

The Primacy of a Decision Taken in a Local Referendum over a Contract Concluded by Local Self-Government Bodies: the Example of the Czech Republic

Abstract

A well-functioning local self-government provides the greatest scope – given the proximity of its members to their elected representatives and the proximity of both groups to the issues – for the realisation of its members’ political rights and their ideas about the governance of the area. In many ways, local governments are “laboratories” of the representative system and democracy. They provide direct opportunities for the expression of different views and positions. If the legal system of a country allows for direct instruments of democracy at the local level, as in the Czech Republic, then there is room for a direct conflict between the interests and intentions promoted by elected representatives and the ideas of their constituents. The result can be a legal problem as to which decision is legally preferable, especially if the decision of the elected bodies is enshrined in a binding legal contract. This question has arisen repeatedly in the Czech Republic, until the Constitutional Court of the Czech Republic ruled in a series of decisions that there is no such thing as a “perpetual contract” and that a concluded contract cannot be an obstacle to holding a local referendum.

KEYWORDS: Czech Republic; local referendum; priority; contract; local self-government

JAN KUDRNA – PhD in law, ORCID – 0000-0001-8009-4294,
e-mail: jan-kudrna@seznam.cz

1 | Introduction

Local self-government and its bodies may be in several conflicts in their operations as it is obvious in a society with varied interest of its members^[1]. One area of friction is where local self-government meets the state government. This can result in disputes over competence or, under the Czech constitutional system, constitutional complaints by local self-government bodies against unlawful state interference in their competence.

The second area of friction is when there is a dispute between the community of citizens with different interests forming the relevant local self-government unit in a given territory and their representatives. In the Czech Republic, this dispute can manifest itself in a local referendum called from below to express a view on an issue where citizens have doubts about whether their representatives are pursuing their interests.

There is also a third line of fundamental conflict. This is between the principle of being bound by the law, expressed, among other things, by the significant rule *pacta sunt servanda*, and the principle of the supreme will of the inhabitants forming a self-governing community.

The last two questions go to the very essence of local government. The purpose of this article is to outline how the conflicting principles should be reconciled and to answer the following key legal research questions:

1. What is the essence of local self-government?;
2. Who has the final say in local self-government? Is it the inhabitants of the respective local self-government unit or their and by them elected representatives?;
3. Are the residents of the local self-government bound by the contract entered into by their elected representatives?;
4. Does the will of the inhabitants of the local government unit or the principle of *pacta sunt servanda* take precedence?

In order to find answers to the above research questions, the method of analysis of existing legislation as well as the analysis of relevant court decisions will be used. The analysis will be based on the legislation and court decisions of the Czech Republic, which, on the one hand, admits the holding of local referendums and thus opens the space for the conflict between the inhabitants of the local government and their representatives,

¹ Pavel Maršálek, *Právo a společnost* (Praha: Auditorium, 2008).

and, on the other hand, has long struggled with the described problem of conflict between several top legal principles. The essence of the problem goes far beyond the borders of the Czech Republic, and this case may also be inspirational for other countries.

2 | Literature overview

In the Czech Republic, there is quite a rich literature on local self-government issues, whether at the municipal or regional level. This is due to the tradition of territorial self-government, especially municipal self-government,^[2] and also due to the fact that the starting point after the restoration of free and democratic conditions in Czechoslovakia in 1989 was, among other things, the thesis: “The basis of a free state is a free municipality”, which originated in the Austrian provisional law on municipalities from 1849. Examples of this are the numerous commentaries on the Municipalities Act^[3] and lesser number of commentaries on the Self-Governing Regions Act.^[4] There are also commentaries on the Local Referendum Act.^[5] In contrast, there is no commentary on the law on regional referendum. The examples given are only a selection from a wider number

² Professor Pražák, the author of the first Czech textbook on constitutional law, conceived his monumental four-volume work uncharacteristically “from below” in view of the importance of local self-government for the Czech nation within the Austrian monarchy. Thus, he devoted the first part to local, municipal self-government, the second part to the provincial administration, and only the third and fourth parts to the Austrian authorities and the common authorities of the entire dual monarchy. See Jiří Pražák, *Rakouské právo veřejné. Díl první: Rakouské právo ústavní. Část první: Ústava obecní* (Praha: Jednota právnická, 1895); Jan Kudrna, “Kdo byl zakladatelem české konstitucionalistiky?” *Právník*, 11 (2024): 1217-1223; Eliáš Karel, “Nad výročím Jiřího Pražáka” *Právník*, 10-11 (1996): 970-982.

