Responsibility of Local Self-Government for Infringement of the European Union Competition and Public Procurement Rules and Its Enforcement in Slovakia*

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Summary: The paper will analyse the position of local self-government (i.e. municipalities and self-governing regions) in the framework of enforcement of internal market, its impact and effectiveness. The analysis of the legal framework of Slovakia has shown, that there are three ways in which the central government can compel local self-governmental authorities to follow rules of internal marker, including competition rules: (1) state aid rules, (2) public procurement rules and (3) "other" rules of competition. Legal analysis is complemented by the analysis of quantitative data regarding sanction policies in respective areas.

Keywords: EU law, EU competition law, state aid, public procurement, local self-government, sanctions

1. Introduction

Local self-government, within the constitutional structure of a state, represents the outcome of historic development and at the same time expression of values and ideas on governance in a certain territory.[1] There are several advantages of decentralized governance, e.g. (1) democratic participation, representation and accountability, (2) public politics and effectiveness of governance and (3) representation and satisfaction of territorial, ethnic, cultural and language differences[2]. The decentralization charges local authorities with powers to organize social, cultural as well as economic life within their territories. Supported by the theory

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1 TRELLOVÁ, L. Ústavnoprávne aspekty územnej samosprávy. Bratislava: Wolters Kluwer SR, 2018, p. 8.

2 TRELLOVÁ, L. *Ústavnoprávne aspekty územnej samosprávy*, p. 9.

of public choice[3], it is natural, that local representatives will tent to favour local citizens and local economy. Being invested with substantial independence local self-governmental bodies shall still follow principles of solidarity to other regions and to international community as well.

Therefore, activities of local authorities can also have impact on the functioning of internal market of the European Union (hereinafter "EU") created and protected by Art. 28 et seq. of the Treaty on the Functioning of the European Union (hereinafter "TFEU").

EU law has created some measures un order to compel sub-state governmental entities to align with rules of internal market, some of them were left to the Member States within their procedural autonomy.

The analysis of the legal framework of Slovakia has shown, that there are three ways in which the central government can compel local self-governmental authorities to follow rules of internal marker, including competition rules: (1) state aid rules, (2) public procurement rules and (3) "other" rules of competition. Thus, the paper will analyse the position of local self-government (i.e. municipalities and self-governing regions) in the framework of enforcement of internal market, its impact and effectiveness.

2. Independence and responsibility of local self-government vis-à-vis responsibility of Member States for violation of EU law

The well-functioning internal market is inevitably a cornerstone of European integration. The existence of a free internal market shall be still guarded, although, currently other EU policies and issues have pushed back questions linked to this policy, e.g. migration, Brexit, rule of law.

The Member States, or their authorities, are inevitably templated to favour local production, e.g. via market regulation and regulation of business-to-business practices[4] or via buy-national-like campaigns[5]. However, there is no equa-

[3] WECK-HANNEMANN, H. Globalization as a Challenge for Public Choice Theory. In: *Public Choice* [online], 2001, Vol 106, No 1/2. Available at: http://www.jstor.org/stable/30026185; WALLER, S. W. Public Choice Theory and the International Harmonization of Antitrust Law. In: *The Antitrust Bulletin* [online]. 2003, Vol 48, No 2. DOI: 10.1177/0003603X0304800206.

[4] E.g. BLAŽO, O., KOVÁČIKOVÁ, H., PATAKYOVÁ, M.T. Slovakia. In: PISZCZ, A., JASSER, A. eds. *Legislation Covering Business-to-business Unfair Trading Practices in the Food Supply Chain in Central and Eastern European Countries*. Warszawa: University of Warsaw, 2019, p. 246–250.

[5] E.g. GORMLEY, L.W. Private Parties and the Free Movement of Goods: Responsible, Irresponsible, or a Lack of Principles ? In: *Fordham International Law Journal*. 2015, Vol 38, No 4, p. 997 et seq.

tion between the notion "Member State" and "central government of a Member State". On the one hand, the EU shall respect internal organization of the Member States [Art. 4(2) TEU] and thus accept the active or control role of sub-state entities of the Member States. The sub-state entities, such as constituent parts of federations, lands, regions, autonomous regions, provinces, districts, counties, municipalities have different levels of autonomy and powers and can be directly or indirectly involved in representing the Member State during the law-making process on the EU level[6]. Moreover, there can be also constitutional duty to take into account positions of local governments[7].

On the other hand, all bodies of a Member State shall properly implement EU law, notwithstanding their position in the system of separation of powers (legislative, administrative, judicial[8]), or level of government or self-government: "An individual may therefore plead that provision before the national courts and, (…) all organs of the administration, including decentralized authorities such as municipalities, are obliged to apply it."[9] The Court of Justice confirmed not only the principle of precedence of EU law vis-à-vis regional and municipal law and decisions[10] but also included local self-governing bodies into the framework of duty of loyalty of Member States to properly implement EU law: "It is settled case-law that the Member States' obligation arising from a directive to achieve the result prescribed by the directive and their duty (…) to take all appropriate measures, whether general or particular, to ensure fulfilment of that obligation is binding on all the authorities of the Member States (…), including decentralised authorities such as municipalities."[11] Such a principle applies to all levels of self-government – from municipalities[12], districts to regions and entities of federation[13].

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6 E.g. SKOUTARIS, N. The Role of Sub-State Entities in the EU Decision-Making Processes: A Comparative Constitutional Law Approach. In: *Federalism in the European Union* [online]. 2014, No 1, p. 212. DOI: 10.5040/9781472566164.ch-009 et seq.

7 BERTOLINO, C. State accountability for violations of EU law by Regions: infringement proceedings and the right of recourse. In: *Perspectives on Federalism*. 2013, Vol 5, No 2, p. 158.

8 DAVIES, A. State liability for judicial decisions in European Union and international law. In: *International and Comparative Law Quarterly* [online]. 2012, Vol 61, No 3, p. E.g. DOI: 10.1017/S0020589312000218; VARGA, Z. The Application of the Köbler Doctrine by Member State Courts. In: *ELTE Law Journal*. 2016, No 2

9 C-103/88, *Fratelli Costanzo/Comune di Milano*, EU:C:1989:256, par. 32.

10 E.g. C-103/88, *Fratelli Costanzo/Comune di Milano*, EU:C:1989:256; C-224/97, *Ciola*, ECLI:EU:C:1999:212, C-91/92, *Faccini Dori/Recreb*, ECLI:EU:C:1994:292.

