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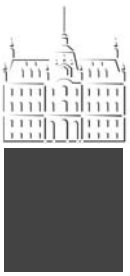

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Uvodnik

Spoštovani.

Tokratna številka revije Uprava vsebuje prispevke, ki z raznih vidikov obravnavajo značilnosti in novosti v razvoju javnega sektorja.

Članki obravnavajo nedosežene cilje uvedbe novega javnega menedžmenta v novih državah članicah Evropske unije, pospeševanje regionalnega razvoja, financiranje visokošolskega izobraževanja in potrebo po evropski akreditaciji visokošolskih programov.

Kljub temu, da mnogi že skoraj dvajset let opozarjamo na smiselno uvedbo metod zasebnega sektorja tudi v javnem sektorju, je videti, da se stereotipi o delovanju v javni upravi trdovratno ohranjajo. Avtor Juraj Nemec kritično opisuje, kako počasi in z malo uspeha so mnoge države Vzhodne Evrope zamenjale socializem s kapitalizmom. Več kot očitne so negativne posledice uvajanja privatizacije javnega sektorja brez določitve standardov, ki bi urejali dostop do storitev in kakovost npr. v izobraževanju in zdravstvu. Uporabniki storitev javne uprave se še vedno srečujejo z vrsto pravnih in birokratskih ovir, ki odražajo prevlado prava v javni upravi.

Zadnji tak primer je zahteva odločujočih na Univerzi v Ljubljani, da javna uprava ne potrebuje samostojnega upravnega doktorskega programa, ampak le pravno-upravnega. Očitno je tako stališče odraz sedanje in pretekle prakse zaposlovanja diplomantov pravnih programov na večini vodilnih delovnih mest v upravi kot posledica zgodovinskega, t. i. kontinentalnega - nemškega modela državne oz. javne uprave. Praksa in izkušnje v svetu so tudi drugačne, saj t. i. anglosaški model daje prednost interdisciplinarnosti z organizacijo, vodenjem ljudi, ekonomiko, javnimi politikami, informatiko in seveda tudi upravnim pravom. Celo države, po katerih se je kontinentalni sistem zgledoval, so že pred desetletji uvedle programe menedžmenta v upravi in ekonomike javnega sektorja. O tem se je mogoče prepričati tudi v prispevku Christopha Reicharda, uglednega profesorja v Nemčiji, ki opisuje sodobne usmeritve pri akreditaciji programov za javno upravo. EAPAA, edino evropsko združenje, pristojno za akreditacijo visokošolskih programov za javno upravo, pravnih programov ne akreditira. Evropski programi, ki žele pridobiti akreditacijo EAPAA, morajo biti interdisciplinarni s sorazmernimi deleži upravnih,

organizacijskih, ekonomskih, politoloških, informacijskih znanosti. Seveda pa to ne izključuje sodelovanja različnih institucij pri izvedbi programov tako, da se doseže največja mogoča kakovost.

Dodaten argument za uvedbo interdisciplinarnega doktorskega programa Uprava je tudi ponudba Sorosevega sklada, da finančno podpre štipendiranje doktorskih študentov iz Vzhodne Evrope in predvsem iz Azije na treh fakultetah s program Management v upravi v Budimpesti, Tallinu in v Ljubljani.

Očitno so ponujeni programi izbranih fakultet po mnenju tujih poznavalcev izobraževanja za javno upravo najboljši. Do tega spoznanja pa morajo priti še odločujoči v Sloveniji. Ne bi bilo prvič, da je težje dobiti priznanje doma kot v tujini.

Odgovorna urednica

Red. prof. dr. Stanka Setnikar Cankar

Review article

New Public Management and its Implementation in the CEE Region: What do we know and where do we go?

UDK: 35:005(4-11+4-191.2)(045)

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IZVLEČEK

The paper presents a short literature review on New Public Management (NPM) and public sector reforms in CEE. It also includes selected practical experiences in CEE countries with the implementation of NPM, data collected for most cases by the author and his team. On this base the conclusions about very limited success of NPM in Central and Eastern Europe are suggested, including explanations of some region specific factors, determining the level of success of NPM strategies.

Our findings argue in simplified way that: "Adieu NPM" should mean that managing by contracts, objectives, competition, etc. as the goal, is a forgotten story (not only for CEE, but generally). But governing by predictable, reliable and coherent, open and transparent, accountable and responsible bureaucracy, using evidence and consultation based policy making and simultaneously properly managing efficiency, economy and effectiveness of any government operation is the future target.

Key words: New Public Management, reforms, Central and Eastern Europe, Neo-Weberian state

JEL: H83, D73, P20, L33, H11

1. Introduction

The global (or even systematic?) crisis that visibly started in 2009 in the form of the financial crisis in the USA, has created new challenges for all national and supranational governments. States need effectively to react to existing global and local problems, not only by short term anti-crisis measures, but above all by

long term strategies, including further revitalisation of their public administration systems.

In the middle 2010 it is already visible (in Greece, but also in many countries in our region) that the sustainability of the public finance will be the core target to achieve. Two options are available – simple cost cutting (as the "bad" choice) or improving efficiency and effectiveness of any governmental actions (we feel that this is the way forward).

Many difficult changes "stay in front" in the situation when many authors still feel that public administration reforms in CEE region represent "unfinished or recently started stories" (despite many governments using different rhetoric!). Unfinished (especially "performance") changes and the so called "post-accession crisis" (slowing or even reverting needed changes almost everywhere in new EU member states), combined with new "crisis challenges" create really difficult environment and risk for future progress.

However, compared to the phase after 1989, the chance to react properly is much higher. More developed CEE states are now in better position. Transformation from "socialism" to "capitalism" was a unique process; without any previous experience from such change, and mistakes were unavoidable (and their scale was partly manageable). Now, when we need to react to new challenges, the local intellectual capacity has been (at least partly) created (also on the base of more than twenty years long experience with transformation and from international experience) and evidence collected. Progressive governments (do we have such in CEE region?) have now the chance to respond to new challenges by evidence based reform policies.

The paper tries to provide a specific input for future evidence based public policies in CEE. It discusses the role of New Public Management (NPM) in our region, with the focus on new CEE EU members and their experience. NPM was, with very limited success, used in many developed countries at the end of the last century. It was also part of reforms at least in some CEE countries. It may be "misused" for simple cost-cutting but also well used for better efficiency in the near future of public finance crises. The issue – our core question - is very simple:

How to understand: "Adieu NPM"?

2. New Public Management and CEE public administration reforms

The brief introductory part of the paper summarises findings from the recent NISPAcee project (Bouckaert et al., 2009) concerning the NPM contents of reforms[1]. Although the pre-accession period was very much connected with capacity building, where both "classic" public management reforms measures and "CEE specific measures" were realised, like fine-tuning or legal-structural retrenchment of existing institutions, improving the bureaucratic workflow and control in administrative organisations, or measures to achieve EU conformity of certain institutions or policies, important differences of approach are visible.

To describe the situation we can use Coombes and Verheien (1997) and Pollit and Bouckaert (2000) classification of reforms – these two classifications have the same base and can be simplified as follows:

1. Radical public management type of reform
2. Mixed type of reform
3. Incremental reforms.

Excluding Eastern European countries, where reforms are still in their early phase and it would be very difficult and preliminary to try to label them, the situation in the rest of countries seems to be as follows in Table 1 on the next page.

The table indicates that NPM "weight" in reforms was very different. Visibly, Estonia is the country, where NPM ideas have prevailed in various public administration reform concepts and strategies originating in the second half of the 1990s. Substantial privatisations have led to the selling off of strategic enterprises such as railways (in 2001 until its re-nationalisation in 2007) or crucial services as emergency medical aid without much public discourse or market-testing. Czechia seems to be the other pole, still reluctant to marketisation of the public sector.

[1] The main base for this part is the author's text published in the NISPAcee book Public Management Reforms in Central and Eastern Europe (2009)

Table 1: Classification of reforms in the Central Europe

Country	Reform type
Czech Republic	Dominantly incremental and legalistic reforms during the entire evaluated period. Few management reforms after 2000. The "Conception of public administration reform" from 1999 planned for complex changes, but only administrative measures were really implemented. New liberal government elected in 2006 tried to propose NPM changes, but has not had the power to implement them.
Estonia	Estonian reforms seem to be the most radical and NPM based. One of the main challenges in Estonia has been induced by the desire to jump straight into having modern management systems without previously establishing a solid base – the classical hierarchically-structured public administration. The central aim in Estonian public administration has not been to build a solid ground for democracy but to improve efficiency of public institutions. Yet, as a consequence of the policies adopted by successive neo-liberal governments, the underlying theme behind government reform initiatives has been decreasing the role of the state. Such an anti-state attitude has contributed to the development of ideas based on the minimal state.
Hungary	Hungarian reforms can be characterised as a mixed model, starting from dominantly incremental and legalistic reform approach in beginning of nineties, slowly changing to the mixed type with radical NPM switch in the post-2006 period. Current NPM changes focus on two central elements – downsizing (including radical decrease in civil service employment - on the territorial and local levels well in two-digit range, in some cases possibly even achieving 30 to 50 per cent) and radical reforming the human resource management system.
Latvia	Latvian reforms can also be characterised as a mixed model from its beginning to the current reform activities. Several NPM types of reform changes were implemented, especially in the later phases of reforming the public administration system, but NPM never dominated reform strategies.
Lithuania	The country report suggests that Lithuania appears to reach the second category (mixed model) of states called "modernisers" according to the classification by Pollitt and Bouckaert (2000). In the pre-accession period Lithuanian public management reform was characterised by ad hoc and sectoral efforts. First two attempts for comprehensive reform, which were undertaken by the Ministry of Public Administration Reforms and Local Authorities in 1995 and 1997, were not successful. More intensive competition over NPM type reforms started only in the post-accession period.
Poland	Poland is the typical representative of prevailing legalistic approach to the reforms and it can be allocated to the third (incremental changes) group of reforms countries. Poland is continuously reorganizing management systems in the public sector. New Public Management had a limited impact on Polish administration, by providing ideas and demands for recognition of the need to modernise Polish administration and at the same time reducing its size.
Slovakia	Slovakia from the point of view of the whole investigated period represents the mixed ("modernisers") approach, but a deeper analysis may distinguish between three main phases. Before 2003 the reform was dominantly incremental and legalistic, with few NPM ideas realised. During the second election period of the liberal prime minister Dzurinda government (2003-2006) radical NPM changes were realised, like massive decentralisation and introducing performance financing schemes. New prime minister Fico coalition, in power from 2006, has returned to the ideas of powerful state dominating in the system of delivery of public functions.
Romania	The information from the country report suggests that Romania lies somewhere between group two and three. Each government after the 1989 revolution has on its agenda the reforming of public administration. Though the concept of public management has not always intertwined with the reform of public administration, some new managerial ideas as use of contractualisation, strategic management and planning, performance measurement systems, reform networks, etc were included in reform packages.

Source: Bouckaert at all, 2009.

2.1 Did NPM "deliver"; what do we know?

In this section we briefly analyse the existing experience with NPM implementation in CEE regions. On the country level we use the example of Estonia for brief evaluation, then we discuss in detail impacts from the use of different NPM type mechanisms in selected CEE countries.

Estonia reforms were heavily based on NPM approaches. From two choices – legalistic reforms leaded by German PA experts in the country (Drechsler, 2001) or radical NPM changes, Estonia selected the second option. Already after some years the best PA experts in the country (Drechsler, Randma, Kattel and others) started to provide important warnings in connection with non-critical implementation of NPM ideas. Today Estonia, who was the main proponent at the beginning, belongs to "strong opposers" of NPM based reforms. Not only the opinion of the academic society (Drechsler, 2005, Randma, 2008, Drechsler and Kattel, 2008) has now been cleared, but also the government has recognised some important failures. Such change is an obvious confirmation of the fact that expectations connected with NPM reforms in the country were not fulfilled. The Slovak experience with decentralisation reforms provides a similar picture. With the respect to existing experience the lesson from/for "macro-level" is self-evident:

Overestimating of the role of NPM, implementing NPM as the reform ideology and main goal, when reforming administrative systems in transitional countries, is an evident mistake.

We should also add, not on the base of our research, but on the base of conclusions by most important PA "gurus" (Pollitt, Bouckaert, Lane, Peters and others):

NPM strategies did not work as expected also in developed "Western" democracies, they delivered some success but also many failures, and their general impact (positive or negative?) on PA development is really difficult to verify.

2.2 Some experience with NPM approaches/ mechanisms/tools

In this section we try to provide some evidence about the results from implementing NPM techniques in CEE, largely using the evidence from the Czech and the Slovak Republics. The main focus will be on contracting, outsourcing and performance evaluation and management, where we have already collected a lot of direct data, other areas providing similar lessons.

Contracting of local public services

Contracting of local public services is a very frequent delivery solution in CEE. Several experts deal with the issue (Péteri and Horvath, 2001 and Zoltán, 1996 for Hungary, Pavel, 2006 and Ochrana et all, 2007 for the Czech Republic, Tonnisson and Wilson, 2007 for Estonia and Setnikar-Cankar et all, 2009 for Slovenia) and their results are very similar. We use Slovak and Czech data partly benchmarked to the Estonia situation.

The Table 2 data are a clear example of the situation; more samples available limit the risk of interpretation mistakes.

Table: 2 Scale of contracting in Slovakia

Service	2001	2005	2006	2008/I	2008/II	2009
Waste	49	64	69	80	56	80
Cemeteries	27	12	16	13	35	13
Public green	16	18	33	14	38	6
Maintenance of local communications	21	41	45	38	37	55
Public lighting	30	35	40	39	49	38

Source: Own research, Transparency International Slovakia 2006, 2008

The main results from contracting should be higher economy for the same quality or slightly higher costs for much better quality. Both dimensions have been checked for Slovak conditions. Data provided by Merickova (2006 and other) indicate that there are no major differences in quality of delivered services, thus we should focus on economy.

The Table 3 indicates that there is no general trend on unit costs, when comparing internal and external forms of delivery. Data differ between sources, municipalities and are also not very reliable. Costs for internal delivery solutions are underestimated; normally do not include depreciation, overhead and transactions costs. In such conditions external delivery costs below, let us say, 125% of internal delivery costs might still represent an economical decision.

Table 3: Costs for external delivery of local public services per inhabitant in Slovakia (internal = 100%)

Service	2001	2005	2006	2008	2009
Waste	94	94	125	184	60
Cemeteries	64	13	67	146	66
Public green	82	192	150	151	133
Maintenance of local communications	70	109	119	114	104
Public lighting	100	138	128	156	127

Source: Own research, Transparency International Slovakia 2006

Two connected issues need to be mentioned – limited results may be caused by non-competitive selections of suppliers, and the differences between unit costs in municipalities of the same size are too high. The Table 4 provides evidence for the first problem (no answer normally means "direct award").

Table 4: Selection of an external supplier for local public services

Method of selection	2001	2005	2006	2008	2009
Open tender	16	17	27	32	17
Restricted tender	5	0	5	3	14
Negotiations	0	13	30	0	7
Price bid	0	0	0	25	4
Direct award	31	17	38	30	11
Municipality did not answer	48	55	-	25	66

Source: Own research, Transparency International Slovakia 2006

The problem of too large differences for similar conditions was evident especially in the beginning of our research, but it still remains (Pavel, 2009). In some cases municipalities pay for the service more than 100 % of costs in similar conditions. Such situation persists also because regular performance benchmarking is not the rule in Slovakia, in Czechia, but also in most of other CEE countries.

Outsourcing of supportive services in public organizations

Outsourcing for supportive services is a less frequently investigated issue, but existing data show that it is also a relative frequent solution in CEE. The Table 5 provides some older data for the Czech Republic (more recent research in Slovakia – Merickova, 2006, shows similar patterns).

Table 5: Frequency of use of contracting-out of supportive services – the Czech Republic, 2000 (figures indicate number of organizations)

Type of organization	Services contracted-out					
	Cleaning	Catering	IT systems	Accoun-ting	Legal servi-ces	Other
Educational bodies – total 11 organizations	1	2	0	1	0	2
Hospitals – total 4 organizations	3	1	0	0	0	4
Culture – total 5 organizations	2	0	1	0	1	2
Local government offices – total 17 organizations	3	0	4	2	6	1
State administration offices – total 19 organizations	9	0	0	1	0	1

Source: own research

The outcomes from outsourcing started to be investigated only recently, and the data for Slovakia provide very "bad" picture. Because data obtained via questionnaires are not reliable and cannot be reliable, we performed in 2009 a direct research in two chosen organizations (municipality and administrative body) in Slovakia. The results were depressive – from the ten investigated decisions all the ten were non economical. Most apparent problems were connected with internal transport, internal catering and external IT maintenance.

Program (performance) budgeting and performance evaluation and financing

Together with Estonia, Slovakia is the country where performance tools have been introduced in large scale. In this section we will describe some of its experience.

Program perfomance budgeting

Slovakia began with a full accrual medium-term programme and performance budgeting at the national level from 2005 (legal base created in 2004), and from 2010 this method will also be applied at the municipal level.

In theory (Ochrana, 2003) program performance budgeting is a crucial budgeting tool, because it helps linking inputs to outputs, outcomes and results, and, if properly implemented (or with some time delay), it can significantly increase "value for money" from public expenditure. This approach was also recommended by the EU (Allen and Tomassi, 2001).

The reality in Slovakia is different. The current situation clearly shows that if program performance budgeting is implemented by top–down orders and in bureaucratic way, it cannot deliver results, it just increases costs. As of today, programme goals are formulated similarly to rhetoric from the past, indicators and targets are formal or fully missing. As an example of bad practice we present a selected sub-program of the Ministry of Health (most of others were similar) from 2009 budget:

- Program: Prevention and protection of health
- Sub-programme: Improving quality of life and health of population

- Goal: Improving and securing the health status of inhabitants by the realization of projects focusing on better natural and working environment.
- Planned resources: not defined
- Indicator: yes

Performance financing and its pervasive effects

In this section we will also use the Slovak facts as example – the case of the performance financing of universities. Another similar case is the Czech Republic – performance (public schools) and fee financing (private schools) plus demographic trends are main factors of interesting situation, when high schools may soon be ready to accept about 90% of populations, rather too much.

The revenues of universities in Slovakia consist of two main sources - public grants/transfers (80-90 %) and own incomes. For the allocation of public grants the Slovak Republic uses an almost 100% based formula based performance financing system. The system is as follows:

Program: University education, science and social support to students

- subprogram University education → Grant to finance accredited study programmes
- subprogram University science and technique → Grant to finance research and development
- subprogram Universities development → Grant to finance development needs
- subprogram Social support for students → Grant to provide support to students
- subprogram Targeted transfers

Source: http://www.minedu.sk/FaR/FINVS/finvs.htm

As indicated, public transfers represent main source of income of Slovak universities and have developed as described by the Table 6.

Table 6: Public transfers to public universities 2002 – 2006 (mil. Sk, current prices, 1 EUR=40 Sk)

	2002		2003		2004		2005		2006	
Grant to finance study programmes	5825	78,3%	6660	80,1%	7460	79%	8023	77,5%	8745	76%
Grant to finance research & development	584	7,9%	638	7,7%	948	9,1%	1066	10,3%	1119	9,7%
Grant to finance development needs	378	5,1%	370	4,4%	330	3,5%	450	4,3%	500	4,3%
Grant to provide support to students	648	8,7%	650	7,8%	700	7,4%	810	7,8%	1150	10%
Total	7435	-	8318	-	9438	-	10349	-	11514	-

Source: www.minedu.sk

The expectation was that the allocation formula would motivate schools to focus on quality and not so much on number of students. The reality was quite different; all the schools reacted by the significant increase of newly accepted students (Table 7). Significant increase of newly accepted students might be a positive fact, but because the total amount of allocated resources they increased very slowly, marginally "faster" than inflation, and the outcome was tragic – the grant per student decreased significantly during the last five years. "Performance trap" was established. With less unit resources the quality was sacrificed (well documented by the national ranking agency ARRA). The government reacted ex-post and started to increase the weight of scientific results in the formula (from 5 % at the beginning to 40 % today).

Table 7: Number of newly accepted students in Slovakia

	1990/91	1995/96	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06
New full time students	13 404	20 809	24 279	24 270	26 974	24 150	32 488	35 542
% of new full time students from 18 (19) old population	15.9%	21.8%	27.2%	27.2%	30.4%	27.2%	36.7%	41.3%
New part time students	1 868	3 881	9 665	12 763	8 057	15 057	15 718	17 254
Total	15 272	24 690	33 944	37 033	35 031	39 207	48 206	52 796

Source: www.minedu.sk

The explanation of reasons for such failure is simple. The management of a university was allowed to maximise the level of the public grant by maximisation the number of accepted students. This also really happened. The only open question is – was such planning mistake by the government intentional or caused by lack of experience?

2.3 Selected experience with NPM approaches/ mechanisms/tools: Conclusions

On the base of the above analysis, supported by similar findings of other experts in the same or different areas, we might conclude as follows:

Results from the use of concrete NPM type tools and mechanisms are significantly different, and depend much on concrete local conditions and the environment.

Implementation of any NPM mechanism should be deeply investigated for pervasive effects and other dysfunction *ex-ante*. *Ex-post* corrections are costly, if possible.

3. Possible explanations

As already indicated, several analyses (like Pollit and Bouckaert, 2000 and 2004, Lane, 2000) clearly indicate that NPM strategies are not just positive multidimensional tools and NPM as the simple dominating ideology has not been the best base for the public sector reforms anywhere. This is the general lesson, almost fully accepted by academics today.

In the following text we first provide important statements and then discuss some explanations, why NPM was less successful in CEE region compared to the more developed states.

"NPM is particularly bad if pushed upon transition and development countries because if it can make any sense, then it is only in an environment of a well-functioning democratic administrative tradition" (Drechsler 2005: 101).

"The greater the shortcomings in a country's established management practices, the less suitable are the "NPM reforms" (Schick 1998: 124).

"Once a so-called Weberian administrative system is institutionalised, then it may make sense to consider how best to move from that system towards a more "modern system of PA" (Peters 2001: 176).

"Importing NPM techniques that needed to improve Weberian bureaucracies when these were not present, and simultaneously building classical checks and balances was a tough reality. Reforming in such cases sometimes was organising dysfunctions" (Nakrosis and Nemec, unpublished).

3.1 What was missing, what was and what is different in CEE?

The use of NPM in transitional countries, to be successful - to deliver positive outcomes and impacts, has to reflect specific "transitional" circumstances, which may limit the possible positive impacts of NPM for reforming public sectors and exaggerate its negative features. The following text provides examples of main region specific features that clearly limit (already controversial) positive potential of NPM use.

Competitiveness and business strategies

The early phases of transformation from command economy to market system were clearly characterised by the fact that even potentially competitive markets in transitive countries were not well developed, dominated by

monopolistic or oligopolistic structures and behaviour. Therefore it is rather optimistic to expect that competition may help to improve the performance of the public sector: one of main arguments for NPM competitive arrangements are costs savings from competition.

Examples of non-successful attempts to use competition in regulating public service are the failures of beginnings of health reforms in Slovakia and the Czech Republic. Both countries switched from general taxation system to pluralistic health insurance system too early (1993). Many health insurance companies were established, most of them collapsed soon, creating just extra transactions costs and no benefits for the system. When financial markets do not function, pluralistic insurance cannot deliver (Nemec and Lawson, 2003).

Did the situation improve? Can public bodies get enough competitive bids? Is the private sector ready to compete and co-operate with government today? We feel that the responses will not be just positive. Certainly, the situation improved. However, the business environment in most CEE countries is still far from perfect. According to our (and other) opinion short term profit strategies prevail, fair long term business strategies are still rare. The following example from our research may support such statements.

The cities Michalovce in Slovakia performed seven large scale procurements in 2009. The average weighted (for financial amounts) number of bids per one invitation was 1,1. We cannot prove that this is just the result from low level of competitiveness, wrongly formulated tender conditions may be also the purposes, but at least it is a clear example that competition is not present. If the failure had been caused by the city management, why (fair!) business did not complain?

Democracy, citizen as the watchdog for government's malfunctions

At the beginning of transformation the expectations were optimistic, but today we well know that democratic institutions and norms have not been fully developed in CEE during the twenty years long period of transformation. The structures exist, but behavior is "semi-socialist".

A lot of research on attitudes, disillusion and norms has been realised in connection with changes in twenty years from 1989. Their results are not very positive for any NPM attempts (Tables 8 and 9).

Table 8: Opinions of citizen – selected CEE states

	Agreement with plura-listic democracy		Agreement with market economy		People worse off than in communism	
Country	1991	2009	1991	2009	Better	The same or worse
East Germany	91	85	86	82	x	x
Czech Republic	80	80	87	79	45	51
Slovakia	70	71	69	66	29	66
Poland	66	70	80	71	47	47
Hungary	74	56	80	46	8	88
Lithuania	75	55	76	50	23	63
Bulgaria	76	52	73	53	13	80

Source: Two Decades After the Wall's Fall. The Pew Global Attitudes Project. www.pewglobal.org

Table 9: Three most critical problems (%)

Country	Corruption	Criminality	Drugs
East Germany	x	47	50
Czech Republic	71	55	51
Slovakia	52	55	46
Poland	58	49	49
Hungary	76	69	x
Lithuania	78	76	66
Bulgaria	76	76	74

Source: Two Decades After the Wall's Fall. The Pew Global Attitudes Project. www.pewglobal.org

Lack of sense to individual responsibility, paternalism and fiscal illusion remain important features of citizen's behaviour. For example in Slovakia 67% of respondents believe that their problems need not be solved by the state (Buncak et all, 2009). In the Czech Republic the issue of co-payments in health care significantly influenced regional elections in 2009, social democrats used their introducing as main fighting tool against the governing party – people still feel that "there is a free lunch".

In such conditions rent-seeking behaviour of politicians and bureaucrats is fully effective (from the economic point of view), as the simplest way to maximize individual benefits, at least from a short-term viewpoint.

On the other hand we need to stress that rent-seeking strategies will be realised independently of NPM measures presence. The service may be out-sourced to relatives or friends, but it can be also channeled internally (Beblavy and Sicakova, 2006). Our data about the costs of local public services clearly support this statement.

