Policy advice
on the status of the capital city Bratislava and the city Košice

Council of Europe
Centre of Expertise for Good Governance

in cooperation with the Slovak NGO MESA10

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July, 2022

CEGG/PAD(2022)4

Good Governance

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MINISTRY OF INTERIOR OF THE SLOVAK REPUBLIC

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Co-funded and implemented by the Council of Europe

Delivering Good Governance in Slovakia – II phase

This document was produced within the project "Preparation of legal and policy advice on good governance in Slovakia" (Ref. No: GA/SK/1/2021) funded within the framework of a Joint Project between the European Union and the Council of Europe "Delivering Good Governance in Slovakia – II phase".

Under the guidance of, and in cooperation with, international experts engaged by the Council of Europe, MESA10 implemented activities through provision of the necessary local expertise as well as logistical support.

This document was produced with the financial assistance of the European Union and the Council of Europe. The views expressed herein can in no way be taken to represent the official opinion of the European Union or the Council of Europe.

Content

Summary *4*

1. Some key factors in interpreting the status of Bratislava and Košice: the historical process of decentralisation, the taxonomy of original and delegated competences, the changing application of the principle of administrative uniformity *6*

2. The introduction of the European principle of subsidiarity as a precondition for strengthening the status of Bratislava and Košice *12*

3. A brief analysis and proposals for constitutional and legislative revision, with a view to European subsidiarity and strengthening the autonomy of Bratislava and Košice *14*

4. Considerations on the specific regulatory framework for the Capital City of Bratislava: system of sources of law, overlapping of competences, vertical and horizontal cooperation, relationship with the districts, the neighbouring municipalities and the region. *17*

5. Considerations on the specific regulatory framework for the metropolitan city of Košice: relationship with city districts and differentiated decentralisation. The difficult role of the Council of Mayors. .. *24*

Conclusions and recommendations *28*

Summary

The aim of this document is to provide recommendations for the revision of the special legislation dedicated to the cities of Bratislava and Košice, based on a normative analysis of the legislative and statutory documents on the two cities. Other factors considered include political implications, cultural heritage, and the historical evolution of the Slovak decentralisation.

A simple analysis of the regulatory data is almost impossible, since the entire constitutional and legislative framework dedicated to the Slovak local authorities appears worthy of a substantial revision, starting from some conceptual categories in the relationship between the State and municipalities that are well rooted in the legal culture of the Slovak Republic.

The findings of the Project, as well as the discussions with local experts and some stakeholders of the two cities, confirmed the existence of large areas of weakness in the regulation at present. They relate to some general problems, which are valid for all local authorities, and to other specific aspects that affect the cities of Bratislava and Košice in particular.

The analysis encountered a major difficulty in finding compliance with the European Charter of Local Self-Government[1], both of the fundamental law on self-government, and the two specific laws under consideration.

This is the case - for example - of the European principle of subsidiarity, to which this document devotes ample space given its deficiency at any level; same for relationship between primary (laws) and secondary (statutes and regulations) sources of law, which appears counter-intuitive and disproportionate in favour of secondary sources, as well as lacking in terms of the force of the law.

And same with respect to some other pillars of autonomy, like the reduction of administrative fragmentation or the identification of the fundamental functions of local governments, or the mechanisms for financial equalisation, as well as - a decisive aspect for the two cities in question – the cooperation tools.

The specific framework for the city of Bratislava (Law 377/1990 and the city Statute) highlights a strong imbalance between law and statute, to the advantage of the statutory source. The structure of administrative competences is equally unbalanced in favour of city districts, with significant overlaps in some crucial sectors such as education and social affairs. The issue of horizontal cooperation in the metropolitan area between Bratislava and the neighbouring municipalities is not adequately developed with a dedicated regulation.

Although Košice appears to be more centralised than the Capital, the regulatory framework (Law 401/1990 and the Statute of the city) highlights a significant excess of intervention in the administrative functions between the city and city districts, which can be considered as a source of managerial diseconomies and risky for the homogeneous use of rights related to provision of local public services. Moreover, the decentralisation of some administrative functions of the city to only some city districts (and not to all of them) cannot be framed in a correct relationship of vertical subsidiarity.

For the reasons analysed in the document, instead of revising the legislation, it would be more useful to start from the revision of relevant constitutional provisions. However, this would be beyond the scope of this policy advice.

[1] https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=122

Therefore, specific recommendations would include: first, to identify a clear legislative mechanism that makes it possible to overcome the dichotomy between *proper* or *original* competencies of the municipalities and *delegated* competencies - transferred by the state.

Second, there is a need for the introduction of mandatory horizontal and vertical cooperation mechanisms, as well as a differentiated structure of the functions of the capital Bratislava, which also could include regional functions within it. For Košice, the main recommendation would be to affirm the city as a basic administrative unit, reducing or completely erasing the possibility of differentiated attribution of competences to the districts.

Apart from the technical considerations, there is a fundamental dilemma, which concerns the fate of the municipal districts of the two cities. They should be included in the overall reform without further delay, since their role - evidently preponderant in the balance of power with their respective cities - appears not in line with the idea of a strong capital and metropolitan areas.

For this highly sensitive issue, the document does not provide a definitive solution, but proposes some possible options.

1. Some key factors in interpreting the status of Bratislava and Košice: the historical process of decentralisation, the taxonomy of original and delegated competences, the changing application of the principle of administrative uniformity.

The analysis required first focuses on the peculiarities of the special legislation for the cities of Bratislava and Košice, which is fundamentally grafted on to the general Law no. 369/1990, that regulates the Slovak local authorities.

This legal framework must be examined under the multiple aspects of the institutional configuration and system of internal relations between the cities and their respective districts, as well as the set of administrative functions they perform, with particular attention to the overlapping of competences ([2]) that have already been identified in I-phase of the Project.

Although a rather detailed analysis is therefore required, some elements of the historical-political and institutional context which led to the result under consideration today, must nevertheless be considered. From the consultations carried out with the main stakeholders, the group of experts identified three main influencing factors:

a) the historical evolution of the decentralisation process in Slovakia, which began about thirty years ago with the devolution of administrative functions to the system of regional and municipal self-government;

b) the qualitative-quantitative relationship between the functions originating from local governments and those delegated by the state level, that has been made complex by the successive stratifications of sector-related provisions and by a latent, unsatisfied request for legislative reorganisation of the subjects ([3]);

c) the historical and cultural heritage of the principle of administrative uniformity which, although operating in the same constitutional and legislative framework, takes a differentiated form in various territorial units of the local government.

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Regarding the first factor, it is well known that decentralisation processes are not exclusively legal or technical procedures because the chances for their success substantially depend also on the national political direction.

[2] According to 2019 Country Report of the European Union, << Within public administration, there is insufficient cooperation between government ministries and between national, regional and local levels. The fragmentation of government at municipal level – 70% of municipalities have less than 1 000 inhabitants – creates high overheads and harms the effectiveness of local government. Thus, the financing capacities of municipalities are often restricted to providing basic public services and infrastructure, thereby diverting resources from social services, education, land planning and construction permits>> SWD(2019) 1024 final

https://ec.europa.eu/info/sites/info/files/file_import/2019-european-semester-country-report-slovakia_en_0.pdf

[3] The main difference between original and delegated competences is that: a) original competences provided by the local government originated in laws or in sub-law regulations, issued by the local government, their performance is financed by the local government (its own budget) and they are performed on their own responsibility and on behalf of the municipality; b) delegated competencies are in fact “delegated execution” of the competencies, while the competencies are still state-owned, originated in laws or in sub-law regulations issued by the state bodies, financed by the state budget and executed on behalf of the State and on its (State) responsibility.

In Slovakia, the decentralisation process started with the devolution of administrative functions and, on an experimental basis, also of tax revenues. It should have been completed with the devolution of the political powers together with a process of amalgamation of the smaller municipalities, which however was not completed.

The significant political sensitivity regarding reforms that had presided over the start of the process has gradually faded, meeting however a growing resistance by local governments to solve the historical problems due to the extreme fragmentation of the territory into small municipalities ([4]).

The effective push towards the goal of a complete autonomy has therefore stopped, which in many ways has remained apparent because it lacks an effective devolution of political power. The unfinished decentralisation process and the failure to subsequently ensure coherent legislative changes pertaining the various subjects, has left a legacy of serious problems of overlapping competences. Moreover, this issue has not allowed for the development of legal instruments to combat administrative fragmentation with greater strength than the instrument of *joint municipal offices*, which have been largely established throughout the country ([5]).

The current overlapping of competences that is registered in numerous areas of the public administration is therefore one of the effects of the incompleteness of the process([6]).

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The second influencing factor, relating to the relationship between original and delegated competences, is directly inherent and consequential to the first.