³ Martin Kopecký, Petr Průcha. et al., *Zákon o obcích. Komentář* (Praha: Wolters Kluwer, 2022); Zdeněk Koudelka, Petr Průcha. et al., *Zákon o obcích (obecní zřízení). Komentář* (Praha: Leges, 2019); Lukáš Potěšil, Adam Furek et al. *Zákon o obcích. Komentář* (Praha: C.H. Beck, 2019); Josef Vedral, “Ještě k omezení místního referenda” *Právní zpravodaj*, 10 (2004): 14.

⁴ Rudolf Cogan, *Zákon o krajích. Komentář* (Praha: Wolters Kluwer, 2019).

⁵ Martin Kopecký, *Zákon o místním referendu. Komentář* (Praha: Wolters Kluwer, 2016); Filip Riegel, *Zákon o místním referendu s komentářem a judikaturou* (Praha: Leges, 2011).

of publications. Textbooks on administrative or constitutional law or commentaries on the Constitution of the Czech Republic are not included.

All the available literature has two things in common. The issue to which this article is devoted is only marginally addressed. In principle, this is natural because it is one of the many problematic issues that arise in the field of local self-government. However, it is a key issue for the operation of municipalities in particular, all the more so the more often we encounter the “not in my back yard” approach. This is a worldwide phenomenon, and it is in keeping with human nature. The above-mentioned literature also has in common the fact that it is all published only in the Czech language. Again, this is natural and not surprising in the conditions of a nation state and a specific national arrangement. However, the clash of conflicting opinions between the inhabitants of a municipality and their elected representatives is a matter that goes far beyond the borders of the state, in this case the Czech Republic. The way in which the conflict between the above-mentioned key principles, which influence and shape the existence and activities of local self-government, was resolved may be of interest to foreign readers.

3 | On the nature of local self-government in the Czech Republic

The territorial self-government in the Czech Republic is very extensive, even excessive in the number of self-government units. In the case of municipalities, it is more than 6,250, in the case of self-governing regions it is 14. According to the OECD, the Czech Republic has the most fragmented local self-government and the largest number of municipalities per population in the world.^[6] These facts alone give a large scope for the emergence of various conflicts and thus provide a large amount of study material.

The basic legal definition of local self-government in the Czech Republic is contained in Title 7 of the Constitution of the Czech Republic (hereinafter also referred to as “the Constitution”). In terms of the relationship between

⁶ OECD Economic Surveys: Czech Republic 2020 (Paris: OECD Publishing, 2020). <https://doi.org/10.1787/1b180a5a-en>. [accessed: 2.1.2025].

representatives and the represented, the key provisions are Article 100(1), Article 101(1), Article 102 and Article 104(2). It follows from them that indirect, representative democracy is also a fundamental principle in the case of local self-government.^[7]

Article 100(1) of the Constitution provides that local self-government units are territorial communities of citizens who have the right to self-government.^[8] However, the right to self-government presupposes the existence of self-interest. Where there is no such interest, there can be no self-government. The interest of the citizens of local authorities can be expressed in many ways (e.g. by petition, assembly, expression of opinion by word, press or other means, etc.) and exercised by direct decision or by electing their representatives. The key point is that the starting point of self-government is the opinion of its members.

Article 101(1) of the Constitution establishes as the starting point the governance of a municipality (or a higher local self-government unit in the next paragraph) by a council. According to Article 102(1) of the Constitution, members of councils are elected, by secret ballot, on the basis of universal, equal and direct suffrage. The details of the method of election are laid down in Act No. 491/2001 Coll. on Elections to Municipal Councils and on Amendments to Certain Acts, as amended.

The Constitution of the Czech Republic therefore preferably envisages self-government through indirect democracy.^[9] However, it does not exclude the possibility of using the instruments of direct democracy. These include a local referendum (regulated by Act No. 22/2004 Coll. on Local Referendum and on Amendments to Certain Acts, as amended) or a regional referendum (regulated by Act No. 118/2010 Coll. on Regional Referendum and on Amendments to Certain Acts, as amended).^[10]

At the local level, representative democracy with elements of direct democracy brings about a possible clash between the opinion of the inhabitants of the local self-government unit and the opinion of their representatives. The latter is a given naturally in any similar community that has a vertical organisational structure. Institutionally, however, this conflict is established at municipal and regional level by the fact that a referendum

⁷ Vladimír Sládeček, Vladimír Mikule, Radovan Suchánek, Jindřiška Syllová, *Ústava České republiky. Komentář* (Praha: C.H. Beck, 2016).

⁸ Václav Pavlíček et al., *Ústavní právo a státověda. II. díl. Ústavní právo České republiky* (Praha: Leges, 2011).

⁹ Pavlíček, *Ústavní právo a státověda. II. díl. Ústavní právo České republiky*.

