

The Effects of the Public-Private Partnership Act on the Slovenian Public Utilities Providers¹

Veronika Petkovšek

University of Ljubljana, Faculty of Administration, Slovenia
veronika.petkovsek@fu.uni-lj.si

Primož Pevcin

University of Ljubljana, Faculty of Administration, Slovenia
primoz.pevcin@fu.uni-lj.si

ABSTRACT

The paper presents the legal status of existing public enterprises in Slovenia before and after the adoption of Public-Private Partnership Act, that demanded the reorganization of existing public enterprises in the period 2007-2009. The paper also presents the analysis of local public utilities delivery mechanisms in Slovenia, focusing on the local public utilities providers in the field of water and waste management. The aim of the paper is to introduce the changes in the legal status of existing public enterprises, caused by new legislation and also to give an insight into the current state of local public utilities providers in the field of water and waste management. The results confirm the fact that public enterprise is the most common organizational form of local public utilities providers in the field of water and waste management and lead to conclusion that in the reorganization process the majority of existing public enterprises retained the status of a public enterprise.

Key words: economic public service, public enterprise, public-private partnership, local public utilities.

JEL: H40

1 Introduction

Slovenia provides public services by specific legal persons, e.g. public institutions, public commercial institutions, public enterprises etc., established

¹ This article is a revised version of the paper entitled 'Analysis of institutional changes for Slovenian public utilities providers under the Public-private Partnership Act', presented at the 12th International conference Challenges of Europe, Bol, 17th – 19th May, 2017, which is not publicly available.

The authors acknowledge the financial support from the Slovenian Research Agency (research core funding No. P5-0093).

by the state or municipality. Municipalities provide public commercial services primarily in two ways: through public enterprises and by awarding concessions. Public enterprises became a principal form of local public services provision. To enable and encourage mutual help and cooperation between entities from the public and the private sectors, which would lead to economical and efficient provision of public services and other goods or services in the public interest, Slovenia adopted the Public-Private Partnership Act in 2006, that came into force in 2007 (Bauby & Similie, pp. 116-117). Besides establishing forms, rules and procedures for implementation of public-private partnership, the Act also determined the transformation of existing public enterprises, which in the specified period should made the appropriate changes in their organization status or should their founders consider about the need to change and adapt their current status to new legislative conditions.

The aim of the paper is to introduce the changes in the legal status of existing public enterprises in Slovenia, which happened due to the adoption of Public-Private Partnership Act, and to give an insight into the current state of local public utilities providers in the field of water and waste management. The paper first presents the legal status of public enterprise in Slovenia and some open questions before the adoption of the Public-Private Partnership Act and after that the legal status' changes that the mentioned Act has caused to existing public enterprises. In the second part, the paper presents the analysis of local public utilities delivery mechanisms, focusing on the local public utilities providers in the field of water and waste management. At the end the paper gives some concluding remarks.

2 Reorganization of Existing Public Enterprises in Slovenia

Slovenia experienced reorganization of the existing public enterprises, which had happened in the period 2007-2009 due to the adoption of the Public-Private Partnership Act (Official Gazette of RS, no. 127/06). The Law demanded reorganization of the existing public enterprises (to transform into a company or remain public enterprise) and awarding concessions to public enterprises which had transformed into companies.

2.1 The Legal Status of Public Enterprises in Slovenia Before Reorganization

Before the adoption of the Public-Private Partnership Act, the inclusion of the private sector in traditional public sphere of public services was allowed by the Public Utilities Act (ZGJS, Official Gazette of RS, no. 32/1993) for the provision of commercial public services used in the form of concessionary relationship and in the form of capital investment in the activities of private law; and by the Institutions Act, which has allowed awarding concessions for non-commercial public services provision (Institut for Public-Private Partnership, 2017).

Since the nineties until today there have been three concepts of public enterprises in the Slovenian legal system, based in particular on the system of property ownership. According to Public Utilities Act a public enterprise was a form of the commercial public services provision. Public enterprise did not have its own status, because this regime was directly relied on the regulation of commercial companies. A public enterprise could have, as a commercial company, also shared capital. The status of a public enterprise therefore did not differentiate from commercial companies, the significant difference was only in the management rights, where the state or local government as a founder of such enterprise had special founder's rights, independent of its capital structure. Under the Public Utilities Act a public enterprise can be established only for the provision of commercial public services or for the performance of activities that are carried out in a manner of public utilities (Brezovnik, 2009, p. 181; Trpin, 2007, p. 6).