The constitutional and legislative framework formally provides for a clear separation between the two types of competences: in general, a function/competence is to be considered *original* if a law does not qualify it as *delegated* (residuality clause). Furthermore, the transfer from the State to the municipalities of the mere exercise of the function and not of its political ownership is a characteristic of delegated functions.

The separation between the two types is also reflected in the methods for their financing: transferred finances ([7]) go to all areas of delegated competencies ([8]) and they can't be used for anything else, as they are bound to the purposes of such expenses, as provided by special laws ([9]). Original competencies are

[4] See on this topic: D. KLIMOVSKY, *Experience with Managerial and Political Reform Measures at the Local Level in Slovakia: Intended and Unintended Outcomes*, 2016

[5] Council of Europe, Centre of Expertise for Good Governance, 2021, *Policy Advice on the improvement of the structure and competences of local governments in Slovakia*, CEGG/PAD/2021/01, page 9

[6] See further on this topic: J. NEMEC, B. M. MERICKOVA , M. MURRAY SVIDRONOVA, D. KLIMOVSKY, *Creation as a Social Innovation in Delivery of Public Services at Local Government Level*:

The Slovak Experience in E. SCHOBURGH - R. RYAN, *Handbook of Research on Sub-National Governance and Development*, Chapter 13, IGI Global, 2017. LCCN 2016037310| ISBN 9781522516453 (hardcover) | ISBN

9781522516460 (ebook)

[7] Paragraph 3 of the law nr. 583/2004 Coll. on budgetary rules of local self-administration stipulates that the transfer of a function also involves for the correlated transfer of the resources of the state budget, necessary to guarantee financial coverage over time.

[8] Art 71 para. 1 of the Constitution of the Slovak Republic: "The law shall delegate the performance of some competencies of local state administration to municipalities and regions. Expenses of such delegated competencies shall be paid by the State."

[9] Art. 3 para. 1 b) of the law nr. 583/2004 Coll: "financial relations of the State to the budgets of municipalities and budgets of regions are subsidies for payment of delegated competencies expenses". In accordance with para. 3, "subsidies stipulated in para. 1 b) are provided due to special laws" (e. g. law on financing of regional schools).

financed by the Personal Income Tax (PIT) and local taxes ([10]), although the State can supplement these revenues with its own subsidies.

In spite of the formal separation in the legislation of the two types of competencies, during the interviews a structural difficulty was noted in establishing a clear qualitative relationship between original and delegated competencies, given the numerous overlaps in multiple areas. Also, with regard to the provisions governing the finances, the framework outlined by the Constitution and the laws encounters significant exceptions since the municipalities are often forced to fill the gaps in funding the delegated functions from the State, with their own budgetary resources ([11]). In this sense, in addition to generating uncertainty in their application and inefficient institutional relations between the levels of government, overlapping functions also present a very high-risk in the efficient allocation of public financial resources.

In fact, the extreme fragmentation of the administrative framework, combined with the presence of numerous joint municipal offices set up on a precarious conventional basis and highly dependent on the political orientation of the contracting parties, produces a structural negative reflection on the ability of the system as a whole to identify financial needs, standardised for the correct financing of the competences delegated from the State to the local system.

This document is not intended to provide a thorough analysis of the financial relationships between the State and local governments. However, the brief references listed in the table below may substantiate and clarify the need for a reform of the decentralisation system.

[10] Art. 65 para. 2 of the Constitution of the Slovak Republic: "Municipality and region shall finance its expenditures in particular by its own revenues, as by the state subsidies".

[11] Well-known example of delegated performance of the state administration is a construction procedure. All of the competencies / responsibilities that have to be done during this special kind of administrative procedure is a state competency, but the procedural part is delegated to municipalities, including issuing decision. Its financing is ruled by the formula "number of inhabitants of a municipality multiplied by a constant". As reported by the experts interviewed during the preparation of this document, the mere application of the formula based on the number of inhabitants leads to distorting effects when, as happens for example in tourist municipalities, the amount of administrative procedures relating to building permits largely exceeds the number of permanent inhabitants, due to the presence of hotels or other tourist facilities. In such cases, the municipalities are forced to finance the extra costs of the wider range of procedures from their own budget.

Box 1 – Financial management of Slovak municipalities

In general:

- main revenues of municipalities consist of:

1. 70% share of personal income tax: there is a formula distributing this tax to individual municipalities, Bratislava (BA) and Košice (KE) are considered one municipality for the purposes of this distribution
2. local taxes – there are several local taxes: property tax, land development fee, waste disposal fee, dog ownership tax, use of public space, accommodation tax, non-hazard games' machines, machines for automated sale of goods, entering the historical centre with a car
3. transfers – mainly for education, this presents around 50% of local budgets, so it is very significant. Since education is a delegated competence, the State distributes the finances to municipalities. Same as in point 1., BA and KE are considered one municipality

- both cities have in their statutes that the city and districts are preparing their budgets independently, so there is no consolidation going on (for comparison, in the Czech Republic, Praha and Brno have an obligation to approve consolidated budgets)

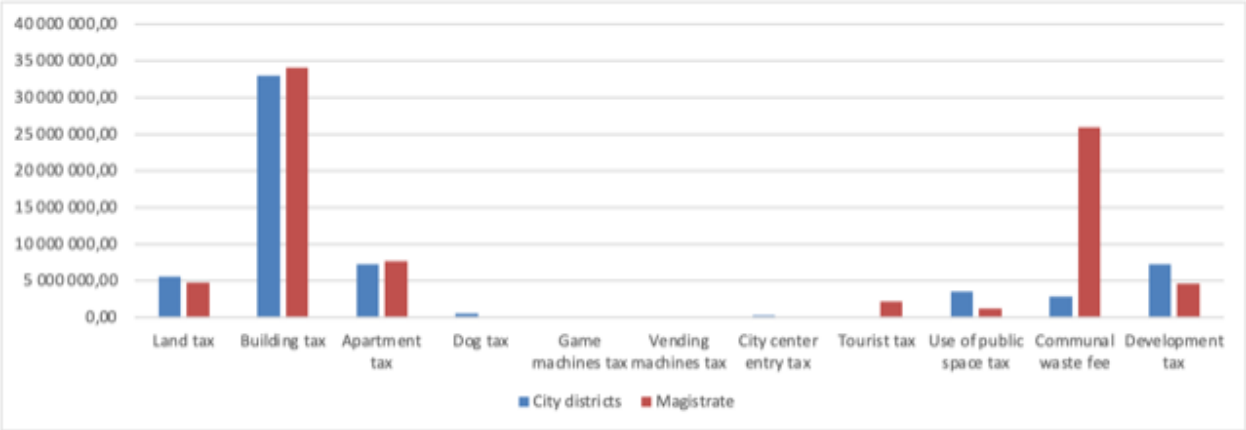
In Bratislava:

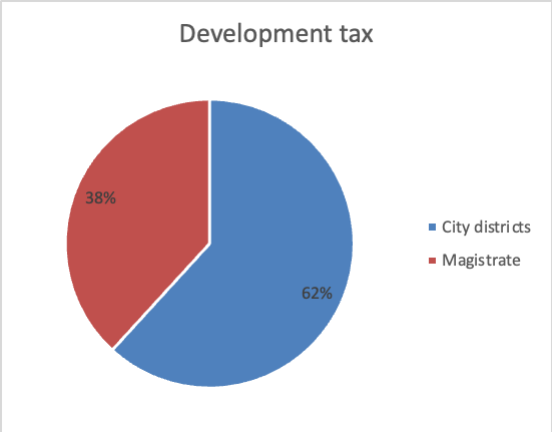
- tax administration is fragmented
- the city is administering property tax, use of public space in case the space belongs to the city, accommodation tax and waste disposal fee
- districts are administering (also deciding the tax base and tax rates) all remaining local taxes
- distribution of taxes between the city and the districts: PIT is distributed 68:32, property tax 50:50, waste disposal fee 90:10, land development fee 32:68 (this one is administered by districts)
- sale of property also gets distributed: 90:10 for whoever is selling property and if the district sells city property that it was taking care of, it is 50:50
- also parking is distributed 50:50 for residents' permits and 85:15 for one-off parking tickets, in the case of Old Town-Bratislava (one of the districts) it's 70:30
- all local taxes that are administered by districts are 100% their income, the city doesn't get a share

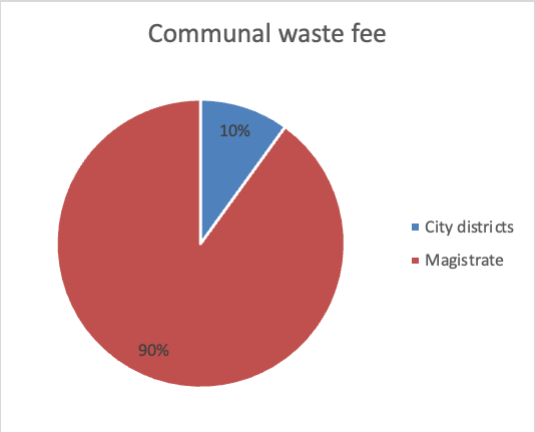
In Košice:

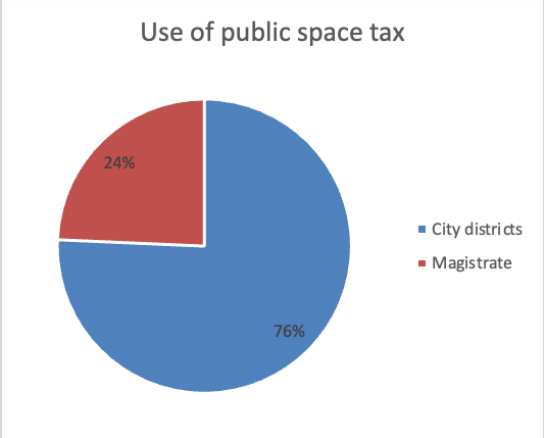
- financial management is much more centralised than Bratislava
- all local taxes are administered centrally
- the statute of KE is stating that the decision on what taxes will be distributed to the districts is done when the budget is approved, so there are no guaranteed percentages
- based on the latest budget, districts get around 10% of PIT allocation, 50% of dog ownership tax and 50% of land development fee
- districts also get 50% of the receipts from property sale, if the city is selling property (§40)

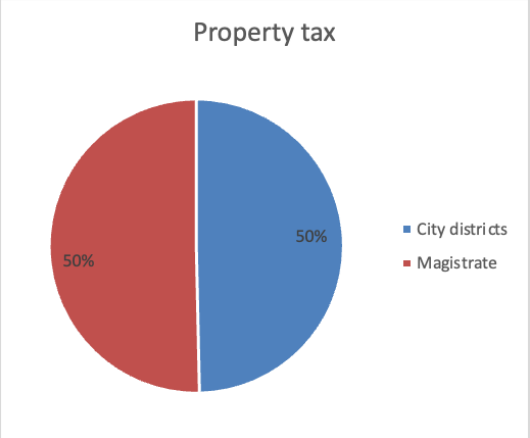
Box 2 – Distribution of revenues in Bratislava between the Magistrate and the City districts

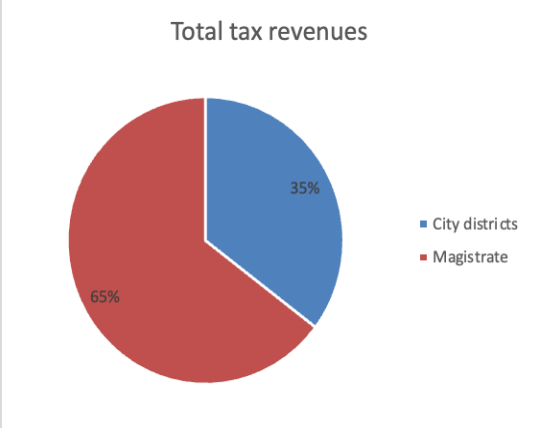


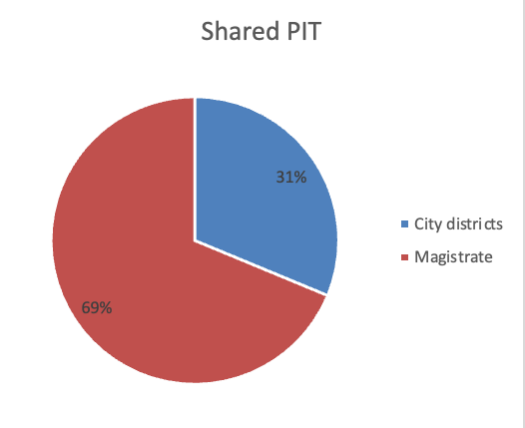












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The third element influencing the concrete framework of local administrative functions is the different use of the principle of administrative uniformity on the territory.

As was also noted in another Council of Europe Policy advice ([12]), the principle of administrative uniformity corresponds to a perfectly symmetrical organisation of local competences and is considered, in the Slovak political context, to be the most acceptable form of local government, also in view of possible substantial reforms.

This principle also has a strong regulatory root in the general law on local self-government: although there is no complete list of administrative functions defined as "fundamental" by this law, the principle of uniformity is effectively operative towards all municipalities regardless of their status.

However, from the interviews collected it's clear that the administrative uniformity faces relevant application derogations, on the one hand in cities such as Bratislava or Košice where the intra-municipal structures are recognised and, on the other hand, in the smaller entities that organise joint municipal offices to perform certain functions, that cannot be exercised individually. This unclear application of the principle of uniformity contributes to difficulties in immediately understanding the scope of local authorities' functions.

For the specific angle of perspective of the metropolitan cities of Bratislava and Košice, the aforementioned Policy Advice has already suggested to limit the competences of the Metropolitan Area to urban planning, regulation and management of transport and policies for environmental protection.

Without going into the merits of the specific indications provided and the possible consequences on the further strengthening of the municipal districts, it is valid to reflect, how much a structure of administrative uniformity that is already in fact fluid can also become formally differentiated without thereby contravening the general principles of local law.

[12] Policy advice on the improvement of the structure and competences of local governments in Slovakia, Council of Europe Centre of Expertise for Good Governance, CEGG/PAD/2021/01, cit. page 14

2. The introduction of the European principle of subsidiarity as a precondition for strengthening the status of Bratislava and Košice

The findings and conclusions achieved in the framework of the Project, as well as the discussions made with internal and external experts and with stakeholders of the two cities, confirmed the existence of large areas of weakness in the current legislative regulation of the Slovak local system. They relate to some general problems which are valid for all local authorities, and to other specific aspects that affect the cities of Bratislava and Košice in particular.

In general terms, the lack of a specific codification of the European principle of subsidiarity ([13]) in the constitutional and legislative framework was noted. As is known, the general meaning and purpose of the subsidiarity principle reside in the recognition of a certain independence of a subordinate authority with respect to an authority of a higher level.

As it is in the relationship between the member States and the European Union, the subsidiarity principle in the relations between national, regional and local levels of government within a single member State is aimed at identifying the best level of governance for the definition and implementation of policies([14]).

It is therefore a matter of division of competences between the different levels of power, applicable both to the relationship between the States and the Union and to the internal relationship between the States: as it was said, it's a concrete guideline for the allocation of responsibilities at any level, which <<cannot stop halfway between the central government and the local level>> ([15]).

A correct application of the subsidiarity principle does not tend to deny the coexistence of the principle of decentralisation in the sub-national context, since it allows for the coexistence of *own* or *original* administrative functions and administrative functions *conferred* or *delegated* by the authority that holds the legislative power - the State or in some countries - the regions.

So, if the principle of European subsidiarity had been properly transposed in the current Slovak constitutional and legislative framework, its application would allow the dichotomy between original and delegated functions to be overcome.

With the recognition that local authorities own the generality of administrative functions (except for those which, in subsidiary exercise, would be attracted to the regulation and management of the State), the criterion for the distribution of administrative powers would thus be overturned.

It would help to avoid the overlapping of competences at all levels of government, in harmony with the most recent recommendations ([16]).

[13] As stated in the Opinion issued by Viktor Nižňanský on a draft of this paper: <<*the principle of subsidiarity has not been fulfilled in the proposed extent, as have the other principles of a fair division of power: political equivalence, fiscal equivalence, non-division of competences and responsibilities and reimbursement of externalities, which causes the current complications. This was due to the reluctance of central governments/political parties to create a strong territorial self-government. It is precisely the failure to comply with the principles proposed in the decentralization strategy that makes it impossible to make better use of the potential of towns and municipalities, the flexibility of state administration and the rigorous governance system of the last century which is completely unsuitable for new societal conditions, trends and challenges.*>>

[14] Article 4(3) of the Charter

[15] Congress Resolution 269(2008)1 European Urban Charter II – Manifesto for a new urbanity, 3.

[16] CEGG/PAD/2021/01, cit.

Conversely, together with other causes that will be examined in this document, the current deficiency results in heterogeneous rules, which in turn, entail an evident uncertainty in the attribution of administrative competences.

As is well known, the application in European countries of the principle enshrined in Art. 5 (3) of the Treaty on the European Union (TEU) has manifested itself in many different forms, only some of which through a specific constitutional and legislative codification.

For example, in France the principle was established first at the constitutional level (Art.72) in a complementary way to the principle of decentralisation, affirming that the territorial authorities have decision-making and regulating power over all the competences for which they have a vocation, with the possibility of experimenting derogatory procedures for the exercise of further functions, under the conditions stipulated by state law.

In Italy, it came out first at the legislative level and subsequently at the constitutional level (Art. 118) in a complementary way to the general principle of autonomy, affirming the ownership of administrative functions in the hands of the municipalities, with the sole exceptions dictated by the principles of adequacy and territorial differentiation.