¹⁰ Ibidem.

can be called not only by the will of the representative bodies, i.e. from above, but also by the will of the inhabitants, i.e. from below.^[11]

Such a situation corresponds to Article 100(1) of the Constitution. It also corresponds to the opinion of the Constitutional Court, which in one of its first judgments, file no. Pl. ÚS 5/93 of 19 January 1994, described self-government at the very beginning of its existence as “a democratic organisational form of taking care of the «own affairs» of the groups of citizens concerned, independent and subject to State supervision”. The notion of “the care of groups of citizens for their own affairs” cannot refer only to the local self-government – state relationship. Since it is the right of citizens to self-government, not merely the right of a municipality or region to be protected from state interference, the interest of the citizens of the self-governing unit is the determining factor.^[12]

To conclude this section, we can answer the first research question asking what is the nature of local self-government? In the case of the constitutional system of the Czech Republic, it is a self-governing community of people inhabiting a certain territory, and their will is decisive in all matters where the law gives them the possibility of self-government.^[13] This conclusion is based not only on the interpretation of the Constitution of the Czech Republic, but also on an analysis of the existing case law of the Constitutional Court of the Czech Republic. The latter has explicitly confirmed that the will of the inhabitants is decisive, using, inter alia, the expression “their own affairs.”

Meanwhile, other research questions defined in the introduction remain open. Namely, it is the question whether the decision of the council or the decision taken directly in the referendum takes precedence. In other words, is a referendum permissible in a situation where the council has already decided or acted on the matter? In particular, when the elected representatives have embodied their decision in a civil contract. In order to find the answer, it is necessary to analyse both the legal provisions governing the holding of local referendums and the court decisions dealing with cases of conflict between the above-mentioned overarching legal principles.

¹¹ Kopecký, *Zákon o místním referendu*.

¹² Sládeček, Mikule, Suchánek, Syllová, *Ústava České republiky. Komentář*.

¹³ Ibidem.

4 | On the admissibility and inadmissibility of local and regional referendums

The two laws on referendum at the local self-government level cited above have a very similar structure. A referendum can be held within a local self-government unit under the conditions set out in both Acts, § 8. If the local council in question decides to hold a referendum within the meaning of § 8(1)(a) of both Acts, it is a referendum initiated “from above.” The other option is initiated “from below”.^[14] This is referred to in § 8(1)(b) of both Acts. Important fact is, that the decision taken in the referendum is binding on the organs and representatives of the local self-government.^[15] This case is interesting in terms of possible conflicts of opinion between the represented and the representatives within the local self-government and will therefore be dealt with only in the following.

A referendum from below is held if the preparatory committee makes such a proposal and the relevant council decides to call a referendum.^[16] The proclamation is preceded by an examination of the merits of the proposal submitted by the authority of the local authority concerned.^[17] The purpose of the examination is to determine whether the proposal submitted meets all the formal requirements within the meaning of § 10 and § 11 of the relevant Act.^[18] If all the formal requirements are met, then the proposal for a referendum shall be submitted by the council of the local self-government unit to the council at its next meeting for consideration.^[19]

It is only the local self-government council which, under § 13(1) of the Acts, considers whether a referendum can be held on the proposed question.^[20] If it concludes that it is possible, it shall then call the referendum and set the date and time of the referendum. If it concludes that

¹⁴ Petr Kolman, “Starosta a místní referendum” *Ekologie a parvo*, 5 (2007): 20-22.

¹⁵ Dušan Hendrych, *Správní právo. Obecná část* (Praha: C.H. Beck, 2012).

¹⁶ Kopecký, *Zákon o místním referendu. Komentář*.

¹⁷ Jan Jemelka, “Krajské referendum v právním řádu České republiky” *Veřejná správa*, 39 (2006).

¹⁸ Pavel Mates, “Právní úprava místního referenda” *Právní fórum*, 2 (2007): 55-61.

¹⁹ Riegel, *Zákon o místním referendu s komentářem a judikaturou*.

²⁰ Kopecký, *Zákon o místním referendu. Komentář*; Riegel, *Zákon o místním referendu s komentářem a judikaturou*.

a referendum cannot be held on the proposed question, it shall decide not to call a referendum.

The matters that cannot be decided in a referendum are set out in § 7 of both Acts. It is for the council to decide whether the proposed question is contrary to law. While there is unlikely to be a dispute over the interpretation of some of the provisions of these paragraphs,^[21] the interpretation of others may be problematic and, in some cases, has already been the subject of court decisions. The subject of proceedings directly before the Constitutional Court was the provision of § 7(1)(d) of both Acts, the interpretation of which has been disagreed upon by the various administrative courts.

The question under consideration was therefore whether the proposed question conflicted with the law in specific cases, or when a decision taken in a referendum might conflict with the law. In the cases decided by the Constitutional Court, the question was specifically whether a contract entered into by a municipality with a legal entity was a legal regulation and therefore an obstacle to the holding of a referendum within the meaning of § 7(1)(d) of both Acts, in particular the Local Referendum Act.