Further on, in 2007 the The Transparency of Financial Relations and Maintenance of Separate Accounts for Different Activities Act (ZPFOLERD, Official Gazette of RS, no. 53/2007, 65/2008) changed the definition of a public enterprise into a broader definition. According to this Act a public enterprise is any enterprise over which the public authorities may perform a dominant influence. Therefore, a public enterprise is any organization with legal form of public institutions, public commercial institutions, public enterprises established under the Public Utilities Act and enterprises, in which public authorities have a dominant position (Brezovnik, 2009, p. 182; Trpin, 2007, pp. 6-7).

The position of private capital in the public enterprise in terms of its legal certainty was unsustainable, as stated by Brezovnik (2009, p. 187). The public enterprise was a commercial company on one side, whose shareholder may have been a person of private law, and on the other hand, it carried out activities in the public interest, which prices were regulated by the state or local governments. Brezovnik (2009, p. 189) also points out to the question of establishment of public enterprises. The formation of public enterprise is controversial in both cases, when a public enterprise is set up by the state or by the local community and also when it is set up by several founders (public-public partnership). The regulation is not clear which legal instrument forms a public enterprise. There are also shortcomings in the relationship between the founder of public enterprise and the public enterprise. In relation to public enterprise, the State or local community act as a regulator of public services implemented by the public sector on one hand, and on the other hand, as the enterprise's (co-)founder or the owner of the majority of capital share. Proceeding from that the state or the local community have a dual role (Brezovnik, 2009, p. 190).

2.2 Reorganization of Existing Public Enterprises in Slovenia in Accordance with the Public-Private Partnership Act

In 2006, Slovenia adopted the Public-Private Partnership Act that entered into force in March 2007. The Act had a strong influence on the legal status of public enterprises (especially Articles 141, 142 and 143), especially for further organisation and operation of the public enterprises providing public services. It has determined the rules of transformation of existing public enterprises, which shall *mutatis mutandis* apply also to public institutions and public commercial institutions (Brezovnik, 2010, p. 24). In the sense of public institutions' regulation, Tičar & Zajc (2010, p. 211) highlight the importance of a repeal of Article 80 in the 1999 Public Finance Act by the Public-Private Partnership Act. The Article 80 of Public Finance Act specifically regulated the privatization of public institutions (also public commercial institutions and public enterprises), more specifically it had frozen all privatization initiatives since it did not allow the transfer of capital investments or establishment rights of the state or municipality in public institutions. Privatization was possible only if so provided by a specific law on the performance of a public service, but since 2002, no such laws had been adopted. This restriction was then removed with the implementation of the Public-Private Partnership Act in 2007.

The Act provides the definition of the legal status of public enterprises. The aim of the new regulation is to differentiate between genuine public enterprises that shall remain exclusively publicly owned to perform public service activities, and other public enterprises that shall be transformed into commercial companies. There are two options for the public enterprises in which there are private equity stakes. One option is that a public enterprise can be transformed into a commercial company in accordance with the Companies Act, and the other option is that the public enterprise status can be retained, provided that the private equity stakes are in a way nullified in the public enterprise, and that only the equity stakes owned by the Republic of Slovenia or local communities remain (Kocbek, 2011, p. 86). Public enterprises where private investors held shares had to be transformed into commercial companies and public enterprises that wanted to remain public enterprises had to transfer the private ownership to the State or local community. The decision had to be taken by the founder of the enterprise within three years from the adoption of the Act, which is by March 2010. Under the new regulation a public enterprise may be an enterprise which is wholly owned by the state or local government (Hrovatin, 2010, p. 102; Brezovnik, 2010, p. 24; Trpin, 2007, p. 6).

