial study.²²

It is important to stress that the Spatial Planning Act provides for other binding spatial planning documents if they have been processed. Such are, for example, landscape plan, nature and landscape protection documentation, flood risk map, land consolidation project and principles of protection of the

²⁰ Special part to the Explanatory report to the Spatial Planning Act, p. 32, <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=505548> [access: 30.06.2023].

²¹ Provision of § 16 para. 4 of the Spatial Planning Act.

²² Special part to the Explanatory report to the Spatial Planning Act., p. 32, <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=505548> [access: 30.06.2023]. In Slovak language. English version is not available.

monument area, if it is a monument area, and sector concepts and other relevant documents if their bindingness results from special regulations are also binding spatial planning documents if they have been processed.²³

2.2. The spatial planning documentation according to the Spatial Planning Act

The subject matter of spatial planning documentation was not changed by the Spatial Planning Act as significantly as the subject matter of spatial planning documents but it is still possible to identify several changes, while the most important ones from our point of view have been detailed below. The Spatial Planning Act itself stipulates that the spatial planning documentation comprehensively determines the urban concept and landscape concept of the defined territory, aligns interests and activities affecting sustainable territorial development, territorial cohesion, protection of historical, cultural, and natural heritage, environmental protection, ecological stability and ecological connectivity, adaptation to the adverse effects of climate change, public health protection, state defense and state security, biodiversity and determines the conditions and regulations for the spatial arrangement of the territory and the functional use of the territory.²⁴ Compared with the previous legislation, its normativity is clearly evident directly from the wording of the definition of spatial planning documentation, when instead of the previously used term “deal with” the expression that spatial planning documentation “determines” is used.²⁵ In addition, it is possible to observe that the legislator places more emphasis on the care of the environment, for example, in the use of terms in the definition such as the protection of historical, cultural, and natural heritage, environmental protection, ecological stability and ecological connectivity, and biodiversity. We also consider the connection to the fight against climate change to be very beneficial, especially to adaptation to the negative effects of climate change, which is rather a rarity in the legal conditions of the Slovak Republic.

Spatial planning documentation is a binding basis for deciding on construction plans and for permitting activities according to special regulations and project activities in the selected areas in the documentation. Spatial planning documentation is hierarchical in its structure (it is composed of levels). The binding part of the spatial planning documentation of a higher level is binding

²³ Provision of § 16 para. 5 of the Spatial Planning Act.

²⁴ Provision of § 18 para. 1 of the Spatial Planning Act.

²⁵ I. Poruban: *Komentár k zákonu č. 200/2022 Z. z. o územnom plánovaní: § 18 Územno-plánovacia dokumentácia* [online], https://zakonovystavbe.sk/onb/33/komentar-k-zakonu-c-200-2022-z-z-o-uzemnom-planovani-16-uzemnoplanovacie-podklady-uniqueidmRRWSbk196FPkyDa fLfWAAfyAS-RqFH1coiL18aNiH2bU3s67vHISdVFgUtLZYC8/?uri_view_type=35 [access: 30.06.2023]. In Slovak language. English version is not available.

for the lower level of spatial planning documentation. The binding part of the spatial planning documentation of a lower level must be in accordance with the binding part of the spatial planning documentation of a higher level, otherwise, it is invalid in this part. The new legislation thus brings one relatively modified type of spatial planning documentation – the concept of spatial development of the region and one completely new type – spatial plan of the microregion compared to the current legislation enshrined in the Building Act, ergo the levels of spatial planning documentation according to the provision of § 18 para. 4 of the Spatial Planning Act are:

- a) the concept of territorial development of Slovakia,
- b) the concept of territorial development of the region,
- c) the spatial plan of the microregion,
- d) the spatial plan of the municipality,
- e) the spatial plan of the zone.

