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Current Tendencies of Judicial Review as Reflected in the New Hungarian Code of Administrative Court Procedure[1]

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ABSTRACT

The continuing expansion of judicial review of administrative actions, as seen throughout Europe, led to the engulfment of the administrative judiciary towards the end of the last century. Review within a reasonable timeframe is hard to grant for this reason: the tensions between lawfulness and efficiency are amplified. The answers given to alleviate this tension raise questions that lie at the heart of the system of checks and balances between public administration and the judiciary. This article aims to present some of respective tendencies. To concretise these tendencies, the article analyses some relevant solutions given by the very new code of administrative court procedures, the Hungarian Act No. I of 2017. The most important elements of the regulation of procedures for judicial review of administrative action are provided in a dogmatic and a comparative perspective showing the changes of rules and/or their interpretation through the judiciary. Thus, major challenges regarding the present understanding of the doctrine of separation of powers are emphasised. The most significant elements of the new Hungarian regulation are presented in a coherent system, which also gives insight on the codificational considerations. Legislation and jurisprudence must deal with the highlighted aspects in any national and in EU legal systems alike.

Keywords: *administrative judicial review, court procedure, codification, Hungary, Europeanisation, interim relief*

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1 Introduction

The creation of administrative justice in Hungary dates back to 1883, when, as a provisional first step, the Royal Court of Finances was established leaning on the Austrian organisational model. The intended transformation of this model into a two instance system failed: only the Hungarian Royal Administrative Court could be established in 1896.[2] The second step of creating first instance administrative tribunals in spite of continuous reform projects never followed. The Royal Administrative Court was abolished in 1949. Since then administrative court procedures were conducted by ordinary (civil) courts with few and weak competences.[3] In 1991, the possibility of access to court was broadened, but other elements of court procedure and court organisation remained unchanged. It was only in 2013 that first instance "administrative and labour courts" started to function.[4] As an important step of the gradual restoration of the autonomy of administrative justice, the Code of Administrative Court Procedure (CACP) was promulgated on 1 March 2017 as Act I of 2017 and entered into force on 1 January 2018.

The codification of administrative court procedure rules was centred on the principle of effective judicial protection. In the process of codification, the Hungarian legislature had to find answers to questions touching on the essence of the doctrine of separation of powers in order to create a set of rules which grant both the timeliness and effectivity of judicial review as the most important control of the legality of administrative action.

The answers given raise questions which lie at the heart of the principle of separation of powers. Of course, this constitutional principle is not static; it needs to evolve together with the developments of society and economy. As access to administrative courts gets broader, different restraints are incorporated into the system of judicial review, partly by the judiciary itself, partly by the legislation. The same way, as the powers of courts increase, preclusion rules emerge from both sides.

This paper identifies some questions regarding checks and balances and the connected tendencies, and presents the answers given by the Hungarian legislature in the CACP. This code is built not only on the jurisprudence, which has developed since 1991, when judicial review was quasi reintroduced as a general possibility according to the ruling No. 32/1990. (XII 22.) of the Consti-

2 With an enumerative model of access to court though, and the competence to even reform administrative acts after a written procedure.

3 Access to court was only granted against some authoritative administrative decisions of minor importance and courts generally could merely annul them. Since 1972, administrative court procedures have been regulated as a special civil procedure within the Act on Civil Procedure Rules.

4 For the historical development of administrative justice in Hungary and the characteristics of organisation and procedure of the Hungarian Royal Administrative Court, as well as the further debates and developments see Patyi, A.: Közigazgatási bíráskodásunk modelljei, 2002, Budapest: Logod, or F. Rozsnyai, K., § 43 Geschichte der Verwaltungsgerichtsbarkeit in Ungarn, in Sommermann, K.-P. and Schaffarzik, B., 2018, Handbuch der Geschichte der Verwaltungsgerichtsbarkeit in Deutschland und Europa., Berlin-Heidelberg: Springer, pp. 1570-1576.

tutional Court, but also on the solutions of other European countries and present European trends. Thus, the methods used to present the solutions form a dogmatic and comparative analysis of the legislative and judicial answers given to some current problems of administrative justice in Europe. Due to a limitation of space, the paper does not contain in-depth case studies, but only refers to their relevance.

2 Access to justice

2.1 Widening the scope of judicial review

One of the most important international trends regarding judicial review is the expansion of the possibility to request judicial review of administrative action. In Hungary, it was principally only formal administrative acts deciding single cases that were apt for judicial review. In the last decade though, there have been some developments in this field. Since 2005, it is possible to sue the administration because of "silence d'administration" (failure to act) in formal administrative procedures on application. Access to court has opened up in relation to some decisions outside the realm of authoritative administrative action, e.g. against disciplinary decisions of professional chambers, or of school directors. A culmination of this development, the greatest novelty of the CACP is the broad scope of application guaranteed by the general rule of access to court formulated in Art. 4 (1). According to this, all administrative activity can be the subject of an administrative dispute. The notion of administrative activity is formulated widely as "an act regulated under administrative law and taken by an administrative organ with the aim to alter the legal situation of an entity affected by administrative law or resulting in such an alteration, or the lawfulness of the administrative organ's failure to carry out such an act".

Important developments due to the broadened scope of judicial protection are on the one hand the contestability of omissions outside the field of authoritative decisions, and on the other hand the reviewability of "normative acts of non-legislative nature" issued by administrative organizations, which are not legislative instruments. These latter general acts can primarily be brought before court in connection with individual acts which apply these regulations. This is also in line with the developments regarding soft law instruments in the jurisprudence of national courts, and that of the ECJ (Kovács et al., 2016), as well as with trends of judicial protection against the norm-setting powers of self-governing bodies (Hoffman and Rozsnyai, 2015). In Hungary, control over the legality of legislative instruments belongs within the competences of the Constitutional Court, with the exception of local government decrees and normative decisions (Fábián and Hoffman, 2014, p. 348). Competences in connection with controlling the legality of local government norm-setting were transferred to the Hungarian Supreme Court (now Kúria) from the Constitutional Court, under the new constitution in 2011. The CACP fills the previous lack of procedural regulation of these procedures through a separate chapter, whose regulations take into due account the twofold, constitutional and administrative nature of these procedures (Chapter XXV).

To set clear some dogmatic questions and hereby foster dogmatic permeation, the CACP contains supplementary dispositions to the general rule of Art. 4 (1). They either describe the notions used by the general rule or clarify some of its borders. So, for example, Art. 4 (4) takes some definitory burden off the jurisprudence and at the same time aims to foster dogmatic penetration by referring to the "political question doctrine" and the findings of organisation theory. It states that no administrative dispute shall take place "a) concerning government activities, in particular with respect to national defence, aliens policing and foreign affairs, b) concerning the lawfulness of an ancillary administrative act serving the purpose of implementing an administrative act, c) between parties in hierarchical or managerial legal relationships, unless otherwise provided by an Act."

To help the interpretation of the notion of administrative action, Art. 4 (2) states that legal disputes stemming from administrative contractual or civil service relationships also qualify as administrative disputes. This should hinder competence conflicts with civil and labour courts. Art. 4 (3) also assists with interpretation, listing some forms of administrative action: "a) single case (individual) decisions; b) administrative measures; c) general acts of non-legislative nature and d) administrative contracts".

The same logic of aiding interpretation is underlying the explanatory norms of Art. 4 (7), which inter alia define the notions of administrative organ and administrative contract. Administrative organ means "a) an organ of state administration and its organisational unit or entity vested with independent functions and powers, b) the representative body of a local government and its organ, c) the representative body of a national minority self-government and its organ, d) a statutory professional body, an institute of higher education and its official or organ vested with independent functions and powers, and e) any other organisation or person authorised by the law to carry out administrative acts." The decision to define the notion of administrative contracts is the result of the judiciary's failure to address this definitory problem in the last decade (Barabás–Nagy, 2010): the civil branch of the Supreme Court made it practically impossible for administrative judges to support the previous efforts of first instance courts to evolve a material definition for administrative contracts. According to the CACP, administrative contract means "a contract or an agreement concluded by and between Hungarian administrative organs to perform a public function, as well as contracts defined as such by an Act or government decree." The CACP thus puts the burden of identifying administrative contracts partly on the legislator, but also makes room for jurisprudence through the broad notions of administrative organ and public function.

These explanatory paragraphs all deliberately use notions or phrases, which are somewhat vague in order not to hinder their autonomous interpretation through the judiciary and to intensify the dogmatic sensitivity of administrative justice. Flexibility is very important to guarantee access to administrative courts amidst the rapid developments of administrative action. The

broad scope entails a set of actions. Thus, as a result of the general rule in Art. 4, the CACP lists in Art. 38 the types of actions which may be brought to court. Following from this, the court may be requested to set aside, annul or amend an administrative act (contestation action), but also to establish that an administrative act failed to be performed (omission action), to prohibit the performance of an administrative act (prohibition action), to order that an obligation arising from an administrative relationship be fulfilled (mandatory action), to order that the damage caused in respect of an administrative contractual relationship or administrative relationship be compensated (mandatory action for compensation), or finally to establish an infringement caused by administrative activity or to establish another relevant fact from the perspective of the administrative relationship (declaratory action). The typology of actions in turn underlies the twofold structure of the code: of the six parts of the CACP, the first four parts containing the general rules are modelled for contestation actions, while the fifth part regulates special procedures.[5] In this twofold structure, the set of actions finds its counterpart in the various types of judgments upholding a claim regulated in Part III, as well as among the rules of special administrative court procedures contained by the fifth part of the CACP.

2.2 Standing: protection of subjective rights and interests or control of legality of administration?

Access to courts depends not only on the scope of judicial review, but also on that of standing. Who is entitled to bring a case before court? Only persons directly affected in their rights, or also persons having legally protected interests, or even persons not having such a close link to the case? The notion of the interested public gains importance and affects the present system of checks and balances through the penetration of collective litigation in the field of judicial review. Questions of standing arise anew, which make it necessary to revisit the basic dilemma regarding the function of administrative jurisdiction, already addressed at its creation: „Rechtsschutz oder Verwaltungskontrolle?" The answers given certainly form our understanding of the principle of separation of powers. Originally this was the basic difference between the two main German models of administrative jurisdiction, the Prussian and the Baden model (Hufen, 2013, p. 29), as well as between the later German and the French model. The principles of rule of law and separation of powers require that judicial review should aim not only to protect subjective rights but also to control the administration – i.e. the protection of legality in cases where there is no prejudice caused to concrete persons' rights or legally

5 Here we find chapters for omission actions, mandatory actions, supervisory actions (actions submitted by the legal supervisory organ) against a statutory professional body, and for norm-control actions against local self-governments, as well as a chapter on simplified procedures, the procedure to enforce compliance with a judgment ordering a new procedure or establishing failure to act, and the procedure for designing the competent administrative organ (in the case of a dispute concerning material competence in administrative procedures). Chapter six contains the final provisions, such as entry into force, transitional provisions, and authorisations for government-delegated rulemaking.

protected interests, as well as in cases where the plaintiff does not contest grave illegalities of the administrative action. The concurrence of models is due to this double function: the question, which one should dominate the system has frequently arisen in the past and arises again at present with the strengthening of civil society. This double function of tribunals is guaranteed by various means and in different ways in national legal systems. Besides the principle of officiality and the *ex officio* duties and/or authorisations of tribunals flowing from it, the granting of standing to entities serving the protection of public interest and/or human rights is of ever growing importance.

The Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests, later the recommendation of the European Commission of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law (2013/396/EU), as well as the new proposal of the European Commission of 11 April 2018 for a Directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers [COM(2018) 184 final] try to enhance these possibilities, too. Although centred on private court procedures, mostly on compensation actions and injunctions in this field, these actions can also emerge in administrative court procedures.

The jurisdiction of the ECJ in relation to administrative court procedures clearly fosters the possibility of collective litigation, too. For now, we will only mention the cases connected to the institution of environmental impact assessment (EIA). Perhaps the most evident "battle" in this field was that against Germany, which resulted in a Commission action before the ECJ against Germany for failing to fulfil its obligations under EU law, the European Commission v Federal Republic of Germany case (C-137/14, EU:C:2015:683). As its forerunners, like "Trianel" – Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen (C-115/09, EU:C:2011:289) and Gemeinde Altrip and Others (C-72/12, EU:C:2013:712), this case concerned access to justice and more precisely the scope of the right of access to a review procedure before a court to challenge the legality of decisions, acts or omissions relating to public participation in decision-making in environmental matters. We could also mention cases against other member states, which all dealt with certain aspects of the possibility for the interested public to take part in administrative procedures, including to request judicial review of the decisions brought in such procedures [e.g. Abraham and others (C-2/07, EU:C:2008:133); Djurgården-Lilla Värtans Miljöskyddsförening (C-263/08, EU:C:2009:631); Commission v Spain (C404/09, EU:C:2011:768); Lesoochranárske zoskupenie I. (C-240/09, EU:C:2011:125); Salzburger Flughafen (C244/12, EU:C:2013:203,); Lesoochranárske zoskupenie II. (C-243/15, EU:C:2016:838)]. Whereas previously there was an additional requirement that the procedural error must affect a 'substantive legal position' to which the applicant is entitled, now procedural provisions have to confer independently enforceable procedural positions on persons affected by a project subject to an EIA.

Continuing the tendency of Europeanisation, the CACP grants various organisations standing to bring a representative action. Administrative organs not taking part in the realisation of the administrative action, but having powers affected by the administrative action are empowered to bring representative actions. In reminiscence somewhat of soviet times, the public prosecutor (or prosecution service) also has standing, if its "notice for legality" expired without yielding any result, because it was not followed by the administrative organ.

The CACP also makes it possible for NGOs to bring representative actions, if a special law allows for this. Just as the Recommendation sets out, these NGOs need to have a non-profit making character, and a direct relationship between the main objectives of the entity and the rights claimed to have been violated is required for standing. Sufficient capacity is guaranteed by the requirement of at least one year of previous functioning in the geographical area where the administrative action is realised according to Art. 17 d). These conditions are verified by the administrative organs, as well as the courts *ex officio*. As NGOs only have standing if an Act or Government decree confers it to them, there will of course be further "battles" in this field, as there have been over the past decades (Rozsnyai, 2014). Apart from environmental cases in Hungary, this possibility is scarce, for example, in cases in connection with the protection of non-smokers and consumers.

Of course, collective litigation is made possible not only through the rules of standing. The rules of the joinder, the institution of model procedure, the compulsory common representation of at least five claims submitted together, as well as special means for notifying through the administrative organ when the public is affected by the case.

Besides the rules of standing, the CACP had to give answers to these questions of objective protection, which was not an easy undertaking. The Hungarian Basic Law does not contain a specific disposition on the function of administrative justice, it only states that courts decide on the legality of administrative acts. Another obstacle was the system which developed in the last 25 years, deeply rooted in civil procedural rules and principles. This system could not be altered from the bottom to the top through the introduction of an investigative system, as most administrative judges were clearly against such a great change. So the CACP had to find another way to give more room to the constitutional role for controlling the legality of tribunals. It declares on the one hand the duty of effective protection in Art. 2, and places the principle of investigation as an ancillary principle beside the principle of procedural autonomy of the claimant. Flowing from this, the CACP poses several *ex officio* duties on the tribunals, including grounds which have to be respected *ex officio*, and the duty of the court to take evidence *ex officio*.

3 Strengthening of the powers of administrative tribunals

3.1 First developments: interim relief

Traditionally, the administrative judge had no power to impose an obligation on the administration (Sommermann, 2018, pp. 1749-1752). In this regard, the concept of sovereign immunity prevailed. However, if the court can only grant protection with its final decisions, that will not be effective. As formulated in Recommendation Rec (2004)20 of the Committee of Ministers of the Council of Europe to member states on judicial review of administrative acts (adopted by the Committee of Ministers on 15 December 2004 at the 909th meeting of the Ministers' Deputies) in connection with the effectiveness of judicial protection: "The tribunal should be competent to grant provisional measures of protection pending the outcome of the proceedings." It is thus very important to give the court sufficient means to preliminarily stop administrative action until the delivery of the judgment. The forerunner of the strengthening of powers therefore stemmed from the field of immediate or preliminary protection against the administration. The Factortame jurisdiction [The Queen v Secretary of State for Transport, ex parte: Factortame Ltd and others (C-213/89, EU:C:1990:257); Zuckerfabrik Süderdithmarschen AG v Hauptzollamt Itzehoe and Zuckerfabrik Soest GmbH v Hauptzollamt Paderborn (C-143/88 and C-92/89, EU:C:1991:65); or Atlanta Fruchthandelsgesellschaft mbH and others v Bundesamt für Ernährung und Forstwirtschaft (C-465/93. EU:C:1995:369)] was a landmark in this regard, which led to the end of the principle of sovereign immunity in several aspects in member states like Great Britain, Germany, Italy (Eliantonio, 2008, pp. 235-253) and at the European level [see e.g. Council of Europe, Committee of Ministers: Recommendation R (89) 8 on provisional court protection in administrative matters and Recommendation R (2003) 16 on the execution of administrative and judicial decisions in the field of administrative law]. We can also trace this development in France and in several Eastern European countries. The French practice did not consider it possible in the "contentieux pour excès de pouvoir" for a long time to impose obligations for the new procedure or to give guidance. This approach has gradually changed, and finally, Act n°2000-597 of 30 June 2000 established a new system of temporary protection (Sauvé, 2015, pp. 2-4). There are three main types of "référés": the référé-suspension, the application for suspension of enforcement, the référé-liberté, with which to stop the violation of liberty rights, and the référé-mesures utiles, with which any measure preventing the realisation of the administrative decision may be requested [Art. L. 521-1, 2, 3 of the Code de Justice Administrative (CJA)].[6] In Germany – which broke away much earlier from the principle of sovereign immunity – the suspensive effect of the claim is the general rule (Hufen, 2013, p. 484), so there were rather contrary developments (e.g. T. Port GmbH & Co. KG v Bundesanstalt für Landwirtschaft und Ernährung, C-68/95, EU:C:1996:452).

6 Apart from these three main types, there are quite a number of special „référés", e.g. for access to public information or public procurement contracts (Art. L. 551-1 CJA and Art. L. 551-13 CJA).

Small signs of the emergence of these convergence processes in Hungary could be found in the sectoral rules. They had granted the possibility of imposing "provisional measures" in some cases, like for the payment of social benefits, or the granting of social care services, or the suspension of the mayor from his office during the court procedure. Even against the official judicial viewpoint that the suspension of enforcement is the only possible means of interim protection, some administrative judges tried to widen the options by interpreting the suspension of the enforcement in a broad sense (e.g. Supreme Court, decision No. 5/2010. KJE for the uniformity of law). The CACP sets forth these tendencies with a set of four tools of interim relief, leaning somewhat on the French solution. So, according to the CACP, the court can order suspensory effect to the administrative action, which cannot be performed or have any other effect until the judgement is delivered. Typically, in public service provision disputes and in some environmental cases, the sectoral law provides for the suspensory effect to be activated by the submission of the statement of claim. As the inverse tool to ordering the suspensory effect, in such cases, the suspensory effect may be dissolved partially or fully by the court. There are further cases where ordering or dissolving suspensory effect is not sufficient to provide interim relief: the court may take any measure within the limits of the decision to be adopted in the court procedure to provide protection immediately. The judge therefore has the possibility to order provisional measures, such as making a right denied by the administration available to the plaintiff for the duration of the procedure or ordering that the administration pay back a sum already executed. The taking of evidence in advance is the fourth tool completing the system. When deciding on granting interim relief, the judge has to ponder periculum in mora and strike a fair balance between private and public interests.

3.2 Enforcement of decisions

The weakening of sovereign immunity also led to more powers for the administrative judge in regard to the enforcement of their judgements: in order to secure the closure of the administrative procedures ordered by the administrative tribunals within a reasonable time, sanctioning the administration for failure to respect court decisions became possible in various countries. There are two main types of judicial decision where court enforcement mechanisms do not work: judgements ordering the repeating of procedures and omission judgements, according to which the administrative organ has to fulfil the obligations stated to be omitted by court. The judgments in supervisory procedures often belong to this category too, as specialized forms of annulment or omission judgments, as well as when ordering the calling of the meeting of an organ of the professional body.

In Hungary, until 2018 there were only tools for protection against omissions in the field of judicial decisions ordering the reiteration of authoritative procedures. These were lengthy and complicated procedures, to be led on at least two levels. Moreover, the judiciary held that the system of separation of powers did not allow the court to impose obligations on the authorities beyond

the conduct of the new procedure. Judges considered that they could not give a deadline for fulfilling the obligation because this way, they would harm the decision-making autonomy of the public administration. Without a deadline, it was not possible to enforce these decisions. The tribunal had no means to enforce its decision or to sanction the non-fulfilment of the judgment.

A separate chapter deals with these problems in the CACP, Chapter XXVI entitled "the procedure to enforce compliance with a judgment ordering a new procedure or establishing failure to act". According to its rules, the court will have several possibilities, if the claimant or the interested person signals the non-fulfilment of its judgment. After requesting clarification from the administrative organ, if this is not satisfactory or none is given, the court can impose a fine on the administration, which is much higher than the procedural fine, up to HUF 10 million (approx. EUR 30,000). This fine is not the only tool for achieving fulfilment of the judgment: the court may also order another administrative organ or, depending on the type of omission, the supervisory authority to perform the duty instead. If these tools are of no use, the court can order provisional measures until the administrative organ fulfils the obligations which arise from the judgement. In the case of a repetitive omission, issuing the leader of the administrative organ with a procedural fine is also possible, which can be an effective measure against the obstruction of administration (see the Appendix, on the procedure to enforce compliance with a judgment ordering a new procedure or establishing failure to act).

Returning to judgements annulling administrative action, their implementation is not only supported by the above tools. It is of utmost importance to have a court judgment which makes clear to the public administration what its obligations are regarding the procedure to be conducted after the judgement. If the new administrative action does not follow these instructions, the court is conferred the possibility to reform it as a sanction, even in cases where it is generally not possible to reform.

3.3 *Ius reformandi*

The reformatory power of the tribunal is not easy to fit into constitutional arrangements as it goes beyond the traditional concept of the separation of powers. When annulling an administrative act, the need to repeat the administrative procedure emerges in order to produce a new administrative act, which in a lot of cases leads to the repetition of all the stages of the procedure (appellate procedure and/or court procedure) after the first instance administrative procedure. It is thus the time pressure which results in a change in the perception of amending judgments. A timely completion of the merits of the procedure can only be achieved by the *ius reformandi*, and thus the legislator is increasingly using this solution. So we see the power of courts to reform administrative decisions more and more frequently, as in the case of French, Slovenian, and to some extent in German courts, to name just a few.[7]

7 Of course there are single countries where the *ius reformandi* was to some extent introduced much earlier, like in Austria for decisions without discretion (Olechowski, 2018, p. 1113.) or in Hungary until 1949 and as an exceptional possibility from 1972 on. The *ius*

The concept of the CACP was that the various types of administrative action have to be treated differently. Regarding the determination of administrative action through statutory law, there is a constant interaction of the legislative, executive and judicial powers. Often the legislator allows the executive branch more freedom and discretion, which allows the administrative body, on the basis of the same statutory facts, to come to different decisions. As life gets more complicated and technicised, legislation provides the authorities with very broad discretion in order to ensure that conflicts of interest are resolved. This is particularly the case in multipolar administrative legal relationships, among which plant licensing cases are most in the focus. In the course of the procedures, technical and architectural questions, as well as those relating to the protection of landscape, the environment and health, or employment and economic growth become relevant and the administration must strike a fair balance between these interests. It needs to examine and consider a great number of factors, and in the majority of cases, this consideration requires special expertise. The legislator can only finally determine the decision of the administration: it is possible to prescribe the result to be achieved, but not the concrete conditions of the decision. This is due to the level of complexity which causes legal regulations to only refer back to technical standards, professional rules and other, non-legislative rules. In these cases, administrative organs thus choose the solution they deem optimal out of several legitimate alternatives. Judicial review must be guaranteed against all types of administrative action; however, given these differences, the power of courts will also vary to some extent. Without going into questions of judicial deference, which is also an important issue in Hungary (Kovács and Varju, 2014, pp. 202–207), it is obvious that even if there is no discretion accorded to the administration, in many constellations, amendments might also be hindered in practice depending on the merits of the case, as courts can only amend some decisions through lengthy and complicated evidence procedures, such that the benefit of a reduction in the number of redress procedures would disappear. Also, the need for further redress would emerge and produce additional remedies. On the one hand, there are administrative decisions which are totally bound by law: if conditions are fulfilled, there is a single administrative act to be taken. There are cases – quite a number of them – where questions of the merits only touch on the interpretation of the law. As it is ultimately up to the courts to answer these questions, there are a lot of constellations where the court can reform administrative acts without touching on the discretional powers of the administration.

Given all these considerations, the Hungarian CACP puts a soft obligation on courts to amend unlawful administrative acts. This obligation is "soft", as it is the court which has to evaluate whether the nature of the case makes it possible to amend a decision. This solution can avoid causing harm to the powers of administration and consequently, the doctrine of separation of powers. To help courts, special cases are mentioned where no amendment is possible. On the one hand, the gravest forms of illegality cannot be healed, such as

reformandi as a general possibility or even as a duty of the court however is rather a new phenomenon.

the nullity or completely erroneous grounds of the administrative action contested. On the other hand, the CACP lists some cases where the nature of the case is deemed to not allow reformation: besides normative acts, this is the case for administrative acts relating to a payment affecting the budget based on exercising equity. To ensure timeliness, the other two positive criteria for amendment, besides the nature of the case allowing for it, are that the facts are properly clarified and the legal dispute may be ultimately settled on the basis of the data available (see the Appendix).

In the majority of their cases, Hungarian tribunals already had a reformatory power before 2018, but they rarely made any use of it. Thus, the CACP also creates an institution called "amending the amount of a payment obligation", leaning on the German solution in order to help make use of the reformational powers [Art. 113 (2) sentences 2 and 3 of the German Administrative Court Order]. According to Art. 91 of the CACP, the court can amend the administrative act without establishing the concrete amount of the payment obligation by providing accurate guidance in the judgment as to its calculation. Upon the judgement, the administrative organ promptly calculates the exact amount of the payment obligation (not being contested or not contested successfully by the parties) and the amount calculated becomes part of the judgment upon the court's approval. The time limit for submitting an application for legal remedy shall start on the day following the order approving the amount of the payment obligation. This tool is very helpful, for example, in tax cases, where the amount of tax due has to be fixed with a software not available to courts, or in the case of fines having to be calculated with complicated formulas.

3.4 *Ex-post* correction of errors through the administration in the course of the court procedure

Another procedural constellation, which raises questions regarding the merging of powers, is the administration's ability in numerous countries to correct errors of its action even if there is a court procedure initiated against it. For example, the German Administrative Procedure Act allows the subsequent amendment of the justifications and the replacement of the remaining procedural acts during the court procedure. An instrument similar to this is the Dutch institution of the "administrative loop" ("*bestuurlijkelus*"), which provides an opportunity for the administrative court to give the case back to the administration in the course of the proceedings in order to remedy, where possible, the offenses in the case (GALA Art. 8:51a). There is no doubt that these opportunities raise many questions due to their novelty. The Dutch solution was, for example, adopted by Belgium, but the Constitutional Court of Belgium annulled the relevant legislation in its decision No. 74/2014 of May 8 2014. The Court deemed the approach unconstitutional because of the violation of the principles of independence and impartiality of the court, the right to appeal and the right of defence. Similar German legislation has led to a procedure of non-fulfilment of obligations before the Court of Justice of the European Union resulting in the European Commission v Federal Republic of Germany case (C-137/14, EU:C:2015:683). These arrangements are neverthe-

less necessary given that the overall tendency is to cut back inner-administrative review procedures. The possibility of self-control of the administration has to be ensured too, as this often enables the final resolution of a case in a much less complicated manner than do court procedures.

Promptly reaching the final decision in a case is another motivation underlying the current tendency to promote mediation in administrative court procedures. At first, one would think that the doctrine of separation of powers is opposed to mediation: how could the administration and the other party "bargain" over the legality of an administrative action? But again, this is far from being the case: within the scope of its powers, especially when the review concerns discretionary administrative action, the public administration can amend or take back its decision or agree to modify a contract, which can tackle the situation in a mutually beneficial and lawful way. This is especially true for multilateral legal relationships. Reaching a settlement is much more satisfactory than repeating the procedure after an annulment.

Of course, mediation needs proper rules within court procedures. Thus, in Chapter XI, the Hungarian CACP gives a set of rules for mediation and settlement, and tries to foster its use in several ways. The court has the obligation to take all possible opportunities to reach a peaceful settlement of the case. Albeit, to ensure the legality of the administration, it is up to the court to decide whether the case is apt for mediation at all, and whether the settlement reached is lawful.

4 Handling procedural errors

The broadening of access to courts and the strengthening of the power of courts brought about the introduction of preclusion rules. These raise new questions which also touch on the principle of separation of powers. Among the different types of preclusion rules we will now focus only on the question of the consequences of procedural errors. The assessment of procedural violations by courts is restricted throughout Europe, either through the self-restraint of the courts or through the legislature's actions. Of course, it is necessary to weigh the procedural rules. Public interest and the interests of external legal entities and parties often require restrictions. According to the settled concept of procedural law being subordinated to material law (e.g. in Germany: Schmidt-Aßmann, 2006, p. 356), procedural infringements should be assessed only in situations which resulted in the procedural safeguard not actually providing any protection to the party. The "requirement of a causal link" thus states that if a decision is to be successfully challenged on the basis of a procedural error, there must, in the circumstances of the case, be a definite possibility that the contested decision would have been different without the procedural error. This requirement can frequently, if not always, be found in the procedural law of administrative courts throughout Europe, for example, in Art. 46 of the German Administrative Procedure Act and in the jurisdiction of the ECJ (Barabás, 2015, pp. 424–434).

Procedural guarantees gain even more importance, and the principle of good administration evolves to a right (or set of rights) enshrined in the European Charter of Human Rights and in national constitutions or procedural codes. This is the case in Hungary too (Art. XXIV of the Basic Law of Hungary and Art. 1 of the Code of General Rules of Administrative Procedure). Thus, this concept is becoming increasingly in doubt and we see a new differentiation emerging beyond the procedural errors and vices of substantive law. Procedural errors can be so serious that they must not be subject to the requirement of a causal link, whereas less significant procedural errors continue to be so. This differentiation can be seen in the Gemeinde Altrip v. Land Rheinland-Pfalz decision of the ECJ (C-72/12, EU:C:2013:712), as well as in the case law of the French Conseil d'État [Danthony et autres (FR:CEASS:2011:335033.20111223) or Luc-en-Provence (FR:CESSR:2014:356142.20140324)]. Consequently, challenging an administrative act can sometimes be successful, even if the causal link is missing, if the case involves a serious infringement of an important procedural right.

The Hungarian CACP also tried to reflect the constitutional importance of the right to good administration. The causation link theory – as developed by the judiciary – is still the general rule, but with exceptions. Art. 88 states that the court shall dismiss the claim if the procedural infringement does not have a relevant impact on the outcome of the case, but at the same time, according to Art. 92, it is obligatory to annul the administrative act if the infringement caused by the violation of substantial rules of the preceding administrative procedure cannot be remedied in the court procedure. Of course, it comes back to the courts to define which rules are to be regarded as substantial rules. Here they have to ponder the different aspects of the right to good administration as enshrined in the Charter and in the Hungarian Constitution, and as further developed by the Act on Administrative Procedure (see the Appendix on typical judgments).

The weight of procedural errors and the connected preclusion rule is only one question of the rule of law to consider now at the dawn of the 21st Century. There are other questions relating to preclusion rules, such as the procedural preclusion of persons not raising their objections in the administrative procedure, or substantive preclusion rules banning evidence and facts from administrative court procedures not referred to in the administrative procedure. These preclusion rules also are based on the idea that administrative procedures, if conducted properly, also protect the rights and interests of persons affected by the administrative action (Schmidt-Aßmann, 2006, p. 361). However, a separate study would be required to address this point.

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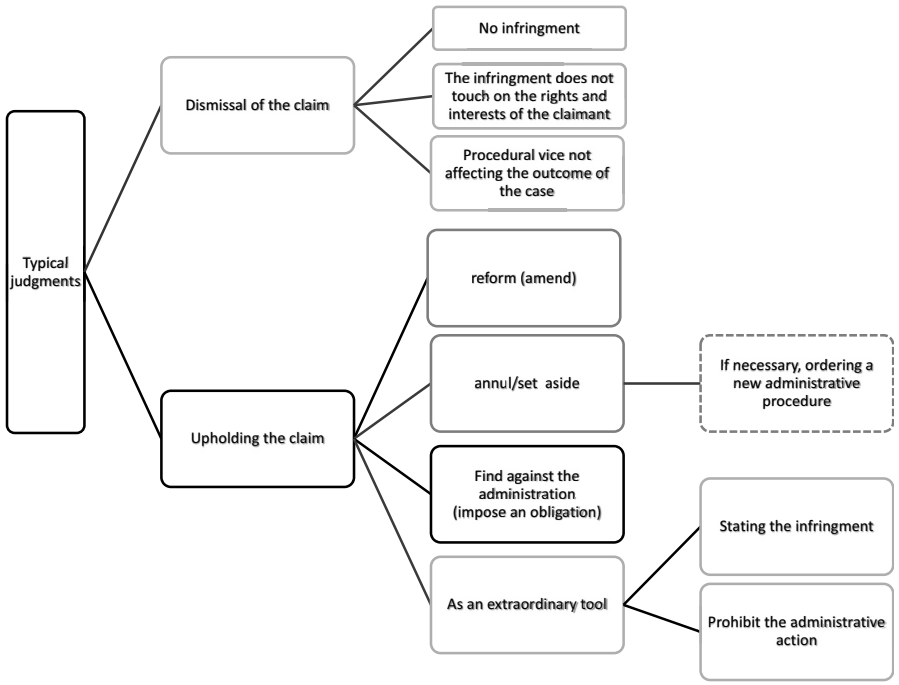
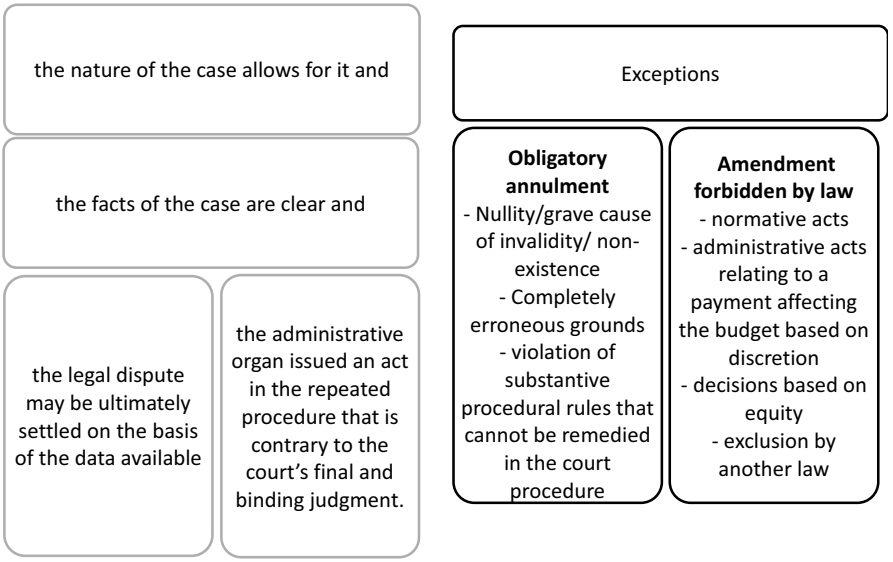
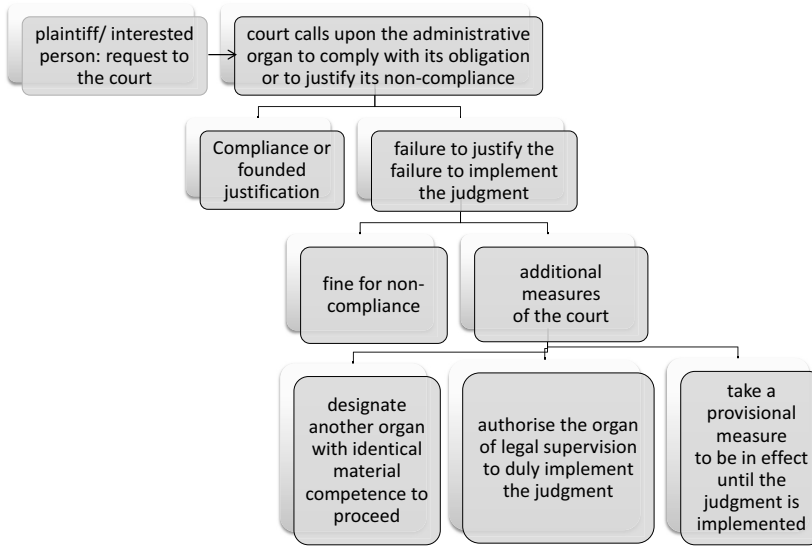
Appendix



Ius reformandi



The procedure to enforce compliance with a judgment ordering a new procedure or establishing failure to act



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Role of the Human Rights Ombudsman in Ensuring Good Administration in Slovenia[1]

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ABSTRACT

According to the Constitution of the Republic of Slovenia and the Human Rights Ombudsman Act, the Slovenian Ombudsman is established to protect human rights and fundamental freedoms in relation to public authorities. It is important that the Ombudsman not only complies with the provisions of the Constitution and international legal acts, but that when intervening, the Ombudsman may invoke the principles of fairness and good administration. The purpose of the article is to contribute to the understanding of good administration and related circumstances for the respect or violation of human rights. The article is based on the idea that by applying the principles of good administration, public authority undermines the public belief that bureaucracy is an end in itself and is in a dominant position. With these principles, public authority focuses on parties which realise their rights and enjoy their freedoms through the principles and postulates of a democratic society. Both theoretical and empirical research methods were used in the preparation of the article. The analysis of complaints to the Ombudsman aimed to verify the compliance of normative, theoretical bases with actual practice, and to establish the basis for evaluating the existing model of the Slovenian Ombudsman, all in the context of the study of good administration. The results together with theoretical findings facilitated the verification that in practice, public authorities most frequently violate the principles of good administration and that the Ombudsman may significantly contribute to good administration within their powers. The findings of this article are an original contribution to understanding ombudsmen and their role in different countries.

Keywords: good administration, human rights, ombudsman, public authority, Slovenia

JEL: H38, K38

1 The article stems from the doctoral dissertation of Kornelija Marzel, titled Analysis of Human Rights Ombudsman Institutions with an Emphasis on Legality and Legitimacy, defended at the Faculty of Administration of the University of Ljubljana on 15 September 2016 under the mentorship of assoc. prof. Mirko Pečarič, PhD, and prof. Polonca Kovač, PhD.

1 Introduction

The Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) as an institutionalised informal form of human rights protection was introduced to our legislation with the Constitution of the Republic of Slovenia (the Constitution). Such an institution had not existed in the previous social system. There was the Council for the Protection of Human Rights and Fundamental Freedoms within which members investigated violations of human rights honorarily and without payment. As a new democratic country was born, its values, human rights and freedoms explicitly stated in the preamble to the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia and the Constitution required special protection.

We learned from the past that mere incorporation of human rights in the highest legal acts is not enough. Efficient and accessible mechanisms to protect human rights must also be provided (Rovšek, 2013). Friendliness, accessibility, informality, simplicity and being free of charge are the characteristics that distinguish an ombudsman from other formal forms of human rights protection. A look to history shows that the first institution of an ombudsman was established in Sweden on the basis of the Swedish constitution from 1809, while the ombudsman actually began practising in 1810.

The ombudsman initially primarily dealt with assessing compliance of public authority with regulations. At that time, legality was the ombudsman's primary assessment standard, while legitimacy, good administration and the protection of human rights followed in subsequent development periods.

In a certain sense, the principles of good administration applied and referred to by the Slovenian Ombudsman are an open framework of common understanding of what is deemed good in relation to public authority, what is accepted as permissible and what is expected as desired in the realisation of goals which fostered the establishment of an individual institute of public authority in view of the context of the social and political situation of the decision making of public authority. By referring to the said principles, fairness is introduced in the work of public authority, since these principles are the framework for the understanding and also restricting behaviour that public authorities must not cross. Good administration is actually the foundation of fairness.

Formal supervision of decisions of public authorities is carried out by appeal bodies, courts and others, while informal supervision is carried out by the Ombudsman. Together, they guide the future work of public authority towards new horizons of legality and legitimacy, and the respect for human rights and freedoms.

The article assumes that the Ombudsman significantly affects the definition and development of good administration. When assessing the work of public authority, the Ombudsman has significant powers, particularly as it does not merely establish whether the administration and other parts of public author-

ities comply with regulations, but, in relation to violations of human rights, also focuses on actions according to the principles of fairness and good administration. The hypothesis that the principles of good administration are not only welcome but an essential supplement to existing principles of the decision making of public authority in terms of a combination of various approaches, especially to protect human rights, is followed by analysis and discussion to study forms of so-called poor administration in Slovenia, and also by taking into account theoretical bases, by recommendations to arrange the principles of good administration in Sloveniade lege ferenda.

The discussion of the topic which is the subject of the article was based on the application of various methods, particularly theoretical but also empirical methods.

To show the actual practice of an ombudsman and the realisation of the model of protection against poor administration, annual reports on the work of the Ombudsman for 2016 and 2017 were analysed, and complaints to the Ombudsman regarding which violations of the principles of fairness and good administration had been established for the two years were studied. The aim was to verify the compliance of normative and theoretical bases with actual practice, and to establish the basis for critically evaluating the model of the Slovenian Ombudsman. Due to the limitation of the article, the analysis only included the national ombudsman. Comparisons with related institutions are recognised as possibilities for further research.

2 Study and results

2.1 Legality and legitimacy

As previously mentioned, the first ombudsmen dealt primarily with illegal behaviour of, at first only, the executive branch of public authority and later also wider. In subsequent development periods, it was widely believed that primarily the courts were meant to supervise legality, and that the supervision by ombudsmen, which are an informal form of the protection of individual against public authority, should, in addition to the aforementioned areas, include the assessment whether the behaviour of public authority was legitimate.

Both legality and legitimacy may be explained within the concept of good administration. This concept is a general term for legal, professional, prudent, fair and decent behaviour of public authorities. Legality means compliance with regulations, while legitimacy means justification, acceptability and fairness of public authority. (Non)Legality is slightly easier to explain, as there are objective criteria for that; legitimacy is harder, which may be deduced from its definition. Teršek (2014, p. 54) labels it as “quality which transforms pure power to justified authority”. The core of legitimacy is composed of the ratio between coercion and free will. In this context, the same author believes that human rights are a “minimum normative standard of justification, acceptabili-

ty and legitimacy of public authority, institutions, rules and binding decisions" (Teršek, 2014, p. 31). The foundation of legality is established with the establishment of public authority, which does not necessarily lay down the foundation of legitimacy. The legitimacy of the behaviour of public authority (determined with regulations, making it legal) is only provided when regulations stem from morality, ethics and customs, which means that they are accepted and respected by society.

As democratic society developed, the actions of ombudsmen moved from the assessment of the legality and legitimacy of the behaviour of public authority to their good administration and respect for human rights. The significance of an ombudsman in human rights protection cannot be denied, as established by Kaučič (2008), Kocjančič (2009), Bavcon (2013), Rovšek (2002), Remac (2013), L. Reif (2004) and others. The said role of an ombudsman is distinctly characteristic of countries without a tradition of democracy, which have to pay special attention to legality and legitimacy, and fundamental human rights and freedoms to establish and maintain democratic standards. The role of ombudsmen in the protection of human rights is not contested anywhere in the world. International promotion of human rights and activities of national institutions for the protection of human rights[2], which, in individual countries, guide, train and educate in relation to human rights, raise awareness of the public and spread knowledge thereof, facilitating the exercise of human rights and reducing their violations.

According to Rovšek (2002), it should be pointed out that almost every "irregularity and procedural error may be defined as a violation of Convention rights, for example in relation to fair proceeding as stated in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Therefore, it is not appropriate to wonder about the significance and role of ombudsmen in the protection of human rights, even in countries with developed parliamentary democracy, where ombudsmen develop standards of good administration and dedicate themselves to new generations of human rights which are not fundamental (e.g. the right to clean environment), contributing to good administration and higher human rights standards.

2.2 Poor administration as a violation of human rights

Democratic development of a country requires decisions by public authority, which are based on legality, correctness, decency, effectiveness and efficiency, and respect the postulates of the rule of law and the principle of good administration. The aforementioned principles are crucial, as public authorities frequently state regulatory framework as an excuse or apology for inactivity in the sense that certain situations are not regulated and that there is nothing that can be done, which is not true, as the general norm that public authority should act professionally and in accordance with the principles of

2 These are national institutions in the field of the promotion and protection of human rights, which operate on the basis of the *Principle related to the Status of National Institutions – The Paris Principle*) adopted by the UN. In 2018, the Slovenian Ombudsman requested to obtain the said accreditation.

good administration is forgotten. The said principles may be the basis of extraordinary solutions in situations not foreseen by regulations (Rovšek, 2002, p. 143). They may be used to solve special situations, circumstances or cases, when, for example, administrative silence is replaced by successful mediation, enabling administrative activity to become legal, legitimate, suitable and efficient public authority (Kovač, 2012).

In good and poor administration, there is a dilemma regarding the standards of such behaviour of public authority. The fact that in Slovenia the phrase "good administration" is only used in the Human Rights Ombudsman Act and the Public Administration Development Strategy 2015–2020 is very interesting. In other countries,the right to good governance, good administration, good administrative behaviour, maladministration and other related terms, which generalise either good or poor governance or either good or bad administration, are used. In this article, good administration is discussed in its narrower sense as part of wider good governance. Poor administration is defined as any questionable behaviour of public authority, which may include administrative errors, or error in ethical or moral aspects (indecency, unresponsiveness, inappropriateness). The main characteristic of poor administration everywhere is that it is not always illegal.

Good administration and the right to a fair trial without error may be referred to when "authorities make the exercise of individuals' rights difficult incorrectly and unjustifiably, without such behaviour being in contravention of regulations" (Grad etc., 1996, p. 331). As previously mentioned, it should be pointed out that good administration and fairness stem from international agreements and international principles: they refer to openness, transparency, accessibility, responsiveness, ethical behaviour, fairness, economy, and effectiveness and efficiency, and in this respect, they do not receive national protection but also international protection.

Ethical rules are the lever of good administration. These are high standards of the behaviour of public authority, which, in a certain sense, supplement and upgrade legal standards. The public expect public authority to behave in a legal and legitimate manner and in line with morality, ethics and customs. In various acts, the standards of good administration are only stated individually and are not substantively improved, which leads us to believe that democratic society and public expectations regarding the behaviour of authorities constantly evolve.

The opposite of good administration is poor administration. The pioneer of its definition in relation to the work of ombudsmen is Richard Crossman who called it maladministration and characterised it with partiality, neglect, carelessness, negligence, delays, incompetence, malevolence and other characteristics (Harlow and Rawlings, 2009).

In 1998, the European Ombudsman shaped the term of good administration as a counterbalance to poor administration (The European Ombudsman, 1999). According to the European Ombudsman, good administration consists of three aspects: material (which comprises legality, equality, objectivity and

others), procedural (refers to the course of proceedings in accordance with procedural rules to protect the rights of clients and efficient decision making) and direct obligations of authorities to clients (particularly requirements for clear and suitable information, friendliness, acknowledgement of errors and apologising for them).

In this regard, it must be emphasised that limited good administration addresses higher expectations than suitable or fair administration which inly includes minimum standards, as found by Addink (2015, p. 44).

Pečarič (2011, p. 535) points out the lack of definition of the content of good administration. It is a legally undefined term which covers "procedural and material elements" which are not necessarily legally enforceable. According to said author, it is used as a standard of "administrative fairness", transparency, openness and clarity of procedures, to correct the quality of the ratio between public authority and citizens, which thus "changes from authoritative and centralised to decentralised and participative functioning of the state" (Kovač and Leben, 2015, p. 4).

Certain authors (Koprić, Musa and Lalić, 2011) state gradualness in the development of good administration: at first, it was defined with ethical standards of behaviour and later became a human right explicitly stated in the Charter of Fundamental Rights of the European Union.

Good administration as a working method "is a mix of entitlements of democratic relations with clients and efficient administration for legally foreseeable and responsible manner of the execution of public authority and public services", as believed by Tomaževič and Aristovnik (2015, p. 2).

It is also essential to increase the possibility of concluding agreements, settlements and mediations, as pointed out by the Ombudsman and discussed in relation to the development of alternative forms of dispute resolution by Remac (2014), L. Reif (2004), Pečarič (2016), Kovač (2014, 2016), Dragos and Neamtu (2014), and others. Good administration could be developed in this way, which "is not only minimum formalism but a participatory and efficient implementation of public policies with active inclusion of individual members of society in public administration" (Kovač, 2016, p. 91).

In reference to all said authors and stemming from findings of theoretical studies, the conclusion is that good administration is based on the principles of legality, openness, transparency, participation, responsibility, efficiency and connection. Prompt response to social needs and equality of both sides, public authority and clients, are key elements of good administration, which is all the essence of modern democratic systems (Lozina and Klarić, 2012). The responsibility of ombudsmen is to contribute with their proposals and recommendations to the formation of the so-called partner relationship between public authority and individuals, and co-shape public authority that will follow legal proceedings (administrative, civil, criminal and other), whose rules and safeguards limit the power of public authorities, and the principles of good administration in a way that respects human rights and freedoms.

2.3 General characteristics, emphases and guidelines of good administration on an international scale

The right to good administration is not explicitly defined in Slovenian legal regulations; only two previously mentioned documents refer to it. Due to the aforementioned reasons, the Slovenian Ombudsman, when establishing violations of good administration, frequently refers to findings of individual experts in this field, and international legal acts which go beyond relating good administration with legal and legitimate behaviour of public authorities. All these procedures of authorities must be carried out with particular sensitivity and in a way that respects personality, the situation and human rights of each individual. For these reasons, international documents which include provisions on good administration are presented briefly below.

European Union: The Treaty on European Union and the Treaty on the Functioning of the European Union both contain provisions on good administration. Provisions on good administration are contained in Article 20 of the Treaty on the Functioning of the European Union (the option to appeal to the European Ombudsman) and in Article 298 of the same document (regarding expectations of an open, efficient and independent European administration), as well as other places.

Article 41 of the Charter of Fundamental Rights of the European Union explicitly acknowledges the right to good administration. The European Code of Good Administrative Behaviour (the European Code) approved at the proposal of the European Ombudsman by the European Parliament, the set of principles of public administration for EU civil servants published by the European Ombudsman in 2012, and the updated version of the European Code from 2015 include ethical standards to be respected by the public administration of the European Union and guidelines on practical actions for better efficiency, transparency and responsibility. The aforementioned documents are not binding but have a dual meaning. On the one hand, they define the culture of the functioning of the EU bodies and Member States when they apply European Union law, supporting citizens in their justified expectations regarding the behaviour of the said bodies. According to the Charter of Fundamental Rights of the European Union, every person has the right to have their affairs handled well by bodies of the EU (and by Member States in situations when they apply European Union law). On the other hand, these acts stimulate Member States to create conditions and circumstances for good administration within their borders.

The adoption of the Law of Administrative Procedure of the European Union proposed to the European Commission by the European Parliament in 2013 and in 2016 with the Resolution[3], which would contribute to good administration, as the rules of administrative law would be codified. Certain procedural rules and rights would be available to persons who encounter EU administration, the rules of good administration would be included in a single act (and

3 The Resolution with Recommendations to the Commission on a Law of Administrative Procedure of the EU (2012/2024(INL)) adopted on 13 January 2013 and the Resolution for an

not various sources like they are now), and the legitimacy of the EU and the confidence of citizens in its administration would strengthen. The adoption of the act would facilitate convergence with national administrative law and affect the standards of good administration in national environments (European Parliament, 2013). It should be noted, however, that the formal procedure for the adoption of the EU administrative law has not yet begun and that the proposal of the European Parliament has only a non-binding nature of the recommendation.

Council of Europe: In 1977, the Committee of Ministers adopted the Resolution on the Protection of the Individual in Relation to Acts of Administrative Authorities (77) 31.[4] Its key purpose was to protect individuals against authoritarian behaviour of administrative authorities. In 2007, the Committee of Ministers further adopted the Recommendation CM/Rec 7 on good administration[5] the appendix to which contains the Code of good administration with a very detailed description of the standards of good administration. None of the said acts is binding for Member States of the Council of Europe, but they urge them to provide good administration, which may be done by adopting suitable standards and establishing a system to measure their performance. All these activities would increase responsibility, the results of administration would improve, the satisfaction of individual would grow, the role of administration would strengthen and the confidence in its work would be boosted.