The importance of deciding this question is obvious. In the first place, the conclusion of the contract falls within the competence of the local authorities. It is therefore primarily a matter of the will of their representatives whether a contract is concluded and on what terms. This is also where the difference in the view of the interests of the local authority between the representative bodies and the members of the local authority may come into play. If the contract were to be recognised as a legal regulation within the meaning of the laws on local and regional referendums, then this would imply the predominance of the will of the representative bodies over the constitutionally guaranteed right of the members of the self-governing community to self-government and the predominance of indirect democracy at local and regional level over direct democracy. It could also be the case that the contract would be entered into on purpose, knowing that it is "sacrosanct." This would imply the predominance of the representatives over the represented and open the way to the exclusion of members of the self-governing community from participating in its governance. On the other hand, the possibility of deciding in a local referendum on a matter already covered by a contract runs up against the principle of legal certainty or, alternatively, the principle of legitimate expectations.

²¹ Vedral, "Ještě k omezení místního referenda", 14.

Although it was clear in the theory that contractual obligations are not legal provisions within the meaning of Czech law, the courts have applied an expansive interpretation in this sense. It is therefore apparent that the issue is a complex one, given by the clash of different principles and interests, as it is typical of modern society.^[22] The answer to the above three research questions asking about the solution of the relationship between the top legal principles can only be given by the analysis of court decisions and in particular the final decisions of the Constitutional Court of the Czech Republic. This will be done in the following sections of this text.

5 | Three cases of local referendums rejected by local authorities and decided by the Constitutional Court of the Czech Republic

The Constitutional Court has ruled on this matter in three decisions of its Third Chamber. These were decisions under file numbers III ÚS 263/09, III ÚS 873/09 and III ÚS 995/09. All the decisions were issued on 9 February 2012. In view of the identical nature of the issue at stake, the circumstances of the cases differ in their individual aspects, but the reasoning of the Constitutional Court is essentially identical. It is also worth noting that all the constitutional complaints in question were directed against identical decisions of one court, namely the Regional Court in Ostrava. The structure of the following part of the text will also be adapted to this, where the individual cases will be described, but the arguments of the Constitutional Court will be presented in summary form.

²² Maršálek, *Právo a společnost*.

5.1. Circumstances leading to the decision on file. No. III. ÚS 263/09 (case of the town of Zábřeh and Wanemi CZ, a.s.)

The first of the described series of three constitutional complaints decided by the Constitutional Court was directed against the resolution of the Regional Court in Ostrava, file no. 22 Ca 309/2008. The complainant was the preparatory committee for the purposes of holding a local referendum, which sought to hold a local referendum on the issue of the sale of municipal land to WANEMI CZ, a.s.

On the merits of the case, it can be noted that according to the available information, the company was (and apparently still is) interested in building a paper mill and a biomass energy source in the Zábřeh industrial zone.^[23] This plan provoked opposition from at least some residents who feared environmental degradation and supported the intention to decide on the whole matter in a local referendum.

On 9 September 2008, the complainant approached the Zábřeh Municipal Authority with a proposal to hold a local referendum on the above-mentioned matter, which was supported by more than 3,000 residents of Zábřeh. The said proposal was submitted by the City Council to the City Council for consideration, and on 9 October 2008, the latter decided not to call a referendum on the proposed question in accordance with the provisions of § 13(1)(b) of Act No. 22/2004 Coll. on Local Referendum, as amended (“the Act” or “the ALR”).

According to the opinion of the town of Zábřeh, the obstacle to the announcement of the local referendum was the contract on the future contract concluded between the town of Zábřeh and the company WANEMI CZ, a.s. on 12 October 2006, because the vote would violate the provisions of § 7 (d) of the ALR.

This view was also upheld by the Regional Court in Ostrava in the above-quoted order to which the complainant had appealed. It stated that, in its view, “legal regulations” within the meaning of the above-quoted provision of the Act should be understood as “any regulations which form part of the law of the Czech Republic, including private law regulations.” Furthermore,

²³ “Kupní smlouva je platná, rozhodl soud ve sporu Zábřeh versus Wanemi” IDNES.CZ., (2014). http://olomouc.idnes.cz/spor-mezi-zabrehem-a-firmou-wanemi-d50-/olomouc-zpravy.aspx?c=A140819_2092021_olomouc-zpravy_tas. [accessed: 2.1.2025].

the Regional Court stated that if such regulations are based on the principle of *pacta sunt servanda*, then an existing obligation of the municipality cannot be ignored when a local referendum is called and the result of the local referendum cannot lead to a breach of such obligations.

The Regional Court also considered important for its decision whether the municipality could get out of the contractual obligation. In the present case, it concluded that the municipality did not have such an option. On this issue, the town of Zábřeh added that a breach of the contractual obligation would have meant an obligation to pay a contractual penalty of CZK 500 000 and compensation for damages (presumably for costs incurred on a reasonable basis – author’s note) more than the town’s budget.

