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naslov uredništva / address of editorial board
Univerza v Ljubljani, Fakulteta za upravo
Gosarjeva ulica 5, SI-1000 Ljubljana
tel.: +386 (0)1 5805-500 faks: +386 (0)1 5805-521
e-pošta / e-mail: mrju@fu.uni-lj.si
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Spoštovani,

v zadnji številki revije v letu 2014 sta tudi prispevka o kolektivnem pogajanju v javnem sektorju in o decentralizaciji in kakovosti upravljanja javnega šolstva v državah EU. Eden od pomembnih kazalnikov stanja v regijah je tudi šolska uspešnost učencev.

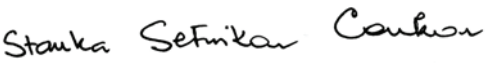
Ker je slovensko osnovno šolstvo javno, bi zato moralo biti približno enako kakovostno po vsej Sloveniji. Ugotovitve študij pa kažejo, da znanje, ki ga pridobi povprečen šolar v Pomurju oziroma šolar v severozahodni Sloveniji in se je prikazalo na nacionalnem preverjanju znanja, ni enakovredno znanju, ki ga pridobi njegov vrstnik v kulturno, socialno in ekonomsko uspešnejših delih Slovenije. Ker je izobraževanje povezano s socio-ekonomskim, kulturnim in intelektualnim potencialom celotnega okolja oziroma regije, se te razlike prisotne tudi drugje. Kljub temu pa je očitno, da imajo ti dejavniki na agregatni ravni večji vpliv v vzhodni Sloveniji, še zlasti v Prekmurju. Pri tem je nemočna tudi šolska politika, saj sama ne more bistveno izenačiti pogojev med posameznimi regijami.

Vprašanju, kako različen ustvarjalni potencial slovenskih regij, izražen v celotnem gospodarskem in socialnem razvoju regije, vpliva na druge pomembne dejavnike življenja ljudi, je bilo do sedaj namenjeno premalo pozornosti. V ospredju so vprašanja širše družbene ureditve, povezane z učinkovito regionalno in ekonomsko-socialno politiko države, od katere je v veliki meri odvisno udejanjanje ekonomskega, kulturnega in socialnega kapitala v lokalnem okolju in v družini.

Z nadaljnjimi raziskavami bi kazalo načrtno raziskati tiste dejavnike, ki izraziteje prispevajo k razlikam med regijami, kar bi olajšalo načrtovanje konkretnejših ukrepov za izboljšanje šolske politike. Znotraj šol bi veljalo raziskati možnosti vključevanja v različne projekte, vpetost šole v regijo, sodelovanje s starši, pristope, s katerimi bi uvajali novosti in evalvirali svoje delo.

Uresničevanje načela o zagotavljanju enakih vzgojno-izobraževalnih možnosti za optimalen razvoj mladih je mogoče dosegati zlasti z decentralizacijo sistema in s povečanjem šolske avtonomije ter s prenosom pristojnosti in odgovornosti na šole same. Sem sodijo tudi ustrezne politike, ki pa morajo, če želijo izboljšati ali spremeniti ekonomsko, kulturno in družbeno prikrajšanost mladih, seči tudi izven šole in zagotoviti realne možnosti izkoriščanja in izmenjave kapitalov.

Podoben pristop tudi na drugih področjih, na primer povečanje možnosti zaposlovanja, odprava brezplačnega pripravništva, večja vključenost mladih raziskovalcev v raziskovalne projekte in ureditev štipendiranja socialno ogroženih dijakov in študentov, bi vsaj malo omilil breme krize, ki jo nosijo mladi in je v regijah v Sloveniji različno. Skupna zaveza gospodarstva in negospodarstva ter politike bi vsekakor morala biti, da so pogoji življenja in dela tudi za mlade v domovini primerljivi s tujino. S tako popotnico vstopamo v leto 2015, v katerem želim vsem bralcem revije veliko ustvarjalnega nemira in osebnega zadovoljstva.



Prof. dr. Stanka Setnikar Cankar
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Development of eHealth in Slovenia - Critical Issues and Future Directions

Dalibor Stanimirović
University of Ljubljana, Faculty of Administration
dalibor.stanimirovic@fu.uni-lj.si

ABSTRACT

Although the basic informatization of the health care system was established relatively early, Slovenia still does not have an interoperable and comprehensive health information system (HIS). Fragmentation of information systems (IS) and their limited interoperability significantly compromise further development of the health care system and adversely affect the quality of health care services. Overcoming the aforementioned challenges requires the progressive implementation of eHealth project, which is one of the key long-term goals of the Slovenian public sector. The main objective of eHealth is the comprehensive integration of distributed IS and connection of a widespread network of stakeholders within the health care system. The paper presents the review of eHealth projects in Slovenia, Austria and Denmark, and provides a comparative analysis of the eHealth development in designated countries. Focusing on the Slovenian experience, the paper summarizes the main deficiencies in the current eHealth settings, and finally outlines a set of applicable guidelines for an effective development and implementation of highly intricate and complex eHealth project.

Key words: *eHealth in Slovenia, Austria and Denmark, infrastructure components, comparative analysis, deficiencies and barriers, development guidelines*

JEL: I15, I18, D8, D81

1 Introduction

Slovenian health care system has been facing serious structural problems in recent years. Due to objective circumstances (Ministry of Health, 2011) these problems cannot be avoided and will require fundamental changes in the current health care arrangements. The health care system reform is becoming a social imperative, which calls for innovative approach in the next years. One of the fundamental tools that would allow for successful and effective tackling of challenges facing the Slovenian health care system is the comprehensive informatization (Ministry of Health, 2005 and 2008) representing one of the key long-term goals of public sector. Experience of the most developed countries shows that successful implementation of health care informatization projects is of immense strategic importance for further development of the health care system (Chaudry et al., 2006; European Commission, 2008

and 2011) but also displays important implications for the increase in social welfare (Bardhan & Thouin, 2013; WHO, 2009), economic growth (Goldzweig et al., 2009; Valeri et al., 2010) and development of information society (Nyamtema, 2010; Walsham, 2013). Majority of the existing information systems (IS) in Slovenian health care have been developed within individual health care organizations and are designed specifically to meet their own needs (Ministry of Health, 2008) while they are not adequately interoperable and do not provide complete, relevant and timely information (Ministry of Health, 2005). The already initiated national project of health care system informatization from 2005, known as eHealth (Ministry of Health, 2005) should be able to integrate all fragmented IS and offer a complete solution benefitting all interested parties. eHealth entails the inclusion of stakeholders into the functional network, reconstruction of health care system business model as well as integration and harmonization of many information subsystems at different levels (Haux, 2010; Iveroth at al., 2013). Informatization of the Slovenian health care system should provide opportunities for high quality and professional work with patients and long-term development, whereas relevant and reliable economic, administrative and medical data provided by eHealth should facilitate better quality planning, control and management of individual health care organizations and health care system in general (Ministry of Health, 2005 and 2008).

The main objectives of the paper comprise the comparative assessment of the eHealth progress in an international context, identification and analysis of the key eHealth components and success factors, and production of applicable guidelines for further development and implementation of eHealth in Slovenia. In achieving the aforementioned objectives we have been focusing primarily on the following interrelated research questions:

1. Review of the eHealth projects and related strategies in Slovenia, Austria and Denmark.
2. Analysis of the development of eHealth projects in Slovenia, Austria and Denmark.
3. Identification of the main deficiencies in the current setting of eHealth in Slovenia and provision of guidelines for further development.

Methodologically speaking, the paper represents a comparative analysis of the eHealth development in Slovenia, Austria and Denmark. The comparative framework was established on the basis of document analysis and information retrieval focusing on in-depth investigation of various electronic and written sources instating eHealth projects in three countries, and ultimately facilitating the identification and characterization of the most important infrastructure components of eHealth. Selection of the research methods was adapted to the research field (Patton, 1990; Yin, 2009), given the complexity and scope of eHealth initiatives.

Following the introduction, the second section of the paper presents the state of the art in the field and conceptual implications of eHealth. The third section outlines eHealth projects in Slovenia, Austria and Denmark, provides a comparative analysis of the eHealth development in selected countries, and finally identifies the main deficiencies related to eHealth development in Slovenia. Lessons learned and guidelines for more effective further development and implementation of eHealth project in Slovenia are presented in the fourth section. The last section contains the review of the overall comparative analysis, discussion on its practical applicability, limitations and future work, and concludes by submitting final arguments and observations regarding the research results, and future development of eHealth in Slovenia.

2 State of the Art

Considering the multifaceted nature of health care systems and related IS, the body of knowledge in the field is relatively extensive, as well as the number of various definitions depicting the concept of eHealth. Gaining international recognition in the last decade (Black et al., 2011; Gillies & Howard, 2011), definitions of eHealth are normally derived from the classifications of IS with the addition of certain features which are associated with the specific nature of health care services and health care system status, being essentially one of the most important segments of the public sector. While some definitions of eHealth are rather general, others are more narrowly focused, converging on individual aspects of information and communication technology (ICT) and health care interaction.

Eysenbach (2001) is referring to the term of eHealth as a general »buzzword«, which is used to characterize virtually everything related to computers and medicine, and interprets e-health as an emerging field in the intersection of internet-related medical informatics, public health and business. In a broader sense, the term characterizes not only a technical development, but also a state-of-mind, a way of thinking, an attitude, and a commitment for networked, global thinking, to improve health care locally, regionally, and worldwide by using ICT. Marconi (2002) defines eHealth as the application of internet and other related technologies in the health care industry to improve the access, efficiency, effectiveness, and quality of clinical and business processes utilized by health care organizations, practitioners, patients, and consumers in an effort to improve the health status of patients. According to Healthcare Information and Management Systems Society (HIMSS, 2003), being one of the leading authorities in the field, eHealth represents a patient-focused framework including various dimensions such as: delivery of key information to health care partners, provision of health information delivery services, facilitation of interaction between providers and patients, acceleration of the integration of health care industry-related business processes, both local and remote access to health care information, support for employers and employees, payers and providers. And conversely, there are a number of arbitrary

and ad hoc definitions which are more narrowly targeted and focused on individual aspects of the eHealth research. They are outlining the concept of eHealth as the process of providing health care via electronic means, in particular over the internet, including web-based applications, cross-sectoral transfer of patient-related data, monitoring of health parameters (telemedicine solutions), and interaction with health care providers (Alpay et al., 2010; Dedding et al., 2011; Gibbons et al., 2011). Extrapolating from different definitions, eHealth concept can be generally regarded as a comprehensive mechanism based on the internet and other related ICTs, expected to facilitate integration of all stakeholders and evidence-based decision making at all levels, in order to improve quality of health care, administrative and managerial processes as well as related outcomes in the health care system.

As noticed by several authors (Ahern et al., 2006; ITU, 2008; Oh et al., 2005) the term eHealth has a highly variable and interchangeable usage, which significantly complicates its substantive characterization and distinction from other related concepts. In addition, there are hardly any extensive empirical studies systematically identifying and analyzing the general implications of eHealth projects on the health care system transformation, its impacts on public health and public finance aspects, and issues related to the long-term development of the health care systems (Bardhan & Thouin, 2013; Murray et al., 2011). Majority of the studies in the field are usually focused on the selected aspect of eHealth, its implications on certain health care service/product or particular institution within the health care system. The latter reasons considerably hinder the research of the very concept of eHealth on the one hand (Gillies & Howard, 2011; Nykänen et al., 2011), and, on the other hand, they prevent the evaluation of the actual effects of eHealth on business and health outcomes of the health care system.

2.1 eHealth Implications

Regardless of their definition and research perspective, virtually all authors emphasize that the main goal of eHealth should be the contribution to a high-quality, efficient patient care and effective performance of the health care system (Haux, 2006; Li et al., 2012; Trudel et al., 2012; etc.). eHealth could empower patients and help in exceeding information asymmetry between main stakeholders while ensuring that reliable and timely health care information is available for operational and strategic decision making, providing better health care services and enhancing public health (Leung, 2012). eHealth systems and services combined with organizational changes, process reengineering and development of new skills can act as key enabling tools facilitating considerable enhancements in access to care, quality of care, as well as efficiency and productivity (Arndt & Bigelow, 2009; Hunter, 2011) of the health care system. Implementation of eHealth is expected to reduce costs and improve productivity in such areas as 1) billing and record-keeping, 2) reduction in medical error, 3) alleviation of unnecessary care, and 4) savings

achieved by business-to-business e-commerce (Stroetman, 2007; Vest et al., 2012).

Given the innate complex nature of the health care activities and specificity of the health care-related IS, there are a reasonable number of requirements, constraints and risks associated with the implementation of eHealth project. The quality introduction and performance of eHealth depend not only on technical determinants such as ICT infrastructure, data quality, system design, or adequate use of ICT (Haux, 2010; Lucas, 2008). Other factors are also involved, such as 1) organizational policies and environmental determinants that relate to the information culture within the country context (Lluch, 2011; Piette et al., 2012), the structure of eHealth (Jensen, 2013; Winter et al., 2007), the roles and responsibilities of the different actors and the available resources for eHealth (Bush et al., 2009; Murray et al., 2011), and 2) the behavioral determinants such as the knowledge and skills, attitudes, values, and motivation of those involved in the production, collection, collation, analysis, and dissemination of information (Walker, 2005; Jaana et al., 2011).

Attributable to these highly challenging preconditions, practice reveals that planning, development and implementation of eHealth are riddled with major problems, even in countries with relatively well-developed health care systems (Lapointe et al., 2011; Protti, 2007). Furthermore, the information generated and retrieved from inadequately conceptualized eHealth is often not helpful for health care management decision-making (Kaye et al., 2010), because information is not applicably clustered; it is frequently disparate with predefined indicators, while modalities and jurisdiction on management and transaction of information can be ambiguous and unrelated to priority tasks and functions of health care professionals (Heeks, 2006; Ibrahim et al., 2013). In other words, poorly defined and unstructured eHealth projects have a tendency to be data and information driven, instead of action driven (Karsh et al., 2010). In order to avoid these threats, the entire eHealth project, including its long-term and wide-ranging implications, must be well thought out, while its contextual role and functions within the health care system must be clearly defined (Haux et al., 2008; Kanjo, 2011), yet flexible and adaptable to requirements and continuous changes in health care ecosystem and broader social environment.

3 eHealth in Slovenia, Austria and Denmark

The section presents the review of eHealth strategies and related documents, and provides a summary of the up-to-date development of eHealth projects in Slovenia, Austria and Denmark.

3.1 eHealth in Slovenia

Ministry of Health has been dealing with the informatization of Slovenian health care system for almost two decades. eHealth project from 2005 in its

latest form consists of 17 sub-projects aiming at extensive renewal and integration of information and communication systems in health care domain. Strategic objectives within the eHealth strategy should be implemented by the year 2023 facilitating fully integrated national IS enabling monitoring of the on-going treatments and related costs, faster access to medical data, medical services as well as cost evaluation, online ordering and coordination of waiting lists, increase of efficiency and transparency of the health care system and optimization of the business processes taking place in health care institutions (Ministry of Health, 2005 and 2008). Based on the Strategy for informatization of the Slovenian health care system 2005–2010 (Ministry of Health, 2005) and the Resolution on the National Health Care Plan for the period 2008–2013 (Ministry of Health, 2008), all activities in the field of Slovenian health care system informatization are aiming at realization of eHealth, whereas summary of its development goals is presented below:

1. The establishment of basic ICT infrastructure including: network used for communication and data exchange, Diagnosis Related Groups (DRG) and standardized definitions of health and social data required for development and management of Electronic Health Records (EHR) and e-prescription as well as improvement of the health care Smart card functionalities (Smart card allows access to medical data containing information on: the cardholder, the person liable for health insurance contribution, compulsory health insurance, voluntary health insurance, selected personal physician and General Practitioner (GP), issued medication, issued prosthetic equipment, potential organ and tissue donation for transplantation etc. After all functionalities of eHealth are implemented, smart card will allow all users to remotely access to their own health data via Personal Health Record – PHR). Currently, EHR content is still not defined explicitly, while its structure comprises free text, preventing its full exploitation. Existing diagnosis as well as medical procedures are standardized and structured according to ICD 10 AM[1] classification, whereas EDIFACT[2], HL7[3] and XML[4] are the current data standards for transfer of messages.

1 International Statistical Classification of Diseases and Related Health Problems (ICD) is a medical classification list developed by the WHO. It codes for diseases, signs and symptoms, abnormal findings, complaints, social circumstances, and external causes of injury or diseases (WHO, 2012).

2 Electronic Data Interchange for Administration, Commerce and Transport (EDIFACT) is the international standard developed under the United Nations. It comprises a set of internationally agreed standards, directories, and guidelines for the electronic interchange of structured data between independent computerized information systems (UN, 2012).

3 Health Level Seven (HL7) is a set of international healthcare informatics interoperability standards developed by the Health Level Seven International. HL7 network provides a framework and related standards for the exchange, integration, sharing, and retrieval of electronic health information (HL7, 2012).

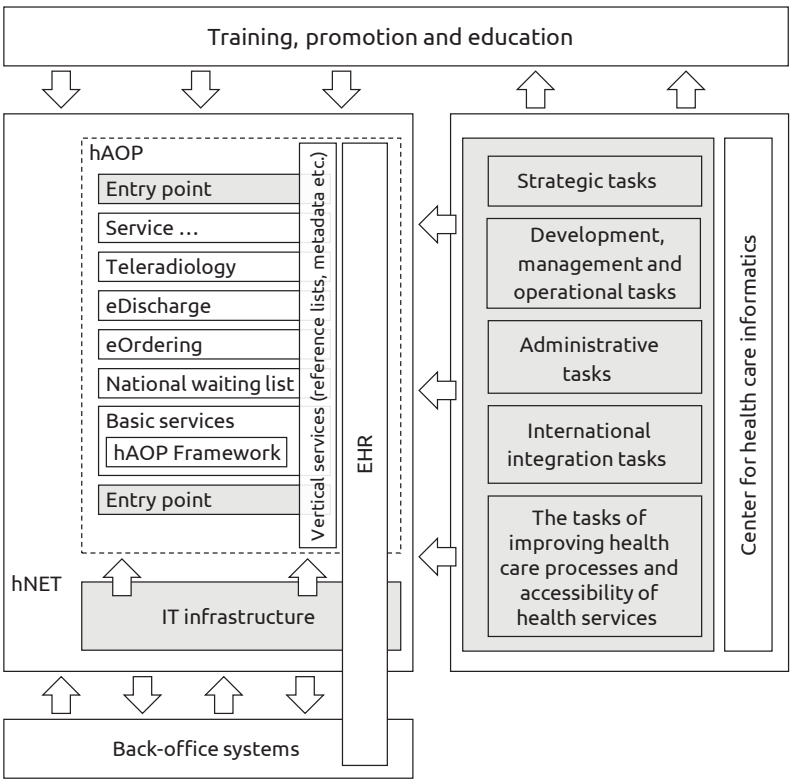
4 Extensible Markup Language (XML) is a markup language that defines a set of rules and standards for encoding documents in a format that is both human-readable and machine-readable. It is developed by the World Wide Web Consortium (W3C) (WRC, 2012).

2. Integration and merging health and social IS into a national HIS and establishing a central, unified health information portal that will allow all stakeholders within the health care system secure and reliable exchange of data, execution of electronic services as well as standardized and transparent information and interoperability with similar systems in the European Union (EU).
3. Introduction of e-business as standard way of conducting operations and processes in the Slovenian health care system and promoting and encouraging the use of eHealth applications by all health care system stakeholders.

eHealth project is thus divided into three substantially separate, yet related areas. The first area is the establishment of a national IS, comprised of Health Network (hNET), a health portal (hAOP) and EHR. The second area represents the establishment and operation of Center for health care informatics, undertaking the central role in governing of IS. This area also includes upgrading and maintenance activities of the entire project after its completion. The third area will enable the improvement of health care processes, access to health care services as well as education and training of target groups. Although the eHealth project is still deep in the implementation phase, the Figure 1 presents the projected infrastructure of eHealth, which should become fully operational sometime after 2020 (Ministry of Health, 2005).

The implications of eHealth will presumably be twofold. First, significant changes can be expected in the field of informing, empowerment and inclusion of patients in the health care process, and second, well-designed eHealth should facilitate timely access to relevant data and information and consequently initiate better supported decision-making at all health care, administrative and management levels. According to project objectives, the fully functional version of eHealth should provide standardized bi-directional connections between the designated entities of the health care system, network synergies and substantial improvements in information and resource flows. Nevertheless, despite ambitious eHealth strategy and objectives, most of the project goals presented above, have remained unfulfilled. Namely, the current infrastructure of eHealth includes components facilitating only a few peripheral functionalities (Smart card, Professional card), which do not yield tangible benefits neither for patients nor for health care workers and health care system managers. Due to leadership issues and lack of coordination as well as financial restrictions and technical problems, the eHealth development has stagnated in the recent period on almost all key areas, while the main project deliverables in the form of infrastructure building blocks have not reached the desired level of development according to the schedule. Consequently, the current infrastructure of the Slovenian eHealth is nonfunctional and causes time and resource losses.

Figure 1: Planned infrastructure of eHealth in Slovenia



3.2 eHealth in Austria

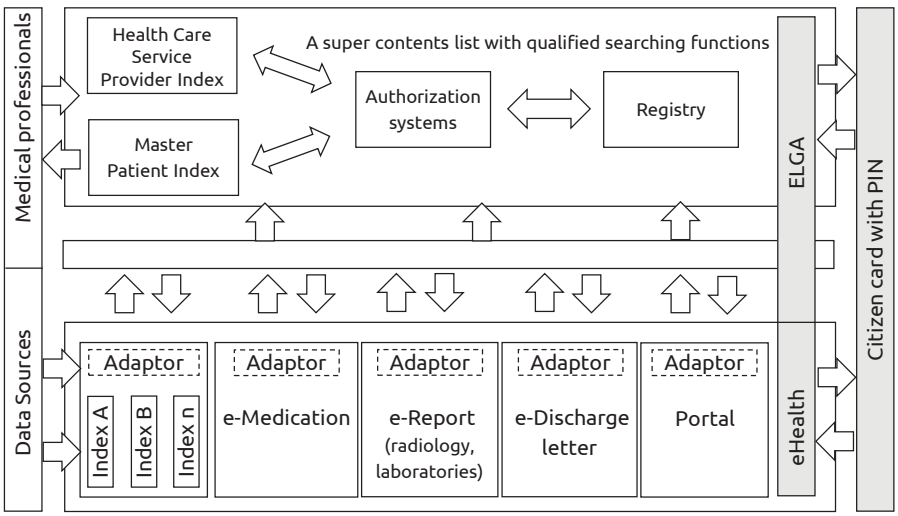
Development of eHealth in Austria has been founded on the eGovernment Act from 2004 (Government of Austria, 2004) and the Health Care Reform Act from 2005 (Government of Austria, 2005), including the Health Telematics Law (Government of Austria, 2005), which focuses on the secure exchange of medical data. The Health Care Reform Act emphasizes the role of ICT in the future development of Austrian health care system and outlines the informatization of the health care system as one of the public sector priorities (Government of Austria, 2005). The main coordinating body responsible for promoting the use of ICT and mechanisms for planning, financing and management of informatization projects is the Ministry of Health (Bundesministerium für Gesundheit). Strategic framework for the health care system reform has defined eHealth as a set of business models and information tools, which should provide improved health care and health care system performance in general while facilitating effective implementation of the priorities listed in the strategic documents from the field. In accordance with the objectives of the i2010 initiative and some other documents, issued by the European Com-

mission (European Commission, 2005 and 2007; Pfeiffer et al., 2010), Austria has established the Information Society Development Program, comprising activities for the harmonization of projects and mechanisms within eHealth and e-government areas. Significant results in this program have been achieved especially in the management of e-identities and electronic signatures. Austrian Citizen Card issued by the federal government in 2008 is considered one of the leading e-identity projects implemented in the EU. In accordance with the informatization strategy, the e-card (health insurance card) was delivered to more than 8 million policyholders and more than 12.000 GPs since 2005 (European Commission, 2008). As in Slovenia, the e-card initially contained only information about the health care insurance of citizens, in the second phase, however, which lasts from 2006 onwards, e-card contains an integrated suite of medical information which is complemented and updated sequentially.

Despite significant achievements in the field, the most important sub-project of eHealth remains development and implementation of a national EHR called Elektronische Gesundheitsakte (Government of Austria, 2009 and 2010). Development of EHR began in 2006 when a thorough analysis of the Austrian health care system and a feasibility study were conducted. In 2009 the institutional framework for the project was established, and a national health care portal (www.gesundheit.gv.at) was created in 2010. In parallel with development activities, the technical standards, interoperability framework and guidelines for further development of health care enterprise architecture were established and adopted. Actual implementation of national EHR started in 2011 through the realization of three pilot projects which were carried out at the regional level. In its first implementation phase, EHR will be mainly focused on e-prescribing and dispensing of e-prescriptions, along with gradual integration of the increasing number of medical data on e-card, in the years ahead. This should lead to the greater exploitation of medical data and higher quality of medical treatments as well as considerable elimination of the contraindications, reduction of allergic reactions and side effects. On the other hand, the implementation of e-prescribing should facilitate control over costs of medical treatments, prevent duplication of prescriptions, establish transparent functioning of the pharmacy market and provide an overview of the types and quantities of prescribed pharmaceuticals, as well as simplify their supply and distribution.

Notwithstanding the legitimate caveats highlighting primarily the protection of personal data and privacy as the most problematic areas of Austrian health care system informatization, development of EHR is undoubtedly an important asset for all policyholders and the entire health care system, while its long-term benefits will only be seen in the following years, when all planned applications and functionalities of eHealth become operative. Planned infrastructure of the eHealth project in Austria and the main relations between its components are depicted in Figure 2 (Pfeiffer et al., 2010).

Figure 2: Planned infrastructure of eHealth in Austria



Effective implementation of national eHealth strategy in the coming years will require a parallel restructuration of the entire health care system and coordinated action at the medical, information and legislative level, as well as the execution of activities to raise awareness of the health care professionals and citizens, and to promote greater use of ICT solutions in health care. Under the latter assumptions, the Austrian health care policy is focusing particularly on the following activities:

- Achieving the overall interoperability and definition of standards for technical, semantic and organizational interoperability within the strategy for informatization of the health care system as well as the development of information society in general;
- Building of trust, protection of patient rights and ensuring responsibility of physicians and personal data protection in the process of EHR management;
- Development of national strategy and specific guidelines in order to facilitate safe and long-term archiving of EHR;
- Gradual elimination of semantic problems and implementation of common terminology for communication and data exchange, as well as monitoring and control of treatment procedures, patient requirements and satisfaction, and comparison of health care services and their quality nation-wide;
- Promotion and upgrading of a user-friendly health care portal accentuating prevention and citizens' participation in caring for their own health and well-being;

- Establishment of the health care provider networks and ICT infrastructure for the provision and execution of integrated social and health care services;
- Implementation of telemedicine projects for home therapy and assistance for disadvantaged population groups.

3.3 eHealth in Denmark

Denmark has a long history in the development of eHealth, which dates back to 1996, when implementation of the strategy for informatization of the health care and development of EHR began (Government of Denmark, 1996). Other initiatives for health care reform and introduction of advanced ICT solutions in health care have been embodied in National Strategy for Information Technology in Hospitals from 1999 (Government of Denmark, 1999) and National Strategy for Information Technology in Health Service 2003–2007 (Government of Denmark, 2003). The last set of strategic guidelines in the field of eHealth development and implementation is contained in Danish Policy Strategies with eHealth relevance, which refers to the Action Plan from 2003 and includes 29 projects connecting many different public institutions. MedCom is the national institution responsible for realization of the eHealth project and acts as coordinator of project activities between health care policy, health care professionals, citizens and ICT service providers. MedCom manages the process of informatization in the Danish health care system, issues certificates of safety and quality in health data exchange and promotes integration of HIS in hospitals and pharmacies (Jensen & Pedersen, 2004). Within the Danish health care system 4 million messages are exchanged every month, including 80 percent of all prescriptions. MedCom also controls electronic data interchange and manages patient identities and safety of personal data through integrated three tier system, which includes the public key infrastructure and allows the traceability of each entry to the system. A key part of the strategy and the ultimate goals of the Danish health care system informatization are the development of integrated HIS and implementation of EHR (Doupi et al., 2010), whereas the future activities within eHealth are focused primarily on:

- Extension of existing applications in the eHealth scheme, more effective integration of the local HIS and e-prescriptions with the aim of developing a personal health profile of the patient, which would be stored on a national medical data server, further improvement of e-prescribing;
- Promotion, upgrading and enhancement of the national health portal Sundhed.dk, awareness-raising between citizens and health care professionals, facilitating the full functionality of the national health portal and general accessibility by using the digital signature;

- Upgrading of health data networks, information infrastructure and personal data protection system, effective intersectoral communication that includes the exchange of more than 40 different types of standard documents (e-prescriptions, e-referrals and e-lab tests, specialist e-referrals, etc.);
- Effective further implementation of the electronic health card project (Common Medication Card — FMK) throughout the country, inclusion of wider range of medical and administrative data on the electronic health card and promotion of its functionality for both patients and health care professionals;
- Effective transfer of medical and administrative patient data across regional boundaries in order to ensure the quality of health care throughout the country, further development and implementation of telemedicine projects for chronic patients, and deployment of cross-border health care networks in the region.

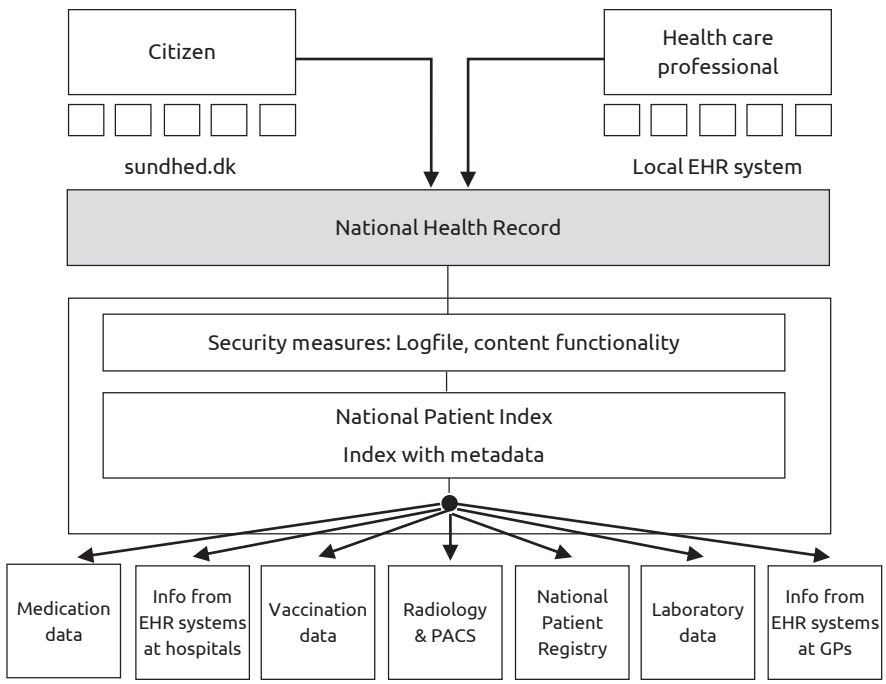
Danish health policy makers have managed to attract a wide range of stakeholders collaborating in the development and implementation of eHealth. Political will and stakeholders' commitment as well as their coordinated action have provided necessary resources, professional and technical support and adaptation of legislation, being some of the reasons for their success. For example, in 2005 the tax legislation was adjusted, which allowed a separate agreement between the government and owners of the regional hospitals, who required equal access to EHR and e-prescriptions throughout the country. The regulatory framework of health care has been adapted as well, since the Act on health care from 2008 (Government of Denmark, 2008) had to take into account the specific requirements in the area of confidentiality and protection of personal data, referring to the implementation and use of eHealth. Among other factors, which influenced the development and intensive use of eHealth applications in Denmark, some other aspects could be exposed, such as: the construction of high-quality ICT infrastructure and health information network, which was built on existing infrastructure building blocks of e-government and the establishment of the National Health Portal (Sundhed.dk), providing uniform access point to health care services for both citizens and health care professionals. Planned infrastructure of the eHealth project in Denmark and the main relations between its components are presented in Figure 3 (Government of Denmark, 2012).

The National Patient Index and The National Health Record will provide health care professionals and patients with access to more complete overview of existing patient data. This will benefit health care professionals and patients in several ways by facilitating (Government of Denmark, 2012):

- A clinical tool that enables digital sharing of data across borders and sectors in the health care system;

- A tool for gaining digital access to patient data not already stored in local EHR systems;
- Support in decision-making in relation to referral, elucidation and treatment of a patient;
- Giving citizens access to a broader range of own health data thereby establishing a foundation for improved dialogue, better insight in their own health condition and improved possibility for active involvement in their own treatment.

Figure 3: Planned infrastructure of eHealth in Denmark



3.4 Comparative Analysis of the eHealth Development in Slovenia, Austria and Denmark

The comparative analysis of the eHealth development in Slovenia, Austria and Denmark was conducted in the first half of 2013. During that time we carried out extensive document analysis and information retrieval through in-depth investigation of primary and secondary online resources, policy papers, strategies, project reports and records, interviews, action plans and other forms containing eHealth related contents in the selected countries. Given the substantial scope, complexity and diversity of the eHealth projects, as well

as the asymmetrical development of the individual thematic and organizational areas within them, comparing the development of the entire eHealth projects was unfeasible. We therefore applied structural decomposition techniques, through which we identified and extracted 12 relatively autonomous and comparable infrastructure components from designated eHealth projects. Subsequently, by evaluating the development level of the selected components, we transformed these components into 12 equally weighted indicators. Given the two fundamental contextual dimensions, which reflect the general development degree of the eHealth projects and their alignment with other relevant factors within the healthcare ecosystem, the indicators were categorized in two groups, namely: operative and technological indicators, and policy and performance indicators (see Table 1). The aggregate of the sensibly evaluated indicators should reflect the actual overall development level of the eHealth projects in the selected countries.

Development level of the individual components, and ultimately the overall development of eHealth, was evaluated applying the following grades (see their explanations in parentheses):

1 – Conceptual phase (Component and its operations are based only on the conceptual design; its development, sourcing and implementation procedures have not yet been defined or started).

2 – Development phase (There is a concrete blueprint for the construction of the component encompassing all planned operations. Development, sourcing and implementation procedures have been defined, initiated and monitored).

3 – Partly functional (Some of the planned component operations are implemented, functional and applied in practice within the health care environment).

4 – Functional (All of the planned component operations are implemented, functional and applied in practice within the health care environment).

Finally, based on the assigned grades, the calculation of the average score of the components' development level was carried out, facilitating the determination of overall development level and associated comparative ranking of eHealth projects in the selected countries. The nominated components within eHealth projects were defined and selected partly on the basis of EU research and guidelines (European Commission, 2008, 2009 and 2011) striving to identify the most important factors for development of comprehensive eHealth projects. Comparative analysis was conducted combining different techniques (Yin, 2009) of qualitative research methods. The initial part of the comparative analysis has focused on the document analysis through in-depth investigation of existing eHealth-related sources, whereas deriving from obtained investigation results, the conclusive part of the comparative analysis is striving to integrate theoretical and practical aspects regarding

the research subject, and provide applicable guidelines for further development and implementation of eHealth in Slovenia.

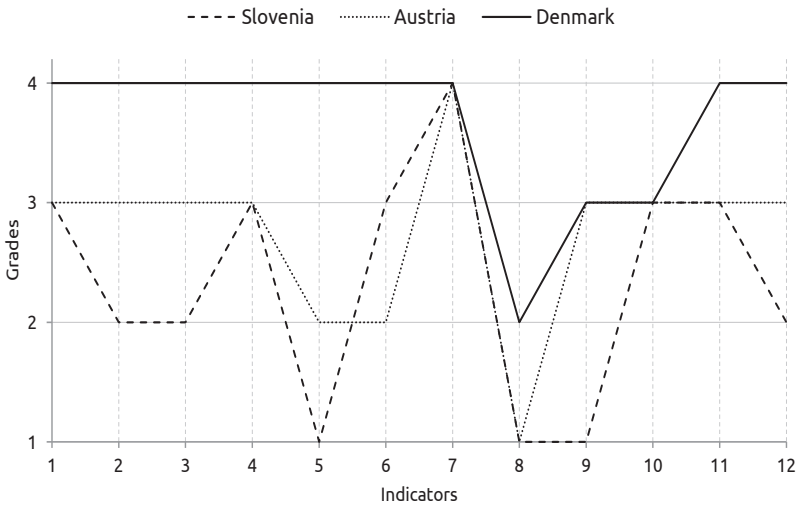
Tabela 1: Indicators for the Comparative Analysis of eHealth Development in Slovenia, Austria and Denmark

Indicators	
Operative and technological indicators	Policy and performance indicators
EHR / PHR	Integration of stakeholders (policy guidelines, reports, data exchange, education and training etc.)
Interoperability framework	Legal regulation
Data standards	Health care system performance indicators
E-prescription	Performance evaluation of eHealth
Smart card	
Professional card	
Telemedicine	
National Health Portal	
Overall rating of the eHealth development in the selected countries	

Despite the fact that, unlike the Danish project, both the Slovenian and Austrian eHealth projects are still deep in the implementation phase and will not become fully functional for some time (Doupi et al., 2010; Ministry of Health, 2011; Pfeiffer et al., 2010), the research revealed some interesting findings. Comparative analysis confirms the undisputed supremacy of Denmark (overall average score 3,67, std. deviation 0.65) in the field of overall eHealth development in comparison with Austria (overall average score 2,75, std. deviation 0,75) and Slovenia (overall average score 2,33, std. deviation 0,98) (Figure 4). Considering the particular groups of indicators (operative and technological indicators, policy and performance indicators) ranking has remained unchanged. Based on the operative and technological indicators, Denmark has won the highest ratings (average score 3,50, std. deviation 0,58), Austria is in the second place (average score 3,00, std. deviation 0), and Slovenia was third (average score 2,25, std. deviation 0,96). Taking into account the policy and performance indicators, the evaluation yielded rather similar results (Denmark – average score 3,75, std. deviation 0,71, Austria – average score 2,63, std. deviation 0,92, and Slovenia – average score 2,38, std. deviation 1,06). Although relatively successful in the field of eHealth development, according to our comparative analysis Austria achieved comparatively lower results than Denmark in most of the categories compared. Slovenia showed the least progress in the field of eHealth development and achieved the lowest score in the comparative analysis, considerably lagging behind the Denmark, and Austria as well. Danish eHealth project achieved superior

results in all comparative categories, except two (performance evaluation of eHealth, health care system performance indicators).