In the Polish constitution of 1997, the principle is mentioned in the preamble among the four pillars of the republican order, both in relations between the State and the local authorities, and in those with the civil society. The principle, therefore, placed at a very high level in the constitutional system was then made concrete by the jurisprudence of the Constitutional Court.

The different forms of manifestation in European constitutions (including the lack of codifications) lead to reflect on the need to give substance to European subsidiarity, by transferring it to the legislative corpus, first as a mechanism for regulating administrative competences between the State and local constituencies.

For these reasons, the following part is devoted to an analysis of the Slovak legislative corpus from a subsidiarity point of view, to identify its shortcomings and possible corrections.

3. A brief analysis and proposals for constitutional and legislative revision, with a view to European subsidiarity and strengthening the autonomy of Bratislava and Košice

Starting from the analysis of the constitutional level, as is known, Title IV of the Slovak Constitution contains the rules for organisation of local authorities and, in Articles 68 and 71, it describes the overall extension of the power of self-regulation over the original administrative functions and those delegated by the State.

As already mentioned, Article 68 of the Slovak Constitution provides municipalities with regulatory powers in the area of original competencies of local government, whereas Article 71 enables the State to transfer *performance* of specified state competencies, ensuring its financing. This article also provides municipalities with the power to issue generally binding regulations in the area of transferred state administration performance, according to the law.

The two norms configure a system of regulation typical of a decentralised state and not of a state conformed to the principles of local autonomy and subsidiarity. Definitely, some important measures for decentralisation have been implemented during the years ([17]), but the extreme fragmentation of the municipalities combined with the lack of constitutional coverage of their autonomous initiatives and policy-making, does not provide the local governments with the relevant capacities to deliver the public services in a proper way.

Also, the debate in Slovakia about the principle of subsidiarity began only in the period immediately preceding the country's entry into the European Union, in the years 2001-2004. *Vice versa*, when the main regulations concerning Bratislava and Košice were approved, in the nineties, the principle of subsidiarity had not yet entered the Slovak institutional debate. After the country's accession to the European Union, there wasn't any adaptation to this principle, either in the Constitution or even in the main general laws.

Subsidiarity is nevertheless one of the principles that the reform in 2001 and 2004 was based on, but in no way did it affect the specific regulations on the main two cities; it was about establishing regional governments and delegation of powers and competences from the State to the regions and even to the municipalities, but nothing specific for the Capital city and Košice.

After that period, a *status-quo* approach prevailed ([18]), even in the face of the global financial crisis of 2008-2010 that elsewhere in Europe has led to substantial changes to the fiscal and regulatory approach

[17] The processes were aimed at strengthening the role and responsibilities of local self-government by decentralising public finances and establishing functioning higher territorial units, mostly through the delegation of state competencies (Klimovsky & Nemec: 2021).

[18] According to V. NIŽŇANSKÝ (Opinion, 2022, cit.) <<...*In the 2006-2021 phase, several proposals to change the current situation were submitted by politicians, but unfortunately they did not find an adequate response. Politicians have limited themselves to partial, very often self-harming, legislative changes, whether in terms of administration or in terms of finances, directed against the principles of a fair division of power. Also for the cities of Bratislava and Košice, proposals were processed to improve the administration and to solve the problems of division, tasks, financing, laws, statutes, which, however, did not become the subject of a political discussion as they collided with the local interests and the central government did not find courage to solve the issue. The authors of the strategy have always considered both cities to be one municipality. Unfortunately, the legislature has not found the courage to resolve this "unconstitutional relationship" yet, and its persistence only complicates the possibility of finding a solution.*>>

And from the same Author: << *After the implementation of the second stage of decentralization (2005), its results was assessed as a significant step forward, which was reflected in particular in the tripling of the decentralization degree, compared to the initial state of 1998. The implementation of the changes has significantly contributed to the stability of the democratic system and to the reduction of the possibility of the return of the autocratic regime. The political influence of local self-governments has increased, which can be documented on many examples, but also*

towards local governments ([19]). In the case of Slovakia, the experts interviewed did not detect any reaction of the legislator to that phenomenon of global transformation of the relationship between the central states and the local authorities.

For these reasons, in the joint effort at European level to identify and promote a common interpretation of the subsidiarity principle ([20]), the Slovak legislator should be urged towards a revision of Articles 68 and 71 of the Constitution in order to introduce a clear attribution mechanism, the generality of the administrative functions and tasks to the municipalities, without prejudice to the subsidiary exercise of the regional or state levels of government depending on the effective capacity and adequacy of the local authorities to respond to the needs of citizens.

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As previously mentioned, the same deficiency and the equal opportunity for a clear definition is observed also at the sub-constitutional legislative level.

The general Law on the organisation of Slovak local authorities (no. 369/1990) offers in fact, in Art. 4, only an indirect reference to subsidiarity, formulated *a contrariis*, where it provides for the safeguarding of acts performed by the State, as legally recognised exceptions to the principle of municipal autonomy. The same article is also giving us a list of the original powers of the municipal authority, which are described in terms of a rule of principle and contain extensive references to the detailed rules by specific regulations provided, in general, by Art. 6 of the Law.

While it appears redundant to emphasize the safeguarding of state acts in a regulatory system that is already clearly based on the principle of legality, it would be advisable in this regard, to include a specific reference to the principle of subsidiarity in Art. 1, para. 2, second sentence of the Law, configuring it as a limit to the exercise of municipal autonomy. That should be done through the use of legal definition of subsidiarity in the Constitution as an inevitable condition for delegating the competencies from the State to local self-governments.

Consequently, Art. 4, para. 1 could be modified to establish that the State can assume the exercise of any function or competence of local self-government not by virtue of an indeterminate cause of legitimacy, but by virtue of an assessment of the lack of adequacy and proportionality of the municipal exercise, which may possibly suggest its removal at the local level ([21]).

Paragraph 4 of the same article also poses the same problems of compatibility with respect for the principle of subsidiarity. In fact, it identifies as strictly indicated competences those delegated by the State, leaving the competences of the local authority to a purely residual categorisation ([22]). This setting

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at the level of popularity, especially of local self-governments. It is a pity that governments did not find the political will to continue the decentralization process in 2007-2020.>>

[19] See widely on this topic: B.BREZOVNIK, I. HOFFMANN, J.KOSTRUBIEC (edited by), *Local Self-Government in Europe*, Institute for Local Self-Government Maribor, www.lex-localis.press, February 2021. ISBN 978-961-7124-00-2

[20] [COM(2018) 490-491]

[21] See, for example, Articles 87 of the Constitution of the Czech Republic, which provides with the right of direct appeal to the Constitutional Court against action and activities of the State in the field of competences of local self-governments. See also Article 101, para. 4, implicitly stating the principle of subsidiarity through the clear and mandatory restriction on the exercise of state powers vis-à-vis local self-government. This constitutional provision, although sufficient for the purpose for which it is intended, is nevertheless considered weak and not sufficient to guarantee a full deployment of the principle of European subsidiarity in the legal system of the Czech Republic. See more extensively M. RADVAN et al., *Local Government in Czech Republic*, in *Local Self-Government in Europe*, cit. p. 95

[22] The Italian experience subsequent to the constitutional reform no. 3/2001 is particularly explanatory of the major transformations that are possible through the adoption of a criterion for the attribution of administrative powers that is based on the principle of subsidiarity. Instead of individual administrative functions delegated by the State to the local authorities (which have no possibility of self-regulation), subsidiarity allows the recognition of the generality of functions as original and fundamental of local authorities, while compressing the space of functions exercised by

makes the fundamental functions of the local authority very ductile and flexible, rather than rigid and resistant to the unilateral action of the State.

It is worth concluding this aspect of analysis with a consideration also on paragraphs 3 and 4 of Art. 4. They contain indeed a "minimum catalogue" of fundamental functions of local authorities ([23]), but it appears weak as well as incomplete since its exact definition depends on the contextual action of three sources of law: the general Law under consideration, one or more special laws and municipal regulations.

Such a framework opens many possible differentiations in the structure of administrative competences in the area, which is amply demonstrated in the special Laws on Bratislava and Košice in the relationship with their respective statutes and regulations.

In this sense, a strengthening of the catalogue of fundamental functions and a simplification of the system of sources of law would be desirable, favouring the instrument of the law - endowed with greater strength and resistance - in place of the statutes and autonomous regulations of the individual municipalities.

With a view to a general revision of Art. 4 of Law 369/1990, the following Article 5 would maintain its consistency unchanged, intended to regulate not the expression of the principle of local autonomy, but the functioning of the different principles of decentralisation of administration and state functions.