"Quality of the state of law"

The possible success of NPM is also connected with the "quality of the state of law". The state is switching from the role of provider to regulator function: such change is impossible (technically possible, but cannot deliver results) in conditions, where the regulation and guidelines do not exist and where the law is not respected.

As of today we can find too many evidence that respecting the law is not the rule for governmental officials and not required by citizen. In CEE a Minister can publicly say: "I know that the Law has not been respected by our action. However, as a fine is just a transfer from one state pocket to another one, we should not be concerned. And we have fire engines, which is the most important" (simplified statement of the Slovak Minister of Interior, commenting a breach of public procurement law, 2005), and nobody cares, party preferences remain unchanged.

Many complicated NPM instruments are introduced without having any explanations, recommendations and guidelines for users available. Some countries have for example public procurement offices, but if we check their web pages for standard templates, guidelines and other navigation, too few might

be found – very poor results after more than 15 years of passing first procurement laws. Navigation for implementing NPM techniques like outsourcing, contracting, benchmarking is almost invisible on government's web pages. And even if some navigation exists – like for today very popular PPP projects – it includes also apparent mistakes (like ideas that PPP is the tool to react to lack of public resources, or PPP just starting today).

The effective use of NPM tools should be based on data and evidence. Those are almost not available. For example only recently countries started to switch to accrual accounting rules, but this is still not enough: full costs accounting might be found only in very small sample of public organisations (universities, hospitals).

The effective use of NPM tools needs also to be supported by new control and audit approaches, focusing both on legality and results. However, the current systems of public sector control/auditing in use in most if not all CEE countries are predominantly the old-fashioned administrative procedural types of control. New laws on financial control were passed by national parliaments under pressure from Brussels, but in reality effective mechanisms to control/audit real efficiency, economy and effectiveness and quality of public sector institutions and processes are still not in place (Pavel, 2009).

Territorial fragmentation

Several CEE countries "suffer" from extreme territorial administrative fragmentation (Table 10). Classic examples are Slovakia that has only 5.5 million inhabitants but almost 2900 municipalities, 68% with less than a thousand inhabitants and the Czech Republic with almost 10 million inhabitants, but close to 6000 municipalities, 80 % with under a thousand inhabitants (see also Table 10).

According to Davey (2002, p. 35) such municipalities struggle with large implementation deficits: "Reform programs are challenged by the inability of such communities to provide administrative and financial capacity, and the scale economics and catchment areas necessary for essential services". For this reason we feel that territorial fragmentation, in the absence of effective inter-municipal co-operation, might also be an explanatory factor in accounting for the differences between Estonia and Czechia and Slovakia.

Table 10: Average size of municipalities in selected CEE countries

Country	% of municipalities below 1000 inhabitants	Average population of municipality	Average area of municipality (sqm)
Bulgaria	0	35 000	432
Poland	0	16 000	130
Hungary	54	3 300	32
Slovakia	68	1 900	17
Czech Republic	80	1 700	13

Source: Davey, 2002, p. 36

Corruption

It is difficult to measure corruption. The probably most frequently used Transparency International CPI indexes describe opinion about corruption and do not measure it directly. Many methodologies are sensitive to the level of awareness – when respondents become more aware about the problem, results worsen. In any case the risk of corruption in CEE is relatively high. We present the following set of data as example (Table 11).

Table 11 Indicators of corruption in selected CEE countries

Country	Year	Observations	A	J	K	L	M
Czech Republic	2002	182	35.93	26.58	1.21	14.29	..
Czech Republic	2005	208	29.73	36.82	1.98	25.49	..
Czech Republic	2009	250	8.73	30.31	1.49	25.12	35.15
Estonia	2002	134	35.14	24.76	1.04	4.58	..
Estonia	2005	172	18.31	7.97	0.18	3.68	..
Estonia	2009	273	1.60	0.28	0.00	5.43	66.45
Slovakia	2002	110	64.44	56.18	3.35	32.04	
Slovakia	2005	143	35.87	38.20	2.02	13.64	..
Slovakia	2009	275	11.63	23.06	2.31	33.11	20.67

Source: http://www.enterprisesurveys.org/

A - % of Firms Expected to Pay Informal Payment to Public Officials (to Get Things Done)

J - % of Firms Expected to Give Gifts to Secure a Government Contract

K - Value of Gift Expected to Secure Government Contract (% of Contract)

L - % of Firms Identifying Corruption as a Major Constraint

M - % of Firms Believing the Court System is Fair, Impartial and Uncorrupted

High risk of corruption is the source of increased risk connected with implementation of most NPM arrangements. To consider this issue in its complexity, we need to be fair: as already indicated - if officials are corrupted, they will withdraw their rent with or without NPM arrangements. However, in case of NPM tools, such rent might be "channelled" to two partners – bureaucrats and suppliers, and thus its total amount higher.

Education and training

NPM needs public managers and not only public bureaucrats. Our recent findings (Nemec, Spacek and Suwaj, 2009) from the research in Poland, Czech Republic and Slovakia are very interesting in this respect. We found that public management programmes are rare in Poland and do not exist in the other two countries. In this stage we were only able to check some selected administrative reasons for this situation. At least for Czech and Slovak conditions it is apparent that neither regulations for civil service education and training, nor accreditation rules motivate for establishing public management programme.

3.2 CEE countries differ!

The previous text provided many examples of missing mechanisms and limited environment for successful implementation of NPM. To provide complex picture we need again to stress that our picture was just a general simplification, concrete situations differ. For any of above mentioned (and not mentioned) facts, some countries are better off, some are still underdeveloped.

The best way to check the situation is cross-country studies with a uniform and tested methodology. We tried to perform such research (Table 12), as the response to too large differences between Slovakia, Czechia and Estonia concerning the use of benchmarking (Nemec et all, 200.). Why Estonia is better off? Difficult to prove, but we feel that less fragmentation and less corruption and more responsibility may be some explanation.

Table 12: Selected responses from municipalities (%)

	Strongly disagree/disagree			Agree/ strongly agree		
	EST	CR	SR	EST	CR	SR
1. The municipal employees are committed to continuous service improvement.	3	4,11	7,32	96	95,89	92,68
2. My authority reviews the need for the services we provide at least once every three years.	12	37,20	29,27	87	62,80	70,73
3. Municipal employees are encouraged to question the need for each service to be provided.	13	25,79	39,03	87	74,21	60,97
4. My local authority delivers high quality services.	7	18,32	19,51	93	81,68	80,49
5. My authority regularly compares the costs of internal and external delivery alternatives of supportive services (cleaning, catering, etc.).	x	17,37	35,37	x	82,63	64,63
6. My authority compares the costs of its services with other local authorities.	5	51,41	45,12	94	48,59	54,88
7. My authority regularly compares the quality of internal and external delivery alternatives of supportive services (cleaning, catering, etc.).	x	22,05	35,37	x	77,95	64,63
8. My authority compares the quality of its services with other local authorities.	7	45,98	39,15	92	54,02	60,85
9. In my authority there is a zero level of corruption.	x	5,43	17,07	x	94,57	82,93

Source: Author's research for Czechia and Slovakia; Tonnisson and Wilson (2007) for Estonia

4. Where should we go?

The analytical part of the paper leads to clear conclusions. NPM as the reform ideology cannot help the developing countries. Also NPM tools and mechanisms have delivered in CEE region very mixed results, more negative

than positive: mainly not because of their character, but because of wrong implementation, or non-implementation (we still feel that for example benchmarking could really help).

As indicated at the beginning of the article, the current global crisis would motivate governments to a new phase of public administration reforms, at least to revitalise public finance system, currently coping with large deficits and fast increasing debts. If IMF prognosis (Table 13) becomes reality, we may expect not only for Greece to be close to state bankruptcy. Simple cost-cutting (also via some NPM mechanisms, including the sale of last state owned resources) may be a short term escape, but what we really need are more long term policies.

Table 13: Debt prognosis (% to GDP)

	Average 1993-2002	2003	2007	2008	2009	2010	2014
USA	64.9	61.2	63.1	70.5	87.0	97.5	106.7
Euro Area	68.6	68.7	65.8	69.1	78.9	85.0	91.4
Japan	117.3	167.2	187.7	196.3	217.2	227.4	234.2
UK	43.1	38.5	44.1	51.9	62.7	72.7	87.8

Source: IMF World Economic Outlook Projections, April 2009

What "reform model" shall we propose to CEE governments? Returning to pure legalistic "Austro-Hungarian" traditions would not deliver enough - in the conditions of limited respect of the law, typical for most transitional countries, attempts to improve the performance of public administration by extra laws, norms and regulations cannot work. Other potential option may be available: more and more frequently we hear about "Neo-Weberian" state (Pollit and Bouckaert, 2004, in CEE especially Drechsler, 2009).

Already in 2004 Pollit and Bouckaert (Table 14) tried to define main features of such model of the state.

Table 14: The Neo-Weberian State (summary)

Neo-	Weberian
Shift from an internal orientation towards bureaucratic rules to an external orientation towards meeting citizens' needs and wishes. The primary route to achieving this is not the employment of market mechanisms (although they may occasionally come in handy) but the creation of a professional culture of quality and service;	(but:) Reaffirmation of the role of the state as the main facilitator of solutions to the new problems of globalisation, technological change, shifting demographics, and environmental threat;
Supplementation (not replacement) of the role of representative democracy by a range of devices for consultation with, and direct representation of, citizens' views (…);	(but:) Reaffirmation of the role of representative democracy (central, regional, and local) as the legitimating element within the state apparatus;
In the management of resources within government, a modernisation of the relevant laws to encourage a greater orientation towards the achievements of results rather than merely the correct following of procedure. This is expressed partly in a shift from *ex ante* to *ex post* controls, but not a complete abandonment of the former;	(but:) Reaffirmation of administrative law – suitably modernised – in preserving the basic principles pertaining to the citizen-state relationship, including equality before the law, legal security, and the availability of specialized legal scrutiny of state actions;
A professionalisation of the public service, so that the »bureaucrat« becomes not simply an expert in the law relevant to his or her sphere of activity, but also a professional manager, oriented to meeting the needs of his or her citizens/users;	(but:) Preservation of the idea of a public service with a distinct status, culture, and terms and conditions.

(Pollitt and Bouckaert 2004, pp. 99-100)

If we compare the description of "Neo-Weberian" model with important EU documents, especially "European governance: a White Paper" (2001) and European Principles for Public Administration (1998), we may conclude that the contents are almost similar. Thus the most important norms for the "Neo-Weberian", but also "Modern Governance" state would be:

- reliability, predictability, coherence,
- openness and transparency,

- accountability and responsibility,
- professionalism,
- participation,
- effectiveness.

5. Conclusions

What is the meaning of our findings? In a simplified way: "Adieu NPM" should mean that managing by contracts, objectives, competition, etc. as goal, is a forgotten story (not only for CEE, but generally).

But governing by predictable, reliable and coherent, open and transparent, accountable and responsible bureaucracy, using evidence and consultation based policy making and simultaneously properly managing efficiency, economy and effectiveness of any government operation is the future target.

Is such a model also realistic? In general and in CEE conditions? We are afraid that no model can be fully implemented in reality. How far will governments be able to go, depends on many factors – internal and external. Could the possible future public finance crisis be such a moving factor?

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Juraj Nemec

New Public Management and its Implementation in the CEE Region: What do we know and where do we go?

POVZETEK

NOVI JAVNI MENEDŽEMENT IN NJEGOVO UVAJANJE V REGIJI SREDNJE IN VZHODNE EVROPE: KAJ VEMO IN KAM BOMO ŠLI?

Prispevek predstavlja kratek pregled literature o Novem javnem menedžmentu (NPM) in o reformah v javnih sektorjih Srednje in Vzhodne Evrope. Prav tako analizira nekatere praktične izkušnje v državah Srednje in Vzhodne Evrope z izvajanjem NPM s podatki, ki jih je v večini primerov zbral avtor v raznih raziskovalnih projektih. Na tej osnovi avtor sklepa, da je imel NPM v Srednji in Vzhodni Evropi zelo omejen uspeh. Posebej obrazloži nekatere, za regijo specifične dejavnike, ki vplivajo na uspeh strategij NPM.

Globalna kriza, ki se je začela v obliki finančne krize v ZDA, je ustvarila nove izzive za vse nacionalne in nadnacionalne vlade. V sredini 2010 je že očitno, da bo vzdržnost javnih financ temeljni cilj posameznih držav. Na voljo sta dve možnosti - enostavno zmanjševanje stroškov (kot "slaba" izbira) ali izboljšanje učinkovitosti in uspešnosti vseh vladnih ukrepov (kar naj bi bila prava pot naprej). Precenjevanje vloge NPM, uvajanje NPM kot reformna ideologija in glavni cilj pri reformi upravnih sistemov v državah v tranziciji, je očitno napačno. Strategije NPM niso delovale po pričakovanjih niti v razvitih zahodnih demokracijah, kjer je sicer prišlo do delnih uspehov, pa tudi do številnih slabosti. Njihov splošni vpliv (pozitiven ali negativen) na razvoj javne uprave pa je težko oceniti.

Nekatere analize jasno kažejo, da strategije NPM niso samo pozitivna večdimenzionalna orodja; NPM kot prevladujoča ideologija ni bila dobra osnova za reforme v javnem sektorju za nobeno okolje. To splošno lekcijo so teoretiki skoraj v celoti sprejeli. Da bi bila uporaba NPM v tranzicijskih državah uspešna - da bi zagotavljala pozitivne rezultate in učinke – bi morala upoštevati posebne, "tranzicijske" okoliščine, ki lahko omejujejo pozitivne vplive NPM na reformo javnega sektorja in poudarjajo njegove negativne lastnosti. Avtor navaja primere glavnih posebnosti regije, ki očitno omejujejo (že tako sporen) pozitivni potencial uporabe NPM.

V zgodnjih fazah prehoda iz monopolnega gospodarstva v tržni sistem je značilno, da tudi na potencialno konkurenčnih trgih v tranzicijskih državah, ki niso dobro razvite, prevladujejo monopolne ali oligopolne strukture in temu primerno ravnanje. Zaradi tega je precej optimistično

pričakovati, da bi konkurenca lahko pomagala izboljšati učinkovitost javnega sektorja: eden od glavnih razlogov za konkurenčno ureditev NPM je namreč zmanjšanje stroškov zaradi uvedbe konkurence. Primeri neuspešnega uvajanja konkurence pri regulaciji javne uprave so napake pri uvajanju zdravstvenih reform na Slovaškem in Češkem. Obe državi sta prešli iz splošnega sistema obdavčitve na pluralistični sistem zdravstvenega zavarovanja prezgodaj (1993). Ustanovljenih je bilo več zdravstvenih zavarovalnic, od katerih je večina zelo kmalu propadla, ustvarila le dodatne stroške in nobenih koristi za sistem. Ko finančni trgi ne delujejo, pluralistično zavarovanje ne more zagotoviti rezultatov. Poslovno okolje je v večini držav Srednje in Vzhodne Evrope še vedno daleč od popolnega. Prevladujejo kratkoročne strategije, dobre dolgoročne poslovne strategije so še vedno zelo redke.

Veliko zapletenih instrumentov NPM je bilo uvedenih brez kakršnih koli pojasnil, priporočil in smernic za uporabnike. Npr. države imajo urade za javna naročila, če pa preverimo njihove spletne strani, najdemo po več kot 15 letih, odkar so začeli veljati zakoni o javnih naročilih, zelo slabe rezultate. Spletno svetovanje za izvajanje tehnik NPM, kot so zunanje izvajanje, sklepanje pogodb z zunanjimi izvajalci, primerjanje najboljših praks je zelo skromno. Če pa že obstaja - kot npr. za zelo popularne projekte javno-zasebnega partnerstva - vsebuje tudi napake (kot je pojasnilo, da je javno-zasebno partnerstvo rešitev za pomanjkanje javnih sredstev, ali da se javno-zasebno partnerstvo v današnjih dneh šele začenja).

Učinkovita uporabo orodij NPM mora temeljiti na podlagi podatkov in dokazov, ki jih skoraj ni na voljo. Šele pred kratkim so države začele s spremembami računovodskih pravil na podlagi nastanka poslovnega dogodka, vendar to še vedno ni dovolj: računovodstvo na podlagi modela celotnih stroškov bi lahko našli le v zelo majhnem vzorcu javnih organizacij (npr. pri univerzah, bolnišnicah). Učinkovito uporabo orodij NPM je prav tako treba podpreti z novimi vrstami nadzora in revizijskih pristopov, s poudarkom tako na zakonitosti kot na rezultatih. Sedanji sistemi nadzora v javnem sektorju še vedno v večini, če ne vseh državah Srednje in Vzhodne Evrope, temeljijo predvsem na zastareli, upravno postopkovni vrsti nadzora. Pod pritiskom iz Bruslja so nacionalni parlamenti sprejeli nove zakone o finančnem nadzoru, v praksi pa se učinkovit nadzor dejanske učinkovitosti, gospodarnosti, uspešnosti in kakovosti javnih institucij še ne izvaja.

Juraj Nemec
New Public Management and its Implementation in the CEE Region: What do we know and where do we go?

Analitični del članka vodi do jasnih zaključkov. NPM je reformna ideologija, ki državam v razvoju ne more pomagati. Tudi orodja in mehanizmi NPM v regiji Srednje in Vzhodne Evrope omogočajo zelo mešane rezultate; več negativnih kot pozitivnih. V glavnem ne zaradi svoje narave, ampak zaradi napačnega izvajanja ali ne-izvajanja.

Glavna pot za doseganje premika od notranje usmerjenosti v birokratska pravila v zunanjo usmerjenost k izpolnjevanju potreb državljanov in njihovih želja, ni uporaba tržnih mehanizmov (čeprav lahko včasih koristijo), temveč ustvarjanje profesionalne kulture kakovosti in storitev. Potrebna je posodobitev ustreznih zakonov za spodbujanje večje usmerjenosti v doseganje rezultatov, ne le pravilne uporabe postopkovnih pravil. To se deloma izvede s premikom od predhodnih v naknadne kontrole, vendar ne s popolno opustitvijo prvih. Upravno pravo naj se ustrezno posodobi z ohranjanjem osnovnih načel, ki se nanašajo na odnos med državljani in državo, na enakost pred zakonom, pravno varnost in razpoložljivost specializiranih pravnih mehanizmov za nadzor nad državnimi ukrepi. Najpomembnejše norme tako za "neoweberijansko", kot tudi za sodobno upravo so: zanesljivost, predvidljivost, medsebojna povezanost, odprtost in preglednost, odgovornost in odzivnost, strokovnost, sodelovanje in učinkovitost.

"Zbogom NPM" pomeni, da je vodenje s pogodbami, s cilji, s konkurenco, pozabljena zgodba (ne samo za države Srednje in Vzhodne Evrope, ampak na splošno). Predvidljiva, zanesljiva in povezana, odprta in pregledna, odgovorna uprava, ki izkorišča informacije in posvetovanja za oblikovanje strategije s hkratnim upravljanjem učinkovitosti in uspešnosti katere koli dejavnosti je pravi cilj za prihodnost. Ali je tak model tudi uresničljiv? Na splošno in v pogojih držav Srednje in Vzhodne Evrope? Verjetno ni mogoče nobenega modela v celoti izvajati v praksi. Kako daleč bodo vlade lahko šle, je odvisno od mnogih dejavnikov - notranjih in zunanjih. Bi bila lahko prihodnja kriza javnih financ tak spodbujevalni dejavnik?

Review article

Challenges of Public Administration Accreditation in a Fragmented Institutional Setting: The Case of Europe

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ABSTRACT

The paper is dealing with accreditation in higher education in Europe, based on observations in the European public administration accreditation field. Considering the existing evidence, there are positive consequences of accreditation, such as improvement of programs and teaching quality. There are also problems and weaknesses, moreover some doubts about the accreditation results. The author also predicts that in the future there may be a trend towards more homogeneity of public administration programs in Europe.

Key words: higher education, accreditation, Europe, public administration

JEL: H83, D73, P20, L33, H11.

1. Introduction

Accreditation in higher education is a rather new and emerging issue in most European countries. It came up within the last few years, not least in the context of the Bologna process of establishing a common framework and format of academic education. In classical continental Europe, accreditation as a mode of quality assurance was not needed: The state government alone provided higher education and the respective institutions. Government employed the academic staff and funded the whole education process. Universities therefore were authorised by government to establish faculties and programs, to perform the educational processes and to award the academic degrees. In

some countries the government was – and still is - even in charge of examinations[1]. Because universities were part of the public sector, there was a clear top-down chain of command from the ruler or later from the elected government and minister to the universities; consequently the Ministry of Education (MoE) regulated all details of the academic value chain. Thus, there existed no accreditation measures, the mode of recognition was a rather bureaucratic authorisation (Talamanca, 2004), with (at least in some countries) lots of freedom for universities.

In the last few years, however, the mode of steering and control of academic education changed. In line with the NPM movement and the recent agencification processes, universities became more autonomous in financial and managerial aspects. Apart from the still dominant public universities in several European countries private universities emerged and became players in the academic field. Furthermore, competition among universities with regard to research and teaching funding increased over the years. A kind of quasi-markets emerged within the higher education sector. Additionally, student mobility strongly increased as they took advantage of various European exchange programs. This resulted in a need for homogenisation of programs and contents. Finally, the number of students and accordingly of academic programs exploded during the last two decades and made it almost impossible for a MoE to control its universities in the traditional bureaucratic-hierarchical way. All these trends demanded for a new mode of control and of quality assurance in higher education. That's why the Europeans discovered the ideas and advantages of accreditation.

Accreditation is a quite modern and fashionable term and it is defined in different ways. In the following, accreditation is understood as a process where "a (non-) governmental or private body evaluates the quality of a higher education institution as a whole or of a specific educational program in order to formally recognise it as having met certain predetermined minimal criteria or standards. The result of this process is usually the awarding of a status (a yes/no decision), of recognition, and sometimes of a license to operate within a time-limited validity" (Vlasceanu et al 2005, 19). Accreditation is one variant of evaluation, sometimes contrasted to the audit (van der Krogt 2006, 7). Relevant common characteristics of accreditation are e.g. (DEI 2003):

1 Academic final examinations in some fields in Germany are e.g. still carried out by the state government, e.g. for lawyers, medical doctors or teachers (*Staatsexamen*)

- the evaluation is carried out by a panel of external experts who were appointed by the accreditation agency
- the accreditation is based on a self evaluation report of the respective institution or program
- the assessment by the experts is based on a site visit of the institution
- accreditation follows a set of pre-defined criteria or standards which usually determine the minimum level of goal achievement.

There are two major variants of accreditation: institutional or system accreditation and program accreditation (e.g. Harvey 2004). As we are dealing with public administration as an academic field, the focus of the following is more on program accreditation.

2. Institutional landscape of Higher Education accreditation in Europe

2.1 European level

As accreditation is quite new and has emerged from different sources and paths, the institutional structure in the accreditation "business" is quite diverse in Europe. At the supranational level we find a confusing plurality of associations and coordinating bodies. Here is a short picture:

- INQAAHEE: International Network for Quality Assurance Agencies in Higher Education. It is a worldwide network of accreditation agencies and other related bodies with more than 200 members. It aims to promote good practice and to disseminate experiences among its members.
- ENQA: European Network for Quality Assurance: It is the platform of all quality assurance institutions in Europe. National accreditation authorities as well as agencies are member of it. Membership is in some countries a prerequisite for national recognition by the respective governments. ENQA undertakes a lot of studies and surveys on quality assurance issues in Europe. In 2005 they have agreed upon common European quality assurance standards for internal quality improvement as well as for external agencies (ENQA 2005), which have been adopted by the European MoEs.

- EQAR: European Quality Assurance Register for Higher Education is linked with ENQA and registers accreditation agencies which fulfil the respective conditions for being recognized and registered. Currently about 17 European agencies are registered.
- ECA: European Consortium for Accreditation in Higher Education again is a coordinating body at European level which aims to simplify the complicated and fragmented European accreditation procedures by promoting mutual recognition of accreditation decisions in one of the member states by the other countries.
- EUA: European University Association is obviously not only involved in quality issues but generally in coordinating educational affairs and in disseminating good practice. However, this association also is active in quality assurance and promotes accreditation initiatives.

In general, most of the mentioned supranational organisations are not directly active in the accreditation business, they are primarily coordinative bodies, do networking and contribute to some convergence and harmonisation trends throughout Europe.

2.2 National level

Most European countries have established a national accreditation system. In most countries there is a regulatory body with some autonomy from government but with board members who are appointed by government. This body usually sets the standards and regulations, organises the accreditation processes and approves the assessments of the various academic institutions or programs. Sometimes it is also directly involved in accreditation missions. Apart from it, in some countries there are a few additional accreditation agencies, organised either as quasi-governmental entities or as non profit organisations. Almost all agencies apart from their accreditation fees receive some funding from government. In some countries, the agencies have the competence to decide upon accreditation while in others they only prepare the material and report for the superior body. If an accreditation agency decides on the accreditation of a program or institution, it has a separate and independent organ (accreditation committee) which ultimately decides about granting the accreditation and which awards the respective certificate. This organ is composed of representatives from several universities and of practitioners (sometimes also including students). Apart from it the agency has a professional working and support unit to organise the visits, the report writing

etc. The concept of peer-based accreditation which is well-known from the US seems to be less widespread in Europe. Usually, the experts participating in site visits receive remuneration and travel allowances.

Case of Germany*:* The *Deutscher Akkreditierungsrat* (German Accreditation Council) is the regulatory body with the legal status of a foundation. It was established by the coordinating body of the MoEs of the German *Länder* and of the association of university rectors. Its task is to set necessary standards, to recognize accreditation agencies and to supervise the whole accreditation activities in Germany. At present there are about 10 recognized agencies in Germany, all with a non profit status, some only for certain disciplines, others active in limited regional settings. The majority of the German agencies are "GONGOS", i.e. government organized NGOs, because they were initiated by the MoE of one of the *Länder* also receive some government funding.