Figure 4: Development of individual components of eHealth in Slovenia, Austria and Denmark



1. Integration of stakeholders	7. Professional card
2. EHR / PHR	8. Telemedicine
3. Interoperability framework	9. Performance evaluation of eHealth
4. Data standards	10. Health care system performance indicators
5. E-prescription	11. National Health Portal
6. Smart card	12. Legal regulation

The most visible gap involving the comparison of strategies and documents related to the development of eHealth comprises the very start of the eHealth project in Denmark, which was initiated nearly 10 years before eHealth projects in Slovenia and Austria. In addition, the number of strategies and documents concerning the national project of eHealth and general promotion of ICT application in health care exceeds the number of similar documents from Slovenia and Austria. Relating to the number of stakeholders involved, which is comparable to the numbers in Slovenia and Austria, Denmark has obviously managed to dispel the conflicting views and other barriers between them, and establish their quality cooperation, coordination and commitment to the eHealth initiative, proving that development and implementation of such complex and important projects require broad social consensus and close interdepartmental collaboration. From the comparative perspective, eHealth in Denmark achieved notable results in almost all categories, except in the areas of Telemedicine, Performance evaluation of eHealth and Health care

system performance indicators, which comparatively accomplished relatively lower results. Denmark is producing excellent comparative results at the level of the EU27 as well, often dominating the top rankings in various classifications of eHealth development (European Commission, 2008, 2009 and 2011).

Slovenian eHealth project has encountered a series of obstacles and setbacks in the course of development and implementation, consequently the date of its completion, earlier planned for 2023, is rather difficult to determine. However, the comparative analysis revealed significant deficiencies in the overall up-to-date development of eHealth in Slovenia and a large gap between Slovenia on one hand, and Austria and Denmark on the other hand, especially regarding the development of individual components of eHealth. Namely, 5 out of 12 selected and compared components of eHealth in Slovenia reached a lower development level than in Austria; however there is even bigger difference compared to Denmark, where Slovenia has achieved a lower development level in 10 of the 12 components compared. Especially concerning is the fact that according to some estimates, eHealth development in Slovenia considerably lags behind the EU-27 average, as well (European Commission, 2008 and 2011; Ministry of Health, 2011). Based on the comparison of eHealth development in Slovenia, Austria and Denmark (Table 1), the explicit deficiencies related to particularly underdeveloped eHealth components (listed components were graded with scores less than 3 – Partly functional) are summarized and defined below:

- EHR / PHR – Two of the most important components of eHealth are in the development phase and currently do not provide required functionality enabling database connectivity for patients migrating from primary to secondary and tertiary health care level);
- Interoperability framework – Component is in the development phase and currently does not facilitate operationalization of adopted standards and integration of existing IS within health care, laboratory and radiology departments (lab results, Picture Archiving and Communication System – PACS etc.);
- E-prescription – Component is in the conceptual phase and the time frame for its construction and subsequent inclusion in the eHealth infrastructure is still indeterminate;
- Telemedicine – Component is in the conceptual phase and although contained in the Slovenian eHealth strategy from 2005, development activities in the telemedicine field have not been specified, let alone launched;
- Performance evaluation of eHealth – Component is in the conceptual phase, since health policy in Slovenia has not established a methodology including appropriate indicators for evaluating the performance of already implemented operational components of eHealth and monitoring of the components in the development process;

- Legal regulation – Component is in the development phase lacking several important regulations for the eHealth application, especially regarding the transfer of medical data, personal data protection, privacy, interoperability standards, liability and risk issues within the usage of EHR / PHR, Telemedicine and E-prescription. Given the existing political debate focused predominantly on economic issues and stringent austerity measures, lack of support and incentives for legislative amendment in the field of eHealth is likely to remain unchanged for some time.

Listed components are in the early development stages. Taking into account the complexity of developing such components, time required for their transfer into operational use and the current budgetary restrictions, it is clear that operations depending on these components, and consequently the entire eHealth project, will not become fully functional for a long time. This is certainly a broader systemic problem and given the scope of health care system, its relations and interdependencies with other segments of the society (European Commission, 2011), it should be noted that eHealth is only a part of the complex social system (European Commission, 2007), while its perception and subsequent application are deeply rooted in the social mode of behavior (Anwar et al., 2011; Kaye et al., 2010) and working practices of organizations and people.

The deficiencies within the development of eHealth in Slovenia, which obviously extend to several areas, such as policy-regulatory, financial, institutional and technological area, could have been mitigated by taking appropriate measures in the course of its conceptualization, planning and implementation. Nevertheless, exposed deficiencies have significant impact on overall performance of eHealth, and consequently do not allow its effective utilization for improvement of health care services and evidence-based management of the health care system. The most significant deficiencies revealed by our research are summarized below:

- Absence of top-down support for implementation of eHealth;
- Poorly defined health care policies and eHealth project objectives;
- Unadjusted and hyper-regulated normative framework;
- Insufficient funding, lack of management skills and human resources;
- Fragmentation and large number of diverse legacy IS on all three levels of health care system;
- Partially defined communication network standards and data exchange standards;
- Lack of standardized definitions of health and social data required for development and management of EHR, PHR and DRG;
- Disregarding interoperability perspective while procuring an increasing number of narrowly specialized IS;

- Inadequate and vague evaluation practice in the field of major ICT projects;
- Lack of experience in the execution of complex and long-term national (ICT) projects;
- Unawareness of the potential benefits of eHealth and lack of skills within the scope of ICT by the health care professionals;
- Lack of consensus on development priorities as well as cooperation and coordination between key stakeholders.

Deriving from the comparative analysis, issues listed above have not been properly and fully addressed, while they seem to be very important elements of the effective strategy for development and implementation of eHealth.

4 Lessons Learned and Guidelines for Future Actions

Assessing the development and future trajectory of the eHealth has proven to be a very difficult task, given the complexity of the eHealth projects themselves and lack of appropriate evaluation metrics. Therefore, it is not surprising that in Slovenia, as well as in the international arena, there are only a very small number of research attempts concerning evaluation of the eHealth development, especially through the international comparison. Notwithstanding the state of affairs in the research field, certain preliminary conclusions can be drawn. It is evident that problems concerning the progress of the Slovenian eHealth extend to various areas, reflecting in the unsatisfactory development level of individual infrastructure components and eHealth project as a whole, whereas on-going financial and economic crisis just revealed the magnitude of pertaining deficiencies, additionally undermining public trust and stakeholders' engagement. Health care systems which strive for the successful development and implementation of eHealth projects have to generally overcome difficulties with the political, legal/regulatory and technical constraints, provide appropriate funding for material and immaterial resources, and precisely specify the course and objectives of the eHealth projects.

Analyzing the current situation in the field of eHealth, we identified various deficiencies which have in our opinion substantially affected the development of eHealth in Slovenia. Some of the problems associated with eHealth development and implementation have been expected, given its scope and complexity, while the other complications appeared unpredictably and were merely the results of poor planning and insufficient project analysis. Synthesis of research results and derived deductions, based on the identified deficiencies, are presented in the form of guidelines, which could facilitate a more effective and structured approach to the realization of the eHealth project:

- Obtain political support, bring together stakeholders from the public sector, not-for-profit organizations and the private sector, and prepare viable strategy documents and action plans (assess the current ICT

infrastructure, departmental IS, legacy IS, interoperability issues, specify the health information standards, education and training of the medical staff, analyze different informational needs of primary, secondary and tertiary health care level, check the financial construction and financial projections related to the budget of eHealth in the medium and long-term, examine the potential obstacles to eHealth realization and conduct a sensitivity analysis, etc.);

- Examine current and projected health care issues, incorporate country specificities, determine national health care priorities, and provide an action plan clearly specifying how eHealth will contribute to the solution of national health care priorities, as well as enable desired reorganization and restructuration of the health care system itself;
- Select a top manager and a quality project team with experience in large ICT projects, clearly structure the project plan, project phases and deliverables for each phase, determine the timeline of the project by reaching mutual consensus with all stakeholders, distribute the assignments and strictly monitor and inspect the work on the project;
- Ensure adequate resources before the start of each phase of the project and make realistic plans within both temporal as well as financial terms;
- Mobilize all stakeholders to ensure commitment, material and moral support, encourage their participation and constructive criticism, provide an inclusive plan for permanent education of the stakeholders and communication between the project team;
- Enhance the preparation and implementation of public tenders (materially and procedurally) related to procurement of ICT equipment and realization of smaller individual ICT projects within the overall eHealth project;
- Perform a constant supervision and strict control of the already executed project tasks with respect to the substantive and temporal objectives, and ensure close monitoring of the tasks which are in the execution phase;
- Inform and sensitize the public, promote project achievements so far, organize marketing campaign to popularize the eHealth project and increase user acceptance of eHealth services, gain support from the media, experts and citizens; eHealth is a socio-technical project.

Presented research results cannot be easily transferred into action, while the poor progress in development of eHealth in Slovenia is related to several factors. Delays in eHealth development require a detailed analysis of the current situation, accommodation of new resources and well-coordinated implementation of operational tasks, which will gradually bring the development of eHealth to its final phase. These measures usually necessitate a radical change in the project management and government financial stimulus. Alarming socio-economic situation could jeopardize the latest efforts

and compel the government to focus on predominantly short-term economic issues and lower the investments for development of eHealth and health care system in general, which could result in far-reaching and irreversible implications for public health in the future. Better exploitation of ICT in health care and eventual provision of medical and economic benefits as well, will therefore require the mobilization of all stakeholders and experts in the field, definition of clear and measurable objectives and a broad consensus about the necessary public expenditures.

5 Conclusions

Considering the potential and almost unparalleled role of ICT in the modern health care systems, eHealth currently represents a very hot topic and could define the main trajectory of health care system action in the future and articulate its long-term goals in general. Conducting a comparative analysis of the eHealth development has emerged as a very challenging mission. So far there is no universally-acknowledged methodology for evaluating the development of overall eHealth projects or their individual components, while the efforts trying to provide at least some kind of comparative framework or conduct international comparative analysis of eHealth development are extremely limited. Although reasonably susceptible to subjectivity and arbitrary interpretations, comparative analysis in hand provides a valuable insight into the developmental characteristics of eHealth projects in Slovenia, Austria and Denmark, and can contribute to theory building in the field. Main limitations of the study probably concern the adequacy of performed weighting process and the fact that development level of individual eHealth component was actually defined on the basis of primary and secondary sources investigation without empirical testing and practical validation of each component in the health care environment. Accordingly, the issues of equal weights assigned to designated indicators and objective definition of development level raise some questions of principle, while the results of the comparative analysis may therefore be arguable and misleading. These issues should be properly resolved in further research and succeeding experiments trying to establish a theory-based and balanced framework for evaluation and comparative analysis of the eHealth development in national and international context. Despite certain methodological dilemmas and limited resources, conducted comparative analysis reveals the intricate dynamics of the eHealth development and potential deficiencies and barriers. Moreover, the comparative analysis, including designated guidelines, may eventually provide the groundwork for further development and implementation of the intractable and costly eHealth projects, and useful assistance for enhanced allocation of project management resources.

***Dalibor Stanimirovic** (PhD) is a researcher in the field of Informatics in public administration. His research work on ICT enabling reform and development of public administration has been published in several national and international journals. Over the last years, he has been actively involved in various research projects concerning his field of expertise. His general research interests include ICT policies and projects, evaluation metrics and models, Government Enterprise Architecture, Health Information Systems.*

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POVZETEK

1.01 Izvirni znanstveni članek

Razvoj eZdravja v Sloveniji – kritični vidiki in smernice za prihodnost

Ključne besede: eZdravje v Sloveniji, Avstriji in na Danskem, komponente infrastrukture, primerjalna analiza, pomanjkljivosti in zapreke, smernice razvoja

S problematiko informatizacije zdravstva se Ministrstvo za zdravje Republike Slovenije (MZ) ukvarja že dobri dve desetletji. Kljub zgodnji osnovni informatizaciji zdravstvenih organizacij v Sloveniji še vedno ni povezljivega in celovitega zdravstvenega informacijskega sistema (ZIS). Številni tovrstni informacijski sistemi (IS) so bili razviti znotraj posameznih javnih zdravstvenih institucij in so namenjeni predvsem zadovoljevanju lastnih potreb. Obstoječi ZIS med seboj niso zadostno komunikacijsko povezljivi in ne nudijo zanesljivih, relevantnih in ažurnih podatkov. Cilj projekta informatizacije slovenskega zdravstvenega sistema (eZdravje) iz leta 2005 je uvedba sodobnih in večstransko uporabnih informacijsko-komunikacijskih tehnologij (IKT) v poslovanje slovenskega zdravstvenega sistema ter povezava lokalnih IS v funkcionalen nacionalni ZIS. Tovrsten nacionalni ZIS bi državljanom in zdravstvenim delavcem zagotovil premostitev številnih ovir pri iskanju informacij, ki so relevantne za proces zdravstvene oskrbe, upravljavcem pa bi omogočil boljše spremljanje poslovanja zdravstvenih zavodov ter na dokazih temelječe odločanje in ukrepanje. S celovito informatizacijo bi si slovensko zdravstvo zagotovilo možnosti za kakovostno delo z bolniki, učinkovito upravljanje zdravstvenih informacij, nadaljnji razvoj zdravstvenega sistema ter njegovo konkurenčno vključevanje v evropski prostor. Na podlagi verodostojnih ekonomskih, administrativnih in kliničnih podatkov bi bilo omogočeno lažje načrtovanje in upravljanje zdravstvenih zavodov oziroma zdravstvenega sistema kot celote. Slednje bi pomenilo odločen korak k doseganju dolgoročnih ciljev ter omogočilo zadovoljitev naraščajočih potreb in različnih interesov deležnikov zdravstvenega sistema.

Projekt eZdravje v svoji najnovejši obliki zajema obsežno prenovo informacijsko-komunikacijskega sistema v zdravstvenem varstvu v Sloveniji. Do leta 2023 naj bi tako predvidoma uresničili projekt informatizacije zdravstva in vzpostavili nacionalni ZIS, ki naj bi s svojimi strateškimi usmeritvami in cilji omogočal spremljanje bolnikov in poteka ter stroškov zdravljenja, hitrejši dostop do podatkov, spremljanje opravljenih zdravstvenih posegov in njihovo zdravstveno kot tudi ekonomsko evalvacijo, spletno naročanje ter uskladitev čakalnih seznamov, povečal učinkovitost in preglednost slovenskega javnega zdravstva in optimiziral pripadajoče izvedbene procese, ki se odvijajo v zdravstvenih zavodih. Kljub znatnim naporom in relativno visokim naložbam v projekt informatizacije slovenskega zdravstvenega sistema, MZ v Resoluciji

o nacionalnem planu zdravstvenega varstva 2008–2013 ugotavlja številne pomanjkljivosti na področju slovenske zdravstvene informatike.

Izhajajoč iz predstavljene problematike, se članek posveča preučevanju naslednjih raziskovalnih vprašanj:

1. Pregled projektov eZdravja in s tem povezanih strategij v Sloveniji, Avstriji in na Danskem.
2. Analiza razvitosti projektov eZdravja v Sloveniji, Avstriji in na Danskem.
3. Identifikacija glavnih pomanjkljivosti na področju razvoja eZdravja v Sloveniji in zagotavljanje smernic za nadaljnji razvoj.

Pri izvedbi raziskave je bila uporabljena primerjalna analiza. Le-ta se je najprej oprla na pregled primarnih in sekundarnih virov na področju razvoja in implementacije projektov eZdravja v Sloveniji, Avstriji in na Danskem. V prvi fazi raziskave so bile uporabljene osnovne družboslovne znanstvenoraziskovalne metode. V nadaljevanju raziskave so bili predstavljeni kazalniki, na podlagi katerih je bila dejansko izvedena primerjalna analiza razvitosti projektov eZdravja v izbranih državah. V tem delu raziskave je bil uporabljen kompleksnejši znanstvenoraziskovalni inštrumentarij, ki je s pomočjo sintetično-analitičnih metod povezal teoretična in primerjalna spoznanja z obravnavanega področja. Raziskovalne aktivnosti so bile umeščene v inkrementalni metodološki okvir, ki je značilen za tovrstne primerjalne analize. Izbira znanstvenoraziskovalnih metod je bila prilagojena raziskovalni problematiki in posebnostim kompleksnega raziskovalnega področja.

Primerjalna analiza v prvi fazi zajema kratek povzetek strateških izhodišč na področju projektov eZdravja v Sloveniji, Avstriji in na Danskem, v nadaljevanju pa na podlagi izbranih kazalnikov primerja stopnjo razvitosti projektov eZdravja. Čeprav sta za razliko od danskega tako slovenski kot tudi avstrijski projekt eZdravja še globoko v fazi implementacije in še kar nekaj časa ne bosta zaživela v celoti, bodisi zaradi tehničnih težav bodisi zaradi javnofinančnih omejitev, pa je na podlagi nekaterih dejavnikov že mogoče ovrednotiti dosedanji razvoj projektov eZdravja v Sloveniji in drugih članicah EU ter določiti njihove prednosti in pomanjkljivosti. Kazalniki, ki so bili v prispevku uporabljeni za oceno razvitosti projektov eZdravja v izbranih državah, so uvrščeni v dve skupini in sicer:

1. Operativni in tehnološki kazalniki
   - Elektronski zdravstveni zapis (EZZ)
   - Interoperabilnostni okvir
   - Podatkovni standardi
   - E-recepti
   - Kartica zdravstvenega zavarovanja (KZZ)
   - Profesionalna kartica

- Telemedicina
- Nacionalni zdravstveni portal

2. Politični kazalniki in kazalniki uspešnosti
   - Vključitev deležnikov (politične smernice, poročila, izmenjava podatkov, izobraževanje in usposabljanje, itd.)
   - Pravna ureditev
   - Kazalniki uspešnosti zdravstvenega sistema
   - Vrednotenje delovanja eZdravja

Na podlagi slednjih kazalnikov prispevek podaja skupna oceno razvoja eZdravja v izbranih državah ter v nadaljevanju tudi ustrezne smernice za preseganje ugotovljenih pomanjkljivosti in učinkovitejši razvoj projekta eZdravje v prihodnjem obdobju.

Primerjalna analiza potrjuje nesporni primat Danske na področju razvoja projektov eZdravja v primerjavi s Slovenijo in Avstrijo. Danski projekt eZdravja prednjači pri oceni vseh primerjalnih dejavnikov, najvidnejša razlika pa je vidna na področju politik in strategij, povezanih z eZdravjem, saj je Danska pričela z razvojem projekta eZdravje skoraj 10 let pred Slovenijo in Avstrijo. Danska je v procesu zasnove, razvoja in implementacije projekta eZdravje očitno dosegla širši družbeni konsenz in uspela vzpostaviti tesno medresorsko sodelovanje ter koordinirano in zavzeto delo vseh deležnikov, kar je odločilnega pomena za učinkovito realizacijo tako obsežnih in dragih projektov, kot je eZdravje. Glede primerjalnega vidika operativnosti aplikacij znotraj eZdravja dosega Danska zavidljive rezultate v vseh kategorijah, razen na področju vrednotenja delovanja eZdravja, kjer se ta izvaja samo delno. Danska pri vseh izbranih dejavnikih dosega primerjalno gledano uspešne rezultate tudi na ravni EU-27 in se v številnih klasifikacijah razvitosti projektov eZdravja uvršča na prvo mesto.

Prispevek razkriva pomembne pomanjkljivosti v dosedanjem razvoju in uporabi aplikacij eZdravja v Sloveniji. Večina kazalnikov dosega slabše rezultate od Avstrije in Danske, primerjava pa kaže, da segajo tudi pod povprečje EU. Upoštevajoč kompleksnost razvoja tovrstnih aplikacij in dolgotrajnost njihovega prenosa v operativno uporabo ter aktualnih proračunskih omejitev je jasno, da omenjene funkcionalnosti eZdravja v Sloveniji še dolgo časa ne bodo zaživele. Simptomatična je tudi nezadostna uporaba že obstoječih aplikacij in IKT orodij. To na eni strani nedvomno kaže na nezadostno ozaveščenost ter pomanjkanje usposobljenosti zdravstvenih delavcev na področju uporabe IKT, na drugi pa na pomanjkanje impulzov in spodbud menedžmenta za intenzivnejšo izrabo potencialov, ki jih nedvomno ponujajo sodobne IKT rešitve.

Na podlagi slednjih ugotovitev so bile ob koncu primerjalne analize oblikovane smernice, ki naj bi pomagale učinkoviteje usmerjati razvoj eZdravja v prihodnjem obdobju.

V skladu z raziskovalnimi izhodišči prispevka je izčrpen pregled razmer na področju razkril, da težave, s katerimi se srečuje projekt eZdravje, na eni strani izhajajo iz tehnično-tehnoloških značilnosti obstoječih ter povečini fragmentiranih ZIS, ki so posledica neusklajenega razvoja na področju zdravstvene informatike v zadnjih desetletjih. Na drugi strani pa glavni krivci za obstoječe stanje prihajajo iz upravljavskih oziroma političnih krogov, ki so razvoj zdravstvene informatike v tem obdobju prepustili lastnim pobudam, potrebam in interesom posameznikov na ravni zdravstvenih zavodov. Poleg tega pristojni v zadnjih letih niso uspeli spodbuditi razvoja in uresničitve projekta informatizacije z močnejšo politično (finančno, kadrovsko, organizacijsko) podporo ter oblikovanjem moderne in konsistentne strategije na področju.

Ne glede na nesporno pomembnost do sedaj že uresničenih in v naslednjih dveh letih pričakovanih podprojektov na področju eZdravja, ostaja skrb, da bodo ti podprojekti ostali nepovezani v neko funkcionalno celoto, ki bi lahko prispevala v boju z vse večjimi težavami, s katerimi se srečujemo v zdravstvu. Največji razlog za skrbi leži predvsem v pomanjkanju dolgoročnega politično-strateškega okvirja, v katerega bi lahko umestili izolirane podprojekte in jih povezali v konsistentno in celovito nacionalno rešitev. Trenutna odsotnost strateških smernic in operativnega načrta lahko znatno prispeva k razvojnemu zastoju in posledično spodkopa vse dosedanje napore ter odloži končno realizacijo projekta za nedoločen čas.

Ne glede na nekatere metodološke dileme in omejene dokumentacijske vire, prispevek celovito razkriva zapleteno dinamiko razvoja eZdravja in določene pomanjkljivosti ter ovire, s katerimi se srečujemo. Izvedena primerjalna analiza lahko na eni strani zagotovi podlago za nadaljnje raziskave na obravnavanem področju, na drugi strani pa lahko predstavljene razvojne smernice pripomorejo k oblikovanju strateških izhodišč za učinkovitejšo implementacijo in operacionalizacijo projekta eZdravje v Sloveniji.

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Alternative Dispute Resolution for Consumer Cases: Are Divergences an Obstacle to Effective Access to Justice?

Urša Jeretina
Professional trainee at Croatian Mediation Association (CMA) and Head of R&D
Zavod UP – Institute for administration operations
ursa@zavod-up.si

Alan Uzelac
Professor of Civil procedural Law at the Zagreb University
Faculty of Law
auzelac@pravo.hr

ABSTRACT

Traditional court proceedings do not always offer practical and cost-appropriate way of resolving consumer disputes. Some authors consider that, in disputes between consumers and businesses, alternative dispute resolution (ADR) is more effective, faster and cheaper. Insofar, consumer ADR (CADR) is seen as a useful instrument that helps consumers realize their right of access to justice. It is argued that the CADR is a flexible and faster method of enforcement of consumers' rights, and that CADR systems provide valuable information on the needs of applicants, while preserving confidentiality and increasing consumer satisfaction. However, while praised in theory, the CADR in real life has not reached the desired levels. It seems that both sides, businesses and consumers, lack awareness of ADR schemes and their benefits. In this paper we analyze the concept of CADR through compensatory collective redress. Special attention is paid to different barriers for the development of various ADR schemes, which are also reflected in the evaluation methods used to measure efficiency of the use of the (C)ADR. The EU Directive on Consumer ADR and Regulation on Online Dispute Resolution (ODR) have attempted to set flexible rules that would assure quality of dispute resolution between entities in the EU. However, the EU initiatives so far leave many questions unanswered, in particular about supervision and financing of CADR schemes, as well as the issues regarding purely internal harmonization of CADR practices. An example for considerable divergences are CADR proceedings in the neighboring Western Balkan states, such as Slovenia and Croatia.

Key words: *consumer alternative dispute resolution, consumer protection, ADR schemes, collective redress, harmonization of EU law, CADR schemes in Slovenia and Croatia*

JEL: D18, D73, D74, K23

1 Introduction

Effective consumer protection is one of the key elements for the functioning of the EU internal market. Functioning of the EU single market is beneficial for consumers and businesses; it supports creating jobs and promoting growth, competitiveness and innovation. However, EU could offer a more unified internal market in key sectors of everyday life, such as energy and telecommunications, as well as in sectors that are fragmented or obviously lack effective competition.

The consumer is a weaker party in every process of dispute resolution. Consumers do not know enough about the quality and characteristics of technically advanced and/or demanding products, and lack comprehensive knowledge about the quality standards pertaining to services. They are unable to assess the risk of particular contracts, while they are heavily exposed to psychological pressure of advertising (Zabel, 1999, p. 468). In addition, judicial proceedings can be long and complex. The losses suffered by European consumers due to the problems with purchased goods or services are estimated at 0,3 % of the European GDP[1]. This estimate particularly targets small claims in which consumers, harmed by an illegal practice of a trader, face difficulties in accessing effective and affordable means to obtain appropriate compensation. Essentially, for the amounts below 200 EUR, 48 % of the EU consumers do not initiate court proceedings, while 8 % of them never do so irrespective of the amount of their claim[2] (Directorate General for Health and Consumers – DG SANCO, 2011, pp. 3–5).

Consumer Alternative Dispute Resolution (CADR) can help enterprises to maintain good relationships with consumers and gain a positive reputation in the EU internal market. It also promotes competition. But, the main advantage of the efficient use of CADR and Online Dispute Resolution (ODR) in consumer matters is the increased satisfaction of the users that get another option to protect their rights – a process that is fair and appropriate, and uses of simpler, cheaper and faster dispute resolution methods.

The ADR methods may be used in relation between consumers and businesses (C2B or B2C) or in relations between businesses (B2B). In any case, the process presupposes the involvement of an independent and neutral third party – a mediator, conciliator, ombudsman or similar person. The CADR procedure seeks to secure interaction between the parties and facilitates finding of consensual solutions. For instance, consumers are actively involved in the dispute settlement procedure – be it mediation, conciliation or negotiation – and participate in the process of finding effective redress for their violated rights.

1 See for example The Gallup Organization (2011), Flash Euro barometer No. 299, *"Consumer attitudes towards cross-border sales and consumer protection"*.

2 See for example TNS Opinion & Social (2011), Special Euro barometer No. 342, *"Consumer Empowerment"*.

In practice, there are more than 750 different ADR schemes (DG SANCO, 2011, p. 6). They are all based on different procedures carried out by different entities. The EU proclaimed that consumer ADR can be carried out both as a civil or as an administrative procedure. The choice of procedure is left to the Member States. The result of this freedom of choice is divergences in various areas. In some of them, e. g. in the areas of energy, telecommunications, e-communications, postal services and transport, if no settlement can be reached, the dispute resolution continues in an administrative procedure, even if the dispute apparently deals with private interests only. The relationship between the consumers or users of these services and their operators is by the EU "*acquis*" defined as the use of "services of general interest" or "universal service obligation – USO". Such services are considered to be carried out as administrative matters that fall under the public administrative law. In such "administrative" ADR proceedings the public interest in the protection of market is matched by the interest in protection of the weaker party – the consumer. If public interest prevails, the administrative proceedings may be supervised by different administrative entities (e. g. regulatory agencies or the ombudsman). In some Member States such agencies, because of their independence and autonomy, conduct ADR proceedings and may issue final administrative decisions. Such decisions are binding for the trader, but the consumer has the right to appeal the decision before the Administrative Court. Resolving these disputes may therefore take form of a multi-stage proceedings, initially conducted under the Administrative Procedure Act (APA), and then before regular courts. It is considered that the said administrative dispute resolution is not a form of ADR (Galič, 2012, p. 6), although administrative ADR (especially negotiation rulemaking) has been introduced in United States in APA (article 571–584) in the mid-1970s' (Henry & Perritt, 1987, p. 863), and is also increasing in several EU Member states e. g. the practice in Sweden, Belgium, Finland, Norway etc. (Lindell, 2012, p. 312) with the move towards a more bilateral relationship between administration and citizens (as consumers), but because of the specific character of public law some problems have occurred (Goes, 2014, p. 9). After Perritt (Henry & Perritt, 1987, p. 863) in administrative law "a major discrepancy between administrative procedure and the decision-making requirements of delegated legislative power was a failure to distinguish 'rights disputes' from 'interest disputes'." The problem is that "interest disputes" are characterized by the absence of pre-existing rules of decision, because adjudication is dealing just with "rights disputes" written by the law. Essentially, there is a need to develop a coherent ADR framework not just for civil proceedings, but also within public administrative law across all Member States.

The purpose of this paper is based on normative and comparative analysis to determine the key positive (benefits) and negative (divergences) aspects of the ADR concept in consumer matters, with exploration whether the current legal status of the EU is contributing to increasing of consumer confidence in the single market across all EU Member states. The objectives are realized

through different empirical analysis of the use of (C)ADR through compensatory consumer redress, which have shown the existence of various ADR schemes through different legal frameworks across EU and also divergences in CADR proceedings with different legal relationships for example in Western Balkan states (Slovenia and Croatia). The main aim of the survey is to present the complete and realistic picture of the use of (C)ADR and future guidelines of the need for EU action, which would serve to create a more coherent and partnership legislation for the development of harmonized (C)ADR model in administrative and judicial proceedings in the terms of "good governance", and ultimately to reply to the question raised in the title of this article.

2 The Benefits of CADR

The cross-border economic cooperation stimulates growth of the number of providers on the market. This creates a favorable competitive climate among providers and has a beneficial impact on prices of goods and services. The movement of goods and people is on the rise. While the EU policies aim to reach high level of consumer protection, in practice it is still difficult for consumers to enforce their rights when such a need arises. In addition, Europe needs new sources of growth and consumer policies should assist that goal.

The Europe consists of 500 million consumers and consumer expenditures amount to 56 % of the EU GDP (European Commission, 2011a, p. 2). The European consumers' skills and capability are nowadays representing an "intangible stock of capital", which means that empowered consumers will boost competition and innovation, they will strongly influence economic growth and sustainability with also forcing businesses to deliver value on the market (Davies, 2012, p. 63). Innovation delivers value to the market, which means authentic commitment to trying something new and retaining an open mind to the results in practice (Macfarlane, 2012, p. 939). The effective innovation in practice is empowering consumers with full confidence and changing the tradition of resolving their disputes (small claims), which are so far too expansive.

The Europe 2020 Strategy[3] calls for "citizens to be empowered to play a full role in the single market', which 'requires strengthening their ability and confidence to buy goods and services cross-border". In today's modern world with globalized and digital economy, consumer empowerment and confidence plays a key role in the single market (DG SANCO, 2011, p. 3). The consumers'

3 See European Commission (2010), *Europe 2020, a strategy for smart, sustainable and inclusive growth*, which proposes seven important initiatives: 1. an innovation Union, 2. youth on the move, 3. a digital agenda for Europe, 4. a resource-efficient Europe, 5. an industrial policy for the globalized era, 6. an agenda for new skills and jobs and 7. a European platform to tackle poverty (p. 5).

trust in the Single Market is adversely affected by the lack of confidence[4], which can be restored only by encouraging active participation of consumers in the functioning of markets and achieved by empowerment of their rights (European Commission, 2011, p. 2). EU Consumer Policy Strategy (2007–2013)[5] defines 'empowered consumers' as consumers with real choices, full accurate information, market transparency and the confidence that comes from effective protection of their rights. The Strategy emphasizes the importance of empowerment, which comes from the capacity of well-informed consumers and also from designed efficient infrastructural framework that can highlight consumer's actual behavior in the market.

Building an overall environment with "smart" policies where consumers can rely on the basic premise of safety through education is not an easy task. What needs to be provided is information on sometimes complex ways of navigating through the Single Market. It is the only way to empower the consumers and help them to effectively benefit from the best offers on products and services. Only in such an enviroment the consumers will be able to confidently exercise their rights knowing that they have access to efficient redress in case of violations. If more consumers are able to make informed decisions, they could also have the greater impact on strengthening the Single Market and stimulating growth by demanding value, quality and service (European Commission, 2011a, p. 2). Access to effective enforcement and efficient redress means to resolve disputes and obtain compensation for consumers when their rights are violated by traders. The indispensable tools for effective protection of consumers' rights are ADR and ODR schemes, which can put empowered consumers at the heart of the Single Market (European Commission, 2011, p. 2).

2.1 The advantages of Consumer Alternative Dispute Resolution (CADR)

ADR and ODR techniques are increasingly used together or combined for inclusion in the formal legal system at the international level. The essence of ADR/ODR procedures is voluntary access of parties in the process and neutrality of the third party (e. g. mediator etc.), which is conducting this confidential proceeding, where jurisdiction is in the hands of the parties themselves. The key advantages of consumer ADR and ODR proceedings are therefore mainly in the scope and role of the parties involved, in lower costs and in fastest final decision of the proceedings, which we listed below.

4 More than 26 % Europeans do not feel confident as a consumer, 36 % Europeans do not feel knowledgeable as a consumer and 40% Europeans do not feel protected by consumer law. See TNS Opinion & Social (2011), Special Euro barometer No. 342, *Consumer Empowerment,* p. 5.

5 See the Communication from the Commision to the Council, the European Parliament and the European Economic and Social Committee (2007), *EU Consumer Policy Strategy 2007–2013, Empowering consumers, enhancing their welfare, effectively protecting them.* Brussels, COM (99 final).

Table 1: Main advantages of ADR and ODR proceedings in consumer matters

Advantages of ADR	Advantages of ODR
-suitability for multi-party disputes -flexibility of the procedure - the procedure is defined and controlled by the parties to the dispute -lower costs -reduced complexity in the sense of »less is more« -parties choice of neutral third party (expertise in the field of conflict) for direct negotiations or termination of the proceeding -the likelihood and speed of decision within a maximum of 3 months -practical solutions tailored to the interests and needs of the parties involved (and not the rights and wishes, it can be perceived) -sustainability agreements -confidentiality, neutrality and voluntariness -maintaining interpersonal relationships and reputation rating -the possibility of collective redress (the general interest of consumers)	- easy online platform ADR = ODR presented with instructions for use in several languages for cross-border disputes between the parties primarily consumer--trader - providing electronic complaint form - defining the competent authority ADR, which the parties agreed to, and forwarding the complaint - free electronic tools (e-mail, mobile messages etc.) to ensure communication between the parties and the ADR bodies to forwarding the request -the digital platform for the translation of information between the parties and the ADR body (accessible in different languages) - electronic archive files: the proposal for ADR, selection of ADR body, record of dispute, agreement on ADR procedures, the settlement of resolving the dispute (or loss) - tendency to resolve the dispute within 30 days from the date of receipted request in consideration - automatic feedback on receiving requests / information etc. - confidentiality, informality, the voluntary nature of the process - the protection of personal data - easy online platform ADR = ODR presented with instructions for use in several languages for cross-border disputes between the parties primarily consumer-trader

Source: Adopted after Directive on Consumer ADR, 201b; Hodges et al., 2012d, pp. 22–23; Regulation on ODR, 2013a; Rous, 2014, pp.16–17 and authors own.

Above advantages show the need of implementation of ADR schemes to public bodies and the implementation of latest techniques of ODR, which is the result of multi complexity and the rapid development of the Network. In some Member States (Belgium, Netherlands, UK and others) ODR is already fully implemented in their legal systems as on-line process of resolving virtual consumer disputes.