Art. 6 of the Law in question governs the exercise of regulatory power, which appears too broad and disproportionate to the reduced scope of the Law. This rule, in fact, especially in cities with internal district-based organisation, enables a further decentralisation of municipal functions, as already mentioned not very determined in its substantial content. This choice should be revised, allowing the exercise of regulatory power only for the detailed discipline of administrative functions and not also to define their allocation to one or another of the levels of government, especially if below the city-tier of public authorities. Also in this article, a reference to European subsidiarity should be found, intended as a parameter for assessing the legitimacy of a regulation, together with the other parameters already indicated: Constitution, constitutional laws, and ratified international treaties.

Art. 11 of the general Law further introduces a topic of interest for this document: the possible coexistence of a plurality of elective mandates for the same administrator, which is induced by the lack of a specific incompatibility to simultaneously perform the role of councillor or mayor of a municipal district (in cities such as Bratislava and Košice) and as a member of the city council, pursuant to para. 2 of the aforementioned article. According to the testimonies collected by the group of experts, this deficiency can produce slowdown - if not *veto* - in the decisions that the city assembly can take, within the scope of its own competences. Substantial content of the position of mayor is to be a representative of the district and its powers are basically executive. On the other hand, substantial content of the position of the member of council is to carry out political direction, regulation and participation in the decision-making process.

As Slovakia has separate elections for members of councils and mayors, one has to decide to be part of decision-making process, or to represent the executive power, because that´s what the separation of elected mandates is based on. This problem, in fact, is very common to several European countries and is difficult to solve, since the right of passive electorate is certainly a fundamental value of constitutional rank, which deserves to be defended. On the other hand, the self-regulation provided in some cases by the political parties themselves (which may limit the right to access to certain institutional offices) appears very weak.

Ultimately, for this part of the analysis, the conclusion suggested to the Slovak legislator is to introduce more stringent limitations to the possibility of running for the office of councillor in the two tiers of district-level and city-level governments. Similarly, incompatibility between the roles of district-mayor and city-councillor should be foreseen.

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the State (or on behalf of the State) to those that exceed the real performance capabilities of the municipalities. It is a real inversion of the attribution mechanism, which therefore allows greater freedom of self-determination to local authorities.

[23] See also D. KLIMOVSKY & J. NEMEC, cit. p. 363

4. Considerations on the specific regulatory framework for the Capital City of Bratislava: system of sources of law, overlapping of competences, vertical and horizontal cooperation, relationship with the districts, the neighbouring municipalities and the region.

The lack of a codified principle of subsidiarity particularly affects the status and potential of Bratislava and Košice, cities of metropolitan rank ([24]) that could benefit from an enhancement of their administrative functions, compared to the other Slovak municipalities which do not have the double level of city/city districts administrative management ([25]).

Other causes of weakness derive from the regulation technique used by the Slovak legislator in the laws dedicated to the two cities: neither of them offer a clear identification of the city competences with respect to city districts due to the numerous overlaps and the wide use of the delegation technique to the statutory source and special regulations, which complicates the accurate identification of the administrative tasks of the city as a whole.

In the opinion of the experts interviewed, the main weakness is however caused by the special legal configuration of the two cities and by the co-existence of the two tiers of municipal government. It poses a significant problem in interpretation and application of the rules that is confirmed by the framework as follows:

Firstly, Art. 1-bis, paragraph 2 of Law 377/1990 proclaims the autonomy of the district territorial units with respect to the city and attributes to the districts the functions of self-government, in addition to those delegated by the Law and the Statute of Bratislava.

The configuration of the districts as "municipalities within the municipality" therefore establishes a double joint legitimacy co-existing on the same territory and a duplication of functions between the district and the city, which is the source of numerous problems.

Based on law, all the districts are municipalities ([26]). The lack of constitutional basis for this provision is customarily accepted, although its costs and problems in functioning are occurring on daily basis. Performing local government services at the level of districts is traditional, and their representatives do not want to give up their competencies, budgets, political influence. So it seems that preserving the tradition could be more important than a rational and reasonable structure of self-government tiers.

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[24] Policy advice on the improvement of the structure and competences of local governments in Slovakia, Council of Europe Centre of Expertise for Good Governance, CEGG/PAD/2021/01, cit. page 14

[25] <<From a multi-level governance perspective, the Slovak political and administrative system nowadays consists of three layers: (i) a national layer of a central government and parliament, (ii) a regional layer comprising eight regional self-governing regions represented by their own directly elected councils and governors as individual executive heads, and (iii) a local layer consisting of almost 2,900 municipalities represented by their own directly elected mayors and councils. The two largest municipalities – the capital city Bratislava, and Košice, considered to be the centre of Eastern Slovakia, also have a fourth layer consisting of sub-local units called city parts/districts (each of whom has its own self-government status and is also represented by a directly elected mayor and council). Another specific layer consists of the 72 districts which represent deconcentrated state administration and are directly subordinate to the central government.>> J. NEMEC, B. M. MERICKOVA , M. MURRAY SVIDRONOVA, D. KLIMOVSKY, *Creation as a Social Innovation in Delivery of Public Services at Local Government Level: The Slovak Experience* in E. SCHOBURGH - R. RYAN, *Handbook of Research on Sub-National Governance and Development*, Chapter 13, cit., page 285

[26] Basically, the Constitution of the Slovak Republic in Art. 64 stipulates (2nd sentence), that "Territorial self-government consists of a municipality and a higher territorial unit." So, there is no provision that local self-government is performed at the city district level. The two exceptions of Bratislava and Košice aren't set up by the Constitution, but by the laws.

When this principle ([27]) is applied to specific competences, the comparison between the Law and the Statute of Bratislava reveals a preponderant role of the districts with respect to the city and even to the Higher Territorial Unit. The result is a considerable fragmentation of the political decision-making process, which must depend on the agreement of multiple institutional actors co-existing on the same territory, for example in some crucial functions such as social affairs or road maintenance. Other examples of the same problem occur also with the application of the third paragraph of Article 1-bis, with regard to the dual residence of citizens. And similarly, Art. 2 of the Law is a source of problems for application of the decentralised competences since it configures ownership of tangible assets shared between cities and districts.

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Art. 6 bis of the Law identifies the tasks of the city and contains a reference to the proper functions and role of a European capital ([28]), but the following articles 7(a) and 7(b) equally entitle the city districts to carry out administrative functions that refer to the same subjects. An example of this can be seen in the following table:

Subject	City functions	District functions
Social and economic development	a) to ensure the economic, cultural and social development of Bratislava, in particular the creation and approval of the economic and social development plan and city-wide concepts and development programmes	a) to ensure the economic and social development of the district in relation to the city-wide development
Urban planning	b) to ensure the procurement of spatial planning documents and the procurement and approval of Bratislava's spatial planning documentation	b) to ensure spatial planning functions, urban development of the districts and regulation of functions in the territory in relation to the city-wide spatial planning regulations
Environment	f) to ensure the collection, removal and disposal of municipal waste and small construction waste and to organise the sorting of waste from households and establishments m) administer the fees for the collection and removal of municipal waste and small construction waste	c) to take care of the protection and creation of the environment within the district
Road maintenance	d) to ensure the maintenance, fluidity and accessibility of local 1st and 2nd class roads and public spaces not entrusted to the administration of the municipal district	e) ensure the maintenance, fluidity and accessibility of local 3rd and 4th class roads and public spaces

[27] The "dilemma" about the legal personality at the local level in countries which belonged to the Warsaw Pact seems to originate in the old practice of the Soviet Union to grant legal personality to each local institution. See about this traditional practice CoE, Centre of Expertise for Good Governance, *Legal Personality at Local Level - 11 Country Cases Summary*, CEGG/PAD(2021)13

[28] See Recommendation 452 (2021) in Congress of Local and Regional Authorities of the Council of Europe, 2021, *The status of capital cities*, CG-FORUM(2021)01-04final, 12 February 2021 updating Congress Recommendation 219 (2007) on the same topic

Cultural policies	k) to take care of the protection of cultural monuments, memorials and other landmarks of Bratislava,	d) ensure the protection of sites of local importance, which are of historical, cultural or social importance to the district
Sport	n) to create the conditions for the development of sport and to carry out tasks in the field of physical culture,	h) to create the conditions for children to play sport, to develop sport for all and to fulfil the tasks in the field
Education	o) be the founder of primary art schools and leisure centres.	g) be the founder of primary schools and educational establishments and perform the function of a school authority

On this ground, it must be noted that establishing special legal safeguards and asymmetric competences is vital for protecting the autonomy of capital cities, given their extraordinary political role *vis-à-vis* the national government. In the case of Bratislava, this type of safeguard must also be achieved with respect to its own municipal districts, which in fact exercise a great power of influence and possible interdiction in the political choices of the capital.

Therefore, the specific advice in this field would be to <<divide the responsibilities between the capital city, the city districts and the higher level of government, in line with the subsidiarity principle enshrined in Article 4.3 of the Charter>> ([29]).