The Act also regulates awarding concessions to public enterprises, which are transformed into a commercial company. First, the founder shall award concessions without public tender to the commercial companies that were created out of the public enterprises where provided persons of private law have no investments in such enterprises. This had to be done within one year, by March 2008. And the second, public enterprises transformed

into commercial companies must obtain a concession in compliance with the legislation. The concession should be awarded within one year by the founder of the enterprise as a result of the bidding process on the public tender. In determining the duration of the concession the founder of a public enterprise have to take into account the nature of the public service and the extent of its implementation, current investment in the public service and the degree of their depreciation and any necessary new investments and other circumstances. When deciding on the duration of the concession the founder have to determine the minimum necessary duration of the concession in accordance with the Act. The founder had to do the bidding process on the public tender by March 2008 also in the case of those commercial companies providing commercial public services that had been already transformed on the basis of previous regulations (Hrovatin, 2010, p. 102; Brezovnik, 2010, p. 24; Trpin, 2007, p. 13).

Mužina (2007, p. 37-38) highlights the fact that the reorganization of existing public enterprises itself does not mean exemption from the Public Procurement Act (Official Gazette of RS, no. 128/2006), therefore even after an eventual reorganization the commercial company will have to fully operate in accordance with these rules. Procurement rules would no longer be mandatory only at the moment when local communities lose a managerial or financial control in commercial company, and if they would leave the entire business to market regulations. Further on, the reorganization also does not mean reducing supervision, because even after the reorganization all the conditions that the legal entity may be a subject of audit by the Slovenian Court of Audit, continue to be met. Similarly, also the decision-making power in the administrative procedure, has remained unchanged, as far as it is undertaken on the basis of public authorization.

3 The Analysis of Local Public Utilities Delivery Mechanisms in Slovenia

In Slovenia, the majority of public utilities in the field of water and waste is managed by public sector, on municipal level. In 2013 new legislative provisions were set. The regulation of local public utilities was transferred from central to municipal level. This means that municipal administration is now responsible for local public utilities regulation, which includes industries like water supply, wastewater treatment, waste collection and waste treatment (Cerkvenik, 2015). Form of local public service provision is prescribed by the municipality by decree to ensure its implementation within the functionally and spatially complete supply systems. The municipal decree regulates conditions for the provision and use of public goods; sources of funding and the manner of their formation; rights and obligations of users; position of the infrastructure for the public service (Grafenauer, 2009, p. 213).

3.1 The Current State of Municipalities in Slovenia

A municipality is the basic self-governing local community. Slovenia has in total 212 municipalities, from which 11 municipalities are so-called urban municipalities. In accordance with the Constitution and within their competence, urban municipalities may also perform tasks under state competence stipulated by law, which refer to the development of the city. Municipalities, in accordance with the Constitution and laws, autonomously regulate and perform matters, duties and functions assigned to them by law (Pevcin, 2012, p. 706; Vlaj, 2010, p. 7).

Municipal administration in Slovenia is organized by the municipal representative body or the mayor. This organization involves number of working posts, a detailed organizational structure and the possibility of independent decision-making powers delegated to the head of the municipal administration. The way municipal administration is organized, also depends on the competencies of a municipality, its size and its ability to organize and provide sufficient funding for the administration. In general, Slovenian municipalities are organized according to the same model. Therefore, there is the problem of obligatory public services provision and a very small size of some municipalities (Haček & Bačlija, 2014, pp. 88-89).

Although Local Self-Government Act in Slovenia stipulates that a municipality has at least 5,000 residents, they are not all formed in accordance with the legal standards. More than a half of municipalities (110) have a population less than 5,000 residents, of which 7 municipalities have less than 1,000 residents (the smallest municipality has 372 residents). A total of 48 municipalities have a population between 5,000 and 10,000; 36 municipalities have population between 10,000 and 20,000; 14 municipalities a population between 20,000 and 50,000 and 4 municipalities have population more than 50,000 (of which one municipality has more than 100,000 and one has more than 200,000 residents).