In the future The EU Regulation on Online Dispute Resolution (2013) and European program 2020 have and will provide a new option for all Member States for resolving cross-border disputes between traders and consumers via digital platforms. Advantages of the virtual settlement for consumer disputes are not only voluntariness, informality and privacy of procedure, but also the faster final decision of cross-border dispute within thirty days. Important role and increased responsibility will be given to “virtual mediators”, which will vir-

tually facilitate parties from different Member States to the consensual decision on digital platform. ODR platform is easy to use with instructions in all European languages (online "Portal Your Europe"), which is pay-free available to all citizens and businesses in the EU.

ODR procedure is extremely confidential, where information exchange enjoys strict protection of the data, although their use is transparent. Member States which have not yet adopted ODR implementation - will be set up in four phases, the main elements of proposal of which are (Hodges, 2012, pp. 30–31, Hodges et al. 2012d, pp. 22–23, Rous, 2014, pp. 16–17):

1. Establishment of the European ODR system: The European Commission will with implementing acts adopt measures to establish an online platform, which should be surrendered in the first test of the technical functionality and suitability of usability by the end of 2015;
2. Information on the EU-wide ODR system: The European Commission should ensure the establishment of a network of national contact points (e. g. interconnection of ADR entities of all EU Member States);
3. Data Protection Rules: ADR schemes will be stored in databases and will be subject to the relevant legislation on data protection, which will ensure widespread availability;
4. Monitoring: The compliance by ADR schemes with obligations set out in this Regulation will be monitored by the competent authorities to be established in the Member States. The final adoption of a comprehensive regulation to use ODR will be in the beginning of 2016, which will be also followed by cyclic reports to the European Parliament on the introduction of the overall performance of the ODR platform. Member States will then gradually implement ODR platform no later than till 2017, but first they should implement various forms of ADR by the end of 2015.

However, many of the advantages of ADR or ODR depend on personal competences and "proper" skills of the involved third naturally party – "mediator", the sensitivity of a policy maker to the recognition of the real needs of interest groups or involved parties, and the creativity of administrative lawyer in structuring a process that will serve the spirit of the Administrative Procedure Act and all other substantive rules/statutes (Henry & Perritt, 1987, p. 928). Mediator has to be multidisciplinary person with psychology, social, law and other knowledge and skills as all in one, to help involved parties with different views and needs to find a compromise as the common interests.

3 Current Legal Status of ADR in Consumer Matters

The reasons why the European Commission developed an increased interest in the consumer ADR are mainly contained in its capacity to assure accessibility, equity, effectiveness, accountability and verification (Hodges et al., 2012,

pp. 1–2). ADR is a political priority for the EU, which EU institutions are promoting together with ODR.

The legal basis for consumer ADR regulation in EU is provided by Article 114 and 169 of the Treaty on the Functioning of the European Union (hereinafter – the TFEU)[6]. TFEU gives particular importance to consumer protection in terms of supporting the interests of consumers, providing high consumer protection and promotion of their rights by awareness building, education and self-organization for the protection of their interests. The first steps in promoting consumer ADR schemes were highlighted as "soft law" in two European documents. The first one was Commission Recommendation on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes[7]. This document sets out seven principles, which must be taken into account by the authorities in each Member State and their bodies that provide services for resolution of consumer disputes. The second document was Commission Recommendation on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes[8], which provides additional four principles to ensure greater choice and flexibility for consumers, particularly with respect to electronic commerce and the development of communication technology.

In 2002, the European Commission drafted the Green Paper on Alternative Dispute Resolution in Civil and Commercial Law[9] with the objective to initiate a broad-based consultations of those interested in legal issues which arise in regard to ADR in civil and commercial law. The Green paper has outlined three main reasons for growing interests in ADR:

1. Increasing awareness of the ADR as a means of improving general access to justice in everyday life,
2. Considerable attention that ADR has received in a number of Member States,
3. Attribution of a political priority to ADR in the context of the information society and the promotion of ODR.[10]

In terms of EU sector-specific legislation there are a number of EU directives, which contain provisions on ADR schemes for consumer disputes, such as

6 TFEU, OJ L EU, No. 83/2010, pp. 47–199. Article 114 regulates EU competences for the approximation of the laws concerning the establishment and functioning of the internal market, while article 169 lists the EU competences for promotion of the interests of consumers and ensuring a high level of consumer protection. See also Juškys and Ulbaitė, 2012, p. 26.

7 Commission Recommendation 98/257/EC of 20 March 1998, OJ L 115, 17. April 1998. It establishes the principles of independence, transparency, adversarial principle, effectiveness, legality, liberty and representation.

8 Commission Recommendation 2001/310/EC of April 2001 on the principles for out-of-court bodies in the consensual resolution of consumer disputes (2001/310/EC), OJ L 109, 19. April 2001. It sets out the principles of objectivity, transparency, efficiency and fairness.

9 The Green paper on Alternative Dispute Resolution in Civil and Commercial Law (2002), COM (196 final).

10 Ibid., in summary.

Directive on credit agreements for consumers[11], Directive on electronic commerce[12], Directive concerning common rules for the internal market in electricity[13] etc. The incorporation of provisions of the new EU legal framework for consumer disputes of this kind indicates the increasing support of ADR in consumer matters. Yet, it is questionable whether the existing European legislation can assure a consistent development of quality ADR providers in the Member States.

Most consumer ADR schemes do not distinguish between the purchase of goods or services by distance sales (co-called "e-commerce") and the methods of direct sales (personal sales). They tend to resolve all kinds of disputes in the area of their jurisdiction, regardless of whether it is electronic or conventional purchase (DG SANCO, 2011, p. 10). In order to increase consumer confidence in the single market, the European Commission submitted two legislative recommendations with a view to subsequent regulation: proposal for a directive on alternative dispute resolution for consumer disputes in the single market[14] and the proposal for a regulation on ODR[15]. The Directive on consumer ADR aims to encourage formation of high-quality bodies for resolving contractual disputes related to the sale of goods and provision of services by traders. Regulation on ODR should enable businesses and consumers to directly access an online platform, established at an intermediary body in accordance with Directive as assistance in resolving contractual disputes related to cross-border online transactions. The European Commission regulations are part of the twelve key actions of the Single Market Act[16] that should contribute to formation of a "strong, deep and integrated" European market which "creates growth, generates jobs and offers opportunities"[17].

The new EU consumer agenda (2014–2020)[18] with DG-SANCOs Management Plan (2014) support the new policy aim that empowered consumers are the heart of the Single Market. This Agenda will achieve the aim with contributing to protection of health, safety and economic interests of consumers and promoting their right to information, education and to organize themselves

11 Directive 2008/48/EC on credit agreements for consumers and repealing Council Directive 87/102/EEC, OJ L 133/66, 66.

12 Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), OJ L 178/1.

13 Directive 2009/72/EC on concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211/55, Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211/94, pp. 55, 94.

14 Commission (EC) "Proposal for a Directive on alternative dispute resolution for consumer disputes and amending, Regulation 2006/2004/EC and Directive 2009/22/EC (Directive on consumer ADR)", COM/791 final, 29. November 2011.

15 Commission (EC) "Proposal for a Regulation on online dispute resolution for consumer disputes (Regulation on consumer ODR)." COM 794/2 final, 29. November 2011.

16 See European Commission (2012a). Single Market Act II, Together for new growth, COM (573 final).

17 Ibid., p. 4.

18 European Commission (2014), Consumer programme 2014–2020, see more on http://ec.europa.eu/consumers/strategy-programme/financial-programme/index_en.htm.

to protect their interests also on Digital platform. The main problems that need to be addressed are signed in following categories with specific aims for consumer policy (DG-SANCO, 2014): Security (enhance product safety through effective market surveillance throughout the EU), working for and with consumers (increasing visibility of EECs), making markets work for consumers (to adopt proposed measures for greater transparency and comparability of bank fees, flexibility of transfers of payment accounts), going digital (implementation of Digital Agenda 2014 – "EU consumer in the digital era"), strengthening rights and redress (enforcement of consumer redress to consolidate consumer rights), enhancing knowledge ("know how" through the "Consumer Scoreboard") and ensuring better implementation and enforcement (to unlock the full potential of the Single Market with enforcement of consumer rights by strengthening cooperation between national enforcement bodies through Consumer Protection Cooperation (CPC) network).

3.1 The Need for Action at the Level of the European Union

The starting assumption of the European programmatic documents is that, if the development of ADR is left to the Member States' action alone, quality ADR schemes will continue to be absent in some sectors of the retail market and in some geographical areas of the EU (European Commission, 2011b, pp. 6–7). Recent studies show that the number of disputes submitted to ADR, including ODR, has increased in the EU from 410.000 in 2006 to 530.000 in 2008 (DG SANCO, 2009, p. 13). Although in 2009 only 3 % of European consumers took their case to an ADR entity, only 9 % of European retails have used ADR and only 6 % of European traders are members of an ADR scheme (DG SANCO, 2011, p. 7). The diversity and uneven geographical and sectoral availability of ADR entities prevent consumers and businesses from fully exploiting their whole potential (European Commission, 2011b, p. 6). Relevant barriers also include non-compliance by businesses with non-binding decisions of ADR schemes and refusal by businesses to enter into out-of-court procedure, which can ultimately undermine consumer trust in such schemes, as well as the absence of ADR schemes in areas or industry sectors where they may be needed (DG SANCO, 2009, p. 39). According to Hodges (2012, p. 27), consumers and also businesses are more willing to resolve disputes through ADR than through court proceedings, but often confusion regarding consumer ADR may prevent its successful use, in particular in a cross border context. More than half of European consumers (56 %) bought something via Internet (TNT opinion & social, 2011, p. 31), of which almost all (48 %) were more confident when ordering goods or services from sellers or providers in their own country then from those in other parts of EU (The Gallup Organization, 2011, p. 6).

This sector-specific and geographical gap has been addressed at the European level with two already quoted proposals of a directive and a regulation. Essentially, the need for EU action roots in the need to implement EU policies

and priorities by designing one coherent model, which can be utilized and rolled-over by the national bodies and organizations for the consumer protection.

Such a model would have additional benefits. ADR procedures can deliver valuable information on types of claims, trends in businesses and their method of operation. In this sense, ADR can also serve as a part of the quality management system, reinforcing and improving virtuous behavior and consumer empowerment (Hodges, 2012, pp. 30–31). Hodges also noted that (Hodges et al. 2012b, p. 4)

> "… if consumer ADR systems are appropriately designed, [they] also offer considerable regulatory possibilities through supporting high standards of behavior in markets. Some national consumer ADR systems are clearly realizing their considerable potential to deliver both increased consumer protection and behavioral consequences for markets and traders, with great efficiency, low cost, and swift results."

To avoid introducing large economic incentives for lawyers and judges that might result in unmerited litigation and abusive practices, many of the national models have deliberately been designed conservatively (Hodges, 2012, p. 14). Within the court system of several countries, mediation services are being offered by the courts. However, court services of this kind may have a limited capacity, and can involve disproportionate costs (Hodges et al., 2012a, p. 1). The need for an effective European approach implies formation of consumer ADR schemes that can transform the existing regulatory systems to fast and effective ADR or ODR systems (Hodges et al., 2012b, p. 4).

3.2 A Model for National Consumer ADR Architecture

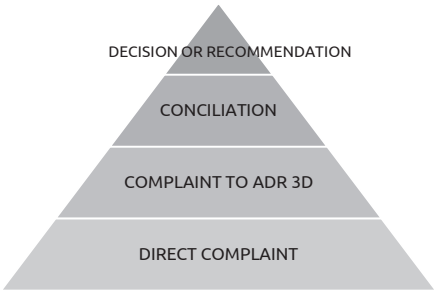
Hodges, Benöhr and Creutzfeldt-Banda (2012, p. 1) have proposed two principles for the design of national consumer ADR architecture:

1. To maximize effective trade, and thereby minimize the number of C2B disputes, by providing expert, informed and reliable sources of consumer advice, from a small number of trusted and clearly identifiable bodies. There needs to be a unified national network of advice centers, linked to expert sectoral bodies.
2. To provide a similar structure of CADR, designed so that it is inherently more attractive to consumers and traders than the court system as a process for resolving small disputes involving applying established law to factual trading situations. Hence, it needs be more user-friendly, quicker, and cheaper than courts, as well as satisfying the essential requirements for any acceptable means of dispute resolution, such as independence, accuracy and consistency of outputs, and so on.

The claim should be submitted online and the case taken forward by proper consumer ADR entity, acting impartially and neutrally but providing swift

feedback to the consumer and trader over possible settlement (mediation/ conciliation, provided by phone or online). In case no settlement is reached, a final and binding decision should be issued.

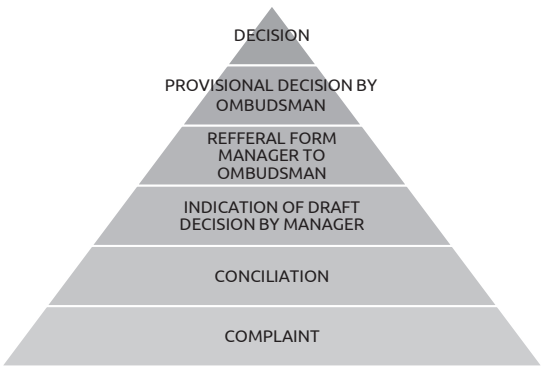
Figure 1: Dispute Resolution Pyramid



Source: Hodges et al., 2012d, p. 406

It is suggested that the outline of a national consumer ADR system should consist of several steps. The dispute resolution system should follow a simple sequence such as a) Consumer contacts the trader; b) Consumer contacts the Consumer ADR organization, or is referred to it by the trader; c) Consumer ADR organization tries to conciliate; d.) Consumer ADR makes a formal determination on the basis of a fair solution. In diagrammatic form as the integrated use of techniques by CADR provider, the consumer should start at the bottom of a pyramid structure (see Figure 1) (Hodges et al., 2012d, pp. 405–407):

Figure 2: More sophisticated model of Dispute Resolution Pyramid



Source: Adopted after Hodges et al., 2012, p. 5

Many CADR models involve a sequence of techniques, starting with negotiation, then providing mediation, and ending with arbitration. In such a sequence the parties have sufficient opportunity to reconsider their positions, and hence agree on solutions. In some systems that give powers to a special body for complaints (e. g. to Ombudsman) the sequence of steps can

even be extended. Here is such a "sophisticated" pyramid, with several steps that may lead to settlement rather than to submitting the dispute right away for a formal decisions (Hodges et al., 2012d, pp. 405–406).

4 The Key Dilemmas Regarding Consumer ADR

There are important dilemmas regarding consumer ADR that arise from major differences in national consumer ADR schemes. The consequence of national divergences may however be a convergence in compensatory collective redress in consumer matters across all Member States.

4.1 Differences in Consumer ADR Schemes

Directorate General for Health and Consumers (DG SANCO) has commissioned a number of studies on consumer ADR that have identified major divergences of the national ADR entities in terms of their sector specific and geographical coverage. On the basis of research conducted in 2009 (DG SANCO, pp. 8–30) there have been 750 ADR schemes identified in the Member States as relevant to business-to-consumer disputes, of which only 60 % have been notified to the European Commission, but there were also 288 non-notified ADR schemes identified across the EU. Most of ADR schemes are available to consumers free of charge or at a reasonable price (below 50 EUR). Consumer disputes are usually resolved within a short time (in average 30–90 days). The procedure in consumer ADR may be entrusted to a collective body (e. g. a committee) or to an individual (a mediator or ombudsman). The result of the process may be very different – it may be a settlement, a non-binding recommendation or a binding decision. If binding, the decision may be binding only unilaterally (just for the trader) or bilaterally (for both parties). This means that practically every scheme of CADR is unique. The European Commission has developed a database of more than 400 ADR schemes (which makes only about 40 % of the ADR entities), which they deem to be in conformity with the principles set up in the Commission Recommendations.

The research found that fourteen Member States[19] have collective judicial mechanisms by which a group of consumers or a public interest representative may require compensation for the damage caused by unlawful conduct of the trader. Some other Member States plan to adopt such ADR systems by the end of 2015 (European Commission, 2011a, p. 5). ADR schemes for consumer disputes are broadly available in the financial services sector (payment services, consumer credit), and in telecommunication and transport services. In the energy sector they are still in the early developing stage. Essentially, some characteristics, such as compulsory membership, the binding nature of the decision and exchange of information within regulatory authorities, are more common in these sectors than in the others. The EU has taken initiatives

19 Austria, Bulgaria, Finland, France, Greece, Italy, Germany, Netherland, Poland, Portugal, Spain, Sweden and the United Kingdom (UK).

to further promote development of common ADR schemes in these sectors (European Commission, 2012a, p. 6). The study of DG SANCO (2009, pp. 8–10) has also revealed the differences in the number of ADR bodies, the procedures (arbitration, mediation, etc.) and nature of the initiative (public or private).

Despite the existing diversity in consumer ADR schemes and models in the EU Member States, three types of host structures for consumer ADR systems can be broadly identified across different sectors and countries:

1. CADR agreements within public regulatory bodies (e .g. Germany, France, Lithuania and UK);
2. Independent decision-making bodies (e. g. Netherlands, Slovenia, Nordic, UK, and Germany);
3. Dispute Resolution arrangements sponsored by a trade association in order to resolve dispute arising under a code of business practice (e. g. UK)[20].

In the latest proposals, the objective of the European Commission is to improve the functionality of the common internal market and, more precisely, to increase the compensation for consumers and harmonize national legal regulations in terms of cross-border ADR schemes. To this end, the European Commission has set up three networks in order to facilitate consumer access to redress: FIN-NET (Network of ADR entities for financial services), the ECC-NET (European Consumer Centers), and SOLVIT ("online problem solving network"). But according to Juškys and Ulbaitė (2012, p. 27)

> "… the official exchange between the ADR entities is also very low and mainly limited to the European Commission-sponsored mediation activities of the ECC-NET and FIN-NET. Such a situation may be explained by the fact that the Commission Recommendations have a non-binding character, and the Member States are free to decide on the model of consumer ADR at the national level."

4.2 Convergence and Divergence in Collective Redress Mechanisms

Collective redress and consumer ADR go hand in hand in a number of areas, in the court proceedings, in out-of-court mandatory procedures and in judicial/voluntary agreement. According to Hodges (2012, p. 11), "… the interests of economy (e. g. bank charges, unfair commercial practice, medicine etc.) suggest that similar issues should be dealt with together, so as to achieve coherent, consistent and economical results." The most well-known "mass technique" of dispute resolution is the American class action, which has been extensively used in the USA since the 1960s. It is essential to note that class actions and other means of collective redress play a rather different role

20 Hodges et al., 2012d, p. 400.

in different legal systems. The general role and status of collective redress in a particular country has important implications for a choice of available techniques. These divergences are reflected already in the evolution of terminology. The notion of "class actions" was abandoned in the European context in favor of the term "collective actions" and, by 2008, in favor of the notion of "collective redress"[21].

In 2011 the European Commission carried out horizontal public consultations under the title "Towards a coherent European approach to collective redress". The aim was to identify common legal principles on collective redress and to examine how such common principles could fit into the EU legal system and into the legal orders of the 27 EU Member States. Some features in which different forms of collective redress could help to better enforce EU legislation or protect the rights of EU citizens and businesses were explored as well.

The EC identified two forms of collective redress: 1. injunctive relief, whereby claimants seek to prevent the occurrence of illegal behaviour or its continuation; and 2. compensatory relief whereby damages are sought for the harm caused. These forms of collective redress can be obtained not only before the court. They may also be provided by the use of ADR mechanisms in the proceedings conducted by public or private representative entities (European Commission, 2013, pp. 3–4). According to an old but true statement of Mauro Cappelletti (Caponi, 2012, pp. 3–4), these efforts of the EU fit neatly in the original profile of the movement for access to justice, which is characterised *inter alia* by the movement to grant representation to collective interests and to protect them through such mechanisms as collective actions and granting consumers and associations standing to sue. Simplification of proceedings and the development of ADR methods, which is another feature of access to justice movement emphasized by Cappelletti, are also an element of the same policy.

Despite the existence of wide variation in consumer ADR schemes in most EU Member States (old and new), not all ADR schemes involve compensatory collective redress. About half of the Member States did not introduce collective redress at all. In fact, only UK, Netherlands, Germany, Spain, Poland and Sweden provide mechanisms for mass claims processing regarding securities. Other Member States have redress mechanism introduced in their Consumer Protection Act, but have very little practical implementation in practice (for example Croatia). See comparative analysis below (Table 2), which includes various premises on consumer collective redress through different ADR schemes in selected Member States.

21 Collective redress is a procedural mechanism that allows, for reasons of procedural economy and/or efficiency of enforcement, bundling of many similar legal claims into a single court action. Collective redress facilitates access to justice in particular in cases where the individual damage is so low that potential claimants would not think it worth pursuing an individual claim. It also strengthens the negotiating power of potential claimants and contributes to efficient administration of justice, by avoiding numerous proceedings concerning claims resulting from the same infringement of law. See European Commission, 2013

Table 2: Comparative analysis of ADR schemes through compensatory collective redress for consumer matters in selected countries

CONSUMER ALTERNATIVE DISPUTE RESOLUTION	COURT PROCEEDINGS FOR SMALL CLAIMS Regulation (861/2007) establishing a European Small Claims Procedure provides a simplified court procedure for cross border claims under 2,000 EUR*	INJUNCTIONS Directive 98/27/ES o on injunctions for the protection of consumers' interests**	COMPENSATORY COLLECTIVE REDRESS
The UNITED KINGDOM (UK)			
- 43 public in private ADR schemes (e.g. financial, Ombudsman, The office Ombudsman for Telecommunications or Energy Ombudsman). - DISADVANTAGES: the transport sector. Public financial services ombudsman in 2009, dealt with 160.000 cases. - Duration of procedure: 31–90 days.	- The procedure for small claims (less than € 7.316) and below € 1500 for personal injury and irreparable harm. - Average duration of 53 weeks. ADR is not mandatory. - Jurisdiction under Regulation is the district, a higher court, the court for small claims, the Supreme Court of Gibraltar..	- Office of Fair Trading and the Relevant Consumer Associations injunction requiring the court to stop the illegal behaviour of traders. - Prior consultation with the companies which are required.	Three collective redress mechanisms: 1. For competition cases, 2. Group Litigation Orders (GLO) allow the court or individuals themselves to group together similar individual cases for harm suffered, 3. In cases where more than one person has the same interest, a mechanism through which a claim can be brought by one (or several) of these persons acting as a representative. The notion of "same interest" is interpreted quite restrictively.
NETHERLAND			
- The Financial Services Complaints Institute; The Advertising Standard Authority; The Foundation for Consumer Complaint Boards includes 49 private commissions which solve disputes between consumers and businesses. - DISADVANTAGES: in the investment sector. - The Foundation for Consumer Complaint Boards handled 11.000 cases in 2008. - The compliance rate is very high: 95,5 %, with 100 % for the Foundation for Consumer Complaint Boards.	A small claims procedure for claims under € 5.000 is available in the Netherlands. No appeal is possible below € 1.750	- Public authorities, all bodies having a legal capacity according to the Dutch Constitution, and the consumer organization Consumentenbond may bring injunctive actions. - Consumentenbond must try to reach an out-of-court settlement before seeking an injunction before the court. The Hague Court is the only competent court for unfair contract terms. The courts may order penalty payments for non-compliance and the publication of the judgment at the expense of the losing party.	- Since 2005, in the case of mass claims, consumer organizations can reach an agreement with the trader and ask the court to validate the agreement. - The system is an opt-out system and is based on the willingness of the parties to reach an agreement.

* Regulation n° 861/2007/EC of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199, 31 July 2007, 1–22.

** Directive n° 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests, OJ L166, 11 June 1998, 51–55.

GERMANY			
- Germany has more than 200 public and private ADR. They are organized by professional organizations and guilds. Some ADR schemes operate at local level; others have a national coverage. - DISADVANTAGES: in the energy, transport and tourism sectors. - Most of ADR cases are solved within 30 to 90 days. On average, the compliance rate to ADR decisions is 81 %.	A small claims procedure for claims under € 600 is available in Germany. The court may, however, apply the ordinary procedure if the claim is too complex. Before going to court, parties must attempt in-court mediation. No appeal is possible, except in specific circumstances. 67,6 % of the cases are dealt with within three months.	Qualified consumer organizations may seek injunctions before the courts. Negotiation before going to court is encouraged. Courts may order the publication of the judgment at the expense of the losing party. On average, injunction procedures take up to three years.	**Two different types of collective redress mechanisms:** 1. A test-case procedure in the area of financial investments. This opt-in procedure has two steps: 1. The common factual and legal questions are decided in a test case procedure. 2. This decision has to be applied to the individual cases. The procedure was introduced in 2005 for a period of five years and it is currently under review. 2. A representative action where consumers can assign their claims to a consumer organization which will bring the cases to court. This mechanism might either be used as a test-case procedure or a collective procedure in which claims are collected and the compensation granted by the court will be distributed among the consumers afterwards. However, in no case can the judgment be binding on persons who are not parties of the lawsuit.
SPAIN			
- 73 public Consumer Arbitration Boards exist at different levels. There are also sector-specific ADR schemes (e. g. Association para la Autorregulación de la Communication Commercial (AUTOCONTROL). - DISADVANTAGES: the financial services and energy sectors. - On average, complaints are dealt with within 30–180 days.	- A small claims procedure for claims under € 30.000 is available in Spain. - Appeal is possible before the court of first instance. This procedure takes approximately 5 months. In-court mediation is optional.	The National Consumer Institute and its regional branches, the public prosecutor and qualified consumer organizations may seek injunctions before the court. The court can also order the publication of the judgment at the expense of the losing party.	Spain has set up an opt-in collective redress action. This action may be initiated by consumer organizations, groups of victims and legal entities legally created to protect consumers' interests. Collective redress actions can also be taken when victims are not individually identified. Such action may only be brought by qualified consumer organizations. Consumer organizations may advertise their action through publication. The courts of first instance and commercial courts are competent.

SWEDEN			
- The public National Board for Consumer Complaints settles disputes between consumers and businesses. There are also private sector-specific Ombudsmen or complaint boards (e. g. the Committee for Insurance of Persons, the Complaint Board of the Driving Schools National Association, the Disciplinary Board of the Swedish Hotel and Restaurant Association). - The Public National Board for Consumer Complaints solves disputes within 6 months with a 76 % compliance rate. On average, private bodies deal with complaints within three months.	- A mandatory small claims procedure for pecuniary claims under SEK 19.7501 (approx. € 2.500) is available in Sweden. Appeal to the decision must be based on specific circumstances. Small claims procedures take 2 months. - The District Courts (tingsrätt) are competent to deal with the Small Claims Regulation.	The Consumer Ombudsman and qualified consumer organisations may seek injunctions before the Market court. In cross-border disputes prior consultation is mandatory before taking action. The Consumer Ombudsman also has direct injunction powers. All decisions of the Consumer Ombudsman and judgements of the Market Court are published. The average duration of an injunction procedure is six months.	- Consumer compensatory collective redress has been available in Sweden since 2003 through an opt-in group action. This action can be initiated by private individuals, consumer organisations or a government-appointed authority. In six years, twelve cases were brought before the court. In 2008, the procedure was positively evaluated. - The Swedish Ombudsman initiated an action against an energy supplier. The company failed to supply electricity to 7.000 consumers at the price agreed in the contract. The case is still pending.
POLAND			
- 31 permanent Consumer Arbitration Courts offer arbitration. The Trade inspectorate runs mediation schemes. - There are some sectoral ADR schemes (e. g. the Insurance Ombudsman (a public body) or the Banking Ombudsman (a private body). - DISADVANTAGES: particular in the investment, transport and tourism, energy and telecommunication sectors. - The average duration of ADR proceedings is between one to three months.	A specific mandatory small claims procedure for claims under PLN 10.000 (€ 2.500) exists. Its scope is limited to contractual claims, claims arising from a commercial guarantee or from non-conformity of goods and claims for payment resulting from contracts for lease of apartments. Appeals are restricted to error of law or violation of procedural rules.	- The President of the Office for Competition and Consumer Protection has direct injunction powers. Qualified consumer organizations and individual consumers can seek injunctions before the President of the Office for Competition and Consumer Protection. - The decisions of the President can be appealed before the Court for Competition and Consumer Protection in Warsaw. - For unfair contract terms, consumer organizations, individual consumers, the President of the Office for Competition and Consumer Protection, a local consumer Ombudsman can seek an injunction directly before the Court for Competition and Consumer Protection in Warsaw. The court can declare a contract term unlawful “erga omnes”.	A new action for consumer compensatory collective redress entered into force in July 2010. The action can be taken by at least 10 claimants or regional Ombudsmen. It is an opt-in system.

LATVIA			
- Three ADR schemes: one public scheme, the Consumer Rights Protection Centre, and two private, the Ombudsman of the association of commercial banks and the Ombudsman of the association of the Latvian insurers. - DISADVANTAGES: investments, postal services and energy sectors. Duration: 31–90 days.	It does not have a specific or simplified small claims procedure for national claims. Ordinary court procedure applies to small claims.	The Consumer Rights Protection Centre has direct injunction powers. Qualified consumer associations may seek injunctions before the Consumer Rights Protection Centre. Its decisions are binding on the traders, who can appeal to the Ministry of Economics and then to the Administrative Court. The Centre may publish the decision. Injunctions procedures take one to four months.	No mechanism of compensatory collective redress exists.
LITHUANIA			
- The Consumer Rights Protection Authority can deal with all consumer disputes. The Communications Regulatory Authority and the Insurance Supervisory Commission are sector specific ADR schemes. - In 2008, the Consumer Rights Protection Authority handled complaints within one month with a 52 % compliance rate.	- A mandatory specific small claims procedure for claims under LTL 1.000 (€ 289) is available. - No appeal is possible below LTL 250 (€ 72), except for some matters. The average duration of this small claims procedure is one to three months. Prior in-court mediation is obligatory.	The National Consumer Rights Protection Authority has direct injunction powers. In case of non-compliance, the National Consumer Rights Protection Board may bring the case before the court. Qualified consumer organizations may seek injunctions before the court. The court may order the publication of the judgment at the expense of the losing party. Case of ADR: Bank had unexpectedly increased the interest rate of credit cards by 5 %, without informing each consumer individually. FINE: € 5.792	No mechanism of compensatory collective redress exists.

SLOVENIA			
- Almost all courts provide ADR; e.g. the district Court conducted mediation in civil and commercial matters, employment matters, family matters, etc. - Bank, Insurance companies, Slovenian Chamber of Economy, Telecommunication, Energy, postal sectors provide private ADR schemes - DISADVANTAGES: in investment, transport, tourism, postal services, telecommunications, energy sectors. - In 2010–2013: an average of 1.300 successful mediations from an average of 909 civil cases submitted (33,11 %).	The existence of a mandatory procedure in small claims (less than € 835), the appeal only on the basis of serious violations of the provisions of the process, the duration – a few months.	- Designated public org. Qualified consumer org. and individual consumers can bring court action for an injunction. - Publication of judgments at the expense of the losing party to the proceedings. - Consumers should rely on the judgment, if the clause is illegal contract invalid.	No mechanism of compensatory collective redress exists. The existence of only those in the private sector (Chamber of Commerce).
CROATIA			
- ADR schemes at The High Commercial Court - conducted mediation in civil and commercial matters, - Public and private Banks, Insurance companies, Croatian Chamber of Economy, Croatian Association Mediation (CMA) provide private ADR schemes, - DISADVANTAGES: in investment, transport, tourism, postal services, telecommunications, energy sectors. - 2010–2013: an average of 15 successful mediations, in 2013–2014 on CMA: average of 40 successful mediations.	The existence of a mandatory speedy procedure in small claims (less than € 1.333), the appeal only on the basis of serious violations of the provisions of the process, the duration is still too lengthy.	- The Qualified consumer organizations and individual consumers can bring court action for an injunction. Qualified consumer organizations may seek injunctions before the court. - Publication of judgments at the expense of the losing party to the proceedings. - Consumers should rely on the judgment, if the clause is illegal contract invalid.	No mechanism of compensatory collective redress yet exists, although they have it implemented in the Consumer Protection Act. The existence of only those in the private sector (Chamber of Economy).

Source: Adopted after European Commission (Consumer redress, 2012), Hodges (2012), Manual reports of the Supreme Court of the RS (2009–2013), Manual reports of the High Commerce Court RH (2006–2013), Croatian Association Mediation (2013–2014) and authors own.

Another difference in approach relates to the way in which represented groups are composed. In this aspect, two models have raised considerable interest in the debates: "*opt-in*"[22] and "*opt-out*"[23] model. According to European Commission (2013, p. 11):

> "In the "opt-in" model, the judgment is binding on those who opted in, while all other individuals potentially harmed by the same or similar infringement remain free to pursue their damages claims individually. Conversely, in the "opt-out" model, the judgment is binding on all individuals that belong to the defined group except for those who explicitly opted out. The "opt-in" model is used by most Member States that provide for collective redress. The "opt-out" model is used in Portugal, Bulgaria and the Netherlands (in collective settlements) as well as in Denmark in clearly defined consumer cases brought as representative actions."

Another issue of controversy is organizational – which qualified authority could provide the most efficient method of the mass claims processing. In this respect, one of the reasons why only 40 % ADR schemes were reported to the EU may be inconsistency of ADR entities with the European legislation (see infra about this problem in Slovenia and Croatia).

In order to develop a common framework, the EU institutions have identified particular issues to be addressed in developing a European horizontal framework for collective redress. Taking into account the complexity on the one hand and the need to ensure a coherent approach to collective redress on the other hand, the Commission issued a recommendation on collective redress. That recommendation is based on Article 292 TFEU that suggests horizontal common principles of collective redress in the European Union which should be complied with by all Member States. After adoption and publication of the Commission Recommendation, the Member States should be given two years to implement the principles recommended by the Recommendation in national collective redress systems (European Commission, 2013, p. 16).

5 The Main Differences of Consumer ADR in Slovenia and Croatia

Both Slovenia and Croatia started to develop ADR practices and consumer dispute resolution from the early 2000's. One of the motives for the introduction of ADR schemes was in both Member States the implementation of EU legislation. The ADR was promoted in different sectors, both public and private. General ADR procedures were introduced in the courts of law, but more specific ADR schemes were launched in the specific sectors for specific

22 The group includes only those individuals or legal persons who actively opt in to become part of the represented group.

23 The group is composed of all individuals who belong to the defined group and claim to have been harmed by the same or similar infringement unless they actively opt out of the group.

users and services, such as banks and insurance, telecommunication, payment and other services. However, the use of these arrangements is still limited. What may be striking, given their similar history, tradition, and legal culture is that CADR options in Croatia and Slovenia have developed in a rather different manner. In the table below, some main differences regarding consumer ADR procedures in Slovenia and Croatia are highlighted.

Table 3: The main differences in the area of consumer ADR in Slovenia and Croatia

Factors for differences in Consumer ADR proceedings	SLOVENIA	CROATIA
Consumer ADR schemes	Mediation, Conciliation, Arbitration	Mediation, Conciliation, Arbitration
Consumer ADR entities	Public ADR entities: All courts, regulatory agencies, telecommunication, energy, postal, employers' and health services. Private ADR entities: Association of Banks and Insurance Councils, Slovenian Chamber of Commerce, Slovenian Mediators' Association, employers organizations, private mediation organizations and institutes	Public ADR entities: High Commercial Court, five commercial courts, County Court in Zagreb, eight municipal courts, County Court in Zagreb. Private ADR entities: Banks and Insurance Bureaus, Croatian Mediation Association, Croatian Chamber of Economy, Croatian Chamber of Trades and Crafts, Croatian Bar Association, private consumer organizations and institutes.
Legislation on consumer ADR	The main ADR acts: Civil Procedure Act, Act on Mediation in Civil and Commercial Matters, Alternative Legal Dispute Resolution Act, Proposal of Consumer Alternative Dispute Resolution Act (2014), Arbitration Law. The sectorial Acts: Law on Consumer Protection, Energy Law, Electronic Communication Act, Labor Relations Act, Administrative Procedure Act (article 137), Law on Patients' Rights, etc.	The main ADR acts: Code of Civil Procedure, Mediation Act, Arbitration Law. The sectorial Acts: Law on Consumer Protection, Family Act (2014), Administrative Procedure Act (article 57), etc.
Consumer ADR proceedings	Administrative and civil proceedings	Mostly civil proceedings
Parties in CADR proceedings	Public or private authorities ⇔legal or natural persons; legal or natural persons	Legal and natural persons
Legal nature of relationship in CADR	General public law obligations; individual public law relationship, individual contract relationship.	Individual contractual relationship of private law nature (*erga omnes, inter partes, intermediate*).

Legal nature of decision--making in CADR proceedings	Authoritative or relative / exclusive, consensual decision making on the matter (regulation based on the will and interests of the parties or just on the will and interests of one party).	Relative / exclusive, consensual regulation (regulation based on the will and interests of the parties).
Types of legal relationships in CADR proceedings	G2C/C2G, G2G, G2B, B2B, B2C/C2B (G: government; B: business, but also PSO; C citizen / consumer / customer).	B2B, B2C, C2C, C2B (B and C are private parties).
Protected interests in CADR proceedings	Both public and private interests.	Mainly private interests.
Legal status of the parties involved in CADR	Negative, positive, active or passive status of natural person and also (non)transferable personal status (universal).	Non-transferable (personal relationship), transferable (singular / universal).
Legal consequences of the settlement in CADR proceedings	- in administrative CADR proceedings: non-binding for consumers (appeal right to administrative court) and binding for traders. - in civil CADR proceedings: binding for both parties, in case of un-fulfillment of obligations – right for an appeal on the regular Courts.	Binding for both parties involved; in case of un-fulfillment of obligations – right to request immediate enforcement or (for non-enforceable settlements) to initiate proceedings in the courts of general jurisdiction.