Art. 7-b of the Law therefore establishes the statutory power of Bratislava, which is very broad both in relation to the regulation of administrative functions delegated by the State, and in the definition of institutional relations between the city and the districts. In this regard, the reference to the Statute is of particular concern as regards the second paragraph of the article, letters b) and c), both referring to the determination of the relationships and areas of self-government of the city in relation to those of the districts. These areas should be governed directly by law and not by statute, in order to enhance the institutional role of the city and not to make its profile subject to internal political negotiation at the two levels.

Art. 7-c establishes a principle of cooperation between the city and the districts in the field of vehicle removal, which does not appear to be exhaustive of all the areas of competence for which cooperation would be necessary. Moreover, the contractual basis for the cooperation implies an improper parity of role between the two institutions, on which we have already said.

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The above considerations are also relevant in the examination of the Statute of Bratislava, which takes the place of the law in defining the institutional relations between the capital and its city districts.

In addition to the general rules contained in the first two parts of the Statute, it is worth mentioning Art. 28, which replicates the list of the fundamental functions of the city, in relation to Art. 29, which instead contains the list of district competences.

The city competences in the field of social services are also noted in Article 31, mostly focused on planning, information and statistics, cooperation with the State and other municipalities, execution of the decisions taken by the court, management of services in the low-threshold day centres, or finally the provision of benefits and economic subsidies. This plurality of very heterogeneous administrative tasks provides a not perfectly understandable picture of the role of the city in social affairs.

[29] CoE Congress of Local and Regional Authorities Recommendation 452 (2021) on the status of capital cities cit. See also Congress of Local and Regional Authorities Recommendation 219 (2007) cit, para 10.

In Article 32, the competences of city districts in social affairs appear to be described in a more linear and consistent way; and the administrative activities and procedures with the necessary homogeneity. Nonetheless, the description of the activities of the districts contains numerous overlapping tasks with respect to those of the city and does not contribute overall to offering the necessary clarity to the interpreter of the rules.

These aporias are especially valid in the activities related to providing information to citizens, the instigation of specific forms of protection and - finally - in institutional relations with the judicial authority which, it seems, completely inappropriately placed at the district level rather than at the city level.

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The lack of a legal system capable of fostering cooperation that's very visible in the Law on Bratislava, can equally be referred to Slovak local authorities in general, as an effect induced by the unfinished decentralisation process mentioned at the beginning of this document.

This general problem, therefore, has produced a fundamentally "blocked" institutional system ([30]), in which it is difficult to move administrative competences between the levels of government through the law, and where there are no legally guaranteed instruments for agreement that can take place. A general deficiency that, in fact, can create major slowdowns in governance processes and institutional innovation.

Nevertheless, it must be mentioned that Slovakia has an interdepartmental consultation system (the so-called "*medzirezortné pripomienkové konanie*"), within which there are representatives of local and regional governments who must be consulted by the State. This process is transparent and takes place online: it has very specific and clear rules and is something worth mentioning in the EU context as well.

Apart from this consultation process, what appears to be lacking is a system of *concertation* (not only *consultation*) which is aimed at the conclusion of intergovernmental executive agreements with supplementary effectiveness, either in terms of so-called "horizontal" relations - between municipalities – or in terms of the so-called "vertical" relations between the national government and the regional and local authorities ([31]).

The general Law on local self-government, in fact, provides (Article 20) for the first aspect, an organic but not compulsory system of inter-municipal cooperation, while (Article 5) for the second, it regulates only the substitutive power of the State in case of inaction of the municipalities in the exercise of the delegated functions.

If this is true for all Slovak local authorities, it is even more so for the capital Bratislava, which has a generic regulatory framework for cooperation, provided by Article 4 of its special Law, only for its horizontal dimension ([32]).

In this regard, it should be noted that the so-called "dual" or "mixed" model of public administration, which is in force in Slovakia, provides that the original competencies are exercised by local authorities and that it is not possible to force them to develop vertical cooperation with the State on these functions. But a modern vision of vertical cooperation must not be thought of solely as a defensive function of local

[30] As it was said, << the current Slovak territorial system consists of three somehow watertight compartments of layers of government: the central administration, the regions and the local level. The regions and local self-government have both contacts with the central one, but they do not have relations between each other. There is no institutional, operative or financial relation between the regional and the local governments. The co-operation and communication between these two levels of government is very weak>>. *Regional democracy in the Slovak Republic*, Explanatory Memorandum, 2005 https://rm.coe.int/regional-democracy-in-the-slovak-republic/168071a6a0

[31] CoE Congress of Local and Regional Authorities - CG-FORUM(2021)01-04, cit., para 35

[32] It must be reminded that Article 4(6) of the Charter stipulates that <<local authorities shall be consulted, insofar as possible, in due time and in appropriate way in the planning and decision-making processes for all matters which concern them directly>>. About the importance of vertical cooperation especially in metropolitan areas (bilateral cooperation between the State and the capital city), see further CG-FORUM(2021)01-04, cit., para 37-38.

authorities. Rather, it must be understood as an expansive type tool with an integrative and explanatory scope related to the concrete functioning of administrative competencies in a specific reality such as Bratislava.

Vice versa, it is noted that a stable system of cooperation is present (at the legislative level) exclusively in the relations between the city of Bratislava and its city districts: a relationship that could be defined conceptually as vertical, since it acts between authorities with different spatial jurisdiction, as well as horizontal, since it acts on complementary and overlapping functions (or parts of them) that are exercised by authorities to which the law also attributes the status of municipality.

In the light of these findings, it is considered advisable to introduce, through the review of the special Law on Bratislava, a stable and structured system of mandatory cooperation, first of all in its vertical dimension.

This result would be achievable by establishing a "permanent conference" between the State and the city of Bratislava (extendable to the metropolitan city of Košice) which is authorised to conclude binding agreements for the management of administrative functions and their financing.

The horizontal cooperation topic applied to the case of Bratislava must be examined in two directions: inwards - that is in the relationship between the city and its districts and, outwards - that is in the relationship between the city and neighbouring municipalities.

In both directions, the shortcomings recorded in the legislative system dedicated to the capital suggest the need for a decisive intervention by the Slovak legislator in adhering to the European standards of metropolitan governance, as recalled by the official documents of the European Commission and of the European Council.

As already stated, the lack of effective powers of the city authority to the advantage of those of the districts significantly affects the potential of Bratislava in attracting public investments and in the speed of decision-making processes in the metropolitan area.

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Starting from the inward cooperation, it is known that the metropolitan administration requires the involvement and participation of all levels of local government. How and with what tools is this involvement guaranteed in the Slovak institutional relations system?

In the regulatory framework of Bratislava, Art. 8 of the Statute provides for the expression of an opinion by the city district council before the adoption by the city council of any resolution of local interest. This rule, which is only partially mitigated by the provision of a silent-assent of 30 days, appears very cumbersome and capable of slowing down the decision-making process of the city beyond the necessary - also in consideration of the fact that the city council is adequately guaranteed the representation of city districts.

Similarly, it must be referred to the provisions of Art. 19 of the Statute, which requires a qualified majority of 3/5 for the adoption of a resolution by the city council, in the event that the local council votes against it.

Finally, the Council of Mayors ([33]) should be mentioned, which in the opinion of the experts consulted during this project is currently limited to merely consultative functions, thus representing more the expression of political power than an institutional place of co-decision.

This latter body, however, represents the actual embryo of a form of horizontal cooperation between the city and its districts, which could be strengthened in powers and extended to the mayors of the municipalities of the hinterland of Bratislava, in order to assume a truly metropolitan dimension.

In this sense, the Law (not the Statute) of Bratislava should describe the tasks of that body, its effective powers to reach binding agreements and how it works on a democratic basis.

[33] This body is provided for by par. 13 of the general Law 377/1990.

This solution, if adopted, would be particularly in line with the indications provided by the Congress of Local and Regional Authorities of the CoE in 2016 ([34]), and aimed at the creation of suitable governance structures of metropolitan areas in the specific form of inter-municipal authorities / bodies capable of managing horizontal cooperation and regulation, in particular in the areas of economic development, urban planning, transport and management of the integrated water and waste cycle.

In these contexts, responsibilities and costs of the participation of the various municipalities can be shared through institutional agreements, which can also involve other subjects external to the cooperation, such as regional authorities or state ministries for the aspects of their respective competence.

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As for the outward cooperation, the effects of the imbalance of powers in favour of the city districts are also manifested in the relationship with the municipalities of the hinterland of Bratislava.

The experts have in fact underlined that the limited influence of the capital towards the municipalities of the region is very problematic, due to the frequent divergence of political orientation in the management of some administrative functions that are complementary to each other, such as urban planning and transport or the planning of size of schools. Furthermore, the lack of clarity in the eyes of citizens and the poor visibility of single authorities competent for the management of the material heritage of the city (and public spaces) make the role of the capital even more complex and weak ([35]).

Specific management problems are also recorded in the technical maintenance services, which in some cases are managed independently by the districts, or for example in the responsibility for building permits which are always politically sensitive.