11 C- 438/99, *Jiménez Melgar*, ECLI:EU:C:2001:509, par. 32.

12 E.g. Ayuntamiento de Los Barrios in C- 438/99, *Jiménez Melgar*, ECLI:EU:C:2001:509, Commune di Milano in C-103/88, *Fratelli Costanzo/Comune di Milano*, EU:C:1989:256.

13 E.g. Land Vorarlberg in C-224/97, *Ciola*, ECLI:EU:C:1999:212 and C-91/92, *Faccini Dori/Recreb*, ECLI:EU:C:1994:292.

Hence, the Commission launched several successful infringement procedures for violation of EU law by local self-governmental authorities caused by their activities, omission or delay.[14]

While in the case of local authorities that are branches of a central government, the influence of the central government on the actions of local self-governmental units is usually restricted. The concepts of independence and responsibility are enshrined in Art. 3(1) of the European Charter of Local Self-Government: "Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population." Three pillars of such a concept are apparent: (1) right to regulate and manage, (2) limitation by law only and (3) following interest of local population. Moreover, the local self-government can be seen as a "fourth power" within the state since citizens, as a source of power in a democratic state, do not exhaust their constitutional rights via legislative, executive and judicial power but also via *pouvoir municipal*[15]. The study of Baker, Van De Valle and Skelcher shows that the desire for strengthening powers and activities of local self-governments varies across Europe, from more than two thirds in Czechia and Malta in favour of local self-government to approximately one half of respondents against strengthening self-government in Hungary.[16] Indeed, in countries in which the presence of activities and responsibilities of local government is significant enough, there the support for more powers to the self-government may be lower.[17] Notwithstanding differences to approaches to local self-government across the EU, different range of competence and existing constitutional and legal framework (or non-existing[18]), local governments can undoubtedly shape the level of competition and economic activities within their territory and thus influence the functioning of the internal market of the EU itself.

Taking into account the independence and constitutional rights of the local self-government, the central government faces the legal challenge: on the one hand it is responsible for actions of local self-government vis-à-vis the EU and on

[14] E.g. C-33/90, *Commission v. Italy*, ECLI:EU:C:1991:476; C-211/91, *Commission v. Belgium*, ECLI:EU:C:1992:526; C-503/06, *Commission v. Italy*, ECLI:EU:C:2008:279, C-516/07, *Commission v. Spain*, ECLI:EU:C:2009:291; C-573/08, *Commission v. Italy*, ECLI:EU:C:2010:428, C-427/17, *Commission v. Ireland*, ECLI:EU:C:2019:269.

[15] TRELLOVÁ, *Ústavnoprávne aspekty územnej samosprávy*. p. 14–16. and literature cited therein.

[16] BAKER, K., VAN DE WALLE, S., SKELCHER, C. Citizen support for increasing the responsibilities of local government in European countries: A comparative analysis. In: *Lex Localis* [online]. 2011, Vol 9, No 1, p. 9. DOI: 10.4335/9.1.1-21(2011).

[17] BAKER, VAN DE WALLE, SKELCHER, Citizen support for increasing the responsibilities of local government in European countries: A comparative analysis, p. 11–13.

[18] RØISELAND, A. Local self-government or local co-governance? In: *Lex Localis* [online]. 2010, Vol 8, No 1. DOI: 10.4335/8.2.133-145(2010).

the other hand, it can have limited scope of legal instruments to instruct or shape decisions (or omissions) of self-government because of respecting its statutory (or even constitutional) autonomy.

3. Aids granted by local self-government as aids granted by "States"

Art. 107(1) TFEU prohibits any anti-competitive "(…) aid granted by a Member State or through State resources in any form whatsoever (…)" as contrary to internal market. The ECJ explained that the term "aid granted by states" covers aid provided not only by central governments but also aid provided by local self-government: "The fact that the aid programme was adopted by a state in a federation or by a regional authority and not by the federal or central power does not prevent the application of [Art. 107(1) of the TFEU] if the relevant conditions are satisfied. In referring to 'any aid granted by a member state or through state resources in any form whatsoever' [Art. 107(1) of the TFEU] is directed at all aid financed from public resources. It follows that aid granted by regional and local bodies of the member states, whatever their status and description, must be scrutinized to determine whether it complies with [Art. 107 of the TFEU] [references updated]"[19].

The aim of the prohibition of aid granted by states[20] is clearly stipulated in provision of Art. 107(1) TFEU itself: avoid any act of public authority that "distorts or threatens to distort competition […], in so far as it affects trade between Member States." Although it employs similar notions and concepts to those used in competition rules for undertakings (Art. 101 and 102 TFEU) (e.g. distortion of competition), the concept is completely different from philosophical and economic point of view. Art. 101 and 102 TFEU are stemming from the ordoliberal idea of necessity to protect competition against accumulation of private economic power through an appropriate institutional order[21]. Art. 107 TFEU is

[19] C-248/84 Germany v. Comission, ECLI:EU:C:1987:437, par. 17.

[20] For more details regarding definitions and concepts of state aid see e.g. KUBERA, P. State Aid rules and public financing of infrastructure . The Case of Autostrada. In: *TalTech Journal of European Studies* [online]. 2020, Vol 10, No 1. DOI: 10.1515/bjes-2020-0005; PÄRN-LEE, E. The Origins of Supranational State Aid Legislations : What Policymakers Must Know and Adhere to . The Case of Estonia. In: *TalTech Journal of European Studies* [online]. 2020, Vol 10, No 1. DOI: 10.1515/bjes-2020-0007; CORTESE, B. State Aid Law as a passepartout: Shouldn't We Stop Taking the Effect on Trade for Granted? In: *Bratislava Law Review* [online]. 2020, Vol 4, No 1. DOI: 10.46282/blr.2020.4.1.194.

[21] DOLD, M., KRIEGER, T. Competition or Conflict? Beyond Traditional Ordoliberalism. In: HIEN, J., JOERGES, C. eds. *Ordoliberalism, Law and the Rule of Economics*. Oxford and Portland: Hart Publishing, 2017, p. 246.

linked back to Art. 28 et seq. TFEU and Art. 110 TFEU, i.e. rules barring the Member States to segmentize internal market by their actions, particularly of protectionist or discriminatory nature. On the other hand, Art. 107 TFEU does not deal with depriving undertakings and other persons of their individual economic freedoms as such, but "merely" with cases where such rights are being distorted. Thus, it can be sometimes hard to identify a "victim" of infringement of Art. 107 TFEU. Notwithstanding the question of economic effectiveness and efficacy, consumers can benefit from such an infringement of competition rules owing to possible lower prices, amount of provided goods or services. However, it is more "redistribution" of benefits, rather than "manna from heaven" because funding of the aid is inevitably created by tax incomes (directly or indirectly).