As presented in the table above, general consumer ADR schemes are almost the same in both countries, although they are carried out by different ADR entities.

Some experiments in introducing ADR at Slovenian court system date back to late 1990s (Galič in Hodges et al., 2012c, p. 197), while development of ADR legislation and introducing ADR in Croatian courts took place in the 2000s (see e. g. Mediation Act 2003; Croatian Phare project on introduction of court-annexed mediation in Croatian courts, 2005–2009)[24]. According to Galič (ibid.) Slovenian litigation practice in spite of all reforms still displays delays and weaknesses. The court cases last long and involve costs and a loser-pays risks. Therefore, business organizations in Slovenia established mediation schemes in Slovenia fairly early, in the beginning of 2000s. Some of them were Chamber of Commerce (which had its well-established Arbitration and Mediation Centre), the Employers' Organization (which offered mediation and arbitration within the Centre for Business Services), the Chamber of Enterprises, the Banks Association and the Insurers Association, and the Slovenian Conciliation Council[25]. In Croatia formation of private mediation

24 More about the Phare project on http://www.mirenje.hr/index.php/o-nama/openite-informacije.html and http://www.vtsrh.hr/index.php?page=conciliation&lang=hr

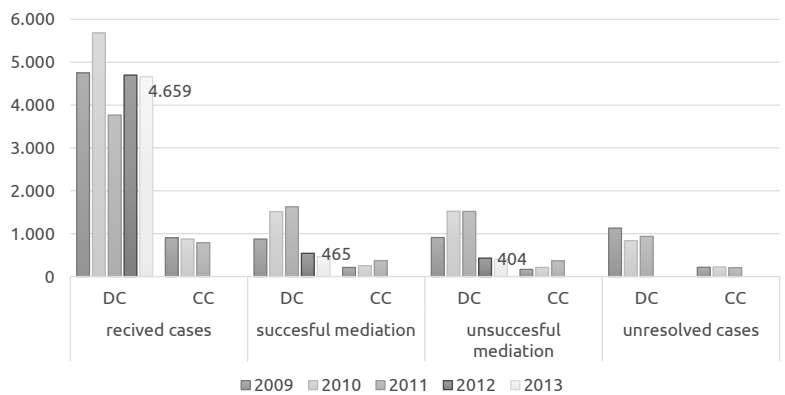
25 The latter was not overly active, as in 2011, there were just 26 cases submitted to the Conciliation Council, and in just two of those cases a settlement was reached (see Galič in Hodges et al. 2012c, p. 197).

services started a bit later, but the providing organizations were similar (see Uzelac et al., 2010).

Until 2012, in Slovenia, if no consensual settlement was reached by mediation, a reasoned decision could be issued as non-binding recommendation for both parties. But after an amendment to ADR legislation, mediation institutions are no longer authorized to issue non-binding decisions. This has had a negative impact on the practical importance of the ADR scheme (Galič in Hodges et al., 2012c, p. 197). In Croatia, issuing non-binding recommendations and decisions is generally not prohibited (if not expressly excluded by the parties' agreement). On the other hand, mediated settlements are in principle binding. However, the ability to directly enforce them depends on whether mediation was conducted by the court or by a private mediation organization. If settlement is reached in a court-annexed scheme, the settlement is generally regarded to have to force of a court-negotiated settlement (*sudska nagodba*) which is directly enforceable. In spite of legal provisions that wanted to give the same effect to the settlement reached before private ADR organizations, in practice these settlements experience difficulties in their enforcement (new legislative plans that should address this situation are underway).

Voluntary mediation schemes now exist in all Slovenian courts and are generally successful. On the other hand, in Croatia voluntary mediation is offered as a service in only some courts, such as High Commercial Court, five commercial courts, eight municipal courts and one county court. In Slovenia ADR is regulated by Civil Procedure Act, Act on Mediation in Civil and Commercial Matters and Alternative Legal Dispute Resolution Act – the latter providing that all courts must offer mediation or another ADR method (Galič & Hodges in Hodges et al., 2012c, p. 202).

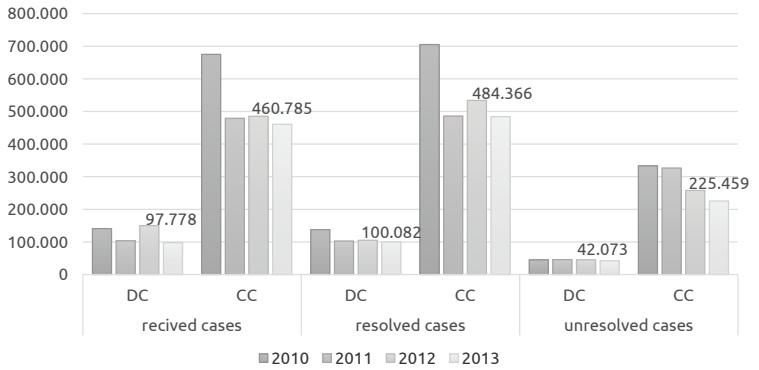
Figure 3: Statistics of court-annexed mediation in Slovenia



Source: Reports on mediation before the District and County Court for 2009–2013

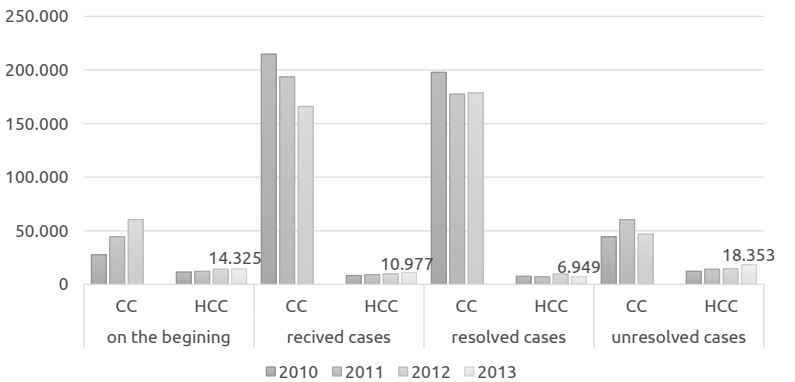
In Slovenian district courts in average 4711 mediation cases were submitted in the last five years. Almost 50 % of them were successfully resolved by court-annexed mediation[26] (see Figure 3). Yet, the rest – i. e. 90 % of all civil litigation cases – or in average 123.086 cases on district courts and 525.114 cases in county courts[27], are resolved by court adjudication (see Figure 4).

Figure 4: Statistics of resolving civil litigation cases in Slovenia



Source: Reports of the district (DC) and county courts (CC) for 2010–2013

Figure 5: Statistics of resolving civil litigation cases in Croatia

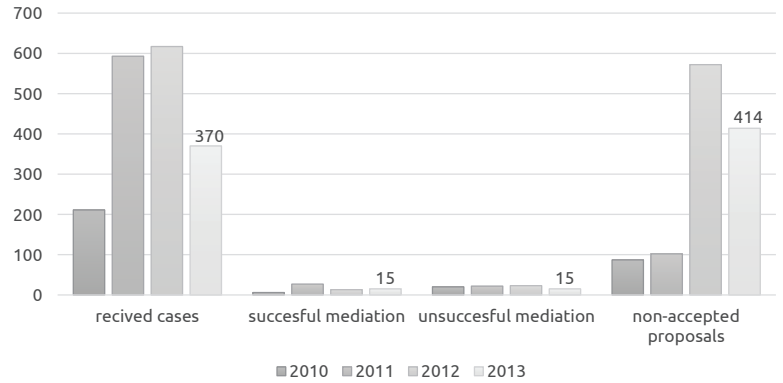


Source: Manual reports of the High Commercial Court (HCC) and the Commercial Court (CC) for 2010–2013

26 Reports of the Slovenian Supreme Court (2010–2013); Statistical reports for mediation cases at the District and County Courts for 2009-2013

27 For example in 2010 there were 15.202 unsolved civil litigation cases (1. 1. 2010), 4.256 of those cases were solved and 3.864 new cases had appeared, so there are still 14.770 unsolved cases left (31. 12. 2010). In the same year there were 875 cases submitted to mediation procedure, 350 of those cases were as successful mediations, 213 were unsuccessful mediation cases and 405 resolved cases with other legal frameworks.

Figure 6: Statistics of court-annexed mediation in Croatia



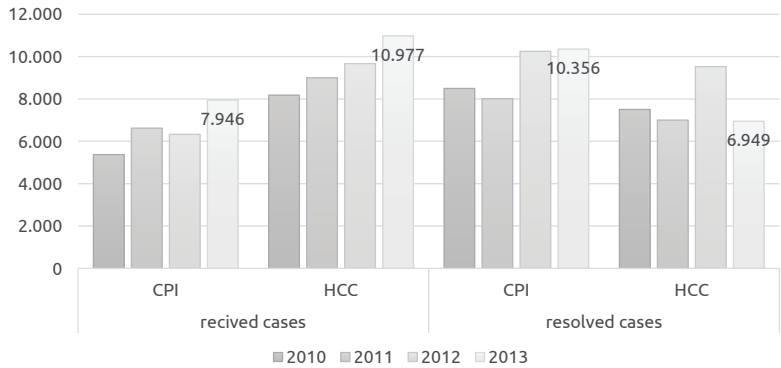
Source: Reports on mediation in the High Commercial Court (HCC) for 2010–2013

In Croatia, in spite of the early adoption of mediation legislation and the frequent polishing of the normative framework, there was no sufficient support for introduction of mediation schemes in all courts. The Croatian High Commercial Court from 13.000 civil litigation cases in average resolves 7.747 cases per year (see Figure 5). At the same Court there are in average 448 submitted mediation proposals per year, of which almost 60 % are not accepted. That is why in average only about 15 mediation cases are successfully resolved per year at that court[28] (see Figure 6).

In Croatia, a significant part of potential users still do not know about existence of ADR mechanisms. A lot of attention has been lately given to promotion of the ADR mechanisms, but so far without great results. It seems that in both Balkan countries, according to general observations, population prefers to use courts as authoritative decision-makers. There is also still the lack of consumers' awareness about availability of ADR procedures. In Slovenia, main consumer protection is provided to consumers within the Consumer Protection Office / Inspectorate[29]. Its functions are recently assumed by the Ministry of the Economic Development and Technology. The Slovenian Consumer Inspectorate is by its caseload similar to the Croatian High Commercial Court (see figure 6) and can help consumers who experience problems with goods or services by contacting their sellers, but according to Galič (in Hodges et al. 2012c, p. 199) there is no ADR mechanism under which trade associations might assist in responding to complaints and there are no ombudsmen for consumer-to-business disputes.

28 Reports of the High Commercial Court and Commercial Court for 2010–2013.
29 See *Tržni Inšpektorat RS* on http://www.ti.gov.si/en/

Figure 7: Comparison of HCC cases in Croatia and CPI cases in Slovenia



Source: Manual reports of the Consumer Protection Inspectorate for 2010–2013

Additionally, the general view is that the Slovenian Consumer Protection Inspectorate has been ineffective[30]. Consumers can also contact the Slovenian Consumer Association[31], which hosts the ECC – Net Office for Slovenia, although its jurisdiction is only for cross-border claims. According to Galič (in Hodges et al., 2012c, p. 201), the ECC Slovenia Office has promoted ADR through media appearances and organized meetings, which seek to affect public opinion in general and in relation to specific traders, but coercive powers can only be exercised where cases are referred to the courts or a governmental Inspectorate. The experience of the Human Rights Ombudsperson and also the courts shows that if an independent dispute resolution body has no effective power, business (or government) will not pay attention to its suggestions, and consumers will not seek to use it.

Both Member States have different Agencies which deal with consumers[32] and act as independent regulatory bodies. They can conduct administrative proceedings and issue administrative decisions, which are subject to judicial review in the administrative courts.

But, while in Croatia various regulatory agencies do not engage in mediation and other ADR schemes, under Slovenian law[33] such agencies may conduct mediation/conciliation proceedings, aiming to reach a consensual solution between parties in dispute. As Galič (in Hodges et al., 2012c, p. 198) noted, proceedings must be in accordance with the principles of impartiality, equality, equity and confidentiality. The ADR mechanism at regulatory agencies in

30 The Consumer Protection Office receives almost 5000 requests per year for assistance in the complaint that are resolved only by forwarding it to other competent bodies.

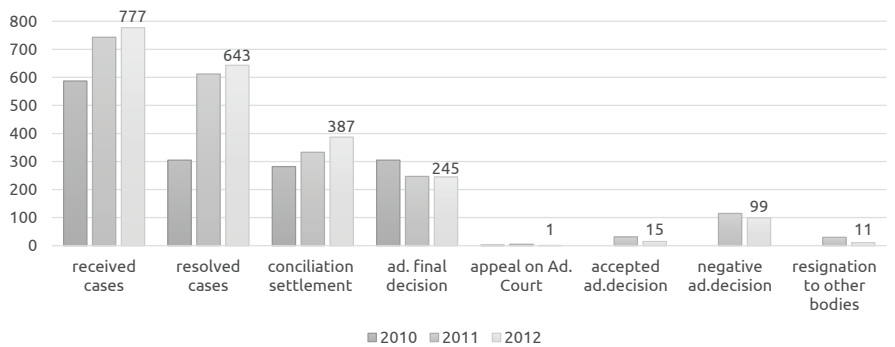
31 See *Zveza potrošnikov Slovenije* on http://www.zps.si/o-nas/english/3.html?Itemid=697. Annual membership fee is 40 EUR, and members get free legal advice, a monthly magazine and a mediation facility.

32 For example these are Agency for postal and electronic telecommunications of the Republic of Slovenia (RS), Energy Agency of the RS, Securities Market Agency, etc.

33 See the Law on electronic communications (Art. 63, 119; OJ RS, No. 13/2007); the Energy Law (OJ RS, No.27/2007); the Law on Security Market (Art. 387a, OJ RS, No. 51/2006).

Slovenia is open to all parties, not only for consumer disputes. The problem is that for example the Law on Electronic Communication unclearly defines the relationship between such ADR procedure and matters in which the competent agency conducts administrative proceedings. Essentially, the Agency can conduct mediation/conciliation proceedings in all disputes between parties, concerning rights arising from the law. For example Agency for postal and electronic communication (APEC) receives in average 702 cases, of which almost 50 % (334) are successfully resolved with conciliation, but another 50 % (265) come out as administrative decision, of which almost half (107) are negative and parties can appeal (see Figure 8). However, if conciliation does not result in a settlement, the Agency has jurisdiction to decide a dispute by its decrees, unless one of the parties has already brought the case to the regular court. If the Agency comes with its decision first, the losing party can appeal to Administrative Court, irrespective of the fact that disputed matter is within jurisdiction of civil courts. According to Galič (2012, p. 6), the use of ADR schemes in Slovenia is inadequate, misguided and unconstitutional, particularly in the most critical sectors like financial services, postal and telecommunication services and in the energy sector.

Figure 8: Statistics of Agency-annexed conciliation in Slovenia



Source: Manual reports of the Agency for Postal and Electronic Communications for 2010–2012

Essentially, an effective, certified ADR system for consumer protection cases exists in neither Slovenia nor Croatia. Governmental and non-governmental organizations which are concerned with this particular field should be jointly responsible for raising the awareness of national consumers and consumers from other Member States about available ADR schemes. Consumer information and education campaigns are one possible approach. National authorities should be involved indirectly in consumer education, namely by providing support (in particular: co-financing) for consumer information and education campaigns carried out by non-governmental consumer organisations. Hopefully, the new European regulatory framework initiated by the two new EU proposals will encourage the creation of a special ADR body for consumer

disputes, which will ensure a higher level of consumer protection, raising of consumers' confidence and empowerment.

6 Conclusion

Divergences in (C)ADR schemes and also through compensatory collective redress are shown as an obstacle to consumers' effective access to justice. Significant barriers for development of common ADR scheme are shown in different legal culture and history (Anglo-Saxon/Continental), transformation of social state (GDP, investments), social mentality of citizen in the state (Is it safer to go to court? More knowable legal requirements – judicial review?) and others. Slovenian and Croatian examples confirm that a decisive EU action in this field is needed to resolve diversity and uneven geographical and sectorial availability of ADR schemes for consumer disputes. If the development of CADR schemes is left to Member States, the quality of the schemes will be poor in some sectors of the retail market. Good practices of some Member States (Netherlands, United Kingdom, Belgium and other) show how to establish effective out-of-court ADR proceedings, in particular by the use of integrated "quality management systems". In measuring efficiency of the ADR schemes, it is not sufficient to compare quantitative data on cases of ADR entities. The Quality Management System should put focus on the empowerment of all involved parties, and to appropriate behavior and communication between the parties in dispute (C2C, C2B and B2B). The integrated and comprehensive approach of quality management evaluation should also include further analysis of violations and study of perceptions of the involved parties. Consumer confidence and satisfaction should be the key elements of consensual dispute settlement in consumer cases, for the sake of development of a strong, growing and fair market that can particularly help in the times of crisis.

EUs priority has to be the creation of one coherent ADR model for consumers, which should be introduced in all Member States despite divergences in legal systems. Member States should then focus on the question, if the creation of these mechanisms should be funded or not funded by the government or companies through associations or industry. In some countries, consumers pay a small fee for the use of the ADR schemes, e.g. in Germany consumers are charged with a fee up to 25 EUR, while in Slovenia and Croatia in public entities consumers are free of charge and in private entities consumers pay from 25 EUR upwards. Different authors are convinced that a small fee in EU could be even a barrier, because parties may get the impression that the decision-making within ADR bodies may therefore not be fairly and objectively.

Member States will also have to carefully consider the potential of all advantages associated with binding or non-binding legal nature of final decision, which is the main topic of ADR entities to provide adequate legal security as "rule of decision", especially in administrative proceedings. After Henry &

Perritt (1987, p. 865) the negotiating rulemaking is the perfect alternative in administrative proceeding, because it resolves "interest disputes" and is similar to legislative process – regulatory negotiation, which refers to decision-making by administrative agencies.

Consumer ADR can be harmonic and proportionate movement for access to justice and also an "added value" as Caponi (2012, p. 4) has proposed:

> "… mediation should not be a remedy for the inefficiencies of the public civil justice system, but rather should present an "added value" to courts that work effectively and efficiently. For this reason the promotion of mediation should always be accompanied by efforts to improve the efficiency of the civil justice system and not by attempting to limit access to the courts. This point of view implies an identification of the kinds of disputes that would be "better" resolved through informal methods than through legal actions before the courts."

The creation of environment where consumers through education, information and awareness know how to navigate in the Single Market is the benefit and "added value" in the whole ADR process. The real European challenge of effective access to justice is not just its justification but its practice. The heart of real effective access to justice is changing the traditional court practice to the dispute resolution innovation with empowerment requirements. After Mcfarlane (2012, p. 939) the essence of effective dispute resolution innovation 'deserves our full intellectual and affective energy if it is to be a "real" experiment in something new… Sometimes the energy we put into developing new rules seems to be a substitute for the energy needed for trying something new. To be effective innovators, we need to limit our preoccupation with rule-based change and explore other ways to support and build culture change. When we experiment with new processes, we should resist easy orthodoxies and stay open to the possibility of failure.'

Urša Jeretina, B.Sc. *holds a University degree in Criminal Justice and Security from the University of Maribor and is about to obtain her Masters of Public Administration Science degree from the University of Administration Ljubljana. She has participated in various projects especially in the field of administrative procedural law and attended in various professional workshops at the University of Ljubljana. She became a mediator within the Rakmo Institute (basic training) and CMA (basic and advanced training). At the Faculty of Law in Zagreb she also finished Erasmus training practice at Croatian Mediation Association CMA.*

Prof. Alan Uzelac, *Dr. Sc. is Professor of Civil Procedural Law at the Zagreb University, Faculty of Law, where he teaches Civil Procedure, Arbitration, ADR, Organization of Judiciary, and Protection of Human Rights in Europe. He holds degrees in law and social sciences from Zagreb University. He has been visiting researcher and scholar at a number of universities. As an active member of the International Association of Procedural Law and the German Association for International Procedural Law, he serves on the chief advisory bodies of both organizations (Council, Rat). He was involved in various activities of the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe, where he held different functions. Since mid-90s, he was engaged as national delegate of Croatia in the work of UNCITRAL Working Group for Arbitration and Conciliation where he participated in drafting of the several international instruments in the field of alternative dispute resolution. Throughout his career, he was often engaged as expert in various legislative projects. As an international expert he worked in the region and Europe, assisting legal reforms and legal collaboration in Serbia, Bosnia and Herzegovina, Montenegro, Russia and Kosovo. Currently, he is also member of the highest body for judicial appointments and discipline, the State Judicial Council.*

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POVZETEK

1.01 Izvirni znanstveni članek

Alternativno reševanje potrošniških sporov: Ali so razlike zapreka za učinkovit dostop do pravnega varstva?

Ključne besede: alternativno reševanje potrošniških sporov (ARPS), varstvo potrošnikov, sheme ARS, kolektivne odškodnine, poenotenje in harmonizacija prava EU, sheme ARPS v Sloveniji in na Hrvaškem

Potrošnja je del našega vsakdana, zato je učinkovito varstvo pravic potrošnikov tudi eden od ključnih elementov za delovanje notranjega trga Evropske unije (EU). Delovanje enotnega notranjega trga je koristno za potrošnike in podjetja, saj podpira ustvarjanje delovnih mest, spodbujanje rasti in konkurenčnosti ter inovacije. A kljub temu bi lahko EU omogočila večjo enotnost v ključnih sektorjih potrošnje, ki so razdrobljeni ali očitno pomanjkljivo konkurenčni. Potrošnik pri uveljavljanju pravnega varstva ostaja še zmeraj šibkejša stranka v postopku spora. Tradicionalni sodni postopki niso vedno praktičen in stroškovno primeren način reševanja potrošniških sporov, saj je za potrošnika ekonomska škoda skupaj sodnimi stroški postopka nesorazmerna, še posebej v sporih majhne vrednosti (10–20 EUR). Izgube evropskih potrošnikov zaradi težav s kupljenim blagom ali storitvami so ocenjene na 0,3 % evropskega BDP.

Nekateri avtorji menijo, da so postopki alternativnega reševanje sporov (ARS) učinkovito, hitro in poceni orodje za reševanje sporov med potrošniki in podjetji. Alternativno reševanje potrošniških sporov (ARPS) je lahko koristen instrument, ki pomaga potrošnikom do zavedanja svojih pravic do pravnega varstva. V teoriji so postopki ARPS predstavljeni kot prilagodljiv in hitrejši način uveljavljanja pravic potrošnikov, ki zagotavlja dragocene informacije o potrebah strank v postopku spora, hkrati pa ohrani zaupnost, enakopraven položaj strank v postopku spora ter povečuje zadovoljstvo potrošnikov. Kljub dobrim ocenam v teoriji ta institut v praksi še ni povsem zaživel. Ocenjuje se, da na obeh straneh, pri podjetjih in pri potrošnikih, ni ustrezne ozaveščenosti o obstoju shem ARS in njihovih koristi. V tem članku smo analizirali koncept ARPS skozi kompenzacijske kolektivne odškodnine ter obravnavali ali trenutne pravne pobude EU prispevajo tudi k povečanju zaupanja potrošnikov v notranji trg držav članic EU. Posebna pozornost je namenjena različnim oviram za razvoj shem ARS, ki se kažejo ne samo v različnosti shem ARS, temveč tudi v metodah ocenjevanja in merjenja učinkovitosti uporabe ARPS. Evropska Direktiva o ARPS in Uredba o spletnem reševanju sporov (SRS) sicer kažeta na začetno nastavitev prilagodljivih pravil, ki bi zagotavljali kakovost reševanja sporov med subjekti v EU. Vendar pa so tovrstne pobude EU doslej

pustile veliko odprtih vprašanj glede nadzora in financiranja shem ARPS ter potreb zgolj v zvezi z notranjim usklajevanjem praks ARPS v državah članicah EU. Primeri precejšnjih razlik predvsem na področjih energije in telekomunikacij se kažejo v postopkih ARPS sosednjih držav Zahodnega Balkana, kot sta Slovenija in Hrvaška.

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An Application of Subgroup Discovery Algorithm on the Case of Decentralization and Quality of Governance in EU

Lan Umek
Faculty of Administration, University of Ljubljana
lan.umek@fu.uni-lj.si

ABSTRACT

This paper analyses a statistical relationship between the decentralization of the EU countries and the quality of their governance. The degree of decentralization is measured from a fiscal and political point of view, and the quality of governance by multiple indicators and citizen opinions. The paper presents a subgroup discovery algorithm which is capable of analysing two sets of several variables, and uses it for the analysis of EU countries. The paper is one of the first to use the data mining methods from the social sciences domain. The used algorithm has discovered some interesting patterns which show a desired relationship. We have discovered that the proportion of public sector employees is one of the most important indicators, which strongly correlates with the degree of trust in the European and national institutions, the government effectiveness and the perception of corruption

Key words: *decentralization, quality of governance, subgroup discovery, data mining, EU countries*

JEL: C38, C12, H11, H50, H77

1 Introduction

Quality of governance is a broad concept that is best expressed through the efficiency and effectiveness of public administration and the quality of its services (Žurga 2001, p. 7). Quality public administration offers services that are consistent with established laws and international standards, and meets the requirements and expectations of its users. If the public administration power is dispersed over several smaller institutions, its performance becomes better and more responsible, and the mutual control is established, which improves the quality of governance (Gerring, Thacker, & Moreno, 2005, p. 567).

The transfer of powers and resources from the centre to the lower levels of governance and political participation is linked with the concept of decentralization (Aristovnik, 2012, p. 6). The paper will discuss in detail two of its aspects, namely the fiscal and the political aspect. Put simply, fiscal decentralization is defined by how much of the expenditure and revenue management

is under the authority of local communities, while political decentralization signifies fragmentation of the country into smaller units, and separation of powers to many political institutions.

In the paper, we use one of the data mining methods, by which we analyse a statistical relationship between the decentralization of a country and its quality of governance, how strong it is and how it is expressed. In the social sciences, researchers use the data mining more and more frequently, but such methods are still quite rare, since established statistical methods (regression, hypothesis testing, factor analysis ...) are preferred. Most commonly, data mining methods (Witten & Frank, 2002) use data tables to generate hypotheses, which are presented to the domain experts in plain language, and in addition to statistical evaluation, allow expert evaluation as well.

In the paper we present an algorithm for subgroup discovery, which is able to analyse two sets of several variables (Umek & Zupan, 2010; Umek, 2011): indicators of decentralization and quality of governance. Unlike the majority of regression analyses, the presented algorithm is able to simultaneously analyse all the indicators of quality of governance, and presents the main results in an interpretable way.

The algorithm is implemented in an open source software package Orange (Demšar et al., 2013), images are plotted with Python library Matplotlib (Hunter, 2007) and with the program Graphviz (Gansner & North, 2000).

In the analysis of the relationship between decentralization and quality of governance, we analysed 27[1] EU countries and 43 indicators. In statistical analysis, the analysis of a small sample with many measured variables represents a challenge, which many existing analyses cannot handle. The discovered patterns are thus even more important.

The principal objective of the paper is the application of a novel approach on a social sciences domain. The effective performance of data mining algorithms on other scientific domains motivates their applications on data sets from other sources (administrative and other social sciences).

The paper is divided into five sections. After the introduction, in the second section we describe the data with which we operated and briefly define the concepts of decentralization and the quality of governance. In the same section we introduce related statistical work and its limitations in analysing such data. In the third section we describe the algorithm for subgroup discovery, and in the fourth we present the results, three interesting subgroups. Conclusion summarizes the paper and presents opportunities for further work.

1 Due to lack of data, we excluded Croatia from the analysis.

2 Description of Data and Related Statistical Approaches

In this section, we will briefly review the most important definitions of quality of governance and decentralization, and describe the variables we used in the analysis. In the paper we used the same 43 indicators as the authors in (Benčina & Mrđa Kovačič, 2013) and (Mrđa Kovačič, 2013): 24 indicators of quality of governance: 15 aspects of trust in several institutions[2] (Samanni et al., 2012) and nine other indicators[3], eight indicators of fiscal[4] and 11 indicators of political decentralization[5].

We will then summarize the related statistical approaches the researchers used for analysing relationships between the decentralization of the country and its quality of governance. Since the main focus of our paper is to present a novel statistical algorithm we will summarize the limitations of the well-established approaches in this area.

2.1 Quality of Governance and Decentralization Indicators

According to the World Bank's definition, quality governance is the »the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies, and the respect of citizens and the state for the institutions that govern economic and social interactions among them« (Dijkstra 2011, p. 1). A slightly different definition is found in Bäck & Hadenius 2008, p. 8. The authors define quality governance as the government's ability to effectively implement its own activities, as well as the absence of corruption. According to Charron (Charron 2009, p. 7) the good governance is characterized by the low level of corruption, the efficiency of bureaucracy and citizens' participation in democratic institutions. According to Vintar the key element of good governance is the level of e-government development (Vintar, 2010).

According to the different definitions our study included 15 indicators of trust in national and European institutions (footnote 2) and nine other indicators, mainly focussed on functioning of government and perception of corruption (footnote 3).

2 Trust in the European Court of Justice, EU Council of Ministers, European Commission, European Central Bank, European Court of Auditors, European Ombudsman, European Parliament, EU Social and Economic Committee, legal system, police, army, political parties, civil service, national government, and in national parliament (presented as the proportion of people who trust in each institution).

3 Functioning of government, Index of objective indicators of good governance, Corruption perceptions index Number of new infringement cases, Transposition of community law, Voter turnout in national and EU parliamentary elections, E-government on-line availability, E-government usage by individuals, Level of citizens' confidence in EU institutions.

4 Tax revenue, Highest marginal tax rate, Expense, Total general government expenditure, Central government expenditure, Local government expenditure, Total receipts from taxes and social contributions (local and central), all measured in (% of GDP).

5 PS (Public sector) Employment, Average district magnitude, Number of districts, Centripetalism, Unitarism, Unitary or federal state, Appointment of regional representatives, Unitary or federal state, Regional authority index, Total fractionalization, Electoral system.

Decentralization is a concept that "includes the transfer of power, formal authority, responsibilities and resources to lower administrative levels of government" (Dubois & Fattore 2009, p. 706). Simply put, it is a transfer of powers from higher to lower levels, initially from the central to local government, and from there to citizens.

According to Schneider (Schneider, 2003, p. 33), there are three aspects of decentralization: fiscal, political and administrative. In our analysis we will focus on the first two. The easiest to measure is the degree of fiscal decentralization, which is concerned with the proportion of transfers of assets (revenue, expenditure) to the local levels, as well as a proportion of fiscal powers which is passed from the centre to the lower administrative levels.

According to Schneider political decentralization covers an area of "the organization, participation and integration of interests in the processes of public administration". In political systems which are decentralized, representatives are operating within the local environment. They represent local interests, by which they participate in the legislative and executive powers.

In our analysis we discussed eight indicators of fiscal decentralization, expressed as a share of GDP (footnote 4) and the selection of 11 indicators of a political decentralization (footnote 5) based on the study (Dubois & Fattore, 2009), and subsequent selection (Benčina & Mrđa Kovačič, 2013).

The majority of the analysed indicators refers to the year 2011 and can be accessible through several sources, the most important are (Samanni et al., 2012) and (Eurostat, 2014).

2.2 Analysis of the Relationship Between Decentralization and Quality of Governance

Several authors have already analysed the impact of decentralization on the quality of governance. Most commonly they have used the regression methods, which have found that fiscal decentralization has a positive impact on the quality of governance (the government's operation), while the political decentralization has a negative one (worse perception of corruption). Similar effects were also confirmed by the studies (Gerring et al., 2005) and (Enikolopov & Zhuravskaya, 2007), which showed that centripetalism has a positive impact on the government performance and economic growth (Kyriacou & Roca-Sagales, 2011).

Several regression studies analysed the impact of decentralization on the level of corruption as one of the aspects of quality of governance. According to (Altunbas & Thornton, 2012; Ivanyna & Shah, 2010), fiscal decentralization has a negative impact on indicators of corruption.

Several authors analysed statistical relations between different aspects (Ahrens & Meurers, 2002; Benčina & Mrđa Kovačič, 2013) and applied

the methods for dimension reduction (Principal component analysis and Factor analysis). On the other hand, by using the structure model, Dreher defined more complex index of corruption (Dreher, Kotsogiannis, & McCorriston, 2007).

All these methods are based on linear combinations of variables, which are often not reasonable or appropriate, and the obtained results are difficult to understand. The main purpose of the paper is to analyse the data with a more general procedure with weaker assumptions (such as linearity) required. The presented approach will be capable of a simultaneous analysis of multiple dependent variables (classical regression analysis can only address one), while the analysed indicators can be completely arbitrary (a mixture of nominal, ordinal and ratio variables). The new approach will present in an understandable way the results which are immediately suitable for further investigation (evaluation from expert's perspective, further testing of generated hypotheses …).

3 Methods

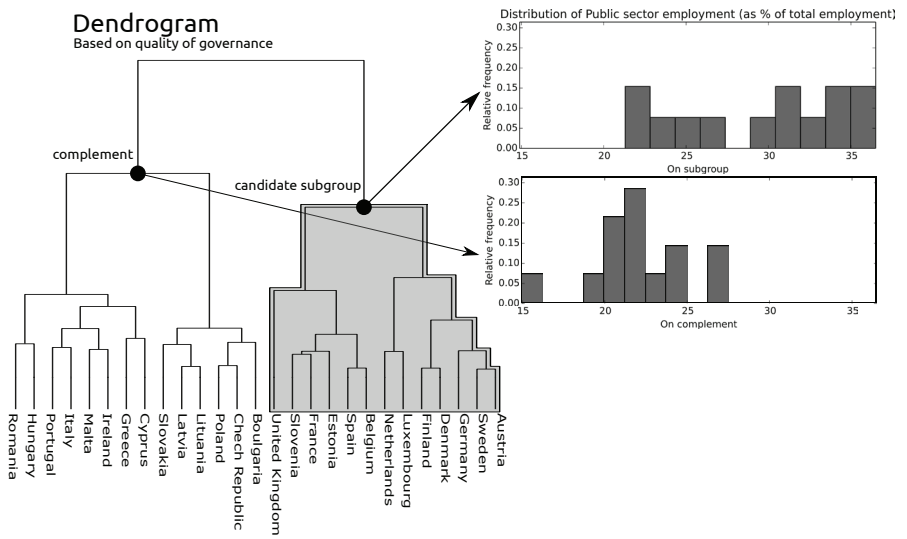
Regarding the objective of the research, we will consider the decentralization indicators presented in Section 2.1, as a set of independent variables (*X*), and the indicators of the quality of governance (section 2.2) as the dependent variables (*Y*). We will analyse the relationships between *X*s and *Y*s. Since we analyse 24 dependent variables, most regression methods cannot be directly applied in our case. Blockeel and Ženko (Blockeel, Raedt, & Ramon, 1998; Ženko, 2008) showed that a separate analysis of each dependent variable weakens the interpretability of the results and extends the computation time. They proposed that in the case of multiple dependent variables, researchers should employ more advanced statistical methods.

In the paper, we applied the algorithm MR-SD (Multiple-Responses Subgroup Discovery), which is primarily aimed at finding interesting subgroups (Klösgen, 1996), and is capable of simultaneously dealing with multiple dependent variables (Umek & Zupan, 2010; Umek, 2011). The MR-SD algorithm tries to find such subgroups of units which are similar in respect to the values of the dependent variables, and then attempts to seek the causes of their similarities in the space of independent variables. In our case, it first searches for the clusters of EU countries that are similar in terms of quality of governance. These clusters (we will call them candidate subgroups) are further evaluated in how well they can be distinguished from other EU member states according to their decentralization. The MR-SD algorithm combines the established methods of clustering and statistical classification, while the results in the form of interesting subgroups reflect the relationship between the two sets of variables.

In a concrete example we show a more detailed description of the algorithm MR-SD. The method first divides EU countries into clusters within which

the members are similar regarding their quality of governance (*Y*) (Ferligoj, 1989). It uses hierarchical clustering, which can be displayed graphically with the so-called clustering tree (dendrogram, left part of Figure 1). The process of hierarchical clustering first treats each country as a separate cluster, and then in each subsequent step merges the two most similar clusters into a new one. The more similar they are, the lower their level of merging is. On the left side of Figure 1, a cluster of 13 countries is highlighted in grey (United Kingdom, Slovenia, ..., Austria). These countries are similar in terms of quality of governance. The aim of further analysis is to determine whether it is possible to find the cause of their similar quality of governance with the indicators of decentralization. We will further evaluate a candidate subgroup with the degree of interestingness "in the space of independent variables" (the right side of Figure 1).

Figure 1: Graphical illustration of the procedure from the paper



Members of the »grey« candidate subgroup are similar in terms of quality of governance (the dendrogram node on the left figure). Double histogram on the right shows that these countries can be clearly distinguished from the others in terms of the indicators of decentralization as well: if the proportion of the PS employees in a country is greater than 30 %, then it is certain one of the countries from the »grey subgroup« (top right).