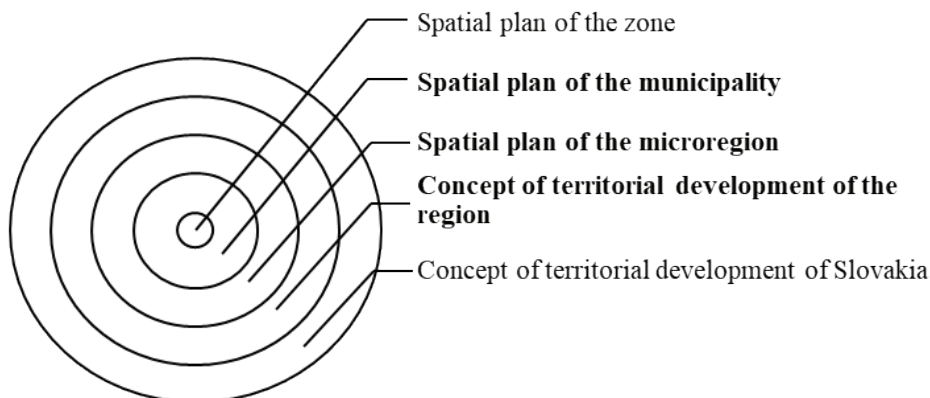


Figure 2. Hierarchical levels of spatial planning according to the Spatial Planning Act
Source: The authors' own work.

The following subsection of this article is focused on one relatively modified type of spatial planning documentation – the concept of territorial development of the region, the new type – the spatial plan of the microregion and another spatial planning documentation that has undergone significant changes – the spatial plan of the municipality.

2.2.1. The concept of territorial development of the region

The concept of territorial development of the region is the territorial planning documentation of the higher territorial unit (until now known as the territorial plan of the region), and is intended to deal with the territorial development of the

self-governing region in a new level of detail and content, which will be equally detailed in the implementing regulations. According to the Office, the purpose of the territorial plan of the region is to capture regional specificities that are significant and common to the entire region, and therefore cannot be solved by municipalities and cities alone. The regional spatial plan includes historically, culturally or naturally significant areas that must be protected and developed together as a region.²⁶

2.2.2. Spatial plan of the microregion

Another new element on the list of spatial planning documentation is the spatial plan of the microregion, the justification of which lies primarily in the cooperation of neighboring cities and municipalities – the so-called microregions, which should be able to agree on the development of territories that connect each other. In this way, harmonious transitions between the borders of cities and municipalities are to be created, either on roads, bicycle routes, or in common cultural, historical, environmentally significant, or tourist areas. There is a prerequisite for cooperation in the development of territories that exceed the boundaries of municipalities but do not reach the importance of the entire region.²⁷ Interestingly, the spatial plan of the microregion is procured by the self-governing region based on the definition of the territory for the processing of the spatial plan of the microregion in the concept of the spatial development of the region or it can be procured by the agreement at the request of several municipalities.²⁸

On the one hand, it should be noted that the concept of territorial development of Slovakia, the concept of territorial development of the region, the spatial plan of the microregion and the spatial plan of the municipality are strategic documents which are subject to environmental impact assessment (SEA) under a special act.²⁹ On the other hand, it should be added that the Spatial Planning Act clearly established that the spatial plan of the zone and changes and additions to the spatial planning documentation, if they are minor changes, are subject to investigative proceedings, within which it will be decided whether or not an impact assessment will take place.³⁰

²⁶ Office for Spatial Planning and Construction of the Slovak Republic: the concept of territorial development of the region [online], <https://stavebnyurad.gov.sk/uzemne-planovanie> [access: 30.06.2023]. In Slovak language. English version is not available.

²⁷ Ibidem.

²⁸ Provision of § 21 para. 2 of the Spatial Planning Act.

²⁹ Act no. 24/2006 Coll. on environmental impact assessment and on amendments and supplements to certain acts, as amended.

³⁰ Provision of § 18 para. 6 of the of the Spatial Planning Act.

Pursuant to the Spatial Planning Act, the spatial planning documentation will be processed electronically in textual and graphical form and will contain an informative and binding part. The binding part of the spatial planning documentation of a microregion, municipality, or zone contains in graphical form a regulatory drawing, the content of which is spatial and functional regulation of the development of the territory, and in text form regulatory sheets of individual spatial-functional units of the territory. The graphical form of spatial planning documentation will be prepared in binding geodetic reference systems. The introduction of electronic spatial planning documentation in the territory of the Slovak Republic will be a novelty compared to still effective legislation, while this can be considered a big step forward.

