

Generally binding regulations of a municipality issuing in order to ensure local matters of public order

Abstract

The work is focused on general binding regulations issued by municipalities to protect public order. However, public order is a concept that is not defined by legislation and is variable over time. Thus, each municipality, in order to protect it, regulates a different social activity that it believes is capable of disturbing public order in the municipality. However, municipalities do not always regulate the activities that can be regulated for the purpose of public order, or the rules they set exceed the limits set by law. The Constitutional Court makes an indispensable contribution to the specification of what can be regulated for the purpose of public order and in what way, as it is the only one entitled to annul an illegal municipal regulation.

The thesis first focuses on the history of municipal lawmaking, the basic characteristics of generally binding regulations as legal regulations issued in an independent competence and, with the help of judicial case law, also on the definition of public order. Then the most extensive part of the thesis is devoted to the analysis of generally binding regulations on public order against the background of the so-called four-step test applied by the Constitutional Court in reviewing their legality. The main focus is on the examination of whether the municipality has complied with its substantive competence, as well as on the principles of proportionality and reasonableness. This section provides answers as to how the statutory power of section 10 of the Act on Municipalities to enact a regulation can be applied, including how municipalities should approach the application of the proportionality and reasonableness test. This is followed by a chapter on the exercise of state supervision over the legality of generally binding regulations, which, in addition to a description of the current legislation itself, supplemented by related case law, also provides a reflection on whether the addressee of a regulation can defend itself against its alleged illegality directly or indirectly (by initiating a supervisory process with the Ministry of the Interior). The last part is devoted to the specific types of areas which, according to the current case law of the Constitutional Court, can be regulated within the framework of public order and their brief characteristics. Finally, it summarises the development of the Constitutional Court's case law to date, together with the fundamental rules that it implies for municipal norm-making.

Key words: generally binding regulation, public order, local self-government