In the case of violation of Art. 107(1) TFEU, the responsibility for violation of EU law is attributed to a Member State itself. This attributability for EU law infringements is apparent from Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (hereinafter "SA Rules on Procedure")[22]:

a) notification duty of the Member State concerned (Art. 2 SA Rules on Procedure),
b) request for information addressed to the Member State (Art. 5 SA Rules on Procedure),
c) decision to close formal investigation addressed to the Member State concerned (Art. 9 and 31 SA Rules on Procedure),
d) injunctions to suspend or provisionally recover aid addressed to the Member State concerned (Art. 13 and 31 SA Rules on Procedure),
e) decision on allegedly unlawful state aid to the Member State concerned (Art. 15 and 31 SA Rules on Procedure),
f) decision requiring the Member State to take all necessary measures to recover the unlawful aid from the beneficiary (Art. 16 and 31 SA Rules on Procedure),

Since the Member States are the only addressees of the decision, they undoubtedly have standing in cases of actions for annulment under Art. 263 TFEU. Although beneficiaries of state aid as well as local authorities granting aid concerned are not addressees of the Commission's decision, they can challenge it at General Court under Art 263(4) TFEU.[23]

Hence regulation of responsibility of sub-state bodies regarding infringement of state aid rules is completely within the ambit of rules enacted by the Member State.

[22] OJ L 248, 24.9.2015, p. 9–29.

[23] E.g. T-461/12 *Hansestadt Lübeck v Commission*, ECLI:EU:T:2014:758, T-778/16 *Ireland e.a. v Commission*, ECLI:EU:T:338.

In Slovakia, this framework is created by the Act on State Aid[24] which gave powers of national coordinator of state aid to the Antimonopoly Office of the Slovak Republic (hereinafter "AMO").[25] The AMO is not empowered to impose fines for violation of Art 107 TFEU itself, merely for violation of procedural rules enshrined in the Act on State Aid. Fines under § 15(1) and (2) of the Act on State Aid do not even cover possible violation of duty to recover unlawful state aid under § 10 of the Act on State. The power to enforce recovery decision of the Commission by other body of central state administration and the right to withhold income from recovery in own budget of such body is the only "sanction" for the provider of a state aid that fails to enforce recovery decision. The AMO may impose a fine up to 35 000 euro to provider that fails to notify state aid to the AMO prior to granting such aid. However, imposition of the fine is not mandatory due to § 15(1) of the Act on State Aid[26].The system od fines and sanctions is not the only vehicle for the central government to ensure proper application of EU state aid rules. "Soft structures", i.e. training, consultations and educational activities are well-spread and well-established across EU (as well as EEA) Member States[27] and also the AMO strongly relies on this policy.[28] To sum up, the public limb of enforcement of state aid rules is mainly oriented at prevention of granting aid contrary to EU law and in the case of granting unlawful aid to recover it. One way or another, there is no substantial threat to public budgets. Moreover, the public body is not obliged (in fact it is not allowed) to recover unlawful state aid if it is contrary to general principles of EU law,[29] particularly when legitimate expectations on legality of aid were created.[30]

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[24] Act No. 358/2015 Coll. on regulation of certain relations in the field of state aid and aid de minimis and on the amendment certain laws (act on state aid).

[25] The AMO does not apparently consider this competence important since it does not even mention it on the English version of its webpage www.antimon.gov.sk (last visited 11 September 2020).

[26] The AMO is not eager to impose such fines, see PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY. *VÝROČNÁ SPRÁVA/ANNUAL REPORT 2018* [online]. 2019 [acessed 14.02.2020]. Available at: https://www.antimon.gov.sk/data/att/2044.pdf; PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY. *VÝROČNÁ SPRÁVA/ANNUAL REPORT 2016* [online]. Bratislava, 2017 [acessed 01.02.2020]. Available at: https://www.antimon.gov.sk/data/att/1899.pdf; PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY. *Správa o činnosti Protimonopolného úradu Slovenskej republiky za rok 2017* [online]. 2018 [acessed 22.02.2020]. Available at: https://rokovania.gov.sk/RVL/Material/22972/1

[27] BERGER, C. How to Ensure State Aid Compliance at Local and Regional Level? In: *European State Aid Law Quarterly* [online]. 2017, Vol 16, No 3, p. 467–478. DOI: 10.21552/estal/2017/3/16.

[28] E.g. PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY, VÝROČNÁ SPRÁVA/ANNUAL REPORT 2018 [online] [acessed 14.02.2020]. Available at: https://www.antimon.gov.sk/data/att/2044.pdf

[29] Art. 16(1) of SA Rules of Procedure.

[30] For details regarding test of legitimate expectations see RITZENHOFF, L. Legitimate Expectations in Reasonable Delay – Regional aid to Hotels in Sardegna. In: *European State Aid Law*

Compared to "public" enforcement of state aid rules, "private" enforcement of those rules can raise substantial claims form undertakings. In this context, Art. 108 (3) in fine TFEU and direct effect thereof are the focal point of such claims: "The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision." The ECJ confirmed powers of the courts of the Member State to enforce Art. 108(3) TFEU not only in cases of recovery decision of the European Commission, but also in "stand alone" cases: "The last sentence of Article 88(3) EC is based on the preservative purpose of ensuring that an incompatible aid will never be implemented. That purpose is achieved first, provisionally, by means of the prohibition which it lays down, and, later, definitively, by means of the Commission's final decision, which, if negative, precludes for the future the implementation of the notified aid plan. The intention of the prohibition thus effected is therefore that compatible aid may alone be implemented. In order to achieve that purpose, the implementation of planned aid is to be deferred until the doubt as to its compatibility is resolved by the Commission's final decision."[31] The European Commission is quite optimistic regarding effectiveness and scope of private enforcement of state aid rules covering five groups of remedies: (a) preventing the payment of unlawful aid; (b) recovery of unlawful aid (regardless of compatibility); (c) recovery of illegality interest; (d) damages for competitors and other third parties; and (e) interim measures against unlawful aid[32]. Although Member States are addressees of Art. 108(3) TFEU, providers of aid, including authorities of local self-government can directly face claims arising from violation of said provision. On the other hand, application of Art. 108(3) TFEU by national courts is limited by procedural rules of respective Member States.[33]

Quarterly. 2014, Vol 13, No 4, p. 733.; PINTO, C. S. The "Narrow" Meaning of the Legitimate Expectations Principle in State Aid Law Versus the Foreign Investor ' s Legitimate Expectations. In: *European State Aid Law Quarterly*. 2016, Vol 2, No 2.