All the aspects mentioned represent concrete and daily problems for the capital and suggest a profound rethinking of the legal structure of the city districts, in connection with a renewed political impulse towards the strengthening of the powers of the city as a whole.

Whatever the outcome of this rethinking may be, it is in any case necessary that the political direction and the correlated executive powers must pass from the districts to the city, following a model of City-Region widely tested in Central Europe.

In the configuration of Bratislava, it is advisable to choose the "Capital city-Region" model in which it is possible to strengthen the city authority both for regional cooperation and, above all, towards its own intra-municipal districts.

In this sense (and going into a perspective of constitutional reform), the city of Bratislava should be provided with the powers of the respective region, through a process of merging the two institutions. This process of reform should not necessarily involve the municipalities belonging to the current region, which could - in their political and institutional autonomy - decide whether to join the city-region of Bratislava or join the neighbouring region.

Although politically very sensitive, this option must not seem risky, since it corresponds to a real need to make the public functions of the Slovak capital more efficient. However, it must deal with the lack of legislation for that kind of local self-government structure: as mentioned above, the Constitution of the Slovak Republic provides that the territorial self-government can be performed only at municipal and regional level. So, first of all, the Parliament should adopt a reform to allow the metropolitan administrative structure. It seems rational that both self-government levels should participate in that – by

[34] Congress of Local and Regional Authorities of the Council of Europe, 2016: *Good governance in metropolitan areas*. Governance Committee, CG31(2016)17. 21 October 2016. See also the European Charter of Local Self-Government, article 6 and 10.

[35] As it is in the Italian model, provided by the Civil Code, <<legal personality confers a precise status, i.e. ownership of rights and protection by the legal system. The constitutive elements of the municipality (*comune*) are: (i) population (all the people who reside permanently on the municipal territory); (ii) territory (the space within which the municipality exercises its jurisdiction and is at the same time the subject of law); (iii) assets (all the economic activities of the *comune*, i.e. the goods and rights it possesses)>>. See further CEGG/PAD(2021)13, *Legal Personality at Local Level - 11 Country Cases Summary*, cit.

giving up some exclusive powers/competencies and joining together for better service delivery (three levels in the case of Bratislava and Košice).

The Slovak experience in municipal cooperation shows that there is significant lack of willingness to cooperate, although it is rational and helpful for the inhabitants. A possible approach how to reach this goal is to set it in the law, with minimum volume of obligatory competencies provided by the metropolitan structure. First cluster of such competencies should be e.g. in the area of transportation, planning, regional development, tourism, security. The next important part of this legislative solution must be the relevant mechanism of creating such a structure, whether by separate elections or derived from municipal / regional election as known presently. The legitimacy of such a structure must be assured. A derivation from general local / regional elections seems to be the easier and cheaper model, not very complicated yet functional.

And last, but not least, is the issue of financing such a metropolitan model that must be solved by the legislation. As this model shouldn´t be more expensive as the present is, there must be a system of costs / revenues sharing among participants, providing functioning system of public services delivery in specified areas. There wouldn´t be any other additional resources for this kind of functioning of the public administration, therefore also the system of budgetary rules would have to be improved / supplemented.

In conclusion to this part of the analysis, a model of functional City-Region or "metropolitan administration" appears to be a relevant recommendation for the Slovak public system, suitable both for Bratislava and Košice. Renewing the cooperation mechanisms in any horizontal and vertical directions can reduce the fragmentation and overlapping which have been described in this part.

As regards the city districts, it is not (necessarily) a question of suppressing them, because they may be given some identity-related functions: the fundamental question is how to intervene on managerial and regulatory competences, identifying in the city the suitable subject for their execution.

5. Considerations on the specific regulatory framework for the metropolitan city of Košice: relationship with city districts and differentiated decentralisation. The difficult role of the Council of Mayors.

The analysis of the administrative situation of the city of Košice is in many ways comparable to that already presented in the part dedicated to Bratislava, albeit with some differences.

Košice is the second largest city in the Slovak Republic, with a population of just over 238,000 inhabitants, and is located near the national border towards Poland, Hungary and Ukraine. The information gathered by the project experts and the representatives of the city, highlighted how in the recent decades the city has undergone significant enlargements through the annexation of several municipalities, but settling at the same time with a very differentiated decentralisation structure in terms of the number of inhabitants of its current 22 city districts ([36]).

Its geographical position moreover induces high commuting, with consequent burdening effects on public services that the city is obliged to provide also to the residents of the neighbouring municipalities. Critical issues in this regard have been noted in the sectors of health, social and cultural activities, and in the education field. Of course, the high commuting involves, as always in the phenomena of "city usage", significant inequalities in the allocation of financial resources.

The urban development of the city therefore seems to be a critical and determining factor for the reform hypotheses in the focus of this document ([37]). The high "path dependence", all the historical drawbacks and the distribution of powers, or the demands of different city constituencies, whether large or small in population, often encounter the fundamental problem of whether to give priority to some development for the benefit of the whole city, or for the benefit of a single constituency.

Although the debate on the subject is politically very sensitive, it must be highlighted that, with the same territorial size and demographic consistency, the peculiar administrative configuration of Košice and its division into districts provides strong political representativeness to very small communities of citizens, in spite of much more significant territorial realities that do not have this form of internal decentralisation ([38]).

And even comparing the two administratively homogeneous realities (Bratislava and Košice), it must be noted that equal representativeness is given to city districts of 700 inhabitants (in Košice) and 120.000 residents, as happens in Petržalka (in Bratislava). Both are city districts ([39]) but when we look at the maintenance of roads, sidewalks, green areas, and similar matters that are under the competence of the city, and then at those under the competence of city districts, we can already see some disproportions.

Indeed, the relationship between a city and a regional constituency is obvious, so much that the city of Košice has a reach far beyond its borders; on the other hand, this is not something that other Slovak cities

[36] See widely, S. CSACHOVA, *Inner boundary reform in Košice – the most fragmented city in Slovakia*, 2016, ISSN 1820-7138

[37] A. GORKA, D. KUSNIROVA, Socialist Industrialization as a Factor of Urban Development and a Difficult Legacy in Košice, 2021. https://doi.org/10.31577/archandurb.2021.55.1-2.3

[38] The experts stressed that the possible reforms of the governance of Košice can be related to the urban agglomeration of Prešov, which can represent a model of reference, although it is smaller than that of Košice. Prešov is governed only by the Municipal Establishment Act, which has so-called city district committees that bring together active residents and local councillors for the given constituency, who can give proposals to the city what they would like to improve in the district and in the given neighbourhood. In this way, the local structure can enter in, or propose, changes within the large unit, such as the city of Prešov.

[39] Petržalka - if it were independent - it would be the third-largest city in Slovakia

would not encounter as well, albeit on a smaller scale, because when we look at Žilina, Banská Bystrica, or Prešov, they also deal with these effects.

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From the legislative framework point of view, the Law 401/1990 on Košice is completely lacking a taxonomy of the administrative competences / functions of the city, which must therefore be borrowed from the general Law on local self-government, in conjunction with the city statute. The lack of taxonomy induces an order of considerable complexity in the analysis of the functions of the city, which due to the double reference to other legal sources has a very weak structure of competences, compared to the potential role of a normal metropolitan city.

The rule on which to draw attention primarily is Art. 18, which in paragraph 1 c) provides for the statutory competence in the distribution of self-government powers between the city and the districts. As we can see, entrusting even basic regulation (a typical task of the law) to the statutory source appears to be a dangerous vulnerability to maintaining a central role of the city and a first, substantial, element of institutional weakening.

Secondly, Art. 18 paragraph 1 f) matters because - as we have already seen in the case of Bratislava – it delegates the Statute with the discipline concerning the nature and extent of the assets of the city that can be entrusted to the city districts. This provision also leads to numerous problems since, according to the testimonies collected by the group of experts, the division of property ownership between the city and the districts is a source of managerial diseconomies. Also, Art. 20 of the Law is relevant as in its para. 1 it provides for the concurrence of the city and the city districts to carry out tasks in collaboration with the state authorities.

This excess of intervention in institutional relations does not allow the city to play a primary role necessary in the exercise of the functions delegated by the State.

Finally, it is worth mentioning Art. 25, which does not allow the transfer of the administrative powers of the State to the city districts. This provision certainly represents a barrier to further decentralisation which, as has been said, appears generally too broad in scope but has the limit of being restricted only to the powers delegated by the State.

As will be seen below, it seems possible that in any case the provision has very limited effects since the whole Title II of the Statute describes the division of self-government competences between the city and the districts with a clear imbalance in favour of the latter.

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Despite these evident problems of vagueness in the legislative framework, the principal authority of local governance at the city level is the city of Košice, not the city districts. This is what the Law sets and the local government powers can be implemented by city districts insofar as they are transferred to them, thus the city districts have the position of a municipality.