The Venice Commission (European Commission for Democracy through Law, 2011, p. 6) places good governance and good administration in a set of sustainable development theories with the following characteristics: legality, openness, transparency and responsibility, fairness and equality, the use of counselling and participation mechanisms, effectiveness and efficiency, clear, transparent and useful legislation, consistency and clarity when designing policies and high standards of ethical behaviour.

2.4 Good administration in national legislation

Slovenian legislation explicitly states the term good administration only in one legal act, i.e. the Human Rights Ombudsman Act (ZvarCP), Article 3 of which stipulates that "In their work, the Ombudsman shall comply with the provisions of the Constitution and international legal acts on human rights and fundamental freedoms. When intervening, the Ombudsman must invoke the principles of equity and good administration". Equality is one of the fundamental constitutional principles. Together with the principles of a legal and social state, it means the basis of fairness in society. Within the aforementioned intervention, the Ombudsman may propose exceptional, sensible and suitable solutions, while remaining in the zone of legality and equality before the law, and recommend amendments to legislation. The Ombudsman con-

open, efficient and independent European Union administration (2016/2610(RSP)) adopted on 9 June 2016.

4 Resolution (77) 31 on the Protection of the Individual in Relation to Acts of Administrative Authorities (Council of Europe, 1977.

5 Recommendation CM/Rec 7 on good administration (Council of Europe, 2007)

tributes to informal practices of the behaviour of public authorities to become legally binding, which may occur in situations when the Ombudsman recognises injustice in failure to comply with the principles of good administration and therefore, proposes an act that makes good administration binding.

The term good administration is also defined in the Public Administration Development Strategy 2015–2020 which states on page 3 that "citizens as business entities need a flexible and responsive public administration which will behave in a transparent, professional and responsible manner, and comply with the principles of good administration". The Strategy foresees public administration to be modernised so that it will comply with the principles of good administration. Good public administration should contribute to general welfare and boosting the confidence of the public in its work. As elements of good administration, the Strategy states individual principles and values: transparency, responsibility, participation and others. The said elements refer to the rights citizens must have in relation to public services , some of them are included in the Constitution, procedural rules which regulate individual legal fields, in the Public Employees Act, the Code of Conduct for Civil Servants, the Code of Conduct for Civil Servants in State Bodies and Local Community Authorities, and elsewhere.

This brings up the question about the content of good administration. According to Pečarič (2008, p. 202), "the principle of good administration may be explained as the umbrella principle of the whole public administration (or the public sector) to behave according to the principles of legality, legal certainty and predictability, political neutrality, focus on users, openness and transparency, quality, effectiveness and efficiency, and should not only include the protection of human rights and fundamental freedoms, but also prudence, effectiveness, efficiency, proportionality, rationality and responsiveness of the functioning of public administration". According to the Slovenian regulation of the Ombudsman, good administration is available in the broadest sense of the word; its infringement is not necessarily a violation of regulations. This may also be deduced from Article 45 of the ZVarCP, which stipulates that the Ombudsman provides state authorities, institutions and organisations with public authority with proposals to improve their operations and treatment of clients. However, the Ombudsman may intervene in cases of poor administration, regardless of their primary task (to protect human rights), since good administration is crucial for the exercise of human rights and freedoms.

2.5 Analysis of forms of poor administration in the practice of the Slovenian Ombudsman

The subject of the Ombudsman's work is the protection of human rights and fundamental freedoms which are violated by illegal and illegitimate behaviour or poor administration, which is not studied and established by the Ombudsman, as they are limited to public sector bodies that carry out the tasks of public authority. According to the Constitution and the ZvarCP, the Ombudsman supervises state authorities, local self-government authorities and holders of public authority.

Within the scope of the analysis, reports on the work of the Ombudsman for 2013, 2014, 2015, 2016 and 2017 were studied, particularly cases and complaints regarding which the Ombudsman established violations of the principles of good administration and fairness in 2015, 2016 and 2017.

The research showed the following limitations:

- a large number of complaints handled by the Ombudsman, over 3,000 per year on average;
- the system of concluding justified complaints by stating the type of the violation established and the violator was only introduced in 2015, which prevents retrospective comparisons;
- the manner of concluding complaints with a description of the established violation of the principles of good administration or fairness, which sometimes required a physical insight in a case prior to the capturing and analysis of data, which was followed by uniform recording on a pre-prepared form;
- the Ombudsman's not completely clear and focused recommendations on how a public authority should behave to comply with the principle of good administration, which could significantly contribute to the content of the said principle.

2.6 Analysis results

Annual reports on the work of the Ombudsman for the term of the current Ombudsman Vlasta Nussdorfer (2013–2017) show the following data on closed cases either handled at the Ombudsman's initiative or on the basis of received complaints. The closed cases are all cases handling of which was completed with the end of each year.

Table 1: Ratio between the number of all closed and justified cases by years*

Year / Cases	2013	2014	2015	2016	2017
Closed	3737	3181	3008	2722	2627
Justified	893	684	457	357	386
Level of justification	23.9%	21.5%	15.2%	13.1%	14.7%

* The data do not include the field of the National Prevention Mechanism.

Source: annual reports on the work of the Ombudsman for 2013, 2014, 2015, 2016 and 2017

The level of justification, i.e. in which the Ombudsman established irregularities, violations of human rights and behaviour in contravention of the principle of good administration, has been around 15 per cent for the past three years. Prior to that, the level of justification had been higher. However, it was established that it was particularly down to the fact that the Ombudsman established a new working method and a system of concluding complaints

in 2015 in which the type of violation and the violator (authority) are recorded in each justified case. The aforementioned findings will facilitate detailed analyses, comparisons and more accurately focused recommendations of the Ombudsman.

Justified cases in which violations of the principles of good administration and fairness were established are shown below, at first in absolute numbers (Table 2) and then in shares (Table 3). They are related to this article, so only these established violations are compared. It is crucial to take into account the fact that such a comparison and analysis are not possible for previous years, since justification was established and recorded only generally, which did not enable the actual situation regarding the extent of a certain problem or the number of individual violations to be shown.

Under current regulation, the results of the analysis allow consideration of urgent changes to legislation and existing practice of the functioning of public authorities, particularly where violations occur most frequently.

Table 2: Ratio between the number of all violations and established violations of the principles of good administration and fairness*

Year / Violations	2015	2016	2017
Good administration	63	78	114
Fairness	3	14	15
All**	504	374	446

* The data are shown without the field of the National Prevention Mechanism.
** The data signify total violations of human rights established in individual years.

Source: annual reports on the work of the Ombudsman for 2015, 2016 and 2017

The article also shows the importance of the comparison of the shares of all violations and violations of the principle of good administration by years.

Table 3: Ratio between the share of all violations and established violations of the principles of good administration and fairness*

Year / Violations	2015	2016	2017
Good administration	12.5%	20.8%	25.56%
Fairness	0.59%	3.7%	3.36%
All	100%	100%	100%

* The data are shown without the field of the National Prevention Mechanism.

Source: annual reports on the work of the Ombudsman for 2015, 2016 and 2017

The urgency of further research of violations of the principles of good administration and fairness is notably highlighted, as it was established that public authorities most frequently violate these principles related particularly to the

right to a fair trial. To understand the data shown in the article (limitation to individual years and violations), it should be explained why the numbers of justified cases, violations and violators do not match. More cases handled included the identification of several violations and violators. The answer also lies in the circumstances of the work of the Ombudsman (already presented) and public authorities. They carry out many demanding, diverse and related tasks, and the fact of frequent and insufficiently thought out amendments to legislation extending to fields of work of various authorities may not be ignored either.

Also important is the study of cases handled by the Ombudsman at their own initiative, in which violations of the principle of good administration were established, as shown in Table 4.

Table 4: Ratio between violations of good administration and the manner of procedure instigation

Year / Procedure	2015	2016	2017
Upon received complaint	62	76	108
At own initiative	1	2	6
Total	63	78	114

Source: own

Regarding the violation of fairness, all justified cases were handled on the basis of received complaints; the total number of such violations in 2015, 2015 and 2017 is 32.

The analysis further researched the segment of violators of the principles of fairness and good administration (Table 5).

Table 5: Violators of fairness and good administration by years

Year / Violator	2015	2016	2017
State administration	45	50	79
Other state authorities	6	4	9
Local self-government	10	7	11
Holders of public authority	2	15	27
Other	0	2	3

Source: own

The results of the analysis in the years in question show that all justified cases (and violations) handled by the Ombudsman most violations were violations of the principle of good administration, i.e. unsuitable cooperation and coordination between authorities, failure to reply to received letters (ministries,

inspectorates, mayors), unsuitability, lack of comprehension and lack of harmonisation of provided information, lengthy decision-making procedures, unresponsiveness of authorities, delays in procedures, failure to fulfil promises and commitments, unclear competences and powers of individual authorities and institutions, failure to adopt internal acts, failure to fulfil the obligation to explain, and others. Also important is the finding that shows that the share of cases of established violations of the principle of good administration has been increasing with years, which is shown in Table 5, and that the highest share of violators are from state administration which includes ministries, bodies affiliated to ministries, government services, administrative units and other state administration authorities that carry out the tasks of state administration at the local level, such as branches of inspectorates, defence and land survey services, financial administration and others.

In the cases and complaints in question, the Ombudsman addressed to competent authorities their specific proposals and positions, which included clearly defined established irregularities and violations, proposals to eliminate the existing situation and proposals for suitable behaviour in the future. Generally, the Ombudsman's proposals for potential amendments to legislation and improvements to existing practices of the authorities towards good administration were provided in relevant annual reports on the work of the Ombudsman, the realisation of which is reported and discussed in the next annual report.

2.7 Other issues related to the findings of the analysis

Despite limitations, the results of the analysis are representative and obtained in this manner for the first time. Together with theoretical findings, they facilitate verification of how public authorities carry out their mission and powers, and follow the Public Administration Development Strategy and postulates of the modern democratic social system, while taking into account the principle of good administration. The results are the substantive basis of the definition of good administration and of its potentially greater inclusion in the legislative framework. The principles of good administration also include broader principles, some of which are part of the Constitution and individual procedural regulations, while others are such that failure to comply with them is not necessarily a violation of legal regulations.

The information that, among all potential violations and irregularities, the Ombudsman established most violations of the principles of good administration most frequently caused by state administration authorities may be explained by the fact that administrative procedures are the most frequent legal proceedings most individuals are involved in and in which decisions are made by state administrative authorities. It is important that the Ombudsman's identification of violations of the principle of good administration comprises irregularities which are a violation of legal regulations (e.g. exceeding the statutory deadline to issue a decision) and those which are not necessarily such a violation. Both cases undoubtedly refer to the behaviour of public au-

thorities which is in contravention of the principle of good administration; however, legal remedies are available to individuals in cases of violations of legislation before national and international public authority. Most unsuitable behaviour of public authorities, which is not unlawful but is in contravention of the principle of good administration, remains unsanctioned but still poses inconveniences and difficulties, and is a violation of the principle of good administration and frequently prevents the exercise of certain human rights and freedoms. Therefore, the Ombudsman's power referred to in Article 45 of the ZVarCP, which stipulates that the Ombudsman may submit proposals for improving operations and the treatment of clients to state authorities, institutions and organisations (including municipalities, taking into account their position and tasks related to public authority) with public authority, is all the more important.

3 Conclusion

While there are many rules, principles and procedural requirements, many violations of human rights still occur in decision-making procedures on the rights, obligations and legal entitlements of clients, and in the provision of goods and services, as established by the Ombudsman. These arise not only from illegal and illegitimate behaviour of public authorities but are frequently the consequence of behaviour of public authority that is in contravention of the principle of good administration.

The Ombudsman was actually established due to the need to limit public authorities' self-will and for them to perform their functions in a way that ensures legality, legitimacy, good administration and respect for human rights and freedoms. The findings of the Ombudsman are a reflection of the actual needs of the people of Slovenia, and the Ombudsman's success stories are alerting to, and eliminating, actual violations of public authorities.

The research shows that the Ombudsman in their work records violations of the principle of good administration more frequently than other potential violations. Also, in relation to the efforts of the European Ombudsman to establish good administration, the instruction of the Slovenian Ombudsman to refer and introduce similar standards in the work of public authority is particularity important. The principle of good administration supplements existing systems, as it legitimises the purpose of the decision making of public authority. Such systems may be formally legal without it but are in contravention of good administration and as mentioned, may be a violation of the right to a fair trial according to the ECHR.

On the basis of what is explained in the article, it may be confirmed that the institution of the Ombudsman significantly contributes to the definition and development of good administration. When assessing the work of public authority, the Ombudsman has significant powers, particularly as it does not merely establish whether public authority complies with regulations, but, in relation to violations of human rights, also focuses on actions according to

the principles of fairness and good administration. Therefore, the Ombudsman does not only eliminate violations and systemic irregularities with their recommendations, but attempts to change the behaviour of public authorities towards new horizons of good administration over a certain period. Alternative forms of dispute resolution, concluding agreements, settlements, mediations and the implementation of the principles of a participatory society are also being pursued .Many problems, irregularities, violations and disputes could be resolved merely by individuals having the opportunity to say how they see things, i.e. being actively included in development and resolution of their situation.

The contribution of the Ombudsman to the development of modern good administration is significant. However, shifts in this direction do not depend only on the ombudsman but on public authority, i.e. whether they see the sense of the Ombudsman's findings, proposals, recommendations and positions, and the potential for good administration to develop, which is crucial to ensuring human rights and freedoms.

The objective of the work of the Ombudsman is to achieve the elimination of violations; therefore, the Ombudsman strives for amicable resolutions with settlements, mediations or other forms of alternative solutions. In this field, the Ombudsman's activity could be enhanced, particularly in light of the finding that a combination of recommendations[6] and powers of public authority has proven in practice rather optimal. The European Ombudsman strives to achieve that the standards of good administration be introduced to the work of EU civil servants. Therefore, the instruction to refer to, and introduce, similar standards to the work of the public sector in Slovenia is sensible.

Perhaps we should consider adopting a code of good administration by civil servants in Slovenia; prior to that, however, a detailed analysis of the actual situation should be carried out in relation to the findings of the Ombudsman and other similar supervisory institutions. Defining the content of the standards of good administration is essential for the establishment of good administration which must be defined as better legislation and part of broader good governance. The option to directly refer to the right to good administration referred to in Article 41 of the Charter of Fundamental Rights of the European Union,[7] although Slovenian legal regulations do not explicitly define it.

6 According to Article 7 of the ZvarCP, the Ombudsman may address proposals, opinions, criticisms or recommendations to competent authorities, which are obliged to discuss, and reply to, them. In this case, the nature of the Ombudsman's powers is recommendatory. According to Article 23a of the Constitutional Court Act, the Ombudsman may address a proposal to the Constitutional Court for a review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority, if they deem that a regulation or general act issued for the exercise of public authority encroaches unacceptably on human rights or fundamental freedoms. In this case, the Ombudsman's powers have the power of public authority.

7 Article 15 of the Constitution of the Republic of Slovenia stipulates that no human right or fundamental freedom regulated by legal acts in force in Slovenia may be restricted on the grounds that this Constitution does not recognise that right or freedom or recognises it to a lesser extent.

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Effectiveness of Judicial Protection against Administrative Silence in the Czech Republic

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ABSTRACT

This paper is devoted to the issue of judicial protection in case of (or against) administrative silence (inactivity) and its effectiveness on the case study of the Czech Republic. The aim of judicial protection against administrative silence is to help solving or terminating administrative silence quickly, otherwise, an imaginary vicious circle is created. The purpose of the paper is to verify whether judicial protection is indeed effective by surveying the related legislation and court practice (especially the length of proceedings) dealing with the so-called inactivity. The methods of analysis applied are normative analysis, literature review, statistical analysis of decision-making activities of courts and deduction. Our findings establish that due to the excessive length of court proceedings and incomprehensible legal regulation it is difficult to view the judicial protection against administrative silence as being a speedy and effective instrument of remediation of inactivity on the part of administrative authorities. The results can serve as a ground to compare the situation with other similar countries and to exchange best practices.

Keywords: *administrative silence, administrative justice, constitutional court, effectiveness, judicial protection, Czech Republic*

JEL: K41

1 Introduction

This paper deals with questions connected with judicial protection in case (or against) administrative silence (inactivity) and its effectiveness on the exam-

ple of the Czech Republic. The basic aim of judicial protection against inactivity is to solve public administration inactivity quickly and effectively. The main purpose of this article is to verify whether the judicial protection against administrative silence can be seen from the point of view of person affected by the silence as a protection, which is provided quickly, clearly and effectively. Therefore we analyze the related legislation and court practice with an emphasis on analysis of the length of the court proceedings in cases of so-called inactivity action, which is the most important judicial mean of protection against public administration inactivity. We also focus on the theoretical context of the administrative inactivity, historical context and partly on remedies against administrative silence provided by public administration itself. The methods of analysis of legal requirements of national legislation, normative analysis, literature review, deduction and statistical analysis were used to create this paper.

2 Public administration as an activity...

Public administration tends to traditionally (in the central European interpretation) be perceived as a dual phenomenon. The said duality includes an organizational (static) and material (dynamic) element of public administration.[1] Both aspects are closely interconnected with one another. The existence of public administration would lack a purpose without content, and such content is activity.

Public administration can be perceived as a purposely built organizational structure, the function of which is to provide for the exercise of public authority and administration.[2] Public administration is based upon activity and its potential inactivity basically negates the said defining feature. However, here we do not mean cases of legitimate self-restriction in the acting of public administration, but rather, a breach of the obligation to apply prescribed procedures, within a certain (reasonable) time (Skulová et al., 2017, p. 248).

We base this reasoning upon the well-known thesis of E. Forsthoff, according to which public administration can indeed be described, but it cannot be clearly and completely defined. We will not attempt a more detailed definition of public administration as an activity either. We thus base this work upon the fact that public administration consists in the intentional and purposeful administrating of public matters and the achievement of public objectives, in the public interest, whereby it is carried out primarily by public entities and with the application of public authority methods and means.

Public administration is created in order to function and be active wherever its activity is expected. We should add that this must be activity that is not random, but rather, it must be of a long-term and continual nature, whereby

1 Of the German literature in regard to (not only) this issue, see Mayer, 1914, Ipsen, 2007. In the case of Austria, Raschauer, 2003. In the case of the Polish literature compare the publication of the prominent representative of the doctrine Starościak, 1969.

2 See Craig, 2012.

we get to the essence of the legitimate expectations[3] and the predictability of public administration.[4] Any inactivity thus also has such negative connotations, i.e it can establish legitimate expectations in situations, where public administration should be active.

The said facts about functioning and active public administration reflect the expectations of society in regard to the fulfillment of goals, tasks and functions of public administration. That also finds its expression in the legal anchoring of the means of protection of the rights of individuals, but also the protection of the public interest in the fulfillment of the said tasks and functions. For the indicated reasons, a relatively broad palette of individual means has been created by which individuals can demand the protection of their rights in the event that these have been negatively encroached upon through the activity, or through the inactivity, of public administration.[5]

Public administration, thanks to its broadly perceived subject matter, which is public matters, is expressed outwardly in certain typical forms, which, however, are growing broader in the course of time and through the development of public administration. It is characteristic for the predominating part of central European theory that a significant portion of its attention is comprised of so-called forms of activities, otherwise known (through foreign languages) as *formy działenia*[6]or *Handlungsformen*. The central European doctrine historically defines public administration as an activity through detailed concretization and analysis of forms in which, specifically, the activity of public administration is carried out. However, for the purposes of this article, we will not characterize them any more broadly. We will merely add that, through them, public administration impacts upon the daily life of persons, for example, by issuing (secondary) legal regulations, making decisions on rights and obligations, taking de facto actions – orders ordirect interventions, issuing measures of a general nature, or entering into public contracts. These indicated forms, or their definition, are key not only in terms of activity and setting a procedural framework for the realization thereof, but also in the case of inactivity. The individual means of protection against inactivity offered legal order can be applied according to what the specific case of inactivity is, or in what procedural form the inactivity occurred. Understandably, this also applies to cases of court

3 The case law has, in regard to inactivity and predictability, expressly stated that legitimate expectations are established not only by the activity of public administration, but also by its inactivity. According to the extended branch of the Supreme Administrative Court (compare the resolution dated 21 July 2009, file no. 6 Ads 88/2006-132, no. 1915/2009 Coll. of the Supreme Administrative Court) "*administrative practice establishing a legitimate expectation is constant, cohesive and long-term activity (or potentially also inactivity) on the part of bodies of public administration that repeatedly confirms a certain interpretation and application of legal regulations. The administrative authority is bound by such practice. It can be changed if the change is made going forward, affected entities have the option of acquainting themselves with it, and it is duly justified by serious circumstances.*".

4 In terms of the legal aspect, these principles are expressly grounded in § 2 (4) of Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended (hereinafter the "Code of Administrative Procedure").

5 More comprehensively in regard to (not only) this issue from the Czech environment, compare Skulová, Potěšil, et al, 2017.

6 In regard to this issue, comprehensively in the Polish doctrine, see Błaś, Boć, Stahl, Ziemski, 2013.

protection against inactivity, which is not of one universal protective nature designed for all the forms of public administration acitvity.

At the start of the 20th century, J. Pražák defined (public) administration as "*activity sustained with the lasting purpose of managing whichever matters*" (Pražák, 1905, p. 1). It must be noted that this definition from the year 1905 is, even currently, still being presented and remains unsurpassed. In 1907, J. Hoetzel spoke of police activity and stated that public administration consists in "*positive care for the welfare and common good of the population (Wohlfahrtpolizei)*" (Hoetzel, 1907, p. 4). It is evident from that which is indicated that public administration was and continues to be based upon intentional and continual activity, whereby such activity is to have a positive quality.

That historical era provides us with the perhaps relatively interesting finding that the theory of that time basically did not concern itself with the issue of the inactivity of public administration. The legal regulations of that time did not contain as many instruments of protection against inactivity as there are today, either. However, undoubtedly, public administration did see inactivity a hundred or more years ago. Nevertheless, is it not precisely the multitude of various means against inactivity that we know today that is paradoxically one of the reasons for which inactivity does nevertheless occur? Does the knowledge of the existence of the multitude of correctional means not lead to a situation where inactivity can be looked at more benevolently, because when it does occur, it can be remedied just as any other shortcoming? And, ultimately, in the case of an absence of means of protection against inactivity in this historical era, the situation of inactivity was more burdensome, and for that reason it was also more exceptional, because the inactive administrative authority could not rely on such means.[7]

During the period of socialist state administration after World War Two, the attention of theory and legal regulations was not focused on inactivity either. The possible inactivity of state administration could have, at that time, been intentionally applied as an instrument against persons who were inconvenient to the regime of the time. It thus follows that the means of protection against inactivity on the public administration level were basically absent.[8]

In terms of the focus of this article, it must be noted that even judicial protection against inactivity on the part of public administration was excluded for a long time. The original Austrian[9] administrative justice and then the adopted

7 However, it is necessary to mention the difference in the conditions and requirements in regard to the exercise of public administration in modern society, where inactivity need not, by far, be rooted only in a passive approach on the part of the administrative bodies, but also in the intricacy of the conditions, including the relevant legal regulations, and the complexity of the expected result of activity, and the demanding nature of the process that is to lead to it.

8 And this was until 1968, when the legal regulation of protection against inactivity on the part of public administration was set out (but in only a very general and brief manner) in § 50 of the then-current Code of Administrative Procedure No. 71/1967 Coll.

9 See (Austrian) Act No. 36/1876 Coll., on the Establishment of the Administrative Court.

Czechoslovak[10] administrative justice did allow for judicial protection, but exclusively against a (already issued) decision.[11]

This negative situation basically lasted until 31 December 2002, because the Code of Administrative Justice came into effect on 1 January 2003. Nevertheless, in the 1990s, this explicit lack of legal regulation of judicial protection against inactivity to a certain extent was compensated for by the Constitutional Court, which subordinated it under the category of an "other encroachment" upon the rights of an individual, which we will address further in the text below.

3 … and inactivity of public administration

As much as inactivity on the part of public administration is not an isolated phenomenon in today's Czech Republic, it is astonishing that it is basically on the periphery of the interests of theory. As a monograph, the issue of inactivity was addressed by K. Frumarová in 2012,[12] while a relatively representative anthology from a conference focusing on inactivity on the part of public administration comes from the same time period.[13] If we disregard textbooks,[14] the attention of theory is not focused on the issue of inactivity as such or attempts at preventing it or a comprehensive approach in dealing with it. Theory tends to rather focus on the separate individual means or instruments of protection against inactivity, specifically those that the law allows to be utilized in cases where inactivity has already occurred, and thus an instrumental approach rather tends to be applied. These are *ex post* means, although we can also find several means of a preventive nature, such as the setting of (general or entirely specific) deadlines for the issuance of a decision,[15] the

10 See (Czechoslovak) Act No. 3/1918 Coll., on the Supreme Administrative Court and on the Handling of Competency Conflicts, which was amended by Act No. 164/1937 Coll., on the Supreme Administrative Court. In the 1950s, the concept of administrative justice was (in line with the Soviet model of the time) abandoned and partially renewed after 1991, whereby the true renewal of administrative justice occurred only from 2003 on.

11 See the decision of the Supreme Administrative Court dated 14 March 1936, file no. 11600/36, according to which an administrative court cannot provide parties protection against inactivity on the part of administrative authorities, or, congruently, the decision dated 22 August 1938, file no. 1764/35.

12 See Frumarová, 2012.

13 See Kadečka et al., 2012.

14 See Skulová, 2017.

15 See § 71 of the Code of Administrative Procedure and the general requirement of the speedy handling of matters according to Art. 6 (1) and (2) of the Code of Administrative Procedure.

setting of a deadline for the termination of liability for a minor offences,[16] or the fiction[17] of (a positive or negative) decision.[18]

Despite the fact that inactivity is perceived as negative, "*it can, in cases specified by the law, have the same legal consequences as activity on the part of public administration would have*" (Frumarová, 2012, p. 34). Inactivity can present with not only a negative aspect, but also a constitutive aspect. In view of that, for example, the Polish administrativist J. Starościak posed the question of whether inactivity may perhaps be a peculiar form of activity on the part of public administration. Inactivity on the part of public administration is a relatively complicated phenomenon and cannot be perceived as only negative without further examination. In many cases, inactivity can have positive effects for the addressees of public administration, both in terms of a lack of punishment of the perpetrator of a minor offence, as well as the acquisition of a certain right or at least the acquisition of the belief that public administration will tolerate or put up with a certain situation.

Inactivity can be generally divided up, according to its expression, into delays, which is a less serious form of inactivity[19] and absolute inactivity.

The first of these is when there are delays in proceedings that are currently under way (already commenced) and have not yet been concluded. An administrative authority is dilatory within the proceedings. It does act, but with long intervals in time. The case law[20] shows that unreasonable and impractical acts by an administrative authority, for example, with the goal of intentionally drawing out the proceedings, can be characterized as inactivity. Redundant acts that do not reasonably and practically lead to the achievement of the purpose, primarily to the ascertainment of the facts of the case significant for the matter, can also be assessed as inactivity.

A specific category is comprised of cases where an administrative authority is obligated to conduct a certain proceeding, but already delays its commence-

16 See § 30 of Act No. 250/2016 Coll., on Liability for and Proceedings on Offenses.

17 With the fiction of issuing a decision in the situation when the administrative body does not issue a decision within the statutory time limit are connected certain risks that cause the general introduction of these fictions to legal order seems not to be an ideal solution. For example, in the case of a fictitious negative decision, the whole problem can be transferred to a superior administrative body which, due to the inactivity of a subordinate body, may be overwhelmed by a remedy against a negative decision, and the problem won´t be really solved. On the other hand, a positive fiction is connected with the problem of sufficient protection of the public interest. There may be situations where an administrative body fails to issue a decision in a situation where the decision should be negative. This could lead to the approval of, for example, controversial building projects, only thanks to the overhead of the administrative body.

18 See § 9 (3) of Act No. 123/1998 Coll., on the Right to Information Regarding the Environment, as amended.

19 Nevertheless, even according to Art. 38 (2) of the Charter of Fundamental Rights and Freedoms of Czech republic, everyone has the right for his/her matter to be handled without undue delays.

20 See the judgment of the Supreme Administrative Court dated 20 December 2009, file no. 7 Ans 2/2009-38.

ment, whereby the proceeding cannot be commenced in any way other than by the administrative authority (i.e. proceedings to be commenced *ex officio*).

A special case is delays caused intentionally by affected persons who, for various reasons (typically to avoid administrative penalties), are not interested in the matter being dealt with by public administration and make efforts by various means (obstructions) to cause delays typically in *ex officio* proceedings or even to paralyze it.[21]

A clearly negative feature of inactivity on the part of public administration is illegal inactivity, i.e. cases where there is no (positive or negative) consequence linked with inactivity and inactivity delays a certain resolution, or does not bring one about.. In a small number of cases, a delayed decision on the part of public administration is often perceived in the same way as a negative decision, or a decision with a result that is unfavorable for its addressee.

Undoubtedly, illegal inactivity is an example of so-called maladministration and a circumstance that can play a negative role in the perception and evaluation of public administration.[22] The requirement of the timely handling of the matter, or the handling of the matter within a reasonable period of time, is a part of the right to fair procedure in the broadest possible sense within its constitutional or European context.

Public administration operates within time and the time factor is reflected in it very strongly. Often, even a justifiable and necessary procedure by the administrative authority (within the scope of procuring underlying documents, the assessment thereof and the showing of evidence), which requires a certain period of time, is perceived negatively by affected parties.

In a number of areas, public administration is not and cannot be a machine for the speedy resolution of individual cases and issuance of decisions. Public administration often deals with cases that are extremely complicated;[23] cases in which there is a conflict between various interests, or cases that require a certain period of time due to their nature. Often, it is necessary to patiently consider the individual interests and to protect and promote the public interest. Therefore, we believe that even the application of elements of com-

21 The Supreme Administrative Court in the judgment dated 10 December 2012, file no. 2 Ans 14/2012-41, No. 2875/2013 Coll. of the Supreme Administrative Court, stated that "*inactivity is an objectively existing state in which the relevant procedural acts have not been taken within the deadlines prescribed by law. However, not all inactivity is attributable to an administrative authority. The provisions of § 71 (5) of the Code of Administrative Procedure … represent the material aspect of assessing such a state; if the origin of ascertained inactivity is in the manner in which it acts as a party in the proceedings, this is not inactivity on the part of an administrative authority and one cannot demand protection against such. The assessment of whether such a situation exists also falls within the powers of the administrative court within the scope of assessing the legitimacy of an action …*".

22 Good administration is also, among other things, according to the Recommendation of the Committee of Ministers of the Council of Europe (2007) 7 on good governance/administration, that which (according to Art. 7 of the Code of Good Administration) fulfills obligations within a reasonable period of time. On the European Union level, we can mention Art. 41 (1) of the Charter of Fundamental Rights of the EU. See Widdershoven, R., Remac, M. (2012) p. 387.

23 A sufficient reason for reasonable delay may be the complicated scope of the procedure, the difficulty of the gathering evidence and the legal difficulty of the case (Posser, H., Wolff, H. A. (2014)).

puterization and so-called e-government will never completely eliminate as certain delay between a request and its handling. However, it can effectively contribute to such delay being truly minimal and purposeful.

However, the key issue is the fact that regardless of whether inactivity consists in objective or subjective reasons on the part of public administration, its negative consequences cannot be passed on to affected persons.[24] For that matter, that is also reflected in the regulation of the basis of liability for harm caused through inactivity. Such liability is of an absolute nature and cannot be relieved of in any way.[25]

4 Role of judical protection against inactivity

It is relatively paradoxical that the majority of means against inactivity - the administrative authority is entitled to take ex officio several types of actions against inactivity of subordinate administrative body[26] - rest once again in the hands of public administration, compared to those offered by judicial control (see details below). That can raise a question regarding the effectiveness of such a legal construction, although its origins were apparently based upon an attempt at finding a speedy, accessible and thus effective solution.

In this article, we address the means of judicial protection against inactivity on the part of public administration, i.e. those instruments that are available to the courts, rather than public administration.[27] This in itself brings about the fundamental question regarding the effectiveness of these means, as the realization thereof outside of the scope of public administration gives rise to an expectation of a speedy, unbiased and objective approach.

24 According to the Constitutional Court, delays that have occurred cannot be excused or justified by anything, and thus, the rationalization that the cause of delays is overwork cannot be accepted under any circumstances. It must be emphasized that citizens cannot, under any circumstances, be made to bear v the technical and organizational problems of the state authorities, especially if it results in a breach of their fundamental constitutional rights (see the ruling dated 12 January 1999, file no. I. ÚS 209/98).

25 See § 2 of Act No. 82/1998 Coll., on Liability for Damage Caused in the Exercise of Public Authority by Way of a Decision or Improper Official Procedure, as amended. As Czech Constitutional Court stated in relation to the inactivity of the courts: "*The delays in the case can not be excused or justified, and in no case can be accepted a court's reasoning that the cause of the delays is the congestion of the court senate. It should be emphasized that technical and organizational problems of the state authorities can not be transferred on citizens in any way"* (ruling of the Constitutional Court dated 12. January 1999, file no. I. ÚS 209/98). This conclusion of the Czech Constitutional Court about objective reasons for delays is also valid for inaction of public administration.

26 See § 80 of Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended: "*A superior administrative authority may: a) order the inactive administrative authority to také appropriate action within a predefined timeline to remedy the situation or issue a decision; b) take the case over by resolution and decide in lieu of the inactive administrative authority; c) through a resolution, appoint another administrative authority within its administrative district to conduct the procedure; or d) through a resolution, adequately exceed the statutory timeline for the issuance of a decision, if it may be reasonably assumed that the administrative authority will issue the decision on the case within the exceeded timeline and if such course of action is more convenient for the parties.*"

27 According to the Recommendation of the Committee of Ministers of the Council of Europe (2004) 20 on judicial review of administrative acts, the system of judicial review of administrative acts, or the category of administrative acts being thus reviewed, should also include cases where an administrative act was refused or neglected to be issued (see letter A item 1 and letter B item 1).

We put some general remarks or even expectations that are connected with the judicial protection. If we seek judicial protection it means that inactivity still continues. What does it mean for the courts and their solution? Judicial protection represents subsequent and ultima ratio measure. Therefore shall be effective and helpful. Is that such the practice? Inactivity is examined not by the administrative bodies, but by the (independent) court. Therefore shall be helpful. What is the reality? And the last remark is about (in)comprehensibility of the legal regulation.

The fact that protection against inactivity on the part of public administration is also entrusted to the (administrative) courts in the Czech Republic is one of the prime examples of a system of mutual checks between the individual branches of public authority. In the given regard, inactivity on the part of public administration and the executive branch is subjected to checks by the (independent) judicial branch. That brings with it both a possible tension between the executive branch and the judicial branch, as well as the risk of excessive judicial activism, or, on the contrary, an excessively cautious or reserved approach by the courts.

Although judicial checks in regard to public administration in the Czech Republic tend to be identified as being of an activist nature,[28] there is a tendency to forget that a judicial proceeding is always commenced upon the petition of an affected party seeking for the court to provide it with protection of its individual rights that have been encroached upon by public administration.[29] In the case of inactivity and judicial protection against it, the situation is simpler to a great extent, as the courts "merely" assess whether the contested situation bears the signs of inactivity or not. They do not deal with the matter itself directly. The courts do not determine how the matter is to be decided, but rather, "merely" that a decision is to be made in the matter.

We have already indicated that judicial protection against inactivity in the Czech Republic is being carried out by the administrative judiciary, specifically from 1 January 2003, when the Code of Administrative Justice came into effect.[30]

Nevertheless, thanks to the constitutional rooting of the requirement for the handling of matters without undue delays as set out in Art. 38 (1) of the Charter of Fundamental Rights and Freedoms, during the time prior to the Code of Administrative Justice coming into effect and the establishment of a full administrative judiciary, the role of judicial protection was carried out (as the first and simultaneously last judicial authority) by the Constitutional Court.

28 Cf. Mates, P. (2016). Development of law in the jurisprudence of the Supreme Administrative Court. Právní rozhledy. 3, p. 86.: *„The role of the courts, as at least „co-creators" of law in the case of its development, seems to be a reality at present, regardless of the skeptical or even rejecting reaction of part of the theory…".*

29 See Art. 36 (1) of the Charter of Fundamental Rights and Freedoms, according to which "everyone can assert their rights, through the prescribed procedure, before an independent and impartial court and, in prescribed cases, before a different authority."

30 See Act No. 150/2002 Coll., the Code of Administrative Justice, as amended (hereinafter the "Code of Administrative Justice"). Judicial protection against inactivity is regulated therein (relatively briefly) by way of an action for protection against inactivity in § 79 to 81.

For that matter, that negative fact, and the closely related overloading of the Constitutional Court, also led to a relatively strong step, consisting in the Constitutional Court repealing in 2001 (with deferred effect) as of 31 December 2002 the then-existing legal regulations on administrative justice, including in view of the fact that it did not allow for an adequate form of judicial protection against inactivity within administrative justice.[31] The Code of Administrative Justice therefore does regulate the form of judicial protection against inactivity on the part of public administration.

5 Protection against inactivity on the part of public administration before the administrative courts

Proceedings on so-called inactivity actions are a special type of proceeding, which is carried out within administrative justice. A so-called inactivity action (along with a so-called action for encroachment/intervention)[32] plays the role of a means of protection of rights in cases where the protection of a right cannot be sought (directly) in proceedings on an action against the decision of the administrative authority, which is precisely the case of inactivity. Therefore, by definition, it does not apply to the review of an act that has already been issued[33] or of an encroachment/intervention that has already occurred.

Administrative justice and the protection provided therein are conceived upon the principle of subsidiarity.[34] Administrative justice has its place only in cases when the means offered by the legal regulations governing the procedural steps before administrative authorities can no longer be utilized. A pre-condition for the admissibility of an action for protection against inactivity on the part of an administrative authority is thus the previous and ineffective (unsuccessful) exhaustion of means for protection against inactivity on the part of an administrative authority.[35]

An action can only be filed after the relevant (predominantly superior) administrative authority assesses the utilized means of protection against inactivity and makes a decision on it. Protection through the filing of a so-called inactivity action has its limits given directly within the legal regulations. It does not apply in regard to all possible inactivity on the part of public administration.

31 In regard to this issue, see the ruling of the Constitutional Court dated 27 June 2001, file no. Pl. ÚS 16/99, according to which "*the current regulation of administrative justice shows serious deficiencies in terms of constitutional law. Primarily, some activities of public administration, as well as its potential inactivity, are not under the control of the judicial branch at all.*".

32 The so-called action for encroachment is regulated in § 82 to 87 of the Code of Administrative Justice.

33 For the purposes of reviewing the lawfulness of an (final) administrative decision the applicant can file an action against the decision (see § 65 (1) of the Code of Administrative Justice). This action has a significant role in the judicial review and serves to review the legal and factual findings of the administrative authorities.

34 See § 5 of the Code of Administrative Justice.

35 However, it is not possible to assert a means of protection against inactivity within proceedings before administrative authorities and then immediately submit an action with the courts without waiting to see how the administrative authorities deal with it. In such a case, the requirement of the previous ineffective exhaustion of means of protection would not have been fulfilled and the condition for proceedings on such an action would not be fulfilled either.

On the contrary, it is limited to inactivity in the issuance of (1.) decisions on the substance of the matter[36] or (2.) certifications.[37]

Likewise, an action cannot be filed in those cases where the administrative authority has in fact not issued the requested decision, but as a result of the fulfillment of the conditions set out by a special law, a fiction has been created that a decision of a certain content (positive or negative) has been issued. Likewise, grounds for the action are not given in cases where inactivity is linked with another legal consequence than the fiction of a decision.

The defendant is the administrative authority that is being inactive, according to the action, despite having an obligation to issue a decision or certification.[38] It is not the administrative authority that assessed the means of protection against inactivity (predominantly the superior/appellate administrative authority), but rather, specifically the inactive administrative authority itself.

The deadline for the filing of the action is not set in regard to the entire duration of inactivity on the part of the administrative body, but rather, it is limited to a period of 1 year. If the action is filed after the elapse of such deadline, the court rejects the belatedly filed action. By definition, the deadline for the filing of the action is a procedural deadline and failing to comply with it cannot be excused.[39]

36 The so-called inactivity action can only be asserted in a situation of inactivity in regard to the issuance of a decision that is to establish, change, cancel or bindingly determine a right or obligation and which is simultaneously capable of depriving a party to the proceedings of his/her rights. If an administrative authority is in delay in issuing an act that does not satisfy such requirements, it is not within the powers of the courts operating within administrative justice to provide judicial protection against such "inactivity". Therefore, one cannot successfully demand, in this type of action proceedings, the issuance of a procedural decision, such as a resolution by which the issue of participation in the proceedings is dealt with, or a decision on an objection of bias. Neither is it possible to demand the declaration of an obligation for an administrative authority to generally continue in proceedings. In this type of proceeding, the courts cannot deal with possible inactivity in delivering decisions that have already been issued or delays in forwarding (not forwarding) a file, either, nor can anyone demand the commencement of proceedings ex officio (for example, in regard to a non-entitlement extraordinary remedial measure).

37 This must be real certification. The difference between a certification and a (declaratory) decision consists in the fact that in the case of a certification, it is not dealing with a disputed issue, whereas in the case of a declaratory decision it is. A further difference is seen in the fact of whether it is an act falling within the factual level (an act officially confirming certain facts) or on a normative/legal level (an act bindingly determining that a certain person does or does not have specific rights or obligations). The possibility of judicial protection pertains exclusively to inactivity on the part of an administrative authority in the issuance of a certification, as an identified type of a so-called other act issued within the regime of Part Four of the Code of Administrative Procedure. We should also note that even in the case of inactivity in the issuance of a certification, the requirement of the previous ineffectual exhaustion of the means of protection against inactivity applies.

38 § 79 of Code of Administrative Justice.

39 When determining the commencement of a deadline for the submission of an action, there are two options to base this upon. According to the first of these, an action can be filed no later than within one year after the date on which, in the matter in which the plaintiff is seeking protection, the deadline prescribed by a special law for the issuance of the decision or certification elapsed without success. The second case is a situation in which a special law does not prescribe a deadline for the issuance of a decision on the substance of the matter or of a certification. In such a case, the deadline for the filing of an action commences on the date following after the last act was taken by the plaintiff in regard to the administrative authority or by the administrative authority against the plaintiff. The key issue is not when such last act was taken, but rather, when it entered into the disposition/knowledge of the plaintiff (e.g. when it was notified/delivered to the plaintiff). Such "last act" is, at the same

The courts hear and make decisions on actions against inactivity on the part of an administrative authority as a priority.[40] Possible delays and lags within the scope of court proceedings on actions for protection against inactivity on the part of an administrative authority have significant consequences and understandably decrease the effectiveness of such a means of judicial protection. The case law also states that the purpose of judicial protection is in fact achieved when the inactive administrative authority issues a decision or certification.[41]

The court, when making a decision on a submitted so-called inactivity action, makes the decision on the basis of the facts of the situation ascertained as of the date of its decision. The court first examines, as of the moment of its decision-making, whether the inactivity of the administrative authority exists (i.e. whether it is continuing). The court is obligated to ascertain whether the administrative authority has perhaps issued a decision on the substance of the matter or a certification after the filing of the action. That means that the inactivity of the administrative authority must exist both as of the moment when the action is filed, and also as of the date of the court's decision.

If a so-called inactivity action is found to be justified, the court imposes upon the defendant administrative authority, with its judgment, the obligation to issue a decision or certification within a reasonable period of time. When setting the deadline, the court should duly take into consideration the subject matter of the proceeding, the complexity of the matter, the number and nature of the parties to the proceedings, as well as the phase in which the proceeding is. The judgment of the court does not preconceive the result of the proceeding or the content of the decision or certification in any way. The court therefore imposes only the obligation to issue a decision or certification within the prescribed deadline.[42]

If the court ascertains that the administrative authority had indeed been inactive at the time when the action was filed, but, nevertheless, that it is no longer

time, to be of a certain quality, and, as follows from the conclusions in the case law (see the judgment of the Supreme Administrative Court dated 12 June 2006, file no. 8 Ans 3/2005-107, No. 931/2006 Coll. of the Supreme Administrative Court), "*it is necessary to understand it as a procedural act by a party to the proceedings or by the administrative authority within the administrative proceedings. Such an act is not a mere reminder to take action or a statement by the administrative authority stating that it believes that there are no grounds for it to make further decisions in the matter.*" For example, it includes a petition for the commencement of proceedings, a statement in regard to documents underlying a decision prior to its issuance, an appeal against a decision, a summons for the relevant party to the proceedings to take part in a hearing, the delivery of a decision, a notification of appeal submitted by other parties to the proceedings. On the other hand, the last act within the meaning of this provision cannot be considered to include a reminder or statement by the administrative authority that it does not intend to proceed in the matter any further.

40 See § 56 (3) of the Code of Administrative Justice.

41 See the judgment of the Supreme Administrative Court dated 16 September 2009, file no. 1 Ans 8/2009-62.

42 A somewhat specific situation is one in connection with inactivity on the part of an administrative authority in the issuance of a certification. The question arises of whether the court should merely impose upon the administrative authority the obligation to assess whether it will issue the certification or not, or whether the decision of the court will be more specific in such a case. For more, see the judgment of the Supreme Administrative Court dated 31 October 2010, file no. 2 Ans 1/2009-71, No. 2114/2010 Coll. of the Supreme Administrative Court.

inactive as of the date of the court's decision and such situation has passed, this constitutes grounds for the action to be rejected due to being unfounded. That also applies in cases when the plaintiff had not (yet) been informed of the subsequent issuance of a decision or certification, or had already been notified of the decision or certification and had despite this not withdrawn the action. It is necessary to note that the court is not entitled, within the scope of such proceedings, to declare inactivity that has already passed.[43]

We should add that if the inactive administrative authority does not agree with the judgment of the court by which it has been imposed with the obligation to issue a decision or certification, it can utilize a cassation complaint to the Supreme Administrative Court. The case law has clearly stated that the filing of a cassation complaint does not automatically mean the suspension of the effects of the contested court decision, and it is often in fact otherwise, including due to purely technical reasons, when the file documents are located elsewhere than with the administrative authority.[44]

These preliminary and fundamental limiting circumstances tend to be against effectiveness of judicial protection against inactivity. Nevertheless, this type of proceeding does not constitute a complete exhaustion of the possibilities of judicial protection against inactivity.

According to the conclusions in the case law,[45] which we fully agree with, it is necessary to consider different or "residual" inactivity on the part of an administrative authority than that which is stated above as a so-called encroachment/intervention.[46] This action is connected with (not only)[47] unlawful inactivity consisting in not performing some act other than a decision or a certification. A so-called encroachment/intervention action is subsidiary in nature and covers the residual activity of the public administration, which is not covered by the action against the decision and the inactivity action. The action

43 The inactivity declaration on the basis of inactivity action is not possible, due to fact that the court decides on the basis of circumstances existing at the time of its decision. The court can declare such inactivity only on the basis of a so-called encroachment/intervention action, whereby it determines with its judgment that the encroachment/intervention consisting in inactivity was unlawful. If the action was dismissed because the administrative authority has taken a decision in the meantime, the applicant must for inactivity declaration bring an encroachment/intervention action. In that regard, it would be appropriate to consider amending the law that the courts may, in the event of an action against inaction, declare that the administrative authorities were inactive. Such a judgment could then serve to fairly rapid compensation to the parties, whom was caused harm by inaction.

44 See the resolution of the expanded tribunal of the Supreme Administrative Court dated 24 April 2007, file no. 2 Ans 3/2006-49, No. 1255/2007 Coll. of the Supreme Administrative Court.

45 See the resolution of the extended branch of the Supreme Administrative Court dated 16 November 2010, file no. 7 Aps 3/2008-98, No. 2206/2011 Coll. of the Supreme Administrative Court), according to which „*an action for encroachment protects against any other acts or steps on the part of public administration oriented against an individual that are capable of affecting the sphere of his/her rights and obligations and which are not mere procedural acts technically securing the course of the proceedings*".

46 According to § 82 of the Code of Administrative Justice.

47 The encroachment/intervention action is of generally subsidiary nature and covers all activities of the public administration which are capable of interfering with the rights of the addressees of the public administration and it is not appropriate to file an action against the decision or inactivity action. The scope of encroachment/intervention action is therefore very broad and its use in the field of protection against inaction is just one of many possible uses. In this paper we are concentrating only on inactivity issues.

must be filled within two months of the date on which the plaintiff learned about the unlawful interference and at the latest an action may be brought within two years of the date on which the case occurred.[48]

An example of the said other inactivity is a failure to make an entry in the Real Estate Register by the Cadastral Authority. An action against inactivity cannot be filed against the failure to make the said entry, as this is not an obligation to issue a decision or certification. Protection against such inactivity is thus provided precisely by way of an encroachment/intervention action.[49] An encroachment/intervention action can be for purposes of this paper characterized in a simplified manner as a defence against other forms of activity on the part of public administration excepting issuing a decision or a certification.

On the contrary, a so-called encroachment/intervention action or other action before an administrative court cannot be used as a defense against inactivity consisting in the non-issuance of a normative administrative act, first and foremost due to the fact that judicial checks of the regulation-making of bodies of public administration are not within the powers of the administrative courts, but rather, only within the powers of the Constitutional Court. Nevertheless, protection against legislative inactivity cannot be sought even before the Constitutional Court.[50] An exceptional case in which the Constitutional Court declared unconstitutional inactivity on the part of the legislature was the long-term inactivity of the Parliament consisting in a failure to pass a special legal regulation defining cases in which a lessor is entitled to unilaterally increase rent (the issue of rent regulation),[51] or the long-term inactivity of the Parliament consisting in a failure to pass a special legal regulation that would settle historical assets of churches and religious societies that had been seized by the state (the issue of church restitutions).[52]

6 Effectiveness of so-called inactivity action and its positive and negative aspects

The legal regulations on so-called inactivity actions are relatively brief and do not show a greater degree of formalization than that which is absolutely nec-

48 According to § 84 (1) of the Code of Administrative Justice.

49 See the resolution of the extended branch of the Supreme Administrative Court dated 16 November 2010, file no. 7 Aps 3/2008-98.

50 According to the resolution of the Constitutional Court dated 25 July 1994, file no. I. ÚS 92/94, "*an encroachment by a body of administrative authority by which a citizen's fundamental right is violated cannot be considered to include legislative activity, or the issuance of a generally binding regulation by a central body of public administration within the limits of its powers and authority*". Further, according to the Constitutional Court "*the failure to pass a law having a certain content cannot be, other than in solely exceptional cases, considered a so-called other encroachment by bodies of public authority into constitutionally guaranteed fundamental rights and freedoms. An "other encroachment" by bodies of public authority can be considered to include inactivity on the part of bodies of public authority in cases where the language of the law provides their obligation to do that which the law imposes upon them. However, in the case under review, the constitutional order does not provide the obligation of legislative bodies or the bodies of the executive branch to pass a certain law*" (see the resolution of the Constitutional Court dated 7 September 2004, file no. Pl. ÚS 10/04).

51 Ruling of the Constitutional Court dated 28 February 2006, file no. Pl. ÚS 20/05.

52 Ruling of the Constitutional Court dated 31 August 2011, file no. I. ÚS 562/09.

essary in order for the court to be able to assess the action and make a decision on it. A certain preliminary limit can be the statutory obligation to pay a court fee[53] for a so-called inactivity action. Nevertheless, the legal regulations enable a partial or complete exemption from such fee obligation and also enable the plaintiff to request a representative to be appointed at the expense of the state.[54] The plaintiff does not have to be represented by an attorney in the proceedings and can draw the action up and file it him/herself, whereby the court shall be of assistance to the plaintiff in eliminating any deficiencies in the action.

However, it is up to the plaintiff to assess by him/herself as to whether the contested inactivity on the part of the administrative authority in his/her matter can be classified as falling under a so-called inactivity or a so-called encroachment/intervention action, which we do not find very comprehensible in regard to non-lawyers who are seeking the provision of protection by the court. Another significant circumstance is the fact that the plaintiff can turn to the court only after he/she has previously unsuccessfully exhausted all appropriate remedial actions before an administrative authority, and also that he/she has to file the action within the prescribed deadline.

Regardless of the indicated positive and negative aspects, the effectiveness of a so-called inactivity action[55] as a means of judicial protection against inactivity on the part of an administrative authority appears to be low.

The basic fact is that prior to the utilization of a so-called inactivity action, the means of protection against inactivity within the scope of the public administration system must be exhausted. That is, in our opinion, certainly a proper condition, but only if public administration truly wishes to decide the matter as soon as possible. In such a situation, means within the environment thereof may already be effective, and an action is thus actually superfluous. A so-called inactivity action can, in the given regard, fulfill the function of a coercive force that fulfills its function if an inactive administrative authority ceases to be inactive.