31 C-199/06, *CELF I*, ECLI:EU:C:2008:7.9.

32 Commission notice on the enforcement of State aid law by national courts (OJ C 85, 9.4.2009, p. 1–22), par. 26.

33 PASTOR-MERCHANTE, F. The Protection of Competitors under State Aid Law. In: *European State Aid Law Quarterly* [online]. 2016, Vol 15, No 4. DOI: 10.21552/estal/2016/4/5; KÖHLER, M. Private Enforcement of State Aid Law – Problems of Guaranteeing EU Rights by means of National (Procedural) Law. In: *European State Aid Law Quarterly* [online]. 2017, Vol 11, No 2. DOI: 10.21552/estal/2012/2/279; MARTIN-EHLERS, A. Private Enforcement of State Aid Law in Germany. In: *European State Aid Law Quarterly* [online]. 2017, Vol 10, No 4. DOI: 10.21552/estal/2011/4/255; GYÁRFAŠ, J. Hic Sunt Leones: Private Enforcement of State Aid Law in Slovakia. In: *European State Aid Law Quarterly* [online]. 2017, Vol 16, No 3. DOI: 10.21552/estal/2017/3/14; JOUVE, D. Recovering Unlawful and Incompatible Aids by National Courts: CELF and Scott/Kimberly Clark Cases. In: *European State Aid Law Quarterly* [online]. 2017, Vol 16, No 3. DOI: 10.21552/estal/2017/3/6; ORDÓÑEZ-SOLÍS, D. Waiting for National

Limits of private enforcement of EU state aid rules can be documented by practice of Slovak judiciary (even though it is rather exuberant to call one judgment practice). The case *Trnava v City Aréna*[34] is interesting because of different aspects. First, it was genuinely stand-alone case without existence of previous positive or negative decision of the Commission. Secondly, the provider of alleged aid, the City of Trnava, itself raised an action against the beneficiary of alleged unlawful aid. Thirdly, the City of Trnava sought annulment of contracts on purchase and lease of real estate. The District Court of Trnava dismissed the action on the grounds that even in the case of unlawfulness of an aid there is no provision of EU law requiring nullity of the contract and the provider of an unlawful aid is obliged to recover (merely) those benefits granted to beneficiary that represent state aid within the meaning Art. 107(1) TFEU. Therefore, the court made a distinction between private enforcement of antitrust rules (nullity of agreements restricting competition is directly enshrined in Art. 101 TFEU) and private enforcement of state aid rules. Since the case was dealt by the first-instance court and it was not challenged by appeal, the court did not decide to ask for preliminary ruling.

4. Public procurement

EU public procurement rules are based on "flexible" harmonization provision of Art. 114 TFEU. EU public procurement regime is not a separate policy of the EU but it is linked to freedoms of internal market, as it is explained by the Public Procurement Directive[35] : "The award of public contracts by or on behalf of Member States' authorities has to comply with the principles of the Treaty on the Functioning of the European Union (TFEU), and in particular the free movement of goods, freedom of establishment and the freedom to provide services, as well

Judges in Infringement Proceedings on State Aid. In: *European State Aid Law Quarterly* [online]. 2017, Vol 16, No 3. DOI: 10.21552/estal/2017/3/7; GOYDER, J., DONS, M. Damages Claims Based on State Aid Law Infringements. In: *European State Aid Law Quarterly* [online]. 2017, Vol 16, No 3. DOI: 10.21552/estal/2017/3/10; HONORÉ, M., JENSEN, N. E. Damages in State Aid Cases. In: *European State Aid Law Quarterly* [online]. 2017, Vol 10, No 2. DOI: 10.21552/estal/2011/2/227; STEHLÍK, V. Interim measures before national courts in the context of EU and Czech law. In: *International and Comparative Law Review* [online]. 2018, Vol 12, No 2. DOI: 10.1515/iclr-2016-0084.

[34] Judgment of 14 September 2018, *Mesto Trnava v City-Arena, a.s., City-Arena PLUS, a.s.*, case No 39C/30/2017, ECLI:SK:2117221806.

[35] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65–242) (hereinafter „Public Procurement Directive").

as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that those principles are given practical effect and public procurement is opened up to competition."[36] Thus, the EU established by secondary law (directives) the regime of public procurement under an understanding that without such supplementary regime the rules of primary law and general principles regarding internal market are inadequate in order to secure their "practical effect".[37] The harmonization of public procurement rules within the EU is only one of the aspects of national public procurement regimes. Effective spending, securing public interest, good governance and transparency are also the interest of national lawmaker. The third group of interests joins the EU and national pane – interest of individual undertakings and competitors. Providers of goods and services seek their right for fair treatment, equal opportunities on market as inherent elements of market-oriented economy. Also the case law of the CJ EU moved towards boosting increased enforceability of individual rights of candidates and tenderers.[38] Putting together all abovementioned concepts, along with other goals, the national public procurement rules based on EU harmonization directives is aimed to secure individual rights of undertakings stemming from the establishing of internal market of the EU.

Despite substantial rules on public procurement being profoundly harmonized, procedural framework established to secure enforcement of public procurement rules remained within the scope of procedural autonomy[39] of the Member States under framework harmonization by the Remedies Directive.[40]

Compared to current agenda within antitrust regime and harmonization thereof[41], harmonized system of enforcement of public procurement rules was not

[36] Recital 1 of the Public Procurement Directive.

[37] WEATHERILL, S. EU Law on Public Procurement: Internal Market Law Made Better. In: BOGOJEVIC, S., GROUSSOT, X., HETTNE, J. eds. *Discretion in EU Public Procurement Law*. Oxford: Hart Publishing, 2019, p. 41.

[38] SANCHEZ-GRAELLS, A., KONINCK, C. de. *Shaping EU Public Procurement Law: A Critical Analysis of the CJEU Case Law 2015–2017*. Alphen aan den Rijn: Wolters Kluwer, 2018, p. 47.

[39] GITNER, C., SIMOVART, M. A. The Remedies Directive 89/665 etc. In: STEINICKE, M., VESTERDORF, P. L. eds. *EU Public Procurement Law*. Baden-Baden: C.H. BECK; Hart Publishing; Nomos Verlagsgesellschaft, 2017, p. 1387.

[40] Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30.12.1989, p. 33–35).