To illustrate this, let us evaluate the candidate subgroup using a single indicator of decentralization. We illustrate the distribution of the independent variable "public sector employment" separately for the subgroup of the 13 countries and for the complement (right side of Figure 1). The histogram shows that all the units in which the proportion of employees in Public sector (PS) is at least 30 % belong to the subgroup of the 13 countries. When the proportion is less than 20 % it is merely a representative of the complement. At the intermediate interval between the 20 % and 30 %, a subgroup or a comple-

ment representative may be located. Knowing the proportion of employees in PS is therefore a pretty reliable (but not precise) indicator of subgroup's membership.

Let us return to the description of the algorithm MR-SD. Dendrogram nodes which correspond to the clusters of appropriate size, are the candidates for further evaluation. The algorithm translates the analysis of several quality of governance indicators into the analysis of belonging to a subgroup and the problem of analysis of two sets of variables to the statistical classification problem (Hastie, Tibshirani & Friedman, 2009; Witten & Frank, 2002). Several methods have been developed for this task (logistic regression, support vector machine, discriminant analysis, decision trees and rules, ...), which vary regarding the speed, comprehensibility, and the type of data for which they are actually most suitable.

The MR-SD algorithm evaluates the candidates in how well they can be distinguished from the rest of the sample in terms of the values of the independent variables, i.e. decentralization. The preferred evaluation score is therefore the area under the ROC curve (Receiver-Operating-Characteristic), which will be in the paper briefly denoted as the AUC (Area-Under-Curve) (Swets, 1996). The AUC score tells us what is the probability that we are able to distinguish between the members of the subgroup and the complement on the basis of the independent variable values. In our motivational case this means that we choose one of the 13 countries from the "grey" subgroup, and one from the rest of the countries. Based on the indicators of their decentralization[6] we estimate the probability of their belonging to the "grey" subgroup. If this estimate of probability is greater for the subgroup member than for the member of the complement, we have been successful in their separation.

The efficiency of the MR-SD algorithm depends on the suitable selection of the initial parameters. For the clustering in our study we used the weighted Manhattan distance between units (the weights were the reciprocal to variables ranges), and Ward's linkage. We searched for subgroups with at least five countries, for the statistical classification model we used decision trees (Quinlan, 1986) to a depth of three (splitting criteria: information gain). We estimated the AUC score using the leave-one-out method (Geisser, 1993).

The MR-SD algorithm can discover many interesting subgroups, which can be very similar in terms of the belonging countries, reducing the transparency of the obtained results. We have therefore compared the discovered subgroups according to their similarity: if the two subgroups matched in more than 50 % of the countries, we then chose the one with the higher AUC score (Umek, 2011).

6 In the motivational case we consider only the proportion of employees in public sector.

4 Results

The algorithm MR-SD discovered three interesting subgroups with AUC scores greater than 0,6. The subgroups covered all EU countries, which means that each EU country was assigned to at least one interesting subgroup which reflects the relationship between decentralization and quality of governance.

Below we describe the statistical properties of the discovered subgroups. For each subgroup, we report the AUC score and list the belonging countries. In the overview table, we present those indicators of quality of governance, where the arithmetic mean differs significantly between the subgroup and the complement. For the level of statistical significance we chose 0,05, we performed the t-test for independent samples and corrected the calculated p-values using Bonferroni correction (the tables show the original p-values). The tables are arranged according to the ascending p-values (Sig.), which means that more important indicators of quality of governance are presented higher in the table. In addition, we report the mean and standard deviation (stdev) for these indicators, separately for the described subgroup and its complement. If the mean on subgroup is significantly higher than the mean on the complement, we wrote the name of such variable in bold. In one case (subsection 4.1), only the aspect of trust in the European institutions stood out among the most important indicators of quality of governance. In addition to the table, we show and explain the decision tree which successfully distinguishes between the subgroup and the complement, based on the values of decentralization indicators.

4.1 Subgroup of Countries with a Higher Degree of Trust in the European Institutions

The subgroup consists of eight members (29 %) of the EU: Cyprus, Greece, Ireland, Italy, Hungary, Portugal and Romania. The subgroup is well separable from the rest of the EU members, the AUC estimate equals 0,901.

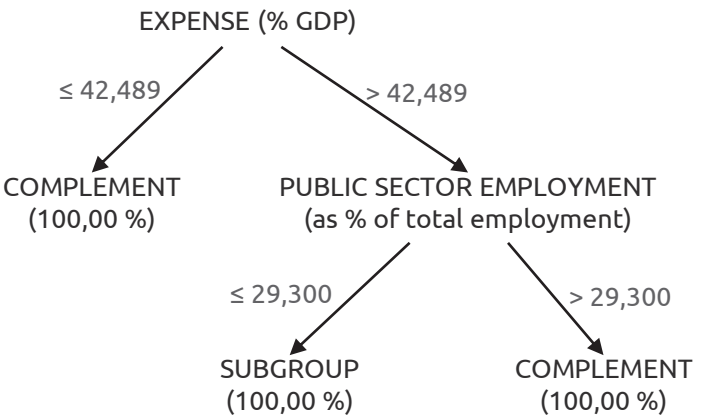
Table 1: Quality of governance indicators which significantly distinguish subgroup from the complement

	subgroup		complement		
variable	mean	stdev	mean	stdev	sig.
Trust and the European Court of Auditors	0,75	0,06	0,60	0,09	3,7E–04
Trust and the EU Council of Ministers	0,77	0,07	0,62	0,09	4,5E–04
Trust in the EU Social and Economic Committee	0,74	0.07	0,58	0,09	4,5E–04
Trust in the European Parliament	0,81	0,07	0,69	0,08	1,3E–03
Trust in the European Central Bank	0,80	0,05	0,69	0,08	1,6E–03
Trust in the European Commission	0,80	0,07	0,66	0,09	1,6E–03

The subgroup is best described by the significantly higher level of trust in the European institutions: the most significant are the differences in trust in the European Court of Auditors, followed by the trust in Council of Ministers, Social and Economic Committee, European Parliament and the Central Bank, while the least significant are the differences in the trust in the European Commission (Table 1). For other indicators, we observed no significant differences, but on average, the trust in national institutions and the index of government functioning were lower.

The decision tree in Figure 2 separates the subgroup from the complement very well, using only two indicators of decentralization. The subgroup is defined by a larger share of expenses as proportion of GDP (> 42,489 %), and a lower proportion of employees in the public sector (≤ 29,3%).

Figure 2: Description of the subgroup with the most characteristic indicators of decentralization



4.2 Subgroup of Countries with Better Governance and a Lower Level of Trust in the EU Institutions

The subgroup consists of 13 members (48 %) of the EU (Austria, Belgium, Denmark, Estonia, Finland, France, Germany, Luxembourg, Netherlands, Slovenia, Spain, Sweden and United Kingdom). The AUC score equals 0,742.

Citizens of the subgroup members use e-government services significantly more, better perceive the level of corruption in the public sector, the government functioning is more successful. This means that the e-government is better accepted among the citizens, the anti-corruption legislation is implemented more consistently, the abuse of power for private gain is rarer. The governments of the subgroup members implement public policies through

the elected representatives more effectively, and are more successful in preventing corruption (Table 2).

Table 2: Quality of governance indicators which significantly distinguish subgroup from the complement

	subgroup		complement		
variable	mean	stdev	mean	stdev	sig.
E-government usage by individuals (%)	43,39	11,95	20,00	6,71	9,7E-06
Corruption Perceptions Index	7,88	1,36	4,78	1,27	5,1E-05
Trust in the EU Social and Economic Committee	0,54	0,08	0,71	0,08	8,5E-05
Trust in the European Commission	0,63	0,08	0,77	0,06	1,0E-04
Trust in the EU Council of Ministers	0,58	0,09	0,74	0,07	1,2E-04
Trust in the European Parliament	0,66	0,08	0,79	0,06	1,2E-04
Functioning of Government	8,65	0,87	6,99	0,91	2,9E-04
Trust in the European Court of Justice	0,70	0,08	0,80	0,06	6,3E-04

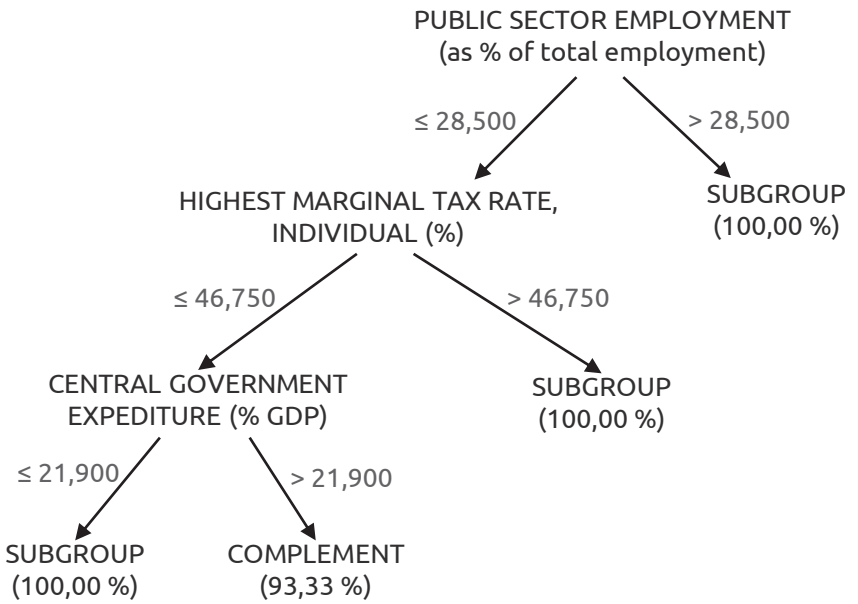
On the other hand, the trust of the citizens from these 13 countries is significantly lower in several European institutions: the most significant are the differences in trust in the European Social and Economic Committee, the European Commission and the Council of Ministers, while the least significant are the differences in trust in the European Parliament and the Court (Table 2).

The decision tree in Figure 3 describes this subgroup with the most important indicators of decentralization. The most discriminating among them is the proportion of employees in the PS: if the proportion is greater than 28,50 %, then certainly one of the 13 countries is concerned. Among the countries in which the proportion of the PS employees is lower than 28,50 %, the subgroup representatives differ most from the other countries by higher marginal tax rate (> 46,75 %). At the minimal depth of a decision tree we find the expenditures of the centre, their effect is less important. The decision tree is not as effective as in the case of subgroups in 4.1. It is clear that the forecast in the leaves is not 100 %, and the AUC score is lower.

The proportion of PS employees again surfaces among the most important indicators of decentralization. Additionally, we calculated the strength of its relationship with the indicators of quality of governance. The calculation of Pearson correlation coefficients (r) showed the strongest relationship with the perception of corruption (r = 0,83), functioning of the government (r = 0,79), and the use of e-government services (r = 0,79); a moderately positive correlation with the level of trust in national institutions (public administration (r = 0,66), police (r = 0,55), political parties (r = 0,52), legal system (r = 0,45), and a moderately negative correlation with the trust in some EU institutions (the European Commission (r = – 0,48), the Parliament (r = – 0,47),

the Social and Economic Committee (r = – 0,46), and the Council of Ministers (r = – 0,42). Most of the above mentioned indicators also appear in Table 2, which helps to explain the discovered subgroup from another point of view.

Figure 3: Description of the subgroup with the most characteristic indicators of decentralization



4.3 The Subgroup of Countries with Low Trust in National Institutions

The subgroup consists of 6 EU members (22 %): Bulgaria, Czech Republic, Latvia, Lithuania, Poland, and Slovakia. The AUC equals 0,631.

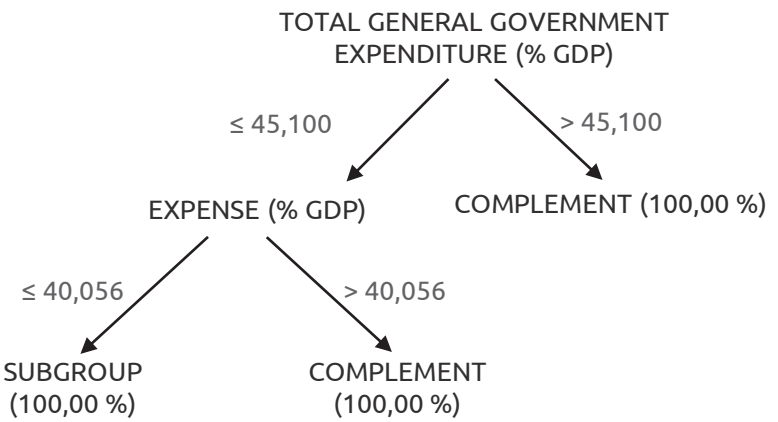
Citizens of the subgroup representatives have significantly lower trust in national parliaments, political parties, judicial system, national government and police, while the corruption perception index and the objective indicators of good governance are significantly lower, and the functioning of the government is typically worse. The subgroup is therefore described by the dissatisfaction of citizens with their own political institutions, and an extremely low (0.03) index of objective indicators of good governance. This suggests that the quality of governance is low: economic conditions are poor, there are too many barriers to entry, the taxes are too high, the contracts are poorly enforced, and there is too much corruption (Table 3).

Table 3: Quality of governance indicators which significantly distinguish subgroup from the complement

	subgroup		complement		
variable	mean	stdev	mean	stdev	sig.
Trust in national parliament	0,24	0,06	0,53	0,12	1,3E–04
Trust in political parties	0,11	0,01	0,25	0,08	1,3E–04
Corruption Perceptions Index	3,98	0,39	6,92	1,83	6,0E–04
Index of Objective Indicators of Good Governance	0,03	0,32	0,59	0,27	9,0E–04
Trust in the legal system	0,30	0,08	0,55	0,14	9,0E–04
Trust in the national government	0,34	0,04	0,52	0,11	9,0E–04
Trust in the police	0,42	0,11	0,66	0,13	1,3E–03
Functioning of Government	6,49	0,56	8,16	1,09	1,5E–03

The decision tree (Figure 4) describes a subgroup of those countries in which the total government spending represents less than 45,1 % of GDP, while expenses account for less than 40,056 % of GDP. The decision tree has otherwise clean leaves, but the AUC score is still relatively low.

Figure 4: Description of the subgroup with the most characteristic indicators of decentralization



5 Conclusion

In the paper we presented a new statistical method that explores the relationship between several independent and dependent variables. We employed the MR-SD algorithm to detect the relationship between the indicators of decentralization (fiscal and political), and quality of governance. The algorithm has proven to be an effective tool and discovered three distinct subgroups within European countries. Significant differences in trust in European

institutions characterized two of them, while significant lower level of trust in national institutions described the third one.

The MR-SD algorithm has shown that the resulting subgroups can be reliably distinguished from the rest of the EU countries by employing a small number of decentralization indicators. The majority of the most significant indicators belonged to the set of fiscal decentralization, the only indicator from the other set was the proportion of employees in PS. Additionally, we separately analysed the relationship of fiscal and political decentralization with the quality of governance. The MR-SD algorithm found some interesting subgroups, the results were better when we used just the political decentralization indicators. The proportion of the PS employees played a key role in this way as the variable with the strongest link to the quality of governance. We do not claim that the proportion has a direct influence on quality of governance – but however, the two concepts are strongly correlated.

The MR-SD algorithm was one of the first subgroup discovery algorithms, which was used on the data about the quality of governance. The promising results of this analysis raise new research questions. In the future work, we will first obtain additional indicators of the quality of governance and decentralization, and verify the stability of the detected subgroups and the principles they express. The most interesting challenge is the change of the results over time. We will first have to adapt the MR-SD algorithm for the time series analysis, and then adequately explain the obtained results.

In the paper we used one of the methods for data mining, which is otherwise rarely used in the social sciences, especially on the data about governance. Since the method has shown that it is capable to generate comprehensible hypotheses and discover certain principles within the data, we hope that in the future, in addition to the existing statistical methods, the data mining methods will be more frequently employed for analysing the data on governance.

***Lan Umek**, PhD, is a Teaching Assistant at the Faculty of Administration for the field of economics of public sector. He holds practical work classes in statistics and quantitative methods. He obtained a BSc in Mathematics in 2005 and PhD in Statistics in 2011 at the University of Ljubljana, Faculty of Mathematics and Physics. His research includes subgroup discovery methods, data mining and other optimization approaches in biological (wine production, genotype--phenotype associations) and administrative sciences (quality of governance, EU countries, questionnaire analysis). Within his research, he developed and applied several algorithms for subgroup discovery in data set with multidimensional responses. He presented the results of his work on several international conferences and journal publications.*

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POVZETEK

1.01 Izvirni znanstveni članek

Decentralizacija in kakovost upravljanja v EU Uporaba algoritma za odkrivanje podskupin

Ključne besede: decentraliziranost, kakovost upravljanja, odkrivanje podskupin, podatkovno rudarjenje, države EU

V članku predstavimo algoritem za odkrivanje podskupin, s katerim analiziramo, ali pri državah EU obstaja povezanost med njihovo decentraliziranostjo in kakovostjo upravljanja, kako močna je in kako se izraža.

Odkrivanje podskupin v podatkih je področje odkrivanja znanj iz podatkov (angl. knowledge discovery in databases), ki se v naravoslovnih znanostih (biokemija, genomika, medicina …) uporablja čedalje pogosteje, v družboslovnih vedah pa je za zdaj dokaj redko zastopano. Metode odkrivanja znanj iz podatkov iz podatkovnih tabel tvorijo raziskovalne hipoteze, ki področnim strokovnjakom pomagajo pri boljšem razumevanju problema.

V članku predstavimo algoritem MR-SD (Multiple Responses Subgroup Discovery), ki je zmožen obravnave dveh sklopov z več spremenljivimi (neodvisnimi in odvisnimi). Algoritem preizkusimo na dejanskih podatkih o državah EU, pri čemer obravnavamo sklopa indikatorjev decentraliziranosti držav (neodvisne spremenljivke) in kakovosti upravljanja (odvisne spremenljivke). Decentraliziranost merimo z osmimi indikatorji fiskalne in 11 indikatorji politične decentraliziranosti, kakovost upravljanja pa s 24 spremenljivkami, od katerih jih 15 meri stopnjo zaupanja v več državnih in evropskih inštitucij.

Jedro članka je opis algoritma, ki temelji na kombinaciji uveljavljenih metod statističnega uvrščanja in razvrščanja v skupine. V prvi fazi algoritem s hierarhičnim združevanjem razvrsti države EU v skupine, znotraj katerih so si predstavnice podobne glede na kakovost upravljanja. Skupine so predstavljene v drevesni strukturi, ki se lahko grafično ponazori s t. i. drevesom razvrščanja (dendrogramom). Grafično gledano tako vsako njegovo vozlišče predstavlja skupino držav EU s podobno kakovostjo upravljanja. Algoritem nato oceni vsako tako skupino (ki vsebuje ustrezno število članic) zgolj na podlagi decentraliziranosti, tako da ji pripiše stopnjo zanimivosti. Natančneje: algoritem skuša z uveljavljenimi metodami uvrščanja v skupine na podlagi podatkov o decentraliziranosti držav razlikovati med predstavnico analizirane skupine in državo iz preostanka. Stopnjo zanimivosti algoritem MR-SD oceni z mero AUC (Area Under Curve), ki se na področju odkrivanja znanj iz podatkov zelo pogosto uporablja kot ocena kakovosti metod.

Algoritem MR-SD je odvisen od mnogih parametrov: pri razvrščanju v skupine smo uporabili manhattansko razdaljo in Wardovo metodo združevanja, za

statistični model uvrščanja pa smo uporabili odločitvena drevesa do globine 3. Mero AUC smo ocenili z metodo izpusti enega, algoritem pa smo implementirali v odprtokodnem programskem paketu Orange. Algoritem MR-SD smo nato preizkusili na konkretnih podatkih, rezultate v obliki zanimivih podskupin pa smo naknadno nekoliko skrčili, s čimer smo pridobili preglednost, kakovosti pa nismo bistveno zmanjšali.

Postopek se je izkazal za učinkovito orodje in je odkril tri izrazite podskupine evropskih držav. Pri dveh je bila izražena razlika pri zaupanju v evropske institucije, pri tretji pa so se izpostavile značilno nižje stopnje zaupanja v nacionalne institucije.

Najizrazitejši rezultat se je pokazal pri podskupini osmih držav EU (Ciper, Grčija, Irska, Italija, Madžarska, Portugalska in Romunija), ki jo najbolje opiše značilno višja stopnja zaupanja v več evropskih institucij: najbolj izrazita je razlika v zaupanju v Evropsko računsko sodišče, sledijo Svet ministrov, Socialno-ekonomski odbor, Evropski parlament in Centralna banka, najmanj izrazita, a še vedno značilna razlika pa je pri zaupanju v Evropsko komisijo. Podskupina je odločno ločljiva od preostanka držav EU na podlagi indikatorjev decentraliziranosti, saj mera AUC znaša 0,9. Odločitveno drevo je pokazalo, da je ta podskupina zelo dobro ločljiva od komplementa samo z dvema indikatorjema: z večjim deležem odhodkov glede na BDP (> 42,49 %) in manjšim deležem zaposlenih v javnem sektorju (≤ 29,3 %).

Nasprotno pa je za drugo zanimivo podskupino 13 držav (Avstrija, Belgija, Danska, Estonija, Finska, Francija, Luksemburg, Nemčija, Nizozemska, Slovenija, Španija, Švedska in Velika Britanija) značilno nižje zaupanje v več evropskih institucij: najizrazitejša je razlika pri zaupanju v Evropski socialno-ekonomski odbor, sledita Evropska komisija in svet ministrov, najmanj izrazita, a še vedno značilna razlika pa je pri zaupanju v Evropski parlament in Sodišče. V primerjavi z drugimi te države značilno bolje izkoriščajo storitve e-uprave, bolje zaznavajo stopnjo korupcije v javnem sektorju, funkcioniranje vlade je uspešnejše. Podskupina je dobro (AUC = 0,742) ločljiva od preostanka držav EU na podlagi indikatorjev decentraliziranosti: če je delež zaposlenih v JS (javnem sektorju) večji 28,50 %, gre prav gotovo za eno od omenjenih 13 držav. Med državami, pri katerih je delež zaposlenih v JS manjši kot 28,50 %, pa se predstavnice podskupine od drugih držav najbolj ločijo po tem, da je mejna davčna stopnja, tj. razmerje med spremembo celovitega plačila davka in spremembo davčne stopnje, v večini primerov višja od 46,75 %.

Zadnjo podskupino sestavlja šest držav EU (Bolgarija, Češka, Latvija, Litva, Poljska, Slovaška) z nekoliko nižjo mero AUC (0,631). Državljani predstavnic te podskupine značilno manj zaupajo v nacionalne parlamente, politične stranke, pravosodni sistem, nacionalno vlado in policijo, indeksa zaznavanja korupcije in objektivnih indikatorjev dobrega upravljanja sta značilno nižja, funkcioniranje vlade je značilno slabše. Podskupino torej zaznamuje nezadovoljstvo državljanov do lastnih političnih institucij, izrazito nizek pa je indeks objektivnih

indikatorjev dobrega upravljanja. To pomeni, da je kakovost upravljanja izrazito slaba: gospodarski pogoji so slabi, preveč je omejitev vstopa na trg, davki so previsoki, pogodbe se slabo uveljavljajo, preveč je podkupovanja. Odločitveno drevo opiše podskupino kot tiste države, pri katerih celotna potrošnja države predstavlja manj kot 45,1 % BDP, odhodki pa predstavljajo manj kot 40,06 % BDP.

Algoritem MR-SD je pokazal, da je dobljene podskupine mogoče zadovoljivo dobro ločiti od preostanka držav EU z majhnim številom indikatorjev decentraliziranosti. Med najizrazitejšimi je bila večina podskupin iz sklopa fiskalne decentralizacije, iz drugega sklopa se je pojavil le delež zaposlenih v javnem sektorju. Ker je metoda pokazala, da lahko generira razumljive hipoteze in iz podatkov odkrije določene zakonitosti, se nadejamo, da se bodo poleg obstoječih statističnih metod pri analizi podatkov o upravljanju v bodoče pogosteje pojavljale tudi metode odkrivanja podskupin oziroma širše, metode odkrivanja znanj iz podatkov.

UDK: 37.014.54:330.34 1.02 Review article

Higher Education as a Means of Achieving Economic Growth and Development – A Comparative Analysis of Selected EU and Former Soviet Union Countries[1]

Maja Grdinić
Faculty of Economics, University of Rijeka, Croatia
mgrdinic@efri.hr

ABSTRACT

In the last twenty years, higher education policies have become increasingly important national priorities in both the developed and the developing countries. According to the endogenous growth theory, higher education and thereby accumulation of human capital is considered to be the main driver of economic competitiveness in the growing global economy founded on knowledge. Thus, as education is undoubtedly one of the main drivers of economic growth and development, an increase in the real expenditures for education is found in many countries. All this is especially evident in times of rapid technological changes. The interest of this paper is to show the relationship between GDP and public spending on education by applying the method of panel data analysis on the selected EU Member States and former Soviet Union Countries for the period 2000–2011. The results of the analysis showed that public expenditure for education, as well the size of the tertiary educated workforce and the number of researchers have a positive impact on GDP growth.

Key words: *economic growth and development, expenditures for education, panel data analysis*

JEL: H520, I250, O570

1 Introduction

The interrelation of education and economic growth is one of the central questions of economic analysis. Modern economists such as Krueger and

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Lindahl (2001), Bassanini & Scarpetta (2002) and Barro & Sala-I-Martin (1995) are trying to develop an empirical confirmation of the causation between education and economic growth, given the fact that education has great economic value and leads to the formation of human capital, which is one of the factors of economic growth. In addition, recently much attention has been paid to improving the quality of human life, and education represents one of the factors which contribute to its increase and which reduce income inequality. The contemporary studies such as Schultz (1963), Knight & Sabot (1983), Chenery & Syrquin (1975) on economic inequality and poverty increasingly emphasize that their key sources lie in the area of tax policy, labor market and employment policy, and in particular, achieved level of education. It is believed that the future trends concerning inequality and poverty i.e. the possibility of their decrease greatly depend on reducing the differences in the accessibility to education to all income categories of the population (Karaman Aksentijević, Denona Bogović, & Ježić, 2012, p. 144). Education is a process of learning in which one comes to know various facts, ideas and theories while on other hand knowledge is the application of these skills and is gained through experience and education. In contrast to capital and labor, education i.e. knowledge as its consequence is cumulative and as such suitable for explaining long-term economic growth and development. World industries that have high growth rates and expect this trend to continue are founded on knowledge and the human intellectual force. Some of these industries are: aerospace and pharmaceutical industries, communications services, financial services and business services, (including computer software development). Theoretically, they can be located in any country of the world if the country meets the most demanding requirement, that of possessing intellectual capital. Therefore, there is a subdivision of countries: those with an educated workforce and those with an uneducated workforce. Also, countries can be divided according to differences in the amount of wages received by workers with similar characteristics (same age, gender, level of education, the same years of working experience, etc.).

The aim of this paper is to explore empirically, using panel data analysis, the impact of public spending for education on GDP growth in EU-13 Member States and selected former Soviet Union Countries. Countries included in this analysis are listed in Table 1.

The economic literature which analyzes the impact of education on economic growth largely involves developed countries (OECD countries or EU Member states) and to a lesser extent only the Central and East European (CEE) countries (Bassanini et al., 2000; Bassanini & Scarpetta, 2001, 2002; Guellec & van Pottelsberghe de la Potterie, 2001; Vinod & Kaushik, 2007). Also, for former Soviet Union countries such research is lacking. Considering that, this paper aims to contribute to economic literature through the study of the impact of education on economic growth in a different group of countries (EU-13

Table 1: List of the countries included in the analysis

Armenia	Lithuania
Bulgaria	Latvia
Belarus	Moldova
Cyprus	Malta
Czech Republic	Poland
Estonia	Romania
Georgia	Russia
Croatia	Slovak Republic
Hungary	Slovenia
Kyrgyz Republic	Ukraine

Member States and selected former Soviet Union countries). The former socialist countries of CEE and the Soviet Union share some common characteristics such as the shared socialist past and significance of the political, economic, and social transformation since the collapse of socialism in 1989. Also, these countries share several educational characteristics, as reflected in a number of educational legacies inherited from the socialist regime and aspiration to embrace Western educational values. Among the positive socialist legacies are solid infrastructures for educational provision and administration, education without charge for all children, nearly universal general education enrolments, and high literacy rates.

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The purpose of this paper is to prove that public spending for education, as well as other variables included in the model (the number of tertiary educated in the total population and the number of researchers) have a positive impact on economic growth in the analyzed countries.

The rest of the paper is organized as follows. Section 2 reviews a theoretical background and literature review linking human capital, public expenditure and economic growth. Section 3 describes the data and methodology and presents the empirical results. Section 4 concludes.

2 Theoretical Background

A major part of economic literature (Fox & Smeets, 2011; Lazear, 2000; Ichniowski & Shaw, 2003) analyzing the importance of the human factor in production uses the terms *human resources* and *human capital* interchangeably. However, a distinction between these two terms should be made.

The term *human resources*, at company level, implies the overall psychophysical ability available to the company which can be used to achieve business goals (Karaman Aksentijević, Denona Bogović & Ježić, 2012, p. 8; according to Bahtijarević Šiber, 1999) while at national level, *human resources* can be defined as the total psychophysical energy possessed by the inhabitants of a country i. e. the energy a society can dispose of and use to achieve its development goals (Karaman Aksentijević, Denona Bogović & Ježić, 2012, p. 9). Human resources can also be defined as total knowledge, skills, abilities, creative capabilities, motivation and loyalty which are at the disposal to an organization. This is a total intellectual and psychic energy that organizations can engage in achieving the objectives and business development (Grbac, 2010). The term *human capital* implies the value of investment in the people through education and health care, but also, through all other activities that contribute to human development. This is the value that is invested in people (employees), primarily through education and health care, with the aim of creating knowledge, skills and professional capacities (according to Karaman Aksentijević, Denona Bogović, & Ježić, 2012, p. 7). In recent years, the Nobel Laureate, economist Theodore Schultz, has contributed to the measurement of human capital. His calculations were based on the accumulation of investment into quality components i.e. their improvement (through education, professional training and health care). However, he also entered into these calculations the lost earnings of people who pursued education, as well as other losses such as, those which occur due to death (Karaman Aksentijević, Denona Bogović, & Ježić, 2012, p. 7; according to Schultz, 1985).

Human capital is formed within a formal, non-formal and informal education system. The informal system includes family upbringing, self-education and self-learning, unintentional-convenient learning, learning from the media, and is achieved through increased accessibility to books, magazines, newspapers, films and the like. Non-formal education includes education for personal

development, language learning, computer courses for personal use, training for social roles - civil and political education – that which is often referred to as complementary education in terms of being complementary to the contents provided by formal and informal education. However, it is the formal education system that plays the most important role in the creation of human capital. It includes pre-school education, compulsory primary education, secondary education, higher education, lifelong learning programs and adult education i.e. education after which the participant receives a recognized degree of education (Babić, 2005, p. 31). Recently, the acquisition of knowledge and skills is growing beyond the traditional institutions of formal education and training. At the same time formal education and training are increasingly using approaches such as learning based on problem solving, mentoring, team work, workshops, case studies and other forms of learning, which are mainly based on learning through experience, both foreign and own (Tomaževič, 2007, p. 76). Given all of the above, it can be concluded that human capital is a broader concept than mere education and is one of the driving forces in the creation of sustainable economic growth and development per capita.

There are many works that explore the role of human capital, education and public policy. The first works on this subject are that of Uzawa (1965) and Lucas (1988). In these models, the individual decides on how much of his/her time is intended for production and how much for creation of human capital. In his work on endogenous growth, Lucas (1988) argues that investment in education increases the level of human capital, which then increases the amount of resources within the economy, and thus the national product, and therefore, according to Lucas, the expenditure for education can be seen as a major source of long-term economic growth. Due to the imperfections on the credit market (Lazear, 1980; Jacoby & Skoufias, 1997), the fact that individuals are not certain that in the future they will benefit from additional education and the externalities of human capital, private agents have only limited incentives and do not have enough funds to finance their education. For this reason, education financed by the public sector can reduce or internalise externalities in the process of accumulating human capital. Any change in the provision of educational services by the government, driven by short-term changes in the fiscal policy, will change the process of accumulation of human capital, and thus long-term economic growth.

Earlier works on the influence of education on economic growth used the production function in their analysis in which education (together with technological progress), as a segment contributing to economic growth, was treated as a residual i.e. as an unexplained segment of the production function (Solow, 1957; Svennilson, 1964; Denison, 1962). According to them, human capital, and especially education, accounts for a significant share in the residual i. e. something that is exogenously determined. However, in 1980, the endogenous growth theories began to evolve and stressed the role of human capital as an endogenous part of the production function. In his work, Rebelo

(1991) expanded the assumption on the impact of human capital on growth by introducing physical capital (e. g. buildings, production and commercial space, machinery and equipment) as an additional input into the process of creating human capital. However, none of these assumptions or models allow for the impact of public spending in the formation of human capital. The works that do take into account the fact that the public sector can stimulate the formation of human capital by investing public funds into education are Glomm & Ravikumar (1992); Ni & Wang (1994); Beauchemin (2001); Blankenau & Simpson (2004). In these works, the accumulation of human capital is the result of joint investments made by the private and public sectors (Glomm & Ravikumar, 1992; Blankenau & Simpson, 2004) or the result of the investment made solely by the public sector (Ni & Wang, 1994; Beauchemin; 2001). Also, as explained above, the accumulation of human capital may occur as a result of investment by the private sector or individuals in the form of non-formal and informal education. In their work, Krueger and Lindahl (2001) indicated that a change in education is positively correlated with economic growth and development. Furthermore, Levine and Renelt (1992) concluded that human capital, measured by the rate of involvement in secondary education, is a very important variable in the growth regression, and that the existence of endogenous growth models containing human capital as a driver of growth is justified.

Based on the studies related to the impact of education on economic growth, in this paper we will expose the model evaluating the impact of public expenditure for education, the number of highly educated workforce in the total population and the number of researchers on the GDP per capita growth.

3 Education as a Determinant of Economic Growth and Development

After opening their markets to global competition many developing countries began building the necessary educational infrastructure, thus raising the question on how much should be invested into human capital. In their works aimed at proving the significance of human capital, Bassanini et al. (2000) and Bassanini & Scarpetta (2001; 2002) used data from OECD member countries. Mamuneas et al. (2006) also found a positive impact of human capital on economic growth in a group of high, medium and low income countries. The results reached by Vinod & Kaushik (2007) in their work analyzing South American, Asian and African countries are consistent with the trends towards increased expenditure for education as recommended by the World Bank, international agencies and the developing countries. In the observed countries, which are also OECD members, the share of highly educated in the overall population is at least 10 %. Moreover, according to the Vinod & Kaushik (2007), in most countries, an increase of 1 % in the literacy rate increases growth by 1,2 % to 4,7 %.

Most of the literature confirms, theoretically and empirically, that education has an important impact on economic growth and development. Education can have a positive impact on the growth rate by means of a variety of mechanisms, including also increase in productivity, literacy (Schultz, 1963), spillover effects from the average level of education in the community (Lucas, 1988) or managers (Chatterji, 1998), by learning how to learn (Phelps, 1995), facilitating the use of new technologies (Nelson & Phelps, 1966), creating new technologies and spillover effects of new knowledge (Nelson & Phelps, 1966; Romer, 1986, 1990), reducing fertility rates (Barro, 1991) and reducing income inequality (Barro, 2000). The synthesis of all these studies is highlighted in the report prepared by the OECD. According to this report, higher education contributes to the social and economic development through four main segments (OECD, 2008):

- creation of human capital by learning,
- development of a knowledge base by researching and developing knowledge,
- dissemination and use of knowledge by interacting with knowledge customers and
- maintenance of knowledge by intergenerational storage and transferring of knowledge.

With such far-reaching mechanisms, it seems unlikely that this knowledge has been acquired within the same levels of education. While primary education may be sufficient for the basic production of goods and services, secondary may be sufficient for applying the technology at one's workplace, higher education is necessary in order for new technologies to be developed. Each level of education raises labor productivity, however, the higher the level the higher the need for resources (Schultz, 1963, p. 43).

In accordance with the findings that various levels of education are causing a different level of productivity, and hence various levels of economic growth, in this paper will be proved that higher education (represented by the number of highly educated workforce in the total population and the number of researchers who are particularly significant in the development of new sophisticated technology, research and development as well as in process of developing patents) has a positive impact on economic growth.

3.1 Expenditures for Education in Selected EU – 13 Member States and Former Soviet Union Countries

According to Sošić (2003) the increasingly rapid technological development has led to an increase in premiums for education in developed economies, while, developing countries demonstrate a convergence of the payment structure towards those in developed economies. This means that in the less developed countries, the structure of wages, during the period of

transition from a planned to a market economy, has adapted to wage structures existing in developed economies regardless that there were many factors that impede that adjustment. Some of the factors are inherited structure of collective negotiation, wages in the public sector or a lower valuation of highly educated workers (Šošić, 2003). The need for increased investments in human capital is particularly important for the developing countries since such investments speed up the restructuring of the economy, increase employment, reduce poverty and solve problems of social exclusion (Sošić, 2003, p. 439). As a result, more and more experts (Possen, 1975; Barrro, 1989; Barro, 1991; Devarajan et al., 1996; Kneller et al., 1999) direct their attention to investment in human capital, particularly to the financial significance of investments into education (the share of public and private expenditure for education in GDP). The increased interest of experts results from the fact that in the last two decades, investment into human capital (i. e. education) has imposed itself as one of the priorities of the economic policy as evidenced by a number of strategies and guidelines that have been adopted including the Lisbon Strategy for Growth and Jobs (European Commission, 2005) the European Employment Strategy (European Commission, 2003), the Jobs Strategy (OECD, 1996).