Nevertheless, if public administration is inactive intentionally, the utilization of these means will delay the whole matter even more. True rectification can only be brought about by the administrative court.[56] As the court can order the administrative authority to make a decision within a certain deadline, an inactivity action appears at first glance to be a very effective means of forcing inactive administrative authorities to issue a decision. Nevertheless, the option of an inactive administrative authority to file a cassation complaint with the Supreme Administrative Court can ultimately result in the whole matter

53 In the amount of CZK 2,000 according to Act No. 549/1991 Coll., on Court Fees, as amended.

54 See § 35 of the Code of Administrative Justice.

55 Primarily in terms of the speed of the whole "process", from the utilization of remedial measures within the system of administrative authorities, up to the issuance of a judgment determining the deadline for the issuance of a decision, or for the issuance of the administrative decision itself.

56 Here, we disregard the possibility of the administrative authority ignoring the obligation imposed by the court, although even such an approach can be seen within the Czech Republic.

being protracted even more, although a cassation complaint is an extraordinary remedial measure and does not have a suspensive effect under law.

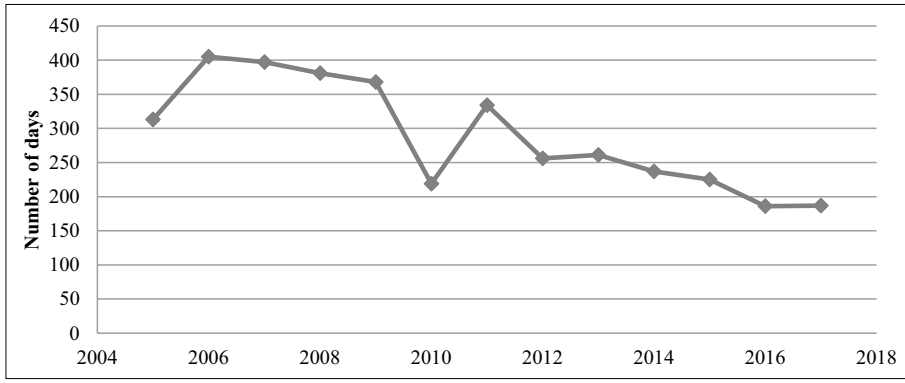
By using statistical analysis we researched into complex data collected by the Ministry of Justice on court's decision-making activities, which include information on the average duration of court proceedings, the number of individual types of actions and the outcome of court proceedings according to the type of sentence of the resulting decision. These data were the basis of our considerations about suitability, respectively effectiveness, of the current judicial protection against the inactivity of public administration. Unfortunately, a conclusion regarding the possible effectiveness of a so-called inactivity action collides with data obtained in regard to the average duration of proceedings before the courts, and these then cast this instrument in a not very flattering light overall.

Table 1: Duration of proceedings in days on a so-called inactivity action for individual years:

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Days	245	313	405	397	381	368	219	334	256	261	237	225	186	187

Source: https://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html

Graph 1: Average duration of proceedings before regional courts in case of inactivity actions

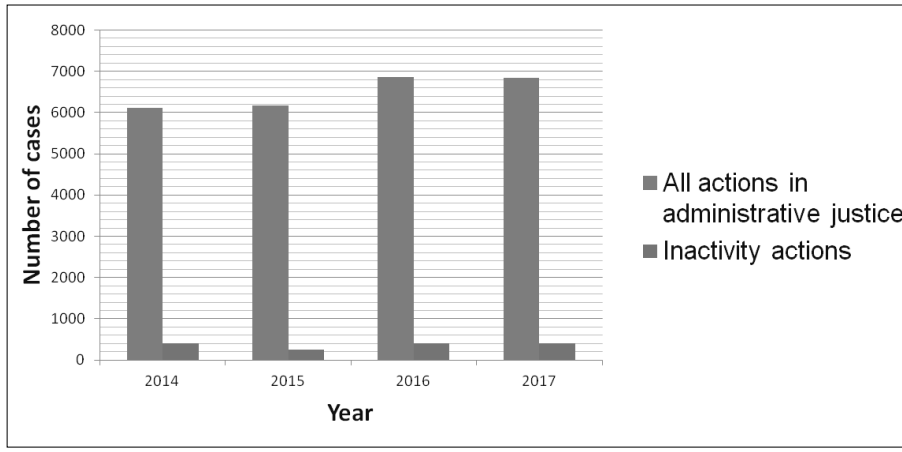


Source: https://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html

This proceeding, although its duration has progressively decreased by up to one half as compared to 2006, its average duration in 2017 was 188 days, even despite the fact that these are priority matters. If we also add to this duration the time that it took to assert the means against inactivity within the public administration system, we reach the conclusion that the court will issue a judgment, in the case of a justified action, after, on average, approximately 9

months from the moment when the party to the proceedings started to seek protection against inactivity. Furthermore, we must also add to such period of time a further time period, which the administrative court must impose upon the administrative authority in which it must make the actual decision. The whole procedure up to the issuance of a decision can, in total, add up to a duration of over a year. If we add to this also the fact that the administrative authority was inactive prior to the commencement of the whole "procedure", the entire system, in terms of the addressee, is not very affable. If a cassation complaint was to be filed, that should not change anything in the matter, but practice has shown that the filing of a cassation complaint can be a means of delay.

Graph 2[57]: Actions in administrative justice



Source: https://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html

It should be noted that action against inactivity represents on average about 6 %[58] of total amount of cases (solved) in administrative justice.[59] These data confirm that the inactivity action is rather the marginal agenda of the regional courts and their amount is relatively steady. The more surprising is the fact that, despite the fact that the agenda is not too frequent, the average length of such proceedings is relatively long, although it is an agenda to be dealt with preferentially.

A weak point of the whole system of proceedings on the so-called inactivity action is also the fact that courts must request that administrative files be forwarded to them in order for them to make their decisions, and that thus, during the time when they are making a decision, administrative authorities themselves cannot (generally) make a decision, although there is the possible

57 Year(Y)/All actions(A)/Inactivity actions(I): (Y)2014/(A)6105/(I)411; (Y)2015/(A)6171/(I)259; (Y)2016/(A)6862/(I)399; (Y)2017/(A)6836/(I)401.

58 In 2014 it was 6, 73 %, in 2015 it was 4,19 %, 2016 it was 5,77 % and in 2017 it was 5,87 %.

59 In 2014 regional courts dealt with 6105 cases of which were 411 inactivity actions, in 2015 6171 cases (of which 259 inactivity actions), in 2016 6862 cases (of which 399 inactivity actions), in 2017 6836 cases (of which 401 inactivity actions).

option for administrative authorities to make copies of the file documents. An appropriate arrangement may be for courts to request the forwarding of files only at a point when the time when they will be able to deal with the given matter is coming near.

In our opinion, the whole system has a fundamental deficiency consisting in the fact that if, in the meantime between the filing of an action until the delivery of the court's judgment, the administrative authority ceases to be inactive and issues a decision, this automatically leads to a rejection, even though, in the given proceeding, the administrative authority may indeed have truly been inactive.

Such an unsuccessful plaintiff must seek the determination of the unlawfulness of the inactivity with the utilization of a so-called encroachment/intervention action (in order to be able, for example, to validly seek compensation of damage caused by the inactivity).

Finding one's way within the entire system of means against inactivity is relatively complicated and difficult for a non-lawyer.[60] One can only imagine whether the relatively low numbers of inactivity actions (Table no. 2) can possibly be due to the fact that public administration is regularly active in a timely manner, or whether potential plaintiffs are primarily dissuaded by the complexity of the system itself or by the duration of the whole procedure.

Going forward, it will be valuable to also examine the reasons for the relatively low success rate of inactivity actions (Table no. 2). Here we have two possible hypotheses, these being either that public administration is sufficiently active, or that the issuance of a decision oftentimes occurs in the meantime between the filing of an action and the issuance of a court decision.

In view of the above, it is difficult to view the so-called inactivity action as being a speedy and effective instrument of remediation of inactivity on the part of administrative authorities, primarily due to the relatively long duration of court proceedings.

60 Generally, in this context, it could be argued that the law as such is complicated and that, therefore, the addressee of public administration may use the services of attorneys. In general, if the applicant succeeds in court's proceedings, the administrative body will be ordered to pay the costs of court's proceedings and the applicant will not bear the cost of legal representation himself. However, it is problematic in this context that the whole process of protection against inactivity begins before the administrative body, when it is difficult for the applicant to orientate in the system of means of protection against inactivity and where even in the case of a justifiable application of means against inactivity it is not possible to award the costs to the applicant. The applicant may choose if he will use services of attorney and will bear the associated costs (which may lead him to discourage completely from applying all protection means because he does not want to bear the costs of representation and he is not enough oriented in the matter) or if he will try to orient himself in the system (with less or greater success).

Table 2: Number of matters and result of proceedings before regional courts and number of cassation complaints against decisions of regional courts in cases of inactivity actions in the years 2014 to 2017

Year	Number of Actions	Granted	Rejected	Number of Cassation complaints
2014	411	47	364	86
2015	259	57	202	93
2016	399	119	280	94
2017	401	83	318	122

Source: https://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html

7 Protection against inactivity by the Constitutional Court

While the previous section dealt with protection against inactivity on the part of public administration through the administrative courts, here we would like to focus on the provision of protection against inactivity by the Constitutional Court, through a so-called constitutional complaint.[61] A constitutional complaint is a means of protection of constitutionally guaranteed rights and freedoms that may be infringed upon in connection with inactivity on the part of public administration. The significant thing is that a constitutional complaint to the Constitutional Court is, similarly to an action with an administrative court, a subsidiary means, and its utilization must, in principle, be preceded by the exhaustion of all procedural means that the law provides for protection against inactivity, i.e. the means of protection against inactivity provided by both public administration, as well as the administrative courts.

In connection with protection against inactivity, there is a possibility of seeking a special exception from the said subsidiarity rule. The Constitutional Court can also decide on a constitutional complaint prior to the exhaustion of the previous means of protection if, in proceedings on a submitted remedial measure, e.g. an appeal against an administrative decision, significant delays are occurring, due to which the affected person is incurring or may incur serious and unavoidable harm. In such an exceptional case, it would be possible to file a constitutional complaint directly. However, this is not a special means for protection against inactivity. Such protection is provided only indirectly through the application of the said exception, as a side-effect. The purpose of such an exception is for bodies of public authority to not be able, through their inactivity, to "block" the powers of the Constitutional Court, on an effective long-term basis (intentionally as well as unintentionally), in situations where an encroachment/intervention, or a violation of constitutionally guaranteed fundamental rights and freedoms of the complainant by way of a decision in legal force is already occurring and as a result of such delays the complainant is already incurring or may incur serious and unavoidable harm.

61 Art. 87 (1) d) of the Constitution.

The exceptional nature of the utilization of the exception as stated above is also seen in the fact that no constitutional complaint has as of yet been allowed for review on the basis thereof.

As a rule, it should be such that sufficient protection against inactivity is already provided within the relevant procedure before the administrative authorities in the public administration sphere and within the subsequent review by the administrative courts. However, this only applies in full from 1 January 2003, when the Code of Administrative Procedure came into effect. From the 1990s, the Constitutional Court was an essential provider of judicial branch protection against inactivity and basically took the place of the activity that is currently within the powers of the administrative courts. Until the time when the Code of Administrative Justice came into effect, it was possible to defend oneself against inactivity directly by way of a constitutional complaint, which can be filed not only against a decision in legal force, but also against an "other encroachment/intervention" by bodies of public authority upon constitutionally guaranteed fundamental rights and freedoms.[62]

It is precisely the term "other encroachment/intervention" that, according to the case law of the Constitutional Court from such time period "*must therefore be understood to mean that, as a rule, this will predominantly be a one-time, unlawful, and simultaneously unconstitutional attack by such authorities against the fundamental constitutionally guaranteed rights (freedoms), which at the time of the attach constitutes a permanent threat to a rightfully existing situation, whereby such an attack in and of itself is not an expression (result) of the proper decision-making powers of such authorities and as such it defies the usual review or other proceeding*".[63] Simultaneously, such "other encroachment/intervention" must be continuing in existence at the time of filing of the constitutional complaint. A constitutional complaint cannot be used to defend oneself against an "other encroachment/intervention" that has already ceased to exist[64], or against an anticipated or future "other encroachment/intervention".[65] Such "other encroachment/intervention" can also consist in an act of omission, i.e. in inactivity on the part of a body of public authority in cases where it is supposed to be active. This shows that a constitutional com-

62 Until the Code of Administrative Justice took effect, when it was possible to defend oneself against inactivity directly by way of a constitutional complaint under the conditions as set out above, the Constitutional Court made decisions (see the ruling of the Constitutional Court dated 4 July 2001, file no. II. ÚS 225/01) in matters of inactivity on the part of public administration, for example, in the case of inactivity on the part of the Czech Social Security Administration, within the scope of which it reached the conclusion that "*the fact that an administrative authority did not take any steps in the proceeding for a period of over 9 months clearly shows that it did not proceed in such a way so that the matter would be handled without undue delays, which shows a violation of Art. 38 (2) of the Charter".* Another example was the constitutional complaint against inactivity on the part of a financial authority, within the scope of which the Constitutional Court reached the conclusion that "*if a body of public authority does not, in making decisions, respect its own internal regulations regarding deadlines for the handling of an appeal, such behavior must be assessed as a violation of a citizen's right to the handling of his/her matter within a reasonable period of time (Art. 38 (2) of the Charter)"* (see the ruling of the Constitutional Court dated 28 August 2001, file no. IV. ÚS 146/01).

63 See the ruling of the Constitutional Court dated 30 November 1995, file no. III. ÚS 62/95.

64 See the ruling of the Constitutional Court dated 22 May 1997, file no. III. ÚS 287/96.

65 See the ruling of the Constitutional Court dated 30 March 1999, file no. IV. ÚS 247/98.

plaint seeking the declaration of the existence of delays, or addressed against an "other encroachment/intervention" in the form of inactivity on the part of public administration is thus – in the case of proceedings that have already been completed at the time of its filing – inadmissible.[66]

Besides the above, a constitutional complaint against an "other encroachment/intervention" cannot be successful if the complainant were to not assert therein that an encroachment/intervention by a body of public authority has violated his/her fundamental right or freedom guaranteed by the constitutional order. Inactivity on the part of public administration can encroach/intervene primarily upon the right to the hearing of a matter without undue delays as guaranteed in Art. 38 (2) of the Charter of Fundamental Rights and Freedoms,[67] as well as the right to fair and equitable proceedings according to Art. 36 (1) of the Charter of Fundamental Rights and Freedoms, which also includes within it the right to the continuation of a proceeding until its completion in a manner as prescribed by law.[68]

If the Constitutional Court finds that such a constitutional complaint is justified, it issues a verdict forbidding the relevant body of administrative authority to continue violating the constitutionally guaranteed right (being inactive) and ordering it to act in the given matter without delay. However, it cannot set a deadline for the issuance of a decision or other act, unlike the courts in administrative justice.[69]

After the Code of Administrative Justice came into effect as mentioned, a constitutional complaint against inactivity on the part of public administration can, in principle, be filed only after the administrative courts have decided in the matter, i.e. the regional courts and the Supreme Administrative Court. The significance of a constitutional complaint as a means of protection against inactivity has been somewhat weakened in the said regard. In these cases, a constitutional complaint is filed not against inactivity as an "other encroachment/intervention", but rather, against a decision of the administrative courts issued within the scope of the protection against inactivity (not) provided by them.

The statistics drawn up for the purposes of this text show that until the year 2017 (i.e. in the course of 14 years), the Constitutional Court issued a total of 54 decisions in matters of constitutional complaints filed against decisions of the administrative courts on actions against inactivity.

In terms of the material structure of matters coming before the Constitutional Court, where constitutional complaints in administrative matters comprise on average approximately 11% of the total number of constitutional complaints, we can see that decisions on constitutional complaints filed in matters of so-

66 See the ruling of the Constitutional Court dated 7 August 2007, file no. IV. ÚS 391/07.

67 For example, the ruling of the Constitutional Court dated 4 January 2006, file no. II. ÚS 507/05.

68 For example, the ruling of the Constitutional Court dated 25 September 1997, file no. IV. ÚS 114/96.

69 See § 82 (3) b) of Act No. 18/2/1993 Coll., on the Constitutional Court, as amended. In regard to that, compare the ruling file no. IV. ÚS 114/96 dated 25 September 1997.

called inactivity actions comprise approximately 12% of the decision-making activity of the Constitutional Court in administrative matters.

If we compare these statistics to the number of cases in which a cassation complaint was filed in matters of administrative actions against inactivity, we can see that only a small portion of these disputes continue to the Constitutional Court (ca. 6% on average).

Out of the said total of 54 matters, in four cases the Constitutional Court acknowledged the constitutional complaints, or repealed the decision of an administrative court on a so-called inactivity action on grounds of its unconstitutionality. The remainder was decisions by which the Constitutional Court rejected the complaints.

In these matters, the Constitutional Court issues a compliant decision, or declares a violation of the constitutional order by the administrative courts in approximately 7% of cases, on average. The said data corresponds to the overall statistics, whereby the Constitutional Court decides, on average, 4160 constitutional complaints per year, of which it complies with 206 constitutional complaints (at least in part), i.e. it issues a compliant decision in approximately 5% of cases. Data relating to the Constitutional Court decisions was obtained from the online database of the Constitutional Court and also from its yearbooks (see the links below).

Table 3: Overview of the Constitutional Court's decision-making activities on constitutional complaints against Supreme Administrative Court judgments in dealing with inactivity cases

Year	Number of Decisions on Constitutional Complaints	Non-Compliant Decisions	Compliant Decisions
2004	1	1	0
2005	2	2	0
2006	3	2	1
2007	0	0	0
2008	3	3	0
2009	5	5	0
2010	4	4	0
2011	3	3	0
2012	4	4	0
2013	8	8	0
2014	5	3	2
2015	10	9	1
2016	3	3	0
2017	3	3	0
Total	**54**	**50**	**4 (ca. 7%)**

Source: https://nalus.usoud.cz

Table 4: Overview of the number of cases dealt with by the Constitutional Court

Years	Number of Decisions on Constitutional Complaints on Average per Year	Material Structure of Submissions on Average per Year	Compliant Rulings (at Least Partially) per Year
2010 – 2017	4160	458 of Administrative Matters (ca. 11%)	206 (ca. 5%) from 4160

Source: https://www.usoud.cz/en/yearbooks/

In a recent and, in terms of the defendant entity, interesting case of a constitutional complaint against a decision of an administrative court on an action against inactivity, the constitutional complaint pertained to the matter of the non-appointment of a nominee as professor at a university in the field of physics.[70] The affected nominee was of the opinion that in the matter of his appointment as a professor, the president of the republic had remained inactive, and he filed an action against the inactivity of the president of the republic. He thereby referred to the previous conclusion of the administrative courts in the matter of the (non-)appointment of judges by the president of the republic, according to which if the decision-making of the president of the republic, through which he is dispensing the power to appoint judges, has the character of an administrative act, the president of the republic is obligated to decide on the proposal for the appointment of a judge and if he does not do so he is remaining inactive.[71] However, in the matter of the non-appointment of a professor, the administrative courts had reached the conclusion that the so-called inactivity action is unjustified, if the president of the republic issued a decision in the form of a letter to the minister of education by which he informed her of the intention to not appoint the nominee as a professor.[72]

The constitutional complaint submitted in the matter was rejected by the Constitutional Court. The subject matter of review in this matter was exclusively the question of whether the president made a negative decision in the matter, or whether he remained inactive. The Constitutional Court agreed

70 According to Art. 73 (1) of Act No. 111/1998 Coll., on Universities, as amended "*he/she who has been nominated for appointment as a professor by the scientific … council of the university shall be appointed as a professor for a certain subject field by the president of the republic.*" The appointment of university professors is therefore not left entirely up to the autonomy of the university, but rather, within the entire system, there remains an anachronism or element, which to a certain extent is a monarchist feature, taking the form of the procedure being concluded with the delivery of appointment decrees by the president of the republic. Therefore, in the Czech Republic, the title of professor is not the designation of a functional position, but rather, it is a "personal and non-transferable" title that enables the person in question to hold the position of a professor at any other Czech university. The above indicates the importance of the appointment procedure on the part of the president of the republic.

71 See the judgment of the Municipal Court in Prague dated 15 June 2007, file no. 5 Ca 127/2006 – 122.

72 See the judgment of the Municipal Court in Prague dated 21 September 2016, file no. 10 A 186/2015-83 and the judgment of the Supreme Administrative Court dated 2 March 2017, file no. 7 As 242/2016-43. We intentionally leave aside the issue of whether the president of the republic is entitled to do so and whether this does not thereby negate the sovereign authority of universities to select the persons that can become professors.

with the administrative courts and reached the conclusion that the said letter constituted a decision by the president of the republic. The president was thus not inactive, although the letter was not delivered to the person that it directly pertained to, but rather "merely" to the minister of education, as stated above.[73]

The said decision of the Constitutional Court follows upon the previous case law of the administrative courts in the matter of the (non-)appointment of judges, within the scope of which the administrative courts dealt with the question of whether the president of the republic, who is included by the Constitution in the executive branch, can make decisions as an administrative authority, or whether his failure to act can be assessed as inactivity on the part of an administrative authority and thereby be subject to checks by the administrative judiciary.[74] On the basis of a positive response, the courts subsequently concluded that the president of the republic is obligated to make a decision on the proposal for appointment and if he does not do so he is remaining inactive. It must be noted that the said conclusion, which strengthens or broadens the checks of the administrative judiciary so as to extend to the exercise of the powers of the president of the republic, was not accepted by the relevant law profession public (its opinions contained in academic literature) without reservations.[75] And in terms of the affected candidate, we can only note that such inactivity continues to date, as the president of the republic quite intentionally ignored the said decision of the court.

8 Conclusion

In the article, we have addressed the issue of judicial protection against inactivity on the part of public administration which is dispensed by the administrative and constitutional judiciary.

As much as, at first glance, both systems fulfill the requirements that an individual has available means ensuring judicial protection against inactivity on the part of public administration, the actual practice of the application there-

73 See the ruling of the Constitutional Court dated 7 November 2017, file no. Pl. ÚS 12/17.

74 The Supreme Administrative Court (see the judgment dated 27 April 2006, file no. 4 Aps 3/2005-35) reached the conclusion that: "*in our circumstances, the president of the republic is a part of the executive branch, whereby, within the scope of the powers of the president of the republic as defined by the Constitution, it is possible, but also simultaneously necessary to differentiate those powers that have the character of and are exercised in the form of administrative acts (acts in the area of public administration) and correspond to the position of the president as an "administrative authority" sui generis, and those powers that have the character of and are exercised in the form of constitutional acts and correspond to the position of the president as a "constitutional official"… The president of the republic acts as an administrative authority in cases where two conditions are simultaneously fulfilled, specifically where the exercise of the given power is bound by law and, further, where the president's decision in the dispensation of such power impacts upon the public individual rights of specific persons … In the matter under review (the power to appoint judges), in the opinion of the Supreme Administrative Court, this is a power of the president of the republic the exercise of which has the character and form of administrative acts.*".

75 In the academic literature, we can find, for example, the opinion that, in view of the fact that, in the given case, this is a power of the president of the republic expressly established by the Constitution (and not by "an ordinary law"), this is an act of a constitutional nature, which cannot be reviewed in administrative justice (see Sládeček, 2013, p. 278).

of is relatively critical, primarily in view of the duration of the proceedings before the administrative courts. In our opinion, there is nothing more absurd than when, within the scope of judicial protection against inactivity, there is further inactivity and such is in fact protracted. The state thereby indicates that it is not possible to battle inactivity effectively. It must be noted that this form of judicial inactivity is often caused by "objective factors", such as a large number of court proceedings and an overall overloading of the administrative judiciary. Nevertheless, this situation is ultimately disadvantageous for the affected persons.

A significant weak point of the system of judicial protection is also the fact that the courts within administrative justice cannot declare, on the basis of a so-called inactivity action, that (by then ceased) inactivity occurred and that such inactivity was unlawful. In order to do that, a so-called encroachment/intervention action must be separately utilized *ex post*, which, however, was not originally intended as a means of judicial protection against inactivity. Moreover, such a procedure leads to further burdens upon the administrative judiciary, as the whole matter must be dealt with in two related proceedings. In the case of the Constitutional Court, the said conclusions apply similarly, to a certain extent. However, we are not supporters of these issues being once again concentrated exclusively before the Constitutional Court. The Constitutional Court is and should be a means of protection against inactivity ultima ratio, coming into play only in the event of a failure by all others.

We have intentionally also noted two actual cases in the article of intentional (!) inactivity on the part of the president of the republic and the related conclusions by the courts. In these cases as well, we see that legal means of judicial protection against inactivity are not always the most effective, specifically in cases where there is a lack of will to proceed within the bounds of good administration. Understandably, such expressions of arbitrariness undoubtedly do not contribute to administrative authorities ceasing to be inactive and complying with obligations imposed upon them by the law and by the courts.

To conclude and answer our research questions, we can summarize that due to the long length of court proceedings and incomprehensible legal regulation it is very difficult to view the judicial protection against the administrative silence as a speedy and effective instrument of remediation of inactivity on the part of administrative authorities.

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Conflict of Interest: Legal and Ethical Aspects in Local Self-Government in Slovakia

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ABSTRACT

Serving the public interest should be perceived as a fundamental goal of public administration. Regarding the complexity of social reality, various motives could influence public officials' behaviour and decision-making. Conflict of interest is mostly discussed as an issue, which relates to activities of elected officials. In this sense, the paper concentrates on rules and standards connected with the conflict of interest, which have to be observed by the public officials. The paper tries to be an interdisciplinary insight and emphasizes the legal and ethical approaches to the examined issue. In this sense, the paper tries to examine the managing of risks and impacts of the examined issue at the local level of self-government in the Slovak Republic. The hypothesis is based on the precondition that ethical norms can define aspects of the conflict of interest more precisely than the relevant legal acts. In the paper, the methods of content analysis, abstraction, comparison and synthesis are involved. The benefit of paper is based on the finding that ethical norms could define important aspects of the conflict of interest more precisely than legal acts. The author presumes that complementarity of legal systems and ethical infrastructure could minimize contradictory and negative impacts of the conflict of interest. Based on this fact, local self-government units should adopt codes of ethics if they want to improve the managing of risks and impacts of the conflict of interest.

Keywords: *public interest, conflict of interest, public officials, local self-government, Slovakia*

JEL: D73, K23, J80

1 Introduction

Public interest is important quality of public administration execution. The necessity of serving the public interest is underlined by the ongoing process in contemporary society, for example dominance of economic dimension of globalization and integration processes, reduction of differences between private and public sector, as well as increasing sophistication of providing public goods and services. In this sense, public officials face many powerful motives, which might potentially threaten serving the public interest. It must be said that individuals are irreplaceable part of public administration. In this sense, the capability of public administration to manage risks and impacts of conflict of interest might positively influence serving the public interest. Based on abovementioned, the ambition of the paper is to examine formulations connected with managing of risks and impacts of conflict of interest. In this sense, the paper is devoted to rules and standards included in relevant legal norms and ethical norms. Put differently, paper concentrates its attention on normative aspect of conflict of interest. We have to admit that the complementarity of mentioned normative systems are typical for contemporary democracies. We decided to concentrate our attention self-government units with the city status, which are the most important part of local level of self-government in the conditions of Slovak Republic. Conflict of interest is mostly discussed as an issue, which relates to activities of elected officials. However, presented contribution concerns the quality of rules and standards, which regulates public officials employed by selected group of local self-government units. The selection of local self-government units and the position of public officials is explained in chapter devoted to methodology. The paper tries to be an interdisciplinary insight and emphasizes legal and ethical approach to examined issue. In this sense, the paper tries to examine managing of risks and impacts of examined issue in the conditions of local level of self-government in the Slovak Republic.

The paper is organised as follows. The introductory part deals with the explanation of used terminology, especially public interest and conflict of interest. Besides, introductory part of the paper tries to emphasize selected aspects of conflict of interest, which are definition of examined issue, delimitation of entities, which cannot gain improper advantage and duties of public officials. Besides, formulation mentioned in important ethical documents adopted on international level are important element of introductory part. In this sense, mentioned formulations should be perceived as a reflection of contemporary state of knowledge. The core part of the paper concentrates its attention on rules and standards included in legal acts and ethical norms, which are relevant for cities in the Slovak Republic. Another part of the text is devoted to discussion connected with findings presented in previous chapter. Moreover, this part of the text tries to suggest some improvements, which we hope might improve managing of risks and impacts of examined issue in the conditions of Slovakian cities.

1.1 Contemporary public administration and the importance of public interest

Public administration should be characterized as a set of activities, which are performed by public administration organizations. Besides, public administration is an irreplaceable part of contemporary democratic states, which exist in dynamically developing reality of contemporary society. As contemporary world changes, we are being forced to readjust public administration´s capabilities to satisfy citizens' needs. In this sense, public administration is larger, more sophisticated, and more complex than in the past. Public administration tends to be large and provides a number of different roles and functions (Lawton, Rayner and Lasthuizen, 2013, p. 4). Public administration has many more responsibilities to citizens, and it still has to cope with increasing demands of the people (Vigoda-Gadot, 2003, p. 2). Moreover, public administration shall be guided by balanced framework of ethical values, such as democratic, professional, ethical and people values (Androniceanu, 2009, p. 25). Anyway, the primary role of public administration is to manage public issues in accordance to public interest.

However, what should be understood under this quality, which should determine activities of public administration? The perception of public interest is influenced by many factors, such as political ideologies, perception of values, public wealth and cultural or historical predispositions. Public interest should be defined by procedural approach, which is typical for practice and on the other hand, there should be used analytical approach, which is typical for the theory (Potůček and Rudolfová, 2016, p. 4). Public interest is crucial for democracy and provides the basis for much public service delivery in the context of justice, fairness, equity, empathy, compassion, altruism and benevolence (Lawton, Rayner and Lasthuizen, 2013, p. 39). Public interest should be reflected by public administration as a duty to ensure transparency, openness, impartiality and other qualities, through which should contemporary democratic states guarantee integrity and responsibility of public administration (Ondrová, 2013, p. 55). Moreover, public interest should be perceived as interest of group of citizens, sum of individual interests, common interests, supraindividual interests and the expression of plurality of collectivized interests, but at the same time, public interest represents fundamental basis and attribute of public policy efficiency and objectivity of public administration (Adamcová, 2016, p. 29). Another definition of public interest was presented by Douglas F. Morgan and Henry D. Kass, who argued that public interest could be defined in three ways. Public interest should be explained as a duty to serve the nation, recognized collective interest of the community and obligation of administrators to future generations (Morgan and Kass, 2015, p. 184).

Simultaneously, we might agree with Richard C. Box and his two basic models of public interest. While substantive model is closely connected with decision of individual that his or her behaviour is good, aggregate model represents the will of majority at a specific point of a time (Box, 2015, p. 59). We have to admit, that first approach needs ethically strong individual. On the other

hand, second approach is mostly represented by regular elections. It is difficult to say, which approach is better, but real practice of public administration requires combination of both approaches.

Based on abovementioned, public interest is important and irreplaceable quality of contemporary democratic states. Public administration cannot ignore the importance of public interest, even many documents do not define this important quality of contemporary social reality. States, their governments and public administration organizations have to implement policies in accordance to generally beneficial public requirements.

Public interest is guaranteed by organizations, but it could be potentially bended by public officials. Based on this fact, the quality of personal substrate is important predisposition of public administration functioning. Put differently, public officials represent important part of serving the public interest. In this sense, personal dimension of serving the public interest should be perceived as a significant factor. There always will be an administrator, public official or supervisor, who will make decisions by applying of administrative discretion. This human element could not be eliminated from the public administration (Králik and Kútik, 2013; Jreisat, 2011). Simultaneously we might say that public administration organizations should directly manage behaviour of public officials. Basically, the behaviour of public administration employees is mostly regulated by various types of standards and rules. The paper concentrates its attention on formulations connected with selected aspect of conflict of interest, which are mentioned in selected group of legal acts and codes of ethics.

Legal acts regulate whole process of public administration practice, decision-making process, as well as organizational issues. The legislative regulates interactions of the same kind and unlimited quantity. In this sense, legislative represents irreplaceable part of public administration. On the other hand, there are some terms which could be correctly explained by norms of ethical character, such as ethical integrity, responsibility, accountability, corruption, mobbing or transparency and openness. Mentioned attributes are obviously described in the codes of ethics for public officials. We might agree with the experts on public administration ethics that code of ethics is most frequently used tool of ethical management (Dyck and Neubert, 2010; Lewis, 2015; Menzel, 2017). Normative aspect of public administration ethics is typical for both democratic countries and countries, which tries to become more democratic (Menzel, 2015). In this sense the promotion of ethical norms could be very useful, especially in the Eastern European countries and Slovak Republic as well. Codes of ethics can be perceived as a reflexion of adequate requirements, which should regulate behaviour of public administration employees in their relations to various types of entities (Kernaghan and Langford, 2014). Moreover, the existence of appropriate and consistent ethical standards seems important because of prevention of ethical chaos, reduction of professional erosion, increasing motivation of employees and increasing of public confidence and legitimacy (Haque, 2011). Based on abovementioned, we

might argue that ethical norms and legal norms contain generally accepted rules and standards. Thanks to these norms, employees know how to behave in specific situations. Both, codes of ethics and relevant legal norms are suitable tools, which have to be used by cities to protect public interest.

1.2 Conflict of interest – an unacceptable situation?

Regarding the complexity of social interactions various types of interests and motives could influence public officials, their behaviour and decision-making. We might argue, that employees should not be influenced by any type of contradictory interest, which might threaten serving the public interest. However, public officials face powerful conflicting motives that make it difficult to maintain perfect professional integrity (Moore, Tanlu and Bazerman 2010, p. 47). In that context, situation when public interest is threatened by other types of interest is mostly called as conflict of interest.

Conflict of interest is difficult problem for public administration employees. According to T. L. Cooper (2012), especially because public officials have special access to government commons that most citizens do not, as well as responsibility of public officials to supervise, monitor and coordinate conduct of others. Public officials of local self-government units have such competencies. Moreover, conflict of interest could be described as contradiction between interest of organization and personal interest of professional (Hutton and Massey, 2006). Besides that, conflict of interest should be defined as situation, when something should influence or disturb judgement of public official (Stark, 2013, p. 173). Conflict of interest is a situation, which can have negative effect on actual decision only when leeway is granted to decision-makers (Peters, 2012). Selected definitions outline fundamental basis of conflict of interest. Based on abovementioned, we might argue that integral part of examined situation is the possibility of negative impact on organization or public interest.

Finally, conflict of interest can be characterized by another important aspect, which is very important in the context of whole paper. Conflict of interest evokes assumption that law is not self-sufficient and cannot rely solely on itself (Guzzetta, 2008, p. 21). Based on this fact, examined issue should not be considered only as a legal concept, but it has to be enriched by approaches mentioned in ethical norms.

The importance of examined issue is confirmed by formulations included in documents of ethical character, which were adopted by international organizations, European Union or specialized ethical bodies of national character. Conflict of interest is defined very precisely in some documents. We might say, that some formulations should be very easily implemented in the conditions of member states, as well as in the conditions of Slovak Republic. We have to admit, that following formulations should be perceived as examples of good practice, which should help to improve practice in the condition of Slovakian local self-government. On the other hand, following formulations should be perceived as a reflection of contemporary state of knowledge too. Besides,

we have to mention that ambition of following part of the paper is not to define conflict of interest exhaustively nor provide an overview of aspects of examined issues included in documents adopted at international level.

Conflict of interest is highly dangerous situation, which can threaten the reputation of an organization (UN Ethics Office, 2012). Standards of Conduct for International Civil Service contain very inspirational and appropriate definition of examined situation. Conflict of interest may occur when individual´s personal interest interfere with performance of his or her official duties or call into question ethical qualities, such as integrity, independence and impartiality (International Civil Service Commission, 2013, p. 6). Another definition could be found in Code of Conduct for OECD Officials, which describes examined situation as a conflict between the public duties and the private interests of an official, in which the official has private-capacity interests which could improperly influence the performance of his official duties and responsibilities (OECD, 2017, p. 9). Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials describes conflict of interest as situation when public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties (Council of Europe, 2000, p. 4). The European Code of Good Administration Behaviour contain formulation that civil servants should not place themselves under any financial or other obligation that might influence them in the performance of their function (European Ombudsman, 2015, p. 8).

We might conclude that conflict of interest is often associated with negative impacts on public interest. Examined situation has potential to influence performance of working duties and responsibilities of public administration employees. However, there is no comprehensive and universally accepted definition of conflict of interest. Put differently, it is hard to find definition, which can cover all aspects of conflict of interest. Anyway, it is important to define conflict of interest exactly. We have to admit that the effort to eliminate contradictory interests is not something new. The principle when nobody can judge his own case, case of his family or case of his close relatives was regular and basic principle, which were known in ancient times (Sičáková-Beblavá, 2008, p. 17). This means, that tendency to gain improper advantage at the expense of the public interest should be perceived as an inherent part of human being.

As it was mentioned before, contemporary society should be characterized by growing complexity of social interactions between various types of entities. Social relations are more sophisticated than in the past. In this sense, the goals of public administration are endangered by various types of interests in almost every state of contemporary world (Schindler, 2012, p. 159). Conflict of interest arise among the various types of actors, for example citizens, local governments, private shareholders, service providers (Calabro and Torchia, 2011). According to this fact, impacts of various types of entities needs to be eliminated.

Delimitation of such entities is sometimes connected with private interest in documents adopted on international level. Private interest includes any ad-

vantage to public official, his or her family, close relatives, friends and persons or organizations with whom he or she has or has had business or political relations (Council of Europe, 2000, p. 4). Conflicts of interest can according to Standards of Conduct for International Civil Service arise from an international civil servant's personal or familial dealings with third parties, individuals, beneficiaries, or other institutions (International Civil Service Commission, 2013). Conflict of interest may involve otherwise legitimate private-capacity activities, personal affiliations and associations, family interest, and post-public office employment, if those interest could influence improperly employee´s duties (OECD, 2003). We might argue that mentioned definitions are different, but they are relatively similar at the same time. Some definitions contain more entities than other. Anyway, no matter how many entities are mentioned, their improper interests could not be considered as a part of decision-making process.

Regarding the ideal of transparency, we might stress need to inform the public about the processes inside the public administration. The most important reason is precondition, that citizens should be perceived as active part of contemporary democratic society. In this sense, citizens should be informed about the mechanisms and procedures related to conflict of interests. Sometimes, citizens can objectively evaluate aspects of conflict of interest more promptly and more clearly than employees. Italian expert E. Di Carlo (2013) concluded that conflict of interest recognition is often left to the discretion of the individual, consequently employees deal with this phenomenon in different ways. This important idea refers to another significant aspect of examined issue, which could be called as duties of public officials.

In that context, public officials should be able to recognize what is acceptable and what is unacceptable. Fundamental priority is to prevent conflicts of interest, handle them before they arise and subsequently resolve any conflict arising in practice (GRECO, 2017, p. 5). The usual method of dealing with a conflict of interest is to disclose conflict, to remove the source of conflict or to avoid the conflict (Coleman, 2008). Romanian definition of conflict of interest highlights the importance of prevention in detecting a potential or an actual conflict of interest, but when conflict of interest seems to occur, relevant authority is authorized to take adequate measures (Farca, 2018). On the other hand, conflict of interest needs more complex solutions. Anyway, mentioned rules should be perceived as unconditional basis.

Specific duties linked to the conflict of interest can be found in relevant ethical documents adopted by international organizations. We might say that such duties can be divided in to five groups, which are relatively consistent and represent identical content of public officials´ duties. The difference between formulations are minimal and that is the main reason why we choose this presentation of contemporary trends. Mentioned groups of duties are presented in table 1. The quantity of each group is demonstrated by the list of relevant documents.

Table 1: Duties of a public officials mentioned in documents adopted on international level

Duty	Document
duty to be alert to any conflict of interest	Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials, Putting ethics to work, Guide to the obligations of officials and other servants of the European Parliament, The European code of good administration behaviour
duty to avoid any conflict of interest	Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials, Putting ethics to work, Recommendation of the council on guidelines for managing conflict of interest in the public service, Code of Conduct for OECD Officials, Guidelines on Gifts and Hospitality, Public service principles for the EU civil service
duty to disclose any conflict of interest, duty to inform	Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials, Standards of Conduct for the International Civil Service, Putting ethics to work, Code of Conduct for OECD Officials, Guide to the obligations of officials and other servants of the European Parliament
duty to solve any conflict of interest	Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials, Standards of Conduct for the International Civil Service, Putting ethics to work, Recommendation of the council on guidelines for managing conflict of interest in the public service
duty to comply with final decision	Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials, Putting ethics to work
post-employment duties	Public service principles for the EU civil service, Guide to the obligations of officials and other servants of the European Parliament, The European code of good administration behaviour, Code of Conduct for OECD Officials

Source: own processing based on mentioned documents

Based on the table, we might argue that fundamental duty of public official is duty to avoid the conflict of interest. This duty represents active approach to managing of examined situation. Public officials should actively prevent arise of situation, which can be characterized as conflict of interest. As it was mentioned before, there is potential and real conflict of interest. Public officials have to inform his or her organization about aspects, which are relevant for preventing conflict of interest. Anyway, the complexity of social relations generates situations, which cannot be predicted. In this sense, sooner or later conflict of interest may arise in each organization. In this sense, another duty of public officials is duty to solve real conflict of interest in favour of public interest or organization. We might argue that public officials have to avoid arise of conflict of interest, but if such situation occur they should be able to solve it. What´s more, mentioned fundamental duties should be supplemented by following duties. Public officials have to comply with final decision, which is made in the context of examined situation. What´s more, conflict of interest should not arise in the context of future employment of public officials. This duty is relatively controversial, but it has potential to protect public interest and interests of public administration. Put differently, public official should not act in a way, which could provide improper advantage for potential employer in the future.

Finally, we might conclude that conflict of interest is one of the most significant issue of contemporary public administration, which is sensitively discussed both by theory and practice. In this connection, therefore, we might conclude that conflict of interest is unacceptable situation in the sphere of public administration. We might define conflict of interest as situation, when something or someone influence public officials and performance of working duties and responsibilities, which should be realized in accordance to public interest. Anyway, solving the conflict of interest must be perceived as irreplaceable part of public administration in the 21st century (Peters, 2012, p. 37). We might conclude that conflict of interest should be detected in various types of everyday activities of public administration. Activities connected with preventing and solving of conflict of interest have to be perceived as important part of serving the public interest in contemporary states. The right question is not if conflict of interest will arise. More important question is how to eliminate and minimize risks and impacts of this situation.

The objective of the paper is to analyse the formulations connected with managing risks and impacts of conflict of interest, which are included in relevant legal acts and ethical norms. The hypothesis is based on the precondition that ethical norms can define aspects of conflict of interest more precisely than relevant legal acts. In this sense, paper is focused on legal normative system and ethical normative system, which could be perceived as dominant normative systems in the sphere of public administration. Besides, paper concentrates its attention on normative aspect of examined issue, which could be perceived as a fundamental part of whole set of activities related to managing risks and impacts of conflict of interest in contemporary public administration. Moreover, paper concentrates its attention on employees of Slovak cities.

2 Methods

In the paper, the methods of content analysis, abstraction, comparison and synthesis were involved. The method of content analysis was used to analyse selected group of ethical norms and relevant legal norms. Content analysis was selected because of its potential to convert qualitative data, mentioned in ethical norms and legal acts, into quantitative data. Subsequently, the abstraction was used in the context of filtering those aspects of selected norms, which are relevant for accomplishing main goal of the scientific paper. In that context, the attention was put on those parts of ethical and legal norms, which are devoted to conflict of interest. The comparison method was used to compare important aspects of examined issue mentioned both in legal and ethical norms. Moreover, the comparison method was used to recognise differences between contemporary trends defined by theory and practice and real conditions in the Slovakian cities. The method of synthesis was used to draw conclusions resulting from the analysis. Obtained data were reflected in the context of contemporary states of knowledge and actual trends mentioned in important documents of ethical character adopted at the level of international organizations. The hypothesis was verified based on descriptive statistics. The obtained data were processed using Microsoft Office Excel and were presented using tables. The paper reflects contemporary conditions in the Slovak Republic up to 30 June 2018. Regarding the objective of the paper a very important step how to achieve main goal is to analyse selected group code of ethics for employees and relevant legal acts. In this sense, the research is devoted to formulation connected with conflict of interest, which are included in ethical norms adopted by selected group of local self-government units and relevant legal acts.

Firstly, we have to clarify the arguments of realized intentional selection of local self-government units. Slovakian public administration consists of three subsystems, which are state administration, self-government and public institutions. Regarding the contemporary tendencies local self-government units play important role in serving the public interest. The contemporary discussions are focusing on more comprehensive understanding of self-government based on concept of new governance, examination of the cooperation between the various levels of self-government, horizontal cooperation of local government units or partnership of actors from different sectors (Meluš, 2017, p. 108). Moreover, according to the theory of power distribution, local self-government limits central power in its vertical sense, what could be perceived additionally to horizontal distribution of power realized by the system of checks and balances (Palúš, 2017). We might argue, that local self-government units are important part of public administration in Europe. Based on this fact, the presented text is focused on local self-government in the condition of Slovak Republic. Regarding the number of citizens and state area local self-government can be characterized as highly fragmented. According to the official statistics, local self-government consists of 2933 units (Government Office of the Slovak Republic, 2018). Some experts say that the number of local self-government units is too high, some theoreticians say that problem is

the number of competencies. Currently, all 2933 units have the same competencies. According to official statistics, there are 1 145 units with population under 500 hundred citizens. Small local self-government units have serious problems with their functioning. Anyway, this challenge is not the centre of our attention. But, it will help us to choose relevant units, which have adequate resources to manage risks and impacts of examined issue. It does not mean that other self-government units do not have enough resources, but cities are mostly perceived as initiator of innovative solutions in the conditions of Slovak Republic. In this sense, the paper concentrates its attention only on 140 local self-government units with the city status. Based on legislative, the status of city is given to local self-government unit, which should be characterized as administrative, economic or cultural centre, provides public services for other local self-government units, has urbanized territory, secures transport connection with other units, and population of such unit is over 5 000 citizens (Act No. 369/1990 Coll. on municipal establishment, as amended). In this sense, we might argue that city is local self-government unit, which should be characterized as centre of wider territory. Moreover, we should emphasize personal, financial and organizational ability of cities to manage ethical aspect of everyday activities. The acceptability of selection is confirmed also with scope of performed activities, such as variety of procedures, application of legislative, decision-making process and implementation of public policies.

The research sample was selected by an intentional selection. The research sample consist of codes of ethics adopted by cities. Subsequently, very important step was to identify cities with adopted codes of ethics. Codes of ethics were adopted in 46 (32,85%) cities out of 140 cities in the Slovak Republic. The majority of analysed codes, 27 codes (58,69%) were adopted in the last seven years. Moreover, research sample contain relevant legal acts, which regulates both functioning of cities and behaviour of public officials employed by selected local self-government units. In this sense, actions of public officials are regulated by two dominant legal norms, which are Act no. 552/2003 Coll. on execution of work of public interest, as amended and Act no. 55/2017 Coll. on the civil service, as amended. Cities execute original and transferred competencies, which are generally included in mentioned acts. In this sense, mentioned two legal acts are relevant for execution of state administration roles and local self-government roles, which are realized by the cities in the conditions of Slovak Republic. According to these facts, we concentrate our attention on formulations connected with conflict of interest mentioned in both legal acts. Selected legal acts are generally applicable in the whole territory of Slovak Republic. Moreover, mentioned legal acts regulates interactions of the same kind and unlimited quantity. The only acts with higher legal force is the Constitution of the Slovak republic and related constitutional acts.

Moreover, formulations included in legal acts and codes of ethics regulate behaviour of individuals. Based on abovementioned, personal aspect of public administration is very important factor of serving the public interest. The

attention is put on public officials employed by Slovakian cities. Based on legislative, public official in the condition of Slovakian cities should be defined as individual, which is in employment relationship with city. (Act no. 552/2003 Coll. on execution of work of public interest, as amended). Put differently, public official should be characterized as employee, which performs working duties and responsibilities connected with execution of public administration in Slovakian cities. Besides, such employee is employed by city as a self-government unit. in the conditions of Slovak Republic. In that context, the term public official is used in mentioned meaning.

3 Results

Based on abovementioned, conflict of interest is an important issue in contemporary discussions on the public administration and serving the public interest. The results of theoretical discussions are transformed to real existing norms, which regulates the behaviour of public officials. In this sense, following part of the text will concentrate its attention on formulations connected with conflict of interest mentioned in legal acts and ethical norms. The basic structure of this part of the text reflect important aspects of examined issue, which are definition of examined issue, delimitation of entities, which cannot gain improper advantage and duties of public officials.

3.1 Conflict of interest – requirements in legal norms

Generally speaking, functions and activities of public administration are primarily determined by the legislative. But, specific legal norm devoted to the conflict of interest of public official does not exist in the conditions of Slovakian local self-government. On the other hand, conflict of interest is partly mentioned in following legal acts.

Regarding the importance of local self-government units, the requirements on behaviour, acting and decision-making of their public officials are included in the Act no. 552/2003 Coll. on execution of work of public interest, as amended. This legal norm should be because of its personal force and regulation of local self-government ´s public officials perceived as the most relevant. Article 2 defines conflict of interest as a situation, which could be characterized by prioritization of personal interest by an employee.

Moreover, the conflict of interest is also mentioned in the Act no. 55/2017 Coll. on the civil service, as amended. Based on obligations and restrictions mentioned in Article 111, public official should refrain from actions, which could lead to conflict between the interest of an office and public official´s personal interests, mainly duty not to misuse information obtained in connection with the performance of working responsibilities for its own benefit or for the benefit of another person. Besides that, another formulation specifies duty to report real or potential conflict of interest without any delay. Conflict of interest is an unacceptable situation, which is also mentioned in the principles of political neutrality and impartiality, which are stated in introductory part of this legal act. (Act no. 55/2017 Coll. on the civil service, as amended)

We might argue, that mentioned legal acts contain only general formulations. Conflict of interest is described as unacceptable situation. What´s more, duties connected with expected behaviour are general too. Based on abovementioned, we might argue that formulations connected with managing risks and impacts of conflict of interest are quite limited. Issues connected with this state will be discussed in following chapter.

3.1 Conflict of interest – requirements in ethical norms

At the first place, we might argue that it is the primary goal of ethical norms to put special attention on the ethical dimension of public administration. However, the space dedicated to conflict of interest is relatively different in analysed codes. Based on careful content analysis of selected group of codes, we might argue that examined situation is not included in only 8 (17,39%) codes out of 46 ethical norms. The remaining part of analysed codes contained at least minimal or general requirements how to behave when conflict of interests occurs. This means, that 83% of cities with adopted ethical norm try to regulate conflict of interest using the restrictions in codes of ethics. Otherwise, 38 (27,14%) cities out of 140 cities consider legal regulations linked to conflict of interest as insufficient. According to abovementioned opinions of experts it is important to pay adequate attention on various aspects of examined issue. General statements mentioned in legislative should not be perceived as a primary goal, but only as commitment. It is necessary to formulate duties and responsibilities related to conflict of interest more precisely. This inclination is often represented by separate part of ethical norm, which is mostly called as conflict of interest. Such tendency was identified in 31 (67,39%) codes out of 46 ethical norms.

Codes of ethics contain different explanations of conflict of interest. Generally speaking, we might argue that selected group of codes characterize conflict of interest as an unacceptable situation, which is incompatible with interest of organization and public interest as well. But, some codes contain only general statement that conflict should not arise. This interpretation is almost similar to legal definitions mentioned earlier in this part of the text. Such specification of examined issue could be found in codes without separate part devoted to conflict of interest. Based on abovementioned, we might argue that ability of these codes is quite limited when it comes to preventing and solving real practical issues.

Another important aspect of conflict of interest is delimitation of entities, which cannot gain any inappropriate advantage. The definition of these entities is relatively different in the selected ethical norms adopted by Slovakian cities. According to the text of analysed codes, we could divide mentioned entities in to three groups (Table 2).

Table 2: Type of entities, which could not gain improper advantage

Type of entities and their rate of occurrence in selected groups of ethical norms		Number of codes = 46	
		n	%
Type of entity	public official	31	67,39%
	family and close relatives	28	60,87%
	any other person or organization	25	54,35%

Source: own processing

The primary type of mentioned entities is public official employed by the city. In this sense, public officials could not gain inappropriate advantage of their position. This type of formulation could be found in 31 (67,39%) codes. Another entity should be named as family and close relatives. This type of entity is included in 28 (60,87%) codes out of all codes of ethics adopted by Slovakian cities. Besides that, some codes contain direct reference to the Civil Code. Close relatives are defined as relative in direct line, sibling, spouse or other person in family relationship, or any other person close to each other in case, if the harm suffered by one of them is reasonably considered as own harm (Art. 116, Act no. 40/1964 Coll. Civil Code). Moreover, duty to ensure that any other person or organisation will not gain any inappropriate advantage is mentioned in 25 (54,35%) codes of ethics. Simultaneously, 17 codes (36,95%) concretize this entity more precisely, namely as entities with past or current business, personal or political relationship to the public official. Based on abovementioned, specification of entities, which could not gain inappropriate advantage is quite various. Presented delimitation should be perceived as very important factor of whole management of risks and impacts of conflict of interest.