[41] KOVÁČIKOVÁ, H. Directive (EU) 2019/1 as Another Brick into Empowerment of Slovak Market Regulator. In: *Yearbook of Antitrust and Regulatory Studies* [online]. 2019, Vol 12, No 20. DOI: 10.7172/1689-9024.YARS.2019.12.20.6; PATAKYOVÁ, M. T. Independence of National Competition Authorities-Problem Solved by Directive 2019/1? Example of the Antimonopoly

established and the Member States developed their own approaches to compel contracting authorities to prudently follow public procurement rules.

The legislative framework in Slovakia relies on the system of administrative fines that the Office for Public Procurement (hereinafter "OPP") can impose on contracting authorities, including central governmental bodies, as well as local self-government.

In order to analyse the impact of fines imposed due to infringement of the public procurement rules on the budgets of contracting authorities, set of 371 decisions of the OPP from the timespan from 2011 to 2020 in which the OPP imposed a fine have been exmined.[42] During that period, three different acts on public procurement were in force in Slovakia with different provisions on fines: Act No 523/2003 Coll. (§ 123), Act No 25/2006 Coll. (§149) and Act No 343/2015 Coll. (§ 182). Moreover, all these acts were amended multiple times and respective types of violations were described differently and re-grouped in different ways. For the purpose of analysis, 38 types of infringements of public procurement law were created by the author of this paper in order to make it possible to sort and compare levels of imposed fines during evaluated period and these violations were labelled from "A" type of infringement to "ZM" type of infringement.[43] The types of the most serious violations of public procurement

Office of the Slovak Republic. In: *Yearbook of Antitrust and Regulatory Studies* [online]. 2019, Vol 12, No 20. DOI: 10.7172/1689-9024.YARS.2019.12.20.5; SZOT, P. The Polish Leniency Programme and the Implementation of the ECN+ Directive Leniency-related Standards in Poland. In: *Yearbook of Antitrust and Regulatory Studies* [online]. 2019, Vol 20, No 12. DOI: 10.7172/1689-9024.YARS.2019.12.20.1; CSERES, K. The Implementation of the ECN+ Directive in Hungary and Lessons Beyond. In: *SSRN Electronic Journal* [online]. 2019, Vol 2019, No November. DOI: 10.2139/ssrn.3489903; VALENTINA, G. D. Competition Law Enforcement in Italy after the ECN+ Directive : the Difficult Balance between Effectiveness and Over-enforcement. In: *Yearbook of Antitrust and Regulatory Studies* [online]. 2019, Vol 12, No 20. DOI: 10.7172/1689-9024.YARS.2019.12.20.3; SURBLYTĖ-NAMAVIČIENĖ, G. Implementing the ECN+ Directive in Lithuania : Towards an Over-enforcement of Competition Law ? In: *Yearbook of Antitrust and Regulatory Studies* [online]. 2019, Vol 12, No 20. DOI: 10.7172/1689-9024.YARS.2019.12.20.7; REA, M. New Scenarios of the Right of Defence Following Directive 1 / 2019 by. In: *Yearbook of Antitrust and Regulatory Studies* [online]. 2019, Vol 12, No 20. DOI: 10.7172/1689-9024.YARS.2019.12.20.4.

[42] Database created by the author on a basis of decisions published on the OPP's webpage https://uvo.gov.sk (last visited 10 September 2020)

[43] A: CA bypassed application of PPA or direct award without fulfilling conditions for such award, B: CA deviated from criteria for award, C: CA divided of contract in order to avoid PPA, D: violation of publication duties for direct award, E: violation of conditions and procedures of conclusion of contract, F: violation of rules regarding amendments to contracts, G: violation of duties regarding publication of conditions of participation or award criteria, H: contract awarded notwithstanding tender documentation or bid, I: direct award of framework agreement or excessive time framework of FA, J: contract with a person outside list of ultimate beneficents, K: violation of notification duties before conclusion of contract, L: delay of fulfilment of duties or

rules were present in all three acts on public procurement (type A, B, and C) during the whole period and the infringement is punished by a fine equal to 5 % of the value of contract. Some types of serious infringements appeared later, e.g. conclusion of contract with a person that is not registered in the register of ultimate beneficiaries. There has been also a group of types of infringements that have not been fined during researched period.[44] The "A" type of infringement, i.e. avoiding public procurement procedures or direct award without fulfilling conditions, appeared as the most frequent violation of public procurement rules – it was detected in 112 cases and total amount of fines reaches 6,788 mil. euro, i.e. 30 % of all cases and 71 % of the value of all cases. The second most common infringement is the "V" type of infringement – violation of the principle of transparency, equal treatment or non-discrimination[45].

Comprehensive data are shown in Tables 1, 2 and 3. For the purpose of the analyses, all branches as well as enterprises established by the central government

avoiding to conclude contract, M: CA did not fulfil duty ordered by the decision of the OPP, N: CA did not fulfil duty to maintain proper documentation and/or to provide such documentation to the office or AMO, O: violation of prohibition to request certain legal form of consortia, P: CA did not properly evaluate fulfilment of criteria for participation or bids, Q: CA did not notify outcome of award selection to all parties, R: CA used prohibited criteria for award, S: CA did not exclude "double" bids, T: CA did not follow procedures for awarding contract under limits of directive, U: non-employment of accredited person, V: violation of principle of transparency , equal treatment or non-discrimination, W: clean vehicles procurement, X: CA violated the duty to confirm reference, Y: violation of publication duties in the profile of contracting authority, Z: violation regarding expected value of contract, ZA: violation of duties regarding conflict of interests, ZB: violation of reporting and publication duties, ZC: violation of some duties regarding subcontractors, ZD: violation of duties regarding documentation of tender, ZE: violation of duties regarding returning of deposit and interests thereof, ZF:CA did not protect competition in the case of consultations, ZG: CA failed to provide information of the OPP, ZH: CA failed to provide expected amount or price(tenders out of the scope of the Public Procurement Directive), ZI: CA failed to announce results (tenders out of the scope of the Public Procurement Directive), ZK: CA failed to publish data on concessions in profile (tenders out of the scope of the Public Procurement Directive), ZL: CA failed to notify direct award, ZM:CA failed to publish low-price awards.

[44] Type I, O, R, S, U, Z, ZB, ZC, ZE, ZF, ZG, ZH, ZI, ZJ, ZL, ZM.