In its statement to the Constitutional Court, WANEMI CZ, a.s., agreed with the Regional Court’s argumentation and added, *inter alia*, that, in its opinion, “[...] no one denies the citizens of Zábřeh the right to vote in a local referendum, but this right can only be exercised before the municipality enters into a contractual obligation, or even if the contract gives the municipality the option to withdraw or otherwise unilaterally terminate the contractual relationship.” At this point, we are touching on the essence of the whole issue at stake, which is the question of the relationship between the municipal representative bodies and their role and the municipal community itself. In other words, by attempting an analogy that is valid at the national level, it is perhaps possible to say that the question is who is entitled to “sovereignty” in a municipality, and how and under what circumstances it can be exercised. At the same time, it is a question of the responsibility of the representatives towards the represented.

In its constitutional argumentation, the complainant, on the contrary, referred to the violation of Article 100(1) of the Constitution of the Czech Republic, Article 3(2) of the Charter of Local Self-Government, published under No. 181/1999 Coll., and, in general, the right of citizens to participate in the administration of public affairs under Article 21 of the Charter of Fundamental Rights and Freedoms of the Czech Republic, published under No. 2/1993 Coll. (hereinafter referred also to as “the Charter”). According to the complainant, the Regional Court should also have interpreted the provisions of § 7(d) of the ALR in the context of § 50a(3) of Act No. 40/1964 Coll., of the Civil Code, as amended, according to which an obligation under a future contract is extinguished if the circumstances on which the parties based the obligation have changed to such an extent that it cannot be fairly required that the contract be concluded. The Constitutional Court considered the complaint as well-founded and upheld it. Its reasoning is set out below.

As a partial conclusion of this section, we can mention that the Administrative Court in Ostrava in the case of Town of Zábřeh and Wanemi CZ, a.s., on the one hand, recognized the supreme position of the inhabitants of the local government unit. On the other hand, it stated that their “sovereignty” is subordinated to the contract concluded by their elected representatives. In doing so, it explicitly placed the principle of *pacta sunt servanda* first. Implicit in his conclusions is also that, in the ordinary course of business, the will of the elected representatives effectively takes precedence.

5.2. The circumstances leading to the decision on file. III. ÚS 873/09 (case of the municipality of Krasov and VENTUREAL, s.r.o.)

The second of the described series of constitutional complaints was directed against the resolution of the Regional Court in Ostrava, file no. 22 Ca 83/2009-37. The complainant was again the preparatory committee for the purposes of holding a local referendum, which in this case sought a local referendum on the issue of the construction of wind power plants in the municipality of Krasov and its cadastral area.

As far as the merits of the case are concerned, it can be stated from commonly available sources that the company VENTUREAL, s.r.o., was interested in building several wind power plants in the municipality itself and in its cadastral territory.^[24] The complainant and its supporters expressed their interest in the protection of nature and the countryside, as well as in the elimination of the negative impact of wind power plants on people and requested that the inhabitants themselves decide on the advantages and disadvantages of the described construction in a local referendum.

On 12 January 2009, the complainant approached the municipal officials of Krasov with a proposal for a local referendum on the above matter, which was supported by 136 eligible voters. This proposal was discussed at a public meeting of the municipal council held on 2 February 2009. The Municipal Council decided not to call a referendum on the proposed question in accordance with the provisions of § 13(1)(b) of the ALR.

²⁴ “Referendum v Krasově vyřešil až ústavní soud” *DENÍK.CZ.*, (2012). <http://www.denik.cz/moravskoslezsky-kraj/referendum-v-krasove-vyresil-az-ustavni-soud-20120307-1vvj.html>. [accessed: 2.1.2025].

According to the representatives of the Krasov municipality, the main obstacle to the announcement of a local referendum was the agreement on cooperation in the field of wind energy, which the municipality concluded with representatives of the above-mentioned company on 22 January 2008. In the opinion of the representatives of the municipality, if a referendum were held, the provisions of § 7(d) of the ALR would be violated.

At the same time, according to the municipality's representatives, the vote threatened to violate the provisions of § 6 of the ALR, since the proposed issue did not fall within the municipality's autonomous competence, and at the same time it would violate § 7(e) of the ALR, since it was an issue to be decided in a special procedure, namely before the locally competent building authority.

The Regional Court in Ostrava, before which the complainant initiated the proceedings, also agreed with the opinion that the referendum would violate the provisions of § 7(d) of the ALR in its above-quoted resolution. In particular, the Regional Court stated that the announcement of a local referendum on the issue in question could lead to the municipality of Krasov failing to fulfil its private-law obligation towards VENTUREAL, s.r.o., from which the municipality was not in a position to withdraw at the time of the submission of the proposal to hold the referendum. According to the court, the result of the local referendum was contrary to the general legal principle of *pacta sunt servanda*.