Moreover, selected group of codes contains another important aspect of examined issue, which could be called as duties of public official. Expected behaviour of public official was mentioned partially in previous part of the text. Based on our analysis, there should be identified five basic duties of public official (Table 3).

Table 3: Duties of public official

Duty of public official and rate of occurrence in selected groups of ethical norms		Number of codes = 46	
		n	%
Duty of public official	participation in suspicious activities	31	67,39%
	avoid the conflict	28	60,87%
	disclose of conflict	28	60,87%
	act in accordance with public interest	26	56,52%
	political neutrality	10	21,74%

Source: own processing

Generally speaking, public officials should not participate in activities, which are incompatible with their working responsibilities. Based on performed analysis, public officials should not participate in activities, which may endanger confidence and trust of the public in public official or organization. This duty is included in 31 (67,39%) codes. Moreover, there are another two duties, and both are mentioned in 28 (60,87%) ethical norms. Firstly, public officials should avoid the conflict of interest. On the other hand, public officials should disclose to his or her supervisor or established ethical body any potential or real conflict of interest. Another duty relates to unexceptional commitment to act in accordance with public interest. But, this duty is explicitly included in only 26 (56,52%) codes of ethics. What´s more, duty connected with political neutrality is mentioned in only 10 (21,74%) codes out of 46 adopted codes.

As it was mentioned before, conflict of interest is a complex phenomenon. In this sense, some promises and commitments should be made by the organization of public administration. In other words, relevant support system should help public officials to react ethically correct. Such mechanisms are mostly represented by specific ethical body or careful assistance of supervisor. If public official has any question about whether existing situation should be evaluated as a conflict of interest, the possibility to seek guidance could help to prevent the potential negative impacts of such conflict. But, mentioned support mechanism is included in only 8 (17,39%) ethical norm out of 46 codes overall.

To conclude, we might argue that selected group of codes contain specific aspects of conflict of interest, such as general definition, delimitation of entities, which could not gain inappropriate advantage and duties devoted to conflict of interest. However, we have to say that different quality and quantity of related formulations were identified in analysed ethical norms. Unfortunately, there were identified codes, which do not concentrate their attention on conflict of interest. Besides that, we might argue that significant part of examined codes concentrates its attention on solving and preventing conflict of interest. Both approaches should be perceived as important part of whole management of risks and impacts of examined issue.

4 Discussion

Based on abovementioned, the primary and general regulation of conflict of interest is included in legal norms. According to our analysis we might say, that codes of ethics should be perceived as an irreplaceable extension of legal norms. Simultaneously, we might argue that ethical norms are significant part of whole management of examined issue. Besides that, free will of each organization is represented by formulations in codes of ethics. However, formulations in ethical norms cannot conflict with formulations included in legal norms.

We might argue that Act no. 55/2017 Coll. on the civil service, as amended and Act no. 552/2003 Coll. on execution of work of public interest, as amend-

ed contain general and universal restrictions related to the conflict of interest. We need to emphasize that presented text is focused on the cities of Slovak Republic and public officials of local self-government units with the city status. In this sense, the Act no. 552/2003 Coll. on execution of work of public interest, as amended is the most relevant legal norm. In our opinion, definition of examined issue, which is included in mentioned act is appropriate. But, other aspects of conflict of interest should be characterized as universal and unclear. Mentioned legal act contains only general statement that public officials should refrain from any action that might lead to conflict of interest. This duty of public officials should be perceived as a fundamental basis. On the other hand, it is necessary to formulate additional duties and restrictions.

Regarding the personal and territorial force of legal acts, we might argue that legislative regulates interactions of the same kind and unlimited quantity. In this sense, it is appropriate that legal acts contain general restrictions, which should be applied to various types of social interactions. Anyway, another general formulation related to conflict of interest would not harm general character of analysed legal acts, especially when we mention entities, which could not gain inappropriate financial or any other advantage. Besides that, some kind of rigidness is at least suitable for legislative and regulation of conflict of interest. Such stability is represented primarily by formulation included in legal norms. Anyway, conflict of interest should be regulated more precisely.

Based on our analysis, we might identify two important tendencies. At the first place, we might identify clear effort to prevent arise of situation, which could be characterized as a conflict of interest. This tendency is represented by concrete duties of public officials, namely duty to act in accordance to public interest, duty not to allow conflict of interest or duty not to participate in contradictory activities or activities threatening confidence of the public. In this sense, prevention should be perceived as an unconditional priority in the condition of Slovakian cities. On the other hand, cities realize illusion connected with the ability of public officials to prevent conflict of interest. This tendency is represented mostly by the duty to disclose existing conflict of interest.

Moreover, another important aspect of examined issue is delimitation of entities, which could not gain any improper advantage. We might argue that regarding the decreasing distinctions between public and private sector, the clear definition of this aspect should be perceived as an important part of effective and transparent procedures in the sphere of public administration. In this sense, the reactions of public officials should be quicker and more suitable. According to analysis, mentioned entities were divided into three relatively consistent groups, namely public officials, family and close relatives and any other persons or organizations. In this sense, we might say that presented definitions included in codes are adequate. Moreover, some formulations also meet the strictest criteria. On the other hand, the significant part of codes does not specify entities, which could not gain improper advantage. The effectivity of these regulations is at least questionable.

Analysed group of codes of ethics formulate concrete processes, which should be applied when conflict of interest has occurred already. In this sense, it is very difficult to prevent conflict of interest, because this situation will occur sooner or later in almost each organization. Duty to solve real conflict of interest should be perceived as a necessary reaction on contemporary social reality. But, there are minimal or no requirements how to behave when conflict of interest occurred already. Duty to report is only procedure, which is mentioned in analysed codes.

In this sense, reporting is another important aspect of examined issue. Most of codes reflects contemporary tendency, which is based on disclosure of potential conflict. This approach is closely related to the ambition to minimize conflict of interest as much as possible. In this sense, duty to disclose only existing conflict of interest is not acceptable in contemporary world. Besides that, we could stress that possibility to seek guidance is set only in 17% of analysed ethical norms. This right of public officials could be another factor, which could help to manage risks and impacts of examined undesirable situation. Moreover, this approach promotes proactive attitude of public officials. The main benefit is mutual advantageousness both for public official and organization. On one hand, public officials are protected and on the other hand, organization is informed and could react adequately if necessary. Anyway, situation when employees could not prevent conflict of interest may occurs very easily. This fact was confirmed also by the opinions of scholars mentioned in the introductory part of the text.

Political neutrality is another imperative, which is mentioned only in 10 codes out of all analysed codes. Political neutrality is partly mentioned in relevant legal acts. Incompatibility of elected function and position of public official is mentioned in the Act no. 369/1990 Coll. on municipal establishment, as amended. But, the possibility of political pressure is not eliminated completely by formulation included in mentioned act. In this sense, we might say that duty to act political neutrally is legitimate requirement and should be included in ethical norms.

Based on abovementioned, we might continuously suggest some improvements, which could be implemented in the conditions of Slovakian cities. Firstly, organizations of public administration should systematically manage risks and impacts of potential or real conflict of interest. We have to admit that important aspects connected with the conflict of interest should be wrote down in codes of ethics. We might argue that most of codes tries to regulate conflict of interest. But, the most surprising is the fact, that 8 codes of ethics do not contain any reference to conflict of interest. These 8 cities and cities without code of ethics considered requirements mentioned in legal acts as sufficient. Besides, we might argue that most cities (67,25%) do not perceive concretization of rights and duties associated with the conflict of interest as necessary. Regarding the complexity of examined issue general definition and its prioritization should be very dangerous. Finally, we might say that adequate and systematic concretization of associated rights, duties

and mechanism should be very beneficial both for employees and achieving of public interest. In this sense, codes of ethics should contain part, which is devoted to conflict of interest.

It is necessary to say at this point that the most of mentioned formulations included in legal acts and ethical norms correspond with actual trends, which could be identified in contemporary modern democracies. Simultaneously, we could not say that there is nothing to improve. In this sense, we might argue that codes of ethics are live documents and should be revised and improved. We might argue that the revision of codes is the easier way how to improve whole system of managing risks and impacts of examined issue. The change of legislative seems to be more complicated and longer process. However, relevant and quality mechanisms included in legislation are important part of whole system of managing risks and impacts of examined issue.

Moreover, organizations should be fully responsible for actions related to the managing of risks and impacts of conflict of interest. In this sense, organization should help their public officials to manage risks and impacts of examined issue. The possibility to seek advice of supervisor should be perceived as fundamental basis. What´s more, the existence of individual or collective ethical body should be perceived as ideal tool, which can solve doubts of public officials. Such tendency should be identified in international documents of ethical character. Generally speaking, any type of ethical body is appropriate tool of ethical infrastructure, which can mitigate negative aspect of conflict of interest.

What´s more, additional duties should be implemented in the codes of ethics in the conditions of Slovakian cities. Based on duties, mentioned in international documents of ethical character, especially duties connected with solving the conflict of interest should be added in the ethical norms of cities. Such duty relates to reflection to act in accordance to public interest. But, this uncertain duty should be replaced by concrete mechanism connected with solving the conflicts of interest. At this time, cities concentrate their attention on preventing conflict of interest and not adequate attention is put on solution of real conflict. In this sense, cities should add some formulations to their codes, such as duty to prepare report about conflict, duty to comply with decision about solution of compromising situation or duty to acquire as much information as possible. Moreover, duties connected with post-employment restrictions should be added in the codes of ethics in the conditions of Slovakian cities. Regarding the complexity of contemporary relations between public and private sector, such formulation could be perceived as necessary.

Finally, we might argue that findings suggest that cities have to adopt codes of ethics if they want to improve managing of risks and impacts of conflict of interest. This suggestion is based on the fact, that rules and standards mentioned in legal acts are general. On the other hand, Slovakian cities may decide if they want to adopt code of ethics. In this sense, the managing of risks and impacts of conflict of interest is depends on awareness of each local self-government unit.

5 Conclusion

The main goal of public administration is to administrate public issues in accordance to public interest. Regarding the complexity of contemporary social interactions various types of situations could threaten serving the public interest. Besides that, the dominance of economical dimension of our society creates conditions, where conflict of public and individual interest should arise on daily basis. In this sense, managing of risks and impacts of conflict of interest represents important issue of contemporary public administration, which is discussed by public administration experts on national, European and global level.

The objective of the paper was to analyse the formulations connected with managing risks and impacts of conflict of interest, which are included in relevant legal acts and ethical norms. The hypothesis has been proved. Our research has confirmed that ethical norms can define aspects of conflict of interest more precisely than legal norms. Put differently, codes of ethics are appropriate tool, which is suitable for concretization of general requirements mentioned in relevant legal acts. Generally, we might conclude that codes of ethics should contain detail definition of conflict of interest, delimitation of entities, which could not gain inappropriate advantage or benefits, as well as clear list of rights and duties of public officials. Besides that, conflict of interest perfectly represents complementarity of ethical and legal norms. In this sense, ethical norms could describe aspects of conflict of interest, which could not be specified by legal norms. Of course, legal acts have to be used to set limits and define general aspects of conflict of interest. Based on abovementioned, we might argue that basic regulation of conflict of interest could be found in relevant legal acts. However, we have identified minimal concentration on important aspects of conflict of interest in legal acts. As it was mentioned before, some additional formulation could be perceived as mutually beneficial both for public administration and the public. In this sense, such formulations are included in ethical norms in the conditions of cities in the Slovak Republic.

In this sense, codes of ethics should formulate rules and standards how to behave in situation which should be characterized as conflict of interest. The complementary existence of ethical normative system and legal normative system should be perceived as a necessary in contemporary world. To conclude, legal norms contain general requirements and ethical norms contain specific formulations and mechanisms in the conditions of Slovak cities.

Based on abovementioned, the paper could encourage future research. Firstly, the paper is devoted to issue, which is not examined and discussed satisfactorily in the conditions of Slovak Republic. In this sense, paper may support interest in deeper research both in local self-government and public administration. Moreover, the paper concentrates its attention on public officials, which are employed by self-government units. Examining relations between rules and standards for employed public officials and elected public authorities could enrich both theory and practice. Moreover, the importance of com-

parison between states of Europe should be characterised as very attractive in contemporary globalized world.

What´s more, this paper has some limitations. First, the research sample was selected by intentional selection based on the criteria of status of local self-government unit. On the other hand, the paper examines those ethical norms and legal acts, which was relevant for Slovakian cities. Put differently, paper analyses all adopted codes of ethics of Slovakian cities and legal acts, which regulates execution of public administration in the conditions of local self-government. According to these facts, the widening of number of public administration organizations and ethical norms could be very useful both theory and practice. What´s more, we suggest that local self-government units should adopt codes of ethics. But, such suggestion has no legal and no legitimate support in contemporary legislative in the conditions of Slovak republic.

To conclude, the contemporary reality should be characterized by various types of contradictions and inconsistencies. According to Staroňová and Malíková (2007), we cannot compare possibilities of interest groups to affect those, who make decision to the ideal pluralistic society, because some groups are privileged, and some are apriori marginalised, isolated and disqualified by contemporary democratic systems. Anyway, public administration is the best mechanism when it comes to serving the public interest. Serving the public interest and efforts linked to managing of risk and impacts of conflict of interest should be perceived as important goal of contemporary democratic states.

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Financial Position and Sustainability of Associations in Croatia[1]

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ABSTRACT

This paper emphasizes the economic importance of the civil society sector in the national socio-economic context. There is a systematic neglect of the economic and financial components of civil society organizations and non-profit sector in Croatia even though a significant volume of civil society organizations' activities is funded from public sources and there is a high possibility of exploitation of their relatively privileged tax position. The purpose of this paper is to present research results of the funding sources, the financial potential and the elements of economic performance of citizens' associations in the Republic of Croatia. The survey sample includes over 20,000 citizens' associations which have submitted financial reports to the Registry of Non-profit Organizations in accordance with the statutory obligation. The research is based on aggregated data reported in the Balance Sheet and Performance Report for 2015 and 2016. The scientific contribution of the paper is reflected in the assessment of the financial performance and financial transparency of the activities of civil society organizations in the Republic of Croatia and their sustainability in comparison with Serbia and Slovenia.

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JEL: G34, M14, M41

1 Introduction

Development, performance and importance of civil society organizations in wider society is usually measured and evaluated using non-financial, qualitative criteria of their impact on narrow interest groups and their contributions to the development of society as a whole. While economic and financial component of civil society organizations and non-profit sector is neglected not only in professional analyzes and scientific research, but also for the purposes of macroeconomic management at the national level.

Activities of non-profit sector attract public and regulator's attention only sporadically in the context of major political campaigns, large-scale humanitarian actions or financial affairs involving prominent public figures. There is systematic neglect of the fact that a significant volume of civil society organizations activities are funded from public sources and that there is high possibility of the exploitation of their economic and financial unattractiveness and their relatively privileged tax position.

For these reasons, the main aim of this paper is to answer the question what is economic strength, financial position and financial performance of the citizen's associations as the most important group of civil society organizations in Croatia and are available funding sources satisfactory for sustainable development and long-term stability of civil society organizations. Some of the key indicators of financial position and financial performance of associations and non-governmental non-profit sector in the Republic of Croatia will be presented based on the analysis of the aggregated data reported in the Balance Sheet and Performance Report for years 2015 and 2016. The survey sample includes over 20,000 associations of citizens and their associations which have submitted financial reports to the Registry of Non-profit Organizations in accordance with the statutory obligation.

For overview of the sample quality, scope of non profit sector, and in particular the formal-legal framework and territorial distribution of its most significant segment - citizens' associations and their alliances, will be presented in the paper. Special focus in the research will be put on funding associations activities from public sources.

1.1 The scope of non-profit sector in Republic of Croatia

The characteristics of a non-profit organization do not necessarily depend on its legal form, i.e. the activities and the purposes of the organization are more important than the character of its legal identity. Non-profit organization is defined as a legal entity whose purpose and objectives of establishment and functioning are not directed towards profit generation, but towards satisfying general interests and common needs of the wider community (Vašiček

and Vašiček, 2016, p. 6). Governmental non-profit organizations also meet this definition, but since as budget users they are merely funded from budget they are part of the public sector, not non-profit sector[2]. According to international statistical classification[3] non-profit sector includes only nongovernmental nonprofit organizations founded on a private initiative that are dominantly financed through donations, grants, membership contributions and other similar specific forms of financing that are, as a rule, based on voluntary and humane grounds (European Commission, 2010, pp. 545-546). So, non-profit sector in Croatia includes (Croatian Bureau of Statistics, ny):

1. Trade unions, professional or school associations, consumer associations, political parties, churches or religious associations (including those financed but not controlled by the state), and social, cultural, recreational and sports clubs;
2. Charitable organizations, aid providing organizations that are financed through voluntary transfers in cash or noncash transfers from other institutional units.

However, according to the Act on Financial Operations and Accounting of Non-Profit Organizations (Official Gazette 121/2014), the non-profit sector of the Republic of Croatia, with the exception of civil society organizations (non-governmental domestic and foreign associations and their alliances, trusts, foundations, art associations, trade unions, employer associations) also includes all other legal entities that are non-profit by nature, although they are founded and financed under special regulations (institutions, chambers, ...). Except for the proclaimed non-profit character, the common denominator of these entities is a unified system of accounting and financial reporting through the Register of Non-profit Organizations (in text: RNO) managed by the Ministry of Finance in common.

Because of the heterogeneity and the broad scope of the non-profit sector in Republic of Croatia, the focus of the analysis is on the economic and financial potential of associations and their alliances, which according to current data from the RNO make up 33,191 organizations out of 35,780 non-profit organizations or more than 92% of the non-profit sector of the Republic of Croatia[4].

1.2 Citizens' associations in the Republic of Croatia

Associations are the most common form of organized voluntary organization of civil society that allow individuals to step out of their private sphere of

2 See more on: Croatian Bureau of Statics: Sektorska klasifikacija institucionalnih jedinica, (S.13), <http://www.dzs.hr/app/sektorizacija/Documentation/SektorskaKlasifikacija.pdf> and The Rulebook on Determining Budget and Extra-budgetary Users of the State Budget and Budget and Extra-budgetary Users of the Budget of Local and Regional Self-Government Units and on the Method of Keeping the Register of Budgetary and Extra-budgetary Users, Official Gazette 128/09, 142/14

3 European Commission, EUROSTAT, European system of accounts – ESA 2010, *Classification of the purposes of non-profit institutions serving households* (COPNI), <http://ec.europa.eu/eurostat/web/products-manuals-and-guidelines/-/KS-02-13-269>, pp. 545–546

4 Only organizations that have fulfilled their legal obligation to register in the Register are included.

family and/or professional life without leaving them and influence on how common and public functions are fulfilled. Law on Association (Official Gazette 74/17, 70/17), which regulate the establishment, registration, legal status and termination of existence of associations, as well as the registration and termination of activities of foreign associations in the Republic of Croatia, define association as any form of a free and voluntary association of several natural or legal persons, who shall, in order to protect their benefits or stand ups for the protection of human rights and freedoms, as well as the ecological, humanitarian, information, cultural, ethnic, pro-natality, educational, social, professional, sports, technical, health, scientific or other believes and goals that are not in contravention of the Constitution, without an intention of gaining profit, comply with the rules that regulate the organization and activities of such a form of association.

The Association as a non-profit organization does not perform its activities with the purpose of gaining profit for its members or third parties. However, the non-profit character of the association does not mean that the association can not engage in social entrepreneurship, i.e. associations can perform revenue-generating activities (in the market), but the revenue generated must exclusively be used for the performance and improvement of the activities of the association that enable achieving goals set by the statute. In that way, a non-profit organization is not limited to earn income by performing "profitable" activities.

Legislative regulation on the "profit" activity of a non-profit organization is based on assumption that these activities make relatively small part of overall economic activity which, in spite of the tax-privileged position of non-profit organizations, does not disturb market competition, and that income earned in those activities is intended to be consumed in accordance with the activity of non-profit organizations, and not for making profit. Nevertheless, in spite of the public benefit of its activity, the association becomes a taxpayer when it continuously performs more significant scope of market activities with the aim of gaining economic benefits, thus seeking to eliminate its relatively privileged tax position in compare to other economic entities[5].

The association acquires its legal personality by registration in the Register of Associations of the Republic of Croatia managed by the Ministry of Public Administration. According to official data, on June 30 2017 there were 52,227 associations registered in the Register of Associations (Ministry of Public Administration, 2017). This number also includes associations which are considered inactive because not convening assembly for more than eight years. Currently, based on that criteria, there are even 24,440 associations in Register (46.8% of total registered associations) that are considered inactive. In the context of the application of the Law on Association, 25,109 associations have aligned their statutes with the provisions of the Law on Association, and for 4,637 associations the statute is in the process of harmonization.

5 See more: Instructions from the Central Tax Administration Office, KLASA: 410-01/15-01/1590, URBROJ: 513-07-21-01/15-1

Table 1: Number of associations in Republic of Croatia on June 30 2017

County	Number of registered associations	Number of associations per 1.000 inhabitants	Of the total number of registered			
			Associations that have aligned their statutes		Inactive associations	
City of Zagreb	12,500	15.8	4,410	35.3%	6,519	52.2%
Dubrovnik-Neretva	1,934	15.8	1,032	53.4%	899	46.5%
Istria	3,008	14.5	1,298	43.2%	1,387	46.1%
Primorje-Gorski Kotar	4,082	13.8	1,909	46.8%	1,701	41.7%
Osijek-Baranja	3,896	12.8	2,392	61.4%	1,569	40.3%
Lika-Senj	647	12.7	392	60.6%	348	53.8%
Šibenik-Knin	1,344	12.3	695	51.7%	719	53.5%
Bjelovar-Bilogora	1,386	11.6	893	64.4%	656	47.3%
Koprivnica-Križevci	1,323	11.4	759	57.4%	406	30.7%
Karlovac	1,439	11.2	897	62.3%	601	41.8%
Požega-Slavonia	852	10.9	556	65.3%	369	43.3%
Split-Dalmatia	4,863	10.7	2,872	59.1%	2,525	51.9%
Zadar	1,762	10.4	824	46.8%	778	44.2%
Međimurje	1,162	10.2	841	72.4%	418	36.0%
Brod-Posavina	1,607	10.1	797	49.6%	894	55.6%
Varaždin	1,778	10.1	1,162	65.4%	612	34.4%
Virovitica-Podravina	839	9.9	596	71.0%	354	42.2%
Sisak-Moslavina	1,696	9.8	1,211	71.4%	710	41.9%
Zagreb	3,103	9.8	1,892	61.0%	1,685	54.3%
Vukovar-Syrmia	1,752	9.8	1,208	68.9%	821	46.9%
Krapina-Zagorje	1,254	9.4	951	75.8%	469	37.4%
TOTAL	52,227	12.2	27,587	52.8%	24,440	46.8%

Source: authors calculations based on data from Register of Associations of Republic of Croatia and date from Croatian Bureau of Statistics (Population contingents, by towns/municipalities, Census 2011)

The number of associations, as an important form of civil society organization, is a good indicator of the social activities of citizens, their involvement in social processes and the level of social capital (Putnam, 2000 and Deakin, 2001 according to Bežovan, 2002, p.66). Since the number of associations is often used as the main indicator of civil society development, Table 1 shows the total number of associations, the number of associations per 1,000 inhabitants, the absolute and relative share of associations that have aligned their statutes and absolute and relative share of associations that are officially considered inactive in the each county of the Republic of Croatia in 2017.

According to data from Table 1, the average number of associations per 1.000 inhabitants in the Republic of Croatia is 12.2 and ranges from 15.8 in the City of Zagreb and the Dubrovnik-Neretva County to 9.4 in the County of Krapina-Zagorje. There are only 35.3% of associations in the City of Zagreb that have aligned their statutes, and even 52.2% of associations are considered inactive because not convening assembly in last eight years. In contrast, in the Krapina-Zagorje County even 75.8% of associations have align its statutes, and only 37.4% of associations are considered inactive. Counties, which according to the number of associations per 1,000 inhabitants recorded above average civil society activity in the Republic of Croatia, excluding City of Zagreb and the Dubrovnik-Neretva County, are: Istria, Primorje-Gorski Kotar, Osijek- Baranja, Lika-Senj and Šibenik-Knin County. The lower level of civil society activity is recorded in the Krapina-Zagorje, Vukovar-Syrmia, Zagreb, Sisak-Moslavina and Virovitica-Podravina County. The largest share of inactive associations registered in the Register of Associations was recorded in Zagreb, Šibenik-Knin and Lika-Senj County, while in Krapina-Zagorje, Međimurje, Sisak-Moslavina and Virovitica-Podravina County high share of associations have aligned their statutes with the Law on Associations.

2 Methods

Of the total number of associations registered in the Register of Associations (52,227), only 33,191 associations are also registered in the RNO managed by Ministry of Finance of the Republic of Croatia. This register is set up for the purpose of monitoring the financial performance of non-profit organizations through the data and information from annual financial statements. Given the ascertained significant number of inactive associations, it can be concluded that the number of associations signed in the RNO at the Ministry of Finance (32,542) more realistically reflects the number of active associations today.

The analysis and assessment of the economic and financial potential of a citizen's association is based on information presented in financial statements. Information is generated according to nonprofit accounting system of Croatia which based on accrual accounting principle since 2008. According to the Act on Financial Operations and Accounting of Non-Profit Organizations (Official Gazette 121/2014), the reporting and accounting system is rationalized by the size and economic importance of a non-profit organization. Accounting methods and financial reporting vary based on the revenue and asset value of

certain non-profit organizations[6]. So called small non-profit organizations are enabled to apply simplified cash basis accounting, while others apply accrual accounting and the system of integrated financial reporting.

Of the total number of associations registered in the RNO 54% apply accrual accounting principle and are required to submit complete set of financial statements. The remaining 46% are so-called small associations that apply simple bookkeeping and submit only annual financial report on receipts and expenditures at the end of the year. This complicates an integrated overview and the analysis of economic strenght of the non-profit sector, because it requires the reclassification of data expressed on different methodological bases.

An analysis of the overall financial performance of the associations in the Republic of Croatia is even more complicated due to fact that only about 70% of associations registered in the RNO have fulfilled their statutory obligation to submit financial reports for 2016, namely 75% of associations applying accrual accounting and the system of integrated financial reporting and about 65% of associations applying simplified cash basis accounting. Although the percentage of associations that had fulfilled their statutory obligation to submit financial reports has increased in comparison to 2015, the degree of transparency of financial operations and financial discipline of associations is still unsatisfactory in Croatia.

3 Results and discussion

Despite the fact that only 70% of associations registered in the Register of Non-profit Organization have fulfilled their statutory obligation to submit financial reports for 2016, the available data represents a valuable source of information on financial aspects of the activities of associations. Nevertheless, at the level of macroeconomic management to this group of entities is not given adequate importance. Probably because of their low fiscal potential and relatively small share of the total number of workers they employ.

3.1 Economic and financial potential of citizens' associations in the Republic of Croatia

Associations that are required to submit complete set of financial statements reported in aggregate Income and Expenditure Report in 2016 total revenues exceeding EUR 740 million, or 13.7% more than in 2015 and expenditures in excess of EUR 720 million which is 9% higher than in 2015. According to date from aggregate Balance sheet, the value of the assets of associations of citizens and their alliances in the Republic of Croatia at the end of 2016 amounts to HRK 700 million, which is 4.4% higher than in the previous year.

Small associations, that apply simplified cash basis accounting, in aggregate Report of the Receipts and Expenditures in 2016 reported receipts 17.7%

6 Single bookkeeping can be applied by non-profit organization whose revenue and value of asset does not exceed EUR 30,666.66 in last three years. More on non-profit accounting system in Republic of Croatia: Vašiček, V. and Vašiček, D. (2016)

higher than in 2015 (HRK 411.6 million) and expenditures 20.1% higher than in 2015 (HRK 400.8 million).

Human resources, especially those working for associations, are key factor for sustainability and development of the same. Employment data in 2016 (based on hours worked) show that associations in Croatia employ a total of 18,800 workers, which is 6.5% more than last year. This number of workers account for more than 0.86% of the total number of employees in the Republic of Croatia[7].

The 2016 summary report shows that aggregated employment data and performance elements of associations and their alliances are steadily increasing, suggesting that in economic terms, due to their non-market orientation, unfavourable economic conditions have not adversely affected the activities of associations in the Republic of Croatia. It should also be borne in mind that, although financial reporting obligation for all non-profit entities has been introduced in 2015, still a large number of associations do not fulfil their obligation to register in the Register of Non-Profit Organizations and to submit financial reports. This makes it difficult to fully analyze and create an overall picture of economic strength of the most represented form of civil society organizations.

3.2 The sustainability of citizens' associations in the Republic of Croatia

Certain amount of funding is necessary to cover the costs of activities of each association. Sustainable development and long-term stability of civil society organizations are linked to possibilities of collecting necessary financial resources from different sources. Sources of financial resources required for the operation of the association are private donations of economic entities and citizens, public grants awarded by governments, counties, cities and municipalities or public companies and organizations, then membership fees or funds provided by members of individual associations and the funds allocated to them from foreign programs intended for the development of civil society (Bežovan and Ivanović, ny, pp. 38-43). The existence of various sources of funding associations' activities indicates that society has recognized the strength and important role of civil society in the development of society. Unfortunately, most of the organizations have one or two sources of funding, which, in the long run, imply a great financial instability of such organizations (Bežovan, 2004). In addition, the number of sources most often depends on the area of activity of an association (Bežovan and Ivanović, ny, pp. 38-43). Since many associations face significant financial challenges, a question remains as to how effective associations can be in their activities if much of their energy is spent in grant seeking.

In 2016, donations make up the largest proportion of sources of income for non-profit organizations (28%), of which 60% are donations from the budget,

7 Authors Calculation based on data from Croatian Bureau of Statistics (*Employed by occupation, age and sex, by towns/municipalities, Census 2011)*

followed by revenue on the basis of special regulations (27%). Membership fees account for 14% of income, while on the basis of social entrepreneurship 19% of revenue is generated (Vašiček, Sikirić and Čičak, 2017, p. 763). The aforementioned indicates that the financing of the non-profit sector is mostly obtained through donations. It is noticeable that the revenues of social entrepreneurship are relatively poorly represented, which leads to the conclusion that this form of action needs to be stimulated through the legal and tax system.

The Regulation on the Criteria, Standards and Procedures for Financing and Contracting Programs and Projects of Public Benefit Interest Implemented by Associations (Official Gazette 26/15) defines the standards of financing and measures that associations and other civil society organizations must fulfil when implementing programs and projects of general interest financed from public sources. One of the basic prerequisites is the registration in the RNO, which aims to increase financial transparency of the operations and activities of non-profit organizations According to the Report on the Financing of Civil Society Organizations Projects and Programmes from Public Sources in 2015, adopted by the Government in April 2017, 36.104 different programs and projects of general interest implemented by associations and other civil society organizations were financed from the public sources, and through a public call a total of HRK 223,026,557.21 was awarded by direct grants, donations and sponsorships. The amounts awarded according to the sources of funds at all levels in 2015 are shown in Table 2.

Table 2: The amounts awarded according to the sources of funds at all levels in 2015

Source of funds	Amount awarded (in EUR)	Relative share (in %)	No. of projects
TOTAL FUNDS ON NATIONAL LEVEL	103,292,741.75	46.33	7,540
Funds from the part of the revenues from games of chance	47,965,487,49	21.50	
Funds from the state budget	40,660,353,07	18.23	
EU funds	13,320,945,83	6.00	
Funds from part of the income from the public broadcasting company fee	543,888,34	0.24	
Funds from fees for environmental protection	445,796,99	0.20	
Funds from other foreign funds (European Economic Area countries and the Kingdom of Norway)	311,949.91	0.14	
Non-financial funds	44,320.12	0.02	
ON THE LOCAL AND REGIONAL LEVEL - TOTAL	113,262,536.37	50,78	22,420
Funds from the city budgets	52,954,371.97	23.74	8,721
Funds from the budget of the City of Zagreb	28,672,175.37	12.86	1,814
Funds from the municipal budget	18,539,057.07	8.31	5,867
Funds from county budget	13,096,931.96	5.87	6,018
Funds from the income of companies owned by the Republic of Croatia and local and regional self-government units	4,164,906.44	1.86	2,231
Funds from the part of the income of tourist boards	2,255,122.97	1.01	656
Total:	**222,975,307.53**	**100.00**	**32,847**

Source: Office for the Cooperation with NGOs, 2017

State administration bodies, Croatian Government offices and other public institutions at the national level financed 7,540 civil society organizations' programs and projects with EUR 103,292,741.75 in 2015, which is 31.73% more than in 2014 when only 5,724 civil society organizations' programs and proj-

ects were financed. The largest amount of funds, 24.1% of the total amount, was allocated to social activities. 22.5% of total funds were allocated for the activities in the field of culture and art and 17.6% for sports projects. Most of the funds (40.36%) were awarded through a public call/invitation. Sports competition are the most financed activity with 16% of the total amount, followed by organizational capacity building activities with 14.06% and activities aimed at raising the quality of life of people with disabilities with 9.64% (Office for the Cooperation with NGOs, 2017, pp. 3-45). It can be concluded that at national level, civil society organizations' programs and projects are increasingly seen as an investment in community and development of a society as a whole, and not as a cost.

In 2015, counties, the City of Zagreb, cities and municipalities allocated a total of EUR 113,262,536.37 or 50.78% of total funds[8]. 66% of county's funds, 75% of city's funds and 40% of municipality's funds were awarded by public calls. All counties and the City of Zagreb allocate their funds based on strategic and/or program documents. While, only around 50% of cities and about 25% of municipalities have strategic documents based on which funds should be allocated (Office for the Cooperation with NGOs, 2017, pp. 3-45).

5.87% of total funds were allocated from the county's budget using which 6.018 civil society organizations projects and programs were financed, which is 16.94% less than in 2014. 1.814 civil society organizations' projects and programs were financed by more than EUR 28 million[9] from the budget of City of Zagreb which represents 12.86% of total public funds. The largest amount of funds was allocated to the field of sport, almost 31% of the total public funds from county budget and 71.55% of the total amount from the budget of the City of Zagreb. Following is the area of culture and art, financed with a share of 20.14% of funds from county budget and with 11.39% of funds from the budget of the City of Zagreb, and the area of social activity[10] funded with 11.37% of funds from county budget and 7.1% of total budget funds of the City of Zagreb (Office for the Cooperation with NGOs, 2017, pp. 3-45).

From city budgets EUR 52,954,371.97[11] or 23.74% of total public funds was awarded. Using those public funds 8,721 civil society organizations projects and programs were financed. City of Split awarded 8.37% of total amount of funds from city budgets, City of Rijeka 6.5% and City of Dubrovnik 5.2%. 56,2% of total funds from city budgets or EUR 29,782,928.52 is used for financing activities in field of sport followed by activities in field of protection and secure with share of 10,74%, and projects and programs in a field of art and culture with 10,68%. The largest share of funds (40.65%) were allocated for the realization of public needs programs established by a special law. 40.21% of the funds were awarded through public calls. 10.1% funds are used

8 In 2014 EUR 18,032,837.25 or more than 60% of total public funds was awarded by local self-government units.

9 19,83% less than in 2014

10 Financial support for people with disabilities, people with special needs and socially vulnerable groups

11 14,45% less than in 2014

for the implementation of public authority entrusted by the special law. While EUR 1,104,423.02 or slightly more than 2% of the total allocated funds were by the decision of the mayor allocated outside the public call to unplanned activities (Office for the Cooperation with NGOs, 2017, pp. 3-45).

From municipal budgets 8.31% of total public funds (EUR 18,539,057.07) were allocated for implementation of 5,867 projects and programs. The highest amount of EUR 467,423.93 was allocated by the Municipality of Podstrana, which is 2.52% of the total amount of funds from municipal budgets, followed by the Municipality of Dugopolje with a share of 2.29% and the Municipality of Kostrena with a share of 1.56%. 14 municipalities declared that they did not allocate any public funds to civil society organizations in 2015. More than 40% of total funds from municipal budget were allocated for the activities in the field of sport, 26.12% for the activities in the field of the protection and secure, while projects and programs in the field of culture and art were financed by 13.90% of total amount of funds (Office for the Cooperation with NGOs, 2017, pp. 3-45).

142 companies owned by the Republic of Croatia and local and regional self-government units funded 2,231 projects with more than EUR 4 million. More than 80% of donations and sponsorships came from companies owned by the Republic of Croatia, such as Hrvatska elektroprivreda d.d. with 74,5% of total amount, INA d.d. with 7,4% and Croatian bank for reconstruction and development with 6.3%. Among the companies owned by local self-government units, i.e. cities and municipalities, the highest amount was awarded by Zagrebački holding (26.4%), followed by Vodovod i odvodnja Šibenik d.o.o. (10.37 %), GKP Komunalac d.o.o. (3.36%) i Montraker d.o.o. Vrsar (3,36%). Most of the funds were awarded in the form of sponsorships, to be exact more than EUR 2.4 million, predominantly to the field of sport, followed by the area of social activity, and the area of culture and art. Donations and sponsorships from the public companies are mostly not awarded on the basis of strategic documents and in 2015 only a few companies awarded their donations on the basis of a public call, considering that the prescribed standards of planning, allocation and monitoring of allocated funds do not apply for them, which indicates a low level of awareness of need for transparent spending of public funds in public companies (Office for the Cooperation with NGOs, 2017, pp. 3-45).

36 tourist boards awarded 1.01% of total allocated funds from public sources for implementation of civil society organizations projects and programs in the field of tourism. The highest amount was awarded by the Tourist Board of the City of Zagreb with a share of 65.42%, followed by Croatian National Tourist Board (8.71%), Tourist Board of the City of Poreč (with a share of 5.66%), Tourist Board of the Municipality of Medulin (3.89%), Pula Tourist Board (2.44%) and the Split-Dalmatia County Tourist Board (2.25%) (Office for the Cooperation with NGOs, 2017, pp. 3–45).

This shows that even though civil society organizations are independent from the government and political life they highly rely on public funds. While income

from social entrepreneurship is still underrepresented, pointing to the conclusion that this form of action is necessarily to be more systematically stimulated through the legal and tax system. Besides that, frequently public funds are awarded without any strategic documents based on which funds should be allocated and by knowing that the level of transparency of financial operations and financial discipline of associations is still unsatisfactory in Croatia, it necessary to ensure better monitoring and supervision of this group of entities.

4 Review of Serbian and Slovenian experience

Unlike accounting and financial reporting for entrepreneur which were harmonized through the application of IFRS/IAS, there are no special requirements for non-profit sector in the EU; national legislations are left to decide about the accounting standards and principles, as well as NGOs reporting requirements. So systems of accounting and financial reporting of NGOs significantly differs from one country to another, as well as in neighboring countries which make comparison between countries difficult. In this paper experience of Croatia is compared with experience of Serbia and Slovenia as neighbouring countries of which Slovenia is already an EU country and Serbia is non-EU country.

Civil society in Serbia is quite young. Most of the associations were established in 2000. All associations, no matter the size, apply double entry bookkeeping based on accrual accounting which makes analysis of financial potential of non-profit sector easier in comparison with Croatia where almost half of associations use single entry bookkeeping and another half use double entry bookkeeping. All associations need to electronically submit at least once a year balance sheet and statement of income with notes to Register of Associations which is led by Serbian Business Registers Agency (Velat et al., 2011, pp. 13-37). Thereat so called micro associations[12] submit only balance sheet and statement of income without notes (Accounting Act, Serbian Official Gazette 62/2013, 30/2018). No data was found on how many of associations regularly fulfil their statutory obligation to submit financial reports so it is difficult to evaluate the level of transparency of civil sector in Serbia. Research result from 2011 show that most of the sources used for operating activities comes from project funding (28%) and membership fees (23%). In Serbia associations also can perform profit activities to generate revenue needed for their activities (Law on Associations, Serbian Offical Gazzette 51/09, 99/11), but only quarter of the total number of associations registered market activities in the Register of Economic Entities. Same as in Croatia revenues of social entrepreneurship are relatively poorly represented, i.e. only 13% of sources of associations is generated from performing market activities (Velat et al., 2011, pp.13-37).

In Slovenia in recent years the number of non-governmental organisations has been growing constantly. In compliance with the established practice only organisations that are submitting their annual reports to Agency of the Re-

12 In Serbia micro associations are associations that do not exceed two out of three following criteria: average number of employees is 10, business revenue of 700.000 EUR, average value of asset 350.000 EUR (Accounting Act, Serbian Official Gazette 62/2013, 30/2018)

public of Slovenia for Public Legal Records and Related Services (AJPES) are perceived active and this is more than 95% of registered NGOs. In comparison with Croatia where only 70% of NGO's fulfil their statutory obligation to submit financial reports, non profit sector in Slovenia show significantly higher level of transparency. According to data from May 2018 associations make up more than 87% of non profit sector in Slovenia (CNVOS, 2016). NGO's in Slovenia employ more than 0,8% total active population. As same as in Croatia, aggregated employment data and performance elements of associations in Slovenia are steadily increasing, suggesting that in economic terms, due to their non-market orientation, unfavourable economic conditions have not adversely affected the activities of associations. According to data from 2007 53% of total revenues is generated from providing services and only 27% from public funds and 13% from private donations (Kolarič et al. 2002; Črnak-Meglič 2008; AJPES 2010 according to Rožić, 2015, p. 734). The amount of funds acquired by non-governmental organisations from public sources had been increasing till 2011, when for the first time, a slight drop occurred. Since 2012, the amount has been fluctuating, and in 2016 more than 65% of total revenue is generated from other than public funds sources, such as donations, memberships, sales revenue and the like. Thereat In of all funds remitted by budget users, 66.79% were allocated to non-governmental organisations to which the state has acknowledged to be acting in the public interest (CNVOS, 2016). These data is perceived as government is not supporting enough development of civil society sector in Slovenia.

5 Conclusions and recommendations

The development of a civil society, as part of a non-governmental non-profit sector, is one of the key indicators of the degree of development of a country's democracy. In addition, citizens' associations with their multitude and heterogeneity of activities represent the fundamental infrastructure of civil society and are the dominant part of the non-governmental non-profit sector. Due to countries, particularly transitional and post-transitional countries, dedicate special attention to institutional and legislative creation of conditions for their establishment and operation which is reflected in the creation of a broad and liberal legal framework, certain tax benefits, institutional support and public funding. Although citizen's associations operate predominantly on volunteer basis, the viability of the activities of citizen associations and other non-governmental non-profit organizations is conditioned by the availability of appropriate economic and financial resources. Citizens' association's sources of funds vary and, in accordance with their non-market and non-profit orientation, are only to a lesser extent generated on the market in the sphere of social entrepreneurship.

The development, performance and importance of the non-profit sector is primarily evaluated by non-financial, qualitative criteria of their influence on political decisions and their contribution to the development of society as a whole, while systematic monitoring of economic and human potential and financial sustainability of citizen's associations is absent. The research results

presented in this paper show a significant number of citizens' associations and significant regional diversity of their activity in relation to the number of inhabitants. Also, research results show that the degree of financial discipline and formal legal arrangements are still low. This is reflected in the disproportion of the total number of registered associations in relation to the number of associations that have aligned their statues with the Law on Association and a significant number of associations that did not fulfil their statutory obligation to submit financial statements. These facts make comprehensive economic financial analysis of the entire group of associations difficult. However, available data show that associations represent a respectable socio-economic segment in the Republic of Croatia. Annual revenues and assets of this group of legal entities are continuously increasing and continuously exceed HRK 5 billion, while effective employment, expressed in hours of work, reaches almost 1% of the total number of employees in the Republic of Croatia. Although to a large extent based on voluntarism and private sources of funding, public funds still represent the most important source of financing civil society organizations activities, while income from social entrepreneurship is still underrepresented.

Systems of accounting and financial reporting of NGOs significantly differs from one country to another, as well as in neighbouring countries which make comparison between countries difficult and makes it hard to evaluate current situation of civil society sector. But some conclusions and recommendation can be made. Government should definitely support development of civil society sector but public funds should me awarded based on the strategic or other similar documents and level of awareness of need for transparent spending of public funds should be increased. Social entrepreneurship results with a lot of different benefits for the whole society so it should be more systematically stimulated through the legal and tax system. Civil society sector represent a respectable socio-economic segment that should not be neglected in the defining macroeconomic management at the national level. And even though it has low fiscal potential there is high possibility of the exploitation of their economic and financial unattractiveness and their relatively privileged tax position so it is necessary to ensure better monitoring and supervision of this group of entities.

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The Impact of Transparency on the Citizen Participation in Decision-Making at the Municipal Level in Romania

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ABSTRACT

The article analyses the implementation of the transparency law and investigates whether its adoption generated more citizens' participation in the decision making process at municipal level in Romania. The research consisted of an analysis of the transparency reports that municipal authorities need to compile every year. We analysed the reports compiled by 28 cities and 5 sectors of the Bucharest municipality for the years 2014, 2015, 2016 and 2017. Additional information about the challenges of the implementation of the law was collected from previous studies conducted by nongovernmental organizations on this topic. The research showed that public institutions increased the transparency of the decision making process by disclosing draft normative proposals and the documents the proposals were based on. The level of citizens' participation in the consultation and deliberation stages of the decision making process remained low over the period analysed, even though a small increase could be observed. The number of recommendations received on draft normative acts was low. The research showed that citizens' suggestions had higher chances to be included in final decisions if they were voiced during Local Council meetings. Besides providing empirical insights in the implementation of the transparency law in Romania, the article provides the researchers with evidence that increased decisional transparency does not automatically lead to greater citizens' involvement in the decision making process.

Keywords: *transparency, citizens' participation, decision making, public administration reform, Romanian municipalities*

JEL: K23

1 Introduction

The importance of governmental transparency and access to public information has risen on the public agenda as the citizens' trust in public institutions decreased. Within the context of New Public Management reforms, the position of citizen in the relationship with public institutions changed from being a customer to being a partner (Lee and Kwak, 2012). Transparency is a desired principle of good governance and an instrument for reducing corruption, and increasing trust in government and accountability of public officials (Grimmelikhuijsen, 2009; Meijer, 2009). Even though its benefits are much praised, they are rather overrated (Porumbescu *et al.*, 2017) and difficult to achieve.

The process of reaching greater transparency in government was strenuous for countries in Central and Eastern Europe, which had to deal with the legacy of the communist regime (Asllani, 2016; Kovač, 2016). In Romania, during communism transparency of the decision making process was neither desired nor encouraged, and the decisions were made internally by the communist elite and then communicated on the public agenda. Even though the party propaganda proclaimed that the decisions were representative of the working class opinions and the laws were passed with almost unanimous votes, people did not have any saying in the final decision. Any opposition or contestation of the formal decisions were discouraged and harshly punished by *Securitate* (the Romanian secret police of the Romanian Communist Party), therefore public institutions became opaque and closed to any communication with the public. Citizens were "administered" beneficiaries of public services rather than partners, and they had a reduced trust in the capacity of government to solve their problems (Hințea and Țiclău, 2017). The mistrust in public institutions preserved after the fall of communist regime in 1989. The reform of public administration lacked coherence, and it was driven rather by external factors (such as accession to the European Union) than by internal ideological beliefs (Hințea and Țiclău, 2017). Frequent changes of legislation and of the politically appointed officials made the implementation of administrative reforms difficult and unsustainable on long term (Radu, 2015).

More than ten years after the fall of communism regime had passed until the legislation regarding transparency in the decision making process was adopted in Romania. The main driving force was the pressure of the accession to the European Union. In terms of achieving greater transparency, a more important concern of the political class was to open archives and secret police records (Dragoș, 2006, p. 26) rather than to increase the amount of public information disclosed to citizens. The law on decisional transparency passed in 2003 is among a set of regulations adopted at the beginning of 2000s that aimed to increase openness of public institutions, such as free access to public information (2001), transparency in public office, in commercial transactions and in debts of the state (2003), and public's access to environmental information (2005). Civil society was involved in drafting the two pieces of legislation regarding access to information and decisional transparency, and their adoption was an important milestone toward building a more predictable and

open government. However, both the disclosure of information and making the decision making process more transparent were goals difficult to achieve as Romanian public institutions lacked administrative capacity and true commitment toward reaching them (Schnell, 2018; Radu and Dragoș, 2019).

The article aims to analyze the law on decisional transparency, and whether its adoption generated more citizens' participation in the legislative process. The scope of the research aims to cover a gap of information that exists about the citizens' participation in the formal decision making process. Even though there are other academic researches about the free access to public information and transparency of public institutions conducted in Romania, none of them looks at the degree of citizens' participation in different stages of the decision process at municipal level.

In the following section we will define and conceptualize transparency in the public sector and the benefits of increasing transparency of public institutions. Then, the analysis will focus on presenting the main legal requirements of the Romanian law on decisional transparency, followed by a statistical analysis of the annual reports regarding the application of the law between 2014 and 2017. The article will conclude on the impact of the law and will attempt to explain causes of the low level of citizens' participation in the decision making process.

2 Conceptualizing governmental transparency and benefits of citizens' participation in the decision making process

Transparency of public institutions means to provide information to the public in order to achieve several objectives: to facilitate greater understanding of what public organizations do, who gains and who loses, to encourage citizens' participation and involvement in public affairs, to monitor the activity and performance of government, and to predict how governmental decisions will impact people and the environment. Transparency is a normative concept that sets standards for the evaluation of public actors (Meijer, 2013). Transparency along openness are complementary ethical principles of good administration (Kovač, 2016) that support other principles of law, instead of having a self-standing meaning (Prechal and Leeuw, 2007, p. 52).

Transparency of public institutions is a much praised remedy for many issues of public administration. Researchers argue that transparency lowers corruption, increases government financial performance and accountability, makes more accessible the activity of public institutions and reduces the risk of arbitrary action (Grimmelikhuijsen, 2009; Garrido-Rodriguez *et al.*, 2017; Kim and Lee, 2012; Asllani, 2016). However, there are studies that show mix results for the core of transparency goals such as trust, legitimacy and accountability (Cucciniello *et al.*, 2017; Grimmelikhuijsen, 2012), which suggests that the benefits are not clear-cut and other contextual and human factors influence the effect of transparency.

Researchers have highlighted that increasing organizational transparency might have several drawbacks. Grimmelikhuijsen (2009) and Curtin and Meijer (2006) argued that increased transparency might lower trust in government because it might expose its unlawful activity that can be criticized. According to O'Neil *apud* Porumbescu *et al.* (2017), transparency could conduct to information overload, generate confusion and therefore uncertainty. Garrido-Rodriguez *et al.* (2017) pointed that greater governmental transparency might reduce its legitimacy. Few citizens might access public information, as the nongovernmental organizations or the journalists might be the main beneficiaries of governmental transparency, and this triggers debates about their representativeness (Curtin and Meijer, 2006). Hood (2007) showed that when the demand for greater transparency meets bureaucrats' blame avoidance, side-effects or reverse-effects might occur.

The simple disclosure of legally required public information is not a sufficient condition for reaching higher transparency. Publishing a great deal of information does not mean being more transparent (Grimmelikhuijsen, 2012), because the disclosed information should be accessible and relevant for citizens (Cucciniello and Nasi, 2014; Park and Blenkinsopp, 2017; Heimstädt and Dobusch, 2018), meaning that the information should be "complete, verifiable, accurate, balanced, comparable, clear, timely, and reliable" (Rawlins *apud* Park and Blenkinsopp, 2017). In addition, citizens should be able to understand the information disclosed (Porumbescu *et al.*, 2017), therefore it is equally important how the information is presented to the public. Prechal and Leeuw (2007) highlight that public institutions should have clear procedures for disclosing public information, as well as clear and predictable channels for collecting information from citizens.

Transparency can be proactive or reactive (Ben-Aaron *et al.*, 2017) depending on the incentive to disclose public information. Proactive transparency refers to public information disclosed voluntarily in the absence of a request for information, while reactive transparency refers to information that is made available in response to a request. Disclosure of information can be made in real-time or retrospective (Grimmelikhuijsen, 2012; Hood, 2007). Real-time transparency is characterized by continuous disclosure of information as soon as it is created; however, some public information is suitable only for retrospective reporting (such as in the case of project performance or in the case of minutes of public meetings).

Transparency refers to the right of an interested party to have access to public information as well as to the transparency as a general right (OECD, 2010). The first type of transparency refers to the right of a citizen participating in an administrative procedure to have access to documents on which a decision that might affect him/her is based. The second type of transparency refers to the general right of citizens to have access to all information officially held by public authorities.