[45] MOUKIOU, C.P. The Principles of Transparency and Anti-Bribery in Public Procurement: A Slow Engagement with the Letter and Spirit of the EU Public Procurement Directives. In: *European Procurement & Public Private Partnership Law Review* [online]. 2016, Vol 11, No 2. Available at: https://www.jstor.org/stable/10.2307/26643496; ABAZI, V., TAUSCHINSKY, E. Reasons of Control and Trust: Grounding the Public Need for Transparency in the European Union. In: *Utrecht Law Review* [online]. 2015, Vol 11, No 2. DOI: 10.18352/ulr.319; BOVIS, C. H. The effects of the principles of transparency and accountability on public procurement regulation. In: *Legal Challenges in EU Administrative Law: Towards an Integrated Administration* [online]. 2009, Vol 3, No 1. DOI: 10.4337/9781848449206.00019; KOVÁČIKOVÁ, H. Conflict of interest: Case of the public procurement in Slovakia. In: *Strani pravni zivot* [online]. 2019, Vol 71, No 4. DOI: 10.5937/spz63-24010.

and local self-government were attributed to central government and local self-government respectively, except hospitals.

Table 1 – Total amount of fines for public procurement infringements

Type	Total (€)	Central government (€)	Universities (€)	Regional self-government (€)	Hospitals (€)	Other (€)
A	7 453 910,33	4 264 198,02	–	2 973 899,99	194 144,47	21 667,85
B	50 928,11	–	–	50 928,11	–	–
C	680 044,46	309 685,00	–	260 365,48	109 993,98	–
D	3 246,00	–	3 246,00	–	–	–
E	16 440,00	–	–	16 440,00	–	–
F	64 335,10	15 000,00	–	33 835,10	–	15 500,00
G	369 302,04	20 000,00	–	349 302,04	–	–
H	84 962,83	–	–	1 000,00	60 605,40	–
J	47 063,62	–	–	35 587,79	–	11 475,83
K	46 944,64	28 000,00	6 500,00	11 944,64	–	500,00
L	120 000,00	60 000,00	–	40 000,00	–	20 000,00
M	117 256,00	76 150,00	900,00	31 659,00	300,00	8 247,00
N	32 550,00	17 050,00	5 000,00	10 500,00	–	–
P	19 950,00	7 500,00	6 000,00	6 450,00	–	–
Q	3 500,00	–	–	2 500,00	1 000,00	–
T	47 200,00	32 700,00	–	14 500,00	–	–
V	340 200,00	143 400,00	600,00	131 750,00	31 850,00	32 600,00
X	1 950,00	500,00	–	1 450,00	–	–
Y	2 000,00	–	1 000,00	–	1 000,00	–
ZA	1 500,00	–	–	1 500,00	–	–
ZD	2 000,00	–	–	1 500,00	–	–
ZK	5 000,00	–	–	5 000,00	–	–
Proc.[46]	2 000,00	–	–	2 000,00	–	–
Total	9 512 283,13	4 974 183,02	23 246,00	3 982 112,15	398 893,85	109 990,68€

Source: decisions of the OPP, author

[46] Procedural infringements.

Table 2 – Distribution of the amount of fines for public procurement infringements among different levels of contracting authority

Type	Central government	Universities	Regional self-government	Hospitals	Other
A	57%	0%	40%	3%	0%
B	0%	0%	100%	0%	0%
C	46%	0%	38%	16%	0%
D	0%	100%	0%	0%	0%
E	0%	0%	100%	0%	0%
F	23%	0%	53%	0%	24%
G	5%	0%	95%	0%	0%
H	0%	0%	1%	71%	0%
J	0%	0%	76%	0%	24%
K	60%	14%	25%	0%	1%
L	50%	0%	33%	0%	17%
M	65%	1%	27%	0%	7%
N	52%	15%	32%	0%	0%
P	38%	30%	32%	0%	0%
Q	0%	0%	71%	29%	0%
T	69%	0%	31%	0%	0%
V	42%	0%	39%	9%	10%
X	26%	0%	74%	0%	0%
Y	0%	50%	0%	50%	0%
ZA	0%	0%	100%	0%	0%
ZD	0%	0%	75%	0%	0%
ZK	0%	0%	100%	0%	0%
Proc.	0%	0%	100%	0%	0%
Total	52,29%	0,24%	41,86%	4,19%	1,16%

Source: decisions of the OPP, author

Table 3 – Number of imposed fines for infringement of competition rules and average level of fine in thousands of euro

Type	Total		Central government		Universities		Regional self--government		Hospitals		Other	
	No	Avg.	No	Avg.	No	Avg.	No	Avg.	No	Avg.	No	Avg.
A	113	66,0	35	121,8	0	-	64	46,5	11	17,6	3	7,2
B	2	25,5	0	-	0	-	2	25,5	0	-	0	-
C	30	22,7	10	31,0	0	-	18	14,5	2	55,0	0	-
D	1	3,2	0	-	1	3,2	0	-	0	-	0	-
E	1	16,4	0	-	0	-	1	16,4	0	-	0	-
F	9	7,1	1	15,0	0	-	6	5,6	0	-	2	7,8
G	7	52,8	2	10,0	0	-	5	69,9	0	-	0	-
H	3	28,3	0	-	0	-	1	1,0	1	60,6	0	-
J	5	9,4	0	-	0	-	3	11,9	0	-	2	5,7
K	7	6,7	1	28,0	1	6,5	4	3,0	0	-	1	0,5
L	3	40,0	1	60,0	0	-	1	40,0	0	-	1	20,0
M	55	2,1	17	4,5	3	0,3	26	1,2	1	0,3	8	1,0
N	9	3,6	4	4,3	1	5,0	4	2,6	0	-	0	-
P	7	2,9	2	3,8	1	6,0	4	1,6	0	-	0	-
Q	3	1,2	0	-	0	-	2	1,3	1	1,0	0	-
T	14	3,4	3	10,9	0	-	11	1,3	0	-	0	-
V	90	3,8	17	8,4	1	0,6	57	2,3	8	4,0	7	4,7
X	3	0,7	1	0,5	0	-	2	0,7	0	-	0	-
Y	2	1,0	0	-	1	1,0	0	-	1	1,0	0	-
ZA	1	1,5	0	-	0	-	1	1,5	0	-	0	-
ZD	2	1,0	0	-	0	-	1	1,5	0	-	0	-
ZK	1	5,0	0	-	0	-	1	5,0	0	-	0	-
por	3	0,7	0	-	0	-	3	0,7	0	-	0	-
Total	371	25,6	94	52,9	9	2,6	217	18,4	25	16,0	24	4,6

Source: decisions of the OPP, author

It is possible to draw the following conclusion from the analysed data. Overall amount of fines imposed to central government bodies is slightly higher and represents 52 % of the whole sum of fines, compared to local self-government

(42 %). On the other hand, there is substantial difference in the number of infringements that were detected – 217 fining decision addressed to local self-government authorities compared to 94 issued to central government. Thus, the average fine imposed to local self-government authorities is lower (18,4 thousand euro) comparing to central governments (25,6 thousand euro). In the category of the most frequent infringement of public procurement rules – type "A" and type "V" infringement, infringement is more frequent in the case of local self-government: 64 compared to to 35 in the type "A" and 57 compared to 17 in the type "B".