2.2.3. Spatial plan of the municipality

The new legislation emphasizes the fact that within the hierarchy of spatial planning documents, the spatial plan of the municipality can be considered the most important one. The spatial plan of a municipality that is a city is called the spatial plan of the city. The spatial plan of the capital of the Slovak Republic – Bratislava, and the city of Košice is called a metropolitan spatial plan. The peculiarities and possible permissible deviations of the metropolitan spatial plan from the general conditions and regulations concerning the specificity of the territory, in cooperation with the Office, can be adjusted by these two cities through a generally binding regulation.³¹ One of the most progressive changes brought by the Spatial Planning Act is the obligation of all municipalities to have a municipal spatial plan, while the only exceptions to this obligation are the cases where the entire territory of the municipality is part of the spatial plan of a microregion,³² and the cases when two or more municipalities agree that they will have a common spatial plan.³³

The spatial plan of the municipality determines various aspects, such as the planned territory and its links to the territories of neighboring municipalities and to the wider region and the border of the built-up territory of the municipality, the urban concept of the development of the territory, the main development axes and territories, significant urban, architectural and landscape elements and characteristics, public spaces and green infrastructure and protection

³¹ I. Poruban: *Komentár k zákonu č. 200/2022 Z. z. o územnom plánovaní: § 20 Územný plán obce*. [online], https://zakonovystavbe.sk/onb/33/komentar-k-zakonu-c-200-2022-z-z-o-uzemnom-planovani-22-uzemny-plan-obce-uniqueidmRRWSbk196FPkyDafLfWAAfyAS-RqFH1coiL18aNiH3HtBY9bbHbdFnBFiwwUf_f/?uri_view_type=35 [access: 30.06.2023]. In Slovak language. English version is not available.

³² Provision of § 22 para. 1 of the Spatial Planning Act.

³³ Provision of § 22 para. 2 of the Spatial Planning Act.

of the municipality's territory against unwanted geological phenomena, floods, fires, environmental burdens, prevention of serious industrial accidents and limitation of their consequences on people's health, the environment and property, measures to mitigate climate change in the municipality's territory and to adapt to its adverse consequences and so on.³⁴

Fortunately, the legislator took into account that the process of obtaining such spatial planning documentation can be both professionally labor-intensive and time-consuming and established the so-called transitional period in the sense that a municipality that does not have a spatial plan is obliged to procure and approve a spatial plan of the municipality before the end of March 2032. If the municipal authorities do not have a spatial plan of the municipality, they issue only a statement for a decision on building permission until the time of approval of the spatial plan and for the permitted purpose of the activity, which has only a recommendatory nature.³⁵ In the following subsections, we deal in more detail with the impact of the new legislation of the spatial plans of municipalities on the process of land consolidation and the battle against climate change.

Spatial plan of the municipality and the process of land consolidation

Even though the area of the Slovak Republic is not particularly large, only 4,903,405 ha³⁶ (49,035 km²) in total, the country has a really big problem in the form of land fragmentation. At the moment there are 8.4 million ownership parcels, 4.4 million registered landowners and 100.7 million co-ownership relationships, which means that the average number of co-owners per plot is 11.93, and one owner co-owns 22.74 plots on average.³⁷ The current legislation contained in the Building Act does not impose an obligation on all municipalities to have a municipal spatial plan, in general, this obligation only applies to municipalities with more than 2,000 inhabitants.³⁸ We do not consider such a situation to be optimal, because in certain territories of municipalities, there are no defined principles and regulations for spatial organization and functional use of the territory of the municipality in connection with the surrounding territory,

³⁴ Provision of § 22 para. 3 of the Spatial Planning Act.

³⁵ Provision of § 40 para. 2 of the Spatial Planning Act.

³⁶ Enviroportal: Land Use [online], <https://www.enviroportal.sk/indicator/detail?id=161> [access: 30.06.2023]. In Slovak language. English version is not available.