In most countries around the world, the public sector plays a prominent role in the financing of education, especially in primary and secondary education (Sopek, 2011). While the economic theory assigns the key role in growth to expenditures for education, the empirical support in terms of this relation is different. In almost every model in which growth is driven by expenditures for education, different relationships between spending and growth may occur. For example, expenditures for education can increase growth, while imposition of taxes to finance those expenditures may reduce it, leaving the net effect unclear. Therefore, according to the endogenous economic theory in order for the effects of the expenditures for education on economic growth to be clear, the effects of the introduction of taxes should also be considered, which has not often been the case in empirical research.

Besides the mentioned variables, economic growth can be influenced by other variables such as trade openness, accumulation of physical capital, expenditures for research and development, rate of inflation or public expenditures. Given that the main goal of this paper is to analyze the impact of public expenditure for education to economic growth, the model presented in this paper includes only variables that are closely related to education (public spending on education, number of tertiary graduates and number of researchers). Blankenau, Simpson and Tomljanovich (2007) placed the relationship between expenditures for education, taxes and economic growth in the focus of their analysis. In their analysis, they assess the equation deriving from theoretical models in which expenditure for education is an essential factor in economic growth. The key novelty in their regression is that they took into account the taxes paid to support education. They used the panel data for 23 developed

countries from 1960 to 2000 and found a positive correlation between expenditures for education and long-term growth only in cases when rules of budgetary constraints were followed. The studies which do not take the mode of financing as a control variable, underestimate the role of expenditures for education (Mendoza et al., 1997). In addition to studies that find positive correlation among these variables, there are some which indicate the presence of reverse causality between investment in human capital and economic growth (Nelson & Phelps, 1966; Benhabib & Spiegel, 1994). Therefore, the developing countries need to increase the share of human capital by funding it through various sources such as their own savings, different types of support received from bilateral and multilateral sources of financing such as European Community Action Scheme for the Mobility of University Students (ERASMUS AND ERASMUS+), Horizon 2020, Central European Exchange Program for University Studies (CEEPUS) as well as from private sources.

In the early 1990s i. e. the beginning of transition in these countries, political control over wages was abolished and the wage structure rapidly converged to the structures present in the markets of the developed countries (Rutkowski, 1996). Most underdeveloped countries invest noticeably more funds into higher education in relation to primary and secondary, while this ratio is lower in developed countries (Rutkowski, 1996). Generally, insufficient resources for primary and secondary education affect all individuals within the society, as well as the decrease in production and the increase in inequality, where, on the other hand, excessive resources result in excessive tax burden which reduces the well-being of all individuals in society (Welsch, 2009).

Data used in this paper are annual data covering the period from 2000 to 2011 for 20 countries (EU-13 Member States and seven selected former Soviet Union countries (Armenia, Belarus, Georgia, Kyrgyz Republic, Republic of Moldova, Russia and Ukraine). The reason why in the analysis all former Soviet Union countries are not included is the lack of data. Considering that the analyzed countries, as previously mentioned in this paper, share some common characteristics, the panel data analysis was performed on all twenty countries together. Of course, there is the possibility that the analysis would be done separately (EU-13 Member States as one group and the former Soviet Union countries as other group). However, given that the data for the former Soviet Union countries is available only for seven countries, the panel data analysis only for this group of countries is not possible.

Variables included in the model are Gross Domestic Product (GDP) per capita, public spending on education as a percentage of GDP, share of tertiary graduates in total population and number of researchers. The data was extracted from the World Bank (World Development Indicators) and from UNESCO Institute for Statistics (Education and Science, Technology and Innovation Statistics).

The most widely used method of panel regression analysis when it comes to utilization of short panels with high probability of correlated time-invariant component of the error term is fixed panel regression.

The general form of the panel regression model used in this paper is as follows:

$$y_{it} = x_{it}\beta + a_i + u_{it}; \quad \text{for} \quad t = 1,..., T \quad \text{and} \quad i = 1,..., N$$

Where y_{it} denotes dependent variable, x_{it} regressors, a_i individual-specific effects and u_{it} is an idiosyncratic error.

The results of the empirical estimation are presented at the Table 2.

The full model results show the positive effect on economic growth of public spending on education, percentage of tertiary graduates and number of researchers. Percentage of tertiary graduates in total population has the greatest impact on economic growth in the analyzed countries, while the public expenditure on education has the smallest impact. A more educated workforce is more mobile and adaptable, can use a wider range of technologies and sophisticated equipment (including newly emerging ones), can learn new tasks and new skills more easily and is more creative. This is particularly evident and is associated with a number of researchers, scientists and engineers whose number also shows a positive impact on economic growth. All of these attributes make a more educated workforce more productive (compared to a less educated one) and enable employers to organize their work places differently and adjust better to changes necessitated by competition and technical advances or by changes in consumer demand. It can be concluded that countries that increase the level of education of their workforce obtain greater productivity and through the impact on income, employment and poverty levels faster economic growth.

However, there are several econometric issues that require caution when interpreting the results. The first one is that there is an autoregressive effect of GDP on public spending on education. Growth of GDP in current year raises education spending in the following year. This leads to overestimation of regressors effect on economic growth. Secondly, the regressors in the model are actually connected through the structural relationship. More specifically, increase of public spending on education increases the number of tertiary graduates in total population. In addition, the more tertiary graduates in total population, the more researchers per million of inhabitants are there. Finally, more researchers cause a rise of GDP per capita through the well known process of rising productivity. This structural relation is presented by regressing variable tertiary graduates in total population with public spending on education (second column) and researchers per million of inhabitants with the percentage of tertiary graduates in total population (third column). In both cases independent variables exert positive and significant effects on dependent variables.

Table 2: Panel fixed effects estimation results for model

Dependent variable	GDP per capita	Tertiary graduates in total population (%)	Researchers per million of inhabitants
Constant	2,089493 (1,56)	0,26*** (2,37)	7,356451*** (228,84)
Public spending on education (% of GDP)	0,12*** (3,11)	0.12*** (5.10)	
Tertiary graduates in total population (%)	1,61*** (12,89)		0,3680668*** (9,86)
Researchers per million of inhabitants	0,59*** (3,30)		
R2	0,72	0,13	0,35
F-test	136,92***	25,98***	97,14***

Source: Authors calculation

3.2 The impact of the highly educated population on economic growth and development

In addition to the role of public expenditures for education in economic growth and development, some empirical studies explain a positive impact of public expenditures on economic growth by technological progress or by the growth of total factor productivity. Total factor productivity is the measure of the efficiency of all inputs to a production process. Increases in total factor productivity result usually from technological innovations or improvements. According to Jorgenson & Stiroh (2000), Abdih & Joutz (2005), Guellec & van Pottelsberghe de la Potterie (2001) and Ulku (2004) the total factor productivity is a function of human capital quality or level of education. The quality of human capital or a higher level of education of the workforce, especially in the field of science and technology, leads to greater innovation capacity, accelerated acquiring of knowledge needed to implement new and sophisticated technologies, and attraction of investment into physical capital, all of which have a positive impact on economic growth and development but to varying degrees, depending on the structure of the highly educated in each country. Differences in management "account" for around 40 per cent of the difference in productivity between branches within the same line of business service (Griffith et al., 2006, in Conrad, 2013). There is a clear correlation between employee engagement and high organisational productivity (Rayton et al., 2012 in Conrad, 2013). Value-based (rather than volume-based) fees for service seem to improve productivity for both service operations and strategy (Conrad, 2013).

The microeconomic evidence speaks in favor of educational accomplishments (expressed as the number of years of education). In his work, Mincer (1974) assessed the log-linear relation between the years of education and annual income. Recent studies show that an additional year of education increases

income at individual level by about 6,5 % in the EU and this relation gets stronger in times of rapid technological progress. This is founded on the report prepared by de la Fuente & Ciccone (2003).

A similar situation exists also in the EU-13 Member States as well as in the former the Soviet Union countries. For instance, in Slovakia workers with only a primary education earn 450 EUR per month on average, while the workers with tertiary education earn more than 1200 EUR per month. In the Czech Republic the tertiary educated people have on average 60 % higher wages as primary educated people (Kahanec, 2012).

Studies, including those of Mankiw, Romer & Weil (1992) and Barro & Sala-I-Martin (1995) found a significant positive correlation between countries that varied in the early stages of education and subsequent rates of economic growth. Numerous empirical studies on the impact of human capital on economic growth and development take human capital as an independent variable presented by the average number of completed years of secondary, associate and higher education. Such an approach exists in the work of Barro (2001) where research was conducted based on data for 100 countries that had different levels of economic growth for three decades: 1965–1975, 1975–1985 and 1985–1995. The growth rate of real GDP per capita was taken as the dependent variable, and human capital was defined as the percentage of the male working population above 25 years of age who had completed secondary and tertiary education. The research results showed that an additional year of schooling increases the rate of economic growth by about 0.44 % per year. Moreover, the research by Bebczuk (2002) showed that countries with a higher share of highly educated (tertiary education) have a tendency to have more scientists and engineers which requires a greater level of investment in R&D. Consequently, ceteris paribus, these countries should achieve higher GDP growth rates.

Gaining and dissemination of knowledge is very characteristic for both the former Soviet Union countries and for EU-13 countries. The key lessons drawn from theoretical and empirical contribution of this paper is that there is a structural relationship of higher education spending on economic growth. The increased spending on education leads to higher share of highly educated population and consequently more researchers which raise the production possibility frontier of particular society. Economic, socio-cultural and political environments in the analyzed countries, neoliberal reforms brought in by the West and globalization have shaped the path each country chose or had to follow in the last twenty years. The transformations in educational systems in many ways were similar: reforms of admissions to higher educational institutions, introduction of Bologna process, establishment of private higher education institutions and shrinking of the free higher education. The countries also faced cuts in public funding and massification (i. e. the move from a system where only elite could enter higher education system to one that every member of society might enter) of higher education participation.

In most of the countries, establishment of the private sector of higher education contributed to quantitative growth of higher educational institutions. New educational institutions, whose number has doubled in the last twenty years, have contributed to increasing the quality of the education system as well as the growing number of highly educated people.

Regardless of the already mentioned implemented reforms in the education system, the analyzed countries show weaker economic performance in relation to the old EU member (EU-15)[2] or OECD countries. Removing the corruption, which is a major problem in the education system, particularly in the former Soviet Union countries, harmonization between the educational system and the actual requirements of the labor market and increasing the quality and number of academic professors in order to continue with the establishment of private universities are necessary prerequisites for education to have an even greater positive impact on economic growth.

4 Conclusion

Economic growth and development require an increase in worker productivity over time. This is achieved through the innovation of the manufacturing techniques and products, increase in the capacities to apply the existing and new technology and as such contribute to the increase in the total factor productivity. Changes in production technologies as well as in the structure of the economy represent the challenges and opportunities that require higher levels of knowledge and skills of the workforce. Higher education plays a key role in this process, especially in the creation and application of new knowledge and techniques resulting in the increase in productivity. Even in developed economies, increased productivity implies the implementation of better and new methods of production by means of innovation, acquisition or imitation of existing technologies. For this reason, low-income countries must constantly strive to keep up and align with the technologically advanced countries or trying to improve the application of foreign technologies. That is crucial for low – income countries because they already have exploited the comparative advantages of low wages, but not the benefits of improved skills and knowledge. The workforce in these countries must obtain the necessary level of education that will provide them with the ability to follow up on and to adopt the existing technologies or innovations in order to become competitive in world markets, and thus keep up with the development in the developed countries reducing the income gap. Therefore, in both the developed and developing countries, there is a need for increasing the financial resources allocated to education and the role of the public sector. The common motivation lies in the fact that public expenditures for education are vital for sustainable economic growth.

2 Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

Also, in recent years, there are an increasing number of private universities in all countries. Like public universities, private universities are playing a vital role in the educational system of the country and such institutions revitalized the higher education system due to the importance attached to the quality of graduates and programme offerings. Also, private universities provide good avenues to complement the public tertiary institutions to absorb the huge number of pre-tertiary students as well as adult learners who are unable to gain access to the public schools. One of the problems that occur in private universities is the price of education, which in most cases is very high. It prevents the access to higher education to poorer individuals. Because of this, education should still largely be made public and available to everyone.

The results in this paper show the positive effect on economic growth (GDP per capita) of public spending on education, percentage of tertiary graduates and number of researchers.

However, when interpreting the results, we should take into account several econometric limitations such as autoregressive effect of GDP on public spending on education and structural relationship of the regressors. Structural relation is presented by regressing variable tertiary graduates in total population with public spending on education and researchers per million of inhabitants with the percentage of tertiary graduates in total population. In both cases independent variables exert positive and significant effect on dependent variables.

In this paper, we have made a progress on identifying the effect of public expenditures for education, number of tertiary graduates in total population and researchers per million of inhabitants on GDP growth for 20 countries (EU-13 Member States and selected former Soviet Union countries). Results of the study indicate that in future studies, in order to evaluate the impact of variables associated with education on economic growth, should take into account the number of individuals involved in primary and secondary education, the structure of the working age population and the number of private universities.

Maja Grdinić *is teaching assistant at the University of Rijeka, Faculty of Economics, Croatia for the courses Public Finance, Comparative Tax Systems, Tax Systems of European Union and Corporate Taxation. After she graduated from the Faculty of Economics in Rijeka in March 2008 she worked in an insurance company. From November 2008 she is working at the Faculty of Economics in Rijeka and from February 2009 she is a Doctoral student of Economics (title of the dissertation: The Interdependence of Tax Structure and Economic Growth in Selected Countries of Central and Eastern Europe and The Republic of Croatia).*

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POVZETEK

1.02 Pregledni znanstveni članek

Visokošolsko izobraževanje kot sredstvo za doseganje gospodarske rasti in razvoja – Primerjalna analiza izbranih držav Evropske Unije in držav nekdanje Sovjetske zveze

Ključne besede: gospodarska rast in razvoj, izdatki za izobraževanje, analiza panelnih podatkov

V zadnjih dvajsetih letih so politike visokošolskega izobraževanja postajale vedno bolj pomembne v nacionalnih prednostnih nalogah tako razvitih držav, kot tudi držav v razvoju. V skladu z endogeno teorijo rasti se visokošolsko izobraževanje in z njim akumulirani človeški kapital šteje za glavno gonilo gospodarske konkurenčnosti v rastočem svetovnem gospodarstvu, osnovanem na znanju. Ker je torej izobrazba nedvomno eden od glavnih spodbujevalcev gospodarske rasti in razvoja, je povečevanje dejanskih izdatkov za izobraževanje mogoče zaslediti v mnogih državah.

Izobraževanje ima veliko gospodarsko vrednost in vodi do oblikovanja človeškega kapitala, ki je eden od glavnih dejavnikov gospodarske rasti. V nasprotju s kapitalom in delom, je izobrazba, tj. znanje kot njena posledica (izobraževanje je proces učenja, kjer človek spozna določena dejstva, ideje in teorije, medtem ko po drugi strani znanje, pridobljeno skozi izkušnje in izobraževanje, pomeni uporabo teh veščin v praksi), kumulativna in kot takšna primerna za razlaganje dolgoročne gospodarske rasti in razvoja. Poleg tega se v zadnjem času veliko pozornosti namenja predvsem izboljšanju kakovosti življenja ljudi, pri čemer izobrazba pomeni enega izmed dejavnikov, ki prispevajo k boljši kakovosti življenja in zmanjšanju dohodkovne neenakosti.

Izobraževanje, ki se financira iz javnega sektorja, lahko zmanjšuje ali prevzema zunanje dejavnike v procesu akumulacije človeškega kapitala. Vsak ukrep vlade glede zagotavljanja izobraževalnih storitev, ki je posledica kratkoročnih sprememb v fiskalni državni politiki, zato spreminja proces akumulacije človeškega kapitala in s tem vpliva tudi na dolgoročno gospodarsko rast. Kakovost človeškega kapitala ali visoka stopnja izobrazbe delovne sile, še zlasti na področju znanosti in tehnologije, vodi k večji zmogljivosti za inovacije, pospešenem pridobivanju znanja, potrebnega za pripravljanje nove in napredne tehnologije, in privlači naložbe v fizični kapital, kar vse pozitivno vpliva na gospodarsko rast in razvoj, vendar v različnih obsegih, odvisno od strukture visoko izobraženih ljudi v državi.

Cilj članka je s pomočjo analize panelnih podatkov empirično raziskati učinek javne porabe za izobraževanje na rast bruto domačega proizvoda v državah

Evropske Unije – v 13 državah članicah in izbranih državah nekdanje Sovjetske zveze. Podatki, uporabljeni v tem članku, vključujejo letne podatke, ki zajemajo obdobje od leta 2000 do 2011 za 20 posameznih držav (13 držav članic Evropske Unije (EU-13)) in sedem izbranih držav nekdanje Sovjetske zveze (Armenija, Belorusija, Gruzija, Kirgiška Republika, Republika Moldavija, Rusija in Ukrajina). V model so vključene naslednje spremenljivke: bruto domači proizvod (BDP) na prebivalca, javna poraba za izobraževanje kot odstotek BDP, delež diplomantov terciarnega izobraževanja v celotnem prebivalstvu in število raziskovalcev.

Potem ko so odprle svoj trg globalni konkurenci, so mnoge države v razvoju pričele graditi potrebno izobraževalno infrastrukturo in se tako srečale z vprašanjem, koliko bi morale vlagati v človeški kapital. Različne stopnje izobrazbe povzročajo različno stopnjo produktivnosti in posledično tudi različne stopnje gospodarske rasti. Glede na slednje ta članek potrjuje, da ima visokošolska izobrazba (predstavljena s številom visoko izobražene delovne sile v celotnem prebivalstvu in številom raziskovalcev, ki so še posebej pomembni pri razvoju nove napredne tehnologije, raziskav in razvoja, kot tudi v procesu razvoja patentov) pozitiven učinek na gospodarsko rast.

Rezultati modela kažejo, da imajo javna poraba za izobraževanje, odstotek diplomantov terciarnega izobraževanja in število raziskovalcev pozitivne učinke na gospodarsko rast. V analiziranih državah ima največji vpliv na gospodarsko rast odstotek diplomantov terciarnega izobraževanja v celotnem prebivalstvu, medtem ko imajo javni izdatki za izobraževanje najmanjšega. Bolj izobražena delovna sila je namreč bolj mobilna in prilagodljiva, lahko uporablja več različnih tehnologij in sodobno opremo (vključno z novo, nastajajočo opremo), se lažje nauči novih nalog in veščin in je tudi bolj ustvarjalna. To je še zlasti očitno in je tesno povezano s številom raziskovalcev, znanstvenikov in inženirjev, katerih število pozitivno vpliva na gospodarsko rast. Zaradi svojih lastnosti je bolj izobražena delovna sila tudi bolj produktivna v primerjavi z manj izobraženo delovno silo in omogoča, da delodajalci organizirajo delovna mesta drugače ter jih bolje prilagodijo spremembam, ki jih narekujeta konkurenca in tehnični napredek, oziroma spremembam v povpraševanju potrošnikov. Prav tako je mogoče sklepati, da države, ki povečujejo stopnjo izobrazbe delovne sile, dosegajo z večjo produktivnostjo in učinki na dohodek, zaposlenost in stopnjo revščine, tudi hitrejšo gospodarsko rast.

Kljub temu pa je več ekonometričnih vprašanj, ki zahtevajo previdnost pri razlagi rezultatov. Prvo vprašanje je vprašanje avtoregresivnega učinka bruto domačega proizvoda na javno porabo za izobraževanje. Rast bruto domačega proizvoda v tekočem letu namreč poveča porabo za namen izobraževanja v naslednjem letu, kar vodi do precenjenosti vpliva regresorjev na gospodarsko rast. Drugič, med regresorji v modelu dejansko obstaja strukturno razmerje. Natančneje to pomeni, da povečanje javne porabe za izobraževanje poveča število diplomantov terciarnega izobraževanja v celotnem prebivalstvu. Prav tako velja tudi dejstvo, da več kot je diplomantov terciarnega izobraževanja v

celotnem prebivalstvu, večje je tudi število raziskovalcev na milijon prebivalcev. In končno, več raziskovalcev z dobro znanim procesom povečanja produktivnosti povzroči dvig bruto domačega proizvoda na prebivalca. To strukturno razmerje je predstavljeno z regresijo spremenljivke diplomantov terciarnega izobraževanja v celotnem prebivalstvu z javno porabo za izobraževanje ter z raziskovalci na milijon prebivalcev z odstotkom diplomantov terciarnega izobraževanja v celotnem prebivalstvu. V obeh primerih neodvisne spremenljivke izražajo pozitivne in pomembne učinke na odvisne spremenljivke.

Pridobivanje in razširjanje znanja je zelo značilno tako za države nekdanje Sovjetske zveze, kot tudi za države članice EU-13. Ključno spoznanje, ki izhaja iz teoretičnega in empiričnega prispevka tega članka, je, da obstaja strukturno razmerje med porabo za visokošolsko izobraževanje in gospodarsko rastjo. Povečana poraba za izobraževanje vodi do večjega deleža visoko izobraženega prebivalstva in posledično večjega števila raziskovalcev, ki razširjajo proizvodne zmožnosti neke družbe. Ekonomska, družbeno-kulturna in politična okolja v analiziranih državah, neoliberalne reforme, ki jih je prinesel Zahod, in globalizacija, so oblikovale pot, kateri je želela slediti vsaka država oziroma ji je bila primorana slediti v zadnjih dvajsetih letih. Spremembe izobraževalnih sistemov so bile v mnogih pogledih zelo podobne: spreminjanje sprejema na visokošolske izobraževalne ustanove, uvedba bolonjskega procesa, ustanovitev zasebnih visokošolskih izobraževalnih ustanov in krčenje brezplačnega visokošolskega izobraževanja. Države so se spopadale tudi z zmanjšanjem javnega financiranja in s prehodom iz sistema, kjer je v visokošolski izobraževalni sistem lahko vstopala le elita, v sistem, v katerega je lahko vstopil prav vsak član družbe. V večini držav je vzpostavitev zasebnega sektorja za visokošolsko izobraževanje povečevala število visokošolskih izobraževalnih ustanov. Nove izobraževalne ustanove, katerih število se je v zadnjih dvajsetih letih podvojilo, so prispevale k večji kakovosti izobraževalnega sistema, kot tudi k večjem številu visoko izobraženih ljudi.

Ne glede na omenjene izvedene reforme v izobraževalnem sistemu analizirane države v primerjavi s starimi članicami EU (EU-15) ali državami OECD kažejo manjšo gospodarsko uspešnost. Odstranitev korupcije, ki se kaže kot glavni problem v izobraževalnem sistemu, še zlasti v državah nekdanje Sovjetske zveze, usklajevanje med izobraževalnim sistemom in dejanskimi potrebami trga dela ter povečanje kakovosti in števila akademskih profesorjev, ki pripomorejo k nadaljnjemu ustanavljanju zasebnih univerz, so nujno potrebni osnovni pogoji, da bi imela izobrazba še večji pozitivni učinek na gospodarsko rast.

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Patterns, Trends and Policy Processes in Spanish Secondary Education: Multiple Streams in a Multilevel Context

Eliseo López Sánchez
Facultad de CCPP y Sociología Universidad Complutense de Madrid
eliseorl@cps.ucm.es

Esther del Campo
Instituto Complutense de Estudios Internacionales of
Universidad Complutense de Madrid
delcampo@cps.ucm.es

ABSTRACT

Educational policies in Spain have been characterized by conflict and continuous changes to legislation in the Central State. However, Spain is a decentralized State and the Autonomous Communities (regions) are responsible for implementing secondary education. The article aims at explaining and analyzing how Autonomous Communities have defined their educational models and policies for secondary education based on an unstable state legal framework. The analysis focuses on key elements of State legislation, such as the management methods of schools and the adaptation of policies to social differences between autonomous communities. Based on Zahariadis' multiple streams model, the article concludes by pointing out the importance of the context and its impact on the policies, the relevance of the ruling party's ideology in each Autonomous Community and the involvement of stakeholders in the implementation of secondary education policy.

Key words: *educational system, public secondary education, direct management, outsourcing, autonomous jurisdictions, multilevel government, Spain*

JEL: I28, K39

1 Introduction

This article presents the first findings, not yet systematic, of an ongoing research project which aims at identifying and analyzing how the Spanish Autonomous Communities (ACs) – in three cases: the Basque Country, Andalusia and Madrid – use their decision power as a result of public policy choices made by their political leaders. The research in secondary education policy is based on personal interviews with policy-makers and with many social stakeholders from the three ACs and the Central State. In addition, literature on

public secondary education in Spain, legal texts and the review of the ACs' press have been taken into consideration.

Regarding the State legislative framework, the Organic Law on Education (LOE) of 2006, currently in force[1], consolidated the Autonomous jurisdictions and represented an opportunity for regions to develop or consolidate their educational models themselves.

Within these models, the Basque Country, Andalusia and the Region of Madrid can be considered extreme, and serve as role models for other Spanish ACs.

Thus, the questions that guide our study are the following: Why have they been defined as different models if the State's general framework is the same? What criteria do they follow to set their policies? Do they adapt to the different circumstances of each Autonomous Community? Do they include stakeholders in the processes to define problems and goals? Finally, each model is analyzed to see to what extent education is considered a public service, a constitutional right, a tool to create a collective identity, whether it is conceived as a system for job market training, etc.

To approach this study, we have selected the perspective of multiple streams or windows of opportunity as our theoretical framework, which was developed by Kingdon (1984) and later taken up by Zahariadis (1999, 2003, 2007). We consider that this approach is particularly relevant for two reasons: firstly, due to the fact that ideas are given an important role (political paradigms, belief systems and policy images) and these are successfully disseminated as a means to explain the changing expectations of political stakeholders or coalition members, as well as to promote a change in policy and, secondly, because, the policy subsystem is assumed as the main unit of analysis.

Briefly, this approach identifies three streams – problem stream, policy stream and political stream[2] – which can couple at a specific point in time to generate windows of opportunity that allow political entrepreneurs to appropriately include topics they promote or advocate for in the government's agenda[3]. Although this framework has been used in the past to explain the development of higher education (Maguire, 2008), it is the first time it has been used for Spanish secondary education.

Firstly, we present the initial situation of these educational policies within the scope of the Central State, as such scope has marked the key lines of political

1 In 2013 the 7th Law on Education was passed since the beginning of Spanish democracy, the Organic Law for the Improvement of the Quality of Education (LOMCE).

2 Problem streams are the circumstances that policy-makers and people are willing to address; such as environmental problems, transportation, health care or, in our case, education. Policy streams are all the ideas that compete to receive attention. Political streams consist of three elements: the national mood, lobby campaigns, and administrative or legislative changes.

3 Policy windows are defined as fleeting opportunities for advocates of proposals to push their pet solutions, or to draw attention to their social problems. When policy windows open, policy entrepreneurs must immediately seize the opportunity to initiate action.

confrontation, and jurisdiction over secondary education has been transferred from this level to ACs at different times. The article is then structured into four sections and the conclusions. The first section overviews the Spanish educational system, indicating both the legal changes and the institutional inertia that have taken place within this period. The other sections focus on the analysis of the three regional models under research.

2 Evolution, Changes and Institutional Inertias of the Legal Framework in Spanish Education

Secondary education policies in Spain are under regional jurisdiction at the implementation level, and the general legal framework falls under the powers of the Central State. This jurisdiction has been transferred to the different ACs at different periods.

Several organic laws[4] have defined a set of common elements to all ACs since the 1980s, while other elements have been open to the autonomous decision of regional political bodies.

Among the issues that the Central State decides on are:

- Percentage of the courses and their contents.
- System for student promotion.
- Types of educational centers according to their management method: direct public management, outsourced (privately managed by agreement with the public sector) and private.
- Criteria for teacher recruitment.

In this general model, the successive laws have left some room for ACs to decide on, which has allowed them to outline different educational models. We can also identify several key issues that regional politicians have had to define:

- Percentage of elective courses and their contents.
- Management of secondary schools (high schools), including direct management and outsourced management. Regional authorities sign outsourcing agreements and conditions according to rules set by the Central State.
- Recruitment of teachers in the public sector, as well as of regional educational administrative staff.
- Criteria for selection of students applying for admission to secondary schools.

4 An Organic Law is a framework law that only the Central State can pass and needs to be approved by an absolute majority in the two chambers of the Spanish Parliament.

However, the evolution of each model is different, based on two main elements. First, the socio-economic differences which affect the problem streams of ACs policies. Second, the political environment of the Central Government, which affects the political stream and has been characterized by uncertainty and changes in a selected part of the model. In fact, a new change is being implemented at the moment.

The changes to the Spanish educational framework have occurred every time there has been a change in the Central State's parliamentary majority between the two main Spanish political parties, PP (conservative) and PSOE (social-democratic). It should also be noted that the previous reference point was the 1970 Law, passed in the last period of Franco's dictatorship, which consolidated the provision of universal primary education, however using two types of schools: public and private[5].

The public high schools were managed in a hierarchical, bureaucratic and centralized manner, and reported to a ministerial structure that was present in the entire Spanish territory through provincial departments, yet their decision-making autonomy was quite limited. Alongside the public high schools there were multiple private centers, mostly owned and managed by Catholic Orders, although there were also secular private high schools which were owned by individuals or cooperatives. The distribution in the territory of these schools was uneven, with significant differences between the provinces. In general terms, it could be argued that private centers were concentrated in urban areas, and in Northern Spain rather than in the South.

Once the current Constitution of 1978 entered into force, the Government headed by Adolfo Suarez aimed to adapt the Spanish educational system to the new political regime. The Parliament passed the Organic Law Governing the Statute of Schools (LOECE). This 1980 Law gave rise to a strong confrontation with PSOE, the main opposition party at that time. The lack of agreement forced PSOE to take the law to the Constitutional Court, which published its judgment in 1981, invalidating many of its provisions. The Law never came into force.

The next milestone occurred in 1985, with Felipe González's Government (1982–1996): the Organic Law on the Right to Education (LODE). It meant a reorganization affecting all educational centers and their management. The most important aspects of this Law on the management of schools are:

- All public high schools should have a School Council, composed of the representatives of parents' associations (AMPAS), students and faculty. High school faculty would elect school principals, selecting one among them.

5 For more specific information on the dualization process between public and private education in the Spanish educational system as well as on its impact on educational inequalities see Bonal (2002).

- Many private schools, not all, were integrated into the public educational system, through service agreements, which meant outsourcing the supply and management of a public service.

In practice, the implementation of the legal rules, the budget allocation and control was in the hands of the Ministry of Education, so the management of public schools was not decentralized. In fact, the School Councils could not choose an educational project for their center under LODE – for instance, the teaching method, or content and course specialization were decided by the Ministry.

Private schools which signed an agreement with the Ministry of Education, or with the relevant Regional Government Department if educational powers had been transferred, took on course contents and students who resided in the area assigned by the Ministry, or by the Regional Department, and who applied for studying at these Private Schools. Outsourced schools could also shape their School Councils, although their role was truly limited.

Regarding personnel selection, public schools should recruit their teachers through the model for civil service in force, a career model which is the basic model in all Spanish public administrations. Private schools could recruit their teachers from those who met some academic degree requirements and passed a nation-wide aptitude test, which applied to non-outsourced private schools anyway. In the case of secondary education, teachers had to be graduates of areas related to the courses they taught, both in public and in private schools.

The fundamental problem that LODE tried to solve in 1985 was the overcrowding of the network of public high schools, as children born from the mid-1960s to the mid-1970s – a period when Spanish birth rate had grown – reached school age at that time. Spanish birth rate had dropped since then, so the alternative of building new schools under direct management was dismissed, as they would have no students by the end of the 20th century.

In 1990 another controversial Law was enacted to complement the above – the Organic Law on the General Organization of the Educational System (LOGSE). This Law mainly changed the courses and their contents, while the dual network of high schools remained intact. However, LOGSE stipulated that principals would be elected by School Councils.

LOGSE introduced some improvements, such as a maximum of 30 students per classroom, psychological counselors and support teachers for students with difficulties in each high school, it raised the age for compulsory education from 14 to 16 years and the education inspectorate was given a greater role. It also strengthened the agreements with private schools, but as a right of parents to choose their children's education, and not as a short-term solution to the problem of temporary excess of demand.

With the change in parliamentary majority in 1996 and the start of José María Aznar's mandate, the implementation of LOGSE was constantly challenged. However, PP did not have an absolute majority in the Spanish Parliament then, and did not get sufficient support to amend this framework law. When PP got an absolute majority in 2000, Aznar's Government promoted the Organic Law on Education Quality (LOCE), enacted in 2002. This Law gave rise to great controversy about the role of Catholic religion as part of the curriculum. It also changed the procedure for student promotion, considered so far by PP and several social stakeholders involved in educational policies to be very flexible and tolerant to students, and it was believed to produce indiscipline, lack of respect for teachers and to give little value to effort.

LOCE did not come into force, since the first year in which it had to be applied, academic year 2004–05, coincided with the arrival of socialist José Luis Rodríguez Zapatero's Government. With this Government, the Organic Law on Education (LOE) was enacted in 2006. Since PSOE did not have an absolute majority in the Spanish Parliament, it needed the support of other parties, which was found in left-wing parties and in Catalan, Basque, Canarian and Galician nationalist parties.

However, LOE originated a heated public debate, since Religion (Catholic or other) was not considered a "gradable" course and "Education for Citizenship" was included as a compulsory subject, whose content was considered an ideological indoctrination of progressive values by conservative stakeholders and by the Spanish Episcopal Conference.

This Law did not alter any agreements with private schools, as these matters remained in the ACs hands, but strengthened them instead, as the Central State started financing teachers' salaries by transferring funds to ACs.

A new change in the State's framework occurred after the powers were transferred to all ACs in 2001. This means that LOE equally affected all ACs. For the ACs which had received their powers in the 1980s, LOE was an opportunity to confirm or not their educational model, rethink old public problems in the regional public agenda, or introduce new issues. For ACs which had received their powers at the turn of the century, LOE was an opportunity to develop their own educational model, beyond what they had inherited from the Central State.

Schools' management autonomy became a key point around which the different stakeholders took sides also in the regions chosen for this study. As mentioned above (Bolívar, 2008; Madera, Martin and Pérez, 2013), the Central State's political subsystem did not solve this issue before, as these powers were transferred to the regions in 2000. The problem stream had not successfully defined neither high school's degree of management autonomy nor the teaching method they should implement. Social stakeholders that could be involved in this matter, such as parents associations and

teachers' unions, were not given sufficient priority and the social demand for a better education was not linked to the autonomy of schools. For decades, these demands called for a quantitative increase in the resources spent on education: more teachers, more schools, more scholarships and grants, more educational materials (Bonal,1998). This issue had never been given priority in the political stream before, so the window of opportunity had never opened for the autonomy in the management of schools. In both cases, the solution was sought in agreements with private schools.

Among all the ACs we can identify the Region of Madrid, the Basque Country and Andalusia as particularly significant due to their clear definition of their own models. Each one of them responds to different circumstances in terms of ruling parties and types of majorities at regional level, networks of social stakeholders, moment of power transfer and financing.

3 A linguistic Issue: the Basque Country Case

The Autonomous Community of the Basque Country received powers in non--university education essentially in 1980. In the early years of the autonomous implementation of the powers in secondary education, the Basque Government found the main difficulties in managing the administration's material resources on the one hand and the staff on the other hand. Both issues were handled by creating structures and rules for operating the Basque Government and administration.

The initial situation inherited from the Central State in the Basque Country regarding secondary education had some peculiarities when compared to the rest of Spain. The service was provided by means of two models, public and private, with a 50–50 student share.

In the public model, involving direct management and public ownership, high schools were managed according to a very centralized, hierarchical and bureaucratic scheme.

The private model consisted of a group schools which were privately owned and managed, but divided into two different types. The first type comprised private schools belonging to Catholic orders. The second type were schools set up by parents of students, cooperatives called “Ikastolas”. These parent cooperatives were formed to give a different education to the public education content of the Franco Regime and the Law of 1970, and were linked, in many cases, to Basque nationalist ideology.

LODE in 1985 meant an opportunity in the problem stream for the Basque Autonomous Community, and LOGSE in 1990 consolidated this opportunity.

The political stream in the autonomous political subsystem picked up momentum in the Basque election of 1987. A Government coalition between PNV (Basque nationalist) and PSE (PSOE’s Basque section) was created and this

coalition assigned the Regional Ministry of Education to PSE. Then the main characteristics of the current Basque educational model were defined, based on political agreements between Basque nationalists and Socialists (Dávila Balsera, 2004).

The foundations of this model consolidated after the regional election in 1991 and then with different Government coalitions, as PSE remained a minority Government partner up to 1998, holding the Regional Ministry of Education until then. Later, this Regional Ministry was taken over by Eusko Alkartasuna (EA)[6] until 2009.