3. Patterns of the European "accreditation business"

There are different variables which together form a certain pattern of accreditation procedures in a country. The following variables seem to be relevant:

a) Institutional structure:

- Some countries just have one (quasi-) governmental authority which works as the extended arm of the MoE and which is responsible for the whole accreditation business. Others have a more complex structure of a superior regulatory agency and several public or private (mostly non profit) accreditation agencies.
- Influence of government on accreditation differs: in the classical continental countries, the ministries still try to control the university sector in a detailed way and thus also supervise the accreditation activities. In the Nordic or anglophone sphere the accreditation agencies seem to be more autonomous.

b) Subject of accreditation*:* Generally, this is the issue of program accreditation versus institutional or system accreditation. In case of *programs* it may be asked:

- Are all academic programs subject of accreditation or only newly established programs?[2]
- Are only academic programs to be accredited or also professional programs or other variants of vocational training?
- Is only one program of a single university, are several programs in the same discipline but offered by several universities or are different programs of one university to be accredited together in one process?[3]

In the case of institutional accreditation there are again some options: Does accreditation apply to all academic institutions or only to certain types (e.g. only to private universities like in Austria)?

So far, program accreditation was much more common as institutional accreditation in most countries (ENQA 2008). In the last few years, however, there is a tendency to move towards institutional accreditation.

c) Purpose of accreditation, degree of obligation and phasing*:*

- The most obvious reason for accreditation is the recognition of the respective program (or institution) by government, e.g. regards to funding, to legitimise academic degrees or to entitle students to receive student grants.
- Accreditation can be mandatory or voluntary. In most countries, regular accreditation is mandatory at least for all government funded programs (Finland is for instance an exception as they don't force university programs to be accredited).
- Accreditation can be done either *ex-ante* or *ex-post*. "Real" accreditation can only be done after completion of one or more intakes of an academic program because only then it is possible to observe certain effects (e.g. learning outputs). Many governments, however, ask for *ex ante* verification of new programs.

d) Accreditation standards and criteria*:* The evaluators can at first check certain input criteria, e.g. learning facilities (qualification of teaching

2 In Germany for instance only the „new programs" with a bachelor and master degree are subject of mandatory accreditation.
3 The last case under the label of "cluster accreditation" is widely spread in Germany: an extended site visit team is evaluating in the same mission several programs, some times even in different departments or faculties. The quality of such a procedure seems to be doubtful. In the Netherlands f. i. there is a history of "discipline-accreditation" where in one process all programs in a discipline in all universities are accredited (and more or less compared), and where sometimes a "state-of-the-art" report of the discipline is produced.

staff, class room equipment, library, PC-pool). Furthermore, they can assess the quality of educational processes and the compliance with given procedures (e.g. with examination regulations or with quality assurance procedures). And finally, the outputs and outcomes of the education process can be the object of accreditation (e.g. the degree to which the teaching in a course is meeting certain learning objectives or expectations of employers). There is some evidence that the usual accreditation schemes are relying to a great extent on input and process criteria while the focus at the output dimension is less prominent (but becoming more important). This is not surprising as it is very difficult and time-consuming to measure and to attribute results of the educational process (and even more: success of alumni in their future careers) to certain elements of academic education. Previously, accreditation missions asked frequently for the subjects taught in programs and for the number of students passing exams. Nowadays, the focus has somehow shifted to the assessment of competencies the students should have acquired (van der Krogt 2006, 14-18)[4]. Finally, a more general issue is the benchmark, against which a program should be measured and assessed: while some accreditation concepts are following more formal and sometimes domain-crossing criteria, others put the mission of the respective program into the centre of investigation and assessment: to which extent is a program achieving the objectives it has formulated in its own mission statement?[5]

Looking around in Europe's higher education scene, we still find very different patterns of accreditation systems – they represent a multiple mix of parameter values of the above mentioned variables. The influence of government is different, the obligation to accredit (all or some) programs differs, the purposes and the phasing of accreditation are different and lastly the types of standards and criteria used for accreditation are varying. However, the above mentioned European coordinating bodies like ENQA do a lot to harmonise these patterns and to foster convergence.

4 See also the new NASPAA standards 2009, No 5 or the attempts in Europe to focus at professional competencies in higher education: http://tuning.unideusto.org/tuningeu/
5 This is for instance the case with the NASPAA standards and also with the EAPAA criteria; see http://www.eapaa.org//index.php?option=com_docman&task=cat_view&gid=41&Itemid=47

4. Accreditation in Public Administration: the current situation and trends in Europe

Institutional Setting*:* Currently there is one supranational organisation in Europe dealing with accreditation issues particularly (and only) in the interdisciplinary field of public administration: the European Association of Public Administration Accreditation (EAPAA). Although this agency has done a lot of program accreditation work in the last 10 years, it is not yet widely acknowledged in the academic community. Most of the existing academic PA programs in the various countries of Europe still are accredited by national bodies (mostly because universities are forced by their governments to do so). As we have seen, the majority of national accreditation agencies do not have a domain-specific focus. There is no specific national agency for PA accreditation in Europe so far. Apart from the widespread preference of national (obligatory) accreditation, most of the leading PA programs in Europe opted for (additional) accreditation by EAPAA because this allows a better comparative view based on the experiences with accrediting the various PA programs in Europe (Daemen/van der Krogt 2008). This applies particularly for smaller countries with few PA programs.

Very recently, there are signals that new actors may enter the scene: At first, NASPAA is planning to expand its activities to the international education markets and to undertake accreditation missions outside the USA (probably primarily for "American-style programs"). Secondly, the International Association of Schools and Institutes of Administration (IASIA) has started the preparation of an own accreditation program[6]. If one or both of these internationally well-known institutions finally enter the European PA scene, the situation probably will change: we have to expect broader expertise but also more competition.

EAPAA*:* The association was established 10 years ago with the support of NASPAA (more details: www.eapaa.org). EAPAA follows to some extent the NASPAA philosophy of peer-reviewing and of a mission-based accreditation system. EAPAA is based at the University of Twente (The Netherlands) and has there a very modest support office. It is governed by an executive committee and a secretary general. The decisions on awarding accreditation are done by an independent accreditation committee. EAPAA is so far a membership

6 See: http://www.iias-iisa.org/iasia/e/standards_excellence/Documents/Resolution%20of%20the%20IASIA%20BoM,%20August%202009.pdf

organisation, based on nearly 40 members (= universities) from different European countries; about half of them have programs accredited by EAPAA. EAPAA follows detailed procedures which are similar to those of NASPAA and other agencies. It has a set of accreditation criteria which are binding for the self evaluation reports of the candidates and for the site visit teams and their reports[7]. Accreditation is done for academic bachelor and master programs in public administration (in a broad and interdisciplinary perception, covering also elements of public policy and management) of universities in the (enlarged) European space. Although EAPAA is recognised by the Dutch accreditation body NVAO, it still does not enjoy Europe-wide recognition. Registration in the EQAR register is a challenge, as this authority – together with ENQA – still has some concerns which are related with the membership status of EAPAA (risk of dependence from members' influence) and with the very modest scale of its support office (EAPAA largely depends on the engagement of its members and not much on own administrative capacity). That's why EAPAA intends to change its status into an association with only a few institutional members, primarily probably EGPA and NISPACee).

Quality assurance in Public Administration*:* As PA is an interdisciplinary field, one of the challenges for quality assurance is to identify and to assess properly the various elements of PA which are taught in a program. Depending on culture and traditions, administrative sciences are perceived quite differently in the various European countries (Kickert 2008). At large three big domains of PA curricula are to be differentiated (Hajnal 2003, Cepiku/Meneguzzo 2007):

- a legal perception of PA, widespread in large parts of continental Europe, e.g. in the German speaking countries, southern European countries and some of the post-socialist states
- PA perceived from the view of political and organisation sciences, quite prominent e.g. in the Nordic countries but also in Belgium and The Netherlands
- PA perceived from the perspective of Business Administration and Management, to be found in the UK, Ireland and partly also in the Nordic and West-European countries.

The status of PA as an own and independent academic field is very different in Europe. While in some countries PA has remarkably emancipated (e.g. in some of the Nordic countries or in The Netherlands), in other countries it is

7 See: http://www.eapaa.org//index.php?option=com_docman&task=cat_view&gid=41&Itemid=47

poorly institutionalised and quite fragmented (e.g. in Germany; see for details Reichard 2008). In countries with a low development status of PA, the role of a domain-specific accreditation concept is correspondingly weak.

Not surprisingly, accreditation of PA programs has to deal with the different contents of the PA-curricula. While some programs have a rather strong focus at law, others are more close to political sciences and again others have a clear management approach. Furthermore, not all programs are called "public administration" programs, some are labelled as "public management" programs, others as "public policy" or "public affairs" programs (see also the database of public affairs programs: www.wotpa.org). From the EAPAA view, all these programs can be attributed to "public administration" in a broader sense and thus accredited as PA-programs, if they are not too much sector-specific (e.g. health care management).

What are the most relevant issues of quality assurance in the field of PA? The following dimensions probably play a particular role for accreditation (Daemen/van der Krogt 2008, 27):

- content: one of the important issues is to check if the relevant subjects of PA are covered by the curriculum, i.e. if the basic structures, functions and processes of PA are included and analysed from an interdisciplinary perspective. It also has to be proved if the content corresponds with the state-of-the-art knowledge of PA.
- balance between academic and professional (applied) knowledge: Depending on the level of studies and the type of educational institution, it has to be assessed if there is an adequate balance between theoretical understanding of PA and the provision of knowledge and skills which are relevant for the professional career of the students.
- pedagogical implementation: It has to be examined, if the taught contents are coherent and consistent, if the faculty is applying adequate teaching modes and methods and if there is sufficient support for independent students' learning.
- quality maintenance: It also has to be checked if the institution has applied appropriate quality assurance mechanisms, e.g. if students can regularly evaluate their teachers and if the evaluation results are followed-up by the directorate.
- adequate resources: Ultimately it is a matter of quality control if the faculty is sufficiently qualified (professors, lecturers, support staff etc) and if the learning facilities (rooms, library, computer pools etc) are adequate.

As was said before, one of the challenges for accrediting PA is to assess the content which is taught and the learning outcome of students in this field. In a professional field like PA with so many different occupational variants for graduates, it is very difficult to define clear and easy measurable core competencies (e.g. compared with business managers etc). Some accreditation authorities therefore try to circumvent the problem by using more formal and process-oriented criteria, but it is rather questionable if they come to adequate and realistic results.

5. Is there an added value of program accreditation?

Accreditation nowadays is a new and fashionable tool for quality assurance and it is unavoidable for many academic programs to receive the "accreditation seal". In many parts of Europe it is simply mandatory to receive accreditation for getting funded or for awarding academic degrees. In some cases it also has a public relation and marketing function: programs having a prestigious accreditation are better ranked and higher valued by employers or student candidates. Accreditation also has a legitimising function as it makes it public that the department responsible for the respective program is maintaining a certain level of quality. Additionally, there are two other functions of accreditation which are particularly relevant for public administration (Daemen/van der Krogt 2008, 24): the disciplinary function which safeguards the identity and integrity of the – quite complex – (inter) discipline of PA; and the emancipatory function which contributes to the further development of PA as an independent and integral part of the social sciences.

It is rather difficult to assess effects of accreditation. There are at first severe measurement problems. What is the comparator of an accredited program? How can changes of a program be attributed to the accreditation measure? Although accreditation procedures usually lead to some changes in content, teaching modes, facilities and quality management, these changes cannot clearly be traced back to the accreditation intervention. Thus, the following reflections about the positive and critical results and effects of accreditation are to some extent speculative.

Based on experiences with the (EAPAA) accreditation of several PA programs in various European countries, there is, however, some evidence of the consequences of accreditation. At first, accreditation may lead to convergence

of curricula and to a common understanding of the basic disciplines and elements of PA. Even if the evaluators in an accreditation project follow a mission-based approach, they will look for commonalities and conformity with their perception of a full fledged PA concept. In several cases this may result in recommendations of the evaluators to consider additional fields or functions of PA to become part of the respective curriculum. At large, it can be said that accreditation promotes a broader and more interdisciplinary perception of the program content and that historically rooted one-sidedness of the curriculum can be reduced.

Secondly, almost all program managers say that the drafting and writing of the self evaluation report already has forced them to raise uncomfortable questions which were not raised before (e.g. concerning teaching quality or didactics). They also often admit that accreditation opened a window of change as evaluators demanded for certain improvements which the program managers alone could not enforce. Thirdly, the faculty of the program is exposed to the questions of the internationally mixed site visit team. This has positive effects on the awareness of faculty members of the need for persistent development of their PA program.

Altogether, it is quite evident that PA programs will usually benefit from accreditation missions: the structure of the program will be adjusted, the contents will be partly renewed or amended, the teaching methods and facilities are critically reviewed and the quality management concept in place will be assessed. All those impulses will result in an increased quality of the program.

There are, however, also some problems and weaknesses related with program accreditation. At first, there may be some concerns about the validity of accreditation results. The assessment is usually based to a large extent on the self evaluation report. Evaluators have to believe the content of it and they can only verify a few issues. Verification becomes particularly difficult if the program is taught in a language of which most of the evaluators are not familiar with[8]. Although evaluators usually have the impression that they get a "true" picture of the program, it may be questionable to which extent it is possible to draw a valid and complete picture of a complex program within a site visit of two days where the evaluators have to rely on the oral explanations of their respondents. Another possible weakness is perhaps a mainstream bias: The picture of evaluators of a "good program" is usually based on their

8 In EAPAA site visit teams there shall be always at least one international expert speaking the local language of the respective program.

own experience and on previous accreditation missions. This may hinder an impartial and open-minded view on a program and lastly restrict innovative ideas in curriculum development[9].

The value-for-money issue also is a point of debate: Universities in several countries have to afford a quite substantial amount of money to pay the accreditation fees. In Germany for instance, accreditation agencies ask for about 10.000 to 15.000 euro for a program accreditation[10]. And these are only the external costs; the preparation of a self evaluation report costs at least one man year. If a university has to get dozens of programs accredited, this will be a strong financial burden. And critical observers indeed raise the question if the whole effort of preparing the reports and carrying out the accreditation process is it really worth. There may remain some doubts…

Finally, it may be asked if accreditation agencies are able to solve the information asymmetry problem which is narrowly related with quality assurance in higher education (see also Scheele 2004). It is quite evident that the classical approach of a bureaucratic and in-depth supervision of the educational quality, as it was done traditionally by the MoEs, was and is inefficient and also not very effective. Is the new system of accreditation better off in terms of providing reliable and relevant quality information? At first – as we have seen – the institutional pattern of accreditation is much more complex as the traditional bureaucratic setting: There is the government as major funding institution and as authority ensuring the supply of educational programs. There are the various accreditation agencies and additionally sometimes independent regulatory bodies. Furthermore, we have supranational quality assurance associations and several coordinative bodies (ENQA etc). And we have the educational suppliers, i.e. the universities and other higher education institutions who have to provide the basic data for the quality assessment. All these actors are following their own interests and logic. In such a setting it would be not surprising if the agencies do not meet the expectations of the consumers of accreditation information. It is therefore probably still an open question, if – and to which extent – the accreditation agencies as "agents" are providing relevant and reliable information to their "principals" (primarily to the government).

9 Similar evidence is known from refereed journals where the referees sometimes force the authors to follow a mainstream approach of theories or methods.
10 EAPAA fees, by-the-way, are much lower as the peer-based accreditation concept is less costly (see www.eapaa.org for details).

What can be expected in the future? Although national particularities will certainly remain, there may be a trend towards more homogeneity of public administration programs in Europe, at first because of increased European collaboration (e.g. in networks like EGPA, NISPACee or IRSPM), secondly because of the harmonisation related to the Bologna processes and thirdly, however, also because of international accreditation activities. It can be hoped that all these efforts will contribute to a common interdisciplinary perception of public administration in Europe.

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Christoph Reichard

Challenges of Public Administration Accreditation in a Fragmented Institutional Setting: The Case of Europe

POVZETEK

IZZIVI AKREDITACIJE V VISOKEM ŠOLSTVU ZA PODROČJE JAVNE UPRAVE - PRIMER EVROPE

Članek obravnava akreditacijo v visokem šolstvu na temelju izkušenj z akreditacijo visokošolskih izobraževalnih programov za javno upravo v Evropi. Akreditacijo opredeli kot proces, v katerem državni organ ali privatna organizacija vrednoti kakovost institucije visokega šolstva v celoti (institucionalna ali programska akreditacija) ali samo za specifičen izobraževalni program (programska akreditacija), zaradi uradnega potrdila, da institucija ali program dosega neke vnaprej opredeljene kriterije ali standarde. Avtor se v članku osredotoča predvsem na programsko akreditacijo.

V zadnjih letih se je visoko šolstvo v Evropi izredno razvilo. Institucije, ki izvajajo izobraževalne programme, so postale bolj samostojne. Uveljavile so še številne nove, zasebne visoke šole. Vse to zahteva nove načine nadzora in zagotavljanja kakovosti. Akreditacija, ki ni bila potrebna, ko je bilo šolstvo izključno v oblasti države, se zdaj vse bolj uveljavlja, ponekod je celo obvezna. V Evropi obstaja več institucij, ki se ukvarjajo z akreditacijo na mednarodni, pa tudi na nacionalni ravni. Njihovi pristopi in kriteriji so precej različni.

Za področje javne uprave že deset let izvaja akreditacijo mednarodna organizacija EAPAA. Vendar v mnogih državah akreditacijo programov še zmeraj vršijo zgolj nacionalne organizacije. Tako kot je stališče do izobraževanja za delo v javni upravi v posameznih državah različno, tako so tudi programi tega izobraževanja različni.

Avtor navaja pet najpomembnejših problemov zagotavljanja kakovosti izobraževalnih programov za področje javne uprave: vsebina, usklajenost med akademskih znanjem in prakso, pedagogika pristopa, vzdrževanje kakovosti, ustrezni viri (osebje, oprema, stavbe).

Izkušnje potrjujejo, da so učinki akreditacije pozitivni. Prvič, akreditacija lahko vodi do poenotenja izobraževalnih programov zaradi boljšega razumevanja, katera so temeljna znanja za kakovost poslovanja javne uprave. Drugič, pisanje poročila o samoocenjevanju je privedlo do neprijetnih vprašanj, o katerih se prej ni govorilo (npr. o kakovosti poučevanja, o didaktiki). Tako je akreditacija odprla vrata do sprememb, ki jih zahtevajo ocenjevalci in jih pred tem ni bilo mogoče uvesti. Tretjič, mednarodna

akreditacijska skupina zahteva odgovore na številna vprašanja, ki odkrivajo nove poglede na izobraževalni program.

V zvezi z akreditacijo pa obstajajo tudi problemi in slabe strani. Predvsem bi večkrat lahko podvomili v veljavnost rezultatov akreditacije. Stroški akreditacije so znatni, zlasti če institucija potrebuje akreditacijo za več programov.

Kaj lahko pričakujemo v prihodnosti? Čeprav bodo nacionalne posebnosti ostale, se bodo izobraževalni programi za področje javne uprave v visokem šolstvu verjetno vse bolj zbliževali, zaradi vse boljšega sodelovanja med državami v Evropi, kot posledica bolonjskega procesa in tudi dejavnosti mednarodnih akreditacijskih institucij. Vse to naj bi privedlo tudi do enotnega, interdisciplinarnega pojmovanja javne uprave v Evropi.

Pregledni znanstveni članek

Uresničevanje ciljev Lizbonske strategije na regionalni ravni EU in Slovenija

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IZVLEČEK

Evropska unija je v letu 2000 v Lizbonsko strategijo zapisala, da želi v desetih letih postati najbolj dinamično in konkurenčno, na znanju temelječe gospodarstvo na svetu, reforma 5 let kasneje pa je kot poglavitna cilja izpostavila ustvarjanje novih in boljših delovnih mest ter vzpostavitev močnejše in trajnejše gospodarske rasti. Namen prispevka je preučiti trenutno stanje Evropske unije in Slovenije na poti do ciljev zastavljenih v prenovljeni Lizbonski strategiji. V analizi želimo ugotoviti kako daleč je EU pri doseganju zastavljenih ciljev ter kako uspešna je bila pri implementaciji strategije na regionalni ravni članic EU. Pri tem se kot osnovno orodje uporablja izračun časovnih distanc ter prikaz časovne prednosti oziroma zaostanka pri doseganju posameznih ciljev Lizbonske strategije na regionalni ravni NUTS 2 razširjene EU in Slovenije.

Ključne besede: Lizbonska strategija, kohezijska politika, NUTS 2 regije, Slovenija, časovna distanca

JEL: C10, R10, O10, O52

Aleksander Aristovnik, Andrej Pungartnik
Uresničevanje ciljev Lizbonske strategije na regionalni ravni EU in Slovenija

1. Uvod

Evropska unija (EU) si že od svojih začetkov prizadeva zgraditi gospodarstvo, ki je konkurenčno, napredno, ustvarja delovna mesta in je uravnoteženo med ekonomsko učinkovitostjo in socialno pravičnostjo. Z izvajanjem strukturne in kohezijske politike preko strukturnih skladov, Kohezijskega sklada ter drugih instrumentov Unija že desetletja krepi socialno in ekonomsko kohezijo, s sprejetjem Lizbonske strategije pa se je zavezala k še bolj strukturiranemu ter ambicioznemu zasledovanju ciljev.

Lizbonska strategija je z leti pridobila velik vpliv na oblikovanje in vodenje politik na ravni EU in držav članic. Izvajanje teh politik prispeva k povečanju gospodarske rasti na ravni EU, preko finančnih mehanizmov strukturnih in Kohezijskega sklada pa pospešuje gospodarsko rast v državah članicah, še posebej v novih članicah, kar se v končni fazi odraža tudi v zmanjševanju razlik v razvitosti med državami in regijami znotraj EU, torej v realni konvergenci.

Pri uresničevanju svežnja reform, o katerih so se dogovorili v Lizboni, je bil dosežen določen napredek na državni in evropski ravni, kljub temu pa Evropa še precej zaostaja za načrtovanim. Ob tem je Unija vstopila v nov lizbonski cikel ob upočasnjeni svetovni rasti, ki je zaradi hude finančne krize zajela vse svet. Recesija bo zelo otežila dosego lizbonskih ciljev, toda prav v teh kriznih časih je treba nadaljevati z izvajanjem strategije, saj se lahko le na ta način omilijo učinki recesije. Predvsem je torej pomembno, da se okrepi učinkovito uresničevanje strategije, katerega del je tudi evalvacija sprejetih ukrepov in njihovih rezultatov. Prav metoda časovne distance, ki je uporabljena v tej analizi, je zaradi svoje nazornosti ter preprostosti pomemben člen te evalvacije, saj zelo jasno prikazuje odstopanja dejanskega stanja od ciljev, zapisanih v Lizbonski strategiji na ravni regij in držav. Cilj prispevka je analizirati trenutno stanje Evropske unije in Slovenije na poti do ciljev, zastavljenih v Lizbonski strategiji, ter s pomočjo aplikacije Centra za socialne indikatorje[1] konkretno prikazati, kakšni so zaostanki oziroma prednosti pri zasledovanju posameznih ciljev, izraženi v časovnih distancah na ravni regij NUTS[2] 2 EU ter Slovenije.

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1 SICENTER je privatna, neprofitna raziskovalna ustanova. Aktivnost centra se osredotoča predvsem na raziskave in svetovanje na področju analize ekonomskih in socialnih kazalnikov na različnih ravneh agregacije, z aplikacijo v ekonomiji, politiki, poslovnem svetu in statistiki. Vodilni raziskovalec je prof. dr. Pavle Sicherl (Center za socialne indikatorje – SICENTER, 2008).

2 NUTS (*fr. Nomenclature des unités territoriales statistiques*) je nomenklatura statističnih teritorialnih enot oziroma skupna evropska statistična klasifikacija teritorialnih enot. Omenjeno klasifikacijo je vzpostavil Eurostat, da bi tako zagotovil celovito in dosledno členitev

2. Lizbonska strategija

Zaradi izgubljanja konkurenčne prednosti EU pred Združenimi državami Amerike (ZDA) ter vse hitreje razvijajočimi se azijskimi državami, so se na spomladanskem zasedanju Evropskega sveta v Lizboni leta 2000 voditelji držav in vlad članic Unije dogovorili, da EU potrebuje dolgoročno strategijo. Evropa si je postavila za strateški cilj postati najbolj dinamično in konkurenčno, na znanju temelječe gospodarstvo na svetu, ki ustvarja nova in čedalje boljša delovna mesta, omogoča nenehno gospodarsko rast z večjo socialno kohezijo ter ne nazadnje gospodarstvo, ki spoštuje in varuje okolje (Kok, 2004: 8). Strategija je bila dopolnjena leta 2001 na spomladanskem zasedanju Evropskega sveta v Stockholmu in leta 2002 na zasedanju Evropskega sveta v Barceloni. Švedsko predsedovanje je v strategijo vključilo okoljevarstveno razsežnost, špansko predsedovanje pa dalo večji poudarek socialni razsežnosti ter vlaganju v raziskave in razvoj (Služba vlade RS za evropske zadeve, 2008).

Zaradi nezadovoljivega napredka in povečanja razlik v potencialu rasti med Evropo ter drugimi gospodarstvi pa je Evropska komisija februarja 2005 državam članicam predlagala spremembe Lizbonske strategije. Revidirana verzija je ponovno opredelila prioritete in metode za njihovo doseganje, najpomembnejša cilja Lizbonske strategije pa sta postala rast in zaposlovanje. Z reformo Lizbonske strategije je bila kot ključni instrument na ravni Skupnosti, ki prispeva k izvajanju strategije za rast in delovna mesta, potrjena kohezijska politika. Poleg ohranjanja socialne kohezije je Evropski svet kot bistvene prednostne naloge za uresničitev lizbonskih ciljev označil še vlaganje v znanje in inovacije, vzpostavitev privlačnega okolja za naložbe in delo ter ustvarjanje več in boljših delovnih mest (Nov začetek za Lizbonsko strategijo, 2005: 7).