In its arguments, the complainant disagreed with these conclusions because, in its view, they would lead to "a fundamental restriction on the right of citizens to participate directly in the administration of public affairs." The complainant pointed out that, if the municipal council were interested in excluding members of the local authority from influence on decision-making, it would always be sufficient to conclude the relevant agreement, thereby eliminating the possibility of a local referendum. The complainant also argued that any referendum result in no way violates the municipality's obligation under the contract because it does not affect the termination or breach of the contract, nor does it obligate the municipal authorities to act unlawfully. In its arguments, the complainant referred to a violation of Article 21(1) of the Charter of Fundamental Rights and Freedoms and Article 3(2) of the Charter of Local Self-Government. VENTUREAL, s.r.o. did not make any comments on the complaint to the Constitutional Court. The Constitutional Court considered the complaint to be well-founded and upheld it. Its reasoning in this case will also be set out below.

Also in the case of the municipality of Krasov and VENTUREAL, s.r.o., the Administrative Court in Ostrava clearly preferred the principle of *pacta sunt servanda* to the possibility of adopting a decision in a local referendum that could interfere with the contract.

6 | The circumstances leading to the decision on file. No. III. ÚS 995/09 (case of the municipality of Bystročice and the Ministry of Transport)

The third of the described constitutional complaints was directed against the order of the Regional Court in Ostrava, file no. 22 Ca 16/2009-25. The complainant was again the preparatory committee for the purposes of holding a local referendum, which in this case sought to hold a local referendum on the issue of the disposition of selected municipal land in the municipality of Bystročice.

As far as the merits of the case are concerned, the circumstances of this case are most complex, as the case described was the third local referendum that failed to be initiated from below in the municipality of Bystročice. However, all the attempts, albeit with fundamentally different proposed questions, were aimed at a single objective, namely, to prevent the construction of the logistics centre. As can be ascertained from commonly available sources, “[...] people fought against the construction of the logistics centre because of concerns about noise and air pollution from traffic associated with the operation of the centre.”^[25] It can be summarised that in this case, too, the dispute was about the building and its operation and concerns about its waste on the quality of life in the village. Therefore, the complainant and its supporters expressed an interest in having the residents themselves decide the pros and cons of the described development in a local referendum.

On 13 October 2008, the complainant approached the representatives of the municipality of Bystročice with a proposal to hold a local referendum

²⁵ “Bystročicím neprávem zamítli referendum kvůli skladu” *DENÍK.CZ.*, (2012). http://olomoucky.denik.cz/zpravy_region/bystrocice-mely-narok-na-referendum-kvuli-skladu.html. [accessed: 2.1.2025].

asking: “Do you agree with the municipality of Bystročice to donate, sell, lease or otherwise alienate or encumber (e.g. by establishing an easement) any of the following land parcels: parcel numbers 46/1, 46/2, 47/2, 52/15, 52/33, 52/34, 207/1, 207/2, 209/2, 2010 in the cadastral territory 616681 Žerůvky, including their parts?”

In this way, the establishment of an easement for the high voltage line for the electronic toll system was to be blocked. In the municipality of Bystročice, the construction of a logistics centre was the subject of several attempts, the earlier initiative asking for a decision on the question: “Do you agree that the municipality of Bystročice should prevent, by all available legal means, the construction of a logistics centre, an access road, or other storage halls or industrial buildings, on all the land between the Žerůvky district, the biocentre and the R 46 expressway?” This question was rejected for lack of clarity.

The municipal council decided on the proposal on 22 December 2008, so it did not approve the proposal. The complainant was informed of this decision by a communication from the mayor on 29 December 2008.

In this case, the obstacle to the referendum was the municipality’s master plan, which provided for the establishment of a water and sewerage system on some of the listed plots. Another obstacle to preventing the announcement of a local referendum was a future contract concluded by the municipality of Bystročice and the Ministry of Transport of the Czech Republic on the establishment of an easement on the land on which the electronic toll collection system was to be located. Also in this case, the holding of a local referendum would have violated the provisions of § 7(d) of the ALR. This argument was only raised by the municipality’s representatives in the proceedings before the Regional Court, but it was a decisive argument for the Regional Court.

The Regional Court in Ostrava also argued in this case that the announcement of a local referendum on the issue in question could lead to the municipality of Bystročice failing to fulfil its private legal obligation towards the Ministry of Transport of the Czech Republic. According to the court, the result of the local referendum could be contrary to the general legal principle of *pacta sunt servanda*.