³⁷ Ministry of Agriculture and Rural Development of the Slovak Republic: Proposal of measures for accelerated implementation of land improvements in the Slovak Republic [online], https://www.slov-lex.sk/legislativne-procesy?p_p_id=processDetail_WAR_portletsel&p_p_lifecycle=2&p_p_state=normal&p_p_mode=view&p_p_cacheability=cacheLevelPage&p_p_col_id=column-2&p_p_col_count=1&_processDetail_WAR_portletsel_fileCooaddr=COO.2145.1000.3.3366829&_processDetail_WAR_portletsel_file=vlastny_material.pdf&_processDetail_WAR_portletsel_action=getFile [access: 30.06.2023]. In Slovak language. English version is not available.

³⁸ See subsection 1.3 of the present article.

further permissible, limited and prohibited functional use of areas, principles and regulations for environmental care, territorial system ecological stability and landscape formation, including green areas, and finally the border between the continuously built-up territory of the municipality or the territory designated for construction and the rest of the municipality.

The Spatial Planning Act lists the land consolidation project as one of the possible spatial planning documents (which is of course commendable), we see potential in the opposite order as well. Land consolidation brings, among other things, a formal side to the process, they bring clarity to the definition of objects, and their direct relationship to the real estate cadastre data. In all municipalities, including the ones that have not had a plan thus far) that will have a spatial plan processed and published, it will be possible to incorporate individual data into the data of the real estate cadastre. In this way, it will be possible to assign ownership relationships to individual objects. The availability of spatial planning data together with real estate cadastre data will bring more awareness of owners and thus also respect for their interests, which can bring greater balance to ownership relations and the development of the territory, which cannot exist without each other. At the same time, it is possible to conclude that a high-quality spatial plan of the municipality can facilitate the subsequent implementation of land consolidation in a given municipality.

We would like to mention one more advantage, but due to the scope of this article, we will not go into the details of land consolidation in the conditions of the Slovak Republic. It is appropriate to note that according to Act no. 330/1991 Coll. on land consolidation, landownership arrangement, land offices, land resources and land communities, as amended (hereinafter: the Land Consolidation Act) before the decision on the regulation or permission of land consolidation, the district office will order a procedure to start land consolidation, also called preparatory proceedings. In the preparatory proceedings, the district office, among other things, secures the relevant spatial planning documentation from the spatial planning authority, while discussing with it the possibilities of using such spatial planning documents in the process of land consolidation.³⁹ At the same time, landowners are entitled to compensation for land which is subject to land consolidation corresponding to the value of their land and permanent vegetation on it.⁴⁰ According to the provision of § 11 para. 2 of the Land Consolidation Act, settlement is provided to landowners and owners of co-ownership shares on other land (new land). When selecting new plots of land, the district office takes into account the operational and economic conditions of all participants and the circumstances that affect the use, appreciation and income from the plots. In cases when the legislation does not stipulate

³⁹ Provision of § 7 para. 4 letter d) of the Land Consolidation Act.

⁴⁰ Provision of § 11 para. 1 of the Land Consolidation Act.

otherwise, the new plots of land should be commensurate with the original plots in terms of type, size, bonito, location and economic status, while taking into account the benefits obtained by land modifications.⁴¹

It is important to mention that when selecting new plots of land, the district office takes into account not only the properties and creditworthiness of individual plots, the interests of environmental protection, etc. but also the spatial planning documentation. At this point, we can state that the mandatory existence of municipal spatial plans according to new legislation enshrined in the Spatial Planning Act as well as the existence of current knowledge about the state of the territory, its limitations and the conditions for changes in its use, expands the possibilities for the participant of land consolidation in the district of land consolidation in the form of acquiring a new plot of land, which is provided as settlement. Based on the above, it is possible to conclude that one of the factors slowing down the land consolidation process is also the absence of municipal spatial plans. We believe that its very absence narrows the selection of new plots of land for the participant in the land consolidation procedure, which is provided to him/her as a settlement. We also believe that not only the obligation of municipalities to have a spatial plan according to the Spatial Planning Act but also the ongoing acquisition and updating of spatial planning documents in the current state will have a positive effect on land consolidation because the municipality procures and ensures spatial planning documents for the procurement and processing of the municipal spatial plan.