Table 1. *Municipalities in Slovenia by population size in 2016*

Population size	Number of municipalities	% of all municipalities
< 1,000	7	3,30
1,000 – 5,000	103	48,58
5,000 – 10,000	48	22,65
10,000 – 20,000	36	16,98
20,000 – 50,000	14	6,60
> 50,000	4	1,89
Total	212	100,00

Source: Statistical Office of Slovenia, 2017; authors' calculations

3.2 The Analysis of Slovenian Public Utilities' Providers in the Field of Water and Waste Management

In Slovenia, a municipality may provide commercial public services via the municipal administration body, by establishing public institutes and public enterprises, by awarding concessions and in any other way determined by law. Overhead plant is a relatively rare form of local commercial public services provision. It may be used when it would be uneconomical or irrational to establish a public enterprise or to give a concession due to the small size or the characteristics of the service. Public commercial institute is also a very rare form of local commercial public services provision. It is used when a public service, due to its nature, cannot be provided as a profit activity or if profit is not a goal of such a service. Public commercial institute may be either a legal entity of public law or an entity without legal personality. (Pevcin & Rakar, 2015, pp. 705-706). Concession is the only possible form providing commercial public services, performed by a legal person of private law. By its nature, it is a form of public-private partnership (Institut for Public-Private Partnership, 2017). Public enterprise is the most widespread form of local commercial public services provision. Public enterprise is used for the provision of one or more services of increased volume or when economic public service is a monopoly. In both cases, services are required to be performed profitably (Pevcin & Rakar, 2015, pp. 705-706). Public enterprise can be established as a Limited Liability Company or as a Public Limited Company.

The analysis of public utilities providers takes into consideration the public utilities providers for drinking water supply, wastewater treatment and waste collection and treatment. Regarding the data available at the database E-komunala (E-Utilities), Slovenia has 61 providers for drinking water supply, 66 providers for wastewater treatment and 62 providers for waste collection and treatment. Many of these utility providers provide all three or two of the analyzed public utilities.

Table 2. *Public utilities providers in Slovenia in 2017*

Public utilities providers	Drinking water supply	Wastewater treatment	Waste collection and treatment
No. of providers	61	66	62

Source: E-komunala, 2017; authors' calculations

Therefore, in Slovenia 43 public utilities providers provide all three studied public utilities (drinking water supply, wastewater treatment and waste collection and treatment). There are 12 providers for drinking water supply and wastewater treatment and 6 providers for wastewater treatment and waste collection and treatment. Slovenia also has providers for one public utility only, namely 6 providers for drinking water supply, 5 providers for wastewater treatment and 13 providers for waste collection and treatment.

In total Slovenia has 85 public utilities providers in the field of water and waste management.

Table 3. *The range of public utilities covered by public utilities providers in Slovenia in 2017*

The range of public utilities	No of public utilities providers
drinking water supply, wastewater treatment, waste collection and treatment	43
drinking water supply, wastewater treatment	12
wastewater treatment, waste collection and treatment	6
drinking water supply	6
wastewater treatment	5
waste collection and treatment	13
Total	85

Source: E-komunala, 2017; authors' calculations

Most of the public utilities providers are public enterprises and only small share goes to concessionaires and overhead plants (E-komunala, 2017).

Table 4. *The organizational form of public utilities providers in the field of water management*

Public utility	No of providers	Organizational form					
		Public enterprise		Concession		Overhead plant	
		No	%	No	%	No	%
Drinking water supply	62	56	90.3	4	6.5	2	3.2
Wastewater treatment	67	62	92.5	5	7.5	0	0.0
Total	73	66	90.4	5	6.8	2	2.7

Source: eKomunala, 2017; authors' calculations

Table 3 shows that the majority (around 90 %) of analysed public utilities providers for drinking water supply and wastewater treatment represents public enterprises, around 7 % are concessionaires and around 3 % are overhead plants, which are only found for providing drinking water supply.

3 Conclusion

In Slovenia, local commercial public services are most often provided by public enterprises, followed by concessions and (rarely) overhead plants. Slovenia faced the reorganization of existing public enterprises in the period 2007-2009 with the adoption of a Public-Private Partnership Act, which has influenced the legal status of public enterprises and brought significant

changes in their ownership. The sole ownership of the public enterprises by the state or local government has increased public ownership and control in Slovenia. The Act has left the decision on the organizational structure of public enterprises to their founders.

The analysis of local public utilities providers confirm the fact that public enterprise represents the most common organizational form in Slovenia in the field of drinking water supply and wastewater treatment. This can lead to conclusion that the majority of existing public enterprises retained the status of a public enterprise on the basis of the Public Private Partnership Act and thus transfer the ownership into 100% municipal ownership.