The complainant disagreed with these conclusions in his arguments. In this case, too, it was argued that the interpretation applied by the Regional Court allowed the municipal authorities to avoid holding a local referendum by concluding “all sorts of future contracts.” At the same time, the complainant pointed out that, at the time of the decision of the

municipal council, no one had been informed that some of the land in question was the subject of a future contract. In his argument, the complainant referred to violations of Articles 21(1), 4(3) and 37(3) of the Charter. The Ministry of Transport of the Czech Republic and the municipality of Bystročice did not comment on the complaint to the Constitutional Court. The Constitutional Court considered the complaint as well-founded and upheld it. Its reasoning in this case will also be set out below.

In the case of the municipality of Bystročice and the Ministry of Transport, the Administrative Court in Ostrava again clearly preferred the principle of *pacta sunt servanda*.

7 | Position of the Constitutional Court on the interpretation and application of § 7(d) of the ALR

Although these were three separate cases, each with its own particularities, the core issue was the same. It consisted in the question whether a contract concluded by the municipality's representatives could be regarded as a legal regulation within the meaning of § 7(d) of the ALR. That is, whether it can become a legal obstacle to holding a local referendum on a matter regulated by such a contract. The reasoning of the Constitutional Court was therefore practically identical in all three cases. And for the same reason it will also be summarised here in one place.

First of all, the Constitutional Court commented on the question whether a local referendum is directly subject to constitutional protection, or to what extent. In this matter, the Constitutional Court did not deviate from its earlier decisions (see the decisions I. ÚS 641/2000 of 25 April 2001, II. ÚS 706/04 of 31 August 2006, and III. ÚS 40/06 of 22 February 2007) and stated that “the local referendum lacks a similar constitutional anchorage as the right to vote” (see the decision III. ÚS 263/09). In the opinion of the Constitutional Court, the constitutional protection resulting from Article 21 of the Charter of Fundamental Rights and Freedoms applies only to the voting in a local referendum that has already been announced, but not to the announcement of the referendum itself.

In the above-mentioned decisions, however, the Constitutional Court has established the existence of a subjective public right to initiate a local referendum, the protection of which may be sought before an administrative court under Article 36 of the Charter of Fundamental Rights and Freedoms.

All of the constitutional complaints were accepted for consideration by the Constitutional Court on the grounds that the decision of the administrative court – in all three cases described by the Regional Court in Ostrava – may have violated the right to judicial protection under Article 36(1) of the Charter of Fundamental Rights and Freedoms. According to the Constitutional Court, this “may be done by the general courts, inter alia, in the form of manifest interpretative excesses of a certain higher degree of seriousness – for example, by interpreting and applying legal provisions which impermissibly affect some of the fundamental rights and freedoms, or which are the expression of a manifest unjustified deviation from the standards of interpretation respected in judicial practice, or which are contrary to generally shared principles of justice.”

It is essential that according to the Constitutional Court, the municipal council may decide to refuse to call a local referendum only if the referendum cannot be held at all under the provisions of § 6 and § 7 of the ALR. In other cases, the declaration of a local referendum gives rise to a legal claim, subject to other legal conditions, which is subject to judicial protection under the provisions of § 9(2)(c) and § 57(1)(b) of the ALR. This brings us to the key issue in this case, which is the interpretation of the provisions of § 7(d) of the ALR.

In this case, the Constitutional Court concluded that the interpretation of § 7(d) of the ALR, as made by the Regional Court in Ostrava, was too extensive. Even to the extent that it contradicts the purpose and meaning of the Local Referendum Act, which is intended to enable the citizens of a municipality to directly manage public affairs falling within its independent competence, as the Constitutional Court has previously stated in its ruling in Case No. The Constitutional Court explicitly states that “through this interpretation, the Act would become in a significant number of cases an almost dead legal norm.”

In its opinion, the Constitutional Court is inclined to the view that although the provisions of Article 21(1) of the Charter of Fundamental Rights and Freedoms cannot be directly applied in the present case, the political nature of the rights in question, which are implemented through the local referendum, cannot be ignored. Here one can also see a connection with Article 100(1) of the Constitution of the Czech Republic, which was

mentioned only by the first complainant in his constitutional complaint, but the Constitutional Court mentioned this provision in the reasoning of all three judgments.

In view of the fact that the local referendum constituted important elements of direct democracy in the Czech Republic, the Constitutional Court referred to Article 22 of the Charter of Fundamental Rights and Freedoms, according to which not only the legal regulation of political rights but also their interpretation allowed and protected the free competition of political forces. In the light of this provision, the Constitutional Court concluded that the provisions of § 7 of the ALR, including point (b), which exhaustively set out the conditions under which a local referendum cannot be held, must be interpreted *restrictively*.

The Constitutional Court justified its opinion on the key issue of the conflict between a decision made in a local referendum and an obligation arising from a private law contract by stating that no consequences for private law relations arise from a decision made in a local referendum, similar to the consequences of casting votes in an election. The local referendum is an instrument by means of which citizens can, *inter alia*, direct the elected representatives of the municipality on specific issues of public interest. They are then obliged to promote the opinion of the citizens of the municipality by the means available to them under the law.