Spatial plan of the municipality and the battle against climate change

The problem of climate change is an existential threat to all people and all communities on Earth. Among the two most basic approaches to its solution are mitigation, which is dominant for states rather than territorial units, and adaptation, which represents a dominant role precisely for territorial self-government units – self-governing regions and municipalities. “Municipalities have the best information about specific features of the territory as well as the individual manifestations of climate change in a given territory and therefore can address these issues best.”⁴² It can be argued that, in general, municipalities have two main tools at their disposal to carry out the adaptation process. The first of them is through the adoption of a comprehensive or partial adaptation strategy, and the second is the usage of spatial planning tools, especially the spatial plan of the municipality, or the spatial plan of the zone.

⁴¹ Ibidem.

⁴² M. Michalovič: *Adapting to the adverse effects of climate change – the role of the international community, the European Union, states or self-government?* In: *Milníky práva v stredo európskom priestore 2019* [electronic document]. Eds. A. Koroncziová, T. Hlinka. Bratislava: Právnická fakulta UK, 2019, pp. 281–288. https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie_a_podujatia/Milniky_zborniky/Milniky_Zbornik_2019_01.pdf [access: 30.06.2023].

At the beginning of 2023, the Ministry of the Environment of the Slovak Republic presented a draft law on climate change and the low-carbon transformation of Slovakia,⁴³ in which it was proposed to entrust all municipalities with the task to develop and adopt a strategy for adaptation to climate change in the municipality. Unfortunately, this draft has not yet been adopted due to the stormy political situation in the Slovak Republic, hence currently, municipalities' approach to the adaptation to the adverse consequences of climate change is more or less proactive, without any legal obligation to adopt any document or measures in this area. All the more positively we evaluate the spillovers of the battle against climate change into the new spatial planning legislation.

One of the positives of the new Spatial Planning Act is the inclusion of problems related to climate change and the possibility of addressing them directly in the act's wording. In general, we find adaptation in defining the spatial planning documentation, where it is stipulated that it "comprehensively determines the urban concept and landscape concept of the defined territory [...] adaptation to the adverse consequences of climate change [...] and regulations for the spatial organization of the territory and the functional use of the territory."⁴⁴ In the case of municipalities, the legislation clearly stipulates that the spatial plan of the municipality determines, in particular, "the protection of the territory of the municipality against undesirable geological phenomena, floods, fires, environmental loads, the prevention of serious industrial accidents and the limitation of their consequences on people's health, the environment and property, measures to mitigate climate change on the territory of the municipality and for adaptation to its adverse consequences."⁴⁵ At the same time, it was established that the spatial plan of the zone must, *inter alia*, include "the conditions for minimizing the negative effects of construction, the adverse effects of floods and serious industrial accidents, the impact of the use of land on public health and the quality of life of people, on fire safety, on civil protection of the population and measures to mitigate climate change and to adapt to its adverse consequences."⁴⁶

⁴³ Ministry of the Environment of the Slovak Republic: Draft Act on Climate Change and Low-Carbon Transformation of the Slovak Republic and on Amendments to Act No. 162/2015 Coll. Administrative court order as amended (Climate Act). [online], <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2023/29> [access: 30.06.2023]. In Slovak language. English version is not available.

⁴⁴ Provision of § 18 para. 1 of the Spatial Planning Act.

⁴⁵ Provision of § 22 para. 3 letter i) of the Spatial Planning Act.

⁴⁶ Provision of § 23 para. 3 letter f) of the Spatial Planning Act.

3. Conclusions and outlook for the future

The current spatial planning legislation contained in the Building Act ceases to be effective on April 1, 2024, and on this date, the Spatial Planning Act will become effective as *lex generalis* in the area of spatial planning in the legal conditions of the Slovak Republic. The two main supporting pillars of this significant change are digitalization and simplification. The electronization of processes as one of the foundations of the new spatial planning legislation will result in a unified methodology and there will be one spatial planning and construction information system. Such a system should store and publish individual data and information from spatial planning documents, spatial planning documentation, selected decisions of building authorities and verified project documentation of buildings. At the same time, the overall process of procurement and maintenance of individual data and information in the form of spatial planning documents and spatial planning documentation will be simplified. We also have come to such a conclusion during our study of this newly adopted legislation and during the comparison of it with the one currently in effect.