Transparency of public institutions differs depending on the type of problems and the size of communities. According to Meijer (2009), transparency is high

in traditional, smaller communities where people know each other and nobody could do things unnoticed. In larger cities where people do not know each other and social control is lower, direct transparency declines and it is replaced by modern, mediated transparency. Traditional or two-way transparency refers to the council meetings where citizens can see the councilors, hear the debates and make proposals, but also the councilors can see the citizens attending the meetings (Meijer, 2009; Hood, 2007). The modern, mediated transparency refers to the government transparency mediated by Internet, social media and other computerized systems; it is often one-way transparency because citizens have access to public information or watch council meetings, but councilors have no idea who is watching them or who is reading the information. Modern, mediated transparency is replacing traditional, direct transparency because face-to-face information and consultation become more difficult in large, dispersed towns that have variable problems. Cucciniello and Nasi (2014) distinguish between formal and useful transparency. Park and Blenkinsopp (2017) and Kovač (2016) highlight that public employees tend to stick rather with formal or technical view of transparency, while citizens have more practical concerns about the accessibility and utility of disclosed information.

A review of journal articles conducted by Cucciniello *et al.* (2017) that analyzed the benefits of transparency for citizens' participation in the decision making process highlights positive and consistent findings. The majority of the empirical studies examined suggest that greater transparency foster greater citizens' participation; however, some studies showed mixed and negative effects. The authors argue that the differences may be caused by the channels (or lack of them) used by citizens to engage with the government. In addition, other contextual factors, such as national cultural values, the form of government, the type of policy issue debated and policy domain, bear upon the effect of transparency (Cucciniello *et al.*, 2017). Following the contextual view of transparency, Heimstädt and Dobusch (2018) analyzed transparency as an interorganizational process, and showed that different stakeholders advocated for forms of transparency that reflected the dominant logics and values of their professional fields. Similarly, Ben-Aaron *et al.* (2017) highlighted that public institutions do not act individually and do not diligently apply the laws, but rather they perform within an institutional context. The authors showed that the knowledge about peers' fulfillment behavior influenced the average time response to information request, and therefore seeing that their peers have already complied had subconscious, psychological effects that increased compliance with transparency requirements.

When public institutions increase organizational transparency by disclosing more information, they aim to increase citizens' knowledge about their activity and to encourage citizens' participation in the decision making process. Several studies showed that citizens do not base their judgment only on knowledge, but on emotions related to the activity of public institutions and the degree of understanding of the information disclosed. Grimmelikhuijsen (2012) found that the general trust in government explained a large proportion of a specif-

ic trust in a public institution, and that citizens' general attitude toward government was more important than the effect of increasing transparency of a public institution. Porumbescu (2017) found that people who voiced more their opinions to the government were those who were not satisfied with the public services, and therefore read public institutions' websites and looked for information that documented their accusations of government mismanagement. According to the same author, improving transparency through the use of social media is effective at enhancing citizens' perceptions of government because the information presented is more general, and therefore easier to understand. Porumbescu (2017) recommends the use of different forms of transparency to target different objectives when aiming to improve the relationship with citizens. Pietrowski and Ryzin (2007) found that citizens who viewed government as closed demanded more transparency, whereas those who saw government closed sought less transparency. In addition, the research found the more confidence citizens had in their local officials, the less they were interested in fiscal and good government transparency.

Porumbescu *et al.* (2017) showed that the way in which the information is presented facilitates greater understanding of public institutions, and therefore the intention to comply. They also found that policy domain influences the degree of understanding of the information. Therefore, transparency is not a universal instrument to bolstering citizens' knowledge and compliance.

Internet and computer-based technology facilitate government transparency and diversify the ways in which public institutions provide citizens with opportunities to participate in the decision making process. Participation of the citizens is influenced by the government responsiveness and quality of response, which motivates citizens to participate frequently (Kim and Lee, 2012). In addition, the involvement of citizens should go further than voicing ideas and recommendations to truly empowering citizens to solve community problems, otherwise participation remains just a window-dressing ritual (Arnstein, 1969).

The current article aims to explore whether providing more information about the decision making process will encourage citizens to get more involved when public institutions make decisions.

3 Short overview of Romanian decisional transparency law

In 2003, the law no. 52/2003 on decisional transparency was adopted, and it sets the minimum procedural rules to guarantee decisional transparency of central and local public institutions. It is a piece of legislation that is distinct from Freedom of Information Act that regulates the disclosure of information of public interest by public authorities. However, the law no. 52/2003 includes also some legal provisions regarding the disclosure of draft normative acts before being proposed for adoption by a public institution. According to the law, its objective is to increase the accountability of public institutions and to stimulate the active participation of citizens in the decision-making process.

The law establishes the procedural rules for ensuring the transparency of the decision making process. All public institutions from central and local level, and the institutions that use public funds are bound by law to publicize drafts of normative acts, to allow citizens and nongovernmental organizations to make recommendations on draft proposals, and to participate to deliberative meetings of the legislative bodies. According to article 3 of the law, the normative act is the act issued or adopted by a public authority, and which has a general applicability. It is an act that regulates general rules of behavior that should be applied repeatedly on an indefinite number of subjects. In 2016, Ministry for Public Consultation and Civic Dialogue and Ministry of Regional Development and Public Administration recommended some general guidelines to public institutions for identifying the draft decisions that should be subject to the transparency procedures: a) decisions that prescribe or sanction behaviors, b) decisions that involve allocation/reallocation of public resources: spending of public funds, renting/concession of buildings or lands, participation of a public institution to a national or international project as partner or applicant, c) decisions that aim to establish norms or standards for a particular group of the population, and the way the access to public resources will be granted, and d) decisions that are going to have an impact on a part or the entire population (Ministry for Public Consultation and Civic Dialogue and Ministry of Regional Development and Public Administration, 2016). Strategies and urban plans should also be subject to transparency procedures.

Provisions of the law do not apply to the normative acts on subjects related to national defense, national security and public order, the country's economic and political strategic interests, technical and economic data if their publication violates the principle of fair competition, and personal data. In addition, the administrative acts with an individual character are exempted from the transparency procedure.

According to the law, a public institution has to publicly announce the drafts of the normative acts 30 days in advance of being proposed for adoption, by posting them on the public institution website, at the public institution headquarter and to submit them to local or central mass-media. The public institution should submit the draft normative acts to all citizens who have submitted a request for receiving this information. The announcement regarding the drafting of a normative act should include: the date of display, a note of substantiation, a statement of reasons, an approval report on the need to adopt the proposed normative act, an impact or feasibility study, the full text of draft normative act, the deadline, the place and the way in which interested parties can submit in writing recommendations regarding the normative act. Public institutions should set a period of at least 10 calendar days in order to receive in writing recommendations or opinions on the draft normative acts subject to public debate. A public institution is required to organize a public consultation meeting to discuss a draft normative act, if this has been requested in writing by a legally established association or by another public authority.

Public institutions should announce the deliberative meetings of the legislative bodies 3 days in advance of the event. The announcement regarding the

public meeting should be displayed at the public institution headquarter, on its website and sent to mass-media. Public institutions should announce the meeting to the citizens and the legally established associations that have submitted recommendations in writing. The announcement should contain the date, time and venue of the public meeting, as well as the agenda. Citizens are allowed to participate to deliberative public meetings and to make recommendations; however, their participation is made within the limits of the seats available in the room. After each meeting, the public institution should write a minute of the meeting containing information about how participants voted, and display it at headquarter of the institution and post it on its website. Public institutions are required to notify in writing the citizens and legally established associations that made recommendations about the motive for not including their recommendations in the final decision.

Any person who considers that his/her rights provided by the decisional transparency law have been broken has the right to file a complaint with the administrative court. The normative acts, which were not subject to the transparency procedure can be declared null. However, in case of a situation which, due to its exceptional circumstances, requires the adoption of immediate solutions, in order to avoid a serious prejudice to the public interest, the draft normative acts are subject to adoption under the emergency procedure (meaning without citizens' consultation).

4 Methodology

The goal of the research is to analyze whether decision making transparency contributes towards more citizens' and nongovernmental organizations' involvement in the decision making process. On the one hand, the research aims to analyze whether public institutions provide information about the decisions that are about to be made and provide interested parties with opportunities to participate in the decision making process. On the other hand, we aimed to find whether citizens and nongovernmental organizations get involved in the formal process of decision making by formulating recommendations and participating to council meetings. We conducted the analysis on the cities county residence because the issues that are solved at local level are closest to the needs and problems of the citizens, which incentivize them to get more involved in the decision making process, and we expected to find an increased number of citizens getting involved in the decision making process.

The research consists in a quantitative analysis of the annual reports that the public institutions have to compile regarding the application of the transparency law. We conducted the analysis for all 41 cities county residence from Romania and the six sectors in which Bucharest municipality is divided. We analyzed the annual reports for the years 2014, 2015, 2016 and 2017. In the first phase, we analyzed the webpages of all 47 institutions and in the case we did not find the annual reports, we emailed the person responsible for public relations asking for the missing reports. We included in the sample only those institutions for which we had the reports for all four years. However, we

excluded from the sample those cities for which we had all the reports, but some important information was missing; therefore data was not comparable over time. The final sample on which we conducted the analysis consists of 33 administrative units: 28 cities county residence and 5 sectors of Bucharest municipality. The sample represents 70% of all the institutions considered for analysis. The Annex 1 includes the full list of the administrative units included the sample.

According to the transparency law, public institutions are required to publicize annually a report regarding the application of the law. The report should contain information regarding the number of normative acts adopted by public institutions, the number of administrative acts announced publicly, the channels used to publicize the normative acts, number of requests received for providing information on draft normative acts, number of recommendations received, and total number of recommendations included in draft normative acts. In addition, public institutions should disclose information about the decision making process by publicizing information about the number of local council meetings, the channels used to announce them, number of people who participated, total number of observations and recommendations expressed during these meetings, and total number of recommendations included in the decisions adopted. Public institutions should report the number of cases when an action in the administrative court was started against them for failing to comply with the provisions of the law.

We compared the findings of the current research with the results of other studies conducted by nongovernmental organizations regarding the application of the decisional transparency law. We aimed to identify whether we obtained similar results, and to collect further information about the implementation of the law. A second argument was that nongovernmental organizations in Romania played an important role on overseeing how public institutions implemented the transparency law. They acted as watchdogs, and their constant monitoring exposed those institutions which did not diligently apply the law.

5 Results

The quantitative analysis of the transparency reports show an increase in the number of normative acts adopted by City Halls from 6,628 in 2014 to 9,271 in 2017, which indicates a more active decision making activity of the public institutions. The largest majority of the normative acts were announced publicly, and their proportion fluctuated over time, such as between 97% (in 2016) to 83% (in 2017) (see Table 1). The fluctuation is caused by the type of proposals City Halls reported as normative acts, because a fewer percentage of total proposals are normative acts and have to be announced publicly and to be subject to public consultation[1]. In addition, when centralizing the data we observed that City Halls reported differently the number of normative

1 A part of the proposals subject to voting in the Local Councils are individual administrative acts, which are not required by law to be subject to public consultation.

acts adopted. Some of them reported high numbers, while others reported significantly lower numbers. For example, in 2017 Cluj-Napoca City Hall reported 1,086 normative acts adopted, while Craiova City Hall reported only 11 (while the cities are of similar size). The difference is caused by how City Halls reported the proposals, one city reported all proposals subject to decision in Local Council, while the second city reported only the normative acts. Even though there are differences between what City Halls reported to be a normative act, we checked that each City Hall to keep the same classification over the analyzed period, therefore the trend identified when comparing the data over time to be reliable.

Table 1: Number of normative acts adopted and announced publicly, and the channels for announcing them

	2014	2015	2016	2017
No. of normative acts adopted	6,628	6,690	5,995	9,271
No. of normative acts announced publicly (Percentage of normative acts announced publicly)	6,206 (94%)	5,751 (86%)	5,803 (97%)	7,711 (83%)
Channels for announcing normative acts				
Website (Percentage out of total no. of normative acts announced publicly)	5,350 (86%)	5,631 (98%)	5,517 (95%)	7,400 (96%)
Headquarter of public institution (Percentage out of total no. of normative acts announced publicly)	3,362 (54%)	2,711 (47%)	2,705 (47%)	3,904 (51%)
Mass-media (Percentage out of total no. of normative acts announced publicly)	2,579 (42%)	2,356 (41%)	1,980 (34%)	3,057 (40%)

The main venue for announcing normative acts are websites of public institutions. In 2015, 2016 and 2017 more than 90% of the normative acts were announced through this channel. Publication at headquarter of the public institution or in mass-media are of moderate use. The majority of City Halls used at least two methods for announcing the draft normative acts.

The law grants citizens and business associations or other legally established associations the right to request information regarding drafts of normative acts. Between 2014 and 2017 the number of requests declined from 158 to 85 for all City Halls analyzed (Table 2), which might be caused by the large proportion of draft normative acts publicized by the public institutions.

Table 2: Number of requests for providing information on draft normative acts

	2014	2015	2016	2017
No. of requests received for providing information on draft normative acts, from:	158	82	42	85
Citizens	104	53	25	55
Business associations or other legally established associations	54	29	17	30

The number of recommendations received by public institutions increased from 348 in 2014 to 2,049 in 2017 (Table 3). Even though the increase seems to be large over the analyzed period, the total number of recommendations is not very large reported to the total number of normative acts publicized by City Halls. In 2014 only 14 out of 33 City Halls analyzed received at least one recommendation, while in 2017 their number increased to 26. The comparison of total number of suggestions received between 2014 and 2017 shows that General City Hall of Bucharest received the largest number (1,636), followed by Cluj-Napoca City Hall (616), Iași City Hall (467) and Arad City Hall (335). These are cities with the largest population and the capital of Romania.

Table 3: Degree of public involvement in drafting normative acts

	2014	2015	2016	2017
Total no. of recommendations received	348	575	1,446	2,049
No. of City Halls that received recommendations	14	18	25	26
Total no. of recommendations included in draft normative acts	75 (22%)	123 (21%)	368 (26%)	567 (28%)
No. of public consultations organized at the request of legally established associations	18	25	17	24
No. of municipalities which had a least one request to organize at least one public consultation	7	8	9	11

A small number of observations were included in the final draft of normative acts (Table 3). In 2014, 22% of recommendations were included in the final drafts and the percentage improved just slightly by 2017 when it reached 28%. The number of requests to organize public consultations coming from legally established associations remained small over the analyzed period, the highest number being of 25 meetings organized in 2015. However, the number of public institutions which had at least one request to organize a public consultation is very small. In 2014 only 7 out of 33 City Halls received at least one request, while in 2017 11 City Halls received such a request. The finding highlights the low level of interest of both citizens and nongovernmental organizations to demand public consultations. Still, the data does not portrait the entire picture regarding the organization of public hearings, because City Halls can organize public consultations at their own initiative.

The number of Local Council meetings increased from 688 in 2014 to 811 in 2017 (Table 4). More than 95% of the meetings were announced on the public institutions' websites. The majority of public institutions used at least two channels to announce the council meetings. The estimated number of people who participated at Local Council meetings increased in 2015 comparatively with 2014, and in 2016 and 2017 it remained at almost the same level. Total number of recommendations voiced by citizens during Local Council meetings is overall small (Table 4), and it increased during the analyzed period from 397 in 2014 to 700 in 2017. The number of recommendations included in the final decisions increased from 195 in 2014 to 324 in 2017. In average, half of the recommendations were included in final decisions. The proportion is higher than the percentage of suggestions included in the drafts of normative acts during the consultation procedure, which was approximately 28% in 2017.

Table 4: Citizens' participation in the deliberative process

	2014	2015	2016	2017
No. of Local Council meetings	688	767	743	811
Channels for announcing council meetings				
a. headquarter of public institution	533 (77%)	581 (76%)	562 (76%)	680 (84%)
b. website	661 (96%)	741 (97%)	725 (98%)	770 (95%)
c. mass-media	591 (86%)	612 (80%)	555 (75%)	579 (71%)
Estimated no. of people who participated to council meetings	12,451	15,481	14,635	14,591
No. of recommendations voiced during council meetings	397	304	369	700
No. of recommendations included in the final decisions	195 (49%)	118 (39%)	205 (56%)	324 (46%)

In very few cases public institutions reported that a complaint was filled with an administrative court for breaking the transparency procedures. In most of the cases, institutions reported that the actions in court were still pending (18 cases), in 2 cases the courts decided in favor of the plaintiffs, and 3 cases in favor of the public institutions.

In the following section we will discuss the findings of the research, will compare the findings with the results of similar studies, and we will analyze the limits of our research.

6 Discussion

The quantitative analysis of the annual transparency reports highlights an overall low level of citizens' participation in the decision making process. Even though the number of recommendations made during the consultation and deliberation stages of the decision making process increased between 2014 and 2017, it is still small comparatively with the number of draft normative acts proposed for adoption. The majority of analyzed public institutions reported that they did not receive any recommendations. The larger cities received the highest number of suggestions, which can be influenced by the larger number of normative acts subject for adoption and larger population. Public institutions reported few public consultations organized upon the request of citizens and nongovernmental organizations. The low number of complaints with the administrative courts indicate the low level of awareness among citizens that Local Council decisions, which did not follow the transparency procedures, might be declared null by the administrative courts.

In the following part we will compare the findings of our research with the results of researches conducted previously by some nongovernmental organizations. As we mentioned earlier in the article, nongovernmental organizations were instrumental in putting pressure on public institutions to diligently implement the decisional transparency law and freedom of information act.

A research conducted by Coalition 52, Advocacy Coalition and Foundation for Civil Society Development (2015) reached the same conclusion. Only 2% out of 846 public authorities questioned reported that they organized a public consultation upon request, and 22% organized a consultation upon their own initiative between February and October 2015. Institute for Public Policies (2013) conducted a research regarding the implementation of the decisional transparency law between 2009 and 2011 by sending questionnaires to a sample of 119 public institutions from local and central level, and 150 nongovernmental organizations. The results showed that the organization of public consultations was a formal procedure, and rather an obstacle for public institutions when making decisions. Public institutions were reluctant to organize public consultations because the procedure made the decision making process more difficult. A possible cause is that citizens do not have the knowledge or the expertise to understand the draft normative acts (Vrabie *et al.*, 2014).

The analysis conducted by Romanian Academic Society (2015) on transparency reports of 106 public authorities for the years 2013 and 2014 showed that citizens tend to participate more in the consultation stage of the decision making process rather than in the deliberation stage. The authors argued that citizens perceived that their recommendations had higher chances to modify the draft normative acts than during a deliberation meeting with long agenda and tight schedule of voting the legislative proposals. This finding is in contradiction with the results of our research, which might be caused by the difference between the samples we used.

The low level of trust in public institutions in Romania might explain the low level of citizens' participation in the decision making process, because "people abstain from engaging in civic activities … when they are skeptical about the impact that their acts might have" (Bădescu, Sum and Uslaner, 2004, p. 325). In the past years, several opinion polls showed a low level of trust in local public administration, the mayor, public employees and local councilors in Romania. In 2016 Romanian Institute for Evaluation and Strategy conducted an opinion poll on a representative sample at national level of 900 people, and found that 25% of the respondents trusted much and very much the mayor, 17% of people trusted local councilors and 29% of them trusted civil servants (Romanian Institute for Evaluation and Strategy, 2016). The results showed a decreasing trend in citizens' trust in local public administration comparatively with a research conducted by the same research institute in 2015 (Romanian Institute for Evaluation and Strategy, 2015). Institute collected the information through telephone survey. In 2016, INSCOP Research found that 37.3% of the respondents trusted the City Hall; data was collected through a questionnaire applied at the respondent's residency.

The use of Internet might help citizens to have easier access to information about the draft normative acts subject to adoption. However, Eurostat data shows that the percentage of people that use Internet frequently in Romania is low comparatively with other European Union member states (61% in 2017), while only 3% of them use Internet to take part in on-line consultations or voting to define civic and political issues, and 8% use Internet for civic and political participation.

The low level of citizens' involvement in the decision making process is also rooted in a poorly developed participatory culture of the Romanian public administration. During communist regime, public institutions discouraged any type of opposition to public decisions, and public consultations and voting process were manipulated by communist elite toward the desired outcomes. Citizens were expected to diligently bind the rules, and not to be involved in initiating or designing them. Any opinion in opposition with the communist propaganda was discouraged or punished. After the fall of the communist regime, building a more open and transparent public administration was a gradual process, and the efforts toward fostering citizen participation and building community capacity to solve problems remained marginal. Based on a survey conducted on a representative sample at national level of top level civil ser-

vants and public officials, Haruța and Radu (2010) found that the information provided by citizens is of moderate importance for public officials when making decisions, as the most important elements are legal framework, budgetary constraints and the conclusions of reports, statistics and different analyses. The findings of the current research are consistent with other previous academic research, which indicates a low level of citizens' participation in the decision making process in Romania (Haruța and Radu, 2010), an insufficient implementation and use of decisional transparency law (Schnell, 2018), indifference and sometimes fear of citizens from rural communities to participate (Pascaru and Buțiu, 2010), and that public institutions comply only formally with the provisions of the decisional transparency law (Dragoș *et al.*, 2012).

The study we have conducted has several limitations. The methodology used to collect the information allowed us to draw limited conclusions with regard to the implementation of the law and the citizens' participation in the decision making process. Other research methods would allow to collect in depth information, such as interviews with the civil servants responsible with the application of law or direct observation of local council meetings. In addition, we have some doubts regarding the accuracy of the data reported by public institutions. We observed that City Halls reported differently normative acts; some City Halls reported all decisions adopted by Local Councils, while others reported only those proposals that were considered normative acts according to the transparency law. Even though there is a recommended table format for reporting the information, some City Halls wrote narrative reports instead of filling the table, and the narrative reports did not contain all the recommended information, which determined us to exclude them from the sample.

Even though the picture portrayed by our research is of low level of citizens' participation, the transparency reports did not count for other forms of citizens' involvement in the decision making process that City Halls have developed over the past years. For example, Cluj-Napoca City Hall implemented for the first time participatory budgeting in 2013, and by 2018 Timișoara, Oradea and Sibiu City Halls and City Hall of Sector 1 Bucharest embraced the initiative. Through this program citizens can propose and decide on the most pressing problems of the city for which a part of the local budget to be spent. Internet based technology facilitated alternative opportunities for citizens' participation. For example, Cluj-Napoca City Hall has developed an online platform (My-Cluj), through which residents can signal problems on ongoing basis or even suggest alternative solutions for solving existing problems, while the municipality informs them on the problem solving status. The application process for different designations that cities compete for, such as European Capital of Culture and European Capital of Youth, requires that the proposals to be the outcome of a participatory process of relevant stakeholders from the community, and to represent a shared vision for the city. The process of drafting these applications empowers citizens to get involved in the decision making process, as well as in the implementation stage in case a city receives the designation. These examples illustrate that the citizens' participation in different stages of the decision making process at municipal level in Romania has em-

braced more diverse forms. Transparency is an important prerequisite for citizens' participation, but citizens' involvement can be encouraged through multiple mechanisms that are more adapted to new information technologies.

7 Conclusions

The decisional transparency law created the legal framework to make the activity of public institutions more transparent and to give citizens' the opportunity to get involved in the decision making process. Even though great improvements have been achieved, the level of citizens' participation in formal procedures of legislative process at local level is low. Public institutions tend to technically apply the provisions of the law and to concentrate less on organizing meaningful consultations for collecting a diversity of opinions. Without a true citizens' empowerment the requirements on public institutions to become more transparent remain a window-dressing ritual (Arnstein, 1969).

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Appendix: List of the administrative units included in the analysis

	Type of administrative unit	No. of cities
1	City Halls of cities county residence: Arad, Bacău, Baia Mare, Bistrița, Brașov, Buzău, Călărași, Cluj-Napoca, Constanța, Craiova, Deva, Galați, Giurgiu, Oradea, Pitești, Ploiești, Râmnicu Vâlcea, Iași, Satu-Mare, Sfântu Gheorghe, Sibiu, Slatina, Slobozia, Târgu Jiu, Târgu Mureș, Timișoara, Zalău, General City Hall of Bucharest	28 (out of 41)
2	City Halls of Bucharest Sectors: Sector 1, 2, 3, 4 and 6	5 (out of 6)

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Cost Management at Higher Education Institutions – Cases of Bosnia and Herzegovina, Croatia and Slovenia[1]

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ABSTRACT

Higher education expenditures persistently rise due to various economic, demographic and socio-cultural reasons. This caused repeated calls for reforms of the economic model in the higher education sector and dramatically increased the importance of the economic evaluations in the last decades due to concerns for efficiency. The above academic challenges led us to pioneering an attempt to evaluate the capabilities of financial management tools for three Western Balkan countries, i.e. Bosnia and Herzegovina, Croatia and Slovenia. The precondition for successful reform processes is certainly a comprehensive and high-quality accounting information system that meets not only the requirements of external reporting but also the requirements of internal users, especially the management of HEIs. In that context, the main aim of this paper is to overview the legal and organizational accounting systems' characteristics focusing on external and internal reporting requirements, and study the level of development and usage of cost accounting at HEIs in selected countries. Therefore, our paper employs research methodology based on the survey conducted. The results show great differences in legal and organizational characteristics of accounting systems among the countries

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as well as in the development stages of cost accounting systems, which mainly focus on inconsistent overhead allocation as well as different accounting basis usage. The research results confirm poorly conceptualised and structured reporting of accounting information for management purposes, offering several applicable platforms for creation of performance management approaches and strategies in the public sector.

Keywords: *cost management, financial accounting, higher education institutions, accrual accounting, Bosnia and Herzegovina, Croatia, Slovenia*

JEL: I23, M41

1 Introduction

Forced by marketization, the phenomenon of massive expansion of higher education, several governments have coped with the challenge of HEIs efficiency, while the existing resources cannot meet the demand. The increasing number of students entering the higher education system and the inability of the public resources to finance this massive expansion, the increasing cost-sharing with parents and students, the public call for accountability and sustainability demand new resources but also efficient and effective service delivery at the existing level (Molesworth et al., 2010; Abbott and Doucouliagos, 2003).

The accurately determined public policy of higher education system demands the improvement of the financial management objectives focusing on providing high quality accounting information (Sanyal and Martin, 2009). Although HEIs register the business transactions and prepare the financial reports according to the accounting rules that are prescribed by the normative framework, those systems provide insufficient information for performance management. Instead, accounting systems do not transparently present the different revenue sources on which universities rely, the true costs of core functions such as teaching and research, the cross-subsidies of some functions by others, administrative growth or shrinkage, and differences among disciplines. All of the above-mentioned data prevents managers from making wise decisions (Capaldi and Craig, 2011).

The higher education system is a community of people implementing institutional goals: education through educational activities and innovations through research activities (Del Sord et al., 2012, p. 826). Due to mentioned public HEIs have a key role for social and economic development of any country and they are deemed to be responsible for use of public funds for financing their own activities (Ibid, 2010, p. 826). For this reason the higher public education institutions are included in the whole set of different financial and institutional reforms in order to achieve financial stability, institutional autonomy and quality measurement (Kyvik, 2004; Sursock and Smidt, 2010, p. 395). Modern public HEIs can face with problem of spreading services and difficulties caused by increase of costs that will affect their financial stability

(Simmons et al., 2006, p. 31). To successfully achieve the mentioned reform process it is necessary to have appropriate cost accounting system and use of cost information through this system.

Cost accounting ensures important source for financial accounting in the manner of ensuring cost data for determination of financial position (Khan and Jain, 2007). Recommendation for public HEIs is to implement accounting methods and techniques of private sector through accounting information system (Mitchell, 1996, p. 53). This is possible by using accrual basis in public higher education institutions. An accrual basis has a key role in understanding values of assets and costs (Agasisti et al, 2015, p. 496; Jovanovic, 2015, p. 68) and in increasing financial responsibility, transparency and efficiency of public HEIs (Christiaens and Rommel, 2008, p. 61). Accrual accounting basis implementation in financial accounting became specific movement in public sector in the previous 20 years (Mehrolhassani and Emami, 2013, p. 281). This is related with the New Public Management movement (Drechsler, 2009) that emphasises accounting reforms in public sectors by introducing measurement of effectiveness and managerial control of entities in the public sector (Eriotis et al. 2011, p. 154). According to Wynne (2004) advantages of accrual basis are comprehensive financial data, better assets management, calculation of full price of public services, focus on output, better quality of information for management and decision making, better comparability results that could lead to development of responsibility accounting in the public sector.

Financing of public HEIs refers to financing of educational activity, research and costs of students' support (scholarships, subsidies and supports) as well as capital investment in infrastructure (Letica and Dragija, 2014, p. 80). The last financial crisis affected the HEIs in the sense of smaller funds necessary for the proper functioning of the institutions. For this reason, it can be seen that public HEIs need to comprehend all incurred costs. The European University Association (EUA) promotes the use of full costing method as basis for cost calculation. The full costing refers to ability to identify and calculate all direct and indirect costs of an institution's activities including projects (Estermann and Claeys-Kulik, 2013, p. 6). The costs of universities' activities are rising and hence the financial sustainability have to be concern for universities in the 21st century. The first step towards this is to identify the real costs of their activities (Pruvot et al, 2015, p. 6). Monitoring the total costs of their own activities becomes very significant for HEIs if they want to be financially sustainable based on timely and transparent information decision making.

The full costing method has been developed and applied relatively recently, since 1990s (Hutto, 2009). Tatikonda and Tatikonda (2001, p. 26) emphasized that full costing method ensures more accurate information on total costs and this enables more efficient allocation of limited resources and more efficient control of costs, i.e. it can be seen accurate picture on total costs and their holders. Cropper and Cook (2000) upgraded full costing concept by activity based costing methodology as the most significant costing innovation in higher education. The EUA in their report from 2013 emphasised that the

European universities are faced with numerous funding challenges that has to be overcome and following of full costs can help in it. According to this report (Estermann and Claeys-Kulik, 2013, p. 12) full costing has certain benefits for universities: a more systematic approach to activity analysis and costing, a more efficient internal resource allocation, improved strategic decision-making based on better understanding of investment decisions, benchmarking possibilities within the sector and an enhanced ability to negotiate and price activities. Full costing is relatively new accounting approach. Hence, there are still many obstacles to its implementation. The EUA's report from 2013 mentions few of them as main: lack of autonomy, legal barriers and lack of trust between stakeholders, lack of financial support for implementation of full costing. Full costing is seen as an instrument that helps universities to provide better input for decision-making process, ensure a more systematic analysis of activities and costs, provide better opportunity for negotiations and support price formation, ensure more effective distribution of inner resources and enable comparison (Toompuu, 2015, p. 36). By full costing of universities Toompuu (2015, p. 36) refers to the ability to identify and calculate all direct and indirect costs per activity and/or project that need to be considered to carry out these activities. The same author also indicates that there are some general principles that has to be taken into account in implementing full costing: it should respect diversity of systems, missions, profiles and funding and governance structure, different costing models. ABC offers framework but allows different options for activities, cost drivers, cost objects and resources, different time allocation mechanism (Toompuu, 2015, p. 37).

The developed European higher education institutions have recognized the importance of comprehensive accounting information bases and have implemented cost methods that provide full cost information for individual activities at HEIs (Estermann and Claeys-Kulik, 2013). Thus, there are different approaches of the development of full costing at HEIs that depend on the institutional profiles and strategies of higher education institutions. The common feature of all approaches is the focus on identifying and calculating all direct and indirect costs by individual activities, programs and projects of higher education institution. Nevertheless, the implementation of the full costing method is a prerequisite for the efficient management at higher education institutions.

In accordance with the problem exposed, the article is focused on the following coherently connected research objectives:

– overview of the legal and organizational accounting systems' characteristics for HEIs focusing on external and internal reporting requirements in observed countries;
– analysis of the cost accounting systems capabilities in HEIs in observed countries. The analysis consists of four research areas: a) cost tracking area, b) allocation of indirect cost (overheads), c) service/program price

price determination; d) methods of cost calculation.

The paper is divided into five sections. After a brief introduction, the methodology is presented, followed by results of legal and organizational characteristics of accounting systems in different countries comparison as well as comparison of development stage of cost accounting systems in HEIs. After the discussion part in the fifth section, the conclusion is presented.

2 Methodology

On the basis of the presented, there are two main objectives of our study. Firstly, the research is focused on the overview of the accounting systems' characteristics using the source and literature review methodology. This method constitutes an original and valuable work of research in and of itself. Rather than providing a base for a researcher's own work, it creates a solid starting point for all members of the community interested in a particular area or topic (Paré et al., 2015).

Secondly, the research provides the precise analysis of the cost accounting systems capabilities in HEIs in observed countries based on survey methodology. Within this second part of the research, there are four research questions a) how preciously can costs be tracked (at HEIs as a whole, by nature types, by places of cost, by cost carriers, by sources of funding), b) do HEIs allocate the indirect cost (overheads), c) how is the service/program price determined d) which methods are used for cost calculation. The selection of the methodology was adapted to the particularities of the research topic as well as to the special features of HEIs. The individual perception and attitudes as well as organisational policies and practice can be assessed by the survey questionnaires (Baruch and Holtom, 2008). There are three major characteristics of research-oriented surveys, which differentiate them from according surveys as marketing tool or political polls. The purpose as first characteristic of the research-oriented surveys is to produce quantitative descriptions of some aspects of the study population, where the subject might be individuals, groups, organisations, but also projects, applications, etc. Secondly, the structured and predefined questions are a basic way of collecting information, while their answers constitute the data to be analysed. Finally, data is generally collected on the sample of study population in a way to be able to generalise the findings to the population (Pinsonneault and Kraemer, 1993).

The was conducted in the year 2015 and 2016 by using questionnaires in all public HEIs in Bosnia and Herzegovina, Croatia and Slovenia. The questionnaires were sent by email in an online form and as well by post to heads of accounting. The response rate for questionnaire in Bosnia and Herzegovina (Federation of Bosnia and Herzegovina and Republic of Srpska, District Brčko is not included) was 35% (7 out of total 20 public HEIs), a response rate for questionnaire in Croatia was 34.61% (36 out of total 104 public HEI's) and response rate for questionnaire in Slovenia was 46% (23 out of 50 public HEIs). On the provided data, the descriptive statistics have been calculated providing reliable method for research objectives achievement.

3 Results

3.1 Overview of the legal and organizational accounting systems' characteristics

The research results of the legal sources and literature considering accounting systems' characteristics in observed countries enabled presentation and disclosure of the similarities and differences of accounting systems in three observed countries. This observation included general review of the higher education systems focusing on organizational and financing level, number of entities, etc., but also comparison of the normative framework, the accounting principles, the set of external and internal financial reports of HEIs.

It has been found out that the higher education systems in all three observed countries is very similar as far as organizational structure is concerned. In all three countries, the higher education sector is under the jurisdiction of ministries of education, which means the general government sector authority. The central state-level Bosnia and Herzegovina includes two largely autonomous entities: the Federation of Bosnia and Hercegovina and Republika Srpska (RS) and a self-governing district, Brcko, under the direct authority of the central state government. The limited responsibilities of the central state include the establishment of a Constitutional Court, a Commission for Displaced Persons, a Human Rights Commission, a central bank, public corporations to manage and operate transport and telecommunications, a Commission to Preserve National Monuments and a system of arbitration. In addition, in subsequent years ministries of justice, security and defence were created at state level. Institutional picture of educational sector in Bosnia and Herzegovina is a reflection of the constitutional order defined by the Constitution of BiH, entities and cantons constitutions and District Brčko statute. According to the mentioned full and non-divided jurisdiction in the education belongs to the Republika Srpska (RS), ten cantons in the Federation of Bosnia and Herzegovina (FBiH) and the District Brčko. Federal ministry of education and science has jurisdiction for organisation of educational sector in the FBiH, while in the RS that jurisdiction is within the RS Ministry of education and culture (Branković, 2012). In Croatia and Slovenia, the higher education sector is under the jurisdiction of ministries of education, which means the general government sector authority.

According to the size and number of HEIs criterion, our research is limited on Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH). HEIs in FBiH are established in accordance with the Framework Law on higher education and Cantonal law on higher education, depending on the location of HEI's establishment. The accounting regulations' jurisdictions depends on sectoral affiliation (public or private) but also "integration factor". At fully integrated universities, the faculties are organisational units (members), but only university is legal entity and the beneficiary of a budget funds. Those, integrated, universities are in the system of treasury, providing them use of the Treasury Main Book and Treasury Single Account. At non-integrated uni-

versities every single member (faculty) is legal entity and has possibility for non-treasury activities and disposal of its own revenues (Dragija et al., 2015, p. 116). In FBiH, there are 21 organization of high education; 6 public universities (University of Sarajevo, University of Zenica, University of Bihać, University of Tuzla, University, Džemal Bijedić and University of Mostar), nine private universities and six private high schools.

In the RS all HEIs are established in accordance with the Law on higher education as non-profit institutions, specifying universities as entities with independent legal personality and faculties as the organizational units (members) of the universities without legal personality. Thera are two public universities, seven private universities and ten private high schools.

HEIs in Croatia are established as public or private institutions. Public HEIs are organized as budgetary users while private are organized as non-profit organizations or companies. Similar to organizational structure of FBiH, in Croatia there are two kind of universities; integrated and non-integrated universities. While non-integrated universities have "constituencies"; these are independent entities (faculties, academies), which independently conduct study programs, enrol students and hire teaching staff, integrated universities consist of several departments (faculties, etc.) without status of legal personality. Consequently, the business policy is centralized under university, which (among other) hires all employees of the members (faculties). Integrated universities are University of Dubrovnik, University of Pula and University of Zadar, while other universities are formally not integrated, but have a greater or lesser degree of functional integration. Overall, there are 119 HEIs: 8 public universities, 2 private universities, 68 faculties and art academies and 1 university centre at public universities, 4 private polytechnics, 11 public polytechnics, 22 private colleges, and 3 public colleges.

In Slovenia, the Higher Education Act determines the HEIs as universities, faculties, art academies and professional colleges. The university is an autonomous, scientific research, artistic and educational institution of higher education with a particular status, which ensures the development of science, profession and art and through other entities (faculties, etc.) provides the educational process. The universities are legally independent entities. There are 4 public universities, which consist of 50 faculties and art academies, 48 private faculties.

The public HEIs in FBiH apply International Public Sector Accounting Standards (IPSAS) according to the Law on accounting and auditing. According to the modified accrual basis, the revenues are recorded at the moment of payment (cash flow principle), while the time of accrual determines the evidence of expenses. A consolidated annual calculation of budget is based on a single annual calculation, while budgetary users are obligated to prepare interim financial reports on predicted and realized revenues and expenses during the budgetary year for the competent ministry.

Three non-integrated universities use budget accounting but each faculty with its own legal personality makes and submit own financial reports, while consolidated reports are made at the university level. Specific case is the University of Mostar that has only summary overview instead of consolidated report since the last cannot be done because all faculties/members did not accept budget accounting yet.

The basic financial reports of the public HEIs in the FBiH are: income statement, balance sheet, report on cash flow, report on capital expenditures and financing. Beside the mentioned, the following annual reports are made and submitted: the Form – Special data on salaries and number of employees, Annual report on budget execution, Annual report on investment, Report on calculated and paid contribution for protection against natural and other accidents. Besides annual reports, the public HEIs are obligated to report quarterly in paper and e-form to the Ministry of finance. The quarterly financial reports include: review of incomes, revenues and financing by economic categories, expenditures and expenses by economic categories, special data on salaries and number of employees, special data on current and capital transfers, cross-classification of budget expenditures and expenses by economic and functional classification, register of transfers form the current budget reserve, register of unpaid liabilities, review of revenues, incomes, expenditures and expenses by economic categories, expenditures, expenses and transferred funds by source of financing for development projects, report on assigned cost of transfer.

The public HEIs in RS also apply IPSAS since 2006, but full accrual basis is applied since 2013 for the financial reporting purposes, while the budget execution reports base on modified accrual basis. According to the modified accrual basis, the revenues are registered by payment, while expenses on accrual basis. Treasury Main Book and Treasury Single Account encompass all organizational units of public HEIs, which do not prepare financial reports for each faculty, but consolidate the financial report for the university. Due to the nature of public HEIs' revenues (transfers from the budget, scholarships etc.) application of full accrual basis allows more comprehensive and realistic review of financial position. Consequently, the transparency of accounting information is increased making conditions for more accurate use of management evaluation indicators for evaluation of management.

In BiH usage of accrual accounting basis has enabled comprehensive and more realistic approach to the financial, property and revenue conditions. In addition, the transparency of the accounting information is increased and precise usage of performance ratios is enabled. However, the abovementioned can lead to conclusion that there are still evident differences between the Entities in Bosnia and Herzegovina on use of cost accounting and full costing. Differences can be tracked also in the legal basis of different use of IPSAS and different accounting basis between the Entities. External financial reports and included information are differently used in the FBiH and RS for different decisions. The mentioned can be caused by the organisational structure of univer-

sities since universities in the RS are fully integrated while in the FBiH universities are integrated and non-integrated. Previous research (Lutilsky and Ćorić, 2015) showed that accountants and financial officers believe that full costing method for cost allocation of all direct and indirect costs should be developed. Issue of changes in accounting system and reforms in education system regarding use of cost accounting and use of full accrual basis within the Bosnia and Herzegovina universities makes space for further research and development.

Budgetary accounting is conducted based on the principle of double-entry bookkeeping and according to the schedule of accounts in the chart of accounts, as well as rules for recording transactions and events. Due to the fact that public HEIs are budgetary users they are therefore obligated to prepare external financial reports by using modified accrual basis. Consequently, the revenues are recorded on cash basis while expenses on accrual basis (Vašiček, 2007). External financial reporting is determined as mandatory, with prescribed form, content, period, as well as liabilities and deadlines for their submission. The analytical financial reporting framework is universal and enable the consolidation of financial reports. Financial reports incorporate five statements, preciously presented in Table 1. As for the cash flows report, it is not stipulated in the normative framework and is drawn up on an optional basis. Financial reports of public HEIs are based on the economic classification and contain information about following accounting categories: revenues, expenditures, receipts and expenses, assets, liabilities and sources of ownership recognized in accordance with the prescribed rules of measurement and evaluation. They are all available for public. Besides financial reports, the Croatian HEIs are obligated to report about budget execution to relevant ministry and Ministry of Finance according to other classifications (by sources of financing, programs, etc.). Those budgetary reports of each public HEIs are not public available but the data contained are used as consolidated financial and statistical data of relevant ministries and other government bodies.

There is no internal financial reporting or cost accounting system regulation for Croatian HEIs. No doubt, that successful decision-making process needs additional accounting information contained in the internal reports. Even though some reports are prepared for internal purpose, the quality of those reports is questionable due to the fact that Croatian public HEIs neither do not apply accrual basis of accounting neither cost accounting systems are regulated.

The Slovenia, the general budgetary accounting principle (accounting basis) for transactions recognition is the cash flow principle (cash received or paid – paid realisations). Nevertheless, some public legal entities (public institution, agencies, institutes, chambers, etc.) use the accounting principle of a business event (invoiced realization), recognizing the revenue and expenses when a business event occurs. The specificity of the Slovenian public accounting system is a modified version of an accounting system where the main accounting principle is a cash basis and an accrual accounting basis is applied as main accounting principle only in case of particular budget users. The HEIs are public institutions that belong into the group of indirect budget users keeping

books on the uniform chart of accounts primarily using the accrual accounting basis but also cash basis[2].

The annual report consists of financial reports and business reports. The financial report consists of the balance sheet, the statement of income and expenses and the notes to the financial statements. Those reports should be forwarded to the Agency for Public Legal Records and Related Services (collecting and disclosing them) and to the Ministry of Science, Education and Sport. The required contributions to the balance sheet are: the report of state and movement of intangible assets and tangible fixed assets and the review of the status and trends of long-term investments and loans. The financial data should be disclosed in the notes to the financial statements publishing the criteria that were used for the demarcation of income and expense in a public service activity and the activity of selling goods and services on the market.

From the financial accounting system point of view, the Slovenian HEIs have a predisposition to provide fully relevant and reliable information basis needed for making economic decisions at the micro level. But, there is no legal act considering the cost accounting in HEIs and consequently the cost accounting is in charge of every single entity (university) itself.

2 According to the cash flow principle, the revenues and expenditures are recognized when the following two conditions are fulfilled: a) a business event resulting in the recognition of the revenue or expense has occurred and b) the cash or its equivalent has been received or paid or if receivables or liabilities relating to the revenues or expenses have been settled in another way without the actual cash flow (the Ordinance on Measuring and Breakdown of the Revenues and Expenditures of the Users of the Uniform Chart of Accounts).

Table 1: Accounting and budgetary systems in BiH, Croatia and Slovenia

Criterion	BiH		Croatia	Slovenia
	FBiH	RS		
Legislation	Law on budgets of FBiH Directive on accouting of the budget of FBiH Rulebook on financial reporting and annual FBiH budget calculation Rulebook on accounting of FBiH budget Law on treasury	Law on budget system Rulebook on financial reporting for the budget beneficiaries of the Republic, municipality, cities and fonds budget Rulebook on accounting, accounting policies and accounting estimations for budget beneficiaries in RS Law on treasury	Budget Act Regulation on financial reporting in budgetary accounting (Official Gazette, 2011; Official Gazette 2015a)	Public Finance Act Accounting Act Regulation on the compilation of annual reports for the budget, budget and other entities governed by public law (Official Journal RS 115/02124/08)
Budgetary accounting	Modified accrual basis	Modified accrual basis	Cash-flow basis	Cash-flow basis
	A consolidated annual calculation of budget	Annual report on Budget Execution	Semi-annual and Annual Budget Execution Reports	Semi-annual and Annual Budget Execution Reports
Financial accounting	Modified accrual basis	Accrual basis	Modified accrual basis	Accrual basis
	Income statement, Balance sheet, Report on cash flow, Report on capital expenditures and financing.	Balance Sheet Income Statement	Balance Sheet Report on revenues, expenses, receipts and expenditures Report on expenditure according to functional classification Report of changes in the value and volume of assets and liabilities Report on liabilities	Balance sheet Statement on revenue and expenses Notes to financial statements

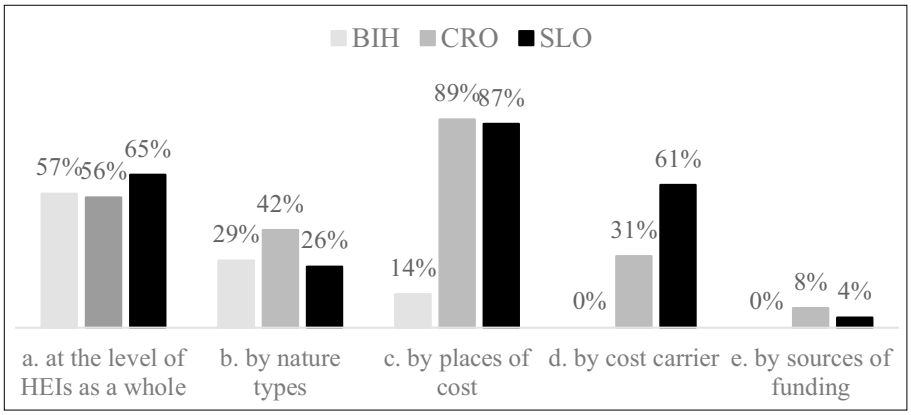
Source: own

3.2 Analysis of the cost accounting systems capabilities in HEIs in observed countries

In the second part of the research, the focus has centred on the analysis of the internal reporting of the HEIs in observed countries, pointing out specifically cost accounting. The cost-tracking question within cost accounting is one of basic elements for useful management tool as far as decision-making is concerned. The first question of our survey was oriented on the analysis of the current situation in HEIs accounting systems as far as monitoring direct and indirect costs are concerned as the potential for full costing method implementation. The results show how detail HEIs are tracking cost, while in the questionnaire there were several possibilities like; a) HEIs as a whole, b) by nature types, c) by places of cost, d) by cost carriers, e) by sources of funding. The results revealed that the majority of HEIs do trach cost at least by places of cost, much less HEIs use cost carriers or sources of funding for cost tracking.

From the Figure 1, state of the cost accounting systems at public HEIs in Bosna and Herzegovina, Croatia and Slovenia can be observed.

Figure 1: Cost tracking at public HEIs in selected countries

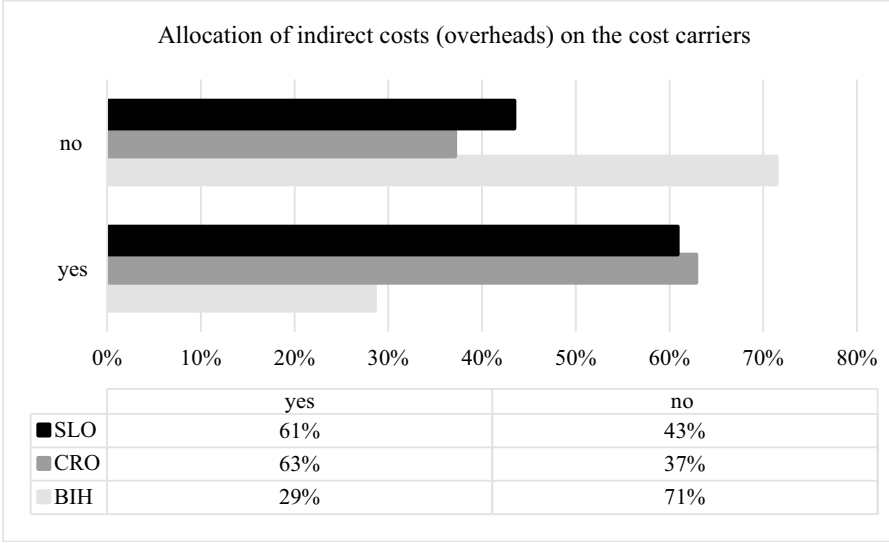


Source: own

It is evident that there are big differences in cost tracking in selected countries. In Bosnia and Herzegovina costs are dominantly tracked at the level of HEIs as a whole (57%), while by the nature types only 29% of respondents gave affirmative answer and by places of cost 14%. According to research results, there is no cost tracking by cost carries and by sources of funding in Bosnia and Herzegovina. In the Croatia the most respondents answered that costs are tracked by places of cost (89%), followed by cost tracking at the level of HEIs as a whole (57%) and by nature types (42%). 31% of respondents in the sample is tracking cost by cost carrier and only 8% by sources of funding. The situation in Slovenia is slightly better because 87% of respondents is tracking cost by places of cost, 65% at the level of HEIs as a whole and 61% of respondents is tracking cost by cost carriers.

Allocation of indirect cost (overheads) at HEIs is very important issue due to the fact that majority of HEIs' costs have indirect character. In other words, those costs cannot be directly identified and allocated directly to each individual activity/project/carrier. In that context, full costing is ability to identify and calculate all the direct and indirect costs per activity and/or project. The cost accounting system that is incapable to provide information about at least direct and indirect-costs, has no potential for full cost method implementation. The fact is that the implementation of the full costing method is a prerequisite for the efficient management of HEIs. The results of our second research question that are presented in Figure 2, revealed the state at HEIs in three observed countries as far capability of direct and indirect cost allocation is concerned.

Figure 2: Allocation of indirect costs at public HEIs in selected countries



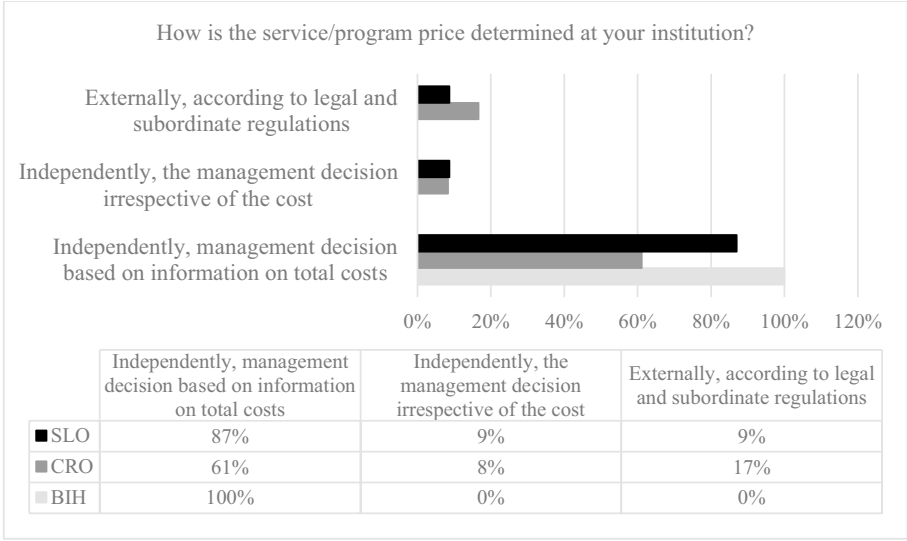
	yes	no
SLO	61%	43%
CRO	63%	37%
BIH	29%	71%

Source: own

From the Figure 2 it is evident that in Slovenia (61%) and Croatia (63%) most of respondents answered affirmatively on this question while in Bosnia and Herzegovina only 29%. In Bosnia and Herzegovina 71% of HEIs are not allocating indirect costs on the cost carriers.