In this context, the Constitutional Court has also indicated that there is no “perpetual contract.” Even in the case of contracts which do not provide for unilateral termination or contain several contractual penalties, the legal order never prohibits a contracting party from seeking to modify or terminate its contractual obligation, which may be done, *inter alia*, by agreement of the contracting parties.

For this reason, neither the principle of *pacta sunt servanda* nor the principle of legal certainty can be argued, since the vote in the local referendum does not itself affect the contract but merely instructs the elected representatives of the municipality on how to approach its existence or its content in the future. And the result may be its modification or termination by mutual agreement of the parties, which does not contradict to the above principles.

Even the existence of possible contractual sanctions does not, in the opinion of the Constitutional Court, an obstacle to the calling of a local referendum. First, for the reason stated above, the result of the vote does not directly affect the existence and performance of the contractual obligation. At the same time, however, the existence of possible contractual sanctions

may be an important argument of the municipality's representation in the pre-referendum campaign, which can be used to persuade citizens not to vote against the contractual obligation.

In conclusion, the Constitutional Court summarized its reasoning by stating that the local referendum is, in its view, "an important democratic safeguard against the failure or unlawful action of elected municipal bodies." In the opinion of the Constitutional Court, a broad interpretation of the provisions of § 7(d) of the ALR, as repeatedly used by the Regional Court in Ostrava, would indeed lead to the fact that the municipality's representative bodies could at any time eliminate the right of the municipality's citizens to express their views on almost any issue of public interest by entering into a contract with a third party and, with reference to a contractual obligation, refuse to call a referendum.

The final conclusion of the Constitutional Court is that the exclusion from the holding of a local referendum under § 7(d) of the ALR can only be invoked if the question put or the eventual outcome of the local referendum would be contrary to legal norms of a mandatory nature. According to the Constitutional Court, it is inadmissible to refuse to call a local referendum on the basis of the existence of a private law obligation. In view of this, the Constitutional Court annulled the decisions of the Regional Court in Ostrava in all three cases.

8 | Conclusions

This interpretation provided by the Constitutional Court is extremely valuable to clearly and with final legal force, which of course also affects other academic discourse, answer all the research questions posed above.

1. The Constitutional Court answered the first research question, what is the nature of local self-government, by confirming both its previous decisions and the existing conclusions of theory. That is to say, that it is a community of persons inhabiting a certain territory who are entitled to make *final* decisions in their own affairs, i.e. in matters entrusted to them by law.
2. All three decisions of the Constitutional Court analysed above also provide a clear answer to the second research question, who is the

decision-maker in local government. It is the inhabitants of a given territory who are entrusted with local self-government. By analysing the above-mentioned decisions of the Constitutional Court, it can also be partially concluded that it is up to these residents to express their will directly or to leave the decision to their elected representatives (as is usually the case). However, they can never be deprived of their “sovereign” position vis-à-vis their representatives by not being able to express their will because the elected representatives “outstrip” them.

3. The analysis of all three decisions of the Constitutional Court also provides a clear answer to the third research question. A concluded civil contract cannot be an obstacle preventing the expression of the will of a self-governing community. This also confirms the earlier conclusion expressed by theorists that a civil contract is not, by nature, a legal provision envisaged by law as an obstacle to the holding of a local referendum.
4. The above also implies the answer to the fourth question concerning general principles of law. The will of the inhabitants of a local authority takes precedence over the principle of *pacta sunt servanda*. However, this does not preclude the possibility of legitimate contractual sanctions for non-fulfilment of the contract.

In conclusion, it can be stated that in the Czech Republic, the principle of the directly expressed will of the inhabitants of the local self-government unit has a clear priority in the conflict between the three top principles described above in the area of the implementation of local self-government. Elected representatives must submit to it in their decision-making. The will directly expressed by the inhabitants can overturn decisions previously taken by the elected representatives. This includes cases where the decision of the elected representatives results in the conclusion of a civil contract to give effect to the decision taken. Thus, as a practical matter, such a contract is not a bar to holding a local referendum on the matter that is the subject of the contract. It does not follow, however, that the legal consequences of not complying with a contract so rejected cannot be drawn. This, too, falls within the discretion of the inhabitants of a local self-governed unit, whether municipal or regional.

The interpretation given by the Constitutional Court not only cleared a lot of principal issues, but it also gave the citizens of municipalities and regions a tool by which they can more effectively participate in the

management of their affairs. At the same time, the knowledge that entering into a contract does not preclude a local referendum may have a preventive effect on both parties seeking to enter into it and may lead to greater caution and restraint in negotiating commitments.

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