In theory, the city could formally amend the Statute and assign all local government powers to itself, so that the city districts would only serve some local governance functions together with the newly assigned powers of the state administration. However the city of Košice cannot influence the attribution of competences driven directly by the State and its special regulations; here we can see a difference with Bratislava, which can also transfer the delegated competencies of the state administration to a certain extent, from the city to its city districts.

Art. 17 of Košice's Statute introduces the provisions on self-government with the power of the city to transfer certain administrative functions to all districts, or only to some. The following articles contain a large list of specific competences of the districts relating to the fields of commerce, waste management, cleaning of public areas, cemetery administration, road maintenance, public lighting management, culture and sport, social welfare services.

This singular provision ([40]) configures inside the city a differentiated level of decentralisation that does not appear consistent with the identification of the city as the basic administrative unit of sovereignty, although the second para. of Art. 17 contains a precise and consistent application of the principle of vertical subsidiarity, where it proclaims the competence of the city for the districts where this decentralisation is not operating.

The following Art. 28 strengthens the power of intervention of the city in a subsidiary way also towards the districts where decentralisation is operating, but only for some specific social protection functions and in consideration of causes that the norm itself identifies, including the insufficiency or inadequacy of the services provided by the districts.

Above all formal prescriptions, the reality of their execution is even more complicated. For example, the streets where the local public transport service is not operational are given to the management of small city districts for what concerns maintenance, renovation, complete reconstruction. In theory, they also provide street illumination, which is a historical thing due to the fact that they were once independent municipalities. This illumination is not connected with the rest of the city, though. It means that they can regulate it by themselves, according to the city Statute too. But despite a formal autonomy in regulation and management of this illumination, the city still makes contributions for its modernisation and electricity bills annually, but only on those streets through which the urban public transport runs. The principle that comes out of this example is that Košice doesn't have a uniform model and standardised rules for execution of administrative functions.

In this regard, it is considered appropriate to point out the need to recover the overall consistency of the rules:

- to affirm the unity and non-division of the city as a basic administrative unit;
- to reduce or completely eliminate the possibility of differentiated attribution of competences to the districts;
- to affirm the subsidiary exercise of the city for decentralised functions, in case of inadequacy of the districts for their correct exercise or for other causes that the Law (better than the Statute) can and must identify without leaving political discretion in determining the effects just mentioned.

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In conclusion and without prejudice to the historical-cultural reasons that govern this choice, it appears inevitable to underline how the introduction of differentiated levels of decentralisation, combined with the autonomy of legal subjectivity of the districts, effectively result in an excessive fragmentation of the public administration, making the homogeneous use of services among citizens extremely precarious, with potential negative consequences regarding the enforceability of related rights. Hence, the jeopardising the effective delivery of local public services seems to be a serious issue for Košice.

On this side, it is necessary to question the actual need to have city districts with a specific administrative constituency, where the interaction between the demand for local public services and the allocation of administrative functions sees a clear prevalence in favour of the city, and not the city districts. Apart from permanent or temporary residence permits and other minor administrative functions, most of the tasks are appropriately allocated to the city, such as the real estate tax, waste management fees, issuing building permits, permits under the Environmental Act, permits under the Road Act functions, social services and management of all primary schools and kindergartens. On the side of functions exercised by the districts, the disparity in allocation makes their use very difficult for all citizens.

While identifying a homogeneous solution for the administrative decentralisation of the city, the range of local public services that can be progressively guaranteed by digital tools must also be taken into account. It is well known that the effectiveness of local governments is measured by how they can respond to citizens' requirements and particularly deal with minor issues.

[40] See, for example, Art. 27 of City Statute on childcare and social services.

The city representatives are very well aware of this, so they have been launching activities since 2019 through the attempted creation of a decentralised front-end desks in the city districts. To this end, the city has proposed to the city districts to create a single office responsible for information, receiving applications and delivering the documents and measures requested by citizens. Unfortunately, the initiative - although it required a basic organisational effort that was not impossible to achieve - was not consistently successful in the city districts.

To get to the effective solution of minor issues, the city representatives moved then towards the different and more comprehensive goal to create a unified digital help-desk for residents, within the "one-stop-shop" logic. A city resident should not be interested in which part of the city it is or whether it is taken care of by the city district, city, or some other local city organisation. Residents should have an effective help desk through which they can submit their requests and receive feedback.

This goal is obviously connected with the IT infrastructure and, indeed, with the creation of new specialised jobs for the remote relationship with citizens that currently appears to be an underway process.

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In a previous part of this document, we already examined the role of the Council of Mayors as one possible solution to the cooperation issues that the two metropolitan cities are facing in their relationship with the city districts. In Košice, the Council of Mayors is a relatively new authority, working as an advisory board without decision-making or executive powers. In certain matters, it used the right to veto in order to seek the City Council to renegotiate budget resolutions.

On the other hand, as already mentioned for Bratislava, it seems a challenging that mayors are often members of the city council, as it is easier to be elected if a person is running for both the mayor and a member of the city council. In these frequent cases, some problems arise where a representative of the city council is also a member of the council of mayors.

The accumulation of elective mandates that is generated in the three political bodies (district, city council, council of mayors) exponentially increases the risk of conflicts of interest and weakens the strategic vision of the city, which becomes subservient to the interests of individual territorial constituencies. Moreover, it affects the capability for the Council of Mayors to carry out real decision-making powers also towards the city council, in consideration of the possibility of influencing the voting majorities.

As already stated for Bratislava, to solve this general issue there should be an introduction of more stringent limitations for dual mandates.

Conclusions and recommendations

- *The introduction of the European principle of subsidiarity in the Slovak Constitution (Art. 68-71), would allow the enabling of a uniform and homogeneous criterion for the distribution of administrative powers among the national, regional and local levels of government, in line with the recommendations of the other Policy advice prepared in the framework of the CoE-EU Joint Project "Delivering Good Governance in Slovakia". Its current deficiency entails indeterminacy of the authority responsible for the provision of public services at the local level, and many overlaps in the multi-level governance, especially for the capital city of Bratislava and for the metropolitan city of Košice.*
- *In the general Law 369/1990 the area of fundamental functions of local governments appears weak as well as incomplete, since its exact definition depends on the contextual action of three sources of law: the general law itself, one or more special laws, and municipal statutes and regulations. The issue is amply demonstrated in the special Laws on Bratislava (n. 377/1990) and Košice (n. 401/1990), in the relationship with their respective statutes and regulations. For the two cities, a better specification of the catalogue of fundamental functions and a simplification of the system of sources would be desirable, which could favour the instrument of the law - endowed with greater strength and resistance - in place of the statutes and autonomous regulations of the individual municipalities.*
- *In the two cities of Bratislava and Košice, the possible coexistence of a plurality of elective mandates for the same person, and the lack of a specific incompatibility to simultaneously perform the role of councillor (or mayor) of a municipal district and a member of the city council can produce an inefficient set-up, which is a source of slowdown - if not veto - in the decisions that the city assembly can take, within the scope of its own competences. The Slovak legislator should introduce more stringent limitations on the possibility of running for the office of councillor in the two levels of district and city government. Similarly, incompatibility between the roles of district-mayor and city-councillor should be foreseen.*
- *The double level of city/city district administrative management in Bratislava and Košice does not appear to have a specific constitutional foundation, even if it is strongly rooted in the legislative framework, let alone the historical and political tradition of the country. The double legitimacy coexisting on the same territory creates some relevant overlaps, which greatly affect the actual potential of Bratislava in expressing a political direction and administrative powers appropriate to its role as national capital. As for Košice, the possibility for the city to transfer certain powers of self-government and administrative functions to all districts - or only to some - introduces a differentiated level of decentralisation inside the city that does not appear consistent with the city itself as the basic administrative unit of sovereignty, according to the Slovak Constitution.*
- *Establishing special legal safeguards and asymmetric competences is vital for protecting the autonomy of Bratislava, given its extraordinary political role vis-à-vis the national government. This type of safeguard must be achieved with respect to its own municipal districts, which in fact exercise a great power of influence and possible interdiction in the political choices of the capital. The Council of Mayors represents the embryo of a horizontal cooperation between the city and its districts, which could be strengthened in powers by the law to be more decisive and efficient.*
- *The limited influence towards the municipalities of the region makes the role of the capital even more complex and weak. Given the spatial configuration of Bratislava, it is considered advisable to start a process of constitutional reform inspired by the "Capital city-region" European model, in which it could be possible to strengthen the city authority for metropolitan (regional) cooperation. In this sense, the city of Bratislava should be provided also with the powers of the region, through a process of merging the two institutions.*
- *The legislative framework for Bratislava and Košice should introduce a stable system of mandatory vertical cooperation within the model of "permanent conferences" between the State and the two cities. The permanent conference should manage the decision-making processes in all matters falling within the competence of the local authorities, with the main purpose of achieving executive and intergovernmental understanding and agreement, for the better management of delegated administrative functions and their financing.*