Evropska kohezijska politika je z reformo, ki jo je predlagala Komisija, torej postala ena od glavnih politik Skupnosti za uresničitev agende Unije za rast in delovna mesta. Z razširitvijo EU na 27 držav članic in z dramatičnim povečanjem razlik v razvitosti med posameznimi članicami ter regijami pa se je soodvisnost doseganja obeh ciljev, gospodarske rasti in kohezije na ravni Unije še povečala. EU kot celota tako ne bo mogla dosegati višjih stopenj gospodarske

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teritorialnih enot, potrebno za zbiranje, razvoj in usklajevanje regionalnih statistik v Evropski uniji. Ker klasifikacija NUTS temelji na hierarhični členitvi, se ozemlja držav delijo na 3 hierarhične ravni: NUTS 1, NUTS 2 ter NUTS 3, pri čemer države pri razdelitvi svojega ozemlja na enote NUTS upoštevajo normativna merila (število prebivalcev), ki so določena v uredbi o NUTS (NUTS, 2008).

rasti, kot jih dosega sedaj, v kolikor nove članice ne bodo nadaljevale z doseganjem stopenj gospodarske rasti, ki bo bistveno višja od povprečja Unije. Visoka gospodarska rast v manj razvitih delih EU je pomembna za sočasno doseganje obeh ciljev, realne konvergence manj razvitih regij Skupnosti in povečevanja gospodarske rasti v EU kot celoti. V tem kontekstu je logično, da naj bi EU v srednjeročnem obdobju 2007–2013 usmerjala kohezijska sredstva predvsem za namene, ki bodo zagotavljali trajnostno gospodarsko rasti, konkurenčnost gospodarstva in zaposlovanje, kot je to predvideno v prenovljeni Lizbonski strategiji (Nacionalni strateški referenčni okvir 2007-2013, 2007: 3).

3. Učinki kohezijske politike na ravni NUTS 2 regij EU

Eden od glavnih ciljev kohezijske politike je zmanjšanje ekonomskih in socialnih razlik v razvoju med evropskimi regijami. Regije, ki zaostajajo v razvoju, morajo ostati v središču politike, ki pa mora zajeti celotno ozemlje EU, glede na to, da je cilj kohezijske politike tudi spodbujanje lastnega razvojnega potenciala evropskih regij. Učinke kohezijske politike EU je iz več razlogov težko natančno izmeriti. Jones (2001: 247) omenja tri glavne vzroke, zakaj je temu tako: prvič, vse učinke nekaterih programov in projektov je mogoče videti le na dolgi rok, drugič, tako na regionalne, kot nacionalne ekonomije vpliva cela vrsta faktorjev in je težko določiti natančen vpliv posameznega faktorja in tretjič, obstaja tudi problem ločevanja vpliva politike EU od vplivov nacionalnih regionalnih politik. Navkljub velikemu trudu EU tako še vedno obstajajo velike razlike v BDP na prebivalca med državami članicami ter med njihovimi regijami. Konvergenca med evropskimi regijami je v zadnjih letih sicer dokaj močna, zaradi česar so se zmanjšala neskladja v BDP na prebivalca.[3] Do te usmeritve so v glavnem privedla izboljšanja v najmanj uspešnih regijah, ob tem pa lahko zmanjšanje razlik pripišemo tudi počasnejši stopnji rasti BDP v najrazvitejših regijah. Naslednja analiza je narejena na ravni regij NUTS 2.

3 To je realna konvergenca, ki pomeni približevanje ravni gospodarske razvitosti, ki ga običajno predstavlja kazalnik bruto domači proizvod na prebivalca (merjen po pariteti kupne moči). Analiziranje realne konvergence med državami (regijami) s tem kazalnikom dejansko pomeni oceno, ali se BDP na prebivalca neke države, regije ali skupine držav približuje povprečni vrednosti omenjenega kazalnika za vse primerjane države (regije) (Martín, 2001: 7).

V tabeli 1 lahko vidimo, da so imele leta 2000 najbogatejše regije, ki pomenijo 10 % prebivalcev EU-15, BDP na prebivalca višji od povprečja EU za skoraj 92 %, medtem ko so imele najrevnejše regije, v katerih živi 10 % prebivalstva EU-15, BDP na prebivalca nižji od povprečja EU za več kot 32 %. Če to izrazimo s koeficientom, lahko rečemo, da je bil BDP najbogatejših regij (10 %+) v letu 2000 2,8 krat višji od tistega v najrevnejših regijah (10 %-). V letu 2005 je ta koeficient znašal 2,7, kar pomeni, da so se razlike med najbogatejšimi in najrevnejšimi regijami v tem obdobju nekoliko zmanjšale, vendarle pa ni bilo občutnejšega izboljšanja, zaradi česar je tudi prišlo do reforme kohezijske politike in popravkov strategije.

Tabela 1: Najbolj in najmanj razvite regije EU glede na BDP p.c. v obdobju 2000-2005

Regije	EU-15		EU-27	
	2000	2005	2000	2005
10%+	191,6	187,7	184,7	173,8
10%-	67,6	70,0	30,9	36,7
Koeficient	**2,8**	**2,7**	**6,0**	**4,7**
25%+	160,0	156,0	150,9	149,9
25%-	79,1	79,8	47,9	52,8
Koeficient	**2,0**	**1,95**	**3,5**	**2,8**

Opomba: podatki se nanašajo na BDP na prebivalca, merjenega po pariteti kupne moči; vrednost BDP je izražena kot % povprečnega BDP Evropske unije; 10 %+ in 25 %+ se nanaša na regije z najvišjim BDP na prebivalca, ki skupaj predstavljajo 10 oziroma 25 % celotne populacije EU; 10 %- in 25 %- se nanaša na regije z najnižjim BDP na prebivalca, ki skupaj predstavljajo 10 oziroma 25 % celotne populacije EU.

Vir: Eurostat; lastni izračuni.

Tabela nam tudi pokaže, da so se razlike med regijami v EU z vstopom novih članic še izrazito povečale. Vidimo lahko, do kakšne spremembe pride, če v letu 2000 povečamo število držav na 27 (torej zajamemo še 10 kandidatk, ki so v EU vstopile leta 2004, ter Bolgarijo in Romunijo) ter kako to vpliva na koeficiente. Ugotovimo, da so imele najrevnejše regije, v katerih živi 10 % prebivalcev EU-27, v letu 2000 BDP na prebivalca za skoraj 70 % pod evropskim povprečjem. Vrednost koeficienta je v letu 2000 znašala 6,0, kar pomeni, da je bil BDP najbogatejših regij (10 %+ EU-27) 6-krat višji od tistega v najrevnejših regijah (10 %- EU-27). Razlike med regijami so se torej z vstopom novih članic

še dodatno povečale, je pa v obdobju petih let koeficient padel na 4,7, kar kaže na to, da so najrevnejše regije na ravni EU-27 naredile korak naprej, ob tem pa je na zmanjšanje koeficienta vplivalo tudi znižanje povprečja BDP na prebivalca v najrazvitejših regijah glede na povprečje Unije. Seveda so razlike med najbolj in najmanj razvitimi regijami še izjemno velike in treba bo še veliko časa, da se bodo najslabše razvite regije približale povprečju EU.

Zanimivo je tudi pogledati, kje je mesto Slovenije v primerjavi z najbolj in najmanj razvitimi regijami EU. Ozemlje RS se sicer od leta 2009 na ravni NUTS 2 deli na dve kohezijski regiji - Vzhodno Slovenijo in Zahodno Slovenijo. Na ravni NUTS 1 Slovenija še vedno nastopa kot celota, na ravni NUTS 3 pa se tako kot prej členi na 12 statističnih regij.

Tabela 2: Razvitost Slovenije na nivoju regij NUTS 2 glede na BDP p.c. v obdobju 2000-2005 (EU-27=100)

	Slovenija	
	2000	2005
Slovenija	79,8	87,4
Vzhodna Slovenija	67,3	72,5
Zahodna Slovenija	94,5	104,8

Opomba: podatki se nanašajo na BDP na prebivalca, merjenega po pariteti kupne moči; Vzhodna Slovenija: Pomurska, Podravska, Koroška, Savinjska, Zasavska, Spodnjeposavska, Jugovzhodna Slovenija, Notranjsko-kraška; Zahodna Slovenija: Osrednjeslovenska, Gorenjska, Goriška, Obalno-kraška.

Vir: Eurostat, lastni izračuni.

Iz tabele 2 je razvidno, da je imela v letu 2000 Slovenija BDP na prebivalca nižji od povprečja EU-27 za dobrih 20 %, v letu 2005 pa le še dobrih 12 %. Se pa zelo velike razlike kažejo na ravni regij NUTS 2, kjer je v letu 2005 Zahodna Slovenija že presegala povprečno razvitost Unije, medtem ko je Vzhodna Slovenija za tem znatno zaostajala. Tudi znotraj Slovenije torej obstajajo velike razlike v razvitosti glede na BDP na prebivalca, razlike pa so se v omenjenem obdobju med regijama še povečevale, zato predvsem na področju Vzhodne Slovenije čaka našo državo še veliko dela.

Vidimo torej lahko, kako je vključitev novih držav še dodatno otežila doseganje lizbonskih ciljev in kako zelo velike razlike so med regijami na ravni EU. V preučevanem obdobju večina teh najmanj razvitih regij sicer ni bila del Unije, toda namen analize je predvsem prikazati ogromne razlike v razvitosti regij ter pokazati, koliko dejansko najmanj razvite regije zaostajajo za najbolj razvitimi. Glavna naloga kohezijske politike je zmanjševanje neenakosti med regijami Unije in ti rezultati kažejo, da bo treba vložiti še veliko napora, da se bodo razlike zmanjšale in se bodo tudi najmanj razvite regije približale najbolj razvitim. Koliko pa dejansko znašajo zaostanki na ravni regij NUTS 2 za lizbonskimi cilji, ugotavljamo z metodo računanja časovnih distanc.

4. Izračunavanje časovnih distanc in odstopanj od ciljev lizbonske strategije

4.1 Časovna distanca

Časovna distanca je v splošnem razdalja v času med dvema dogodkoma. S-distanca pa je posebna kategorija časovne distance, ki je definirana za dano raven spremenljivke (kazalnika). V nasprotju s statičnimi merami, ki so opredeljene glede na določeno časovno enoto, je S-distanca opredeljena za določeno raven spremenljivke in meri razliko v času, ko primerjani enoti dosežeta dano raven opazovane spremenljivke. Tako določeno distanco v času (npr. število let, mesecev, dni, itd.) uporabljamo kot dinamično (časovno) mero neenakosti med opazovanima enotama v istem smislu, kot določeno razliko (absolutno ali relativno) v določenem trenutku uporabljamo kot statično mero razlik med opazovanima enotama (Sicherl, 2003: 188).[4]

Za računanje S-časovne distance na makro ravni sta potrebni dve časovni seriji: časovna serija dejanskih vrednosti kazalnika ter časovna serija predvidenih ciljnih vrednosti (linija do cilja). Časovna distanca je razlika med dejanskim časom ter časom na liniji do cilja za vsako dejansko vrednost spremenljivke (Sicherl, 2008: 2):

$S(X_t)$ = dejanski čas **t** – čas na ciljni črti **T** za vsako dejansko vrednost spremenljivke X_t

$S(X_t) = t(X_t) - T(X_t)$

4 Več o časovni distanci glej tudi v Granger (1997, 2003).

Časovna distanca ima kot komplementarna mera konvencionalnim meram razlik zelo obsežno potencialno uporabo pri analizi časovno opredeljenih podatkov pri primerjavah med raznimi enotami, pri regresijah, modelih, predvidevanjih in monitoringu. Po drugi strani pa predlagana metodologija uvaja nov pogled na stopnjo neenakosti v razvoju in blaginji in s tem boljšo analitično podlago za vrednostne sodbe, ki jih o svoji relativni poziciji v družbi in svetu oblikujejo posamezniki in skupine na različnih ravneh, kakor tudi za nove hipoteze o načinih povezovanja problemov rasti in problemov neenakosti v teoriji in praksi. Ta povezava pa je ena od ključnih točk evropske razvojne paradigme, kot je izražena v Lizbonski strategiji (Sicherl, 2003: 203).

Namen uvajanja časovne distance v analizo razlik ni v nadomestitvi običajno uporabljanih statičnih metod in meritev, temveč v njihovi dopolnitvi in razširitvi celotnega teoretskega in metodološkega pristopa. Uporaba koncepta časovne distance in njena operacionalizacija s pomočjo statistične mere S-distance omogočata kot dodatni instrumentarij k obstoječim metodam analize dodatno razumevanje problema in izboljšave na dveh področjih, konceptualnem in analitičnem. Prednost S-distance je, da je izražena v enotah časa ter tako razumljiva vsem, dodatna prednost pa je lastnost, da vse dosedanje metode in rezultati (ne pa nujno tudi zaključki) ostanejo nespremenjeni, saj časovna distanca dodaja novo dimenzijo in ne nadomešča drugih pogledov (Sicherl, 2003: 189).

4.2 Izračun napredka/zaostanka pri doseganju ciljev Lizbonske strategije na ravni regij NUTS 2

Dodaten pogled na stopnjo uresničevanja Lizbonske strategije glede na postavljene EU ali nacionalne cilje je razvil Center za socialne indikatorje. Pripravil je spletno aplikacijo za enostavno računanje časovnih distanc in odstopanj od ciljev na podlagi katere je narejena tudi naslednja analiza. V njej je S-časovna distanca (izražena v enotah časa) uporabljena na primeru lizbonskih ciljev na regionalni ravni za EU in Slovenijo. Za dejansko vrednost v določenem letu ugotavljamo, kdaj naj bi bila ta vrednost dosežena na postavljeni liniji do cilja, časovna distanca pa izraža prednost ali zaostanek v času glede na linijo do cilja.

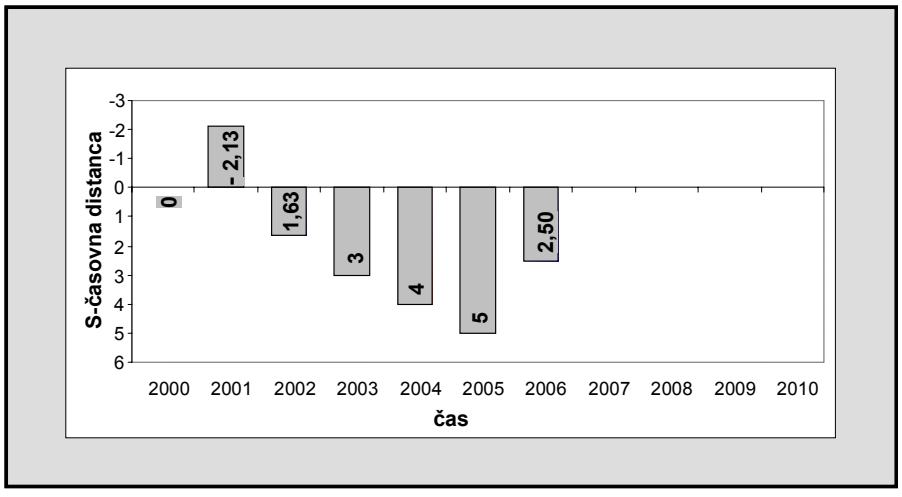
V analizi računamo povprečno časovno distanco za najbolj ter najmanj razvite regije NUTS 2 na ravni EU-27 ter Slovenije. Tudi tu velja, da med najbolj razvite regije uvrščamo regije z najvišjim BDP na prebivalca, ki skupaj pomenijo 10 % celotne populacije EU-27, med najmanj razvite pa regije z najnižjim BDP na prebivalca, ki skupaj pomenijo 10 % celotne populacije EU-27. Naj omenimo, da je

zaradi pomanjkanja podatkov na regionalni ravni merjenje časovne distance za posamezne kazalnike onemogočeno oziroma zelo oteženo. Tako na primer ni mogoče sledenje cilju deleža BDP namenjenega raziskavam in razvoju, ki je eden temeljnih lizbonskih ciljev, so pa izračunane časovne distance za cilja 70 % stopnje zaposlenosti v EU ter 3 % povprečne letne rasti BDP EU do leta 2010. Poudariti je treba tudi, da je v primeru neobstoja podatkov za določeno regijo, ki po svoji razvitosti (nerazvitosti) sicer spada med 10% najbolj (najmanj) razvitih regij na ravni EU-27, ta bila zamenjana z naslednjo v nizu, za katero so podatki na voljo.

4.2.1 Lizbonski cilj na ravni regij NUTS 2: 70 % stopnja zaposlenosti v Evropski uniji do leta 2010

Med najbolj razvite regije (10%+) so uvrščene večinoma regije iz starejših članic, predvsem Nemčije, Anglije, Belgije, Nizozemske, iz novink prihajata le dve, in sicer, Praga ter Bratislava. Povprečna stopnja zaposlenosti najbolj razvitih regij je že leta 2000 znašala 68,5 %, torej je bila zelo blizu ciljne vrednosti, in je po manjšem upadanju do leta 2004 v zadnjih dveh obravnavanih letih spet dosegala pozitiven trend. Prav ta pozitivni zasuk v letih 2005 in 2006 se je dobro odrazil tudi na časovno distanco, saj je ta v zadnjem obravnavanem letu znašala le še 2,5 let.

Slika 1: Časovna distanca 10%+ regij EU-27 pri sledenju cilja 70 % stopnje zaposlenosti EU do leta 2010

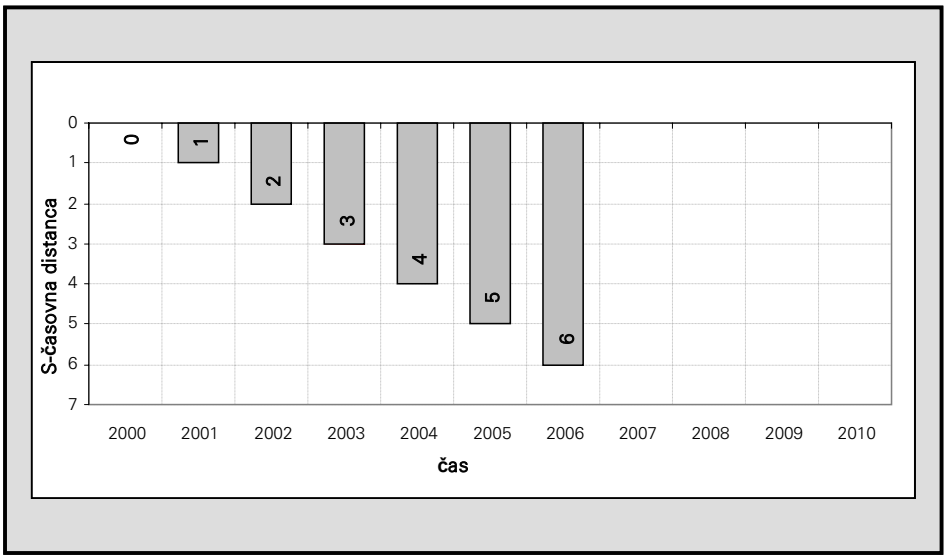


Legenda: (-) časovna prednost (pred linijo do cilja), (+) časovni zaostanek (za linijo do cilja).

Vir: Eurostat; lastni izračuni.

Popolnoma drugačna je slika za najmanj razvite regije, večinoma iz Bolgarije, Romunije in Poljske, ki imajo najnižji BDP na prebivalca in skupaj predstavljajo 10 % celotne populacije EU-27. V letu 2000 je povprečna stopnja zaposlenosti za te znašala slabih 56,9 % in v naslednjih 6 letih te vrednosti ni več dosegla. Časovna distanca se je v zajetem obdobju konstantno povečevala ter je v zadnjem obravnavanem letu znašala 6 let.

Slika 2: Časovna distanca 10%- regij EU-27 pri sledenju cilja 70 % stopnje zaposlenosti EU do leta 2010

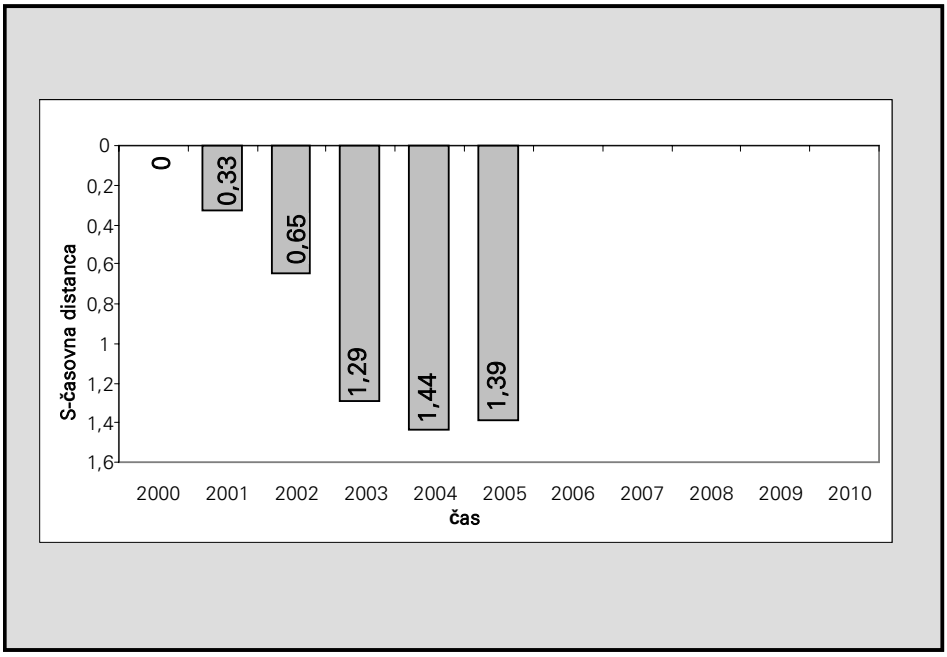


Legenda: (-) časovna prednost (pred linijo do cilja), (+) časovni zaostanek (za linijo do cilja).
Vir: Eurostat; lastni izračuni.

4.2.2 Lizbonski cilj na ravni regij NUTS 2: 3 % povprečna letna rast BDP Evropske unije do leta 2010

Tako kot na ravni držav tudi pri regijah pričakujemo, da bodo manj razvite regije rastle hitreje kot bolj razvite, saj le tako prihaja do konvergence in zmanjševanja razlik v razvitosti. Za najmanj razvite regije torej pričakujemo negativne časovne distance oziroma prednost pred ciljnimi vrednostmi, za najbolj razvite pa zaostanke ter pozitivne distance.

Slika 3: Časovna distanca 10%+ regij EU-27 pri sledenju cilja 3 % povprečne letne rasti BDP EU



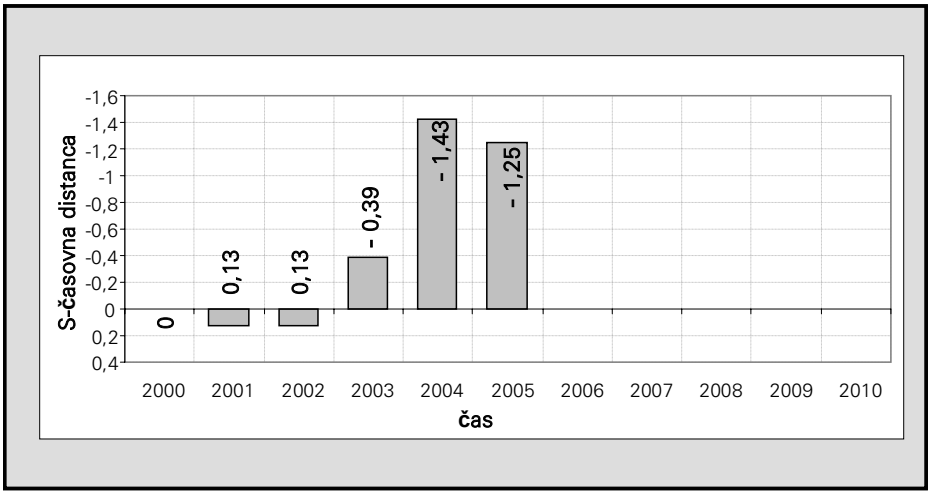
Legenda: (-) časovna prednost (pred linijo do cilja), (+) časovni zaostanek (za linijo do cilja).

Vir: Eurostat; lastni izračuni.

Že od samega začetka uvajanja Lizbonske strategije je povprečna letna rast najbolj razvitih regij (10%+) zaostajala za ciljnimi vrednostmi, slika 3 pa kaže, da se je v zadnjih dveh obravnavanih letih (zaradi pomanjkanja podatkov je zadnje zajeto leto 2005) zaostanek ustalil na približno 1,4 leta. V letu 2005 je tako časovna distanca znašala 1,39 let.

Drugače je pri sledenju cilja 3 % povprečne letne stopnje rasti BDP za najmanj razvite regije (10%-), saj povprečna stopnja sledi oziroma prehiteva ciljne vrednosti. V prvih dveh letih sicer obstaja manjši zaostanek, toda od leta 2003 naprej je časovna distanca negativna, kar pomeni prednost pred ciljno vrednostjo. V letu 2005 se je distanca sicer nekoliko zmanjšala glede na predhodno leto, toda še vedno je prednost znašala 1,25 let.

Slika 4: Časovna distanca 10%- regij EU-27 pri sledenju cilja 3 % povprečne letne rasti BDP EU



Legenda: (-) časovna prednost (pred linijo do cilja), (+) časovni zaostanek (za linijo do cilja).

Vir: Eurostat; lastni izračuni.