It must be noted, that two factors can have impact on data regarding the sums of fines. First, the OPP reduces the level of the fine to 50 % if the contracting authority in issue fully agrees with conclusions of the OPP regarding the infringement and the level of the fine. In the analysed period, overall reduction of fines was 954 920,36 € and 293 096,24 € was the sum of reduction of fines of the central governmental bodies and 635 801,42 € was overall reduction of fines of regional self-government, thus local government benefited more from the reduction of fines. Moreover, the second aspect is the approach of the OPP to local self-government since it considers the fact that the contracting authority is a local self-governmental body as a mitigating factor for the fine.[47]

Administrative fines imposed by the OPP are undoubtedly a severe form of punishment for violation of public procurement rules and one of the forms of compelling contracting authorities, including local self-governmental bodies to obey them. Thus, the central government (via the OPP) has apparatus strong enough to enforce freedoms of internal market that could be deprived by distortions in public procurement. However, there can be also a different view on severity of fines. The financial fines represent financial transfer from the budget of the offender to the budget of an authority imposing the fine. However, the impact on of central government and local self-government is different. Imposing the fines to central governmental bodies is "inhouse" transfer and the fine is becoming an income of the general state budget. Even if the offending central governmental body is obliged to pay a certain part of its budget, it does not prevent the situation that in the case of partial deficit of said institution, some additional financial transfer will be granted to that offender from the general state budget. On the other hand, this situation cannot be expected in the case of offences of local self-government. Therefore, infringements by local self-governmental authorities entailed in transfer of 3 982 112,15 € in favour of the budget of the central government. Due to this fact, citizens of municipality or region may suffer from errors and infringement (notwithstanding whether intentional

[47] E.g. decision of the OPP No 3817-3000/2019 of 28 March 2019, par. 61.

or not) by lower efficacy of spending (i.e. from errors of public procurement itself), by fine imposed by the OPP and also, in some cases, by sanctions related to financial interests of the EU, if the procured goods and services are financed by the EU's budget.[48]

The aim of activities of the OPP shall be to maintain a well-functioning system of public procurement, including freedoms of internal market. Such pure financial transfers may not prevent accidental errors of local self-governmental bodies. Moreover, these bodies may feel unjustly prosecuted by the central government. De lege ferenda, rather than "deadweight" transfer to central government, establishing of trustee can be alternative to the fine. A trustee could be appointed by the OPP and should be paid by party that had violated public procurement rules. The responsibilities of a trustee will cover the review of internal mechanisms that lead to infringement of public procurement rules and they shall "countersign" all activities of the contracting authority within the stipulated period. The model of trustee can be drawn from the concept used in merger regulation or budgetary rules in force in Slovakia.[49]

5. Other competition infringements by local self-government

While in many EU countries the local self-government can be caught by competition rules, other than state aid rules, only in exceptional cases[50], Slovakia (along e.g. Czechia) is one of the jurisdictions that allow the national competition authority to prosecute competition infringements of state and self-governmental authorities.[51] The wording of the substantive provision of competition infringement of public authorities, i.e. not undertakings, is quite broad: "State administration authorities in the exercise of state administration, municipalities and self-governing regions in the exercise of self-governance and transferred state administration, and professional self-governance bodies in the exercise of

[48] KOVÁČIKOVÁ, H. Verejné obstarávanie ako problematický aspekt čerpania štrukturálnych fondov. In: *Právo fondov EÚ v teórii a praxi*. Bratislava: Úrad podpredsedu vlády pre investície a informatizáciu Slovenskej republiky, 2018.

[49] Cf. § 19 of Act No 583/2004 Coll. on Budgetary Rules of Local Self-Government and on Amendmet Other Laws.

[50] REPAS, M. Public Entities as Undertakings under Competition Rules. In: *Lex Localis* [online]. 2010, Vol 8, No 3. DOI: 10.4335/8.3.227-243(2010).

[51] LAPŠANSKÝ, L. Nástroje protiprávnych zásahov orgánov verejnej moci do hospodárskej súťaže. In: VOZÁR, J. ed. *Míľniky súťažného práva*. Bratislava: Ústav štátu a práva, Slovenskej akadémie vied, 2015.

transferred state administration must not provide evident support giving advantage to certain undertakings or otherwise restrict competition".[52] Although § 39 covers violations of state bodies as well, the AMO may impose administrative fines up to 66 000 euro to self-government only.[53]

Due to its general wording, § 39 of the Competition Act can be considered too far reaching. However, it shall be understood as "*lex generalis*" to all other competition infringements of public authorities prosecuted by other law, such as public procurement rules or state aid rules, hence its application is auxiliary. Moreover, this power cannot be understood as a power of the AMO to annul the illicit act of local self-government.[54] The AMO may impose the fine in the case of infringement of order to terminate illegal behaviour, but it does have power to make steps against validity of the measure in issue itself, not even standing in annulment procedure.

From Table 4 it is apparent that in recent 10 years the AMO has almost ceased activities regarding the application of § 39 of the Competition Act[55].

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[52] § 39 of Act No 136/2001 Coll. on Protection of Competition and on Amendments and Supplements to Act of the Slovak National Council No. 347/1990 Coll. on Organisation of Ministries and Other Central Bodies of State Administration of the Slovak Republic as amended as amended (hereinafter „Competition Act").

[53] § 38(2) of the Competition Act.

[54] Judgment of the Regional Court in Bratislava No 2S 11/2007 of 18 September 2009.