HEIs apply service/programme prices for several purposes. Those prices can be can be determined within the institution (management) or externally (according to legal requirements). In this context, our research question has tested the methodology HEIs use for this price determination. The results are presented in Figure 3.

Figure 3: Price determination at public HEIs in selected countries

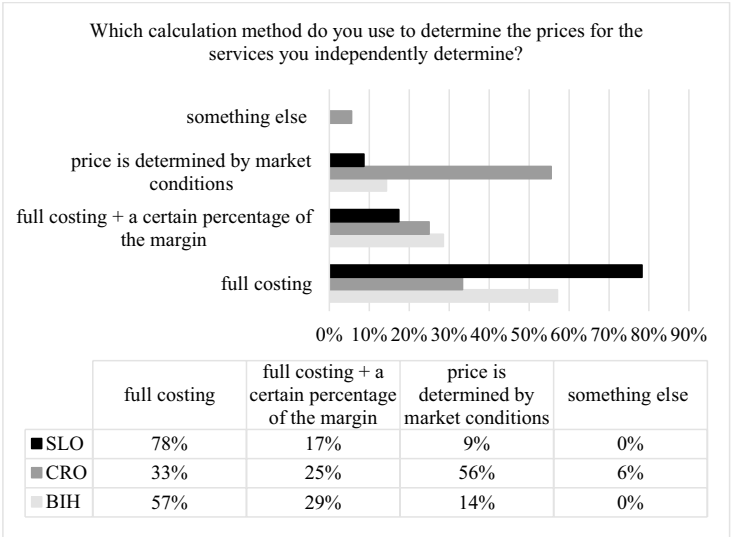


	Independently, management decision based on information on total costs	Independently, the management decision irrespective of the cost	Externally, according to legal and subordinate regulations
SLO	87%	9%	9%
CRO	61%	8%	17%
BIH	100%	0%	0%

Source: own

From the Figure 3 it is obvious that in all selected countries prices at HEIs are in most cases determined independently, but using accounting system information on total costs. In close connection with aforementioned question and results, the research focus has spread on determination of the calculation method to determine the prices for the services HEIs independently determine. The results are presented in Figure 4.

Figure 4: Calculation methods for price determination at public HEIs in selected countries



	full costing	full costing + a certain percentage of the margin	price is determined by market conditions	something else
SLO	78%	17%	9%	0%
CRO	33%	25%	56%	6%
BIH	57%	29%	14%	0%

Source: own

In Slovenia (78%) and Bosnia and Herzegovina (57%) respondents are dominantly using full costing method while in Croatia only 33% of respondents are using full costing method. In Croatia, most respondents (56%) answered that the price is determined by market conditions.

4 Discussion

The research of the development stage of HEIs' cost accounting systems in observed countries has revealed that the "accounting capacities" are primarily focused on external financial reporting, which is normatively determined due to the fact that internal reporting is at the very early development stage. The reason for such situation comes out of the fact that all three countries are ex-Yugoslavian republics with post-socialistic organizational structure of higher education. There are no available data about costs per student or programme in former common state, but it is known that 17% of GDP has been allocated in higher education in 1989 (Latifić, 1997). The centralized financing structure of public higher education system in common state caused consequences on accounting systems of HEIs that have not changed until today. The normative frameworks of public sector accounting systems in the observed countries have gone through certain reforms transforming cash flow into "more accrual" based accounting. At the moment, there are differences in the organizational structure within universities in different countries, differences in accounting principles of budgetary as well as of financial accounting and reporting. Due to the fact that BiH is still in the transition process with status of candidate country for EU membership, reform processes are even more intensive than in Croatia and Slovenia.

Our quantitative research revealed interesting results. In Bosnia and Herzegovina costs are dominantly tracked at the level of HEIs as a whole (57%), while in Croatia (89%) and in Slovenia (87%) most frequently cost are tracked by places of cost. In that context, the results of testing overheads allocation have not been surprising. It turned out that in Slovenia (61%) and Croatia (63%) HEIs allocate overheads, while HEIs in BiH did that only in 29% organizations. The smallest differences among countries have been presented as far as price determination was concerned, while the prices are in most cases determined independently by using total costs information. Considering cost methodologies in HEIs differences appeared. In Slovenia (78%) and Bosnia and Herzegovina (57%) respondents are dominantly using full costing method while in Croatia only 33% of respondents.

All of the above mentioned, raises many new issues. Undoubtedly, the interrelation of all four questions has brought some additional insights. The fact is that overheads allocation is first step in providing cost accounting system of high quality. Having in mind that approximately 60% of Slovenian and Croatian HEIs and less then 30% of HEIs in BiH allocate overheads, the reliability of information about cost tracking strategies and methodologies is under great concern. How can management rely on data and information about cost if even overheads are not allocated? From that point of view, the Slovenian HEIs seems to have most reliable data, while only 17% of HEIs use ABC method 17% and

only 26% Balanced Scorecard. Surprisingly, the ABC method has been most frequently used in BiH but the reason has been found in the international project IPA Reform of Higher Education in BIH 2012-2014, where universities representatives in cooperation with EU experts developed a computer program to track the cost per student, but application of this program was on voluntary basis so it was never actually implemented in the reporting systems as mandatory part.

Nevertheless, the problem of reliability of the data obtained still remains due to the fact that only Slovenian hospitals use accrual based accounting system. Other two countries' accounting systems use modified accounting basis for cost/expenses recognition, that would on the example of depreciation mean that cost are recognized in the period when the asset is purchased and it is not divided on the useful time of the asset.

5 Conclusion

A comprehensive and developed accounting information system is on the most important preconditions for efficient management at HEIs. The fact is that the HEIs in developed countries have already recognized the importance of good management accounting systems. On the basis of financial accounting that is legally regulated, HEIs worldwide have started to develop cost accounting as an important management tool. Moreover, European University Association promotes the use of full costing method as basis for cost calculation at HEIs. In that context, the main aim of this paper was to investigate the level of development and usage of cost accounting at HEIs in selected countries; Bosnia and Herzegovina, Croatia and Slovenia on the basis of legal framework and literature as well as on the survey conducted in the years 2015 and 2016.

The literature review and normative framework analysis of accounting systems in the observed countries have indicated that accounting systems are more oriented on satisfying legal requirements regarding reporting then on usage of cost accounting instruments for management purposes. Due to that, we have examined following areas of cost accounting in order to reveal the real level of development and usage of cost accounting tools. Results of conducted research have shown big differences in the cost accounting usage at public HEIs in Bosnia and Herzegovina, Croatia and Slovenia. Overall, the cost accounting systems in the observed countries are at the very low development stage tracking indirect cost in approximately 60% of HEIs in Slovenia and Croatia and less then 30% in Bosnia and Herzegovina. According to our research results, it is obvious that there are several more steps in development of the cost accounting systems of the observed countries.

Acknowledgement

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Multiplication of Negative Scenarios: the Approach Public Administrations Could Use at Drafting General Rules

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ABSTRACT

This paper addresses problems that emerge when draft laws are created without due regard for the calculus of probability. Although the latter should be sine qua non for future legislation, legislators usually do not use it despite the legislation's pro future orientation. The paper, based on Hume's old "is-ought" problem (the impossibility to move from descriptive statements to prescriptive ones) and with the awareness that probability will not be used soon, offers a solution for the future legislation in the multiplication of (negative) scenarios, applied to different life questions. Despite the more and more "popular use" of regulatory impact assessments, smart regulation, probability and risk, public administrations as the major drafters of general legal rules usually do not even use the (much simpler) negative approach to gain better insight into problems, although it is per se the natural way of our thinking. A new view on probability through signs that fit into (unwanted, but known in advance) scenarios can also provide new answers regarding causality. The latter is based on signs, which is what evidence per se really means.

Keywords: *apophatic (negative) decision-making, draft legislation and regulation, probability*

JEL: K40

1 Introduction

Authorities have no "authority" over the natural laws and – as practice shows – only moderate over people's emotions and actions. The understanding of (un)related (legal) effects nevertheless became more possible with the first publications of empirical data on deviancy by government bodies, when de-

terminism was subverted by the laws of chance.[1] A first step towards better understanding of such laws is in recognition that legal rules are always (intuitively) weighted (Brest and Krieger, 2010; Dworkin, 1978; Irving John Good, 1983), balanced and more or less *probable* (the latter is seen in the evidentiary standards like "beyond reasonable doubt, probable cause, sufficient cause, necessary cause"). For Cicero, probability *(P)* was the very guide of life (2008) and this *ipso facto* – and even more than for past cases – holds for each decision that should be applied in the future. The latter comes thus relevant also for rule-making that affects a larger number of people than adjudication. Although as a lawyer Leibniz already understood *P* as a part of natural jurisprudence as degrees of assent, of perfection, of likelihood or the chain of evidence (G. W. Leibniz, 1988; G. W. F. von Leibniz, 1996), *P* somehow bypassed the later generations of lawyers. There is much literature about responsive (Ayres and Braithwaite, 1995), smart (Gunningham, Grabosky and Sinclair, 1998), meta (Chiu, 2015), risk-based (Black, 2012) and other forms of regulation, while P is still rarely mentioned (let alone used in the public administration as the largest governmental drafter of general legal rules), although scholars debate about it for more than 45 years (Ayres and Nalebuff, 2015; Finkelstein and Fairley, 1970, 1971; Tribe, 1971). There is a large number of countries that nowadays address regulatory issues within the impact assessment context (to enhance regulatory legitimacy and accountability) (OECD, 2009, 2014, 2017), but they should go deeper into the very core of *P* to have better laws, to make decisions with more predictable results.

The paper's predisposition is that *P* has not been sufficiently elaborated in legal drafting, although it is engraved in the very foundations of decision-making, in degrees of belief, in indications as inartificial proofs and analogy between legal cases and notions (Beecher-Monas, 2007; Brest and Krieger, 2010; Dwyer, 2008). The basic connection between *P* and evidence comes from the very etymological grounds of "evidence" as "the ground for belief or an indication or sign" ('Evidence | Define Evidence at Dictionary.com', 2016) that 'tends to prove or disprove the existence of an alleged fact' (Garner, 2004, p. 595).[2] And a sign is recognised as such through the order and connection of ideas (to change the order and connection of things and *vice versa*) (Descartes, Spinoza and Leibniz, 1974). In *P*'s core are not complex causations, but *changing (subjective) perspectives* from which signs are recognised as probable evidence, not only in the law, but in all matters. There are no special forms of reasoning peculiar to law (Alexander and Sherwin, 2008); lawyers engage in the same modes of (intuitive, logical) reasoning as other people do. Quality in regulation emanates from *behaviour* (Ridder, 2007); the common thought, tradition, institution, and even reason are repetitive forms of *behaviour*, but the public administrations should not only describe/recognise what is happening (there are plenty descriptive models of reality for example the

1 To believe there were such laws, one needed law-like statistical regularities in large populations. How else could a civilisation hooked on universal causality get the idea of some alternative kind of law of nature or social behaviour (Hacking, 1990, p. 3)?

2 Probability is simply the appearance of connections, resting on proofs [here = 'lines of thought'] in which no logical connection is seen (G. W. F. von Leibniz, 1996, p. 232).

Weberian, New Public Management, Neo-Weberian, Governance and Good administration model), but to look ahead, in the future, a new approach is needed. A next step is to *predict* what could happen (in a manner of driving a car – by looking mainly straight ahead, not backwards). If we paraphrase Marx's saying on philosophers, also decision-makers have mainly 'interpreted the world in various ways; the point, however, is to change it' (Marx, 1976, p. 574). And this stands also in the field of legal probability;[3] legislators enact laws also without knowing their potential (side) effects (Merton, 1936; Sieber, 1981) or from the standpoint of classical perspectives.

So, how things can be changed in the future from the present standpoint, and not only described? If there is a difference between the descriptive and prescriptive laws, why is so hard to recognise the natural and complex (descriptive) things cannot be regulated prescriptively (the law can merely more or less accommodate to natural things)? The classical regulatory methods – that are in their core still in the past centuries[4] – are not good enough, because they do not imitate complex adaptable organisms that can adapt to the flexible environment. A personal adaptation is the subjective element of recognition to adapt, but also this phase is based on a pre-step connected with a way by which information is collected, and also the latter is recognised as such through the numerous receptors. And the same could stand for the public administrations as regulators. This paper is focused on legal drafting that receives too little attention in connection with *P*, because the laws and regulations affect a larger number of people than adjudications, and more empirical data is available to form a prior *P* or base rate on which relevant general decisions can be made. One of the major obstacles for a higher level of objectivity at general drafting is the apparent logical impossibility of the principle of induction to form general statements – known as Hume's guillotine or fact–value gap (Hume, 2009). Findings on the inductive method affect human rights and their universal and inalienable nature, so better understanding of it is not only *sine qua non* for understanding of *P* but also of legislation/regulation. Nobel prizes have been given for works on human bias and fallibility, but public servants still mainly prepare draft rules with the help of their common

3 One of the rare examples of probability is the so-called precautionary principle, in the EU law applied in the field of environment (see Article 191(2)). One of the most-known cases from this field is the judgment of the Court of First Instance, T-13/99, *Pfizer Animal Health SA v Council of the European Union* [2002]. About the apportionment of the burden of proof, the court stated that 'the Community institutions must show, first, that the contested regulation was adopted following as thorough a scientific risk assessment as possible, which took account of the particular circumstances of the present case, and, second, that they had available, on the basis of that assessment, sufficient scientific indications to conclude, on an objective scientific basis, that the use of virginiamycin as a growth promoter constituted a risk to human health' (para 164). Despite the fact that institutions enjoy a discretion *vis-a-vis* the pursued objectives and appropriate means of action, the level of risk and/or the severity of the impact on human health and the probability of possible adverse effects, should still be based on »available scientific knowledge« (para 152). But - but what to do when on some (legal) field there is no scientific knowledge on probability that would allow predictions (that is legal decisions)? In this case public officials should create it themselves, and/or at least understand some basis of P.

4 A reader could compare a newest statute of his country with the General State Laws for the Prussian States (*Allgemeines Landrecht für die Preußischen Staaten*) of 1794, and search for differences.

sense and/or intuition (of what would be the right thing to do or enact), in a way laws were made centuries ago. The paper's RQ is:

How P can be embedded in legislation and regulation, and how the public administrations could be more adaptable to changes in environment and be at the same time in accordance with public values?

2 The paper's predispositions

One of the first obstacles to make legislative drafting more efficient is *confirmation bias*, as a deliberate and exclusive search for confirming evidence.[5] This kind of cognitive ease with attention focused only on the personal, visible or accessible parts is not only very known – think on Rawls's veil of ignorance (2005) – but it is still blind (that further confirms it as bias) to other individual cases that disconfirm them. It is also a negative companion to public and/or collective decision making. Because of its prevalence also in legislative drafting (a parliamentarian coalition rarely accepts oppositions arguments), it will be further addressed later in the paper. The paper claims more objective criteria could be established to draft general laws, because *reality does not matter for coalitions* in Parliaments and happens through things capable to act based on numerous (un)intended causes and effects. Decision-makers can enact better legislation/regulation if they recognise *P* (and with this a basic unpredictability) as a major player in decision-making; their decisions could be – through the insertion of *P*-procedures as the numerical degrees of belief – more predictable, thorough and more objective. If this is too optimistic, decision-makers could at least be aware changes in the flexible environment are happening more often than classical legal rules "permit".

The second obstable is classical causality or the cause-effect relation, although already Carnap in 1966 claimed causality 'is not a thing that causes an event, but a process…[in which] certain processes or events cause other processes or events' (Carnap, 1966, p. 190). Cziko describes this as *circular causality,* where 'perceptions do not control behaviour. Rather, individuals vary their behaviour as necessary to control their perceptions and thereby obtain desired outcomes and avoid unwanted ones' (2000, p. 253). Circular causality (feedback loops) is one of the main elements of systems theory, and it can give different perspective also for legislation by bypassing the »is-ought« problem.

An effective application of mathematical *P* will probably not be used any time soon in the practice of legal drafting, so to be fast and pragmatic at the same time, a method used in apophatic (negative) theology is proposed for the public administrations: decisions about future results could be closer to goals

5 Although this bias has become better known through the works of Tversky and Kahneman (2013; 1974), it is found already in cataphatic theology, in which knowledge of God is obtained through defining God with positive statements (Oxford Dictionaries, 2016). This tendency can also be found in scholars' papers where authors – if they want to gain a reviewer's attention – cite numerous authors at the beginning of their papers that have focussed their efforts on a particular problem, while falsifiability is ignorant for them; it is based only on experience.

when decision-makers know what results they do not want, what is *absent* in the present state of things. Such general decisions cannot be the sharp sword of Alexander to cut a hard knot of unpredictability, but they can be sharp enough – if (besides the mathematical *P*) negative exclusion and the signs of evidence (which decision-makers possess) are used with *P*. To reach this aim, the problem of legal induction will be described in the next chapter, to be able to propose a way of determination of *P, i.e.* beliefs in legal drafting in the fourth chapter. In the fifth chapter, a problem of "legal cosmology" will be described in order to offer a solution to this problem. The paper's predispositions are the existence of confirmation bias that could be minimised with the application of *P*, within the frame of circular causality. As *P* will probably not be used in the law in a manner used in natural science, a "shortcut" will be given in a form of negative thinking.

3 The problem of legal induction in the absence of causality

For Comte 'the positive point of departure for the work of *the statesman* … [is] to discover and institute the practical forms to avoid…crises which spontaneous development brings about when it has not been foreseen…in this order of phenomena science leads to foresight, and foresight allows us to regulate action' (1998, p. 3). Although this sentence – usually known as *savoir pour prevoir, prevoir pour pouvoir* (to know in order to predict, to predict in order to control) "sounds nice", it jumps to the conclusion because methods of knowing and understanding are accepted as relevant also without being tested first. As all of them address reality from the inductive or deductive point of view, it is valuable to readdress Hume's is–ought problem.[6] Hume represents the beginning of the still unfinished conception of science that was/is based on the inductive method of research. It is the same as a conditional form of the legal norm (if → then), and is thus important also for legislators. Kant has tried to avoid Hume's critique of the principle of causality (*phenomena*) by declaring pure concepts as a synthetic *a priori* principles as things in themselves (*noumena*): 'this complete solution of the Humean problem… restores to the pure concepts of the understanding their *a priori* origin… not, however, in such a way that they are derived from experience, but that experience is derived from them, a completely reversed type of connection that never occurred to Hume' (2004, pp. 64–65). Sir Karl Popper agreed with Kant we must confront the nature with hypotheses and demand a reply to our questions, but Kant's *a priori* valid expectation proved too much for him; 'in thinking that these laws are necessarily true, or that we necessarily succeed in imposing them upon nature, he was wrong. Nature very often resists quite

6 For Hume, induction cannot be logically defensible, while causes and effects can be discovered by *experience* (not by reason): 'even after the observation of the frequent or constant conjunction of objects, we have no reason to draw any inference concerning any object beyond those of which we have had experience' (Hume, 2009, p. 228). For him, all reasoning about facts originates from the cause-effect relation, although we have no coherent understanding of causality: 'the sense of justice is not founded on our ideas, but on our impressions…[which] are not natural to the mind of man, but arise from artifice and human conventions' (Hume, 2009, p. 757).

successfully, forcing us to discard our laws as refuted; but if we live we may try again' (1962, p. 48).[7] Although Popper agreed with Hume's denial of the logical justification of the principle of induction, he was dissatisfied with his psychological explanation of induction in terms of custom, because observations 'are repetitions only from a certain point of view' (1962, p. 46).[8] Instead of explaining our propensity to expect regularities as the result of repetition, Popper proposed explaining repetition-for-us as the result of our "propensity to expect" and search for regularities to solve our problems; he invites us to provide new hypotheses (expected regularities and/or patterns) through which we could evaluate their refutability by real facts that emerge under the trial and error principle.

How can legislators/regulators overcome Hume's guillotine, Kant's a priori principles and Popper's propensity to expect? Decision-makers many times still (only intuitively or also logically) "feel right" *i.e.* when they use common sense and intuition as the prime movers of general rules when they do/enact something (Baron, 1998; Kahneman, 2013), but they should also take into account possible future »detours« of their acts. One way to bridge a gap between a legal act and different effects in the future is to consider Wittgenstein's language games: he rejected the (apparent) paradox of following and breaking the rule[9] by treating action in accord with the rule as its *practice*: 'there is a way of grasping a rule which is not an interpretation, but which is exhibited in what we call "obeying the rule" and "going against it" in actual cases…And hence also "obeying a rule" is a practice' (Wittgenstein, 1986, p. 81). A connexion between what humans say/read/understand as a rule and their *actions* must thus be *regular enough* to call it "language", "institution" or "the law". *A rule is thus what its practice shows*. Where rules are stated prescriptively ('woman do not enter rum shops') much depends on how people stand to a rule with which their conduct *conforms* (MacIntyre, 1978, p. 220). Rules' meanings are established with their practical usage.

A next step is a link between future practices and (prescriptive) legislation that can be established with imagined practices (scenarios) without using causality (the latter cannot be even present in draft laws as they are focused in the future). Actions are made/recognised as such in our mental frames, where general statements are *required* by our mind in the form of our *inborn*

7 The scientific method depends on considering at the outset the hypothesis that variations in the data is completely random and modifying it step by step as data is found to support alternatives is a complete reversal of the nature of induction as understood by philosophers (Jeffreys, 1998, p. viii).

8 Similarity-for-us is the product of a response involving interpretations (which may be inadequate) and anticipations or expectations (which may never be fulfilled). It is therefore impossible to explain anticipations or expectations as resulting from many repetitions, as suggested by Hume. For even the first repetition-for-us must be based upon similarity-for-us, and therefore upon expectations – precisely the kind of thing we wished to explain. This shows that there is an infinite regress involved in Hume's psychological theory (K. R. Popper, 1962, p. 45).

9 No course of action could be determined by a rule, because every course of action can be made out to accord with the rule…if everything can be made out to accord with the rule, then it can also be made out to conflict with it. And so there would be neither accord nor conflict here (Wittgenstein, 1986, p. 81).

propensity to look for regularities/similarities. This propensity can be a bridge between is and ought, if causality is left outside of the is-ought problem. All observation involves the recognition of dis/similarities; this recognition, although psychologically and logically *a priori*, is not valid *a priori*, for our recognition may fail in new environments, where we often fail to find regularities. Order is established *ex automata* if it is suitable for a relevant legal context. Despite the logical impossibility of the principle of induction to climb on a ladder of generality, there is our psychological *a priori* search for regularity. A psychological *a priori* drive or search for regularity to embrace uncertainty is not the solution for the "is-ought" problem but it can be the explanation for our actions. The mentioned problem can be more objectively addressed (but not solved) in the field of *P* that accepts ought as merely probable based on the past data. Hume's statement was often erroneously understood as a statement making no claims about what ought to be a basis of a statement about what is. Claims *can* be made; although they are not valid logically, they are "good enough" for the ordinary course of things. If this is not true, legislators could not enact laws as general rules in which ideas and values have no real existence, but exist only as the object of feeling, of values not of reason: '[s]elf-interest is the original motive for the establishment of justice: but *sympathy* with public interest is the source of the moral approbation, which attends that virtue' (Hume, 2009, p. 762). Our natural tendency for order could on the practical level bypass Hume's problem; it gives us a foresight that enables us to regulate our *actions*. The human inborn tendency for order and the search for missing things brought us to the very gates of *P*, which resembles to the doorkeeper's answer in Kafka's novel The Trial (2004): "[n]o one else could ever be admitted here, since this gate was made only for you. I am now going to shut it". The gates are open, and we should step in to grasp *P*.

4 Probability in the law

In numerous legal works, *P* is not even mentioned. In some it is, but how it can be estimated is not presented (Hood, Rothstein and Baldwin, 2001; Hudson, 2003; Palmer, 1998) or it is done very briefly (Dwyer, 2008; Fisher, 2012; Palmer, 1998), intended to be applicable for usual legislators or public servants as the major drafters of statutes (not being neither experts, nor even beginners). Ordinary logic seems to be inadequate in itself to cope with problems involving beliefs (think about a legal promise or future obligation where inference cannot be made from a particular case to all future cases), so a theory of *P* has been developed. What and how should a decision-maker consider different elements to regulate future events? *P* is a central concept of everyday decision-making (think about it the next time you cross a street in traffic without a traffic light), although maybe due to the principle of legal certainty and "predictability" (sic) something that is only probably (although *sine qua non* of each future event) is not very appreciated at legal drafting. We do conclusions intuitively (in our lives and mainly also at legal drafting); since we do not obtain *P*s through statistical methods assumptions can be overestimated. In the US, the Supreme Court, in the case *Daubert v. Merrell Dow Pharmaceu-*

ticals, Inc. 509 U.S. 579 (1993), developed a methodology for these kinds of questions. In this case, the Court demanded the trial court not only has the power but also the obligation to act as a gatekeeper in determining whether an expert's opinion is based on scientific reasoning[10] and methodology. The Court gave a non-exclusive list of four factors (that assist to answer a question if reasoning or an approach can be scientifically endorsed and used for the facts at issue): 'including whether the theory or technique in question can be (and has been) tested, whether it has been subjected to peer review and publication, its known or potential error rate, the existence and maintenance of standards controlling its operation, and whether it has attracted widespread acceptance within a relevant scientific community' (at 12–15). It is also of the utmost importance for the public servant to know how people's beliefs and evidence are transformed into decisions.

Judges are not supposed to take previous convictions into account, while legal drafters *must* take the past and present problems into account. It is surprising that *P* is not used very often in legislation/regulation due to its known procedures that help us to think equally in equal situations, *i.e.* to reduce subjectivity (bias) to a minimum. There is no claim that reasonable beliefs can be measured, but *relations* between them can be calculated.[11] *P* does not concern the merits of the case but the (more objective) regulation of procedure. It would be useful if a higher degree of objectivity is present in legal reasoning; this is possible when *P* is used. *P* was/is a feature of the legal history and is still a part of existing legal systems if decision-makers admit this or not. The same applies for the distinction between the factual and legal state of affairs. Although each decision maker should be acknowledged with conditional probabilities or natural frequencies (Carrier, 2012; Edwards, Jr and Winterfeldt, 2007; Gigerenzer, 2003; Gigerenzer, Todd and Group, 2000; Hacking, 2001), we will not go into the details of *P* here. As was already mentioned in the second chapter one method to get closer to predict future actions more easily will present *P*'s very beginning. It lies in the search for consequences, although not in the usual way. They can be established by looking for the opposites of everything decision-makers know.

5 A problem of "legal cosmology"

As cosmology is the scientific study of the large scale properties of the universe as a whole, in the same manner legal science naivelly tries to legislate/

10 One of the first decisions where the US Supreme court used social science in support of its decision was *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954); in this case, the court used seven social works from different authors (see note 11 of the decision) to claim that the segregation of white and coloured children in public schools has a detrimental effect on the coloured children.

11 A probability theory, being a fixed procedure, lends a certain amount of objectivity to your subjective beliefs (I. J. Good, 1950, p. 4). The probability you assign to any particular proposition is a matter for your own personal judgement, but the set of all your probability assignments is subject to fairly strong rules of internal coherence (Hacking, 2006, p. 14).

regulate society as a whole.[12] But as the first uses P in its operations, the second lag behind. A problem of »legal cosmology« is hence made by prediction without using P.[13] A first mistake in decision making is the ignorance of the *base rate* (Ayres and Nalebuff, 2015) which is the most important factor in the theory of *P*: '[t]he *prior probability*, which must always be found before the method of pure induction can be usefully employed to support a substantial argument, is derived from considerations of analogy' (Keynes, 1921, p. 276), or more vividly 'telling a jury a likelihood ratio without a prior is akin to telling someone how many eggs to include in a cake recipe without telling them how much flour to use or the serving size' (Ayres and Nalebuff, 2015, p. 1500). The absence of the base rate is present also in the law when analogy (the other name for induction) is used in *improper* contexts. The base rate is constituted by all things decision-makers know but it does not constitute a decision in question (although it is very relevant for the latter's *P*). Popper assigned the utmost importance to this problem with his theory of *falsifiability*, by which 'universal statements are never derivable from singular statements, but can be contradicted by singular statements' (2002, p. 19). Singular observations should be used only to *falsify* possible general solutions, not to deduce any particular solution from them.[14] Because the positive or the negative analogy deals with resemblances or differences between objects, for Keynes 'to reduce resemblances between the instances is the same thing as to *increase the differences* between them. Hence any increase in the negative analogy involves a reduction in the comprehensiveness of the characteristics in which all the instances resemble one another outside those covered by the generalisation' (Keynes, 1921, p. 262). The key to reinforce a positive argument is to increase known differences between instances: '[t]he object of increasing the number of instances arises out from the fact that we are nearly always aware of some difference between the instances…Every new instance may diminish the unessential resemblances between the instances and, by introducing a new difference, increase the Negative Analogy. For this reason, and for this reason only, new instances are valuable' (Keynes, 1921, p. 269).

A solution for legal science could be thus also to *look for the negative* when analogy or induction is used. The function of induction is to tell us *not* which predictions are right, but which predictions are indicated as wrong by our present knowledge: 'it is only when our inductive inferences are *wrong* we learn new things about the real world' (Jaynes, 2003, p. 326). Progress is the result of alertness to cases where the inductive method has led to *inappropriate* likelihoods. People up to a certain point ignore the fact that they did not (successfully) predict what would happen (although they later fall into confirmation bias with ease) and even amplify unwanted consequences by their erroneous thinking. The gist of Carroll's failure ("if you don't know where you are going, any road will get you there") can be seen in Ellenberg's "the missing

12 This approach is clearly wrong; it results in a more and more growing number of legal acts that cause the unintended consequences, administrative barriers, new institutions (without reforming the existent ones) etc.

13 Laws many times enact an obligation for an institution to assess risks (especially in Inspection Acts) without even mentioning (a rough frame) how risk could be assessed.

14 A legal principle stays as the valid principle regardless how many times is violated.

bullet holes story":[15] you can only find the weakest spot *negatively* by searching for missing bullets. People, on the other hand, think similarly, i.e. by exclusion of what they know (to get closer to things they do not know): '[t]hinking is a putting-aside, rather than a putting-in discipline, *e.g.*, putting aside the tall grasses in order to isolate the trail into informative viewability. Thinking is frequency modulation for it results in tuning-out of irrelevancies as a result of definitive resolution of the exclusively tuned-in or accepted feed-back messages' pattern differentiatability' (Fuller, 1971, p. 121). Scientific systems are many times refuted negatively by experienced errors. Solutions are found after problems have been carefully addressed and ineffective (negative) methods excluded. The idea *per se* was known already in *apophatic (negative) theology*, which describes God by negation, that is speaking of God only in terms of what He is not (gr. *apophanai*, "to deny") rather than presuming to describe what God is (Theopedia, 2016).

It is surprising that in this regard (in its apophatic part) also Locke's *Essay Concerning Human Understanding* of 1689 was/is still unnoticed in legal decision-making. To him, liberty cannot be without thought, volition or will, while they can (non-freely) exist without liberty. Because liberty presupposes understanding and will, it cannot belong to the latter. Concerning a man's liberty, due to this inference, he is occupied with the further question of whether a man has free will. In respect of willing, he concludes that a man is not free: 'a man in respect of willing – when any action in his power is once proposed to his thoughts, as presently to be done – cannot be free [because] it is absolutely necessary that he will be the one or the other' (1999, p. 230). He concluded that will is determined by something outside itself, by *uneasiness*. Desire, as the uneasiness of the mind, determines the will and springs into action: '[t] he greatest positive good determines not the will, but present uneasiness alone...the greater good, though apprehended and acknowledged to be so, does not determine the will, until our desire, raised proportionally to it, makes us uneasy in the want of it. Another reason why it is uneasiness alone that determines the will, is this: because that alone is present and, it is against the nature of things, that *what is absent should operate where it is not*' (1999, p. 238). As he applied the method of exclusivist reasoning to liberty vis-à-vis the will and the latter *vis-à-vis* desire, he also uses it for the power to suspend the prosecution of any desire (which makes way for consideration). The mind has the power to suspend the execution and satisfaction of any of its desires. This is to him the source of liberty or so-called free will (Locke, 1999, p. 246). His reasoning is relevant for our ordinary understanding of legal decision-making, although more generally knowable structure of reality gave Spinoza in *Ethics*

15 The optimal protection of the U.S. army planes in WWII was about protecting the most vulnerable parts. An optimum amount of armour would be at the midpoint between not getting planes get shot down by enemy fighters and not making the plane too heavy, less manoeuvrable and less fuel efficient. The military wanted – in a common sense manner – to put more armour on the parts with the most numerous holes, when Abraham Wald (member of a classified statistical research group) asked: "Where are the missing holes"? The missing bullet holes were on the missing planes. The reason planes were coming back with fewer hits to the engine was that planes that got hit in the engine weren't coming back. Armour should be put on spots with no holes (Ellenberg, 2014).

with his claim *omnis determinatio est negatio* (all determination is negation): all determination is possible because of positing unreal (finite) things as limitation/separation from the real (infinite) ones: 'as finite existence involves a partial negation, and infinite existence is the absolute affirmation of the given nature, it follows that every substance is necessarily infinite' (Descartes et al., 1974, p. 182). Although Descartes had a similar approach,[16] Spinoza's infinite and uninterrupted Absolute was put on a higher level with Hegel's dialectics that involves interruptions in a continuous flow (Hegel is for lawyers known mostly with his *Philosophy of Right*), while an axiomatic mathematical confirmation of this "negative reasoning" was given by Kolmogorov.[17]

The apophatic, negative approach is also a solution to the most famous Wason selection task, the four-card problem in the study of deductive reasoning (Wason, 1968). A confirmation through negation is taught in legal schools as one of the first legal principles (*neminem laedere* - do no harm; in medicine it is known as *primum non nocere* - first, do no harm), so it is surprising to note that regulators or authorities usually do not *use the elimination system* of parts that are determined not to fit into a particular set. Although Merton popularised the notion of unintended (thus also unpredicted) consequences in social sciences (Merton, 1996), such consequences originate from Hume's "is-ought" problem of the (un)predictability of future events. For Taleb, a series of corroborative facts is not necessarily evidence (2010) and to prevent this naïve empiricism as Popper intuitively thinks, *we can get closer to the truth using the negative instances, not by verification*: '[y]ou know what is wrong with a lot more confidence than you know what is right' (Taleb, 2010). A theory is rational or empirical if it can be examined critically either in a direct way (if there are already known facts) or by examining/testing its (potentially negative) consequences. The reasoning here differs from Popper's, because along with a theory's de facto examination using the new and new hypothesis, we can also (only) predict/assume negative consequences without the hypothesis's examination if there are some predispositions present that allow predictions. There are fields and/or conditions in which prediction can arise based on 'the necessity of scheduling and coordinating our actions…statistical regularities…the knowledge of the causal regularities of nature … [and] the knowledge of causal regularities in social life' (MacIntyre, 2007, pp. 102–103).

Legal science has placed too much emphasis on positive results, *i.e.* what the laws, case-law, adjudications and practices are, while their negative sides should not be seen only as failures but as a source of valuable information: what is not the law, case-law, adjudication and practices is as valuable as their positive counterparts: only when grouped together they represent a whole.

16 I must not imagine that I do not apprehend the infinite by a true idea, but only by the negation of the finite (Descartes, Spinoza, & Leibniz, 1974, p. 137).

17 He started the modern axiomatic foundations of probability theory with the first axiom: $\mathfrak{F}$ is a field of sets. A system of sets is called a field if the sum, product of and difference between two sets of the system also belong to the same system. The set E–A, which is the complement of A, is denoted by ~A (~ *denotes negative*) (Kolmogorov, 1956, p. 2). From A + ~A = E, it follows that P(~A) = 1 – P(A). What we do *not* know and what we know represents a principle of unity. What we do not know can be indirectly assumed through what we know.

A draft general rule can be tested with increasingly remote consequences in the form of negative potentiality: we can more easily imagine negative consequences (what could happen in a black scenario) than what will certainly happen. Options are substitutes for knowledge; they give us a possibility to choose an option that is *ex ante* the least harmful or *ex post* the most beneficial in a light of gained experience (the intelligence effect of trial and error in Pasteur's notion of chance that favours only the prepared mind). Lawyers (states) could try to think through the (negative[18]) consequences of the proposed solutions and/or present decisions based on a certain potency that arises due to complexity itself or consequences that increase twice or three times of a projected number and in such way obtain predictions and prepare future actions. In the future, we could also look through absent things (un/wanted consequences and/or alternative scenarios) and their magnitudes. If we do not know whether something will happen or not, it is better to concentrate on those potential consequences that would be most harmful to us. From here, we can calculate the *P* of events and propose relevant measures. This could also be called "Black Swan logic", which makes what you do not know far more relevant than what you do know (Taleb, 2010). To solve things, we must focus on what we do not know, *i.e.* to focus on potential harmful extremes; we can get closer to the truth through negative instances rather than by (impossible) verification. We need to administer (absent) consequences.

6 Conclusion

The behaviour of integral aggregate (legal and other) systems *cannot* be determined with the classical regulatory methods. If the only two alternatives or hypotheses regulators admit are good/bad or legal/illegal, the whole rich and enormous structure of the living world (and soft law also) is taken out as "evidence" on the account of diversity with its numerous possibilities and/or real processes that work outside the human binary alternatives. Induction, analogy and causality can be better embraced if we accept the world of *signs* that transfer to us information about unwanted (but known) consequences. A binary stance should be replaced with a colourful scale of weights. Their numerical exposition is represented in *P*, which is present also in a search for the negative. The problem of induction can be reduced negatively through the reduction of what we know to what we have signs. People can not only use their liberty or free will when they consider the problem's positive and negative sides, but they reason more objectively when problems' elements are determined negatively. The more there are, the more the positive side can also be determined. The concepts of the mutual independence of two or more multiplicative events and additive dependent events are the *sine qua non* for *P* that from a set of fields (the larger the better) predict future events. What is missing in common sense reasoning is precisely all the "missing" signs

18 In the absence of known consequences, it is easier to imagine what should not happen and the first rule is not to do harm to other people – in medicine this is known as Hippocrates's *Primum non nocere* ("first do no harm"), while the precepts of the Law are to live honestly, *not to injure another* and to give to each one that which belongs to him ("*Iuris præcepta sunt hæc: honeste vivere, neminem laedere, suum cuique tribuere*–Institutes, Bk. 1, title 1).

that disconfirm our prior belief and confirm the same result from different perspectives. And the same is true for legislation, because it usually does not imitate the adaptable, complex (human) organisms that predict future scenarios of what could happen.

As regards RQ – *P* can be embedded in legislation by posting future (negative) scenarios and to them appropriate actions. Legislation can be more adaptable to changes in environment and be at the same time in accordance with public values through the non-stop feedbacks, (re)organisations and (re)arrangements of elements. In this way control can be constantly (re)acquired over new situations that emerge during a change of different conditions or appear during an implementation of rules – if we know what our goals/scenarios are, i.e. what we do not want.[19] The "emergent idea of legislaton" is that if you want goals, focus on a system in which goals are achieved, i.e. focus on processes, their interactions, build the real-time feedback loops and establish transparency for all stakeholders and citizens to be able to tell you what they do not want. Despite all efforts, final goals can be known today as unwanted consequences. On a general (regulatory) level a system is needed in which information asymmetries are minimised in a quick manner (this include also the moral hazard and human fallibility), and this paper gives the solution: it is a system that accommodates/realigns its actions according to detected signs that fit into unwanted scenarios.

19 E.g. the plastic and other pollution, alcoholism among young people, fatal accidents, an increase of a certain type of disease – what a country should do in the scenario 1 (10% increase), scenario 2 (20% increase), scenario 3 (30% increase), etc.? Regardless of taking causality outside consideration each country can in the present time determine measures for future scenarios; when they come, known measures can be applied without loosing a precious time.

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A Comparative Research on Municipal Voluntary Tasks of Three Hungarian and Slovenian Municipalities[1]

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ABSTRACT

The article summarizes the similarities and differences in voluntary task management of municipalities. For this purpose, we carried out empirical research in three Hungarian and three Slovenian municipalities. Our main objective was to discover which economic and social factors influence the scope of voluntary tasks in Hungary and in Slovenia. We separately analysed six sectors of municipal services, with regard to the different size of the municipalities. Likewise, we only covered the major sectors in which voluntary tasks are most likely to appear and therefore can serve as a basis for comparative analysis. The analysis gradually verified the initial hypothesis of our research that voluntary tasks management is more likely to be present in cities with larger economic powers and is remarkably profounder in municipalities of touristic importance.

Keywords: *public services, decentralisation, municipal tasks, voluntary municipal tasks, Hungary, Slovenia*

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1 Introduction

Local self-government is an important dimension of contemporary good governance. Therefore, a study was conducted about the voluntary tasks of comparable municipalities in Hungary and Slovenia, where students took part within the research project co-funded by the Hungarian scientific institutions.

In our research we put an emphasis on the fact that the presence of facultative tasks serves as a tool of self-governance in the continental local government systems (Pálné Kovács, 2016, p. 585). Despite the general clause of local public affairs, the central administration gained more influence on municipal tasks due to the emerge of the "service-providing" and then the "regulatory" administration in the past few decades (Marcou and Verebély, 1993. pp. 237–240). Given a glance to European regulations determining compulsory municipal tasks, we can conclude that freedom to local service management is generally restricted. On the contrary, the central regulations regarding voluntary tasks are less overwhelming, thus, the municipalities have a broader ground for facultative task management. To add more, these are the aspects in which the municipalities can show off their own character, build a unique image.

One of the most important tools of this characterisation is the definition and provision of the facultative (non-mandatory) municipal tasks. These tasks could be analysed hardly and it is related to the freely chosen nature of these tasks. Therefore the legal regulation on the facultative task in the municipal codes of the European (continental) countries are very concise. The voluntary commitment of local affairs is allowed by these legal acts, and several restrictions and limits are stated, by which the provision of the mandatory tasks is secured (Hoffman, 2015, pp. 88-90). Therefore the main aim of our research was to do a 'pilot' research on the facultative tasks, which could be a base for an extended research.

Although the municipal tasks have an important role in the continental local government systems, this topic is just partly analysed by the literature. It is reviewed as part of the municipal tasks system, and the possibility of the voluntary task performance is analysed by the majority of the literature (Scheurerer, 2012, p. 92; Ruttkay, 2009, p. 219 and Hoffman, 2015, pp. 80–84). It is stated, that voluntary tasks are present at municipalities of bigger size and bigger economic power (Szente, 2013, p. 163), especially in the case when a municipality has a more specific character, e.g. it is a touristic destination (Vlés, 2016, p. 68). The voluntary tasks performance of the smaller municipalities could be based on tools which requires only limited financial resources but more personal activities (Nagy, 2017, pp. 24–25).

2 Methods and hypothesis

The analysis is focused on the legal regulations on facultative tasks of the local municipalities. Thus primarily the regulation on the municipal system and the municipal tasks were analysed. Beside the jurisprudential analysis, the

research also included an empirical inquiry regarding the implementation of voluntary task management.

The empirical research – which was based on the jurisprudential and financial analysis of the facultative service provision of several municipalities – was based on a *qualitative method*. Semi-structured interviews were done during the Spring and Summer of 2018. The number of the analysed municipalities were limited. The limitations were related to the pilot nature of the research and the limited resources. Therefore, we focused our research on the analysis of several characteristic municipalities in detail.

The selection of the analysed municipalities were based on our hypothesis. As we have mentioned in the introduction, our research focused on the voluntary task performance of the larger municipalities and the municipalities with specific characteristics. We also assumed that the small municipalities (with limited financial resources) could perform non-mandatory functions. The decreasing number of compulsory tasks highlighted the importance of the non-compulsory tasks; therefore, we also investigate the changes of the last few years.

Therefore, in this pilot examination, we chose a city, a small town and a village as our base of research. Following the theoretical overview, we prepared a questionnaire as a base for the pilot inquiries. We chose three Hungarian and three Slovenian municipalities to thoroughly examine the voluntary task management both as an experiment and a foundation of a wider research, pursuing the methodology described above.

When selecting the municipalities, we paid attention to include different municipality models and their characteristics to verify our hypothesis. As a result, one of the examined municipalities is in a disadvantaged region of Hungary and is in disposal of a weaker economic power. The municipality of Kesznyéten has approximately 2000 residents and is located in the district of Tiszaújváros of Borsod-Abaúj-Zemplén County (which is one of the disadvantaged regions in Hungary). Our next municipality is Balatonlelle, small town in Somogy County of approx. 5000 inhabitants with touristic importance (a town at lake Balaton, which is one of the most important touristic destinations in Hungary). Thus this town has better economic opportunities. The third municipality have been an urban municipality, the 14th district of Budapest (called 'Zugló', hereinafter Zugló), a bigger sized municipality of more than 100.000 residents.[2]

We started our empiric research in March 2018 with the examination of our chosen city-model, Zugló, the 14th (XIV) district of Budapest. In May 2018, the research group continued the work in Balatonlelle, a prominent touristic Hun-

2 In Hungary, the capital city, Budapest has a two-tier municipal system. The districts of Budapest (now Budapest has 23 districts) have the first tier of the system. These districts have self-governance and are defined as first tier municipalities. The second tier municipality, the municipality of the capital is responsible for the issues of Budapest as a single city and the functions which are related to the capital city status of Budapest. This second-tier municipality (the so-called *Fővárosi* Önkormányzat – Capital Self-Government) is responsible for the tasks of the counties in the area of Budapest (Budapest as the capital city does not belong to any county – the counties are the 2nd tier local governments in Hungary). Thus several differences can be

garian town. These results were published in the 2nd and 3rd volumes *Jegyző és Közigazgatás* in 2018 (Hoffman et al., 2018/1; Hoffman et al., 2018/2).

To verify our research, we carried out a comparative study in a neighbouring country which is similar to Hungary but also has differences compared to it. We continued our project in Slovenia during the summer of 2018, due to the fact that the similar economic power, the fragmented and the significant regional differences in the local governmental system of Slovenia implied a good comparison basis. Following the same methodology, our comparative study focused on three Slovenian municipalities of similar size and character (a disadvantaged municipality, a small town of touristic importance, and a city municipality). The empirical studies were accomplished at the municipality of Hodoš (the smallest municipality of Slovenia with its 400 residents), the municipality of Bled (which itself is a town with 5000 residents, but it has 9000 residents with the integrated settlements) as a touristic destination town and the municipality of Maribor as a bigger sized city of more than 100.000 residents.

This article presents the most important results of our comparative study as we demonstrate several similarities and differences between the Slovenian and the Hungarian voluntary task management systems. Because of the limited number of the observed municipalities, the results can be just limitedly generalised. However, the analysed municipalities can be considered as typical ones, therefore, the results can be a base for an extended research on the non-mandatory functions of the municipalities. Thus firstly, we summarize the initial settings: a brief comparison of the Slovenian and Hungarian local governmental systems. Then, we analyse the voluntary task management by each significant sector and by the different models of Slovenian and Hungarian municipalities.

3 Results

3.1 Interpretation and examination of voluntary tasks

The definition of the voluntary tasks in the local government system is yet to be universally acknowledged in academic circles. Based on the various national and international academic works, we can highlight two different point of view regarding voluntary tasks: a narrow and a wider approach. The narrow approach considers only those public affairs as voluntary which are not part of any municipality's compulsory tasks. In this sense, the voluntary and the alternative tasks are separated, hence the alternative tasks are viewed as a means to adjust the structure of local government. The group of alternative tasks consists of the objectives which are taken over by a smaller or lower level municipality from a higher level or bigger municipalities (Nagy and Hoffman, 2016, pp. 58-70). This approach is mainly widespread in countries that are based on dogmatic principals of German jurisprudence. The wider approach interprets the voluntary tasks as a combination of the alternative tasks and the tasks defined by the narrower concept. Although this approach is primari-

observed between Maribor and Zugló: although the population is very similar, but Maribor is an independent city and Zugló is just a district of a city, of the capital of Hungary, Budapest.

ly present in countries following French jurisprudence, we can find its traits in the Hungarian administrative law as well (Kilényi, 2008).

Our analysis is based on the framework of the above-mentioned interpretation. We must state that in the course of the analysis, we chose the narrower approach to voluntary tasks (Hoffman et al., 2018/3). The research focuses on the voluntary task management; however, we partly included the analysis of alternative tasks as well. Consequently, the examination of compulsory objectives where the municipalities are provided with a wide competence is only limited in our paper. In this sense, the municipal subsidies form clearly part of the compulsory tasks as prescribed by section 45 of the Act III of 1993 on the social welfare administration and social services, regardless to the fact that the content and the limits of those subsidies are ruled self-sufficiently by each municipality. Given the obligatory nature of the objective, the local municipality does not willingly take up any task, it only adjusts the provision of the compulsory tasks to the local needs (Tóth, 2016, pp. 169-172). This question has a unique importance in Zugló as the social decree of Zugló provides social care and subsidies in a broader sense exceeding the state average.

This broader task management is not covered in our research as we interpret these objectives as a compulsory task only adjusted to local needs and not as a voluntary task. For this reason, our analysis on Zugló focuses on the narrower approach of voluntary task management system. In this framework, our initial hypothesis was that voluntary tasks are present at municipalities of bigger size and bigger economic power, especially in the case when a municipality has a specific characteristic, e.g. it is a touristic destination. We can conclude that voluntary task management plays also an innovative role in the local government system, in other words, one can notice a process where facultative tasks may become obligatory. As an additional hypothesis, we present that the decreasing number of compulsory tasks highlighted the non-compulsory task; therefore, we also investigate the changes of the last few years. Following the theoretical overview, we prepared a questionnaire as a base for the pilot inquiries which we used in all our case studies.

3.2 Local self-government systems and objectives in Slovenia and Hungary: establishing core points for the research

In the course of comparative studies, the differences between the distinct models should always be taken into consideration. This principle is particularly valid when it comes to voluntary municipal tasks. On one hand, we must examine whether the local self-government system in question is based on the enumeration of municipal tasks prescribed by law or it follows the general clause of self-governance. Slovenia has a continental-like self-government system, which means that the competences of the municipalities are provided by a general clause in the Slovenian Constitution and in the respective laws. Regarding the objectives, both Slovenian and Hungarian legislation clearly separates the group of compulsory tasks – which are specified by national law – and the group of willingly chosen, voluntary tasks.

Beside the distinct municipal tasks, the Slovenian local self-governance system is familiar with the category of delegated central administrative tasks and powers, just like in the Hungarian model. The mayor and the chief office manager may undertake administrative powers and competences defined by national legislation act (Halász, 2011, pp. 800-802). The differentiated power and competences delegation is also present in the Slovenian system of compulsory tasks. In this regard, the town-level local authorities (mestna občina) are mandated to additional tasks (Setnikar-Cankar, 2011, p. 649).

The administrative body of local self-governance authorities in Slovenia are similar to the ones in Hungary: the chief decision-making body is the municipal council, whereas the mayor (župan) is charged with the operative political control who also appoints the director (direktor), the chief administrative manager of the authority (Navarro et al., 2018, p. 364). The city municipalities' administrative body consists of departments and the chief officer of these departments may be empowered with independent competences (Grad, 2012, p. 583).

Based on the above, the two municipal systems are very much alike. In addition, the Slovenian model is based on the principle of strong centralization, partly because of the small size and population of the country (Kovač, 2011, pp. 633-634). Each municipality is responsible for the essential local public services, whereas the specified professional sectors are mainly covered by the state administration (Trpin, 2003, pp. 168-170). Financially speaking, the system is relatively centralized. The municipal budget relies on state subsidies divided central taxes and partly local taxes (Oplotnik and Brezovnik, 2004, pp. 484-486).

Furthermore, in Slovenia the local self-governance system consists of only one level, despite several attempts (Setnikar-Cankar, 2011, pp. 641-643). In addition, it is relatively centralized: among 212 municipalities, 11 are defined as town-level municipality, although the socialist era's strong concentration has softened after the municipality reform of 1993/94. Consequently, Slovenian local governance units cover about 9000-10.000 residents and typically consists of several municipalities. It means that the Slovenian municipalities are equivalent to a Hungarian micro-region. And although the system is concentrated, the size of the municipalities varies. In principle, the required minimum population of the Slovene municipalities is 5000 resident but it could be established smaller municipalities for reasons related to geography, border locations, ethnic compositions, historical or economic reasons. Thus, about half of the Slovene municipalities (111) have less than 5 000 inhabitants (Grad, 2012, p. 579). The largest municipality is Ljubljana with a population more than 283.000 people, the smallest is Hodoš of 375 residents. As a result, the role of co-operation is less important as the Slovenian legislation does not oblige municipalities to co-operate, unlike the Hungarian. Sector-wise co-operation is highly recommended and concerning the local police, the role of co-operation is outstanding. Apart from this, Slovenian co-operations play an

important part in the field of regional development and regional coordination (Bačlija-Brajnik, 2018, pp. 251-253).