Če povzamemo rezultate za obravnavane cilje v tabelo (tabela 3), jih je smiselno primerjati z rezultati na ravni EU-15, saj na ta način v analizo zajamemo le regije, ki so bile v celotnem obravnavanem obdobju del Unije. Glede na to, da se tako na ravni EU-27 kot tudi EU-15 med najbolj razvite regije uvrščajo večinoma regije iz petnajsterice, večjih razlik v samih rezultatih pri najbolj razvitih regijah nismo pričakovali, kar potrjujejo tudi časovne distance. Drugače je pri najmanj razvitih regijah, saj se med 10 % najmanj razvitih regij na ravni EU-27 uvrščajo večinoma regije iz novo pridruženih članic (Romunije, Bolgarije, Poljske), medtem je na ravni EU-15 večina teh regij iz sredozemskih držav (Grčije, Italije, Španije, Francije). Pri sledenju cilja 70 % stopnje zaposlenosti do leta 2010 je časovna distanca v 10 %- regijah EU-27 v letu 2006 znašala 6 let, na ravni EU-15 pa 4,57 let. Stopnje zaposlenosti v najmanj razvitih regijah v novih članicah so zelo nizke in se ne povečujejo, kar vpliva tudi na povečevanje zaostanka za lizbonskim ciljem, medtem ko je na ravni EU-15 opaziti manjšo rast stopnje, ki pa zaostaja za ciljno stopnjo, zaradi česar distanca prav tako v obravnavanem obdobju narašča. Iz dobljenih podatkov lahko ugotovimo, da obstajajo znatne razlike v zaposlenosti med najbolj in najmanj razvitimi regijami, kar kažejo tudi razlike v časovnih distancah, je pa predvsem zaskrbljujoč trend v najmanj razvitih regijah novih članic, kjer zaradi padca stopenj zaposlenosti v zajetem obdobju časovne distance ter s tem zaostanki za

lizbonskim ciljem hitro naraščajo. Med regijami, ki dosegajo najvišje zaostanke pri cilju 70 % stopnje zaposlenosti do leta 2010 so na ravni EU-27 na dnu pričakovano bolgarske, madžarske, romunske ter poljske regije, na ravni EU-15 pa francoski čezmorski departmaji in grški otoki, kar je v veliki meri posledica njihove geografske odmaknjenosti, ter regije južne Španije, Italije in vzhodne Nemčije. Regije, ki dosegajo največje prednosti, izhajajo iz najrazvitejših držav, kot so Anglija (London, Berkshire, Bucks and Oxfordshire), Avstrija (Salzburg, Dunaj), Švedska (Stockholm), med zajetimi regijami pa se iz novo pridruženih članic sem uvrščata le Bratislava ter Praga.

Tabela 3: Časovne distance najbolj (10%+) in najmanj (10%-) razvitih regij (NUTS 2) na nivoju EU-27 in EU-15 pri sledenju ciljev Lizbonske strategije

	S-časovna distanca v letih						
Cilji	2000	2001	2002	2003	2004	2005	2006
Cilj 1							
10%+ regije EU-27	0	-2,13	1,63	3	4	5	2,5
10%- regije EU-27	0	1	2	3	4	5	6
10%+ regije EU-15	0	-3,36	1,23	3	4	5	3,32
10%- regije EU-15	0	0,95	1,57	2,38	2,97	3,88	4,57
Cilj 2							
10%+ regije EU-27	0	0,33	0,65	1,29	1,44	1,39	np
10%- regije EU-27	0	0,13	0,13	-0,39	-1,43	-1,25	np
10%+ regije EU-15	0	0,44	0,86	1,56	1,79	2,03	np
10%- regije EU-15	0	-0,20	0,39	0,70	1,07	1,80	np

Legenda: Cilj 1: 70 % stopnja zaposlenosti v EU do 2010; Cilj 2: 3 % povprečna letna rast BDP EU; np- ni podatka.

Vir: Eurostat; lastni izračuni.

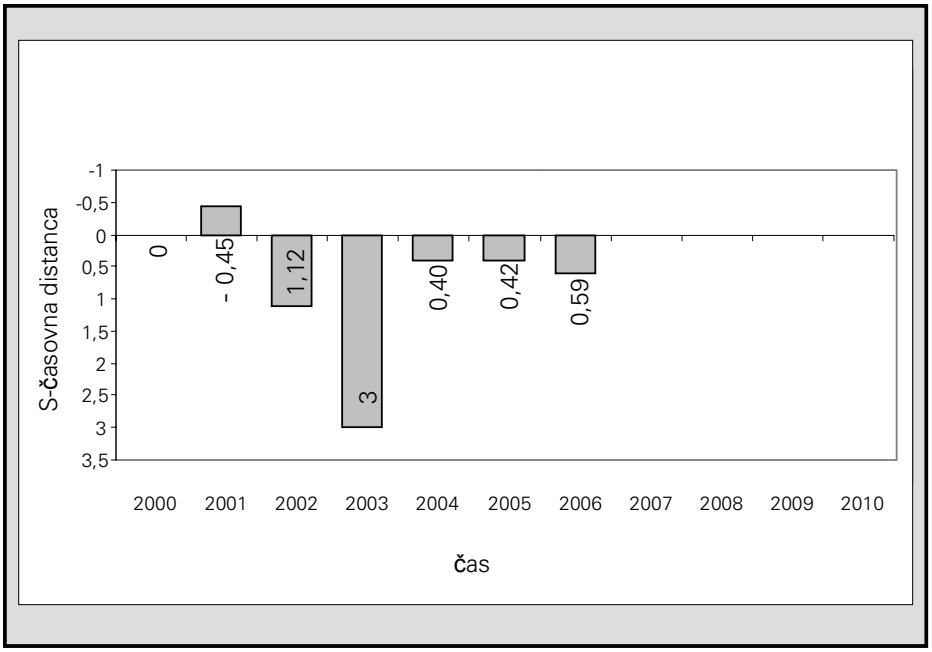
Pri sledenju cilja 3 % povprečne letne rasti BDP zaradi pomanjkanja podatkov preučujemo le obdobje od leta 2000 do 2005. Tudi tu večjih razlik med časovnimi distancami najbolj razvitih regij na ravni EU-27 in EU-15 ni. Je pa pri obeh ugotovljen zaostanek za ciljem, ki se je v petletnem obdobju konstantno povečeval. Glede na to, da med 10%+ regije spadajo najbolj razvite regije, je razumljivo, da le-te težko dosegajo 3 % povprečno letno ciljno stopnjo rasti BDP, saj je njihov BDP na prebivalca že na izjemno visoki ravni, kar otežuje visoke povprečne stopnje rasti. Na drugi strani je časovna distanca regij z najnižjim BDP na prebivalca, ki skupaj pomenijo 10 % celotne populacije EU-27, negativna, kar pomeni prednost pred linijo do cilja. V letu 2005 je ta znašala 1,25 let. Na ravni EU-15 je drugače, saj tam najmanj razvite regije zaostajajo za linijo do cilja, zaostanek v letu 2005 je tako znašal 1,8 let. Glede na mnogo slabšo razvitost 10%- regij EU-27 v primerjavi z najmanj razvitimi regijami na ravni EU-15 so razlike razumljive, saj imajo najmanj razvite regije sedemindvajseterice še ogromno potenciala za rast, zato je doseganje visokih povprečnih letnih stopenj rasti BDP lažje. Najhitreje rastoče regije so tako pogosto pomembnejša urbana območja in regijske prestolnice (London, Luksemburg, Praga, Bratislava), visoke stopnje rasti pa so opažene tudi v regijah, kjer je bila zelo nizka raven BDP na prebivalca, kot na primer, bolgarska regija Yugozapaden, romunska regija Bucuresti-Ilfov itd. Na drugi strani so nizke stopnje rasti ter s tem zaostanek za ciljem 3 % povprečne letne rasti BDP predvsem značilne za regije z visokim BDP na prebivalca v Franciji, Nemčiji, Italiji, na Finskem, Švedskem in Danskem.

4.2.3 Lizbonski cilj za Slovenijo: 70 % stopnja zaposlenosti do leta 2010

Rezultate časovnih distanc na evropskem regionalni ravni pa je zanimivo primerjati tudi z rezultati na ravni Slovenije. Pri tem je treba poudariti, da je zaradi neobstoja podatkov na ravni NUTS 2 na področju stopnje zaposlenosti za posamezne članice analiza za Slovenijo narejena le na ravni celotne države. Za cilj 70 % stopnje zaposlenosti do leta 2010 ugotovimo, da so časovni zaostanki za ciljnimi vrednostmi mnogo manjši v primerjavi s časovnimi distancami v najbolj in najmanj razvitih regijah EU-27 ter EU-15.

V letu 2006 je sicer opazen nekoliko večji zaostanek glede na predhodna leta, a vseeno znaša le 0,59 let (slika 5), kar je mnogo bolje od časovnih distanc na ravni evropskih regij NUTS 2, tako v primerjavi z najbolj razvitimi regijami kot tudi z najmanj razvitimi, kjer so pričakovano zaostanki mnogo večji.

Slika 5: Časovna distanca Slovenije pri sledenju cilja 70 % stopnje zaposlenosti do leta 2010



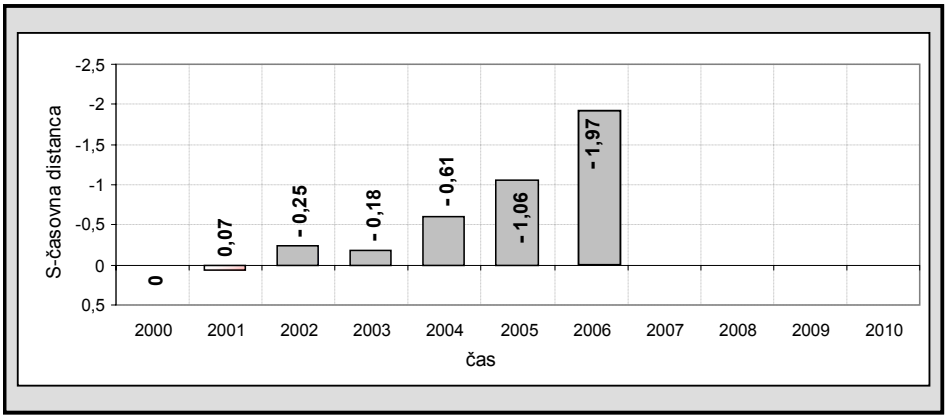
Legenda: (-) časovna prednost (pred linijo do cilja), (+) časovni zaostanek (za linijo do cilja).

Vir: Eurostat; lastni izračuni.

4.2.4 Lizbonski cilj za Slovenijo: 3 % povprečna letna rast BDP do leta 2010

Pri cilju 3 % povprečne letne rasti BDP Slovenija, kot novo pridružena mlada članica, v primerjavi s povprečjem EU dosega dobre rezultate, ki so blizu rezultatov najmanj razvitih regij na ravni EU-27. Že od vsega začetka dejanske vrednosti prehitevajo ciljne, kar se odraža tudi v rezultatih časovne distance (slika 6). Slovenija je imela tako v letu 2006 skoraj dvoletno (1,97) časovno prednost, ki se je povečevala v zadnjih treh zajetih letih.

Slika 6: Časovna distanca Slovenije pri sledenju cilja 3 % povprečne letne rasti BDP

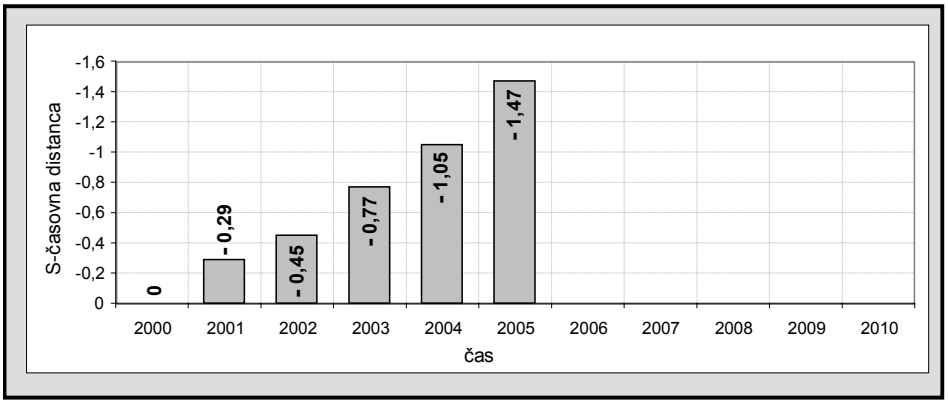


Legenda: (-) časovna prednost (pred linijo do cilja), (+) časovni zaostanek (za linijo do cilja).

Vir: Eurostat; lastni izračuni.

Zanimiv je tudi pogled na zasledovanje tega cilja na nivoju NUTS 2. Časovna distanca za Zahodno Slovenijo se v zajetem obdobju stalno zmanjšuje, kar pomeni povečevanje prednosti pred ciljnimi vrednostmi. V letu 2005 je tako prednost znašala 1,47 let.

Slika 7: Časovna distanca Zahodne Slovenije pri sledenju cilja 3 % povprečne letne rasti BDP

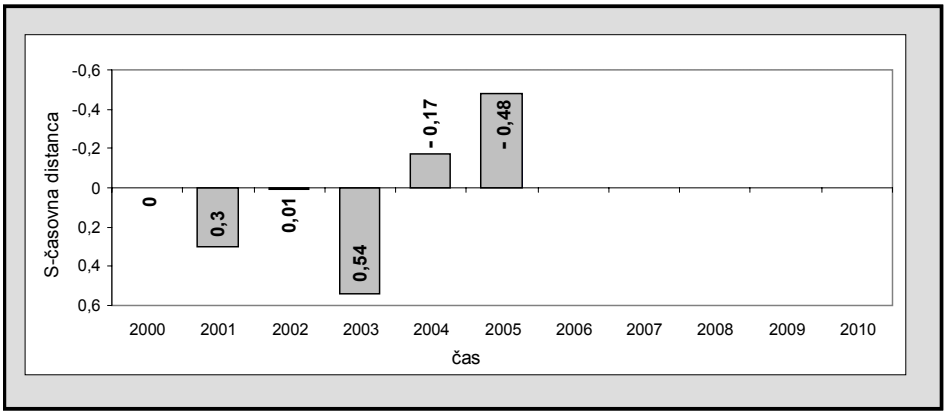


Legenda: (-) časovna prednost (pred linijo do cilja), (+) časovni zaostanek (za linijo do cilja).

Vir: Eurostat; lastni izračuni.

Nekoliko slabše je stanje v regiji Vzhodna Slovenija, ki sicer v zadnjih dveh obravnavanih letih tudi dosega prednost, toda ta je manjša kot v Zahodni Sloveniji. Glede na stanje v državi so rezultati časovnih distanc za cilj povprečne letne stopnje rasti BDP na ravni NUTS 2 v Sloveniji pričakovano ugodnejši v zahodnem delu, ki razpolaga z boljšo infrastrukturo, visoko kvalificirano delovno silo in s tem z boljšimi priložnostmi za razvoj, kar posledično pomeni tudi višjo povprečno gospodarsko rast ter ugodnejše časovne distance.

Slika 8: Časovna distanca Vzhodne Slovenije pri sledenju cilja 3 % povprečne letne rasti BDP



Legenda: (-) časovna prednost (pred linijo do cilja), (+) časovni zaostanek (za linijo do cilja).

Vir: Eurostat; lastni izračuni.

Na ravni Slovenije so rezultati pri sledenju ciljev torej bolj ugodni. Pri sledenju cilja 70 % stopnje zaposlenosti do leta 2010 so rezultati časovnih distanc v primerjavi s povprečnimi časovnimi distancami najbolj in najmanj razvitih evropskih regij NUTS 2 spodbudni. Leta 2006 je tako zaostanek znašal 0,59 let. Zadnji podatki pa kažejo, da je v letu 2007 zaostanek celo prerastel v prednost, saj je dejanska stopnja zaposlenosti presegla ciljno, s čimer je bila Slovenija na dobri poti, da bi v letu 2010 dosegla oziroma presegla zastavljeni cilj 70 % stopnje zaposlenosti, toda globalna recesija ter s tem upočasnjena gospodarska rast in povečanje brezposelnosti, bodo zelo otežile oziroma onemogočile dosego ciljev. Po pričakovanju pa Slovenija dosega prednost pri cilju 3 % povprečne letne rasti, saj kot ambiciozna nova članica mora dosegati visoke stopnje rasti, da se približa najrazvitejšim. So pa rezultati časovnih distanc bolj ugodni za Zahodno Slovenijo kot za Vzhodno.

5. Sklep

Ob hitrem globalnem razvoju, tehnološkem napredku in gospodarskih ter okoljskih spremembah sta za doseganje gospodarske rasti vse pomembnejši razvojna dinamika in konkurenčnost. Voditelji vlad držav članic Evropske unije so zato v letu 2000 s sprejetjem Lizbonske strategije postavili okvirne cilje, ki naj bi jih EU dosegla v desetih letih in tako postala najbolj konkurenčno, dinamično in na znanju temelječe gospodarstvo na svetu, ki bi bilo sposobno ustvarjati trajno gospodarsko rast, nova in boljša delovna mesta ter večjo socialno kohezijo. Z reformo v letu 2005 je Unija na novo definirala glavne cilje in prioritete, ob tem pa prepoznala kohezijsko politiko kot eno od glavnih politik Skupnosti za uresničitev strategije za rast in delovna mesta. Skladno z izvajanjem strategije na ravni Unije pa sledi izvajanju od vstopa v letu 2004, kot polnopravna članica EU, tudi Slovenija. Glede na to, da so razvojni izzivi, pred katerimi stoji, v veliki meri podobni izzivom, pred katerimi se je znašla EU kot celota, je razumljivo, da so si tudi cilji zastavljeni v strateških dokumentih Slovenije, kakor tudi EU, zelo podobni.

Koliko pa Slovenija ter Unija dejansko zaostajata za cilji, zapisanimi v Lizbonski strategiji, smo poizkušali pokazati z uporabo aplikacije Centra za socialne indikatorje, ki omogoča računanje časovnih distanc in odstopanj od ciljev. Zaradi pomanjkanja podatkov na regionalni ravni je sicer merjenje časovne distance za posamezne indikatorje onemogočeno oziroma oteženo. V analizi so tako izračunane časovne distance za dva cilja Lizbonske strategije na ravni regij NUTS 2 in sicer cilja 70 % stopnje zaposlenosti ter 3 % povprečne letne rasti BDP do leta 2010.

Pri računanju časovnih distanc na ravni regij pridemo do ugotovitve, da tako pri sledenju cilja 70 % stopnje zaposlenosti v EU kot tudi cilja 3 % povprečne letne rasti BDP EU najbolj in najmanj razvite regije, ki skupaj zajemajo 10 % celotne populacije EU, zaostajajo za ciljnimi vrednostmi. Izjema so najmanj razvite regije na ravni EU-27, ki dosegajo prednost pri sledenju cilja povprečne letne stopnje rasti BDP, kar pa je pričakovano, saj morajo manj razvite regije rasti hitreje kot bolj razvite, da prihaja do konvergence in zmanjševanja razlik v razvitosti. S tem časovna distanca tudi potrjuje rezultate iz dela o učinkih kohezijske politike na ravni regij, kjer je bila ugotovljena konvergenca med evropskimi regijami in zmanjšanje neskladij v regionalni razvitosti. Na ravni Slovenije so rezultati pri sledenju ciljev sicer bolj ugodni, predvsem na področju zaposlenosti, pričakovano pa Slovenija dosega prednost pri cilju povprečne letne stopnje rasti BDP, kar velja za obe regiji na ravni NUTS 2. Je

pa vendarle zaskrbljujoče dejstvo, da se razlike v razvitosti med slovenskima regijama Vzhodna in Zahodna Slovenija ne zmanjšujejo, zato bodo v prihodnje potrebna nadaljnja pospešena kohezijska vlaganja v Vzhodno Slovenijo.

Rezultati računanja časovnih distanc tako v grobem potrjujejo pričakovanja, da Unija kot tudi Slovenija na ravni regij NUTS 2 večinoma zaostajata za lizbonskimi cilji, z izjemo manj razvitih regij pri sledenju cilja povprečne letne stopnje rasti. Ugotovimo lahko, da bodo cilji Lizbonske strategije do leta 2010 zelo težko doseženi, saj je zaostanek predvsem na področju zaposlenosti prevelik, ob tem pa bodo dosego ciljev še dodatno otežile oziroma onemogočile globalna recesija ter s tem upočasnjena gospodarska rast in povečanje brezposelnosti. A bojazen pred ekonomsko krizo ter posledično nedoseganje ciljev Unije je treba obrniti v še bolj odločno in konkretno uresničevanje strategije, saj lahko le na ta način omilimo učinke recesije.

Na ravni Unije je tako treba okrepiti akcijski načrt, ki bo uvedel kratkoročne ukrepe za omilitev krize ter priredil srednje in dolgoročne ukrepe Lizbonske strategije za boj proti recesiji. Stabilizirati je treba finančni trg, uvesti ukrepe za zmanjšanje tveganja ponovitve krize ter nadaljevati z izvajanjem strukturnih reform, predvsem na področjih, ki podpirajo inovacije in pospešujejo produktivnost ter delajo gospodarstva bolj fleksibilna in odporna. Ključno je torej, da se izvajanje strategije okrepi ob tem pa iz krize izstopi s še bolj učinkovito strategijo, ki bo pripravljena na izzive prihodnosti ter bo znala izrabiti priložnosti globalizacije.

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Mag. Andrej Pungartnik je diplomiral in magistriral na Ekonomski fakulteti Univerze v Ljubljani s področja marketinga. Že med študijem je kazal veliko zanimanje za poglobljeno proučevanje regionalnega razvoja, teritorialnga sodelovanja in evropskih kohezijskih politik. Trenutno dela na področju oglaševanja.

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Review article

Implementation of the Lisbon Strategy Targets at the Regional Level in the EU and Slovenia

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ABSTRACT

In 2000, the European Union set itself a target in the Lisbon Strategy to become the most dynamic, competitive and knowledge-based economy in the world in ten years, whereas during the mid-term review, which was held five years later, it redefined its two main objectives: creation of new and better jobs and achievement of stronger, lasting economic growth. This paper aims to study the current situation in the European Union and Slovenia regarding the implementation of the targets of the renewed Lisbon Strategy. The analysis focuses on establishing at what stage the EU is in the attainment of its goals and how successfully it has implemented the strategy at the regional level of the EU Member States. The basic tools in the analysis included the time-distance monitoring method and a presentation of the time lead or lag in the implementation of the selected Lisbon Strategy targets at the NUTS 2 regional level of the enlarged EU and Slovenia.

Key words: Lisbon Strategy, cohesion policy, NUTS 2 regions, Slovenia, time distance

JEL: C10, R10, O10, O52

1. Introduction

From its beginnings, the European Union (EU) has strived to build up a competitive and progressive economy which creates jobs and strikes the right balance between economic efficiency and social justice. By implementing its

structural and cohesion policies through Structural Funds, the Cohesion Fund and other instruments, the Union has over several decades strengthened social and economic cohesion, whereas by adopting the Lisbon Strategy it undertook to pursue the objectives in an even more structured and ambitious manner.

With the passing of time the Lisbon Strategy has increasingly impacted the formulation and implementation of policies at the levels of the EU and member states. The implementation of these policies contributes to higher economic growth at the EU level and, through financial mechanisms of the Structural Funds and the Cohesion Fund, it boosts economic growth in the member states, especially the new ones, which is in turn reflected in the bridging of the development gaps between EU countries and regions, resulting in real convergence.

The reform package which was agreed upon in Lisbon has seen some progress at the national and European levels; however, Europe still lags considerably behind the plan. Moreover, the Union entered the new Lisbon cycle as the global growth was slowing down due to the serious financial crisis spreading all over the world. Although the recession will make achievement of the Lisbon targets very difficult, it is still important to continue implementing the Strategy in these times of crisis as this is the only way to mitigate the effects of the recession. It is of the utmost importance to strengthen the efficient implementation of the strategy, part of which includes an evaluation of the adopted measures and their results. The time-distance method, as used in this analysis, can due to its clarity and simplicity make an important link in the evaluation chain by clearly illustrating the incongruence between the actual state of affairs and the set Lisbon Strategy targets at the regional and national levels. The article aims to analyse the current state of affairs in the European Union and Slovenia in the course of attaining the Lisbon Strategy targets, as well as to demonstrate in concrete terms, using an application designed by the Socio-economic Indicators Center[1], the time leads or lags in the attainment of individual targets, expressed in time distances at the level of the NUTS[2] 2 regions of the EU and Slovenia.

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1 SICENTER is a private, non-profit research institution. Its activities focus on research and consultancy in the field of the analysis of economic and social indicators at various levels of aggregation, with an application to economics, politics, business and statistics. The principal researcher is Prof. Pavle Sicherl, PhD. (Center za socialne indikatorje – SICENTER, 2008).
2 The term NUTS (*French: Nomenclature des unités territoriales statistiques*) stands for the Nomenclature of Territorial Units for Statistics or the common European statistical classification of territorial units. This classification was established by Eurostat to provide for a comprehensive and consistent subdivision of territorial units as required for collecting, developing

2. The Lisbon Strategy

In the face of the EU's diminishing competitive edge relative to the United States of America and the rapidly developing Asian countries, the heads of states and governments of the Union decided at the spring 2000 session of the European Council that the EU needed a long-term strategy. Europe set itself a strategic target of becoming the most dynamic, competitive, knowledge-based economy in the world which creates new and better-quality jobs and fosters continuous economic growth along with a greater social cohesion, as well as an economy which respects and protects the environment (Kok, 2004, p. 8). The Strategy was supplemented at the spring 2001 session of the European Council in Stockholm and at the 2002 session of the European Council in Barcelona. During the Swedish Presidency of the EU an environmental dimension was embedded in the Strategy, whereas the Spanish Presidency put a greater emphasis on the social dimension and investments in research and development (Government Office of the Republic of Slovenia for European Affairs, 2008).

In view of unsatisfactory progress and the even bigger gap in the growth potential between Europe and other economies, in February 2005 the European Commission proposed an amendment of the Lisbon Strategy to the member states. The revised version redefined the priorities and the methods for attaining them, while putting growth and employment on top of all Lisbon Strategy targets. The reform of the Lisbon Strategy also encompassed the approval of the cohesion policy as the key Community instrument contributing to implementation of the strategy for growth and jobs. Besides maintaining social cohesion, the European Council also included among the key priorities for attainment of the Lisbon targets investing in knowledge and innovations, making the business environment more attractive to investors and workers as well as creating more and better quality jobs (A New Start for the Lisbon Strategy, 2005, p. 7).

Through the reform that the Commission proposed, the European cohesion policy thus became one of the most important Community policies aimed at realising the Union's agenda for growth and jobs. After the EU's enlargement to

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and harmonizing regional statistics in the European Union. As the NUTS classification is based on a hierarchical subdivision, the territories of the countries are divided into three hierarchical levels: NUTS 1, NUTS 2 and NUTS 3, where the territories of the countries are divided into NUTS units on the basis of the normative criteria (population size) laid down in the NUTS Regulation (NUTS, 2008).