[55] Data based on Annual reports of the AMO PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY. *Výročná správa/Annual report 2004* [online]. Bratislava, 2005 [acessed 14.02.2020]. Available at: https://www.antimon.gov.sk/data/att/91.pdf; PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY. *Výročná správa/Annual report 2005* [online]. 2006 [acessed 01.02.2020]. Available at: https://www.antimon.gov.sk/data/att/89.pdf; PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY. *Výročná správa/Annual report 2006* [online]. 2007 [acessed 01.02.2020]. Available at: https://www.antimon.gov.sk/data/att/88.pdf; PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY. *Výročná správa/Annual report 2007* [online]. Bratislava, 2008 [acessed 14.02.2020]. Available at: https://www.antimon.gov.sk/data/att/87.pdf; PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY. *Výročná správa/Annual report 2008* [online]. Bratislava, 2009 [acessed 14.02.2020]. Available at: https://www.antimon.gov.sk/data/att/86.pdf; PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY. *Výročná správa/Annual report 2009* [online]. Bratislava, 2010 [acessed 14.02.2020]. Available at: https://www.antimon.gov.sk/data/att/85.pdf; PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY. *VÝROČNÁ SPRÁVA/ANNUAL REPORT 2010* [online]. Bratislava, 2011 [acessed 01.02.2020]. Available at: https://www.antimon.gov.sk/data/att/84.pdf; PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY. *VÝROČNÁ SPRÁVA/ANNUAL REPORT 2011* [online]. 2012 [acessed 01.02.2020]. Available at: https://www.antimon.gov.sk/data/att/77.pdf; PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY. *VÝROČNÁ SPRÁVA/ANNUAL REPORT 2012* [online]. Bratislava, 2013 [acessed 01.02.2020]. Available at: https://www.antimon.gov.sk/data/att/76.pdf; PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY. *VÝROČNÁ SPRÁVA/ANNUAL REPORT 2013* [online]. Bratislava, 2014 [acessed 01.02.2020]. Available at: https://www.antimon.gov.sk/data/att/1404.pdf; PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY. *VÝROČNÁ SPRÁVA/ANNUAL REPORT 2014* [online].

Table 4 – Activities of the AMO in application of § 39 of the Competition Act

	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004
Complaints	0	11	11	4	4	0	16	n.d.								
Investigations	4	14	12	1	0	6	10	15	n.d.							
Administrative procedures (1 instance)	1	0	0	0	0	1	0	1	4	1	0	5	3	3		
Decisions (1st instance)	1	0	0	0	0	1	0	1	4	1	0	5	3	3		

Source: annual reports of the AMO, author

All three infringement decisions in the recent 10 were addressed to municipalities: the Capital City of Bratislava[56], the Town of Rimavská Sobota[57] and the Town of Šurany[58] and the fines were in the range from 8 000 to 10 000 euro. In Bratislava and Rimavská Sobota cases, the AMO identified cases discriminatory and unfair practices in funerary services. In Šurany case, the AMO fined measures of the municipality blocking undertakings to open new pharmacies in town's territory. Although that practice can be linked to freedoms of internal market, the AMO did not mention this aspect in its decision. Moreover, this competence of the AMO appears to be "Cinderella" of competences of the AMO (without a prospect to become a princess) and its minor importance was also reflected in the prioritization policy of the AMO[59]. Despite not being often employed, § 39 of the

Bratislava, 2015 [acessed 01.02.2020]. Available at: https://www.antimon.gov.sk/data/att/1665.pdf; PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY. *VÝROČNÁ SPRÁVA/ANNUAL REPORT 2015* [online]. Bratislava, 2016 [acessed 01.02.2020]. Available at: https://www.antimon.gov.sk/data/att/1797.pdf; PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY, VÝROČNÁ SPRÁVA/ANNUAL REPORT 2016 [online] [acessed 01.02.2020]. Available at: https://www.antimon.gov.sk/data/att/1899.pdf; PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY, VÝROČNÁ SPRÁVA/ANNUAL REPORT 2018 [online] [acessed 14.02.2020]. Available at: https://www.antimon.gov.sk/data/att/2044.pdf

[56] Decision of the AMO No 2012/39/2/1/023 of 30 May 2012and decision of the Council of the AMO No 2012/39/R/2/050 of 27 December 2012.

[57] Decision of the AMO No 2014/KH/1/1/033 of 29 October 2017.

[58] Decision of the AMO No 2019/OHS/POK/1/32 of 2 October 2019 and decision of the Council of the AMO No 2020/OHS/POK/R/14 of 15 May 2020.

[59] PROTIMONOPOLNÝ ÚRAD SLOVENSKEJ REPUBLIKY. *Prioritisation Policy of the Antimonopoly Office of the Slovak Republic* [online]. Bratislava, 2015, p. 4 [acessed 15.02.2020]. Available at: https://www.antimon.gov.sk/data/att/1636.pdf

Competition Act can effectively serve as fallback competence against restrictions of freedoms on internal market caused by measures of local self-government.

6. Nullity of acts of local self-government

As noted above, neither the AMO nor the OPP may annul a decision or act of the local self-government itself.

If, as a result of erroneous public procurement procedure, a contract is concluded, there is special civil law procedure to declare such a contract null and void. Under § 181(1) of the Act on Public Procurement, every candidate, tenderer or other person that might have an interest in the tender and their rights were frustrated by the contracting authority's procedures may file an action for annulment of the contract in issue. The action for annulment of the contract can be effective measure for enforcement of public procurement rules and thus securing also freedoms of internal market.

The public prosecutor has an important role in safeguarding legality of the acts of local self-government. The prosecutor is, inter alia, empowered by § 22 of the Act on Public Prosecution[60] to protest against administrative acts and issue a notice (warning). The measures of the prosecution can be employed against both, individual decision acts and measures, as well as normative acts of assemblies – "generally binding orders". The public prosecutor may also file an action against generally binding order of municipality or self-governing region claiming its illegality. However, the court is not empowered to encroach self-government and cannot annul the order, it may declare its unlawfulness, only.[61]

7. Conclusions

Although all three competences of central government (state aid rules, public procurement rules and additional powers of the AMO) as well as the competence of public prosecution may be powerful tools for securing internal market of the EU, their enforcement is unbalanced. Comparing to other two policies of the AMO, the OPP has strong powers to enforce public procurement rules as one of the aspects of the EU's internal market. The sum of fines, even justified by serious infringements, cannot escalate forever and there is also time to rethink

[60] Act No 152/2001 Coll. on Public Prosecution as amended.

[61] For more details see VRABKO, M. Preskúmavanie všeobecne záväzných nariadení orgánov územnej samosprávy. In: *Originálna právomoc a prenesený výkon štátnej správy na orgány územnej samosprávy*. Bratislava: Univerzita Komenského v Bratislave, Právnická fakulta, 2019.

the sanction and enforcement apparatus and to also take into consideration alternative forms of sanctions. Sanctions addressed to local self-government cannot represent mere "deadweight" budgetary transfer without any complementary enforcement tools aimed to change the pattern of behaviour of governmental bodies and to avoid future faults.

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