Within the area of spatial planning documents, it can be perceived on two levels. First of all, the number of types of spatial planning documents was reduced from four to two, while three types (the urban study, territorial general, and territorial prognosis) were merged into a new type of spatial planning document – territorial study, which will fulfill similar purposes as the urban study, territorial general and territorial forecast procured according to the current Building Act. Time and financial savings are expected through the establishment of the condition that the territorial technical documents describe the actual state of the territory, and contain data on the current state of use of the territory. Currently, such documents are procured ad hoc if such a need arises.

A comparison of the previous definition of the term spatial planning documentation in the Building Act with the wording in the Spatial Planning Act shows that spatial planning documentation continues to be a normative legal act or an act of law-making, which is the source of law, and therefore is not an administrative decision, which is a decision of an administrative body regarding the rights and interests of an individual protected by law, and therefore that in the case of spatial planning documentation, there is a possibility of a judicial review in the administrative court. The new legislation contained in the Spatial Planning Act also introduces new levels of spatial planning documentation, namely the concept of territorial development of the region and the spatial plan of the microregion.

Greater emphasis was placed on the institution of one of the spatial planning documents, namely the spatial plan of the municipality, which from the point of view of the residents represents the most important of them. In this case, the

biggest change identified was the establishment of the obligation of all municipalities to adopt a municipal spatial plan while in the current legal state, such an obligation exists only for “larger municipalities”. We see the positives of introducing this obligation for all municipalities not only in the definition of principles, regulations for the spatial organization of the territory, its functional use, etc., but also due to the fact that it should remove certain obstacles to the implementation of land improvements. Within the presented article, we positively evaluate the legislation from the point of view of the battle against climate change, where references to adaptation to the adverse consequences of climate change have been included in the provisions on the spatial plan of the municipality. And that is at least until the time when the prepared legislation on the battle against climate change is adopted, within which it is planned to impose on municipalities the obligation to develop a municipal adaptation plan. Subsequently, it will be necessary to link this important document with the spatial plan of the municipality so that the individual measures have a logical connection.

However, at the same time, it is also necessary to address concerns that are directed toward the possibilities of small municipalities to obtain a spatial plan of the municipality. As stated by M. Pavlovič, the process of creation and acceptance of the spatial plan of the municipality and its binding parts is complex, while the problem of smaller municipalities is the low capacity of their own human resources, as a result of which municipalities reach out to external consultants, whose activities also show errors.⁴⁷ Partial solution could be the agreement of several municipalities and the procurement of a single spatial plan for their territories, which the Spatial Planning Act allows. At the same time, we consider it necessary for the Office to carry out its duty to provide professional assistance to spatial planning authorities at a professionally high level.

Of course, it must be remembered that the new Construction Act and Spatial Planning Act are not a sufficient change in the legal order of the Slovak Republic, so it was necessary to adopt extensive amendments to several legal regulations. This was done through a parliamentary proposal, which was adopted in the form of Act No. 205/2023 Coll. on the amendment of some acts in connection with the reform of construction legislation, which amends a total of 68 acts. It can be concluded that the choice of the form of the parliamentary proposal, about which there was no expert discussion or public comment, is not a suitable way to implement such extensive and significant changes. It should also be added

⁴⁷ M. Pavlovič: *Efektívne všeobecne záväzné nariadenie územnom plánovaní*. In: *Dobré všeobecne záväzné nariadenie: Zborník z vedeckej konferencie konanej dňa 25. októbra 2018 na pôde Právnickej fakulty Univerzity Komenského v Bratislave, ktorá sa uskutočnila v rámci vedeckej konferencie Bratislavské rozpravy osprávnom práve 2018 organizovanej Univerzitou Komenského v Bratislave, Právnickou fakultou, Katedrou správneho a environmentálneho práva*. Ed. M. Pavlovič. Bratislava: Univerzita Komenského v Bratislave, Právnická fakulta, 2018, pp. 99–102.

that at the time of writing this article, the Office presented a draft of its decree for Spatial Planning and Construction of the Slovak Republic on the content and method of processing spatial planning documentation and spatial planning documents,⁴⁸ which is currently located in the so-called interdepartmental comment procedure.