27 member states and a dramatic increase in the differences between individual members and regions in terms of development, the correlation among the attainment of both targets of economic growth and cohesion grew even stronger at the EU level. The EU as a whole will not be able to achieve higher economic growth rates as it does now if the new members fail to steadily generate economic growth that is substantially higher than the Union's average. A high economic growth in the less developed EU regions is important for the concurrent attainment of both targets, the real convergence of the less developed Community regions and faster economic growth in the EU as a whole. In this context, it is only logical that, in the medium-term period between 2007 and 2013, the EU should allocate the cohesion funds mainly for the purposes ensuring sustainable economic growth, the competitiveness of the economy and employment such as envisaged in the revised Lisbon Strategy (National Strategic Reference Framework 2007-2013, 2007, p. 3).

3. Effects of the cohesion policy at the level of NUTS 2 EU regions

One of the main targets of the cohesion policy is to reduce economic and social differences in development between European regions. Those regions which lag behind in development terms should remain at the focus of the policy which must cover the entire EU territory, given that the goal of the cohesion policy is to stimulate European regions' development potential. Accurate measurement of the effects of the cohesion policy is difficult for several reasons. Jones (2001, p. 247) mentions the following three main reasons: first, all of the effects of certain programs and projects can only be seen in the long run; second, both regional and national economies are influenced by a series of factors whose influence is difficult to define precisely; and, third there is a problem of separating the effect of the EU policy from the effects of national regional policies. Despite some serious efforts invested by the EU, there are still large differences between the member states and their regions in terms of GDP per capita. In the last few years, the convergence of European regions has been fairly strong, thus reducing

the discrepancies in terms of GDP per capita.[3] This trend is mainly the result of the improvement in the least successful regions, whereas the diminishing differences can be ascribed to slower growth in GDP in the most developed countries. The analysis below was made at the NUTS 2 EU region level.

Table 1: The most and the least developed EU regions in terms of GDP p.c. in the 2000-2005 period

Regions	EU-15		EU-27	
	2000	2005	2000	2005
10%+	191.6	187.7	184.7	173.8
10%-	67.6	70.0	30.9	36.7
Coefficient 1	**2.8**	**2.7**	**6.0**	**4.7**
25%+	160.0	156.0	150.9	149.9
25%-	79.1	79.8	47.9	52.8
Coefficient 2	**2.0**	**1.95**	**3.5**	**2.8**

Note: Data refer to GDP per capita measured by purchasing power parity; the value of GDP is expressed as % of the average GDP of the European Union; 10%+ and 25%+ refer to the regions with the highest GDP per capita, accounting for 10% and 25% of the total EU population, respectively; 10%– and 25%– refer to the regions with the lowest GDP per capita, accounting for 10% and 25% of the total EU population, respectively. Coefficient 1 is calculated as 10%+ / 10%; and coefficient 2 as 25%+ / 25%-.

Source: Eurostat; own calculations.

Table 1 shows that, in 2000, the GDP per capita of the richest regions, accounting for 10% of the EU-15 population, was nearly 92% higher than the EU average, whereas the GDP per capita of the poorest regions, accounting for 10% of the EU-15 population, was more than 32% lower than the EU average.

3 What is meant is real convergence, which means approximation to the economic development level as is usually represented by the indicator of gross domestic product per capita (measured by the purchasing power parity). Analysing real convergence between the states (regions) with this indicator actually means assessing whether the GDP per capita of a certain country, region or group of countries approximates the average value of this indicator for all compared countries (regions) (Martín, 2001, p. 7).

Expressed as a coefficient, the GDP of the richest regions (10%+) in 2000 was 2.8 times higher than that of the poorest regions (10%–). The 2005 coefficient was 2.7, meaning that the differences between the richest and poorest regions have slightly decreased in the studied period but no considerable improvement was observed, which is why the cohesion policy was reformed and the strategy revised.

The table also shows that the differences between the EU regions markedly increased after the new members joined the Union. This demonstrates the size of the change caused by the enlargement of the EU to 27 states in 2000 (including the 10 candidate countries which joined the EU in 2004 plus Bulgaria and Romania) as well as its effect on the coefficients. It has been established that, in 2000, the GDP per capita of the poorest regions, accounting for 10% of the EU-27 population, was nearly 70% below the European average. In 2000, the coefficient was 6.0, meaning that the GDP of the richest regions (10%+ of EU-27) was six times higher than that of the poorest regions (10%– EU-27). The differences between the regions further increased after the accession of the new members; however, in the five-year period the coefficient dropped to 4.7 and demonstrated that the poorest regions at the EU-27 level took a step ahead and that the drop in the coefficient was also due to the lower average GDP per capita in the most developed regions compared to the EU average. Of course, the differences between the most and the least developed regions are still extremely large and it will take a long time before the least developed regions approximate the EU average.

It is also interesting to establish Slovenia's place among the most and least developed EU regions. As of 2009 the territory of the Republic of Slovenia was divided into two cohesion regions at the NUTS 2 level – Eastern Slovenia and Western Slovenia. At the NUTS 1 level Slovenia is still considered as a whole, whereas at the NUTS 3 level it is divided into 12 statistical regions, as it was before.

Table 2 shows that in 2000 Slovenia's GDP per capita was lower than the EU-27 average by a good 20%, and in 2005 by a good 12%. Very large differences are observed at the NUTS 2 region level, with Western Slovenia already exceeding the Union's average development level in 2005 and Eastern Slovenia considerably lagging behind it. Large differences in terms of development by GDP per capita also existed within Slovenia, and the gap between the regions kept increasing in the abovementioned period. Consequently, Slovenia still has much to do in the area of Eastern Slovenia.

Table 2: Slovenia's development at the NUTS 2 level in terms of GDP p.c. in the 2000-2005 period (EU-27=100)

	Slovenia	
	2000	2005
Slovenia	79.8	87.4
East Slovenia	67.3	72.5
West Slovenia	94.5	104.8

Note: The data refer to GDP per capita measured by purchasing power parity; Eastern Slovenia: Pomurska, Podravska, Koroška, Savinjska, Zasavska, Spodnjeposavska, South-Eastern Slovenia and Notranjsko-kraška; Western Slovenia: Central Slovenia, Gorenjska, Goriška and Obalno-kraška.

Source: Eurostat; own calculations.

The above shows that the accession of the new countries rendered attainment of the Lisbon targets even more difficult and that there are big differences between the regions at the EU level. In the period under scrutiny, most of these least developed regions were not parts of the EU; however, the purpose of the analysis is to highlight the enormous differences between the regions in development terms and to quantify the lag of the least developed regions behind the most developed ones. The main task of the cohesion policy is to decrease disparities between the EU regions; the present results show that strenuous efforts will have to be invested in reducing the differences so as to enable the least developed regions to approximate welfare. The lags behind the Lisbon targets at the NUTS 2 region level were established using the time distance calculation method.

4. Calculation of time distances and leads/lags in meeting the Lisbon Strategy targets

4.1 Time distance

In general, time distance is the distance in time between two events. S-time distance is a special category of time distance which is defined for a specified level

of a variable (indicator). In contrast to statistical measures defined by a specific time unit, the S-time distance is defined for a specific level of variable and measures the distance in time between points when the two units being compared reach a given level of the observed variable. The specified distance in time (e.g. the number of years, months, days etc.) is used as a dynamic (temporal) measure of the disparity between the two observed units, in the same way that the difference (absolute or relative) at a given point in time is used as a static measure of disparity between the observed units (Sicherl, 2003, p. 188).[4]

When two functions or series with time subscripts are compared for a specified level of variable X, the difference in time between the obtained values t_1 and t_2 equals the time distance between the two units for a given level of variable X. For a given level of variable X_L, $X_L = X_i(t_i) = X_j(t_j)$, the S-time distance between the (i) and (j) units is defined as:

$$S_{ij}(X_L) = \Delta T(X_L) = t_i(X_L) - t_j(X_L) \quad (1)$$

where T is defined by X_L. In a particular case, T can be a function of the level of variable X_L, whereas as a rule one may expect to obtain several values for time T when the given level of the variable was achieved at several points in time or time intervals. In such cases the S-time distance becomes a vector whose elements are also linked with time, besides the level of variable X_L. Generally speaking, the S-time distance between the (i) and (j) units is defined by the level of variable X_L in a given time (t). The following three subscripts are required to characterize the specific value of the S-time distance: (1 and 2) two units which are used to measure the time distance and (3) the level of variable X (similarly to using the time subscript for characterising statistical measures of differences). As a rule, a fourth subscript is required to indicate the point in time defining the time distance (T_1, T_2… T_n). The sign of the time distance used for comparing two units is important to distinguish whether we are dealing with a time lead (-) or lag (+) (in a statistical sense and not as a functional relationship):

$$Sij(XL) = -Sji(XL) \quad (2)$$

4 More details about S-time distance see also Granger (1997, 2003).

To calculate the S-time distance at macro level, two time series are needed: the time series of the actual values of indicator and the time series of the anticipated target values (line to target). Time distance is therefore the distance between the actual time and the time on the line to the target for each actual value of the variable (Sicherl, 2008, p. 2.):

$S(X_t)$ = actual time **t** – time on the target line **T** for each actual value of variable X_t 3)

$$S(X_t) = t(X_t) - T(X_t) \quad (4)$$

The introduction of time distance in the analysis of differences is intended to complement, rather than replace, the conventional static methods and measurements as well as to broaden the overall theoretical and methodological approach. The application of the time-distance concept and its operationalisation using the S-time-distance statistical measure are instruments complementing the existing methods of analysis, thus enhancing the understanding of the problem and improving two areas, conceptual and analytical. An advantage of the S-time distance lies in the fact that the latter is expressed in time units and is thus understandable by everyone, while another advantage is its ability to leave all previous methods and results (not necessarily the conclusions) unchanged since the time distance adds a new dimension rather than replaces other perspectives (Sicherl, 2003, p. 189).

4.2 Calculation of the lag/lead in meeting the Lisbon Strategy targets at the NUTS 2 region level

Another view of the degree of the Lisbon Strategy's implementation in terms of the set EU or national targets was offered by the Socio-economic Indicators Center. It designed a web application enabling a simplified calculation of time distances and leads/lags in meeting the targets, based on which the following analysis was made. The application uses the S-time distance (expressed as time units) for an example of Lisbon targets at the regional level for the EU and Slovenia. It was established – for a given value in a given year – when this value would expectedly be attained on the line to target, whereas the time distance expressed a lead/lag in time with respect to the line to target.

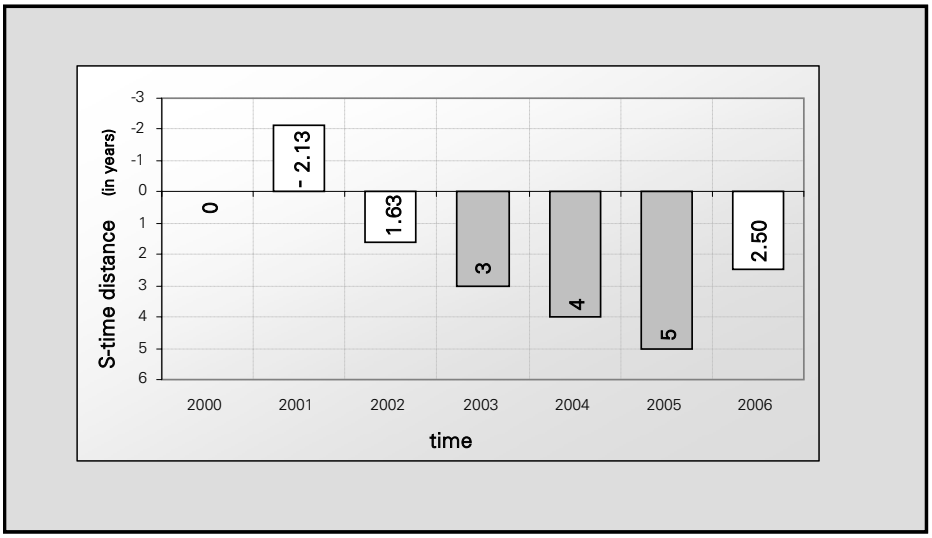
In the analysis the average time distance for the most and the least developed NUTS 2 regions was calculated at the levels of the EU-27 and Slovenia. It is again true that the most developed regions include those with the highest GDP per capita which together account for 10% of the EU-27 population, whereas the least developed regions are those recording the lowest GDP per capita and accounting for 10% of the EU-27 population. It should be noted that, due to the lack of data at the regional level, the measurement of time distance for individual indicators is made impossible or very difficult. It is thus, for example, impossible to follow the target of the share of GDP allocated to research and development which is one of the fundamental Lisbon targets; however, distances have been calculated for the targets of a 70% employment rate in the EU and 3% average annual growth in the EU's GDP by 2010. It should also be emphasised that when data for a specific region, which in terms of (under)development belongs to the 10% of the most (least) developed regions at the EU-27 level, were not available, such a region was replaced by the next region in the row for which data were available.

4.2.1 Lisbon targets at the NUTS 2 region level: a 70% employment rate in the European Union by 2010

The most developed regions (10%+) mainly include regions from older EU member states such as Germany, England, Belgium and the Netherlands, whereas only two regions belong to the new members, namely Prague and Bratislava. The average employment rate of the most developed regions was 68.5% already in 2000 and was thus very close to the target value; after a slight decrease up until 2004 it again recorded a positive trend in the last two analysed years. This upturn in 2005 and 2006 positively affected the time distance as, in the last analysed year, it was only 2.5 years. The dark columns in the figures showing time distances denote the years in which the actual indicator value was lower than the initial 2000 indicator value.

A completely different picture is seen with the least developed regions, mostly from Bulgaria, Romania and Poland, which have the lowest GDP per capita and together account for 10% of the EU-27 population. In 2000 their average employment rate was slightly less than 56.9% and this value was not achieved again in the following six years. In the period under consideration, the time distance constantly increased and equaled 6 years in the last analysed year.

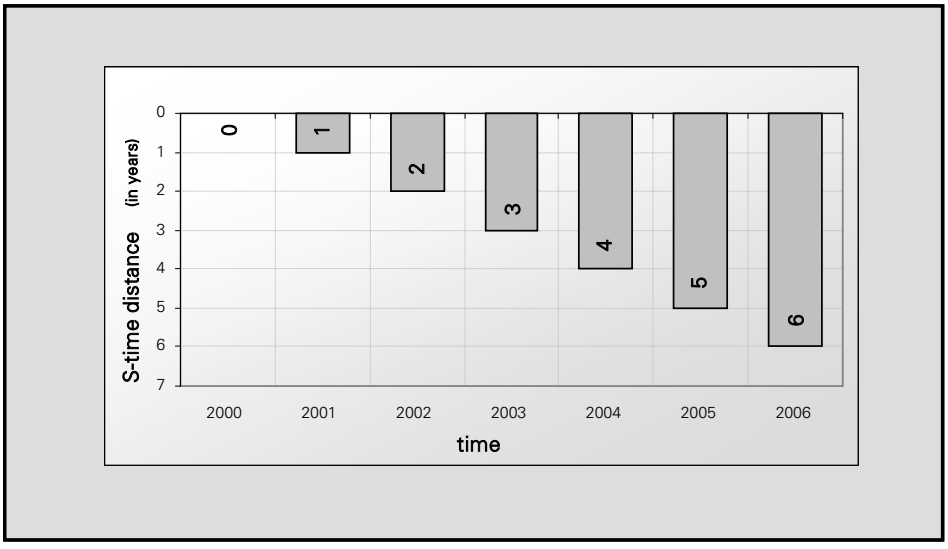
Figure 1: Time distance of the 10%+ regions of the EU-27 in meeting the target of a 70% employment rate in the EU by 2010



Legend: (–) time lead (ahead of the line to target); time lag (behind the line to target)

Source: Eurostat; own calculations.

Figure 2: Time distance of the 10%– regions of the EU-27 in meeting the target of a 70% employment rate in the EU by 2010



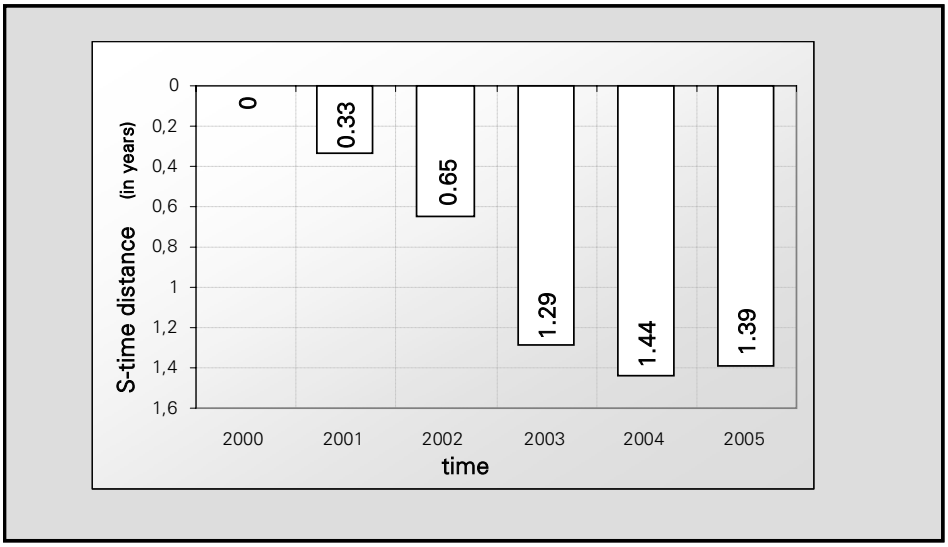
Legend: (–) time lead (ahead of the line to target); time lag (behind the line to target)

Source: Eurostat; own calculations.

4.2.2 Lisbon targets at the NUTS 2 region level: average 3% annual growth in European Union GDP by 2010

The same as for the countries, it is also expected for the regions that the less developed regions would grow faster than the more developed ones because only this generates convergence and decreases the development gap. Thus, negative time distances are expected for the least developed regions i.e. the time lead ahead of the target values, whereas for the most developed regions time lags and positive distances are expected.

Figure 3: Time distance of the 10%+ regions of the EU-27 in meeting the target of average 3% annual growth in EU GDP



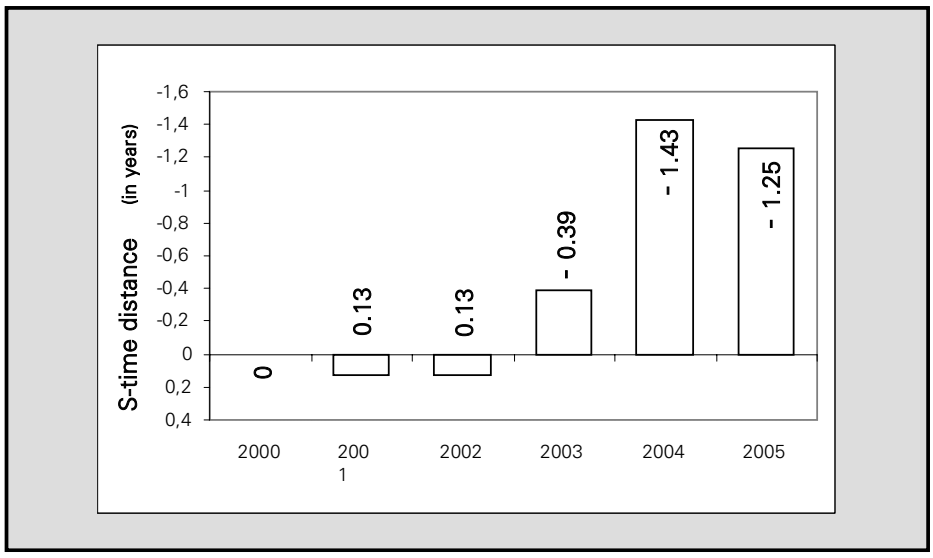
Legend: (–) time lead (ahead of the line to target); time lag (behind the line to target)

Source: Eurostat; own calculations.

Since the very start of the Lisbon Strategy's implementation, the average annual growth in the most developed regions (10%+) lagged behind the target values, whereas Figure 3 shows that, in the last two analysed years (the last captured year is 2005, due to missing data), the lag leveled off at about 1.4 years. In 2005, the time distance was 1.39 years.

A different picture emerges concerning attainment of the target of average 3% annual growth of GDP for the least developed regions (10%–), as the average rate lags behind or leads ahead of the target values. There was a small lag in the first two years, although as of 2003 the time distance was negative which means a lead ahead of the target value. In 2005 the distance slightly decreased compared to the year before, but the lead was still 1.25 years.

Figure 4: Time distance of the 10%– regions of the EU-27 in meeting the target of average 3% annual growth in EU GDP



Legend: (–) time lead (ahead of the line to target); time lag (behind the line to target)

Source: Eurostat; own calculations.

It is reasonable to compare the summarised results of the analysed targets (Table 3) with the results at the EU-15 level as this means that the analysis will only include those regions which were parts of the EU throughout the studied period. Considering that, at the levels of both the EU-27 and the EU-15, the most developed regions mainly include those from the group of 15, no major differences were expected in the results of the most developed regions, which was also confirmed by the time distances. A different situation can be observed with the least developed regions since it is mainly the regions from the new members (Romania, Bulgaria and Poland) that fall within the 10% of the least developed regions at the EU-27 level, whereas at the EU-15 level the bulk of such regions belong to the Mediterranean countries (Greece, Italy, Spain and France). In terms of the target of a 70% employment rate by 2010, the time distance in the 10%– regions of the EU-27 and EU-15 in

2006 was 6.0 and 4.57 years, respectively. The employment rates in the least developed regions in the new member states were very low and did not increase which only added to the lag behind the Lisbon target, whereas at the EU-15 level small growth was observed but there was still a lag behind the target rate and the distance grew over the analysed period. The data show considerable differences between the most and the least developed countries in terms of employment, which is also evidenced by the differences in time distances. Nevertheless, the trend in the least developed regions of the new member states raises concerns since, due to the declining employment rates in the analysed period, the time distances and consequently the lags behind the Lisbon target soar. The regions where the biggest lags behind the target of a 70% employment rate by 2010 were recorded at the EU-27 level include the Bulgarian, Hungarian, Romanian and Polish regions which are, as expected, at the very bottom. As far as the EU-15 is concerned, the bottom-level regions include the French overseas departments and the Greek islands, which is mostly due to their geographical remoteness, as well as the regions of southern Spain, Italy and eastern Germany. The regions where the biggest leads were recorded include those from the most developed countries such as England (London, Berkshire, Bucks and Oxfordshire), Austria (Salzburg and Vienna) and Sweden (Stockholm), whereas of the analysed regions of the new member states only Bratislava and Prague were included.

Table 3: Time distances of the most (10%+) and the least (10%–) developed regions (NUTS 2) at the levels of the EU-27 and EU-15 in meeting the Lisbon Strategy targets

	S-time distance (in years)						
Targets	2000	2001	2002	2003	2004	2005	2006
Target 1							
10%+ regions EU-27	0	-2.13	1.63	3	4	5	2.5
10%- regions EU-27	0	1	2	3	4	5	6
10%+ regions EU-15	0	-3.36	1.23	3	4	5	3.32
10%- regions EU-15	0	0.95	1.57	2.38	2.97	3.88	4.57
Target 2							
10%+ regions EU-27	0	0.33	0.65	1.29	1.44	1.39	N/A
10%- regions EU-27	0	0.13	0.13	-0.39	-1.43	-1.25	N/A
10%+ regions EU-15	0	0.44	0.86	1.56	1.79	2.03	N/A
10%- regions EU-15	0	-0.20	0.39	0.70	1.07	1.80	N/A

Legend: Target 1: 70% employment rate in the EU by 2010; Target 2: average 3% annual growth in EU GDP; N/A: not applicable

Source: Eurostat; own calculations.

The attainment of the target of average 3% annual GDP growth was examined only for the 2000-2005 period due to a lack of data. No major differences were established between the time distances of the most developed regions at the EU-27 and EU-15 levels. At both levels, a lag behind the target was identified which kept increasing over the five-year period. Given that the group of 10%+ regions includes the most developed ones, it is understandable that these achieve the targeted average 3% annual growth in GDP with difficulty as their GDP per capita is already at a very high level and this hinders high average growth rates. On the other hand, the time distance of the regions with the lowest GDP per capita, together accounting for 10% of the EU-27 population, is negative which translates as a time lead ahead of the line to target. In 2005, the lead was 1.25 years. The EU-15 level shows a different picture as the least developed regions lag behind the line to target, with the 2005 lag equaling 1.8 years. These differences are understandable considering that the 10%– regions of the EU-27 are much less developed than the least developed regions at the EU-15 level, because the least developed EU-27 regions have great growth potential and their attainment of high average annual GDP growth is easier. The fastest growing regions often include major urban areas and regional capitals (London, Luxembourg, Prague and Bratislava), whereas high growth rates were also observed in the regions with a very low GDP per capita such as, for example, the Bulgarian region of Yugozapaden, the Romanian region of Bucuresti-lefov etc. On the other hand, low growth rates and thus lags behind the targeted average 3% annual GDP growth are mainly characteristic of the regions with a high GDP per capita in France, Germany, Italy, Finland, Sweden and Denmark.

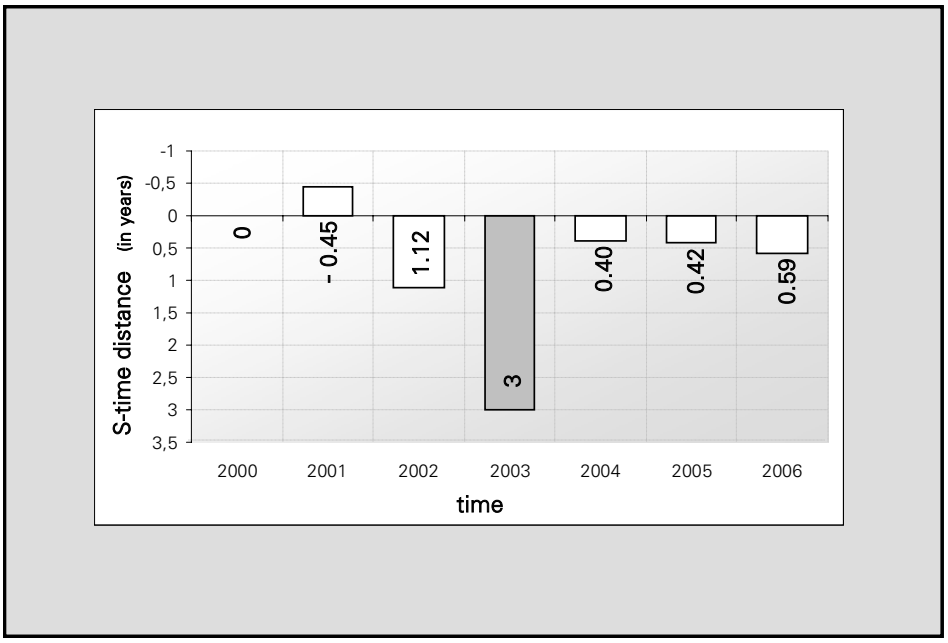
4.2.3 Lisbon target for Slovenia: a 70% employment rate by 2010

It is interesting to compare the results of the time distances at the European regional level with those of Slovenia. Yet it should be stressed that, due to a lack of employment rate data for some member states at the NUTS 2 level, the analysis for Slovenia was only made at the level of the entire state. As regards the targeted 70% employment rate by 2010, it was established that the time lags behind the target values were much smaller than the time distances in the most and the least developed regions of the EU-27 and EU-15.