In short, the main features of the Basque case were laid from 1987 to 1991. These remain today, although they have been challenged. Practically all private schools, whether Ikastolas or other types of private schools, were contracted as external providers of the public system, and have that same status today. There are hardly any private education providers without an agreement, and the ratio of students in private and public education remains stable at around 50 %.

Secondary education schools, whether directly managed or outsourced, must offer three teaching models, according to the language in which courses are taught. The choice between one and the other is up to the parents. These three models are called A, B and D:

A. In Spanish language, except for the Basque language course.

B. Mixed, with prevalence of the Basque language.

D. In Basque language, except for the Spanish language course.

Schools have some autonomy to offer one or another model, and are responsible for providing training to their faculty in Basque language for them to be able to teach their courses in either language, considering that teachers who did not speak Spanish were exceptional to start with. This autonomy of centers to meet demand has also been used by their managers to introduce quality tools or standardizing procedures in some cases.

The main public issue found in the Basque educational system is the language: the use of Basque or Spanish in teaching. The evolution of demand for this model has led to the offer of model A being limited to some urban areas of province capitals. The parents' demand is focused on models B and D. However, the possibility to study following the model A exists.

In 2006, after LOE was released, the Basque Government at that time consisted of a coalition between PNV, EA and EB (Ezker Batua)[7], and the Regional Ministry of Education was held by EA. The new law was used to challenge the continuity of the model in the government's agenda. The reason was that,

6 A nationalist political party which split from PNV in 1985, and which could be considered more progressive and secular than PNV.

7 Section Basque United Left, political organization to the left of PSOE.

although models B and D prevailed in secondary education, the use of the Basque language in society was considered insufficient, particularly in the three province capitals and areas such as the industrial zone near Bilbao and the South of the province of Alava. As an alternative choice, these Basque nationalists proposed the Catalan model, known as »immersion«, however this option was finally dismissed and the three-way model remained.

After the 2009 election there was a change in the Government of the Basque Country, and PSE formed a Government with the parliamentary support of PP. For PSE, as for EA, education is a matter of priority in their party's agenda.

Considering that PSE had been a protagonist in the design and implementation of the original educational model agreed with PNV, we could understand that they would be reluctant to change it. However, the Socialist Basque Government introduced changes to the model, although it did not approach it as a reformulation of the policy, but as a mere addition to the traditional three-way model. They did not reformulate the public issue that gave rise to the model, just introduced a specific program, along with others, as an upgrade or update of the same model. It was therefore presented as an incremental solution.

The update of the model revealed that it had weaknesses, produced over time, such as the use of new technologies in education and training in English. For this last weakness, the Basque Ministry of Education presented a trilingual program, so instead of dividing each model into two languages, they were divided into three: Spanish, Basque and English. Although the teaching time ratios for each language were initially discussed within the public agenda, at the end the program allowed public and outsourced private high schools to decide whether to introduce English in each of the models that they were already offering, leaving at least 20 % to each of the three languages if they did. In short, the decision to introduce or not the program remained in the hands of high schools, as well as the programs for the use of new technologies. High schools that applied this program received economic incentives, such as English training for teachers, material resources and grants for activities in English.

At the end of the term of the PSE Government in 2012, the output of this program was to blur the original three-way model, and its implementation was limited.

We may consider the Basque case to be an attempt to change the policy. The consensus on the educational model which originated for the first time since 1987 created a stable network with stakeholders specialized in this policy. These stakeholders include trade unions, both nation-wide left-wing unions and Basque nationalist unions; parents' associations, which are usually moderate Basque nationalist, or employer associations, also close to nationalism. All of those make up a network which is rather favorable to Basque nationa-

lism and which prioritizes the Basque language as the main issue of secondary education in the Basque country, keeping the A-B-D model as a stable solution at least until 2009, as opposed to the Central State where the model is constantly changed.

Challenging the policy between 2009 and 2012 by the Basque Socialists in the regional government was an attempt to change on a large scale, but the result was the restoration of balance. It should be noted that the trilingual program gave rise to protests and social demonstrations led by social organizations with a nationalist ideology, such as trade unions and parents' and students' associations.

We can also understand that the Central State caused with LOE the event that drove the problem stream (Zahariadis, 1999) to the Basque Autonomous Community. Additionally, studies and expert opinions push the policy stream in favor of promoting English studies, even for teaching other courses, giving credibility to the option adopted by the Socialist Government in the Basque country in 2009. Finally, the political stream shows that the ideology of the ruling party (Zahariadis, 1999) is critical of the selection of alternatives, both in the Socialist Government and in the previous nationalist Governments and also in the subsequent Socialist Government.

4 The Search for a Direct, Public and Egalitarian System: the Case of Andalusia

The region of Andalusia received basic powers in non-university education in 1982 and 1984 shortly before the Central Government enacted LODE in 1985. From then on, the main objective of successive heads of the Regional Ministry of Education was adapting material and human resources transferred according to such Law, but taking into account that most of these resources were in public hands, i.e. that the possibilities for Andalusia to get outsourcing agreements with private high schools were limited by the low amount of these when compared to other ACs.

The main objective of the Autonomous Community of Andalusia from 1985 to 2006 was to extend the provision of educational services. Firstly, by handling the increase of students in the 1980s and, secondly, by extending the age of obligatory education and increasing the services to students with disabilities or diversity in the 1990s, implementing LOGSE. Thus, the main objective was quantitative: building more public schools and increasing staff and resources.

It should be noted that the Andalusian Government, since its creation in 1982 until now, has always been ruled by the Andalusian section of PSOE (PSOE-A)[8]. This situation has supported continuity in policy-making, with stability in

8 Since 2012, the government of Andalusia is a coalition with political party Izquierda Unida for the first time, as the Socialist Party did not reach an absolute majority in the Andalusian Parliament – this situation had only happened previously from 1994 to 1996.

the identification of public issues and their solutions, as well as an almost absolute control of the Government agenda by PSOE-A. The definition of objectives has mirrored PSOE-A's prevailing values and ideology. Among them, in the period before 2006, Andalusian leaders preferred direct public management to providing the service through agreements with private schools, particularly Catholic, as a way of securing the right to free choice of values by parents, beyond the attention to the temporary increase of demand posed by LODE in 1985.

To comply with the legal framework established by the Central State, the Andalusian Government reached an agreement with private schools. Thus, an 80/20 ratio was established between directly managed schools and schools whose management was outsourced. This balance remained until 2006. However, it should be noted that the public sector was responsible for reaching the most deprived areas, even marginal areas, and that LOGSE provided for additional resources in these areas.

In addition, the Regional Ministry of Education kept control over directly managed schools, by keeping an ongoing contact with principals, transferring economic, material and human resources, and through the presence of education inspectors in schools. This did not eliminate the role of School Councils, although most parents' associations [AMPAS] in Andalusian public schools share left-wing values and strategic objectives. No unions representing teachers in the public sector seem to have discussed the fundamentals of the Andalusian educational model, and the control of public schools by the Regional Ministry, so the School Councils have not been forums to claim for specific educational projects for their school.

In brief, Andalusia has set up an educational model where direct management, administrative centralization and control of secondary education schools prevail, and where students are preferably selected based on their place of residence (Merchán Iglesias, 2012).

The key elements of this model remained the same after LOE was enacted in 2006. However, the Andalusian Government took the opportunity to redefine its policy for secondary education. Both the Andalusian Government and the most relevant stakeholders, such as parents' associations, trade unions and political parties, agreed that Andalusia faced two main public issues regarding secondary education in 2006: high drop-out rates and students' school failure.

High drop-out rates is a phenomenon that took place in Andalusia prior to the transfer of powers, because parents in rural areas traditionally required their children to start working at an early age. From the 1980s to 2008, the school drop-out phenomenon began to be connected to the fact that young people found it easy to find a job in the building industry, quitting the educational system without ending their period of obligatory secondary education.

To solve these issues, the Andalusian Government redesigned its educational policy through a regional law enacted in 2007: the Law on Education for Andalusia (LEA) of 2007. LEA was an initiative of the Andalusian Government, which included in its draft before it was submitted to the Andalusian Parliament the standpoint of majority trade unions then, UGT and CC.OO., with a similar ideology to PSOE-A, through a roundtable agreement[9]. Policy-makers also listened to the School Council of Andalusia, where associations of students, parents and private school employers were represented, as well as the Association of Principals of secondary education public schools. Within each sector, PSOE-A gave greater importance to closer organizations, for example, the Association of Teacher Cooperatives received more attention than "Catholic Schools", a conservative organization.

The participation of the social stakeholders in the area of secondary education also happened in the Parliamentary process. In the Parliamentary Commission almost all stakeholders appeared, but without a vote. The Andalusian Parliament finally passed LEA with the votes of PSOE-A, which had the absolute majority and IU, which was not ruling with PSOE-A at that time; however, PP voted against.

Although it may be considered that LEA marks a starting point in Andalusian education, programs developed from LEA on to solve public issues in compulsory secondary education may be considered incremental as opposed to the situation before 2006.

Regional programs increasing and intensifying the strategies and the means set out at that time by LOGSE regarding school failure: personalized actions for students with disabilities, with extra support classes; more availability of curricular pathways, or promoting the use of new technologies as a means to integrate youth in the educational system, for instance. Additionally, the Andalusian Government developed and implemented a new specific program, "Scholarship 6000", whereby the Administration paid 600 euros per month during school months to students who lived in low-income areas and whose families required them to enter the job market.

It should also be noted that LEA struck the balance of outsourced private schools, allowing a 4 year extension of existing agreements, but stating that in the event the demand of students in a certain area decreased, the Government would not renew the service agreement, moving students to the nearest public school or choosing a private school outside the public sector. In 2012, this led to a 20–18 % drop in the share of outsourced private schools.

In brief, the Andalusian Government has used the LOE framework to take an incremental step in its educational model (Lindblom, 1979), although it has

9 It is a corporate body of negotiation for the working conditions of staff. Currently there is a table for teachers of the public sector and another one for the teachers of the outsourced private sector.

opened a reformulation process for all educational public policies by developing a regional Law. The end result was a reinforcement of the policy made before, considering that education was a priority for PSOE-A.

The policy stream came to Andalusia from the Central State in 2006, coinciding with the political stream in the regional political subsystem. Thus, both streams opened the window of opportunity for the Andalusian Government, which used them to change the objectives of its policy. However, this did not mean a review or a change in its management model for secondary education. Among other reasons, this was due to the fact that, since the powers were transferred, a stakeholders' network was formed following this policy, which finally became an advocacy coalition around PSOE-A (Sabatier & Jenkins-Smith, 1999). The stakeholders' coalition, including unions, parents' associations, the Association of Secondary School Principals, education inspectors, etc. promoted LOA, and it was not in their interest to change the management model, although this was one of the objectives of LOE.

5 A Process of Privatization: the Region of Madrid

In the case of the Region of Madrid, its starting point was clearly different from the other two ACs, since it received powers in Education between 1999 and 2000. This means that the entire development and implementation of the Central State's framework laws, such as LODE and LOGSE, corresponded to the Central State's Ministry of Education until 2000 in the territory of the Region of Madrid, which defined a model for secondary education that we may define as neutral, as it did not define any specific aspects for Madrid, nor for any other Autonomous Community.

Thus, in the case of the Region of Madrid, the educational model could be defined specifically since 2000, but at first it took on the model it had received without challenging the previous situation. We must take into account that Madrid's Regional Government has been held by PP since 1995 until now with an absolute majority in the Regional Parliament.

In the early years, the main concern of the educational authorities of the Region of Madrid seemed to be the change that the Central Government intended to make regarding the general educational framework with LOCE, the law which did not come into force in 2004. This law would have provided the chance to define a model that would explicitly develop PP's principles and values in the ACs. These principles aim at giving more weight to outsourced private schools and at including the Catholic religion as a "gradable" course, which is the Central State's jurisdiction. However, as LOCE did not enter into force, the opportunity to define the model for secondary education of the Region of Madrid with these principles was postponed until 2006, with LOE, but adapted to the particular circumstances of this territory. In fact, this adaptation already began in 2003, with the new regional President, Esperanza Aguirre.

Until 2003, new developed areas where new schools had to be built became widespread. Outsourced private schools were allowed to be built in these areas, but with a lower density than public schools. In practice, this allowed for some room for choice in the newly developed areas. However, this period coincided with a huge real estate expansion and the development of many new urban areas, so Madrid experienced a heavy population growth, from 5 to 6,5 million from 1995 to 2012.

From 2003, the regional Government began to sign outsourcing agreements for new urban development areas that included the assignment of the land covered by the secondary school for 75 years. This land was reserved to build public educational facilities and was owned by the Region of Madrid. In return, private investors undertook to build the schools, and the Government of Madrid to not allow other public or outsourced private school in the area, so there was no competition[10]. Currently, the capacity of outsourced private schools is 50 % versus directly managed high schools.

In the case of the Region of Madrid, the salary of a teacher working for private outsourced education is lower than the salary of teachers of public sector. If we add to this the immediate savings from the construction of buildings, it means that the objective of saving costs has been met, and allows us to identify that Madrid's political leaders have defined a problem of costs generated by the provision of educational services. However, this practice ended in 2009, as there were no private investors willing to partner up with the public sector under such collaboration agreement.

Other changes in the Regional educational policy were presented as partial programs, and not as a general policy plan. However, if we analyze them as a whole we can see that they have a purpose and common values.

The most outstanding secondary education programs have been: the program of bilingualism, English and Spanish, and the program for educational excellence. Both seek to improve access of students in secondary education to the job market. This implies the definition of a public problem involving the students' misalignment with the needs of companies. For this purpose it is essential to introduce stricter criteria for student promotion, the opposite to what LOGSE set forth and in line with LOCE.

However, these programs' performance is being discussed by social stakeholders who oppose this policy, because they state that these programs have suffered budgetary cuts with the economic crisis and that their results are limited.

In short, we can understand Madrid's secondary education model is characterized by a market-driven approach, both in the manner the service is provided and in the type of students seeks it to lead to graduation, and it fosters

10 We may considerer it to be a kind of PFI, Private Finance Initiative.

competition between students. It is a model that seeks economic efficiency over the integration of educational stakeholders, and the role of unions, associations of parents and students, and employers is small in the political agenda (Antón, 2009).

However, this model tends to give a certain degree of management autonomy to directly managed schools. The school managerial teams may choose to adopt programs such as bilingualism or excellence, even if this means losing the resources involved. They can also choose to offer certain optional courses, if they identify a specific demand beyond their area of coverage. In short, the relationship with the Regional Ministry of Education gives them some room to make decisions.

If we analyze the case of the Region of Madrid from the point of view of the multiple streams in Zahariadis' version (1999), we see that the problem stream was driven by LOE in 2006, and it was perceived as an opportunity for the Regional Government, which coincided with a policy stream, as it was an expert knowledge linked to some right-wing think tanks and to other experts related to the previous Law on the Quality of Education (LOCE). These two streams also coincided with the third, the political stream, since the solution adopted for secondary education includes values and beliefs which are part of PP's identity in Madrid.

6 Conclusions

In short, if we look back at the questions we asked initially regarding these three ACs: the answer to the first one – "Why have they defined different models if the State's general framework is the same?" – is that they have done so because they respond to very different social environments, which makes them develop different answers to different public problems. The window of opportunities arising from the current problems (Zahariadis, 1999) is specific for each Autonomous Community, although it can be opened due to the changes in the state legislation. Therefore, the autonomous jurisdiction of secondary education has fulfilled its aim to adapt the policies to social environments and the answer to the question "Do they adapt to different situations of each Autonomous Community?" is affirmative, as well.

The answer to the question "What criteria do they follow to set their policies?" has already been answered; the criteria are the ideology of the ruling parties, which enables a clearer identification with the decisions of voters, but it also implies greater tensions and disputes in education policies, since the lack of agreement between parties makes the policies to be interrupted with the changes of the party in power, as it also occurs in the Central State. It are the ruling parties which influence the policy flows most and identify the opening of the window (Zahariadis, 1999).

Do they integrate into the processes of defining the problems and objectives for social stakeholders? The answer is that social players participate in the school councils of ACs formally and as consultants. Nevertheless, the social sectors that are ideologically more related to the ruling parties have more informal relations and a greater influence on the policies of the ACs involved in the research. This aspect represents a line of research to be developed in the future.

***Eliseo López Sánchez**, PhD, Assistant Professor at the Faculty of Political Science and Sociology of the UCM [Facultad de CCPP y Sociología Universidad Complutense de Madrid]. He holds a Master's Degree in Public Administration from Instituto Universitario Ortega y Gasset (IUOG) - National Institute of Public Administration (INAP), he teaches various courses related to public policy, governance and political systems. He is a researcher in several projects on local and regional public policy and intergovernmental relations, author of different publications, book chapters mainly. Previously, he worked as a coordinator of research teams in the Third Sector as a Senior Consultant in the Private Sector.*

***Esther del Campo**, PhD, Professor of Political Science and Public Administration at Instituto Complutense de Estudios Internacionales of Universidad Complutense de Madrid. She is the Head of the PhD program "Government and Public Administration" at the Ortega-Marañón Foundation. Her main research interests and publications include Comparative Politics, Governance and Institutional Reform, Decentralization and Political Participation. Currently she is the Director of Complutense Institute for International Studies (ICEI).*

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POVZETEK

1.04 Strokovni članek

Vzorci, trendi in procesi oblikovanja politike v španskem srednješolskem izobraževanju: številni tokovi na več ravneh

Ključne besede: izobraževalni sistem, javno srednje šolstvo, neposredno upravljanje, oddajanje del, krajevne pristojnosti, vlada na več ravneh, Španija

Raziskava o srednješolski izobraževalni politiki temelji na intervjujih s pripravljavci politike in številnimi drugimi deležniki iz treh avtonomnih pokrajin in državne vlade. Avtorja sta tudi upoštevala vse dostopno literaturo o javni srednješolski izobrazbi v Španiji in druga zakonska besedila ter medijske objave o dogajanju v pokrajinah. Kot teoretični okvir za pristop k študiji sta izbrala pristop številnih tokov ali oken priložnosti, ki ga je razvil Kingdon (1984) in kasneje uporabil Zahariadis (1999, 2003, 2007). Ta pristop prepoznava tri tokove – tok problemov, tok javnih politik in tok politične volje – ki se v neki časovni točki lahko združujejo, tako da ustvarijo t. i. okna priložnosti ter omogočajo, da politični akterji tematike, za katere se zavzemajo, vključujejo na dnevni red vlade.

Vprašanja v raziskavi so bila naslednja: Zakaj so bili modeli pokrajin opredeljeni drugače, čeprav delujejo v enotnem državnem okviru? Kakšni kriteriji so bili upoštevani pri pripravi politik izobraževanja? Ali se prilagajajo različnim okoliščinam vsake avtonomne pokrajine? Ali v procese prepoznavanja problemov in ciljev vključujejo deležnike?

Članek opisuje prvotno stanje izobraževalne politike na državni ravni, kot izhodišče za kasnejša ključna področja političnega soočenja, medtem ko se je pristojnost za srednješolsko izobraževanje kasneje prenašala z državne na krajevno pristojnost – na raven pokrajine.

Članek je razčlenjen na štiri glavne dele in sklepe. Prvi del obravnava španski izobraževalni sistem in prikazuje tako pravne spremembe kot tudi institucionalno inercijo, do katere je prišlo v času izbranega obdobja. Drugi, tretji in četrti deli opisujejo in analizirajo srednješolske izobraževalne modele treh izbranih španskih avtonomnih pokrajin in sicer: Baskije, Andaluzije in Madridske regije.

Avtorja v članku predstavita odgovore na vprašanja, ki sta si jih glede omenjenih treh avtonomnih skupnosti zastavila v raziskavi. Na vprašanje »Zakaj so bili modeli opredeljeni drugače, čeprav delujejo v enotnem državnem okviru?« je odgovor naslednji: »Ker ustrezajo zelo drugačnim družbenim okoljem, zaradi česar razvijejo zelo drugačne rešitve na drugačne javne probleme«. Okno priložnosti, ki izhaja iz trenutnih problemov (Zahariadis, 1999), je specifično za

vsako izmed izbranih pokrajin in ga je mogoče odpreti s spremembami zakonske ureditve. Prav zato je bil s krajevno pristojnostjo srednješolskega izobraževanja izpolnjen cilj prilagoditve politike družbenim okoljem. Torej je pritrdilen tudi odgovor na vprašanje: »Ali se modeli izobraževanja prilagajajo različnim okoliščinam vsake pokrajine?«.

Vprašanje »Kakšni kriteriji so upoštevani pri pripravi politik izobraževanja?« je tako že dobilo svoj odgovor – kriteriji so namreč kar ideologija vladajočih strank. Slednje sicer omogoča jasnejše istovetenje z odločitvami volivcev, vendar pa obenem povzroča tudi večje napetosti in spore glede izobraževalnih politik, ker različna stališča posameznih strank pogosto povzročajo, da se ob spremembi vladajoče stranke politike prekinejo, kar se dogaja tudi na državni ravni. Na razvoj politik in opredelitev oken priložnosti namreč najbolj vplivajo prav odločitve vladajoče stranke (Zahariadis, 1999).

»Ali v procese prepoznavanja problemov in ciljev vključujejo deležnike?« Odgovor na to vprašanje se glasi: družbeni akterji sodelujejo v šolskih odborih avtonomnih skupnosti formalno in kot svetovalci. Kljub temu imajo družbeni sektorji, ki so ideološko bolj povezani z vladajočimi strankami, več neformalnih povezav in večji vpliv na politike izbranih pokrajin.

UDK: 331.106.24-057.36(497.4) *1.04 Strokovni članek*

Kolektivna pogodba za pripadnike Slovenske vojske: Razmislek o nekaterih značilnostih kolektivnih pogajanj v javnem sektorju za poklic vojak

Ljubo Štampar
Ministrstvo za obrambo, Slovenska vojska
ljubo.stampar@gmail.com

IZVLEČEK

V analizi ugotavljamo, da trend vse večje podobnosti vojaškega poklica s poklici v javnem sektorju zahteva tudi podobno regulacijo odnosov med vojsko in vojakom v zvezi z delom, tako kot povsod drugje v javnem sektorju. Ugotavljamo, da evropske institucije zagovarjajo koncept, po katerem ima vojak iste pravice kot drugi državljani. Zlasti se poudarja pravica do dogovarjanja v zvezi s posebnostmi opravljanja vojaške službe. V državah Evropske unije, na primer na Irskem, se uporabljata dva pristopa glede nadomestil v zvezi s posebnostmi opravljanja vojaškega poklica. V naši državi vojaki nimajo niti lastne kolektivne pogodbe, niti možnosti pogajanj glede posebnosti opravljanja vojaškega poklica. Med iskanjem razlogov za odsotnost kolektivne pogodbe za vojake ugotavljamo, da naša država sicer priznava omejeno sindikalno svobodo, vendar vojakom odreka pravico do kolektivnih pogajanj v zvezi s posebnostmi opravljanja vojaškega poklica. Hkrati pa medsebojna tekmovalnost vojaških sindikatov zaradi nasprotujočih si stališč slabi potencialno pogajalsko moč zaposlenih in vpliva tudi na njihov odnos do samostojne kolektivne pogodbe za vojake.

Ključne besede: javni sektor, kolektivna pogajanja, vojaški poklic, pripadniki vojaške organizacije, Slovenija, Irska

JEL: H 83, J51, J52, J31

1 Uvod

Vojska je organizacija, ki podobno kot drugje v Evropski uniji (EU) tudi pri nas spada v javni sektor. Prav tako je vojaška služba večinoma zajeta med javnimi službami in obravnavana z enotno kolektivno pogodbo za javni sektor. Vendar pa ima vojaška služba kljub podobnostim z opravljanjem dela drugje v javnem sektorju tudi veliko posebnosti. Te so lahko v obliki zahtev ali omejitev zajete v predpisih ali pa so predmet dodatnih kolektivnih usklajevanj. Predpisi, ki vsebujejo dodatne zahteve ali omejitve za opravljanje vojaškega poklica, navadno hkrati predvidevajo tudi obliko materialnega ali nematerialnega nadomestila,

da vojaki v družbi ne bi bili deprivilegirani. Pri omejitvah glede opravljanja vojaškega poklica gre pogosto za zmanjševanje uživanja obsega človekovih pravic in temeljnih svoboščin, pri zahtevah pa so pri opravljanju vojaške službe v ospredju psihofizične lastnosti, ki pri opravljanju drugih poklicev javnega sektorja niso tako izrazite. V primeru, ko nadomestila za posebne pogoje opravljanja poklica v vojaški organizaciji niso zajeta v predpisih, jih država z reprezentativnimi predstavniki vojakov uskladi s kolektivnimi pogajanji. Praviloma so neodvisni predstavniki tisti, ki identificirajo potrebe baze članstva in jih skozi kolektivna usklajevanja z delodajalcem opredelijo v kolektivni pogodbi.

V Republiki Sloveniji (RS) je Slovenska vojska (SV) del javnega sektorja. Sindikalna svoboda je opredeljena v Ustavi RS. Kolektivna pogodba za javni sektor, ki jo sklenejo Vlada RS kot stranka na strani delodajalca in reprezentativni sindikati javnega sektorja kot stranka na strani javnih uslužbencev, velja tudi za pripadnike SV.

Predpostavljamo, da je med vojaškim poklicem in drugimi poklici v javnem sektorju toliko razlik, ki so izražene v obliki zahtev in omejitev, da bi vojaki potrebovali posebno kolektivno pogodbo ali vsaj aneks z vsebino, ki bi zajemala posebnosti opravljanja vojaškega poklica in jih na ustrezen način ovrednotila. Naša predpostavka je tudi, da aktualna ureditev kolektivnih pogajanj, ki velja v naši državi za javni sektor, postavlja vojaške sindikate v diskriminatoren položaj v primerjavi z drugimi sindikati javnega sektorja. Kljub temu, da so iz vojaških vrst in strokovnih krogov že večkrat predlagali, da bi morali uvesti samostojno kolektivno pogodbo ali aneks za pripadnike vojaške organizacije, pa se slovenski vojaški sindikati medsebojno še niso poenotili in na ustrezen način predstavili predlogov, ki bi pomenili vsaj korak bliže možnostim za pogajanja o ureditvi opravljanja vojaškega poklica v naši državi. Prav zato predvidevamo, da obstoječa sindikalna organiziranost v SV ne spodbuja, temveč slabi regulacijo odnosov med pripadniki vojaške organizacije in njihovim delodajalcem. Domnevamo, da potegovanje za isto bazo članstva spodbuja tekmovalnost vojaških sindikatov, tako da ti niso sposobni izraziti skupne volje in v pogajanjih z delodajalcem nastopiti v korist vojaškega poklica.

V prispevku bomo predstavili aktualne zahteve in omejitve pri opravljanju vojaškega poklica v naši državi. Raziskali bomo, ali je sedanji način kolektivnih pogajanj za javni sektor diskriminatoren za sindikate, ki predstavljajo pripadnike SV. Preverili bomo tudi, kako sindikalna organiziranost vojaških sindikatov vpliva na regulacijo vojaškega poklica v naši državi.

Aktualnost razprave se kaže v pobudi za ustavno presojo možnosti stavke za pripadnike SV, v številnih polemikah glede upokojevanja in opravljanja poklica v SV, v objavljenih podatkih glede realnega znižanja plač pripadnikom SV v primerjavi z drugimi poklici v javnem sektorju ter prispevkih v medijih o slabem materialnem stanju pripadnikov SV. Iztekel pa se je tudi rok, ki ga je Ustavno

sodišče RS[1] določilo za odpravo protiustavnosti Zakona o sistemu plač v javnem sektorju (ZSPJS) glede kvoruma sindikatov za veljavnost kolektivne pogodbe javnih uslužbencev.

2 Metodološki pristop

V teoretičnem delu bomo oblikovali teoretično ogrodje, v okviru katerega bomo opredelili javni sektor, kolektivna dogovarjanja v javnem sektorju in vojaški poklic. V empiričnem delu bomo z analizo dokumentov in predpisov ugotovili, kakšni so pogledi evropskih institucij na pravico do pogajanj glede ekonomskih pogojev zaposlitve za pripadnike vojaške organizacije. Prav tako bomo z analizo dokumentov in predpisov predstavili različnost opravljanja vojaškega poklica, kar pomeni izhodišče za kolektivna dogovarjanja. Z analizo delovanja slovenskih vojaških sindikatov bomo proučili vpliv njihovega delovanja na vsebine kolektivnega dogovarjanja. V študiji primera Irske bomo preverili načine in vsebine kolektivnega dogovarjanja ter delovanje akterjev vojaške sindikalne demokracije v irski vojski. V stičišču razprave bomo povzeli ugotovitve in preverili, ali je posebna vsebina posebne kolektivne pogodbe ali aneksa h kolektivni pogodbi za vojake v naši državi potrebna.

3 Opredelitev javnega sektorja

V teoriji ni splošno sprejete opredelitve javnega sektorja in javne uprave, tako da med njima težko potegnemo jasno ločnico (Olsen, 1996, str. 13). V nekaterih virih se pojavljata kot sinonima, vendar ima na splošno javni sektor širši pomen kot javna uprava. Casale in Tenkorag (2008, str. 1) opredeljujeta javni sektor kot subjekt, ki vključuje institucije, ki jih je ustanovila, so v lasti ali jih obvladuje država. Javni sektor je po Setnikar Cankarjevi zbir vseh institucij, ki opravljajo družbene in gospodarske javne dejavnosti, kjer gre za dejavnosti po netržnih načelih, kar se v prvi vrsti kaže s proračunskim financiranjem (Setnikar Cankar, 1997, str. 69). Po mnenju Viranta (2004, str. 20) zajema javna uprava na državni ravni izvršilno vejo oblasti – vlado in državno upravo. Za Viranta (2004) je torej javna uprava širši pojem od državne uprave. V naši državi je javni sektor opredeljen s Standardno klasifikacijo dejavnosti (SKD): javna uprava, obramba in sociala, izobraževanje, zdravstvo in socialno varstvo ter druge javne, skupne in osebne storitve. Obrambni resor je v članicah EU večinoma del javnega sektorja.

4 Kolektivna pogajanja v javnem sektorju

4.1 Kolektivna pogajanja

Kolektivno pogajanje je proces, v katerem se neodvisni reprezentanti (sindikati ali drugi kolektivni predstavniki delavskih interesov) in predstavniki

1 Odločba US št.: U-I-249/10-27 z dne 15. 3. 2012.

delodajalcev dogovarjajo o delovnih in ekonomskih pogojih zaposlitve. V vsebine kolektivnih pogajanj so poleg plač zajete tudi druge kvalitativne in kvantitativne okoliščine opravljanja poklica in se lahko nanašajo tudi na vprašanja intenzitete dela ter organizacije in kontrole proizvodnje (Hyman v Stanojević, 1996, str. 89). Proces kolektivnih pogajanj navadno poteka po vnaprej določenih standardih in predvideva tudi postopke, ki se uporabljajo v primeru neuspešnosti dogovorov (Stanojević, 1996, str. 90). Izplen uspešno zaključenih kolektivnih pogajanj je v obliki prosto izražene volje kot posledici kompromisa sklenjeni dogovor o načinu prodaje in nakupa delovne sile (Stanojević, 1996, str. 85). V kolektivnih pogajanjih gre za proces, ki poteka po demokratičnih principih in pomeni participacijo in iskanje soglasja ter usmerjenost h kompromisu[2]. Tipična kolektivna pogajanja v javnem sektorju navadno potekajo na nacionalni ravni (Casale in Tenkorag, 2008). Nekatere kategorije javnih uslužbencev nimajo pravice do stavke ali drugih kolektivnih akcij. Regulativni okvir kolektivnih pogajanj za javni sektor je v večini držav umeščen že v ustavo in natančneje opredeljen v posebni zakonodaji, ki velja za javni sektor. Pomemben vpliv na nacionalno zakonodajo v zvezi s pogajanji v javnem sektorju imajo tudi mednarodni področni standardi. Pri kolektivnem dogovarjanju za javni sektor ima država dvojno vlogo: na eni strani nastopa kot eden izmed največjih delodajalcev, s čimer je tudi socialni partner v okviru bipartitnega in tripartitnega usklajevanja, na drugi strani pa uvaja mednarodne standarde in sprejema zakonodajo, s katero ureja tako delovna razmerja kot način kolektivnega dogovarjanja. V javnem sektorju ima torej država hkratno vlogo regulatorja in socialnega partnerja. Treba je poudariti, da so v nekaterih državah EU kolektivna pogajanja za javni sektor omejena z vladnimi določili[3], v drugih pa potekajo po istih načelih kot drugje v civilnem sektorju[4]. Tematika socialnega dialoga in kolektivnih pogajanj je tesno povezana z zgodovino, tradicijo in kulturo držav, ki so zelo različne in heterogene (Vodovnik, Turi, 2008, str. 83).

4.2 Sindikalni pluralizem in vpliv na kolektivna dogovarjanja

Sindikalna svoboda lahko vodi v sindikalni pluralizem, ki pomeni več različno močnih sindikalnih organizacij, ki se potegujejo za isto bazo članstva. Med sindikati lahko prihaja do konfliktnih situacij, negativne učinke sindikalnega pluralizma pa do neke meje lahko odpravi prag reprezentativnosti. Za države z uveljavljenim sindikalnim pluralizmom so značilne težnje baze po sindikalni enotnosti. Sindikalni pluralizem lahko spodnaša oziroma slabi neokorporativistično regulacijo razmerja med delom in kapitalom v določeni družbi[5]. V naši

2 Kolektivno dogovarjanje spodbujajo vse pomembne institucije v evropskem prostoru, ki se ukvarjajo s socialnimi pravicami ali odnosi med delavci in delodajalci. Med najpomembnejše spadajo Mednarodna organizacija dela v Konvenciji št. 98 in Konvenciji 154 ter Priporočilih 94, 113 152, 159 in 163, Svet Evrope v Evropski konvenciji o človekovih pravicah in Evropski socialni listini, Evropska unija v Pogodbi o Evropski uniji in Listini EU o temeljnih pravicah.

3 Italija.

4 Skandinavske države.

5 Stanojević (1997, str. 295) analizira sindikalni pluralizem v Sloveniji in ugotavlja, da je ta pri nas dejavnik, ki najbrž ni v soglasju z optimalnim delovanjem neokorporativnih institucij.

državi je bil že od njenega obstoja uveljavljen sindikalni pluralizem. V javnem sektorju lahko v posamezni organizaciji pride do ustanavljanja sindikatov, ki lahko v praksi medsebojno tekmujejo ali pa sodelujejo in se medsebojno povezujejo[6].

5 Vojaški poklic in sindikalna demokracija

5.1 Vojaški poklic v primerjavi z drugimi poklici javnega sektorja

Vojaški poklic je bil skozi zgodovino v družbi nekaj posebnega[7]. Najpomembnejša razlika vojaškega poklica v primerjavi z drugimi poklici je v tradicionalnem smislu »neomejena odgovornost«, ki pomeni moralno dolžnost uboganja. Položaj vojaka, ki je profesionalec v službi države, je nezdružljiv z vsakim drugim družbenim ali političnim položajem, njegova karierna pot pa se bistveno razlikuje od kariernih poti v okolju izven vojaške organizacije (Janowitz, 1975, str. 58). V zameno za odrekanje pravicam in svoboščinam ter za predanost domovini[8] so bili vojaki deležni številnih privilegijev, država pa je poskrbela tudi za njihovo celovito oskrbo[9] kot jamstvo za vojaški poklic, saj sta bili od tega odvisni vojaška učinkovitost in nacionalna varnost. Vojaška organizacija je doživela v dvajsetem stoletju proces prilagajanja družbi, kar je bilo posledica političnih, socialnih, ekonomskih, pravnih in tehnoloških družbenih pritiskov. S tem se je tudi koncept vojaškega poklica močno spremenil. Z ukinitvijo določenih privilegijev, ki so jih bili deležni pripadniki vojaške organizacije, so se okrepile zahteve po neodvisnem zastopanju njihovih kolektivnih poklicnih in ekonomskih interesov, s čimer je v vojaških organizacijah nastala določena negotovost (Broedling 1977, str. 15). Pojavile so se teze o konvergentnosti vojaške organizacije z družbo in vojaškega poklica z drugimi poklici v javnem sektorju (Moskos 1988; Caforio 1988; Kuhlman 1991). Z vse večjo podobnostjo vojaškega z drugimi poklici se je pojavila potreba po podobni regulaciji odnosov med vojakom, vojaško organizacijo in državo s socialnim dialogom in kolektivnimi pogajanji. Kljub tezam o vse večji podobnosti vojaškega poklica s poklici zunaj vojaške organizacije pa ima delo v vojski še vedno svoje posebnosti. Vojne so realnost današnjega časa, v katerih vojaki pod okriljem NATA, OZN ali EU v okviru opravljanja svojega poklica tudi dnevno

6 V vsakem primeru pa potegovanje za isto bazo članstva pomeni tudi boj za iste finančne vire, kar spodbuja medsebojno tekmovalnost.