A prominent element of the new legislation is the existence of electronic spatial planning, which depends on the feasibility and overall application of the provisions contained in the new building regulations. What will be the ability to apply construction legislation after the new legislation comes into force and whether the legislation will bring the desired result, only practice will show, while we assume that research on this topic will continue and further professional and scientific outputs are planned.

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⁴⁸ The Office for Spatial Planning and Construction of the Slovak Republic: Draft of the decree for Spatial Planning and Construction of the Slovak Republic on the content and method of processing spatial planning documentation and spatial planning documents [online], <https://www.slov-lex.sk/legislativne-procesy/-/SK/LP/2023/74> [access: 30.06.2023]. In Slovak language. English version is not available.

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Viera Jakušová, Matúš Michalovič

Aktualne i nowe regulacje prawne planowania przestrzennego w warunkach prawnych Republiki Słowackiej ze szczególnym uwzględnieniem dokumentów planowania przestrzennego i dokumentacji planowania przestrzennego

Streszczenie

Przedmiotem prezentowanego artykułu jest analiza aktualnie obowiązującego i skutecznego ustawodawstwa dotyczącego planowania przestrzennego oraz jego porównanie z ustawodawstwem dotyczącym planowania przestrzennego, które wejdzie w życie 1 kwietnia 2024 roku w warunkach prawnych Republiki Słowackiej. Autorzy artykułu skupili się przede wszystkim na porównaniu dwóch podstawowych narzędzi planowania przestrzennego – dokumentów planistycznych i dokumentacji planistycznych. Bardziej szczegółowo omówiono problematykę planu zagospodarowania przestrzennego gminy i zwrócono szczególną uwagę na zmiany w jej uregulowaniach prawnych w związku z procesem scalania gruntów i walką ze zmianami klimatycznymi.

Słowa kluczowe: planowanie przestrzenne, nowa ustawa o planowaniu przestrzennym, dokumenty planistyczne, dokumentacja planistyczna, plan zagospodarowania przestrzennego gminy

Вера Якушова, Матуш Михалович

Текущие и новые правила пространственного планирования в правовых условиях Словацкой Республики с особым акцентом на документы пространственного планирования и документацию пространственного планирования

Резюме

Предметом данной статьи является анализ действующего и эффективного законодательства о пространственном планировании и его сравнение с законодательством о пространственном планировании, которое вступит в силу 1 апреля 2024 г. в правовых условиях Словацкой Республики. Авторы статьи прежде всего сосредоточились на сравнении двух основных инструментов пространственного планирования – планировочных документов

и планировочной документации. Более подробно рассматриваются вопросы плана пространственного развития гмины, в статье обращается внимание на изменения в ее правовом регулировании в связи с процессом консолидации земель и борьбой с изменением климата.

Ключевые слова: пространственное планирование, новый закон о пространственном планировании, планировочные документы, планировочная документация, план пространственного развития гмины.

Viera Jakušová, Matúš Michalovič

**Le attuali e le nuove normative sulla pianificazione territoriale
nelle condizioni giuridiche della Repubblica Slovacca,
con particolare attenzione ai documenti di pianificazione territoriale
e alla documentazione sulla pianificazione territoriale**

Sommario

Il tema dell'articolo presentato è l'analisi della legislazione attualmente valida ed efficace sulla pianificazione territoriale e il suo confronto con la legislazione sulla pianificazione territoriale che entrerà in vigore il 1° aprile 2004 nelle condizioni giuridiche della Repubblica Slovacca. Gli autori dell'articolo si sono concentrati principalmente sul confronto tra i due strumenti fondamentali della pianificazione territoriale: i documenti di pianificazione e la documentazione di pianificazione. La questione della pianificazione territoriale della municipalità è discussa in modo più dettagliato e l'articolo presta attenzione ai cambiamenti nelle sue norme legali in relazione al processo di consolidamento del territorio e alla lotta contro il cambiamento climatico.

Parole chiave: pianificazione territoriale, nuova legge sulla pianificazione territoriale, documenti di pianificazione, documentazione di pianificazione, piano territoriale comunale.