In 2006 a slightly larger lag was observed compared to previous years, but it still equaled only 0.59 of a year (Figure 5) which is much better than the time distances at the level of the NUTS 2 EU regions compared to both the

most developed regions and the least developed regions where lags are expected to be much bigger.

Figure 5: Time distance of Slovenia in meeting the target of a 70% employment rate by 2010



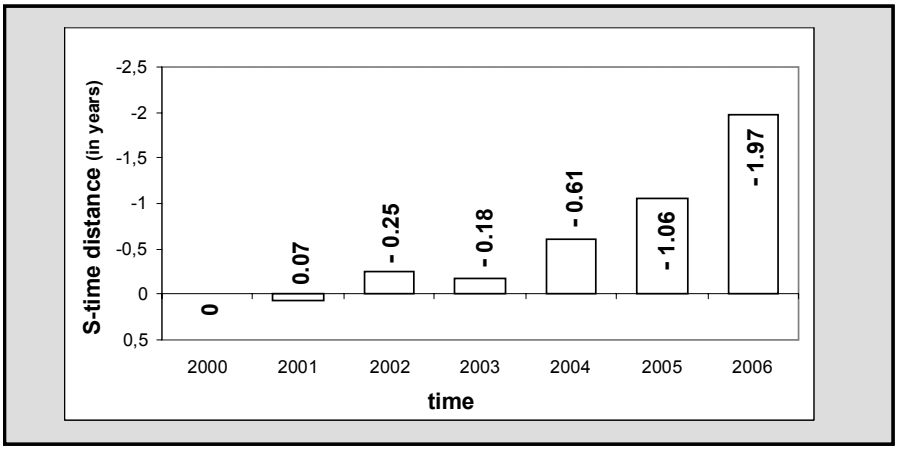
Legend: (–) time lead (ahead of the line to target); time lag (behind the line to target)

Source: Eurostat; own calculations.

4.2.4 Lisbon target for Slovenia: average 3% annual GDP growth by 2010

In terms of the targeted 3% average annual growth of GDP, Slovenia as a new, young member state achieved good results compared to the EU average as they approximate those of the least developed regions at the EU-27 level. From the very beginning, the actual values exceeded the targeted ones, as was also reflected in the time-distance results (Figure 6). In 2006, Slovenia recorded a nearly two-year (1.97) time lead which increased over the last three studied years.

Figure 6: Time distance of Slovenia in meeting the target of average 3% annual GDP growth

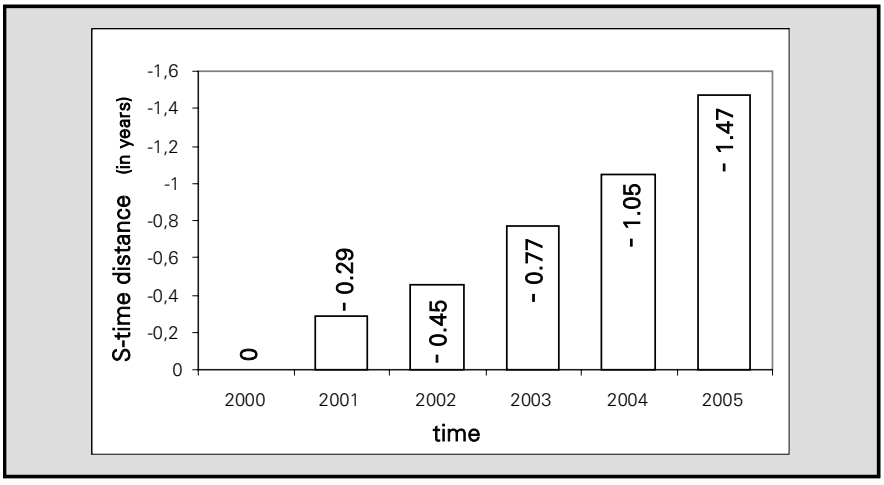


Legend: (–) time lead (ahead of the line to target); time lag (behind the line to target)

Source: Eurostat; own calculations.

A look at the attainment of this target at the NUTS 2 level is also interesting. The time distance for Western Slovenia constantly decreased throughout the studied period, which means that the time lead ahead of the line to target increased. In 2005, the lead was 1.47 years.

Figure 7: Time distance of Western Slovenia in meeting the target of average 3% annual GDP growth

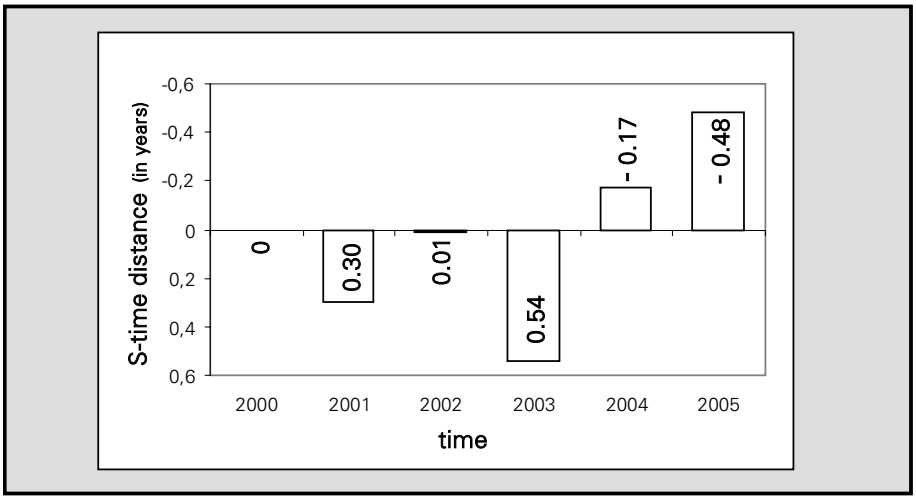


Legend: (–) time lead (ahead of the line to target); time lag (behind the line to target)

Source: Eurostat; own calculations

A slightly poorer situation was observed in the Eastern Slovenia region which in fact did record a time lead in the last two analysed years, yet a smaller one than in Western Slovenia. In view of the situation in the country, the results of the time distances for the targeted average annual growth rate of GDP at the NUTS 2 level in Slovenia were expectedly more favorable in the western area, which boasts better infrastructure, a highly qualified labor force and better development opportunities; this consequently means higher average economic growth and more favorable time distances.

Figure 8: Time distance of Eastern Slovenia in meeting the target of average 3% annual GDP growth



Legend: (–) time lead (ahead of the line to target); time lag (behind the line to target)

Source: Eurostat; own calculations

It all seems that the results of the attainment of the targets at the level of Slovenia are better. As regards attainment of the target of a 70% employment rate by 2010, the time distance results are encouraging compared to the average time distances of the most and the least developed NUTS 2 EU regions. In 2006, the lag was 0.59 years. The latest data show that in 2007 the lag turned into a lead when the actual employment rate exceeded the targeted one, which put Slovenia well on the road to achieve or even exceed the 70% employment rate target in 2010. However, the global recession, the resulting slower economic growth and the increasing unemployment rate will greatly hinder the attainment of the targets or even make it impossible. As expected, Slovenia achieved a time lead in the target of average 3% annual growth as,

being an ambitious new member, it has to achieve high growth rates to approximate the most developed countries. However, the results of time distances are more favorable for Western than Eastern Slovenia.

5. Conclusion

Along with fast-track global development, technological progress and changes in the economy and the environment, development dynamics and competitiveness play increasingly important roles in the generation of economic growth. By adopting the Lisbon Strategy in 2000, the heads of government of EU member states set framework targets which the EU was to achieve in ten years', time to thus become the most competitive, dynamic and knowledge-based economy in the world, capable of generating sustainable economic growth, new and better-quality jobs and stronger social cohesion. Through the 2005 reform, the Union redefined the main targets and priorities and also recognised the cohesion policy as one of the major Community policies for implementing the strategy for growth and jobs. Concurrently with implementation of the strategy at the EU level, Slovenia started following this implementation in 2004 when it became a full member of the European Union. Given that the development challenges lying ahead of Slovenia strongly resemble the challenges of the EU as a whole, it is understandable that the targets set in the strategic documents of Slovenia are very similar to those of the EU.

To demonstrate the size of Slovenia's and the Union's lags behind the Lisbon Strategy targets, we used an application designed by the Socio-economic Indicators Center which enables the calculation of time distances and deviations from the targets. Due to a lack of data at the regional level, the measurement of the time distance for individual indicators is impossible or very difficult. The analysis thus includes calculations of time distances for two Lisbon Strategy targets at the NUTS 2 region level, namely the target of a 70% employment rate and the target of average 3% annual GDP growth by the end of 2010.

The finding derived from calculating time distances at the level of regions is that both the most and the least developed regions, together accounting for 10% of the EU population, lag behind the targeted values in meeting the 70% employment rate in the EU and an average 3% annual growth rate of the EU's GDP. The exception is the least developed regions at the EU-27 level which

recorded a time lead in meeting the target of average annual GDP growth. However, this was expected as less developed regions must grow faster than the more developed ones to generate convergence and reduce the development gap. Based on the above, the time distance confirms the results pertaining to the effects of the cohesion policy at the level of regions where convergence between European regions and smaller discrepancies in regional development were established. At the level of Slovenia, the results on the attainment of the targets are more favorable, mainly in terms of employment, and according to the expectations Slovenia recorded a time lag in the target of average annual GDP growth, which applies to both regions at the NUTS 2 level. Nevertheless, the fact that the development gap between the Slovenian regions of Eastern and Western Slovenia does not decrease, raises concern and this means that an intensive cohesion investment in Eastern Slovenia will be required in the future.

The results of calculating the time distances thus roughly confirm the expectations that both the EU and Slovenia at the NUTS 2 level mainly lag behind the Lisbon targets, with the exception of the less developed regions in the attainment of the targeted average annual growth rate. It can be established that the Lisbon Strategy targets by 2010 will be achieved only with great difficulty as the lag is already too large – mainly in terms of employment. Moreover, attainment of the targets will further be hindered or even made impossible by the global recession and the consequent slower economic growth and higher unemployment. However, the fear of the economic crisis and resulting failure to attain the Union's targets must be substituted by even more decisive and concrete implementation of the Strategy as it is only in this way that the effects of the recession can be mitigated.

At the EU level, a stronger action plan should introduce short-term measures to ease the crisis and tailor the medium- and long-term measures of the Lisbon Strategy to help in the fight against the recession. The financial market must be stabilised, measures introduced to reduce the risk of a reoccurrence of the crisis and structural reforms pursued, mainly in areas which support innovations and promote productivity and thus help economies become more flexible and resistant. It is vital that implementation of the Strategy reinforces and that the path out of the crisis gives rise to an even more effective Strategy which can cope with the future challenges and seize the opportunities offered by globalisation.

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Izvirni znastveni članek

Zakon o davčnem postopku v okviru odprave administrativnih ovir - med cilji in prakso

UDK: 336.225(045)

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IZVLEČEK

Zakon o davčnem postopku je ključni predpis za urejanje razmerij med udeleženci postopkov pri pobiranju davkov. Zato je bil v zadnjih letih že večkrat bolj ali manj korenito spremenjen, med drugim v sklopu vladnega programa odprave administrativnih ovir (OAO). Postopki se skušajo poenostaviti, tako za zavezance kot za davčni organ. Avtorica v prispevku obravnava nekaj izbranih institutov, ki naj bi bili uvedeni s tem ciljem, denimo odmera dohodnine z informativnim izračunom, navadno vročanje, zavezujoča informacija itd. Prek statističnih podatkov o pogostnosti uporabe teh (novih) institutov v letih 2006, 2007 in 2008 avtorica preverja, ali oziroma do katere mere zastavljeni cilji sprememb regulacije davčnega postopka v praksi dosegajo cilj. Ugotavlja, da kljub nekaj izjemam večina obravnavanih institutov res pomeni realizacijo programa OAO.

Ključne besede: davčni postopek, zakon, odprava administrativnih ovir.

JEL: H20, K40, D73

1. Presek davčnega postopka in odprave administrativnih ovir

Namen prispevka je obravnavati, ali in v katerih elementih je sprejem oziroma noveliranje zakonov o davčnem postopku v sklopu programa odprave administrativnih ovir (OAO) v zadnjih nekaj letih v praksi doseglo zastavljeni cilj. V ta namen smo izbrali nekaj institutov, ki so v več gradivih (predvsem v predlogu ZDavP-2[1]

1 Dostopno na spletnih straneh Slovenija jutri, EVA: 2006-1611-0024 (gradivo za prvo obravnavo, jesen 2006). Tudi v Poročevalec Državnega zbora RS, št. 99/06 (20. 9. 2006).

in v dokumentih o Strategiji razvoja Slovenije) opredeljeni kot OAO, nato pa primerjali podatke Davčne uprave RS (DURS) o realizaciji teh institutov po statističnih podatkih.[2]

Davčni postopek je posebni upravni[3] postopek, v katerem se zagotavlja pobiranje davkov, torej obračun oziroma odmera in plačilo oziroma vračilo davka, nadzor nad davčnimi obveznostmi, izterjava upravnih denarnih obveznosti zavezanih strank ter mednarodno sodelovanje v davčnih zadevah (Jerovšek in Kovač, 2008, splošno Kopp & Ramsauer, 2003). Davčni postopek je urejen z več predpisi. Nekaj procesnih določb vsebujejo sami predpisi o obdavčitvi za posamezne vrste davkov, pretežno se uporablja Zakon o davčnem postopku (tak zakon imamo v Sloveniji od leta 1996, več Šinkovec, 2002, sedaj velja ZDavP-2[4]), podrejeno zakona, ki urejata davčno in carinsko službo, delno Zakon o inšpekcijskem nadzoru (ZIN), Zakon o splošnem upravnem postopku (ZUP[5]) in izvršilni akti navedenih predpisov (o subsidiarnosti splošno Androjna in Kerševan, 2006). Za OAO na strani zavezancev, davčnega organa in nenazadnje drugih sodelujočih subjektov v postopkih (npr. bank, delodajalcev, registrskih institucij, ki posredujejo podatke) je ključen predvsem zakon o davčnem postopku, delno pa tudi ZIN in ZUP. Slednja dva sta (bila) prav tako večkrat predmet novelacij v kontekstu OAO.[6] A vse to k OAO v davčnih

2 Večina podatkov je zbranih iz letnih poročil o delu DURS, ki so objavljeni na spletnih straneh. Pri zbiranju podatkov in njihovi obdelavi so poleg avtorice tega prispevka v okviru predmeta Raziskovalni seminar sodelovale štiri podiplomske študentke Fakultete za upravo. Na tem mestu se zahvaljujem DURS, zlasti A. Kovač Arh in P. Jenku iz Pravne službe Generalnega davčnega urada DURS za sodelovanje pri zbiranju tistih podatkov, ki (še) niso javno dostopni na internetu, pa smo jih ocenili kot relevantne za obravnavo v prispevku navedenih vprašanj.

3 Davčni organi vodijo predvsem upravne postopke, ki pa so se jim v okviru pristojnosti davčne inšpekcije leta 2005 pridružili še hitri postopki o prekršku, če kršitev davčnih predpisov pomeni pravni stan prekrška, leta 2007 pa so se na podlagi ZDavP-2 uvedle tudi davčne preiskave kot *sui generis* postopki (predupravni oziroma predprekrškovni). Upravni postopek je presečišče, ki naj zagotovi, da sta javni in zasebni interes uravnotežena, sorazmerna (o tem Komentar Ustave RS, 2002). Če je narava pravice, obveznosti ali pravne koristi opredeljena kot upravna zadeva, mora upravni postopek zagotoviti, da javni interes ni zaščiten čezmerno in hkrati da zasebni interes ni nadrejen javnemu (načelo varstva pravic strank in javne koristi, 7. člen ZUP).

4 Objavljen v Ur. l. RS št. 117/06, 24/08-ZDDKIS, 125/08-ZDavP-2A, 20/09-ZDoh-2D.

5 Ur. l. RS, št. 80/99, 70/00-ZUP-A, 52/02-ZUP-B, 73/04-ZUP-C, 119/05-ZUP-D, 24/06-UPB2, 105/06-ZUS-1, 126/07-ZUP-E, 65/08-ZUP-F.

6 Npr. izmenjava podatkov kot breme organov, 66. in 139. člen ZUP (Androjna in Kerševan, 2006, str. 303), odprava strokovnega izpita iz upravnega postopka, 31. člen ZUP, preventivni ukrep opozorila, 28. člen ZIN (Pirnat et al., 2004), sprejem vlog izven davčnih uradov in sobotne uradne ure na davčnih uradih (po Uredbi o upravnem poslovanju, gl. uvodna pojasnila v Kovač et al., 2008). Sobotne uradne ure so bile uvedene leta 2007, pri čemer je davčne urade v tem času obiskalo le okoli 0,9 stranke na 1 uslužbenca v letu 2007, a kljub enakim podatkom v letu 2008 obvezne uradne ure niso bile odpravljene vse do leta 2009.

postopkih pripomore zaradi posebnosti in relativno celostne specifične ureditve davčnega postopka (Šinkovec, 2002) prejkone minorno, zato se v nadaljevanju osredotočamo na spreminjanje zakonov o davčnem postopku.

Program OAO se v slovenski javni upravi izvaja že več let (predvsem od leta 2001, ko je bila ustanovljena vladna komisija za OAO, o razvoju programa in nosilcih Josevski, 2008). Cilji in aktivnosti programa se pogosto kažejo tudi v normativnih ukrepih. Pri tem Slovenija praviloma sledi dobrim praksam iz tujine (npr. samoprijava in zavezujoča informacija, več v predlogu ZDavP-2, 2006, in Jerovšek et al., 2008). Na področju davčnega prava se izvaja spremembe, ki so materialnopravne (npr. uvajanje novih olajšav, odprava določenih davkov), kot predvsem procesne, saj se lahko olajša zlasti način uveljavljanja pravic, pravnih koristi in obveznosti zavezancev za davek glede poenostavitev za vse udeležence postopkov (prim. Jerovšek, 2005, Kovač, 2006). Na ta način se med drugim doseže večjo stopnjo prilagodljivosti zavezancev kot nosilcev gospodarske dejavnosti razmeram na trgu, torej njihovo večjo konkurenčno sposobnost. Med novostmi poenostavitve postopkov, kar je bil eden ključnih ciljev OAO pri pripravi sprememb zakonov o davčnem postopku v letih 2004-2009, so nekatere določbe zakonov, ki so očitno zavezancem v korist; hkrati je delo ponekod olajšano tudi davčnim organom, čeprav morda zavezance bremeni (Jerovšek, 2005a, Kovač, 2007). Cilj OAO je v čim večji meri razbremeniti davčni organ in fizične oziroma pravne osebe kot zavezance z administrativnimi opravili, ki povzročajo izgubo časa in dodatne stroške, brez dodane vrednosti, saj gre za opravila, ki se podvajajo ali so nesmiselna za cilj davčnega postopka, tj. pobiranje davkov. Temelj davčne reforme kot celovitejšega sklopa ukrepov znotraj in prek OAO, ki je bila zastavljena predvsem v letih 2006 in 2007, je tako spodbujanje konkurenčnosti nacionalnega gospodarstva ter enovitost sistema v razmerju do zavezancev in družbe kot celote. Davčna reforma skuša udejaniti cilje vladnih reform v smislu spodbujanja podjetništva in konkurenčnosti Slovenije, kot izhajajo iz Lizbonske strategije, Strategije razvoja Slovenije in Programa ukrepov Vlade Republike Slovenije za spodbujanje podjetništva in konkurenčnosti za obdobje 2007-2013 (Vlada, 2008). Zakon o davčnem postopku je bil zato leta 1996 sploh oblikovan in sprejet[7] (prej smo imeli v Sloveniji le nekaj procesnih določb v materialnih zakonih in takojšnjo rabo ZUP) in nadalje večkrat bolj ali manj korenito spreminjan. Tako beležimo več zakonov oziroma novel, ki so podlage za opredelitev več obdobij regulacije davčnega postopka v Sloveniji, kot izhaja iz tabele 1.

7 Ur. l. RS, št. 18/96, 78/96 Skl.US: U-I-376/96, 87/97, 35/98 Odl.US: U-I-376/96-9, 82/98, 91/98, 1/99-ZNIDC, 108/99, 37/01 Odl.US: U-I-18/98-20, 97/01, 31/03 Odl.US: U-I-72/00-15, 33/03 Skl.US: U-I-108/99-14, 105/03 Odl.US: U-I-252/00-12, 16/04 Odl.US: U-I-233/01-14, 42/04 Odl.US: U-I-329/02-7.

Tabela 1: Obdobja in (novele) zakoni(ov) o davčnem postopku

št.	Obdobje	Pravna podlaga	Čas veljave oziroma uporabe[8]
1	Ureditev brez samostojnega zakona o davčnem postopku	Področni zakoni o obdavčitvi in ZUP	Do 31. 12. 1996
2	Ureditev s (prvim slovenskim) samostojnim zakonom o davčnem postopku[9]	ZDavP	1. 1. 1997 – maj 2004/ 1. 1. 2005
3	Ureditev po polnopravni včlanitvi RS v EU – nov (drugi slovenski) zakon	ZDavP-1[10]	1. 1. 2005 – 31. 12. 2006 (del že od maja 2004)
4	Ureditev po ukrepih davčne reforme – novelacija	ZDavP-1B	1. 1. 2006 – 31. 12. 2006
5	Celovita ureditev davčnega postopka v okviru davčne reforme – novi (tretji slovenski) zakon	ZDavP-2	Velja od novembra 2006, uporablja se od 1. 1. 2007 –
6	Noveliranje v okviru gospodarske krize	ZDavP-2A ZDoh-2D	31. 12. 2008 Velja od 14. 3. 2009, uporablja se od januarja 2009.[11]

V nadaljevanju obravnavamo izbrane institute davčnega postopka, ki naj bi bili del programa OAO, po absolutnih podatkih na letno osnovo in trendih uporabe zlasti za leta:

8 Po ZDavP-2 se neveljavni zakoni še uporabljajo, 418. člen ZDavP-2. ZDavP-2 se ne uporablja v zadevah, glede katerih je bilo ob začetku uporabe ZDavP-2, tj. 1. 1. 2007, vloženo redno ali izredno pravno sredstvo v upravnem postopku oziroma upravni spor, tedaj se zadeva konča po ZDavP-1 (UPB2); preko tega pa lahko še celo po prejšnjih zakonih glede na njihove prehodne in končne določbe, če se bo končal upravni postopek oziroma upravni spor s spremembo ali razveljavitvijo davčne odločbe. Toda zaradi enakega varstva pravic (22. člen Ustave, gl. Šturm et al., 2002) se v obnovljenem postopku glede materialnih predpisov uporabi predpis za tisto davčno obdobje, na katero se davčna odločba nanaša (razen če ima ZDavP-2 za zavezanca ugodnejšo materialno določbo, npr. nastop zastaranja, po Jerovšek et al., 2008).

9 Pri tem kaže opozoriti, da je davčni postopek edini med približno 400-500 posebnimi upravnimi postopki, kolikor jih pozna slovenski pravni red, ki je determiniran s posebnim procesnim zakonom, kajti drugi postopki so procesno delno urejeni s specialnimi določbami postopka v materialnih zakonih in z ZUP (Androjna in Kerševan, 2006, Jerovšek in Kovač, 2008).

10 Ur. l. RS, št. 54/04, 57/04-ZDS-1, 109/04 Odl. US: U-I-356/02-14, 128/04 Odl. US U-I-166/03-12, 139/04, 56/05 Skl. US U-I-159/05-4, 96/05-ZRTVS-1, 100/05 Odl. US U-I-159/05-14, 109/05, 21/06 Odl. US: U-I-32/04-10, 21/06-UPB2.

11 Po ZDoh-2D velja, da lahko zavezanec ne glede na 54. člen ZDavP-2 že za leto 2008 uveljavlja znižanje določene davčne osnove s predložitvijo popravka obračuna najpozneje v 30 dneh od uveljavitve novele (torej zakon učinkuje v korist zavezancev glede obdobja in postopkovno za nazaj).

– 2006 uveljavitev ZDavP-1B,
– 2007 in 2008 – uporaba ZDavP-2, ki je (večinoma) prevzel institute ZDavP-1B glede OAO in dodal nove.

2. Pregled rabe izbranih institutov ZDavP-2 v praksi

2.1 Izbor obravnavanih institutov

V zgoraj opisanem smislu v tem prispevku preučujemo le nekatere institute zakonov, pri čemer je treba poudariti, da bi celovita analiza regulacije davčnega postopka in OAO morala vključevati različna pravila, čeprav na prvi pogled ne stremijo k OAO, saj celota norm skupaj večplastno učinkuje na končni izid ne/realizacije reformnih ciljev (Pirnat et al., 2004). Tako med institute ZDavP in hkrati program OAO ne uvrščamo npr. temeljnih načel davčnega postopka, čeprav je nekaj celo po evropski sodni praksi takih (npr. načelo sorazmernosti, gl. Šinkovec, 2002, Kovač, 2006a), ki dokaj neposredno pripomorejo k uveljavitvi ciljev OAO v posamičnih postopkih (nekatera načela so neposredno podlaga za določene institute, npr. načelo gotovosti za zavezujočo informacijo).