As for the management of compulsory tasks, the Slovenian and the Hungarian model share some resemblance. The public service provision is relatively centralised in Hungary and in Slovenia, and the municipalities are primarily responsible for basic services. The specialised services are provided mainly by the central government or by the agencies of the central government (Grad, 2012, p. 589-590 and Hoffman et al., 2016, pp. 464-465). For instance, in the public education sector Slovenian municipalities operate kindergartens, whereas in the case of other institutions, they are only responsible for providing the facilities – this model prevailed in Hungary between 2012 and 2016. Likewise, in the field of cultural management, each municipality is responsible for the basic cultural services, however, regional museums, libraries and archives are run by city-level municipalities. Those cultural establishments which bear national significance belong to the responsibility of the state administration system (Srakar et al., 2017, pp. 560-563).

Regarding the social welfare sector, Slovenian municipal tasks are relatively limited: home care and signal system, certain crisis care services and home-meal system are directly managed by the municipalities, however, they are only obliged to provide access to other social services. As we can see, the participation of municipalities in this field are much more limited compared to the Hungarian system, although these basic services contribute to the significant role of Slovenian municipalities in the social sector (Hlebec, 2017, pp. 496-505). The structure of subsidies and aids in Slovenia is more centralized than in Hungary. The income replacement and income supplement benefits are provisioned by the deconcentrated bodies of the central administration, which are also responsible for income measurement.

It is a characteristic trait of the Slovenian municipality system that we can find municipalities where an ethnic minority makes the majority of residents, therefore the municipality is bilingual, such as Hodoš which is included in our research. In Slovenia, three municipalities have the Hungarian language, and two other municipalities have the Italian language as official language. These municipalities are obliged to ensure bilingualism.

The above-mentioned differences and similarities prove that the two countries' voluntary task management models are comparable. The analysis of the Slovenian regulation is particularly interesting to our research group due to the fact that Slovenia has a centralized and concentrated system with no small-town independence as all municipalities consist of more than one town. Therefore, the Slovenian model can state how the merged municipal system works and what are the challenges, in addition to the way it appears in the field of municipal task management.

Table 1: Overview of the main frameworks of the Hungarian and Slovenian facultative (non-mandatory) municipal functions

Characterisation	Hungary	Slovenia
1. Municipal model	*Continental model* (based on the general powers of the municipalities in local public affairs).	
2. Municipal mandatory functions and relation to the central government	*Centralised municipal systems* (the municipalities are responsible for the basic services, the specialised services are organised and provided primarily by the central government or by the agencies of the central government)	
3. Municipal structure	*Two tier system: 1st tier* communities (község), towns (város), district HQ towns (járásszékhely város), county towns (megyei jogú város) and the capital and its districts (főváros és kerületei) (more than 3155); *2nd tier:* counties (19). 1st tier system is very fragmented (average population of about 3 100 people).	*One tier system:* municipalties (občina) and city municipalities (mestna občina) Fragmented, but partly merged system (212 municipalities, average population of about 12 500 people)
4. Municipal (mandatory) service provision		
3.1. Social care	Provider of the basic services (mandatory for every municipalities: home care, meals, family and children support, providing accession to other basic and specialised services), other basic services are mandatory to different municipalities (municipalities with more than 3000 inhabitants: general day care, municipalities with more than 10 000 inhabitants: general and specialised day care, municipalities with more than 30 000 inhabitants: elderly care centre, night shelter, temporary accommodation of homeless people)	Provider of basic services (primarily home care, day care, meals, family and children support)
3.2. Health care	Provider of the basic services: general practitioners, dentist, health visitor, basic emergency services, on-call dental care.	Provider of basic health care services
3.3, Education	Provider of the kindergartens (primary and secondary education is organised by central government agency)	Provider or the kindergartens, maintainer of the local institutions of primary education
3.4. Culture	Municipal community culture, municipal libraries	Municipal libraries
3.5. Public utilities	Local public utilities. local space maintenance and use	Local public utilities. local space maintenance and use

In the following we turn to the analysis of voluntary task management by each significant sector to present their main features.

3.3 Voluntary tasks in cultural sector

3.3.1 City municipalities: Zugló and Maribor

Zugló provides several community building services beyond its legal obligation. The focus here tends towards community building. This principle inspired the so-called Community Garden project, which was supported by the municipality in 2018 with a transfer of 7 million HUF (around 21200 EUR). Other voluntary tasks are realised by the municipal cultural centre and association which work in the form of a municipality owned non-profit limited company. The municipality pays attention to ensure appropriate appearances in the municipal media for local communities and associations which are believed to contribute to the process of community building. In practice, this means coverage on websites and in print as well, what is more, the municipality also supports the publishing of local books and brochures. Youth services are also part of cultural tasks in a broader sense, which are partly provided by the local community centre. Furthermore, the municipality organizes children camps, only in 2018 eleven one-week long camps were available for children which were prioritized in the municipal budget.

Maribor puts significantly more effort in the management of cultural tasks. The cultural policy of the city centers around the municipal public institution of *„Kulturno prireditveni center narodni dom Maribor"* (Cultural and National Centre of Maribor) which is home to various cultural events. One of the most famous tourist attractions is the Puppet-show Theatre of Maribor which was also one of the main venue of European Capital of Culture project in 2012. At this point, we must mention the municipal library, although the maintenance of such facility is a compulsory task, the municipality of Maribor supports the realisation of several community and reading programmes, which activity is considered voluntary as it goes beyond the tasks prescribed by respective laws.

3.3.2 Tourist destinations: Balatonlelle and Bled

Being a tourist destination also means that these municipalities adjust their voluntary task management to local tourism policies – this is even more noticeable in the cultural sector. Accordingly, Balatonlelle must bear in mind two regards at the same time respective to cultural tasks. On the one hand, during the summer holiday season, the municipality shall provide larger events and programmes for the holiday-makers. On the other hand, the cultural needs of local residents shall be fulfilled throughout the year. For the previous objective, the municipality organizes several festivals which attract notable number of tourists in the dedicated Balatonlelle Theme Park (e.g. Wine Festival, Municipality Days). During winter, there is a decrease in the number of programmes and there also a change in venue and the nature of such events – the Municipal Centre of Culture and Library hosts different programmes.

Bled, however, does not face the problem of seasonality, thus the network of cultural events does not require dual approach as the holiday season lasts throughout the year. In winter, winter sports enthusiasts arrive, in summer, the lake is occupied by bathers, whereas during spring and autumn, Bled hosts several conferences. We can observe that sports play a significant role in the management of voluntary tasks in Bled – we will detail it in the following section. Apart from sports related objectives, Bled also organizes and support festivals such as street carnivals and Medieval Days at the Castle of Bled. In addition, the municipality supports the long-time popular pop music festival, the so-called Golden Microphone.

3.3.3 Small-sized municipalities: Kesznyéten and Hodoš

Due to the disadvantaged financial situation of Kesznyéten, the municipality is restricted to the boundaries of a very low budget to spend on cultural programmes and public arts. There are basically two ways in which the municipality contributes to the modest but still existing cultural life of the village. Firstly, by maintaining the town library for five years and counting. Secondly, by supporting minor local events which – according to the mayor – they finance to the extent of 80 000 HUF (around 250 EUR) each. Such events involve the village day festival, which is co-organised by local NGOs.

The municipality of Hodoš has a special situation as its cultural tasks go hand in hand with the role the town plays in guarding their bilingual heritage. However, their main problem is not related to the limited resources, but much more to domestic mobility and the assimilation of the local Hungarian residents. The centre of the local cultural life is the Association for Culture and Tourism which functions as a tradition-guarding and social cohesion strengthening institution via the activities of local civil groups and workshops, such as the folk song and embroidery group. Apart from direct money transfers, the municipality also supports the Association by providing venues for their various events completely free of charge.

3.4 Non-mandatory municipal functions related to sports

Sports task management is interpreted in various ways in academic works. Some approach considers questions and services related to sports as a part of cultural management. This is a principle for instance in the British system where the primarily public sport facilities – which are the basis of competing sports – are examined as part of the cultural task management (Arden et al., 2008, pp. 284-285). This is an initial point for the principles which consider sport as a part of a wide-approach definition culture which also includes education services (Fechner et al., 2014, p. 20).

In different administrative systems, sports task management has different interpretations. Some scholars emphasize health care issues in the field of sports related state objectives – as sport and a healthy lifestyle is a significant element of public health care system (Davis, 2012, pp. 7-8) – whereas others see sports as a means of integration, therefore put sports in the framework of social care tasks (Epstein, 2013, pp. 199-201).

3.4.1 Sports related voluntary tasks in city-level municipalities: Maribor and Zugló

The municipality of Zugló defines the sports related voluntary tasks in municipal decree No. 33/2016 (published on 28th June). The Decree sets out the municipality's duties in a rather wide area (for instance, organizing sports events, supporting kindergarten and primary school sport activities, encouraging all residents to be involved in sports). The former objectives are carried out partly by maintenance facilities and by occasionally subsidizing local BVSC Sports Association.

The municipality of Maribor tends to support sport activities by investments, beside its compulsory tasks. These investments typically aim to maintain and improve the existing facilities. The municipality have allocated approximately 6 million euros (2 billion forints) for the renovation of the city's football stadium, it will be realised with loan from the European Investment Bank. As we can see, both municipalities turn to the maintenance and innovation of facilities in the field of supporting sports activities.

3.4.2 Voluntary task management in small-sized municipalities of touristic importance: Bled and Balatonlelle

The municipality of Balatonlelle does not carry out sports related organizing tasks, however, the local public sport is supported by the town to a large extent. Football receives a significant amount of these subsidies as the Football Division gets 80% of the yearly aid of 12 million forints granted to Balatonlelle Sports Association. The local sports association can use the sports complex which is a municipal property free of charge, furthermore, the municipality carries out other tasks to ensure the quality and the possibility of uninterrupted sports activities, such as regular maintenance of the sports field carried out by the urban management organization.

In respect to sports, the municipality does not grant scholarship for „good sportsperson", but the subsidies depicted above certainly contribute to the success of local gifted students. These pecuniary and non-pecuniary tasks have been present in the last 25 years to facilitate the involvement of the citizens of Balatonlelle in sports activities.

As for Bled, sports play a significant role due to the fact that the sports events organized in the city contribute a large amount to the municipality's budget. Accordingly, the municipality provides pecuniary support to sports associations, organizes sports events, and even maintain and improve existing sports facilities such as the ice rink and facilities regarding the aquatics of Lake Bled (mainly rowing) in addition to planning establishing new facilities. In contrast to Balatonlelle, Bled has several sports associations. The most popular sport in the municipality is ice hockey, beside a professional team, we can find sixteen more amateur associations in the city.

Similar to small municipalities, the in-country migration of locals also appears as a problem. On the other hand, these people are replaced by people coming

from other small towns, and as a result, the ¾ of the players in the team of Bled is not a local. The municipality spends a yearly amount of 200.000 euros to subsidize sports associations which is 1/5 of the budget covering voluntary tasks.

As for event organization, the rowing world championship held in Bled was the event with the biggest revenue last year (and also in the history of the municipality). On the championship, 2000 competitors have participated with 900 boats and it attracted 11.000 spectators. Due to the significant role of sports, the municipality disposes several modern sports facilities, such as athletics- and football field, rowing and skiing centre and ice rink. The latter is the most modern of Slovenia's six ice rinks and the only one facility with LED lightning in Central Europe. The lighting of the sports centre was renovated last year, whereas the central heating is being upgraded this year, and the municipal have allocated 4 million euros for the establishment of a multi-generational recreational centre which would also serve as a venue for sports events.

To summarize, we can state that although both cities support local sports activities to a large extent, Bled is in disposal of much more income than Balatonlelle, therefore Bled has more opportunities to realize these subsidies. Sports events around Lake Balaton are usually organized by other cities (e.g. neighbouring town of Balatonboglár), whilst the area of the municipality of Bled covers Lake Bled entirely, therefore there is no competition for sports events. Because of the location of Bled, the surrounding mountains provide the opportunity for the city to be involved in winter sports as well.

3.4.3 Voluntary tasks in small-sized municipalities: Kesznyéten and Hodoš

The municipality of Kesznyéten can only spare 0,05% of its yearly budget to the support of sports activities (this means approximately 500.000 HUF – around 1500 EUR). This amount covers the infrastructural tasks related to sports activities, like the maintenance of the sports field and the changing rooms). Due to lack of resources, the municipality cannot provide funding to the local sports association, therefore voluntary tasks in this field are very limited. The local sports association consists of only the football division as the handball division was cancelled due to lack of players.

As a comparison, the municipality of Hodoš is capable of supporting both the sports association and sports activities by more means. The municipality supports the budget of the local sports association by 10.000 euros per year, and by non-pecuniary subsidies. Consequently, the municipal-owned changing rooms are accessible to the members of the association, and the municipal lends their mini-van for traveling to sports events in other municipalities. Furthermore, the municipality is responsible for the maintenance of the sports field, including lawn mowing and other tasks. In 2014/2015, Hodoš also realized a huge investment of 40 000 euros for the renovation of the changing facilities which included building separate washrooms and the replacement of the roof. Besides supporting the association, Hodoš has built a fitness centre which was free for the locals to use after the opening, now it costs 5 euros per month.

Neither Kesznyéten, nor Hodoš organizes sports competitions. The latter is indirectly involved in this kind of tasks, as the sports association is capable of organizing sports events form the municipal support. To summarize, both municipalities aspire to play an active part in facilitating local sports opportunities. They also share the problem of the migration of young adults as this process decreases the number of people involved in sports.

3.5 Non-mandatory (voluntary) tasks in the field of education

As set forward before, education is strongly centralized in both countries. The maintenance and operation of kindergartens are considered as primary municipal duty; however, it is also a compulsory task to provide infrastructure for primary and secondary education in Slovenia, just like it was the case in Hungary between 2012 and 2017. As municipalities have limited compulsory tasks in the field of education, voluntary tasks have gained importance and developed a supplementary nature.

3.5.1 City-level task management: Maribor and Zugló

The Hungarian city under examination, Zugló, stands out with its innovative scholarship network regarding the education sector. These scholarships put emphasis on dynamic development instead of static results. Apart from this, the municipal also provides educational support for adults.

The city of Maribor also offers scholarships for gifted students, complementing the state network of grants. To obtain such a scholarship, the applicant must meet several requirements such as outstanding school results, Slovenian nationality and residence status. For secondary school students, the scholarship is 230 euros per month, for domestic universities, 190 euros per month, and for students studying at foreign universities 250 euros per month. Altogether, the scholarships cost 8000 euros for the municipality in 2018 and affected 36 students. The available resources are limited and in the past years, the number of students involved have decreased.

In addition, the municipality supports extracurricular activities: it provides not only foreign language and computer science education for children of 3-6 years, but also school meals. In 2018, the municipality allocated 1.3 million euros only for the latter. Furthermore, the municipality purchased computer science devices for the schools, and funds extracurricular activities like study groups. The support of disadvantaged children is operated on state-level to which the municipality also contributes.

3.5.2 Voluntary tasks in small towns: Bled and Balatonlelle

The municipality of Bled has several tasks related to the educational sector, although its counterpart for the research, Balatonlelle does not have any outstanding voluntary tasks in this sector, we seldom discovered some tasks related to the cultural sector. As there is a state level educational scholarship system in Slovenia, municipalities only provide supplementary aid to

students. In fact, Bled does not have any supplementary grants as the social, economic status of the residents and the needs of the municipality does not require such support. The residents are highly skilled, for the local economy even overqualified, thus it is a bigger question how to attract people with secondary education to town. Schools and kindergartens operate in municipal properties, a 3-phase real-estate development project worth 7 million euros is currently being executed. The budget of the local kindergarten is also mostly covered by the municipality, 82% of the resources is provided by Bled, 15% by the parents and 3% by the state.

3.5.3 Small municipalities: Hodoš and Kesznyéten

In Hodoš, the educational and care sector is in a special status which comes from the bilingualism of the municipality. Only three grades of primary education are available locally, upper grade students visit a school which is 12 km from Hodoš and provides minority education. The municipality has a kindergarten as well, currently operating with 11 children and subsidized by the municipality with a sum of 70.000 euros per year.

As part of a teacher-support programme, the municipality builds a service flat using 36 000 euros. The investment involves the old building of a post office which is no longer in use and was purchased by the municipality. Previous to this investment, the municipality provided support for teachers to commute from their residence to the school. There are no scholarships for Hungarian minority students studying at Hungarian universities as such aids are provided by the minority self-government.

There is cross-border mobility, students from Hodoš study in either Hungarian secondary schools or they go to other Slovenian towns for the same purpose. Interestingly, the cross-border mobility is not only one-way, there are families who take their children to the kindergarten in Hodoš, taking advantage of the better teacher-pupil proportion. Neither secondary school, nor university students receive any scholarship, but the municipality grants 300-400 euros for locals who have completed their higher education studies.

Kesznyéten only covers a few voluntary tasks in the education sector. The lack of teachers causes here problems as well, as the regional centre, Tiszaújváros is just 6 km away and is more attractive to teachers. In 2017, the municipality has given rewards at the end of the year to local teachers, beside the officers of the municipality.

3.6 Health services

Concerning health care services, Slovenian and Hungarian municipalities have similar compulsory duties. Mainly, they are responsible for the primary care services, however, in Slovenia, the central administration plays a more significant role regarding on-call services. In the following, we present our analysis on this matter.

3.6.1 Voluntary tasks in city municipalities: Zugló and Maribor

Both Zugló and Maribor provide various voluntary tasks in the field of health care. The municipality of Zugló facilitate the resident's access to diverse health care service (such as supporting screening tests, refunding the purchase of vaccines). Using a grant contract, the municipality gives also financial subsidies to a local pharmacy for covering the on-call service at nights and weekends.

To begin with, in Slovenia, local communities have less obligatory tasks in the field of health care than in Hungary, because Slovenia is relatively a small country and the state can provide adequate quality of health care on a central level. For this reason, Maribor typically covers the infrastructural basis for health care services. There are voluntary municipal programmes which indirectly supports the improvement of health care. Uniquely, the municipality of Maribor appoints a local health care „ombudsman" who is open for the residents' notices in his office provided by the municipality. On top of that, Maribor is the only municipality in the country which has dental service at night as well, for which the financial background is entirely provided by the municipality.

In brief, Zugló and Maribor both can cover more voluntary tasks due to their larger size. The realization of these tasks is diverse in both cities: Zugló puts emphasis on the provision of health care services, while Maribor tend to support the infrastructural background.

3.6.2 Small towns: Balatonlelle and Bled

Balatonlelle has three medical station, two covering GP services and one for dental services. Since the municipality treats the quality of health care services as a priority, these medical stations are supported by pecuniary and non-pecuniary subsidies. The local dentist was able to purchase new machines with the aid of the municipality, moreover, the municipality helps with the hazardous medical waste management.

Medical offices purchase electricity on a reduced fare, and on top of that, all medical offices are exempted from the local business tax. The essential facilities for primary care are municipal properties, in addition, the municipality provides a large amount of their equipment. Balatonlelle pays specific attention to the preservation of the municipal properties' value that is why the medical offices have been renovated in the past 3 years to provide modern and safe health care services.

According to the division between central administration and local governance, a regional public institute sustains the medical centre in Bled, though the building itself is a municipal property. Accordingly, the municipal renovated the centre using its own budget. Bled is in a peculiar position as usually every Slovenian municipality has their own medical centre, but not in Bled where all the surrounding municipalities and the visiting tourists are treated here. The large number of tourists and the quite common accidents in the

mountains led to the establishment of a well-equipped, easily accessible centre, rather than upkeeping several smaller ones on a lower level. Red Cross volunteers are also present in the city, the municipality supports their work by 5000 euros per year. This aid is spent mostly on first aid programmes, but also, it gave the possibility to purchase a defibrillator.

In a nutshell, due to the fact that the state administration of Slovenia finances the health care system, there are not many tasks covered by the municipalities, in contrast to Hungary. In the field of health care services, Balatonlelle – related to its compulsory tasks – provides a wider network of subsidies speaking of both pecuniary and non-pecuniary tasks. As a feature present in both municipalities, the maintenance and renovation of health care facilities to ensure the quality plays an important role.

3.6.3 Challanges in small-sized municipalities: Kesznyéten and Hodoš

Neither Kesznyéten, nor Hodoš uptakes more responsibilities than the compulsory objectives prescribed by law. Kesznyéten covers the obligatory on-call medical services jointly with the neighbouring municipalities within the framework of a co-operation. Hodoš does not have direct medical care, for which residents must travel 10 km to a neighbouring municipality. Supposedly, this is one of the reasons contributing to the few voluntary tasks, as if municipalities wanted to directly manage health care services, they would not be capable of ensuring the necessary equipment and the quality of the service in vain of financial support.

3.7 Social welfare services

Regarding the social welfare system, the Hungarian municipalities are obliged to cover a wider scope of compulsory tasks and competences in the field of primal social services. On the contrary, Slovenian municipalities have a much more limited role concerning task management in the social welfare sector. We can note that in Slovenia, the central administration ensures social aids, and as a consequence, municipalities undertake solely voluntary tasks.

3.7.1 City challenges: Zugló and Maribor

The municipality of Zugló undertakes a wide range of voluntary tasks in the social sector. These facultative tasks have different objectives, ranging from social situation improvement for the deprived residents to increasing the standard of living of all residents, depending on the capacity of the municipal budget.

Zugló has a great variety of activities regarding social benefits. Among the various types of aids, there are single-use/one-off (e.g. support for the start of the school year) and regular pecuniary benefit, as well. The case-by-case transitional crisis aid is a peculiar form of benefits in kind which is transferred to deprived residents twice a year, around Christmas and Easter, depending on the municipal budget. Residents in need even receive a food package before Christmas from the municipality and as another benefit in kind, the mu-

nicipality provide a set of firewood once a year. The majority of these voluntary tasks are carried out since the current municipal social regulation entered in force late February 2015. Previous to this regulation, these tasks were not part of the compulsory tasks of the municipality, their introduction was based on the local social policy principles. This was also the reason for providing a wider range of services, supplementing the compulsory competences, such as the provision of meals for children during school holidays.

There are benefits irrespective of the beneficiary's income, both pecuniary (e.g. birth aid) and non-pecuniary (e.g. greeting of young adults) which are obtained on specific occasions. The post-reimbursement of the charge of chicken pox vaccination is considered peculiar due to both its objective and the form of the voluntary task management. The support of chicken pox and pneumonia vaccination was entered in force in October 2016, while student scholarship was introduced in October 2017 and the adult-education support in January 2018.

Speaking of social services in Zugló, the „Tükörkép Műhely" (Reflection Workshop) is worth mentioning as it was founded by the municipality in January 2016, expanding the activities of the Zugló Family- and Children Care Centre by adding a beauty salon for people in need. The main objective of this project is to contribute to a successful job application of the deprived residents, but the services of the beauty parlour is open for adolescent and elderly persons in need as well.

The municipality of Zugló covers a wide scope of voluntary tasks by contracts. For instance, the municipality issues non-refundable benefits for social objectives by grant contracts. A grant contract allows the municipality to provide non-refundable aid for a local pharmacy as a compensation for ensuring night and weekend in-call service. Apart from grant contracts, the municipality also undertakes voluntary tasks by supply contracts. This is the case of a primary care service for people suffering from substance abuse carried out by a municipality-funded foundation. The municipality also subsidizes the Charity Shop of the Hungarian Red Cross, which resides in a municipal property.

Due to the limited number of compulsory tasks, Maribor undertakes several social voluntary tasks. Unlike Zugló, Maribor offers mainly personal social services. In this sense – partly through its own establishments, partly by administrative contracts – Maribor operates a temporary housing complex for families in need, upholds primary care for addicts (both for people with alcohol and drug addiction), funds a home for the elderly, and provides day care and temporary residence for the homeless residents. In Hungary, these services are compulsory tasks of municipalities of greater population, imposed by the Act III of 1993 on social administration and social welfare services (Ecsédi, 2016, pp. 346-349).

Although the municipality of Maribor is not obliged to cover these tasks, the municipality – based on local needs and resources – provides these social welfare services. Apart from infrastructural services, Maribor supports social inte-

gration programmes of the Red Cross and other social- and equality-focused NGOs. The administrative body of the municipality reflects the importance of social tasks as an independent social team works under the department responsible for human service issues. Due to the limited municipal responsibility for social benefits, we would like to mention one significant aid: Maribor offers a one-off support for the parents of new-born residents.

3.7.2 Small-towns and their solutions: Balatonlelle and Bled

The municipality of Balatonlelle has only a few voluntary tasks in the social welfare sector. The municipality introduced a one-off pecuniary aid for the new-borns which can be issued only to local residents. The request for this aid should be entered within 6 months from the child's birth. However, the municipal regulation interprets this benefit as a peculiar form of municipal support, meaning that this kind of social service is on the border between compulsory and voluntary tasks.

Bled, similarly, has limited voluntary tasks regarding the social services, but for different reasons. The average standard of living is much higher in Bled than the Slovenian average and because of that, there is no need to use resources for social services beside the social welfare services provided by the central administration. The town is obliged to take care of the elderly and the youngest residents. Beside this, the municipality offers pecuniary subsidies worth 60 000 euros per year for activities organized for the elderly and for the youth. This support can be obtained through a public application system. The municipality also supports NGOs which undertake humanitarian, social and health care objectives, the pecuniary aid can be requested through a public application system with an action plan and defined programme from a budget of 20 000 euros per year. The municipality is currently applying for the authorisation of a multi-generational centre, where they plan to establish library, sports centre, and public spaces for the elderly and the youth. The investment which is worth 4 million euros is planned to be finished in 2019.

As we can see, both towns have limited number of voluntary tasks in the social welfare sector. We can note that both municipalities support new-borns by providing a one-off pecuniary aid. In the case of Bled, the social needs do not require more voluntary tasks, instead, they focus on cultural, sports events, establishing and improving local facilities.

3.7.3 Social welfare management in small municipalities: Kesznyéten and Hodoš

Due to the limited resources, Kesznyéten provides only a few voluntary social services. As for pecuniary benefits, we can note the aid for the new-borns here as well. As we have stated before, the wider range of compulsory tasks means that the resources in the social sector are destined for the compulsory tasks in Hungary.

In Hodoš, the Home for Elderly Residents has opened in 2010. The Home of 500 m^2 and three levels is operated by an external company, but the municipal-

ity provide an aid for those elderly residents who could not afford to pay the whole cost of their care. In addition, the municipality partly funds the domestic care services for those who request the support in advance. We can find here the one-off pecuniary benefit for new-borns which amount is defined by the number of children in the same family (e.g. 150 euros for the first child, 200 euros for the second and so on). This benefit is issued irrespective to the social status of the family, the income of the family is not considered in this case.

Respective to the challenges of a small-sized municipality, Hodoš has developed an innovative solution to encourage young people to settle in the municipality. The municipality offers a construction aid of 4000 euros for new families who are willing to settle and build houses in the municipality. To obtain this support, the new building should be at least 80 m^2 and the applicant must have their permanent residency in Hodoš. If these criteria are not fulfilled, the support shall be repaid to the municipality, together with interest.

The initial hypothesis of the research have been verified regarding to the social sector: the wider range of voluntary tasks seem to be present mainly in city-level municipalities which have sufficient resources to cover not only compulsory tasks but voluntary social welfare services as well. Small municipalities tend to undertake tasks which require less money, however, all municipalities pay attention to subsidies aiming the holding and expansion of the number of residents. In our research, we discovered some innovative solutions in small-sized municipalities. In Bled and Balatonlelle, the voluntary tasks are limited as the better economic and social status are matched with the fact that the smaller population means less need for institutionalised services.

3.8 Public safety (municipal policing)

In Slovenia and Hungary the municipal policing is managed mostly by the central administration, nevertheless, both countries have municipal-level local, quasi-police bodies (Hoffman and Fazekas, 2017, pp. 545-547).

3.8.1 City police: Zugló – Maribor

The municipal public safety tasks are envisaged by a municipal regulation in Zugló, which also establishes Zugló Municipal Police Service. According to Act /2011 on Local Self-governance, districts of the capital may only cover obligatory public safety tasks within the boundaries of the district, on behalf of public spaces and municipal property. In 2018, Zugló Municipal Police Service has 49 constabulary and disposes of 342,3 million (about 1 million euros).

In Maribor, municipal public safety tasks are managed in a similar way. The difference is that the local vigilante service cannot be founded by the municipality, in other words, it is established to cover a voluntary municipal task. Usually, several municipalities form a co-operation to finance the vigilante service. Maribor is accompanied by six other municipalities in fulfilling this objective.

The members of the public safety service wear a uniform and may use pepper spray if justified. During their activities, their competences cover the control

of public spaces and parking. Speaking of finances, the co-operating municipalities define their share in advance. The budget is used for the uniform, equipment, salary of the members, plus for any facilities used during their activities. Constabularies are in contact with the state police in order to ensuring public safety and public order. When noticing any sign of misdemeanour or crime, they may hold back the delinquent for 1 hour until the arrival of the police. The constabulary is entitled to fine the delinquent in the case of misdemeanour.

3.8.2 Tourist destinations: Balatonlelle and Bled

Being a popular holiday destination also means that in Balatonlelle, public safety tasks are intensifying during the summer season. The municipal quasi-police operate under the control of the mayor during the so-called Balaton-season. The quasi-police cover their tasks within the inner area of the town, with special regard to the coastal areas. They guarantee the enforcement of the peace and quiet regulation (in several occasions, this involves making compromises with the locals and tourism hosts), but they are also responsible for preserving the public order and clean state of public spaces. The constabulary also supervise the parking regulation and they are authorised to issue fines, moreover, they supervise the marketeers. In Balatonlelle, 2 constabulary work as a public officer of the municipality who are joined by two volunteers for the summer and work daily form 6:00 to 22:00. For public safety reasons, civilian police also undertake duties in co-operation with the police, the residents and the municipality.

The municipality established CCTV throughout the town with the aim of preventing crimes. Currently, according to the Hungarian legislation, only the police and the quasi-police is authorised to use CCTV in public spaces. In Balatonlelle, the establishment of CCTV cameras was realized based on a co-operation agreement between the police and the municipality. As a result, the quasi-police also supervise the recordings, but they are only allowed to intervene in case of crime. The local police have a crime prevention department as well.

Bled is a significant touristic destination in Slovenia, therefore the town is faced with heavy tourism. Like Maribor, Bled has municipal guards, but it is operated by three neighbouring municipalities including Bled and the municipality of Bohinj which is also considered a touristic destination. The lake and the castle require special surveillance as most tourist frequent these places. For the more efficient crime prevention and the protection of tourists, the municipality hires an independent security service who realize their duties in pairs between 23:00 and 5:00 in the morning. Around priority areas such as schools, playgrounds, CCTV was established for crime prevention reasons.

3.8.3 Small-sized municipalities: without municipal police

Hodoš is a disadvantaged, small-sized municipality with a population of approx. 350 where the municipality does not undertake any voluntary public safety task. There is no need for constabulary, but even if were, the municipal-

ity could not provide the financial means. Previously, a field-guard system was in effect, but not anymore. The situation is almost the same in Kesznyéten where currently no local public safety body exists.

4 Discussion on the emphasised research results

In the Chapter 3 the main fields of voluntary municipal tasks of three Hungarian and Slovenian municipalities have been reviewed, analysed and compared. The hypotheses of the article have been verified mainly by the results of our research.

The results can be analysed by a matrix, which is based on the different type of municipalities and the by the different (voluntary) municipal tasks. First of all, it has been verified, that the larger municipalities with significant economic power performs more voluntary tasks. These non-mandatory tasks plays an important role in the local policies of these municipal units. Secondly, the small towns which have special characteristic – especially touristic destination role – have significant voluntary tasks. It has been verified, that the smaller municipalities try to perform non-mandatory tasks, as well, however, this performance has a lesser significance because the lack of resources.

The second element of the matrix was the analysis of the sectoral activities. As a result of the analysis a special pattern could be identified. The voluntary tasks performance of the larger (city) municipalities focuses on the *human public services,* especially on the (local) welfare services. The role of the locally developed social and health services are very important and several new educational services (mainly scholarships) have been introduced by these local governments. They have important local policing tasks, which is a consequence of the urban nature of these local governments. The voluntary task performance of the small towns with touristic destination focuses on the cultural services. This task performance is a Janus-faced (two-sided) one: firstly it is part of the tourism destination services and secondly their have a community-building role, as well. The services of sport and environmental policy is subordinated to the achievement of the tourism objectives. The health and education services are present, as well, but their role is limited. The municipal policing is very important in these municipalities, as well. The public safety of a community is an important element of the tourist attraction. The voluntary task performance of the small municipalities focuses on the community building. Thus the cultural tasks have a significant role, as well. Because of their limited resources, these tasks performance is based mainly on the personal activities of the local government officers and the local community. The role of the social, health and education services are limited and because of the small population and the strong interpersonal relationships of the members of the communities, municipal police units have not been organised by these local governments.

The main elements of this matrix are shown by the Table 2.

Table 2: Short overview of the analysis

Tasks	Urban (city) municipalities	Small towns (tourism destinations)	Small municipalities
Culture	Differentiated system, which provides several (non-mandatory) services	Service provision focuses partly on the attractiveness of the town. Partly the services have community-building role.	Services focus on the community building role. Less financial resources, the functions focuses on the personal activity of the community.
Sport	Maintenance of (large) facilities, supporting local sport clubs.	Maintenance of smaller sport facilities, focuses on the attractiveness of the town, supporting local sport clubs.	Maintenance of very small sport facilities, supporting local sport clubs (as part of building the local community).
Education	Municipal scholarships, municipal awards, extra services for the teachers and for the students (schoolboy/schoolgirl).	Several additional services for the teachers.	Very limited: focuses primarily to the locally employed teachers.
Social welfare services	Differentiated system with innovative, new services. Several extra services and benefits provided for the residents	Very limited: extra benefits for small children.	Limited, the main aim is preserving the residents of the village.
Health services	Differentiated system with innovative, new services. Several extra services and benefits provided for the residents	Supporting the local doctors and extra investments for the local health centres.	
Public safety (municipal policing)	Large municipal police as part of the urban services.	Municipal policing focuses on the tourism.	

5 Conclusion

The empirical analysis carried out in Hungary and Slovenia covering the significant municipality models gradually verified the initial hypothesis of our research. On one hand, voluntary tasks play an important role in most municipalities. Logically, voluntary tasks management is more likely to be present in cities of greater economic impact. On the other hand, it is a characteristic of larger cities that the majority of voluntary tasks focuses on municipal services, including welfare, cultural and sports objectives. We found that Maribor and Zugló provided similar welfare services, however, in Maribor this means a greater involvement of voluntary tasks as the number of compulsory tasks are more limited in this field. It was also interesting that tasks related to public safety were significantly present in these cities due to challenges of an urban environment.

Our other hypothesis was also confirmed as we concluded that voluntary task management is remarkably strong in municipalities of touristic importance. As far as voluntary task management is concerned in Bled and Balatonlelle, we can state that beside touristic tasks and cultural objectives, they focus on local communities as well. The touristic features also cause that municipal police have a key role in the field of voluntary tasks. Apart from these, we concluded that in the voluntary task management of small touristic towns, the proportion of social services is smaller. Similarly, other functions were related to the tourism, as well. For example, the local environment non-mandatory tasks (Fodor, 2018, pp. 79-81) were related to the town image, as well.

Regarding small municipalities, our hypothesis on the limited resources as a barrier to provide voluntary tasks have also been certified. Nevertheless, in these municipalities mainly cultural, youth and sports objectives are more important, as they not only contribute to community building and preserving the local population, but also demand less direct resource.

As a conclusion, the principle of local self-governance, appeasing local needs and being innovative are all featured when speaking of voluntary tasks. Municipalities have developed several services which may serve as a model for the central administration branch as well. Accordingly, our research might be an initial point for further investigations of voluntary task management as these fields undoubtedly constitute an important part of the principle of self-governance. We hope, the results based on this limited analysis can be a base for an extended research on the non-mandatory functions of the municipalities.

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Appendix: The questionnaire of the semi-structured interviews

1. Does the municipality have a strategy or concept that governs facultative tasks?

1.1. If yes, in what form?

1.2. No

2. Does the municipality have a sector-specific strategy / concept?

2.1. If yes, in which sector(s)?

2.2. No

3. Does the municipality have any type of voluntary task in the social sector? (You can also indicate more than one, please provide an answer in that case)

3.1. Social welfare services: yes/no

3.1.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

3.1.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

3.1.3. For how long the task has been carried out?

3.1.4. Was the task previously a compulsory task of the municipality?

3.1.5. How does the municipality provide the budget coverage and how much is the amount of it?

3.2. Other task(s) yes/no

3.2.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

3.2.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

3.2.3. For how long the task has been carried out?

3.2.4. Was the task previously a compulsory task of the municipality?

3.2.5. How does the municipality provide the budget coverage and how much is the amount of it?

4. Does the municipality have any type of voluntary task in the healthcare sector? (You can also indicate more than one, please provide an answer in that case)

4.1. Substitution for healthcare institutes yes/no

4.1.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

4.1.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

4.1.3. For how long the task has been carried out?

4.1.4. Was the task previously a compulsory task of the municipality?

4.1.5. How does the municipality provide the budget coverage and how much is the amount of it?

4.2. Other task(s) yes/no

4.2.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

4.2.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

4.2.3. For how long the task has been carried out?

4.2.4. Was the task previously a compulsory task of the municipality?

4.2.5. How does the municipality provide the budget coverage and how much is the amount of it?

5. Does the municipality have any type of voluntary task in the education sector? (You can also indicate more, please provide an answer in that case)

5.1. Talent support yes/no

5.1.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

5.1.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

5.1.3. For how long the task has been carried out?

5.1.4. Was the task previously a compulsory task of the municipality?

5.1.5. How does the municipality provide the budget coverage and how much is the amount of it?

5.2. „Good student/good sportman" scholarship yes/no

5.2.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

5.2.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

5.2.3. For how long the task has been carried out?

5.2.4. Was the task previously a compulsory task of the municipality?

5.2.5. How does the municipality provide the budget coverage and how much is the amount of it?

5.3. Subsidizing camps yes/no

5.3.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

5.3.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

5.3.3. For how long the task has been carried out?

5.3.4. Was the task previously a compulsory task of the municipality?

5.3.5. How does the municipality provide the budget coverage and how much is the amount of it?

5.4. Purchase of school supplies yes/no

5.4.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

5.4.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

5.4.3. For how long the task has been carried out?

5.4.4. Was the task previously a compulsory task of the municipality?

5.4.5. How does the municipality provide the budget coverage and how much is the amount of it?

5.5. Other task yes/no

5.5.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

5.5.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

5.5.3. For how long the task has been carried out?

5.5.4. Was the task previously a compulsory task of the municipality?

5.5.5. How does the municipality provide the budget coverage and how much is the amount of it?

6. Does the municipality have some type of voluntary task in the cultural sector? (You can also indicate more, please provide an answer in that case)

6.1. Organizing (local) festivals yes/no

6.1.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

6.1.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

6.1.3. For how long the task has been carried out?

6.1.4. Was the task previously a compulsory task of the municipality?

6.1.5. How does the municipality provide the budget coverage and how much is the amount of it?

6.2. Organizing competitions yes/no

6.2.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

6.2.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

6.2.3. For how long the task has been carried out?

6.2.4. Was the task previously a compulsory task of the municipality?

6.2.5. How does the municipality provide the budget coverage and how much is the amount of it?

6.3. Organizing annual village day / town day yes/ no

6.3.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

6.3.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

6.3.3. For how long the task has been carried out?

6.3.4. Was the task previously a compulsory task of the municipality?

6.3.5. How does the municipality provide the budget coverage and how much is the amount of it?

6.4. Traditionalist programmes yes/no

6.4.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

6.4.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

6.4.3. For how long the task has been carried out?

6.4.4. Was the task previously a compulsory task of the municipality?

6.4.5. How does the municipality provide the budget coverage and how much is the amount of it?

6.5. Subsidizing sports yes/no

6.5.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

6.5.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

6.5.3. For how long the task has been carried out?

6.5.4. Was the task previously a compulsory task of the municipality?

6.5.5. How does the municipality provide the budget coverage and how much is the amount of it?

6.6. Other task(s) yes/no

6.6.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

6.6.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

6.6.3. For how long the task has been carried out?

6.6.4. Was the task previously a compulsory task of the municipality?

6.6.5. How does the municipality provide the budget coverage and how much is the amount of it?

7. Does the municipality have any type of voluntary task in the economic development sector? (You can also indicate more than one, please provide an answer in that case)

7.1. Subsidizing SME sector yes/no

7.1.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

7.1.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

7.1.3. For how long the task has been carried out?

7.1.4. Was the task previously a compulsory task of the municipality?

7.1.5. How does the municipality provide the budget coverage and how much is the amount of it?

7.2. Other task(s) yes/no

7.2.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

7.2.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

7.2.3. For how long the task has been carried out?

7.2.4. Was the task previously a compulsory task of the municipality?

7.2.5. How does the municipality provide the budget coverage and how much is the amount of it?

8. Does the municipality have any type of voluntary task in the tourism sector? (You can also indicate more, please provide an answer in that case)

8.1. Support of tourism yes/no

8.1.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

8.1.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

8.1.3. For how long the task has been carried out?

8.1.4. Was the task previously a compulsory task of the municipality?

8.1.5. How does the municipality provide the budget coverage and how much is the amount of it?

8.2. Other task(s) yes/no

8.2.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

8.2.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

8.2.3. For how long the task has been carried out?

8.2.4. Was the task previously a compulsory task of the municipality?

8.2.5. How does the municipality provide the budget coverage and how much is the amount of it?

9. Does the municipality have some type of voluntary task in the public safety sector? (You can also indicate more, please provide an answer in that case)

9.1. Municipality police yes/no

9.1.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

9.1.2.The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

9.1.3. For how long the task has been carried out?

9.1.4. Was the task previously a compulsory task of the municipality?

9.1.5. How does the municipality provide the budget coverage and how much is the amount of it?

9.2. Constabulary/local rangers yes/no

9.2.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

9.2.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

9.2.3. For how long the task has been carried out?

9.2.4. Was the task previously a compulsory task of the municipality?

9.2.5. How does the municipality provide the budget coverage and how much is the amount of it?

9.3. Vigilante service/Neighborhood Watch yes/no

9.3.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

9.3.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

9.3.3. For how long the task has been carried out?

9.3.4. Was the task previously a compulsory task of the municipality?

9.3.5. How does the municipality provide the budget coverage and how much is the amount of it?

9.4. Other task(s) yes/no

9.4.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

9.4.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

9.4.3. For how long the task has been carried out?

9.4.4. Was the task previously a compulsory task of the municipality?

9.4.5. How does the municipality provide the budget coverage and how much is the amount of it?

10. Does the municipality have some type of voluntary task in the agricultural, environmental sector? (You can also indicate more, please provide an answer in that case)

10.1. Directed (financial) support yes/no

10.1.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

10.1.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

10.1.3. For how long the task has been carried out?

10.1.4. Was the task previously a compulsory task of the municipality?

10.1.5. How does the municipality provide the budget coverage and how much is the amount of it?

10.2. Other task(s) yes/no

10.2.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

10.2.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

10.2.3. For how long the task has been carried out?

10.2.4. Was the task previously a compulsory task of the municipality?

10.2.5. How does the municipality provide the budget coverage and how much is the amount of it?

11. Does the municipality have some type of voluntary task in any other sector not mentioned before? (You can also indicate more, please provide an answer in that case)

11.1. No

11.2. Yes - please specify

11.2.1. If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

11.2.2. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

11.2.3. For how long the task has been carried out?

11.2.4. Was the task previously a compulsory task of the municipality?

11.2.5. How does the municipality provide the budget coverage and how much is the amount of it?

Yes - please specify

11.2.6 If yes, then the voluntary task is:

pecuniary / non-pecuniary, material / organizational / other (please specify)

11.2.7. The municipality carries out the task

by public service / within the organization / with legal entities / other (please specify)

11.2.8. For how long the task has been carried out?

11.2.9. Was the task previously a compulsory task of the municipality?

How does the municipality provide the budget coverage and how much is the amount of it?

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The Potential Capacity of Hamlets: Comparative Research on Small European Municipalities[1]

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ABSTRACT

The main theories on small municipalities and the practices as seen in many a country involving the consolidation thereof presume that the contextual and structural conditions under which small municipalities have to perform work to their detriment and pose a threat to their viability. However, the institutional and human resource conditions in which small municipalities operate might work both ways, being profitable as well as disadvantageous. This paper investigates what is theoretically known and can be empirically deduced about the capacity of small municipalities in Europe. The conclusion is that existing research is inconclusive in its outcomes regarding the actual capacity of so-called hamlets and that existing data related to local capacity are unfit to measure such among these small municipalities. Nonetheless, the paper concludes that although no conclusions can be drawn on the actual capacity of small municipalities, their potential capacity is significant. This is concluded based on their legal protection, their inclination to focus on a limited number of policy areas, their access to central and regional decision-making, and especially the trust they receive from their residents.

Keywords: capacity, conditions, hamlets, small municipalities, performance, trust

JEL: H11, H77

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1 Introduction

In many European countries a tendency to amalgamate small municipalities is visible. This is done because of its supposed positive effects on the capacity and democracy of the involved local governments (cf. de Vries and Sobis, 2013). This paper challenges those practices by asking what is known from existing research about the capacity of small municipalities and whether it is really so problematic as policymakers in several countries want us to believe. The recent book by Denters, Goldsmith, Ladner, Mouritzen and Rose (2014) on "Size and Local Democracy" concludes that the expected relation is at least ambiguous as far as democracy is concerned. Their findings show first of all that the size of a municipality is not linearly, but curve-linearly related to the quality of its democracy and capacity, and secondly that the sign of that relation is negative instead of positive. They conclude: "the size of the local political system has a significant negative effect on the character of local democracy in about half of the models estimated. Where we find such effects, however, they are relatively weak and are most pronounced in the smallest municipalities" (Denters et al., 2014, p. 315). As they put it themselves, their overall conclusions are more in conformity with the "lovely Lilliput argument" implying that small is beautiful, than with the 'big is beautiful' argument.

The findings beg the question whether something similar can be concluded regarding the capacity of small municipalities, villages or hamlets. The arguments Denters et al., (2014) themselves provide are twofold. From the citizen's point of view, small size enables widespread public participation, and because everybody knows everybody, social relations in such small communities are characterized by more social cohesion, and more social capital. Citizens have more say in small municipalities. From a governance perspective, small size enables responsiveness, because of the multiplicity of – informal as well as formal – channels available to the public officials to keep in contact with the citizenry, while large-scale bureaucracies need to depend on hierarchy and formalism.

This paper explores this issue further, giving an overview of existing theoretical and new empirical findings about the capacity of hamlets. Denters et al., (2014) restricted their research to the analysis of public perceptions and indicators of direct and indirect democracy. This paper intends to give a twofold supplement to their research. First, on theories on the capacity of governance in small systems of law. Second, on outcomes of empirical analyses on the capacity of small municipalities.

In order to answer the question of *what is known from existing research about the capacity of small municipalities?* The following sub-questions are subsequently addressed:

– What is local government capacity and which dimensions need to be distinguished?
– What is expected in theory about the impact of size on local capacity?

– What trends emerge out of case studies on small municipalities?
– What can be concluded about the local capacity of small municipalities analyzing comparative data?

This research is triggered by the findings of Denters et al., (2014) although that research mainly focused on democracy and less on the capacity of small municipality's governance. The famous Dahl-Tufte (1973) dilemma tells, however, that the two are related. While local democracy could diminish when the scale of a municipality increases, its capacity is expected to increase. When it is found that there are indeed indicators that local government's democracy is not linearly related to increasing scale, one wonders whether capacity is positively and linearly related to increasing scale. This paper is to be seen as a supplement to their analyses as it investigates what is known theoretically and empirically about capacity issues in the governance of hamlets. Are there theoretical and empirical indicators that support the idea that not only with regard to local democracy but also to capacity, "small is beautiful"?

The next paragraph gives an overview of theories on the capacity of the governance of municipalities and the supposed merits of size. Subsequently, we will give an overview of existing empirical studies on small municipalities and the contents of local capacity indexes and the criteria used therein. We continue with a secondary analysis on new data and end with a discussion and conclusion regarding the main question.

2 Theories on the capacity of municipalities

Capacity in general is defined by the UN as "the ability of individuals, institutions and societies to perform functions, solve problems, and set and achieve objectives in a sustainable manner" (UN 2012, p. 56). The World Bank sees it as "the ability to access and use knowledge and skills to perform a task and to act in pursuit of an objective" (ibid. p. 56). The elaborations surrounding these definitions tell that appropriate organizational structures, systems and resources have to be in place for public institutions to operate effectively, and more importantly staff have to have the ability to understand goals and objectives in order to deliver on predetermined goals.

Local government capacity can also be defined as "the ability of local government to perform their functions in an effective and efficient way" (cf. Reddy, Nemec, and de Vries (2015, p. 161). Reddy et al., (2015, p. 162) distinguish four determinants of such local capacity, namely (1) contextual, (2) structural, (3) institutional, and (4) human resource conditions.

Contextual conditions are found in the jurisdiction, the socio-economic situation of the municipality involved, historical determinants, et cetera. As to historical context, the emerging welfare state is said to have put additional burdens on, especially, small municipalities (Kjellberg, 1985). The increasing number of functions for the public sector, resulted also in the increased importance of local government. It obtained increased power and authority and was seen as the governmental layer in which everything was to be implement-

ed. This created pressures on especially small municipalities. A second development is the increasing urbanization, making the position of especially small and rural municipalities difficult in their relation to their larger expanding urban neighbors (Brans, 1992). A third development is seen in the distrust of national politicians towards the capacity of municipalities and especially the small ones. Those politicians doubt whether municipalities can deliver the services and goods deemed necessary by themselves and talk about the need for efficiency, rationalization, customer-friendly service, flexibility, local control and development, and modernizing social services. They often pursue economies of scale, better service provision, distributional equity, local economic development, and strengthened local democracy (cf. Wollmann, 2004; 2012) through amalgamations. They tend to argue – similarly as the World Bank – that larger governments are able to provide services at lower unit or per capita costs or deliver better quality services at the same cost by capturing economies of scale. Alternatively, indivisibilities in production, which are most likely to arise for very small units of government, can be offset with a larger scale (cf. Fox and Gurley, 2006, p. 8). However, this might vary for different policy areas. Services entailing large capital costs might need a larger size than labor intensive services and in general Fox and Gurley conclude that: "bigger does not always imply lower costs and can imply higher costs" (2006, p. 35).

The position of small municipalities can become challenging under such changing contextual conditions. They need to provide more services, their spacious rural areas are enviously looked upon by their big urban neighbors who lack to space to expand, and their capacity to perform is increasingly put into question by higher-level politicians and administrators. The resulting question is to which extent small municipalities are protected in their existence given these contextual developments, which sometimes do and sometimes don't force them to merge. In some countries, they are protected through the constitution, whereas in other countries they are not, and amalgamation processes therefore are possible and more likely.

Structural conditions refer to the position of local government vis-à-vis other governments, in terms of the degree of decentralization, the delegation of tasks that local governments are responsible for, and their financial autonomy. Countries vary to the degree they give the same powers and authorities to small and large municipalities, whether autonomous and delegated tasks are given to all municipalities or only to larger municipalities, and how supervision of municipalities is arranged. In some Western countries, all municipalities have the same tasks irrespective of their size, but this needs not be the case. If municipalities are too small to handle decentralized tasks on their own, they can cooperate or can be forced to cooperate, as is the case in France with its inter-municipal groupings.

This condition is often said to be related to "economies of scale" (Boyne, 1995). Researchers expect positive scale effects as large entities can produce with lower average costs per unit than small ones. This is the case because there are always fixed costs, which with increasing size are spread over different units

and thus become lower per unit. A municipality, no matter how big or small, needs a mayor and a council. The relative costs thereof per unit of goods or services delivered are said to decrease, if the number of those units increases. A counter-argument is that mayors of small municipalities as the heads of the local government have to do everything; from planning to implementing projects and the fixed costs are relative as there is less division of labor (Tatar, 2010, p. 211). Bhatti and Hansen (2011) found that an increase in jurisdiction size leads to lower administrative costs per capita that can be substantial.