As there are still some open questions present e.g. on the legal status of public enterprises, which motives led municipalities to buy equity stakes in public enterprises; a deeper analysis about the reorganization and current state of public enterprises in Slovenia would give a more specific insight to the organizational structure of public enterprises and an insight into the reorganization process. The results of such analysis would give evidence about the final outcome of the reorganization, whether it was implemented in accordance with the law and what concrete institutional changes and experiences has it brought.

Veronika Petkovšek, MSc, is a senior lecturer at the public sector economics department of Faculty of Administration, University of Ljubljana. She successfully combines pedagogical activities and research work. Her research field started with effectiveness and efficiency in public administration and with cross-border cooperation in the Alps-Adriatic Region. Currently her research focus is on local public services delivery mechanisms and reorganization of existing public enterprises.

Primož Pevcin, PhD, is an associate professor for public sector economics and management. He has been involved in several national and international research projects that addressed various public sector issues. He has been involved in and managed also several developmental and pedagogical projects at the faculty, including Faculty of Administration Summer Schools. His teaching activities relate predominantly to courses on public management and managerial economics. He has also performed several managerial posts at the faculty, where he served as a vice-dean for international cooperation and scientific research, vice-dean for academic affairs, and head of the department for public sector economics and management.

References:

- Bauby, P. & Similie, M.M. (2010). The Governance of Basic Public Services Europe Chapter. *GOLD III Report*, United Cities and Local Governments, Paris: Reconstruire l'Action Publique.
- Bratina, B. (2004). Poslovni izidi gospodarskih javnih služb in tržnih dejavnosti v javnih podjetjih. *Pravna praksa*, 2, 6-9.
- Brezovnik, B. (2008). *Izvajanje javnih služb in javno-zasebno partnerstvo*, Maribor: Lex Localis.
- Brezovnik, B. (2009). Aktualna vprašanja pravne ureditve javnega podjetja v Sloveniji. *Lex Localis - Revija za lokalno samoupravo*, 7(2), 177-195.
- Brezovnik, B. (2010). *Zakon o javno-zasebnem partnerstvu. Pristojnosti in naloge občine z uvodnimi pojasnili in komentarjem*, Maribor: Lex Localis.
- Dijkgraaf, E. & Gradus, R. H. J. M. (2013). Cost advantage cooperations larger than private waste collectors. *Applied Economics Letters*, 20, 702-705.
- E-komunala. (2017). Pridobljeno 27. 2. 2017 s www.ekomunala.si/si
- Grafenauer, B. (2009). Analiza organizacije izvajanja lokalnih gospodarskih javnih služb na primeru dveh slovenskih občin. *Lex Localis - Revija za lokalno samoupravo*, 7(2), 209 – 219.
- Institut for Public-Private Partnership. (2017). Pridobljeno 5. 1. 2017 s www.pppforum.si
- Kocbek, M. (2011). Retaining Public Enterprise Status Through Own Shares. *Lex Localis - Revija za lokalno samoupravo*, 9(1), 85-101.
- Mužina, A. (2007). Preoblikovanje javnih zavodov po zakonu o javno zasebnem partnerstvu - možnosti in posledice. In Hočevar, F. (ed.). *Javno-zasebno partnerstvo*. 14. strokovno srečanje ekonomistov in poslovnih delavcev v zdravstvu. Radenci, 17. in 18. maj 2007.
- Pevcin, P. (2012). Local Government in Slovenia: Structure, Size and Expenditures. *Croatian and Comparative Public Administration*, 12(3), 705-724.
- Pevcin, P. & Rakar, I. (2015). Local Public Services in Slovenia – Lega, Organisation, Economic, and Financial Aspects. *Croatian and Comparative Public Administration*, 15(3), 697-714.
- Statistical Office of Republic of Slovenia. (2017). Pridobljeno 1. 3. 2017 s pxweb.stat.si/pxweb/Database/obcine/obcine.asp
- Tičar, B. & Zajc, K. (2010). Public-Private Partnerships in Slovenia: Recent Developments and Perspectives. *Review of Central and East European Law*, 35, 191-215.
- Trpin, G. (2007). Tržna dejavnost in preoblikovanje javnih zavodov. *Lex Localis - revija za lokalno samoupravo*, 5(3), 1-13.
- Vlaj, S. (2010). Local Self-Government in the Republic of Slovenia. Observatory on Local Economy.