7 Tradicionalno je bilo skozi stoletja poslanstvo vojske vojaška obramba države in družbe ter s tem zagotovitev njenega obstoja. Ta koncept je spremljalo tudi nekaj posebnosti vojaškega poklica: (1) zaveza (zaobljuba) vojaškemu poklicu, kar je med drugim vključevalo odpovedovanje posameznim individualnim pravicam; (2) predanost poslanstvu nacionalne obrambe in domoljubje z namenom priprave na vojno, kar je predstavljalo omejeno družbeno vlogo posameznika; (3) brezpogojna poslušnost, ki je vključevala popolno politično nevtralnost in izključenost iz določenih državljanskih in političnih pravic; (4) popolno zanesljivost in stalno razpoložljivost; (5) takojšnja odzivnost vojske in njenih pripadnikov kot instrumentov v rokah državne politike.

8 Patriotizem je v ameriški študiji Military compensation (2005) naveden kot eden izmed osnovnih razlogov za upravičenost denarnih nadomestil opravljanja vojaškega poklica.

9 Brezplačna zdravstvena oskrba, zagotovljeno prebivališče, zagotovljena prehrana, plačani dopusti, pokojnina, oprostitev davkov.

sodelujejo. V nasprotju z vsemi drugimi službami mora vojak pri izvrševanju ukazov uporabiti smrtonosno silo ali celo žrtvovati svoje življenje, za neizvršitev ukazov pa je kaznovan, kar naredi vojaški poklic unikaten[10]. Ni sicer nujno, da bo vsak vojak v svoji profesionalni karieri stopil na bojno polje, bo pa za to usposobljen in v skladu z »družbeno pogodbo«[11] lahko to v okviru izvrševanja svojih dolžnosti pričakuje[12]. V državah EU najdemo dva pristopa glede možnosti pogajanj o ekonomskih pogojih zaposlitve za vojake. Prvi pristop je paternalističen s funkcijo jamstva države in vojaške organizacije skozi strukturo vodenja in poveljevanja za celovito oskrbo podrejenih[13]. V takem pristopu praviloma država vojakom priznava številne pravice iz naslova posebnih delovnih pogojev (gre za osnovne[14] in posebne dodatke[15]). Drugi pristop predvideva priznavanje individualne pravice do združevanja in sindikalnega organiziranja ter kolektivne pravice do kolektivnih dogovarjanj v zvezi s posebnostmi opravljanja vojaškega poklica. V tem pristopu se predstavniki vojakov pogajajo o posebnih dodatkih v vojski[16].

6 Kolektivna dogovarjanja in vojaška organizacija z vidika evropskih institucij

Bistvena zamisel socialnega dialoga in kolektivnega dogovarjanja je, da pri normativnih odločitvah glede ekonomskih in socialnih pravic sodelujejo predstavniki delodajalcev, delavcev in države. Evropska socialna listina zahteva[17], da država priznava pravico delavcev in delodajalcev do kolektivnega dogovarjanja v primeru interesnih sporov. Analogno s spremembami koncepta zagotavljanja nacionalne obrambe in s tem vsebin vojaške službe ter z zmanjševanjem jamstva države za vojaški poklic po koncu hladne vojne so evropske institucije izdale priporočila, ki predvidevajo, da se tudi vojaki prek neodvisnih

10 V primerjavi z vojaki policisti nimajo pravice do uporabe smrtonosne sile, ne smejo ogrožati svojega življenja ali življenja drugih, lastnino lahko le varujejo in je ne smejo uničevati, ne smejo biti kaznovani za neuspeh akcije, če so se želeli izogniti nevarosti.

11 Družbena pogodba zgodovinsko ne priznava monarha kot nekoga od boga pooblaščenega za sprejemanje zakonov. Vladarji so po tej pogodbi čisto običajni ljudje (Jean-Jacques Rousseau, Du contrat social ou Principes du droit politique, 1762). Družbena pogodba ureja legitimnost avtoritete države in njenih institucij nad posameznikom v zameno za zaščito njegovih naravnih pravic.

12 Zaradi posebnosti vojaškega poklica so že ob vstopu v vojaško organizacijo za kandidate postavljene določene psihofizične zahteve, ki jih drugje v javnem sektorju ne poznamo.

13 Vojak je po tem pristopu izključen iz vseh oblik kolektivnih pogajanj, ima pa celo vrsto bonitet in privilegijev pri opravljanju svojega poklica, ki jih država priznava s predpisi.

14 Britanski in francoski vojaki prejemajo okrog trideset različnih dodatkov iz naslova opravljanja vojaškega poklica.

15 Posebni dodatki se nanašajo na dodatna specialistična znanja ali sposobnosti, ki jih vojak pridobi v vojski.

16 Študije, ki analizirajo nadomestila za opravljanje vojaške službe, ugotavljajo, da vojakom države zaradi posebnosti opravljanja dela najpogosteje priznavajo olajšave pri zdravstvenem zavarovanju in plačevanju davščin ter ugodnejše možnosti za upokojitev (Grefer, 2008). Podatki ameriške študije kažejo (CBO, 2007), da kar 50 % vseh prejemkov ameriških vojakov znašajo nadomestila za opravljanje vojaške službe.

17 V 6.členu Evropska socialna listina zahteva priznavanje pravice delavcev in delodajalcev do kolektivnega dogovarjanja, vključno s pravico do stavke, v okviru izpolnjevanja obveznosti, ki bi izhajale iz sklenjenih kolektivnih pogodb.

predstavnikov s socialnim dogovarjanjem sporazumejo o delovnih in ekonomskih pogojih zaposlitve. Svet Evrope je leta 1988 izdal Resolucijo 903[18], s katero usmerja države članice, da dovolijo pripadnikom vojske ustanovitev neodvisnih predstavnikov, ki jih bodo zastopali pri dogovarjanjih v zvezi z njihovimi poklicnimi interesi, do leta 2012 pa je izdal še številna priporočila[19]. Podoben pogled glede pravice do pogajanj o delovnih in plačilnih pogojih za vojake imajo tudi druge institucije v evropskem prostoru, ki se ukvarjajo z varnostjo ali človekovimi pravicami in temeljnimi svoboščinami. Organizacija za varnost in sodelovanje v Evropi OVSE je v 32. členu Kodeksa ravnanja v vojaško-političnih vidikih varnosti[20] predvidela koncept, po katerem naj pripadniki oboroženih sil uživajo človekove svoboščine in temeljne pravice po konceptu »državljana v uniformi«, ki predvideva, da vojaki uživajo enake človekove pravice in temeljne svoboščine kot drugi državljani, vendar z minimalnimi omejitvami, ki jih prinaša narava vojaškega poklica[21]. Isti koncept zagovarjata Ženevski center za demokratični nadzor oboroženih sil[22] v svojih priporočilih in Evropsko sodišče za človekove pravice[23] v svojih sodbah.

7 Kolektivna pogajanja skozi prizmo vojaškega poklica v RS

Iz sindikalne svobode, ki je v naši državi zagotovljena z Ustavo RS (76. člen), izhaja tudi pravica sindikatov, da se v imenu delavcev, ki se vanje

18 Resolution 903 (1988) on the right to association for members of the professional staff of the armed forces.

19 Parlamentarna skupščina Sveta Evrope je leta 2002 izdala Priporočilo 1572 (Right to association for members of the professional staff of the armed forces, 2002), v katerem spodbuja socialni dialog in kolektivna dogovarjanja za pripadnike vojske. Leta 2006 je Parlamentarna skupščina Sveta Evrope izdala Priporočilo 1742 (2006) (Recommendation 1742 (2006), Human rights of members of the armed forces), v katerem ugotavlja, da države članice še ne zagotavljajo ustrezne ravni pravic, med njimi tudi pravice do pogajanj o delovnih pogojih in plačilih v vojaški organizaciji. V letu 2010 je Svet Evrope izdal Priporočilo (2010) 4 in obrazložitveni memorandum, v katerem je članice pozval k uveljavitvi pravic v vojaški organizaciji le z nujnimi omejitvami, ki jih zahteva vojaška služba. V letu 2012 je Svet Evrope državam članicam posredoval vprašalnik (Questionnaire on the implementation of Committee of Ministers' Recommendation CM/Rec (2010)4 on human rights of members of the armed forces), s katerim je ugotavljal uvedbo Priporočila 2010(4) v državah članicah.

20 Code Of Conduct On Politico-Military Aspects Of Security.

21 Obseg pravic tega koncepta predvideva tudi socialni dialog znotraj vojaške organizacije in pravico vojakov do kolektivnih pogajanj v zvezi z delovnimi in ekonomskimi pogoji zaposlitve.

22 Geneva Centre For The Democratic Control Of Armed Forces,DCAF je podal iniciativo za vzpostavitev »Ombuds« institucij za oborožene sile (Ombuds-Institutions for the Armed Forces – OIAF) v državah članicah in organizira letne konference institucij s ciljem izmenjave najboljših praks in izkušenj, povezanih z mandatom, pristojnostmi in delovanjem institucije. Na tretji konferenci 2011 je bil pripravljen Beograjski memorandum (Belgrade memorandum, Protecting Human Rights Of Armed Forces Personnel: Old And New Challenges), v katerem so bili potrjeni standardi in najboljše prakse varovanja človekovih pravic v vojaški organizaciji, potrjen pa je bil tudi koncept »državljana v uniformi« (točka 5). Prav tako je bilo izraženo priporočilo po priznavanju pravice sindikalnega organiziranja ali drugih neodvisnih predstavnikov, ki bodo vojake zastopali v socialnem dialogu in kolektivnih pogajanjih.

23 European Court of Human Rights, ECHR. Stališče ECHR je, da (1) morajo biti vse omejitve, ki jih država nalaga pripadnikom vojaške organizacije pri uživanju temeljnih pravic in svoboščin, podprte z natančno oblikovano zakonodajo, ki mora biti javno dostopna; (2) zakonodaja ne more vsebovati diskrecijskih pravic za omejitve temeljnih pravic in svoboščin, v nasprotnem primeru pa mora vsebovati mehanizme za zaščito pred zlorabo diskrecijske pravice; (3) je vojak »državljan v uniformi« in mora uživati vse pravice, ki jih uživajo drugi državljani, z nujnimi omejitvami, ki jih prinaša vojaška služba.

združujejo, s predstavniki delodajalcev avtonomno in kolektivno pogajajo ter sklepajo kolektivne pogodbe o socialnih in ekonomskih vprašanjih, povezanih z delovnimi razmerji. Svoboda delovanja sindikatov ima v naši državi vsebinski in postopkovni (procesni) vidik. Vsebinski vidik predvideva tematiko, torej vsebino kolektivne pogodbe, ki jo s kolektivnim pogajanjem usklajujejo sindikati in delodajalci. Iz ustavne svobode delovanja sindikatov v javnem sektorju je izpeljana pravica sindikatov do kolektivnih pogajanj. Vsebinski okvir kolektivnih pogajanj je v javnem sektorju v naši državi nekoliko ožji kot v zasebnem sektorju. Zato v javnem sektorju ni nujno možnosti neomejenega kolektivnega pogajanja.

7.1 Vojaški poklic v SV

Osnovno poslanstvo SV je zagotavljanje obrambne sposobnosti in izvajanje vojaške obrambe RS. Poleg tega so poslanstvu dodani še (1) vojaško prispevanje k mednarodnemu miru, varnosti in stabilnosti; (2) sodelovanje v sistemu varstva pred naravnimi in drugimi nesrečami; (3) podpora drugim državnim organom in organizacijam pri zagotavljanju varnosti[24]. Pri opravljanju vojaškega poklica je naša država vojaka soočila z velikimi pričakovanji[25]. Kljub vse večjim zahtevam do vojakov pa smo pri nas priča postopnemu zmanjševanju jamstva države in s tem degradaciji vojaškega poklica[26]. S prehodom na nov plačni sistem so vojaki po izračunih vojaških sindikatov[27] izgubili kar 19 % dodatkov iz naslova posebnosti dela in načina življenja pri opravljanju vojaškega poklica. Osnovna plača javnih uslužbencev je določena s plačilnim razredom, v katerega je uvrščeno delovno mesto. Zakon postavlja vojake v plačno skupino C4[28], kjer se delovna mesta uvrščajo v plačne razrede z vladno uredbo. Z uveljavitvijo ZSPJS je prenehal veljati tudi četrti odstavek 58. člena

24 Resolucija o splošnem dolgoročnem programu razvoja in opremljanja SV do leta 2025.

25 Iz poslanstva izhaja vse več kompleksnih nalog, ki jih naši vojaki opravljajo v okviru nacionalne države ali mednarodnih operacij in misij, samostojno ali v okviru multinacionalnih zmogljivosti. Od pripadnikov SV se pričakuje visoka stopnja patriotizma. Pripadniki SV se v mirnodobnem času usposabljanjem vsakodnevno srečujejo s povečano izpostavljenostjo poškodbam, telesnim okvaram, boleznim ali z morebitno izgubo življenja. Za napredovanja v višje čine morajo vojaki v primerjavi z drugimi javnimi uslužbenci opraviti več dodatnih izobraževanj in usposabljanj. Obvladovati morajo posebna znanja in veščine v smislu kontrolirane uporabe smrtonosne sile, ki so značilna le za vojaško organizacijo. Vojaki so skozi celotno delovno kariero v SV podrejeni vojaški disciplini, ki predvideva brezpogojno, pravilno, natančno in pravočasno izpolnjevanje dolžnosti. Pripadniki SV so lahko zaradi službenih potreb prerazporejeni na druge delovne dolžnosti, kar jim lahko poslabša socialne razmere. Za pripadnike SV so prav tako prepovedani skupinski ugovori zoper akte vodenja in poveljevanja. Pripadniki SV imajo med drugim omejene državljanske in politične pravice ter uživajo drugorazredno sindikalno svobodo. V okviru nalog pa morajo biti usposobljeni za oborožen boj in pripravljeni, da bodo uporabili smrtonosno silo ali za izvršitev naloge celo izgubili svoje življenje.

26 Plače za vojake, kot tudi za druge javne uslužbence, ureja ZSPJS. Vojaki nimajo posebnih davčnih olajšav ali ugodnosti iz naslova zdravstvenega zavarovanja. Pripadniki SV pri upokojevanju nimajo možnosti podaljšanja dela v SV ali drugje na Ministrstvu za obrambo, ko pridobijo minimalne pogoje za upokojitev.

27 Vir: http://www.sindikatmors.si/novosti/bo-vlada-vendarle-prisluhnila-zahtevam-vojakov.html

28 »Delovna mesta oziroma nazivi v plačnih skupinah D, E, F, G, H in J ter v plačnih podskupinah C1, C2, C3, C5 in C6 se uvrščajo v plačne razrede s kolektivno pogodbo dejavnosti, v plačni skupini C4 z uredbo in v plačni skupini I z uredbo ali s kolektivnimi pogodbami.« (13/2. člen ZSPJS)

Zakona o službi v SV[29]. Številni zapisi v medijih pričajo, da so vojaki s takim plačilnim sistemom nezadovoljni, saj jih veliko živi na robu revščine, kar bi bilo treba spremeniti.

7.2 Akterji sindikalne demokracije v SV

Slovenski vojaški sindikati si še niso enotni niti o potrebnosti niti o vsebini kolektivne pogodbe za pripadnike SV. Pripadnike SV zastopajo štirje sindikati, ki delujejo na obrambnem področju. Skoraj desetletje je v SV veljal sindikalni monizem. Pri prehodu na profesionalno organiziranje vojske so pripadniki SV izgubili del svojih pravic, saj se je država usmerila na nižanje stroškov. Nastali so novi sindikati na obrambnem področju[30]. Pluralistična organiziranost vojaških sindikatov, ki zastopajo pripadnike SV, je zaradi spodbujanja medsebojne tekmovalnosti pomenila pozitiven premik v smeri zagotavljanja pravic in ugodnosti, s čimer bi bili izpolnjeni vsi pogoji za spremembe delovnega okolja v korist vojakov. Vendar se je zgodilo prav nasprotno. Vojaški sindikati zaradi medsebojnega obračunavanja zagovarjajo skoraj diametralno nasprotna stališča glede ureditve vojaškega poklica in kolektivnega dogovarjanja za pripadnike SV[31]. Taka tekmovalnost onemogoča koncentracijo in centralizacijo delavske moči ter spodnaša oziroma slabi regulacijo razmerja med vojsko in zaposlenimi. Vsi našteti sindikati imajo določeno obliko reprezentativnosti, torej aktivno legitimacijo za zastopanje pripadnikov SV in lahko uveljavljajo interese svojih članov. Odprto vprašanje je, ali lahko vsi štirje sindikati, ki delujejo na obrambnem področju, dejansko legitimno zastopajo interese vseh zaposlenih v SV, torej ali imajo splošnozastopniško legitimiteto[32]. Vsak zase gotovo ne. Pri nasprotujočih si stališčih vojaških sindikatov pa ostaja odprto tudi vprašanje, kako so porazdeljeni glasovi nečlanov sindikatov[33].

7.3 Vključevanje vojaških sindikatov v kolektivni pogajalski proces v RS

Država je pripadnikom SV zagotovila le pravico do uživanja drugorazredne sindikalne svobode brez možnosti stavke ali organiziranja kolektivnih akcij in z omejeno možnostjo do kolektivnih pogajanj[34]. Vojaški sindikati se za uresni-

29 »Pripadnikom SV, katerim pogodbe o zaposlitvi prenehajo na podlagi Zakona o obrambi po izpolnitvi predpisane starosti, po kateri ne morejo več uspešno opravljati vojaške službe ali dela v vojski, se osnovna plača poveča za 10 %.«

30 Sindikat pilotov ministrstva za obrambo – SPMO, Sindikat vojske obrambe in zaščite – SVOZ, Sindikat vojakov Slovenije – SVS.

31 Članek SVS: »Sestanek štirih sindikatov, ki delujejo v Slovenski vojski«, 31. 5. 2012.

32 Kot splošnozastopniško legitimiteto razumemo priznano lastnost določenega delavskega predstavništva, da je legitimen, se pravi upravičen oziroma pooblaščen zastopnik interesov (Gostiša 2005, 91).

33 Viri: http://sindikatmors.si/novosti/plehki-sindikalni-marketing.html, http://www.sindikatvojakov.si/poskus-diskreditacije-svs-s-strani-sindikata-ministrstva-za-obrambo-smo/, http://www.sindikatvojakov.si/slike/files/sindikatvojakov_88.pdf

34 Vojaki nimajo pravice do stavke in ne morejo vršiti drugih oblik pritiska v primeru neuspešnosti pogajanj, zato so v primerjavi z drugimi javnimi uslužbenci pri pogajanjih v slabšem položaju. Ostajajo le pritožbeni mehanizmi skozi strukturo vodenja in poveljevanja, inšpekcijske službe ali Varuh človekovih pravic.

čevanje svojih kolektivnih interesov vključujejo v sindikalne centrale, vendar tam zaradi svoje majhnosti igrajo obrobno vlogo. Zaradi uvrstitve vojaškega poklica v plačilno skupino C4[35], ki predvideva, da se delovna mesta v plačilne razrede uvrščajo z uredbo, vojaški sindikati ne morejo ustvarjati pravice do kolektivnih pogajanj in socialnega dialoga pri normativnih odločitvah glede ekonomskih in socialnih pravic vojakov. Ustavno sodišče RS navaja[36], da mora država, če predvidi kolektivno dogovarjanje v javnem sektorju, upoštevati ustavne zahteve zagotavljanja svobode delovanja sindikatov, ki se nanašajo tudi na postopek sklepanja kolektivnih pogodb.

8 Irski model kolektivnih pogajanj za vojake

Irska se je pred leti srečevala s podobnimi zahtevami za zmanjševanje izdatkov za obrambni sektor kot naša država. V okviru prestrukturiranja vojske so se izgubili številni privilegiji, ki so jih irski vojaki uživali iz naslova opravljanja vojaškega poklica. Tudi v tej državi je šlo za postopno zmanjševanje jamstva države za vojaški poklic. Vojaki so bili vse bolj nezadovoljni z ekonomskimi pogoji zaposlitve. Sredi devetdesetih let prejšnjega stoletja je bil vojaški poklic uvrščen med poklice javnega sektorja. V tem obdobju sta bila vojaški sindikalizem in vsaka oblika pogajanj o delovnih in ekonomskih pogojih zaposlitve za irske vojake prepovedana. Zaradi prepovedi kolektivnih pritožb ali organiziranja protestov so žene pripadnikov irske vojske in vojaški vikarji organizirali protestni shod. Na konferenci EUROMIL[37] na Danskem pa je skupina vojakov irske vojske predstavila problematiko vojakov v matični državi in s tem odprla pot neodvisnemu zastopanju poklicnih interesov vojakov in kolektivnim pogajanjem (Callaghan 2006, str. 119). Irska vojska ima podobno poslanstvo kot slovenska, torej zagotavljanje vojaške obrambe države. Podobno kot slovenska pa si svojo legitimacijo irska vojska v družbi ustvarja tudi s sodelovanjem v mednarodnih operacijah in misijah.

8.1 Akterji kolektivnih dogovarjanj v irski vojski

Sindikalna svoboda in pravica do kolektivnega dogovarjanja sta predvideni v irski ustavi – sindikaliziranih je okrog 30 % delavcev, v javnem sektorju pa okrog 95 % (Statistika ETUI 2012). Kolektivna pogajanja za javni sektor so centralizirana (Farrelly, 2013). Sektorska kolektivna pogodba za javni sektor v Dodatku 2[38] omogoča vojakom neposredna pogajanja z delodajalcem o plačah in delovnih pogojih. Interese pripadnikov vojske zastopata reprezentativna predstavnika kot stranki pogodbe ter se v sporazumu strinjata z načeli, cilji in obveznostmi pogodbe. Vojaški poklic je na Irskem uvrščen med poklice javnega sektorja. Oba predstavnika vojakov v irski vojski v medsebojnem usklajevanju dosegata dogovore o odprtih vprašanjih glede politike zastopa-

35 13/2. člen ZSPJS.
36 Odločba US RS št.: U-I-249/10-27.
37 European Organisation of Military Associations- EUROMIL.
38 Appendix 2: Defence Sector Collective Agreement.

nja vojakov pri kolektivnem pogajanju v zvezi z ekonomskimi pogoji in s tem odpravljata težave, ki jih lahko prinaša pluralističen način zastopanja interesov. Združenje PDFORRA[39] je glede organizacije in načina zastopanja zelo podobno sindikatom ali celo delavskim gibanjem, vendar združenja ne moremo imenovati sindikat, ker sindikati za pripadnike vojske v irski vojski niso dovoljeni[40]. Združenje je bilo legalizirano s spremembami in dopolnitvami predpisov[41] na obrambnem področju v letu 1990. Največji dosežek združenja je pridobitev možnosti za sodelovanje kot stranka v pogajanjih in usklajevanjih kolektivne pogodbe za javni sektor v dodatku, ki se nanaša na obrambni sektor[42]. Drugo združenje, ki zastopa kolektivne interese v irski vojski, je RACO[43]. Obseg sprememb in dopolnitev obrambnih predpisov iz leta 1991[44] omogoča združenju RACO, da zastopa svoje člane tudi pri kolektivnih usklajevanjih in dogovarjanjih glede plače in delovnih pogojev[45]. Legalizacija kolektivnih dogovarjanj v zvezi z delovnimi in ekonomskimi pogoji zaposlitve je v irski vojski prispevala k občutku večjega zaupanja ter odprtosti med vojsko in njenimi pripadniki na vseh ravneh, vojakom pa je prinesla boljše delovne pogoje, boljše plače in večje razumevanje.

S priznavanjem neodvisnih reprezentantov vojaškega poklica je bila na Irskem uveljavljena tudi možnost do kolektivnih usklajevanj glede nadomestila za posebne zahteve pri opravljanju vojaškega poklica. Slabosti pluralističnega načina zastopanja interesov vojakov so v irski vojski med akterjema odpravljene z usklajevanjem glede ključnih vprašanj opravljanja vojaškega poklica. Homogenost članstva irskih reprezentantov vojaškega poklica[46] pa zagotavlja članstvu najbližjo agregacijo interesov in krepi pogajalska izhodišča predstavnikov zaposlenih. Irska po priznavanju neodvisnega predstavnika in po uvedbi kolektivnih dogovarjanj spada med države, ki imajo dobro strukturiran socialni dialog[47] med državo in vojaško organizacijo na eni ter vojaškimi reprezentanti na drugi strani.

9 Sklepne ugotovitve

Kljub tezam o vse večji podobnosti vojaškega poklica s poklici v javnem sektorju ali drugimi civilnimi poklici ima delo v vojski še vedno svojo edinstvenost. Vendar pa ima opravljanje vojaškega poklica dovolj podobnosti z drugimi

39 Permanent Defence Force Other Ranks Representative Association - PDFORRA.
40 Združenju je v dvajsetih letih delovanja uspelo formalizirati več kot dvesto dogovorov v zvezi s plačami in pogoji dela v irski vojski (Callaghan, 2006, str. 129).
41 Defence Amendment Act in Defence Force Regulation (DFR) S6, 1990.
42 Public service stability agreement, Appendix 2: Defence Sector Collective Agreement.
43 Representative Association of Commissioned Officers, zastopa poklicne interese podčastnikov.
44 Defence Amendment Act in Defence Force Regulation (DFR) S6, 1990.
45 Velika izziva združenja sta bila sodelovanje pri prestrukturiranju oboroženih sil in zmanjševanje števila zaposlenih, pri čemer je RACO kot predstavnik vojakov igral ključno svetovalno vlogo (Callaghan, 2006, str. 125).
46 RACO zastopa predvsem podčastnike, PDFORRA pa druge zaposlene v obrambnem resorju.
47 Podatek EUROMIL.

poklici javnega sektorja, da se vojakom v mirnodobnih okoliščinah lahko prizna pravica do pogajanj o ekonomskih pogojih zaposlitve. S kolektivnimi dogovarjanji, bodisi v okviru javnega sektorja bodisi samostojno, pa si lahko zagotovijo nadomestila za omejitve in zahteve, ki jih vsebuje delo vojakov. Najpomembnejše evropske institucije z vidika varnosti in varovanja pravic na območju Evrope sledijo trendu sprememb varnostnega okolja, novim nalogam vojaške organizacije in spremenjeni naravi vojaškega poklica v obdobju po koncu hladne vojne in zagovarjajo koncept »državljana v uniformi«. Z resolucijami, priporočili in memorandumi izkazujejo trend vse večjih zahtev po izenačevanju pravic vojakov z drugimi državljani. Posebej se poudarjata pravica do sindikalnega organiziranja in pravica do možnosti pogajanj v zvezi s pogoji zaposlitve. V državah EU najdemo dva pristopa glede možnosti pogajanj o ekonomskih pogojih zaposlitve za vojake. Oba predvidevata možnost pridobitve posebnih nadomestil za služenje vojakov državi.

V naši državi je uzakonjen nekakšen konglomerat med tema dvema pristopoma: vojaki sicer uživajo sindikalno svobodo, nimajo pa možnosti kolektivnih akcij ali kolektivnih dogovarjanj v zvezi z ekonomskimi pogoji zaposlitve. Vojakom so prepovedane tudi stavke ali druge oblike pritiska[48], nacionalni pritožbeni mehanizmi pa nimajo učinka, zato jim pri uveljavljanju zahtev kot možnost ostajajo zgolj pravne poti ali nadnacionalne institucije. V zakonodaji posebne ugodnosti v zvezi z opravljanjem vojaške zaposlitve niso predpisane. Ustava v naši državi zagotavlja sindikalno svobodo, iz česar izhaja tudi pravica sindikatov, da se v imenu delavcev, ki se vanje združujejo, s predstavniki delodajalcev avtonomno in kolektivno pogajajo ter sklepajo kolektivne pogodbe o socialnih in ekonomskih vprašanjih, povezanih z delovnimi razmerji.

Prav zato se sprašujemo, ali ne izhaja iz ustave tudi pravica vojaških sindikatov do sodelovanja v kolektivnem pogajanju za tiste poklice, kjer so pridobili reprezentativnost, če je kolektivno dogovarjanje povsod v javnem sektorju sicer predvideno. Država je namreč pripadnikom SV sicer zagotovila sindikalno svobodo, vendar jim je z načinom ureditve plač onemogočila ustvarjanje pravice do kolektivnega pogajanja.

Na vojaški sindikalni sceni v naši državi velja sindikalni pluralizem, delujejo pa štirje reprezentativni vojaški sindikati. Trije izmed njih se potegujejo za isto bazo članstva, kar spodbuja medsebojno tekmovalnost. Taka tekmovalnost med slovenskimi vojaškimi sindikati onemogoča koncentracijo in centralizacijo delavske moči ter spodnaša neokorporativno regulacijo razmerja med pripadniki SV in njihovim delodajalcem . Vojaški sindikati porabijo veliko energije za medsebojna obračunavanja in zagovarjajo skoraj diametralno nasprotna stališča glede ureditve vojaškega poklica ter kolektivnega dogovarjanja za pripadnike SV, kar odpira tudi vprašanje legitimnosti zastopanja nečlanov

48 Vojaki svoje pravice iščejo skozi dolgotrajne sodne postopke. Na Ustavno sodišče, kot najvišji organ sodne oblasti za varstvo ustavnosti in zakonitosti ter človekovih pravic, so v letu 2013 vojaški sindikati, ki zastopajo nekaj tisoč vojakov, vložili osem zahtev, kar je več kot vsi ostali slovenski sindikati skupaj.

sindikatov. Zdi se, da so pri vojaških sindikatih pri nas vse preveč v ospredju lastni interesi bodisi sindikatov bodisi posameznikov ali lobijev v sindikatih. Aktualna sindikalna organiziranost ne spodbuja, temveč slabi regulacijo odnosov med pripadniki SV in njihovim delodajalcem. Zaradi slabe opredelitve interesov članstva vojaški sindikati v naši državi nimajo opredeljenih prednostnih nalog in s tem strategij svojega delovanja. Na drugi strani pa se država zaradi nepriznavanja posebnosti vojaškega poklica sooča z nezaupanjem pripadnikov SV v strukturo poveljevanja, kar vodi do stalnih konfliktov, pritožb in številnih tožb na sodiščih vseh ravni v državi. Medsebojno povezovanje in opredeljevanje prednostnih nalog pri zastopanju vojaškega poklica bi nedvomno prispevalo k večji učinkovitosti sindikatov pri uveljavljanju nadomestil za posebnosti opravljanja vojaškega poklica skozi proces kolektivnega dogovarjanja z delodajalcem.

Irska je ena izmed držav EU, ki svojim vojakom priznava pravico do neodvisnega predstavnika in do kolektivnih pogajanj pri tistih vsebinah, ki pomenijo posebnosti vojaškega poklica glede na druge poklice v javnem sektorju. Predstavniki vojakov v irski vojski glede ključnih vprašanj pri kolektivnih pogajanjih medsebojno sodelujejo, kar krepi njihova pogajalska izhodišča. Socialni dialog in kolektivna dogovarjanja pa v irski vojski prispevajo k občutku večjega zaupanja ter odprtosti med vojsko in njenimi pripadniki na vseh ravneh. Podobna ureditev, kot je glede kolektivnih pogajanj za vojaški poklic uveljavljena na Irskem, bi bila primerna tudi v Sloveniji, vendar zaenkrat pravna podlaga, ki velja za kolektivna pogajanja drugod v javnem sektorju, ne velja za socialne partnerje, ki zastopajo pripadnike SV.

Ljubo Štampar *je višji častnik v Slovenski vojski. Je doktorski kandidat, s širšim interesnim področjem proučevanja človekovih pravic in temeljnih svoboščin in ožjim področjem proučevanja socialnega dialoga in kolektivnih pogajanj v vojskah članic EU.*

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SUMMARY

1.04 Professional article

Collective Agreement for Members of Slovenian Armed Forces: Reflections on Features of Collective Negotiations in the Public Sector for the Military Profession

Key words: *public sector, collective bargaining, military profession, members of military organisation, Slovenia, Ireland*

In the Republic of Slovenia, the military is an organization that, like elsewhere in the European Union (EU), belongs to the public sector. The military service is a part of the public service sector and treated with a single collective agreement for the public sector. Despite certain theses (Janowitz 1977, Moskos 1986, Callaghan and Kernic 2003, Garb 2008) about the growing similarity of the military profession with professions in the public sector or other civilian occupations, work in the military is unique because of the specific role of the military in society. However, the military profession has sufficient similarities with other public sector professions in peacetime circumstances, so that soldiers should be granted the right to bargain the economic conditions of their employment. Through the process of collective bargaining, either within the public sector or individually, they could ensure compensation for the restrictions and requirements contained in the work of soldiers. The most important European institutions, in terms of safety and protection of the rights in the European region,[1] are following the trend of changes in the security environment, new tasks of the military organization, the changed nature of the military profession in the postmodern era, and defend the concept of the "citizen in uniform". Through resolutions, recommendations and memorandums, they are following the trend of increasing demands for the equalization of the rights of soldiers with the rights of other citizens. In particular, the right of unions to organize and the right for the possibilities to negotiate conditions of employment are emphasized. In the EU, there are two approaches regarding the possibility of bargaining on the economic conditions of employment for soldiers. Both provide the possibility of obtaining a special allowance for soldiers serving the country.

In this paper we note that there is a kind of combination of the two approaches enacted in Slovenia: soldiers enjoy union freedom, without the possibility of collective action or collective bargaining in relation to the economic conditions of employment. Soldiers are not allowed to strike or perform other forms

1 DCAF, the Council of Europe, OSCE

of pressure,[2] and national appeal mechanisms have no effect; therefore, in order to find a hearing for their demands only legal channels or supranational institutions remain as options. In the legislation, specific advantages in connection with the performance of service in the armed forces are not substantively enacted. The constitution of the Republic of Slovenia guarantees union freedom, also resulting in the right of unions to, on behalf of workers, autonomously and collectively bargain and conclude collective agreements on social and economic issues related to labour relations.

We wonder therefore, whether or not the right of military unions to participate in collective bargaining for those professions where they have obtained the representativeness arises from the constitution if the collective bargaining elsewhere in the public sector is otherwise provided. Slovenia has ensured union freedom for the members of the Slovenian armed forces, but they are, because of the existing salary regulations, prevented from the creation of a constitutionally guaranteed right to collective bargaining. Union pluralism applies to the military union setting in Slovenia and there are four military representative unions. Three of them are competing for the same membership base, which promotes mutual rivalry. This competition between the Slovenian military unions prevents the concentration and centralization of workers' power and undermines the neo-corporative regulation of the relationship between the Slovenian military members and their employers.[3] Military unions spend much energy on mutual conflicts and defend almost diametrically opposite views on the organization of the military profession and collective bargaining for the Slovenian military members, which raises the question of the legitimacy of the representation of non-members of unions. It seems that in the military unions' self-interest is at the forefront, either from unions, individuals or lobbies in the unions.

The current union organization does not promote but weakens the regulation of relations between Slovenian military members and their employers. Due to the inadequate identification of the membership interests, military unions do not have clearly identified priorities and strategies of their activities.

On the other side, the Republic of Slovenia, due to the lack of recognition of the specificities of the military profession, is facing a distrust of military members in the chain of command, leading to constant conflicts, complaints and numerous lawsuits in courts of all levels.

Interconnection and setting priorities in the representation of the military profession would undoubtedly contribute to greater effectiveness of unions

2 Soldiers are seeking their rights through a lengthy judicial procedures. In the 2013 on the Constitutional Court, as the highest judicial authority for the protection of constitutionality, legality and human rights, military unions representing several thousand soldiers put eight demands, which is more than all other Slovenian unions combined.

3 It is indisputable that mutually opposing unions reduce the potential power of employees.

in promoting the provision of compensation to the specificities of the military profession through the process of collective bargaining with the employer.

Ireland is another EU country that gives its soldiers the right to an independent national representative and to collective bargaining on those contents that represent features of the military profession in relation to other professions in the public sector. Representatives of soldiers in the Irish military cooperate with each other on critical issues in collective bargaining, which strengthens their negotiating positions. Social dialogue and collective bargaining in the Irish military contribute to a greater sense of trust and openness between the military and its members at all levels. Similar arrangements regarding collective bargaining for the military profession established in Ireland would be suitable in Slovenia, but for the moment the legal basis that applies to collective bargaining elsewhere in the public sector does not apply to the social partners who represent Slovenian military members.

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tehniki, zato barvne slike ali grafikoni kot original niso primerni. Če v članku uporabljate slike ali tabele drugih avtorjev, navedite sklic pod sliko, tabelo ali kot sprotno opombo. Enačbe oštevilčite v oklepajih desno od enačbe.

6. Članek naj obsega največ 30.000 znakov.
7. Članku dodajte kratek življenjepis avtorja/avtorjev (do 8 vrstic).
8. V besedilu se sklicujte na navedeno literaturo na način: (Novak, 1999, str. 456).
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Knjiga:

- Katzenbach, J., & Smith, D. (1993). *The wisdom of teams*. Cambridge, MA: Harvard Business School Press.

Knjiga z urednikom:

- Keene, E. (Ur.). (1988). *Natural Language*. Cambridge: University of Cambridge Press.

Prispevek na konferenci:

- Bugarič, B. (2002). Od hierarhične k participativni (odprti) javni upravi. *IX. dnevi slovenske uprave. Portorož* (str. 23–29). Ljubljana: Visoka upravna šola.

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Disertacija:

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Stavek na strani 31 se briše / Sentence on page 31 is deleted:
The following section gives a brief description of such a hybrid model.

Beseda na strani 35 se zamenja z / Word on page 35 is replaced with:
controller → infrastructure manager