Institutional conditions refer to the internal organization, the financial situation (budget), the availability of a robust database on key economic variables, personnel, financial management, and the quality of the infrastructure. Wallis and Dollery (2002, p. 79) emphasize the importance of such institutional capacity, that is, local government's ability to effectively uphold authority and the regulation of economic and political interactions. The assumption is that small local governments are in general too weak to implement policies effectively (Lorvi, 2013). This applies, for instance, to auditing practices. Recently, the auditors from the Council of Europe concluded that concerning the frequency of external auditing: "Inevitably the situation was worse in countries with large numbers of small authorities (only 84 out of 7,455 the Romanian local government final accounts had been audited)" (Davey, 2012, p. 73). The same report also warns for the quality of the drafting of tax regulations, particularly in small municipalities (p. 137).

On the other hand, one could also say that small municipalities have an advantage in institutional terms. As distances are small, it may be assumed that there is a high level of what is known as "ordinary knowledge". People in small municipalities know each other i.e., there is a large quantity of self-evident information. The existence of small distances means that it is virtually impossible to formulate policies without involving the target group in this process. A high degree of accessibility of the public administration is expected as regards involving people in the development of policy and involving the business community in the development of policy. A high degree of transparency and timeliness, understandability, correctness, and completeness of information provided may also be expected. A high level of "ordinary knowledge" means that there is much self-evident knowledge of citizens and companies and events that occur (Lindblom and Cohen, 1979, p. 12-14). People are closely related to one another as they are family or neighbors, went to the same school, have common friends and acquaintances, and because everything that takes place in the micro-environment and every important development is immediately known. This means that many things can be done based on implicit knowledge, informal relationships, and without extensive bureaucratic formalities, and that considerably more improvisation and creativity is possible than in a larger municipality with a more extensive bureaucracy. Small distances imply that the quality of the information provision is automatically adequate, and that the relationships are informal. The surplus of ordinary knowledge means that the bureaucracy in small municipalities may be expected to be less.

Ordinary knowledge, informal relationships, and a "like-knows-like" mentality do have their advantages when avoiding excessive bureaucracy, but they also have a drawback, because decisions can be made that are not entirely in accordance with the rules. Small distances have their advantages, because buyers and sellers know each other, entrepreneurs and public servants know each other, but the risk is that public and private interests become mixed, that, through bribes or even corruption. Sometimes issues are handled by private actors, contrary to legislation and regulations, and public matters are arranged quickly by public actors only in case of bribes and personal compensation. In large jurisdictions, it is often impossible for individual public servants to accelerate the processing of a request or a permit application. The possibility to accelerate a process of handling a request rather seems more probable in a micro jurisdiction as a small municipality.

Human resource conditions refer to the quality of leadership, the availability of skills in economic and policy analysis, in budgeting, financial management, auditing, evaluation and procurement. Carter (2013, p. 2) talks about a human resource structure enabling "five pillars of strength": (1) a structure that is strong regarding ethical governance, (2) it has the required authority to identify local problems and find local solutions, (3) it facilitates local economic development through community engagement, (4) it is technically able to build and maintain a database and knowledge to respond to community and business needs, and finally, (5) it has a skilled staff, and effective long-term financial and asset management.

Typical of small municipalities is that there usually are a relatively small number of public servants. This means that the characteristics of Weber's model for bureaucracy cannot completely apply. Because of the small number of people, it is likely that the tasks of an official are not limited by the job description, but that these tasks are rather determined by the official's background, education, opinions, and preferences. To quote Murray: "[In such micro jurisdictions] in many jobs the work done, and the whole character of the job, is fashioned by the individual job holder. Rather than the individual being molded to a defined job, the job is molded to suit the individual" (1981, p. 95). In the literature, such small workforces are seen as problematic. In Local Capacity Indexes, it is seen as an indication that robustness is lacking.

In addition, in small municipalities adequate training and education for officials are often lacking. Often there is relatively little supervision of individual decisions, i.e. lacking checks and balances, lacking possibilities to appeal about a decision, and the political influence on official decisions is relatively large (Kersell, 1987). This seems to derogate adequate policy development, because the government officials probably meet classic characteristics, such as effectiveness and efficiency, expertise, quality, and enforcement of legislation and regulations, to a lesser extent.

As a result, the Council of Europe argues that one of the key challenges for municipalities in Europe is the continuing weakness of performance audit, particularly in countries with large numbers of small municipalities without

qualified personnel (Davey, 2012, p. 36). Also, single national studies argue that the number of personnel is directly related to capacity. To quote Haček and Bačlija (2009):

If the levels of administrative capacity are compared with the sizes of municipalities (according to the number of inhabitants), a conclusion can be drawn that small municipalities (with up to 5000 inhabitants) tend to have either a medium or a lower level of administrative capacity, and larger ones (with over 5000 inhabitants) have a middle to high level of administrative capacity (p. 324).

A preliminary conclusion is that the four conditions in theory have several implications for our expectations about the way policies are made in small municipalities. The dynamics in contextual conditions pose a threat to the viability of small municipalities. The changing structural conditions add to this threat, as the – sometimes enforced – cooperation, horizontally with other municipalities, and vertically with regional and national government is detrimental for the autonomy of small municipalities. Considering the institutional and human resource conditions of small municipalities, policy processes in hamlets are different from those in large municipalities and perhaps of less quality in terms of due process, but not necessarily of lower quality. The reason is the abundance of ordinary knowledge, the informal base, and subsequently tailor-made way, in which services can be provided, and the minimum of bureaucracy, might well balance the possibly deficient expertise in some areas, the substandard meticulousness with which decisions are made, and lacking care for procedural aspects thereof.

These preliminary observations make it interesting to research the impact of the four conditions on the capacity of small municipalities. The hypothesis steering that analysis and derived from the theoretical analysis is that small municipalities are expected to have a lower capacity than big municipalities.

In the next section we will describe how we will test this hypothesis, what data are used and what kind of indicators, and in the subsequent section the outcomes of that test will be presented.

3 Findings on the capacity of small municipalities

In this section we give an overview of the outcomes of existing case-studies on the capacity of small municipalities as found in the scholarly literature. We sought, using the University Libraries of Gothenburg and Nijmegen, Google Scholar, the Web of Science and JSTOR with search terms “small”, “municipality”, “hamlet”, and “capacity”. This resulted in 50 empirical studies, which is a rather small number given the nature of the subject. We expected much more results, but research in the workings of small municipalities does seem to be a less popular subject among scholars than research in big municipalities.

In assessing the outcomes thereof, the same order as has been followed in the previous section orders also structures the findings in this section. It implies that we first give results from studies investigating the impact of con-

textual conditions on small municipalities, then we present outcomes of existing research on the impact of structural conditions, subsequently previous research on institutional conditions is discussed, and lastly existing research on human resource conditions.

3.1 Contextual conditions and small municipalities

Research on the contextual conditions impacting on small municipalities was done by Ziółkowski (2015) on Poland. He argues that management is not only a decision-making process within structures of local self-government, but it is also an activity closely related to the environment. It means that management must be recognized in the context of changes that include parallel other processes like e.g., globalization of the economy, increasing competition among local government units on a regional, national and international scale, decentralization of public authority, introduction of new pro-efficiency solutions, membership in the European Union (p. 145).

Gabryjończyk and Iwańska (2010) studied *Krzemienny Krąg (Flint Circle Lag)* and identified the most serious problems small municipalities face under changing contextual conditions. Through a survey among inhabitants of small communities, they found that every fourth respondent complained about the problem of finding a well-paid job, and lacking opportunities for individual development. Most respondents had a bad opinion about the access to roads, and the lack of cultural and entertainment facilities. Regarding economic development, one-third of the respondents pointed to the increase in numbers of village grocery stores. One-fifth of the respondents pointed to the development of agro-tourism, which became the general direction of entrepreneurship development in the region (p. 77). This research represents the interesting case of contextual conditions for the local development that requires participation of the whole local community in problem solving.

In Poland, in the result of the transition to a market economy and the EU accession, small municipalities can no longer base their activities solely on agriculture. It becomes less and less profitable, especially for small and non-specialized farms, having problems with lucrative sales of their products. Gabryjończyk and Iwańska (2010) emphasize that entrepreneurship becomes a new form of economic activity aiming at first to improve the socio-economic security of local inhabitants and later on, it could contribute to life improvement of the local community. They point out that, at the beginning, the development of non-agricultural activities was chaotic especially in small municipalities. With time, this trend proved to become better organized, formalized, and to support multifunctional rural development.

3.2 Structural conditions and small municipalities

As to the structural conditions of small municipalities, empirical research was done into issues involving the financial resources of small municipalities, e.g. Lorvi (2013, p. 98) argues that small municipalities have not been able to effectively exploit the possibilities many larger municipalities do have, such as

making use of EU Structural Funds support, because their administrative capacity is weaker and their co-financing possibilities are insufficient. Instead Kriz, Paulus, and Staehr (2006) studied collecting local taxes. According to them, alternative forms of cooperation between municipalities in order to sustain service delivery, and differentiating the services to be delivered by small and large municipalities. Much of this research points out that amalgamations are not necessary, if small municipalities are willing to cooperate and to accept differentiation in tasks and authorities among municipalities.

That such willingness is not always self-evident, was shown by Previtali (2015). He investigated for Italy the administrative reform aiming at inter-municipal service agreements. Italy belongs to the locally fragmented countries. The author investigated 136 small municipalities from the Lombardy region that had 5,000 or less inhabitants. He focused on two types of inter-municipal cooperation: (1) "Unioni" of municipalities and (2) Inter-local service agreements with other small municipalities. The study showed what kind of joined public services the municipalities performed together, by what kind of agreement, and whether that varied with the size of municipalities. Their research concentrated on services such as records and information services, library, cemetery administration, electricity, parks and recreation, police, civil protection, finance, waste management, education, social, public works, city planning and traffic. It appeared that 37 of the 136 investigated small municipalities joined the so-called Unioni: The other 99 municipalities that declared that they did not join Unioni argued that they wanted "to avoid too deep linkages with other municipalities, which could become a restraint to their autonomy in the medium term" (p. 557) and that they wanted to protect their autonomy, traditions and habits.

Sometimes, cooperation is imposed by central government. In that case, small municipalities are forced to cooperate with one another and sometimes with a larger municipality. In Hungary, the government introduced "multi-purpose micro-regional associations", which can comprise up to 65 municipalities around a larger town in order to improve the structural conditions of municipalities. Such cooperation can take the form of multilevel contracts, in which the state and/or regional authorities cooperate with the municipalities under their jurisdiction. Vajdová, Čermák and Illner (2006) share the opinion that inter-municipal cooperation is also evident in the Czech Republic, where municipalities cooperate intensively, especially in the areas of regional development, tourism, environmental protection and in order to receive European subsidies, and somewhat less in social infrastructure, energy, transport and waste disposal. In Poland, municipalities have created regional, inter-regional and even international associations to cooperate. In 2004, in Slovakia, the very small municipalities had to choose to merge with other municipalities or intensify cooperation. For Italy, Fiorillo (2015) found that the capacity of a council to make its requests approved by central government is higher for a big council than for a small one.

An alternative is to differentiate functions according to municipal size. In Central and East European countries, public services are sometimes only provided by large cities e.g. in Georgia (cf, de Vries and Sobis, 2013).

According to Mohr, Deller and Halstead (2010) small municipalities have many choices in providing public services and solving the structural issues involved. They could do it by themselves, they could sign an agreement with for-profit or not-for-profit contractors or enter in agreement with another local government or authority. The research concludes that small and rural municipalities, especially those that are isolated benefit from collaboration in providing various public services especially by signing external contracts. The authors argue that "collaboration is generating increased attention as a cost-saving, efficiency-enhancing option, especially if there are too few private suppliers to provide true competition" (p. 903). So, mutual supporting by neighbor municipalities is perceived as an adequate alternative for contracting private firms or non-profit agencies.

3.3 Institutional conditions and small municipalities

As to institutional conditions, research was done in the Czech Republic by Matějová, Plaček, Krápek, Půček and Ochrana (2014). The Czech Republic is a special case, because the number of small municipalities is huge. The country is characterized by high territorial fragmentation and the number of municipalities increased from 4120 in 1990 to 6250 in 2001 and stabilized afterwards (p. 404). The territorial fragmentation was said to be the major barrier for decentralization and for local government's effective functioning. Hence, the relationship between economic performance and size of municipality was frequently debated and became of pivotal importance for local government. The authors investigated if there is an optimal size for municipalities. They argued that "the economic rationales for decentralization in the public sector are frequently questioned by qualitative and quantitative research" (Matějová et al., 2014 p. 404) because of such elements as "spatial externalities, economies of scale, overall fiscal efficiency, regional equity, redistributive responsibilities of the government" (ibid., p. 404). In this research 5 978 municipalities having 5 000 or less inhabitants participated, constituting 95,63% of all 6 250 investigated municipalities. The normal cost curve proved to be U-shaped with the smallest and largest municipalities performing worst. Municipalities with very few inhabitants suffered regarding their preschool and primary functions, because of lacking facilities. Hence, it was not surprising that tiny communities advocated for "voluntary amalgamation of municipalities" to perform their functions (p. 409).

Satoła (2010) showed for Poland a general tendency of improvement regarding the financial results of the local government sector with size, manifesting itself as an increase in the share of own revenues and operating surplus in relation to total revenues. The analysis was conducted for the three-years period of 2006-2008, when the implementation of projects from the years 2004-2006 was completed and programs for the period of 2007-2013 started. His research was based on 1586 units with the status of a 'rural commune' (small rural municipalities) representing definitely lower level of financial independence in comparison to bigger municipalities. His conclusion was that, in order to be able to efficiently carry out tasks imposed on local governments,

they must be equipped with financial power and that huge differences are observed among rural communes regarding their economic structure.

3.4 Human resource conditions and small municipalities

The insufficient expertise of personnel in small municipalities might impact on their ability to apply for higher government funding. However, Haček and Bačlija (2014), asked for the Slovenian municipalities how small localities cope with workload and whether they possess enough administrative capacity to provide public services for local community. Their finding was that independent of size, all municipalities have issues with their workload. Large municipalities are especially limited in providing additional services to citizens, while the smallest municipalities are overwhelmed with basic services. Hence, in both large and small municipalities the quality of public services provided can be questioned.

Large and small municipalities have different ways to deal with human resource problems. The small ones usually resolve this by hiring external consultants (Tatar, 2010, p. 210).

Although all over the world, many a study concludes that 'the lack of fully-employed managers hampers decision-making and the ability to strategically look forward' (cf. Development Bank of South Africa, 2009, p. 32). There is, however, an equal amount of studies pointing out that actually, very small municipalities have an advantage. Citizens in such municipalities know the administrators directly and personally and can control them on a daily basis, thus increasing the accountability (Fiorilllo, 2015, p. 3). Fiorillo also found that:

> "(…) in small councils, the accountable relation between administrators and citizens is stronger than the one suggested by the idea that the control of citizens on politicians depends on voting as in models of fiscal federalism theory where accountability problem collapse in electoral decision and promises. [In hamlets] administrators have to consider not only costs depending on non-re-election but the costs of everyday claims" (p. 4).

4 Findings out of comparative studies on municipalities

Asking about the capacity of hamlets in a comparative way, one is immediately confronted with comparative capacity indexes. We also looked at such Local Capacity Indexes (LCI) as they are now widely available, for instance as constructed by the World Bank, the UN, and national agencies. The problem in using such LCI's is that although the number of indicators is huge, the indexes concentrate on the extensiveness of the organization, i.e. institutional and human resource dimensions of local capacity. It is about functional capacities, leadership, knowledge and accountability related to the organizational level, financial management; human resource management, career management, recruitment and promotion, dealing with incentives, process improvement, and additional areas of exploration, combined with engaging stakeholders, vision definition, formulating policies and strategies, budgeting, managing

and implementation, and evaluation (cf. UN, 2012, p. 44ff). It is, for instance, about the capacity of municipalities to:

- *Engage Stakeholders*: Do authorities have the capacity to develop policies and legal and regulatory frameworks and mechanisms that ensure multi--stakeholder participation?
- *Assess a Situation and Define Vision and Mandate:* Do authorities have the capacity to frame, manage and interpret a comprehensive analysis of the policy and legal environment? Do authorities have the capacity to create a vision for fair and equitable policies and legal and regulatory frameworks and mechanisms?
- *Formulate Policies and Strategies:* Do authorities have the capacity to develop policy, legal and regulatory frameworks and mechanisms? And, do authorities have the capacity to develop policies and strategies relating to human resource development?
- *Budget, Manage and Implement:* Do authorities have the capacity to develop policy, legal and regulatory frameworks and mechanisms that support an integrated approach to budgeting and implementation? And, do authorities have the capacity to leverage human resources appropriately in the budgeting, management and implementation of programs and delivery of services?
- *Evaluate:* Do authorities have the capacity to develop policies and legal and regulatory frameworks and mechanisms for evaluation? And, do authorities have the capacity to evaluate performance and trends in HR capacity and productivity enhancement? (ibid.).

No matter how interesting such capacity assessment is, it is of little use for this study, as it is limited to the institutional and human resource dimensions of local capacity and it is only applicable for larger municipalities, as many of the criteria lose their meaning, if the municipality consists of only one or two administrators as is the case in very small municipalities. The number of functions and tasks distinguished in these indexes presume an extensive organization.

Instead of these indexes, we searched for a different proxy to understand the capacity of hamlets. Although far from ideal, we found such data in the Self-rule Index for Local Authorities (SILA) (Lender et al., 2015; 2016) and the outcomes of a Eurobarometer survey of 2016. As to the former, its final report states, this "project analyses 39 European countries and reports on changes in local autonomy between 1990 and 2014. A network of experts on local government assessed the autonomy of local government of their respective countries on the basis of a common code book. The eleven variables measured are located on seven dimensions and can be combined into a "Local Autonomy Index" (Lender et al., 2015, p. 2). The researchers distinguish different situations:

- In a unitary country where all municipalities have the same degree of autonomy the unit of presentation is the country;
- In unitary countries with asymmetric arrangements there are different units of aggregation (for example: "municipalities in general" and "cities with special competences");
- In federal countries where all municipalities have the same degree of autonomy, the unit of presentation is the country;
- In federal countries where the degree of autonomy varies from one subunit to another, the units of aggregation are the subunits (Länder, cantons) (Lender et al., 2015, p. 14).

It is the fourth dot that makes using this index problematic to assess the capacity of small municipalities. The index does in the end fail to distinguish between the functions and autonomy of tiny, small, medium-size and large municipalities. For instance, for the Czech Republic, the most fragmented country in Europe regarding the number of municipalities, no distinction is made between the three categories used in the Czech Republic to distinguish between the 5017 "basic" municipalities, 1036 medium-size municipalities with delegated powers, and 205 municipalities with extended authorities and does not at all take the own responsibilities of municipalities into account. The same goes for France, for which this database tells that it is the most decentralized country with a maximum of policy areas for which municipalities – in fact the departments – are responsible.

Regarding *the contextual level*, the SILA only distinguishes degrees of legal protection – defined as the existence of constitutional or legal means to assert local autonomy. As to *the structural dimension* of local capacity in which intergovernmental relations are central, SILA distinguishes the extent of central or regional access – defined as the extent to which local authorities are consulted to influence higher level governments' policymaking. As to *the institutional dimension* of local capacity, this project distinguishes between policy scopes – defined as the range of functions (tasks) where local government is effectively involved in the delivery of the services and organizational autonomy - defined as the extent to which local government is free to decide about its own organization and electoral system.

Nonetheless, and although we immediately acknowledge that autonomy is different from capacity, some of the indicators used in the project do provide proxies for all the dimensions of local capacity but one, we distinguished before is lacking. SILA does not provide indicators on *the human resource dimension* of local capacity. Therefore, we searched for this indicator from another source, that is Eurobarometer data, to investigate the trust in local authorities and compare this for countries with many small municipalities and countries in which there are only large municipalities. Trust is defined in terms of encapsulated interests – do authorities take the interests of the residents into account, when making decisions and are they capable of doing what they are supposed to do (Hardin, 2002; de Vries and Sobis, 2018). If either of the two is lacking, one cannot be expected to trust the authorities, just as one

wouldn't trust a babysitter, if this person either would not take the interests of the baby into account in the decision-making, or would not be capable to babysit. Hence, trust in local authorities is seen as a proxy for the capacity of local government within the human resource dimension (cf. de Vries and Sobis, 2018). We measured the trust in local and regional authorities using the outcomes of the Eurobarometer survey of 2017/1. We selected respondents living in localities of 2,000 people or less, that were living in small localities, and analyzed their answers to the question in relation to the size of the community they live in''. This is indicative for the trust in the local authorities of people living in rural areas. The analysis enables a comparison between countries where municipalities are on average small and every community has its own municipality, and countries where the average size of municipalities is larger and local authorities are more distant from the villagers.

Such analyses need to be controlled for contextual factors, as in Europe, trust in authorities is strongly related to wealth, living in one of the CEE countries or in Western Europe. Table 1 below provides information about this association (N=39 European countries). The table shows that trust in local authorities is strongly related to the wealth of the country (GDP per capita) (R^2=-0.650) and is much higher in Western Europe than in CEE countries (R^2=-0.421).

Table 1: Trust in local authorities and its determining factors (PM Correlations)

	Trust in local authorities	GDP per capita	CEE
Trust in local authorities	1	,650**	-,421*
GDP per capita	,650**	1	-,589**
CEE	-,421*	-,589**	1

Therefore, our analysis proceeds as follows. First, we create two groups, namely CEE-countries and Western European countries. Within these two groups we distinguish countries based on their municipality density, that is, the average number of inhabitants per municipality. Subsequently, we analyze whether the scores on the four dimensions are related to this municipality density. The analysis of these data will out of necessity be at an aggregated, national, level, as more specific data on the local level are unavailable. It will also be descriptive, as multivariate modeling is hardly possible given the distribution of the variables. We investigated whether the main variables used in this research, "municipal density", "trust in small municipality authorities", "access of municipalities to central and regional decision making", and "policy scope" have a statistically normal distribution. This is necessary for a regression analysis, but only seems to be the case for "policy scope". Municipal density is very skewed to the left with half the countries having less than

10,000 residents per municipality, while the average size of municipalities in other countries varies between 20,000 and nearly 60,000. Trust is skewed to the right, as is access to regional and central decision making. All this makes a regression analysis with trust in local authorities perilous.

Therefore, this analysis is done on the basis of the descriptive values on the different variables in different countries. This does not alter the research question, namely to what extent judicial protection, access to regional and national decision-making, the policy scope, and the trust in local authorities co-vary with the average size of municipalities in Western and Central European countries.

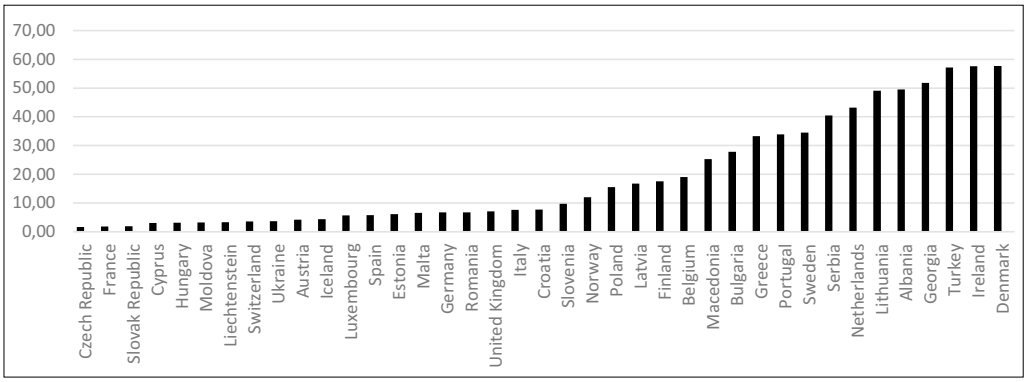
The validity and reliability of the data derived from the Local Autonomy Index and the Eurobarometer can be disputed. National experts could even totally disagree with the figures given. Firstly, the data are aggregated proxies. To measure local capacity at an aggregated – national level is perilous. The authors are the first to acknowledge the issues at stake. Furthermore, is trust in local authorities indeed the best indicator for the human resource dimension of local capacity? In theory the indicator is valid as capacity is a core element in the definition of trust, but in the practice of answering a survey question, the answers could as well imply the opinion about the trustworthiness of local authorities irrespective of their capacity to accomplish things for the municipality. Also, we acknowledge that the contextual dimension of local capacity involves more than only its legal protection, that intergovernmental relations – the structural dimension – involve more than regional and national access of municipalities, and that the institutional dimension involves more than the scope of functions and the freedom to decide about one's own organization. A further objection could be that some indicators do not differentiate between the capacity of small and large municipalities in a country. The access to regional and national decision-making is often equal for all municipalities. Below, we determine whether such access is better or worse guaranteed in countries consisting of many small municipalities compared to countries where there are hardly small municipalities. It does not tell whether small municipalities have more or less access than large municipalities in a country, but it does ascertain whether and to what extent the potential capacity of small municipalities to influence decisions made at the regional and national level is guaranteed in countries with many small municipalities, compared to countries in which small municipalities are (almost) absent. All such objections are justified, and imply that much more research into the issues involved is needed, and that the outcomes as presented in the next section are not definitive, as they provide just a preliminary insight in the capacity of small municipalities. In fact, one could say that the data used are more indicative for the *potential capacity* of small municipalities than for the actual capacity thereof. If the viability of municipalities is strongly supported in the constitution of a country, if their access to the decision-making at higher levels is guaranteed, if the scope of policies they are responsible for themselves is limited, and if their residents trust their local governments more if they are nearby i.e. smaller, this is indicative for their potential capacity.

5 Outcomes

In this section, we discuss how the size of municipalities relates to the contextual, structural, institutional and human resource conditions as distinguished above. First, we give some descriptive outcomes on municipal density, that is, the average number of residents in municipalities in different countries. Figure 1 gives the differences between countries.

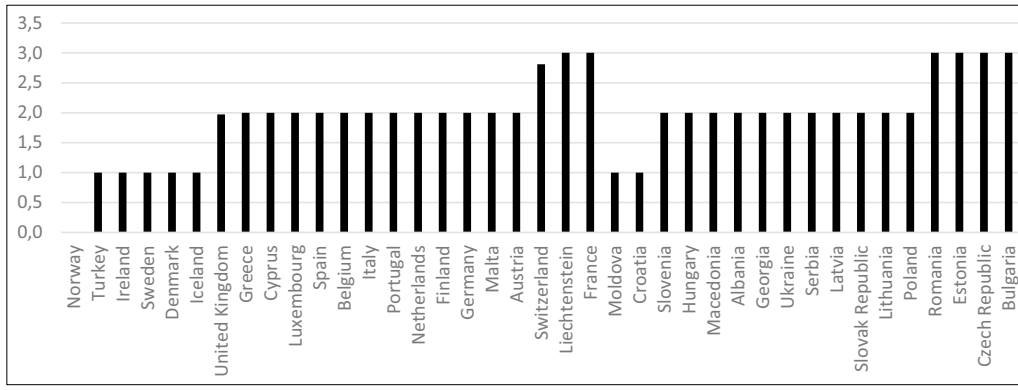
It is seen that the Czech Republic has on average the least number of residents per municipality, followed by France, the Slovak Republic, Cyprus, Hungary, Moldova, Ukraine, Liechtenstein, Austria, Switzerland, Iceland, Luxembourg, Spain, Estonia, Malta and Germany. At the other end of the spectrum one can see Denmark, Ireland, Turkey, Georgia, Albania and Lithuania with relatively many residents per municipality. The latter are all countries in which major processes of consolidation have taken place during the last decade.

Figure 1: Average no of residents (x1000) per municipality



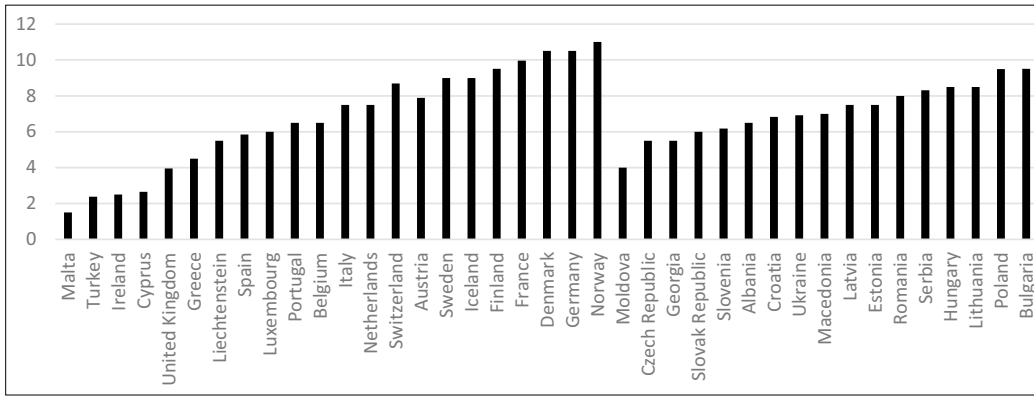
The question is how this relates to the four capacity conditions. As to legal protection, the Czech Republic, Liechtenstein, Switzerland, and France – all countries in which many hamlets still exist, all get a maximum score, implying that there exist constitutional or legal means to assert local autonomy. In these countries the laws and constitution protect local autonomy such as e.g. listing of all municipalities in the constitution or the impossibility to force them to merge, and countries like the Slovak Republic, Cyprus, Slovenia, Austria and Hungary get a lower score. Among the countries such as Denmark, Turkey, and Ireland, in which many amalgamations recently occurred, such legal protection is nearly absent (cf. Lender et al., 2015, p. 50).

Figure 2: Access to central and regional decision-making



A re-analysis of the figures by Lender et al., also shows that in those countries where most micro-municipalities exist, the access of those municipalities to central and regional decision-making is largest. This is seen in Western Europe in France, Liechtenstein, and Switzerland, and in CEE-countries in Bulgaria, the Czech Republic and Estonia. The countries in which such access is smallest are those where huge amalgamations took place, that is Turkey, Ireland, Sweden and Denmark in the West, with Iceland being an exception, and Moldova and Croatia in CEE-countries.

Figure 3: Policy scope of municipalities



As to the policy areas taken care of by the regions, the SILA database distinguishes 13 policy areas and measures whether municipalities have responsibilities in those areas. We counted the number of policy areas for which municipalities have responsibilities in a country, resulting in a scale from 0-13. The results are given in figure 2. The figures show that in countries in the CEE-region with many small municipalities, the number of functions is most limited -Moldova, Czech Republic, Georgia, while the number of functions is largest in countries where amalgamations have taken place, i.e. Lithuania, Poland and Bulgaria.

Figure 4: Trust in local authorities

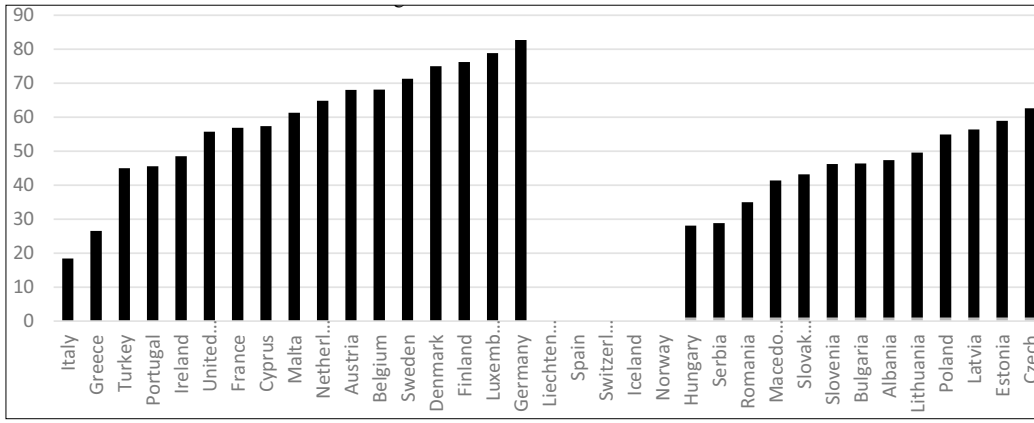


Figure 3 is based on the opinions of people living in the smallest areas (<2000 inhabitants in their locality). It shows that these people on the whole, trust local authorities most in those countries which have most small municipalities. In CEE-countries, this applies to the Czech Republic, having mostly very small municipalities. It is also in the Czech Republic that most of the people living in the rural areas express their trust in the local authorities. In Western Europe this is seen in Germany with its many small "Gemeinde" and Luxemburg. Although an analysis of the data does not show a strong linear relation between municipal density and the trust of rural people in local authorities, the outcomes do indicate that such trust is especially high in those countries where the local authorities are still closest to the people, i.e. the hamlets.

6 Conclusions

This paper asked *what is known from existing research about the capacity of small municipalities?*In order to answer that question, we posed four sub-questions, namely:

1. What is local government capacity?
2. Which impact have conditions of size on local capacity in theory?
3. What trends emerge out of case studies on small municipalities?
4. What can be concluded about the local capacity of small municipalities analyzing comparative data?

As to sub-question 1, we defined local government capacity as "the ability of local government to perform their functions in an effective and efficient way". It is not about the amount of functions, the budget or the number of officials employed, which would be inherently favoring big municipalities and disadvantage the small ones. Even municipalities with only a few functions, a low budget and little personnel can have sufficient capacity to do effectively and efficiently what they are supposed to do. Of course, such capacity depends on a number of factors. These were identified as contextual conditions, structural conditions, institutional conditions and human resource conditions.

The existing literature is far from unanimous in its conclusions on the capacity of small municipalities compared to their larger counterparts. The results of a literature review revealed that unequivocal conclusions about the capacity of hamlets and the impact of each of the four conditions thereon are severely missing. Indeed, there is not an abundance of research on small municipalities. Some of the scarce scholars investigating the issues involved find negative effects of municipality's small size, while others point to the merits thereof. This knowledge is not increased by comparative data as provided by the nowadays popular "Local Capacity Indexes". The indices used to measure local capacity in those indexes make it an instrument that is perhaps valid for measuring the capacity of big municipalities, but not for small municipalities, let alone, hamlets. Using the criteria dominant in those local capacity indexes, results in the outcome that small municipalities are by definition less capacitated compared to bigger municipalities. This is the case, as the availability of resources and personnel is crucial in those indices and hamlets by definition have a minimum of resources and personnel and never will suffice to fulfil all the criteria such indexes use to score local capacity. As there is not much more empirical data, the answer to our main research question cannot but be that we simply don't know much about the actual capacity of hamlets. This is a striking conclusion, since in many countries in Western Europe as well as in CEE-countries witnessed huge consolidation processes in the last decade, out of the idea that the capacity of small municipalities is insufficient.

Some countries escaped such merger processes. Very small municipalities are nowadays still to be found in the Czech Republic, France, the Slovak republic, Cyprus, Hungary, Moldova, Ukraine, Liechtenstein, Austria, Switzerland, Iceland, Luxembourg, Spain, Estonia, Malta and Germany. In many of these countries such small municipalities thank their survival to the legal protection they enjoy. In Western Europe this is especially visible in France, Switzerland and Liechtenstein in their constitutions. In CEE-countries the Czech Republic, Bulgaria and Estonia are exemplary in this regard. In Western Europe main examples of consolidation processes being enabled by the absence of legal protection of municipalities are Turkey, Ireland, Sweden, and Denmark, where huge amalgamations have recently been enacted. Contextual conditions such as legal protection in national laws do capacitate small municipalities to survive.

As to the structural conditions, in countries with many hamlets, the access of those municipalities in central and regional decision-making seems significantly larger than in countries with amalgamated municipalities. This seems to be related to the limited number of functions small municipalities have in comparison to large municipalities. In terms of multilevel governance there seems to be a tradeoff between the functions of a municipality (determined partly by its size) and the access to the decision-making at higher levels of government. This is most clearly seen in the Nordic countries (Denmark, Sweden, and Ireland) and in Turkey in which amalgamations have taken place, and simultaneously their access in higher level decision-making processes has disappeared.

This research found that the main asset of small municipalities is the trust they generate from their residents. Our analyses show that residents of rural communities in countries within which still many hamlets exist and thus the distance between those residents and their authorities is small, trust their local authorities more, than residents in rural areas where the hamlets have been disappeared and the local authorities are more distant from their rural residents.

One could object to the outcomes by pointing out that the findings are not indicative for the actual capacity of hamlets. Indeed, the authors agree that the indicators are disputable and we urge researchers to conduct comparative analyses. Although we do agree that the indicators vary in their validity to make any claim about the actual capacity of hamlets, we do judge the measures useful as indicators for the potential capacity of small municipalities. Especially in their combination - having the trust of the residents, having guaranteed access to decision-making at the regional and national level, being protected by law, and not having to bother with all those policy areas outside their capacity - these measures are seen as proxies for potential capacity.

The main conclusion is therefore, that although information is severely missing about the actual capacity of small municipalities and any answer to the question about their actual capacity is precarious, our comparative analysis points out that the potential capacity of small municipalities is far from negligible. This goes counter to argumentation underlying the amalgamation processes that have taken place in many a European country and is a warning that such amalgamation processes could have serious side-effects.

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Povzetki (Summaries in Slovenian Language)

1. Aktualne težnje sodnega nadzora po novem madžarskem zakonu o postopkih pred upravnimi sodišči

Krisztina F. Rozsnyai

Stalni porast nadzora nad upravnimi akti, kot ga opažamo po vsej Evropi, je proti koncu prejšnjega stoletja zajel tudi upravno sodstvo. Pri tem je težko zagotoviti presojo v razumnem roku, tako da narašča napetost med zakonitostjo in učinkovitostjo. Odgovori, ki stremijo k ublažitvi te napetosti, pa hkrati odpirajo vprašanja, ki se dotikajo samega jedra načela delitve oblasti. Namen tega članka je predstaviti nekatere težnje, ki vzpostavljajo novo ravnovesje v sistemu zavor in ravnovesij med javno upravo in sodstvom. Z namenom konkretizacije teh teženj članek analizira nekaj merodajnih rešitev, ki jih vsebuje nov zakon iz leta 2017 o postopkih pred upravnimi sodišči. Najpomembnejši elementi regulacije postopkov za sodno presojo upravnih aktov so podani z vidika dogmatične in primerjalne perspektive, ki prikazuje spremembe pravil in/ali njihove interpretacije pred sodišči. Tako so izpostavljeni tudi pomembni izzivi v zvezi s sodobnim razumevanjem doktrine delitve oblasti. Najpomembnejši elementi nove madžarske regulacije so predstavljeni kot koherenten sistem, ki med drugim omogoča vpogled v reševanje vprašanj v zvezi s samo kodifikacijo. Poleg tega se morata z izpostavljenimi vidiki soočiti zakonodaja in sodna praksa v pravnih sistemih posameznih držav članic in tudi EU.

Ključne besede: *upravno-sodni nadzor, sodni postopek, kodifikacija, Madžarska, evropeizacija, začasne odredbe*

2. Vloga varuha človekovih pravic pri zagotavljanju dobre uprave v Sloveniji

Kornelija Marzel

Skladno z Ustavo Republike Slovenije in Zakonom o varuhu človekovih pravic je slovenski varuh človekovih pravic ustanovljen za zaščito človekovih pravic in temeljnih svoboščin v odnosu do javne oblasti. Pomembno je, da varuh človekovih pravic ne deluje zgolj skladno z določbami ustave in mednarodnimi pravnimi akti, ampak se v svojem posredovanju sklicuje tudi na načela pravičnosti in dobre uprave. Namen članka je prispevati k razumevanju dobre uprave in s tem povezanih okoliščin za spoštovanje ali kršenje človekovih pravic. Članek temelji na predpostavki, da z uporabo načel dobre uprave oblast spodkopava javno prepričanje, da je birokracija sama sebi namen in ljudem nadrejena. Z omenjenimi načeli se oblast osredotoča na stranke, ki uresničujejo svoje pravice in uživajo svoje svoboščine prek načel in postulatov demokratične družbe. Pri pripravi članka so bile uporabljene tako teoretične kot empirične raziskovalne metode. Analiza pritožb na varuha človekovih pravic je bila namenjena

preverjanju skladnosti normativnih oz. teoretičnih izhodišč z dejansko prakso in vzpostavljanju podlage za presojo obstoječega modela slovenskega varuha človekovih pravic, vse v okviru študije dobre uprave. Rezultati raziskave so privedli do zaključka, da v praksi oblast najpogosteje krši načela dobre uprave in da lahko varuh človekovih pravic v okviru svojih pristojnosti bistveno prispeva k dobri upravi. Ugotovitve članka predstavljajo izviren prispevek k razumevanju varuhov človekovih pravic in njihove vloge v posameznih državah.

Ključne besede: dobra uprava, človekove pravice, varuh človekovih pravic, javna oblast, Slovenija

3. Učinkovitost sodnega varstva zoper molk uprave v Češki republiki

Soňa Skulová, Lukáš Potěšil, David Hejč, Radislav Bražina

Članek obravnava vprašanje sodnega varstva v primeru molka ali nedejavnost uprave in njegove učinkovitosti na primeru Češke republike. Cilj sodnega varstva zoper molk uprave je hitra rešitev oz. prekinitev molka uprave, sicer se lahko ujamemo v začaran krog. Namen prispevka je preveriti, prek študije zadevne zakonodaje in sodne prakse (zlasti trajanja postopkov) v zvezi z nedejavnostjo uprave, ali je sodno varstvo zares učinkovito. Uporabljene so bile metode normativne analize, pregleda literature, statistične analize sodnega odločanja in dedukcije. Ugotovitve kažejo, da zaradi prekomernega trajanja sodnih postopkov in nerazumljive pravne ureditve sodno varstvo zoper molk uprave težko razumemo kot hiter in učinkovit instrument za odpravo upravne nedejavnosti. Rezultati pa lahko služijo kot podlaga za primerjavo z drugimi podobnimi državami in izmenjavo najboljših praks.

Ključne besede: molk uprave, upravno sodstvo, ustavno sodišče, učinkovitost, sodno varstvo, Češka republika

4. Konflikt interesov: pravni in etični vidiki v lokalni samoupravi na Slovaškem

Ondrej Mitaľ

Varstvo javnega interesa gre razumeti kot temeljni cilj javne uprave. Glede na kompleksnost družbene realnosti vedênje uradnikov in sprejemanje odločitev pogojujejo različni motivi. O konfliktu interesov največkrat govorimo v povezavi z delom izvoljenih uradnikov oz. pristojnih v javni upravi. V tem smislu se članek osredotoča na pravila in standarde, povezane s konfliktom interesov, ki jih morajo ti uslužbenci upoštevati. Članek skuša podati interdisciplinaren pogled ter poudariti pravni in etični pristop k obravnavanemu vprašanju. V tem smislu obravnava obvladovanje tveganj in vplivov obravnavanega vprašanja na lokalni ravni samoupravljanja v Republiki Slovaški. Hipoteza temelji na predpostavki, da lahko etične norme posamezne vidike konflikta interesov opredelijo natančneje kot zadevni pravni akti. V članku so bile uporabljene

metode analize vsebine, abstrakcije, primerjave in sinteze. Ugotovi se, da bi lahko etične norme pomembne vidike konflikta interesov res opredelile bolj natančno kot pravni akti. Avtor predpostavlja, da lahko komplementarnost pravnih sistemov in etične infrastrukture zmanjša protislovne in negativne vplive konflikta interesov. Skladno s tem morajo enote lokalne samouprave sprejeti etične kodekse, če želijo izboljšati obvladovanje tveganj in vplivov konflikta interesov.

Ključne besede: javni interes, konflikt interesov, javni uslužbenci, lokalna samouprava, Slovaška

5. Finančni položaj in vzdržnost združenj na Hrvaškem

Davor Vašiček, Ana Marija Sikirić, Martina Dragija Kostić

Članek poudarja gospodarski pomen sektorja civilne družbe v nacionalnem družbenogospodarskem kontekstu. V Republiki Hrvaški se sistematično zanemarja ekonomsko in finančno dimenzijo organizacij civilne družbe in neprofitnega sektorja, čeprav se velik del dejavnosti organizacij civilne družbe financira iz javnih virov in obstaja veliko možnosti za izkoriščanje njihovega relativno ugodnega davčnega položaja. Namen članka je predstaviti rezultate raziskave virov financiranja, finančnega potenciala in elementov gospodarske uspešnosti združenj državljanov na Hrvaškem. V anketni vzorec je bilo vključenih več kot 20.000 združenj državljanov, ki so registru neprofitnih organizacij skladno z zakonom predložile svoja finančna poročila. Raziskava temelji na zbranih podatkih iz bilance stanja in poročila o uspešnosti za leti 2015 in 2016. Znanstveni prispevek članka se odraža v oceni finančne uspešnosti in finančne preglednosti delovanja organizacij civilne družbe v Republiki Hrvaški in njihove trajnosti v primerjavi s Srbijo in Slovenijo.

Ključne besede: združenja, civilna družba, finančni položaj, finančni viri, učinkovitost poslovanja, Hrvaška, Srbija, Slovenija

6. Vpliv transparentnosti na participacijo državljanov v procesu odločanja na občinski ravni v Romuniji

Bianca Radu

Članek analizira izvajanje zakona o transparentnosti in raziskuje, ali je njegovo sprejetje okrepilo udeležbo državljanov v procesu odločanja na občinski ravni v Romuniji. Raziskava je zajemala analizo poročil o transparentnosti, ki jih vsako leto pripravljajo občinski organi. Analizirana so bila poročila 28 mest in 5 upravnih sektorjev občine Bukarešta za leta 2014, 2015, 2016 in 2017. Dodatne informacije o izzivih izvajanja zakona so bile pridobljene iz prejšnjih študij, ki so jih na to temo opravile nevladne organizacije. Raziskava je pokazala, da so javne institucije z razkritjem osnutkov normativnih aktov in dokumentov, na katerih so bili ti zasnovani, povečale preglednost postopka odločanja. Stopnja udeležbe državljanov v fazi posvetovanja in odločanja je bila v analiziranem

obdobju sicer še vedno nizka, a je vendarle mogoče opaziti rahlo povečanje. Število prejetih priporočil glede osnutkov normativnih aktov je bilo nizko. Raziskava je pokazala, da so imeli predlogi državljanov več možnosti za vključitev v končne odločitve, če so bili izraženi na sejah mestnih svetov. Poleg empiričnega vpogleda v izvajanje zakona o preglednosti v Romuniji članek raziskovalcem dokazuje, da boljša preglednost odločanja sama po sebi še ne pomeni večje vključenosti državljanov v proces odločanja.

Ključne besede: transparentnost, participacija državljanov, odločanje, reforma javne uprave, romunske občine

7. Obvladovanje stroškov v visokošolskih institucijah – primeri Bosne in Hercegovine, Hrvaške in Slovenije

Martina Dragija Kostić, Tatjana Jovanović, Jelena Jurić

Stroški v visokem šolstvu se iz različnih gospodarskih, demografskih in družbeno-kulturnih razlogov vztrajno povečujejo, zaradi česar se vrstijo pozivi k reformam gospodarskega modela v visokošolskem sektorju, v zadnjih desetletjih pa se zaradi skrbi za učinkovitost dramatično povečuje tudi pomen gospodarskih ocen. Omenjeni akademski izzivi so nas spodbudili k presoji zmogljivosti orodij finančnega upravljanja v treh državah Zahodnega Balkana, tj. Bosni in Hercegovini, Hrvaški in Sloveniji. Predpogoj za uspešne reformne procese je vsekakor celovit in kakovosten računovodski informacijski sistem, ki ne ustreza le zahtevam zunanjega poročanja, temveč tudi zahtevam notranjih uporabnikov, zlasti upravljanja visokošolskih zavodov. V tem pogledu je glavni namen članka proučiti pravne in organizacijske značilnosti računovodskih sistemov, ki se osredotočajo na zunanje in notranje zahteve poročanja, in raziskati stopnjo razvoja in uporabe stroškovnega računovodstva na visokošolskih ustanovah v izbranih državah. Uporabljena raziskovalna metoda je zato anketa. Rezultati kažejo, da obstajajo velike razlike med pravnimi in organizacijskimi značilnostmi računovodskih sistemov med državami ter med razvojnimi stopnjami sistemov stroškovnega računovodstva, ki temelji predvsem na nedoslednem dodeljevanju režijskih stroškov in uporabi različnih računovodskih podlag. Rezultati raziskav potrjujejo slabo zasnovano in slabo strukturirano poročanje računovodskih informacij za namene upravljanja, kar ponuja vrsto uporabnih platform za vzpostavitev pristopov in strategij upravljanja uspešnosti v javnem sektorju.

Ključne besede: upravljanje stroškov, finančno računovodstvo, visokošolske institucije, računovodstvo na podlagi poslovnega dogodka, BiH, Hrvaška, Slovenija

8. Množitev negativnih scenarijev: pristop za javne uprave pri oblikovanju splošnih pravil

Mirko Pečarič

Prispevek obravnava probleme, ki nastanejo pri oblikovanju osnutkov zakonov brez upoštevanja teorije verjetnosti. Čeprav bi morala biti slednja nujni

pogoj zakonodaje, je zakonodajalci kljub usmerjenosti zakonodaje v prihodnost običajno ne uporabljajo. Prispevek temelji na Hume-ovem »je-naj bi« problemu (ponazarja nezmožnost prehoda z opisnih izjav na normativne) ter ob zavedanju, da verjetnost še ne bo kmalu upoštevana v zakonodajni praksi, ponuja rešitev za zakonodajo v množitvi (negativnih) scenarijev za različna življenjska vprašanja. Kljub vedno bolj priljubljeni uporabi ocen glede vpliva učinka predpisov, pametni regulaciji, verjetnosti in tveganju, javne uprave kot glavni pripravljavci splošnih pravnih pravil običajno ne uporabljajo niti (veliko bolj enostavnega) negativnega pristopa za boljši vpogled v težave, čeprav gre za naraven način našega razmišljanja. Nov pogled na verjetnost s pomočjo znakov, ki se ujemajo z (nezaželenimi, vendar vnaprej znanimi) scenariji, lahko zagotovi nove odgovore glede vprašanj vzročnosti. Slednja namreč temelji na znakih, iz katerih dokazi v bistvu izhajajo.

Ključne besede: apopatično (negativno) odločanje, predlogi zakonskih in podzakonskih predpisov, verjetnost

9. Primerjalna raziskava o neobveznih lokalnih nalogah v treh madžarskih in slovenskih občinah

Marianna Nagy, István Hoffman, Dorottya Papp, Evelin Burján, Kristóf B. Cseh, Tamás Dancs, Anita Kiss, Melitta Lévay, Lilla Matos, Csaba Molnár, Noémi Német, Dávid Ökrös, Zsolt R. Vasas

Članek povzema podobnosti in razlike v upravljanju neobveznih lokalnih služb. V ta namen smo izvedli empirične raziskave v treh madžarskih in treh slovenskih občinah. Naš glavni cilj je bil ugotoviti, kateri gospodarski in družbeni dejavniki vplivajo na obseg neobveznih lokalnih služb na Madžarskem in v Sloveniji. Posebej smo analizirali šest sektorjev komunalnih storitev glede na velikost občin. Pri tem smo zajeli zgolj glavne sektorje, v katerih se neobvezne službe najverjetneje pojavljajo in lahko zato služijo kot osnova za primerjalno analizo. Z analizo smo postopoma preverili začetno hipotezo naše raziskave, da je upravljanje neobveznih lokalnih služb bolj verjetno prisotno v mestih z večjo gospodarsko močjo, še bolj intenzivno pa je v občinah turističnega pomena.

Ključne besede: javne službe, decentralizacija, občinske naloge, neobvezne lokalne službe, Madžarska, Slovenija

10. Potenciali usposobljenosti zaselkov: primerjalna raziskava o malih evropskih občinah

Michiel S. de Vries, Iwona Sobis

Teorije o malih občinah in prakse številnih držav, ki vključujejo njihovo konsolidacijo, predpostavljajo, da kontekstualni in strukturni pogoji, v katerih delujejo male občine, slednjim škodujejo in ogrožajo njihovo sposobnost preživetja. Vendar pa lahko institucionalni in kadrovski pogoji delovanja malih občin delujejo v obe smeri, tj. so koristni in obenem neugodni. Članek raziskuje teore-

tična znanja in empirične domneve glede zmogljivosti malih občin v Evropi. Ugotovimo lahko, da rezultati obstoječih raziskav glede dejanske zmogljivosti tako imenovanih zaselkov niso dokončni ter da obstoječi podatki glede lokalnih zmogljivosti niso primerni za merjenje zmogljivosti malih občin. Kljub temu pa članek ugotavlja, da je njihova potencialna zmogljivost velika, čeprav ni mogoče sklepati o dejanski zmogljivosti malih občin. To lahko ugotovimo na podlagi njihovega pravnega varstva, njihove težnje k osredotočanju na omejeno število političnih področij, njihovega dostopa do vladnega in regionalnega odločanja, zlasti pa zaupanja, ki so ga deležne od svojih prebivalcev.

Ključne besede: usposobljenost, pogoji, zaselki, male občine, uspešnost, zaupanje

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