POVZETEK

1.02 Pregledni znanstveni članek

Učinki Zakona o javno-zasebnem partnerstvu na slovenske izvajalce javnih služb

V Sloveniji je bil leta 2006 sprejet Zakon o javno-zasebnem partnerstvu, ki je prinesel spremembe institucionalnega okvira obstoječih javnih podjetij v procesu njihovega preoblikovanja. Zakon je vplival predvsem na pravni status javnih podjetij, ki izvajajo javne službe. V obdobju 2007-2009, ko je potekal proces preoblikovanja obstoječih javnih podjetij, so le ta skladno z zakonom lahko ohranila status javnega podjetja ali pa se preoblikovala v gospodarsko družbo. Podjetja so se v gospodarsko družbo preoblikovala skladno z Zakonom o gospodarskih družbah. V primeru, da so ohranila status javnega podjetja, pa so morala odkupiti vložke zasebnega kapitala in jih prenesti v lastniške deleže v lasti Republike Slovenije ali lokalnih skupnosti. Javno podjetje je tako lahko le tisto podjetje, ki je v stoddostni lasti države ali lokalne skupnosti. Zakon je torej z vidika lastništva prinesel velike spremembe, in sicer povečal javno lastništvo in nadzor lokalnih javnih služb. Odločitev glede organizacijske strukture javnih podjetij je prepustil njihovim ustanoviteljem. Poleg spremembe statusa javnega podjetja, omenjeni zakon obravnava tudi podeljevanje koncesij javnim podjetjem, ki so se preoblikovala v gospodarske družbe. V tem primeru so morala podjetja pridobiti koncesijo z javnim razpisom.

V Sloveniji se lokalne gospodarske javne službe zagotavljajo na občinski ravni, obliko izvajanja predpiše občina z odlokom. Občina lahko zagotavlja gospodarske javne službe bodisi z režijskim obratom, javnim gospodarskim zavodom, javnim podjetjem, s podeljevanjem koncesij ali na kakršen koli drug način, ki ga določa zakon. Režijski obrat in javni gospodarski zavod sta redki obliki zagotavljanja lokalnih gospodarskih javnih služb.

Koncesija je edina možna oblika izvajanja gospodarskih javnih služb s strani pravnih oseb zasebnega prava. Javno podjetje pa je najpogostejša oblika izvajanja lokalnih gospodarskih javnih služb. To potrjuje tudi analiza stanja izvajalcev javnih gospodarskih služb na področju urejanja voda in odpadkov. V analizo so vključeni izvajalci s portala E-komunala. Rezultati analize, glede na razpoložljive podatke portala E-komunala, kažejo, da imamo v Sloveniji 61 izvajalcev za oskrbo s pitno vodo, 66 izvajalcev za odvajanje in čiščenje komunalne in padavinske vode ter 62 izvajalcev za zbiranje in obdelavo določenih vrst komunalnih odpadkov. Veliko teh izvajalcev izvaja vse tri ali dve od omenjenih gospodarskih javnih služb na področju urejanja voda in odpadkov. Le šest izvajalcev le oskrbuje s pitno vodo, pet izvajalcev le odvaja in čisti komunalno in padavinsko vodo ter trinajst izvajalcev le zbira in obdeluje določene vrste komunalnih odpadkov. Večina izvajalcev gospodarskih

javnih služb so javna podjetja. To kažejo tudi analizirani podatki, in sicer na področju urejanja voda je kar okoli 90 % izvajalcev javnih podjetij, okoli 7 % je koncesionarjev in le 3 % predstavljajo režijski obrati, ki pa so po analiziranih podatkih prisotni le pri oskrbi s pitno vodo.

Iz rezultatov analize lahko sklepamo, da je večina obstoječih javnih podjetij, skladno z Zakonom o javno-zasebnem partnerstvu, ohranila status javnega podjetja in tako postala izključna last občin. Se pa pri tem postavljajo vprašanja, kaj je občine vodilo k odkupu lastniških deležev podjetij, kakšen je bil končni rezultat procesa reorganizacije, ali je bila reorganizacija izpeljana v skladu zakonom. Za tovrstne odgovore je potrebna podrobnejša analiza izvajalcev.

Ključne besede: *gospodarska javna služba, javno podjetje, javno-zasebna partnerstva, lokalne javne službe.*