OAO regulacija davčnega postopka sploh od leta 2006 dalje zelo upošteva, zlasti ZDavP-2 je nedvomno zakon, ki vsebuje večje število norm, katerih cilj je OAO oziroma poenostavitve (po Predlogu ZDavP-2, 2006, str. 2-14). Proces OAO v ZDavP se sicer uresničuje korakoma; postopno se z novimi zakoni in novelami zakona uvaja čedalje več institutov OAO (gl. tabelo 2). Predstavljeni podatki so tako relevantni kot študija primerov. Zaradi izrecnih navedb predlagatelja zakona[12] o OAO in glede na dostopne podatke DURS smo v ožji izbor vključili sedem institutov (vrstni red po naraščajoči številki člena ZDavP-2):

12 Po Predlogu ZDavP-2, 2006, denimo str. 2 in 14 za odmero dohodnine, str. 9 in 185 za odlog plačila davka, str. 182 glede navadnega vročanja. Obširneje v Jerovšek et al., 2008, pri komentarjih k posameznim določbam, glede predizpolnjene napovedi prim. Klun, 2009 (npr. prva država s predizpolnjeno napovedjo je bila Danska leta 1990).

Tabela 2: Pregled obravnavanih institutov davčnega postopka v sklopu OAO

št.	Institut	Pravne podlage	Čas veljave (2006-2008)
1	Zavezujoča informacija	14. člen ZDavP-2	2007 in 2008
2	Samoprijava	390.a, 390.b člen ZDavP-1 55. in 63., 396., 399. idr. Členi ZDavP-2	2006 2007 in 2008
3	(Navadno) Vročanje	85. člen ZDavP-2	2007 in 2008
4	Odpis, odlog in obročno plačilo davka	36. in 37. člen ZDavP-1 101. in 102. člen ZDavP-2 (novo pa 103. (posebni primeri) in 105. člen (odpis po višini do 1 EUR))	2006 2007 in 2008
5	Davčna preiskava	131. člen ZDavP-2	2007 in 2008
6	Obvestilo o neplačanem davku v izvršbi	128. člen ZDavP-1 (odpravljeno z ZDavP-2)	2006
7	Informativni izračun pri odmeri dohodnine	421. člen ZDavP-2 (predizpolnjena napoved za dohodnino za leto 2006, torej postopki v letu 2007) 267. in nadaljnji členi ZDavP-2 (predhodni informativni izračun)	2007 2008

Pri teh institutih postavljamo hipotezo, da se uporabljajo različno pogosto, vendar pa naj bi trend rabe po statističnih podatkih naraščal, če naj bi bil cilj OAO v praksi dosežen. Pri tem je ponekod upoštevan status zavezancev za davek, v odvisnosti, ali gre za gospodarske subjekte (predvsem pravne osebe in fizične osebe, ki so samostojni nosilci dejavnost), saj je program OAO (na davčnem področju) prednostno usmerjen k dejavnemu poslovanju tistih zavezancev, ki so ključni za delovanje trga, torej gospodarstva.

Sicer ima ZDavP-2 (in že prej ZDavP-1) še vrsto drugih določb v zvezi z OAO. Ključnega pomena je primarnost obračuna kot načina izpolnitve davčne obveznosti (več Jerovšek in Kovač, 2008), Dalje je npr. pomembna določba 50. člena ZDavP-2 o bagatelnem znesku pod 10 evri, ki se sploh ne odmeri, postopek se tu zaključi z

uradnim zaznamkom, saj bi znesek davka ne dosegel povprečnine stroškov vodenja enostavnega davčnega postopka (seveda pa se obveznost prenese v naslednjo obračunsko obdobje). Podobno se ne vrne preveč plačani davek brez zahtevka stranke po 97. členu ZDavP-2 ali uvede postopek izterjave po 149. členu ZDavP-2, če gre za zneske pod 10 EUR. DURS po zakonu ne izterjuje davčnih obveznosti za RTV oziroma članarine zbornicam. Določene so dodatne oblike zavarovanj, jasno je normirano razmerje med oddajo obračuna ali napovedi v roku ali po roku, v postopku se praviloma uporablja kot dokazilo le listine, dokazno breme je pri cenitvi davčne osnove obrnjeno, stroški se obračunavajo po posebej opredeljenem načelu uspeha in sorazmerno, odločba se lahko izda le v obliki štampiljke, kontrola obračunov se lahko izvede ob ugotovljenih odstopanjih z direktnim plačilom razlike, vzpostavljene so povezave med postopki (npr. kontrolni in inšpekcijski, vpliv ugotovitev inšpekcije na obnove postopkov, prim. Šinkovec, 2002), praviloma je omejeno trajanje inšpekcije na 6 mesecev, rok za pritožbo zoper inšpekcijske odločbe je podaljšan na 30 dni od vročitve, dodan je samostojni dolgovni seznam kot podlaga, da se uvede le en izvršilni postopek ob več izvršilnih naslovih, institucionalizirano je mednarodno sodelovanje v davčnih zadevah itd. (več v Jerovšek et al., 2008).

2.2 Zavezujoča informacija

Zavezujočo informacijo izda zavezancu glede bodoče davčne bremenitve glavni davčni oziroma carinski urad, da se zavezanec laže odloči, ali bo predvideni davek kot del stroškov pomenil preveliko breme za posel v primerjavi s pričakovanim dobičkom in torej vanj ne bo šel (Jerovšek et al., 2008). Zavezujoča informacija je bila uvedena 2007 kot izraz načela gotovosti, čeprav je postopkovno zapisana tako, da s kopico rezervnih klavzul močno omeji predvideni pozitivni učinek instituta (npr. kar 6 mesečni rok za izdajo, več Kovač, 2006). Institut naj bi bil aktualen predvsem za pravne osebe, zlasti investicije tujcev glede na vidik pravne varnosti na področju davčne zakonodaje (Predlog ZDavP-2, 2006, str. 168). V praksi se po izkušnjah DURS kaže nerazumevanje namena tega instituta, saj zavezanci neredko na podlagi 14. člena ZDavP-2 dejansko uveljavljajo informacije o že izvedenih poslih oziroma dogodkih ali pa zahtevajo splošno pojasnilo predpisa. Zavezujočo informacijo je namreč treba razumeti kot abstrakten (za še ne nastale pravne položaje) in hkrati posamičen akt (za določenega naslovnika oziroma predmet obdavčitve).

Tabela 3: Podatki o zavezujočih informacijah 2007 in 2008

	2007	2008
Število prejetih zahtevkov za izdajo zavezujoče informacije	14	7
Število izdanih zavezujočih informacij	2*	3*

* Od tega se je v obeh letih ena informacija nanašala na davek na dodano vrednost, preostale pa na davek od dohodka pravnih oseb.

Leta 2007 so d.d. in d.o.o od 14 zahtev podale 11 zahtev., leta 2008 je bilo teh 6 od 7. V obeh letih so d.o.o. vložile 57 % vseh zahtev. Zavezujoča informacija v Sloveniji (še) ni zaživela - še zahteve, ki so vložene, niso niti procesno ustrezne, kronološki trend pogostnosti vlog je negativen. Glede na vrste davkov in status prosilcev pa drži, da so zavezujoče informacije uporabne za večje gospodarske subjekte oziroma posle, pri čemer nekateri razumejo delo davčnega organa napačno kot davčno svetovanje (verjetno zato več zahtev d.o.o. kot denimo d.d.). Glede na podatke o številu zavezancev in poslovnimi subjekti po Poslovnem registru (približno 84.000 pravnih in 78.000 fizičnih oseb) lahko zaključimo, da zavezujoča informacija ne dosega zastavljenih ciljev. Glede na to, da je npr. na Nizozemskem poslovanje prek zavezujočih informacij stvar organizacije davčnega organa in ne *materia legis*, lahko z veliko verjetnostjo sklepamo, da je naš zakon preveč zbirokratiziran.

2.3 Samoprijava

V letu 2006 je bil z ZDavP-1B uveden institut samoprijave, vsebinsko in nomotehnično (z ločitvijo na procesni in kazenski del ter določitvijo sosledja za vrnitvijo v prejšnje stanje) izboljšan z ZDavP-2. Samoprijava je dopustna za pravne in fizične osebe po izteku rokov za oddajo obračuna (in odtegljaja) in napovedi za odmero davka, pri čemer zavezanec dolgovani davek takoj tudi plača (Predlog ZDavP-2, 2006, str. 176). Ta institut naj bi združil koristi za javni interes (davek, ki sicer verjetno ne bi bil pobran) in zavezanca, ki sicer plača davek, zamudne in kazenske obresti, a je prekrškovno ekskulpiran, če poda prijavo, preden davčni organ odkrije prenizko (ali sploh ne) pobrano obveznost (prim. Jerovšek, 2005a). Samoprijava je namreč mogoča do izdaje odmerne odločbe, začetka inšpekcijskega (upravnega)[13] oziroma prekrškovnega ali ka-

13 Samoprijava je po ZDavP-2 dopustna do vročitve sklepa o začetku inšpekcijskega nadzora. Prej je bil sporen trenutek začetka inšpekcijskega postopka, saj je lahko zavezanec vložil samoprijavo v letu 2006 po prejemu obvestila o nadzoru, kar je smiselnost nadzora izničilo

zenskega postopka zoper zavezanca. Samoprijava odraža operacionalizacijo načel materialne resnice in izpolnjevanja davčnih obveznosti (s kombinacijo sankcij po Silvani in Baer, 1997, str. 11, 25), čeprav po mnenju nekaterih posega prek kazenske odgovornosti v ustavni privilegij zoper samoobtožbo, zaradi česar bi morali ZDavP-2 jasneje urediti (Ferlinc, 2009).

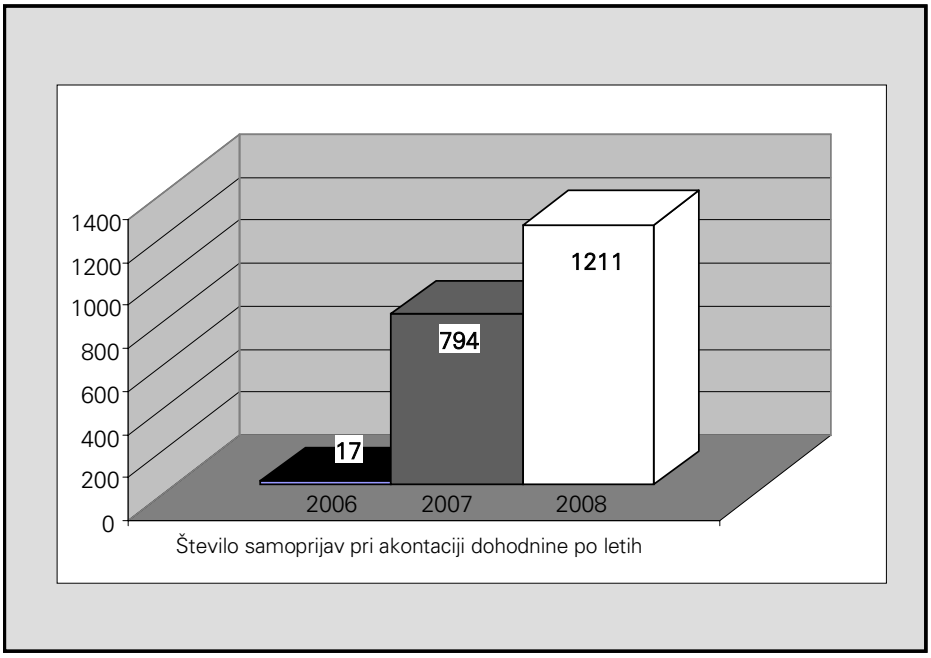
Tabela 4: število in vrednost samoprijav 2006-2008 po vrstah davkov

	2006		2007		2008	
Vrsta davka	Število samoprijav	Vsota dodatno pobranega davka v EUR	Število samoprijav (in trend glede na prejšnje leto)	Vsota dodatno pobranega davka v EUR	Število samoprijav (in trend glede na prejšnje leto)	Vsota dodatno pobranega davka v EUR
Davki in prispevki od dohodkov fizičnih oseb	10	101,202	↑ 368	1,295,468.38	↑ 426	870,372.06
Dohodnina	425	165,957	↑ 3,188	364,478.24	↓ 1,089	163,962.85
Akontacija dohodnine	17	25,914	↑ 794	124,637.00	↑ 1,211	176,689.31
Davek od dohodkov pravnih oseb	31	2,084,645	↑ 161	3,529,711,72	↓ 122	5,495,619.59
DDV	8	381,956	↑ 103	2,094,735.79	↑ 309	1,974,054.74
Druge dajatve	0	0	↑ 3,948	598,654.95	↓ 656	400,183.74
Davek iz kapitala	0	0	0	0.00	↑ 5,239	918,253.60
Izvajanje mednarodnih pogodb	0	0	0	0.00	↑ 1	488.45
SKUPAJ	491	2,759,674	8,562	8,007,686.44	9,053	9,999,624.34

(prim. Jerovšek et al., 2008). V sklopu temeljnih načel ZDavP-2 davčni uradi zavezance lahko (ni pa obvezno) telefonsko oziroma z navadnim e-sporočilom obveščajo o predvidenih nadzorih, s čimer (zakonito) pospešijo prijave in zmanjšujejo potrebne inšpekcije.

Po številu samoprijav prevladuje v letu 2006 dohodnina, leta 2007 druge dajatve (od tega predvsem članarine (3.948), nadalje davek na promet nepremičnin, davek na dediščine itd.), leta 2008 davek iz kapitala (predvsem iz naslova obresti (4.022 od 5.239)), na novo mednarodne izterjave, pri čemer je znesek pričakovano nesorazmeren s številom prijav, saj so določeni davki po naravi izdatnejši. Tako je največ donosa na podlagi samoprijav v vseh letih pripisati davku od dohodka pravnih oseb s povečanjem z dobrih 2 mio EUR leta 2006 na že skoraj 5,5 mio EUR dve leti kasneje. Tako število samoprijav kot zneski pobranih dajatev iz tega naslova se v letih 2006-2008 po vseh kazalnikih nedvomno povečujejo, spreminja pa se struktura le-teh. Zavezanci očitno potrebujejo čas za posvojitev zakonskih novosti, kar izkazuje denimo izreden porast števila samoprijav iz leta 2006 (nekaj manj kot 500) v 2007 (že kar prek 8.500), podobno npr. ugotovimo s parcialnim področjem akontacij dohodnin pri s.p. (v letih 2006-2008 s 17 na 794 in 1.211):

Graf 1: Število samoprijav 2006-2008 pri akontaciji dohodnine



Po drugi strani pri določenih davkih število samoprijav upada, kar je pri dohodnini (za skoraj trikrat iz leta 2007 v 2008) zagotovo kombiniran rezultat uvedbe predhodne kontrole in informativnega izračuna kot predizpolnjene napovedi, podobno velja za druge dajatve. Glede na nove vire je očitno, da je v prihodnje

pričakovati še nadaljnjo stabilizacijo števila in strukture samoprijav po vrstah davkov.

Sešteto so zavezanci zaradi samoprijav plačali v treh letih skoraj 21 mio EUR. Tej vsoti bi bilo treba za izračun koristi instituta prišteti najmanj še stroške neuvedenih inšpekcijskih pregledov, zato kaže institut kot tak ohraniti, kvečjemu minorno nomotehnično izboljšati. Nemogoče pa je izmeriti pozitiven učinek stopnje večanja davčne kulture, ki se nedvomno prek prostovoljnega izpolnjevanja obveznosti občutno zvišuje.

2.4 Navadno vročanje

ZDavP-2 je v letu 2007 uvedel za razliko od 87. člena ZUP le navadno vročanje (glede na ZUP zaradi fikcije vročitve nekoliko prilagojeno) za večino pisanj v davčnem postopku z deklariranim ciljem prihranka stroškov davčnega organa za osebno vročanje. Kljub mogočim zadržkom o neustavnosti ureditve ZDavP-2 v razmerju do ZUP (o tem Kovač, 2008) so podatki za DURS tako vspodbudni, da potekajo v letu 2009 priprave na še večji obseg veljave določb o navadnem vročanju kot sedaj.[14] Tako izračun datuma plačila v grobem pomeni seštevek kronoloških dogodkov: odprava izvršilnega naslova, 20 dni za nastop fikcije vročitve in še 30 dni od vročitve za izvršljivost, torej plačilo davka (splošni paricijski rok). Povezano je treba upoštevati vrstni red poplačil (po vrstnem redu dospelosti za davke, navedene na plačilnem instrumentu). Fikcija vročitve je sicer pomembna enako kot za rok plačila in izvršbo za uveljavljanje pravnih sredstev, zato je DURS za bolj nesporen izračun datuma valute uvedla oznako datuma odprave na ovojnici (pri centralno tiskanih odločbah in odpremi v tranšah natisne datum kar zunanji izvajalec).

Da ugotovimo prihranek iz naslova spremembe osebnega v navadno vročanje, smo primerjali število izdanih odločb za dohodnino (prek 1,1 mio letno), nadomestilo za uporabo stavbnega zemljišča (cca 0,7 mio letno), davek od premoženja, davek iz premoženja, obresti, in kapital v letu 2006 pred uporabo ZDavP-2 in v letih 2007 in 2008. Število odločb je skoraj enako (dobre 2

14 Zakon določa: »Vse odločbe in sklepi ter drugi dokumenti, od katerih vročitve začne teči rok, razen odločb, sklepov in drugih dokumentov, ki se izdajo v postopku davčnega nadzora in v postopku davčne izvršbe, se vročajo z navadno vročitvijo. Šteje se, da je vročitev opravljena 20. dan od dneva odprave ...« Z ZDavP-2A je bila konec leta 2008 navadna vročitev nekoliko omejena, saj je bilo uvedeno obvezno osebno vročanje tudi za odločbe o obročnem plačilu davka, ne le za akte v nadzornih in izvršilnih postopkih.

mio letno), razlika v stroških za vročanje pa na tej osnovi kar cca 2-3 mio EUR na letni osnovi:

Tabela 5: Stroški vročanja in prihranki zaradi navadnega vročanja 2006-2008

leto	Število odpremljenih odločb za dohodnino, NUSZ	Cena navadne vročitve po pisanju(po ceniku pošte)	Skupni stroški vročanja ob navadni vročitvi	Cena osebne vročitve (po ceniku pošte)	Skupni stroški vročanja ob osebni vročitvi	Prihranek DURS zaradi razlike med stroški za osebno in navadno vročanje
2006	2,124,866	0.24	509,967*	1.73	3,676,018	3,166,051*
2007	2,012,670	0.25	503,167	1.78	3,582,552*	3,079,385
2008	2,013,327	0.26	523,465	1.83	3,684,388*	3,160,923

*Izračun, kako bi bilo, če bi bila normativna ureditev nasprotna.

Te prihranke nekoliko zmanjšuje strošek posredovanja aktov, ki jih je vendar treba vročiti osebno po 85. členu ZDavP-2, ker zavezanec v roku za plačilo po fiktivni vročitvi obveznosti ni poravnal (ali pisanja ni prejel ali pa si je zavestno tako podaljšal čas izpolnitve obveznosti brez sankcije). Podatki, koliko je tovrstnih zadev, se ne spremljajo, ocena po izkušnjah v praksi se giblje med 5 do 10 % zadev. OECD ugotavlja, da je zavezancev, ki so pri neizpolnjevanju obveznosti benevoletni, ok. 70 % (na Danskem 67 %, po Klun, 2009), torej je nedvoumno, da je navedeni delež prihranka opazno manjši. O tem neposredno pričajo predvsem pristojni v izvršilnih zadevah, saj se je obseg izterjav izredno

povečal v letu 2009 v primerjavi s predhodnimi leti, ko se izvršilni naslovi še niso vročali navadno (empirični podatki sicer še niso zbrani za letno osnovo). Kakorkoli, pri 2.013.327 izdanih odločbah za leto 2008 bi tako stroški vročanja znesli za navadno vročitev 523.465 EUR, dodatno pa še 1.105.317 EUR, torej skupaj (le?) 2.055.606 EUR. Kot vidimo, je vsota prihranka še vedno bistvena, sploh ker se s tem denarjem ne zajeda pobrani davek za stroške režije, v primerjavi s stroški izvršilnih postopkov pa vendar prejkone primerjava koristi in stroškov pokaže negativen izid.

2.5 Odpis, odlog oziroma obročno plačilo davka

ZDavP-1B je v primerjavi z osnovnim besedilom zakona podaljšal obdobje odložitve oziroma obročnega plačevanja davka z enega na dve leti, pri čemer zakon dopušča diskrecijsko odpis, odlog ali obroke za fizične osebe zaradi ogroženosti preživljanja zavezanca in njegovih vzdrževanih družinskih članov in po drugi strani odlog oziroma obroke za pravne osebe oziroma s.p. ter druge fizične osebe kot nosilce dejavnosti iz razloga večje gospodarske škode, ki bi nastala zaradi plačila v roku (Jerovšek et al., 2008). Odlog oziroma obroki pa ne morejo biti odobreni za akontacije, odtegljaj in določene davke, kar je sicer tehnično sporno, saj se mešata merili določitve izjem po vrstah davkov in načinih izpolnitve obveznosti (tako Kovač, 2006, podobno Hren, 2009, drugače Predlog ZDavP-2, 2006, str. 185). ZDavP-2 je nadalje prinesel pomembnejše novosti v smislu OAO, kot je poseben primer odloga oziroma obročnega plačila, če zavezanec predloži instrument zavarovanja oziroma dovoli vknjižbo zastavne pravice v registru, vendar zaradi odsotnosti meril le do 12 mesecev (103. člen). Nadalje bo fizična oseba, ki ne opravlja dejavnosti, lahko brez presojanja pogojev in meril po 101. členu ZDavP-2 zaprosila za tri mesečne obroke brez zavarovanja. Za čas odloga oziroma obročnega plačila sicer tečejo obresti, a le po medbančni obrestni meri za ročnost enega leta s ciljem ohranjanja realne vrednosti dolga (Jerovšek in Kovač, 2008). Vse opisane spremembe naj bi prispevale k večjemu izpolnjevanju obveznosti v skladu z načelom zakonitosti, kar naj bi vodilo tudi v manj izvršilnih postopkov in predvsem manj negativnih posledic za življenje in poslovanje zavezancev. Podatki DURS za leta 2004-2008 te domneve ne potrjujejo, saj kljub ugodnejšim pogojem s spremembo zakonodaje v obravnavanem obdobju iz posredovanih podatkov ni zaznati posebnega povečanja vlog zavezancev za odpis.

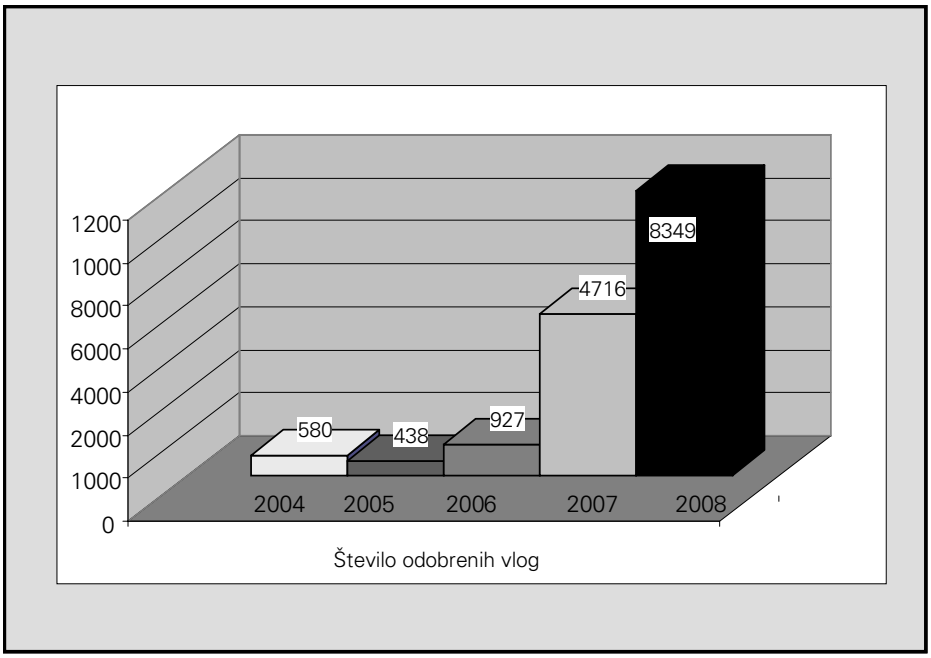
Tabela 6: Število odpisov, odlogov in obročnih plačil 2004-2008

	2004	2005	2006	2007	2008
Število pozitivno rešenih zahtev	Število	Število/ trend in indeks na leto poprej	Število/ trend in indeks na leto poprej	Število/ trend in indeks na leto poprej	Število/ trend in indeks na leto poprej
Odpis	3,065	3,282 ↑ 1.07	3,274 → 0.998	1.816 ↓ 0.55	1,710 ↓ 0.94
Odlog	288	231 ↓ 0.80	948 ↑ 4.10	819 ↓ 0.86	494* ↓ 0.60
Obročno plačilo	580	438 ↓ 0.76	927 ↑ 2.12	4,716 ↑ 5.09 (4,005 dohodnina)	8,349 ↑ 1.77 (7,314 dohodnina)

*Pozitivno rešenih 494 zahtev izmed skupaj 1181 vloženih. To pomeni cca 10 mio EUR (prim. z 1.120 mio EUR plačanega davka od dohodka v letu 2007, po Hren, 2009).

Iz tabele je razvidno, da je institut obročnega plačila med zadevnimi instituti najbolj aktualen, sploh v letih 2007 in 2008, kar sovpada z gospodarsko krizo, (prim. graf 2), medtem ko odpis in odlog opazno upadata (z izrednim porastom odlogov in obročnih plačil leta 2006, ki jih kaže pripisati daljšemu obdobju po ZDavP-1B). Po vrstah davkov je v celotnem obdobju najbolj prisotna dohodnina (tudi socialni prispevki, davek od prometa proizvodov in storitev ter NUSZ). Dohodnina prevladuje predvsem pri odpisu (pravnim osebam ta praviloma ni dopusten) in pri obročnem plačilu v zadnjih dveh letih od uporabe ZDavP-2.

Graf 2: Število odobrenih zahtev za obročno plačilo davka 2004-2008

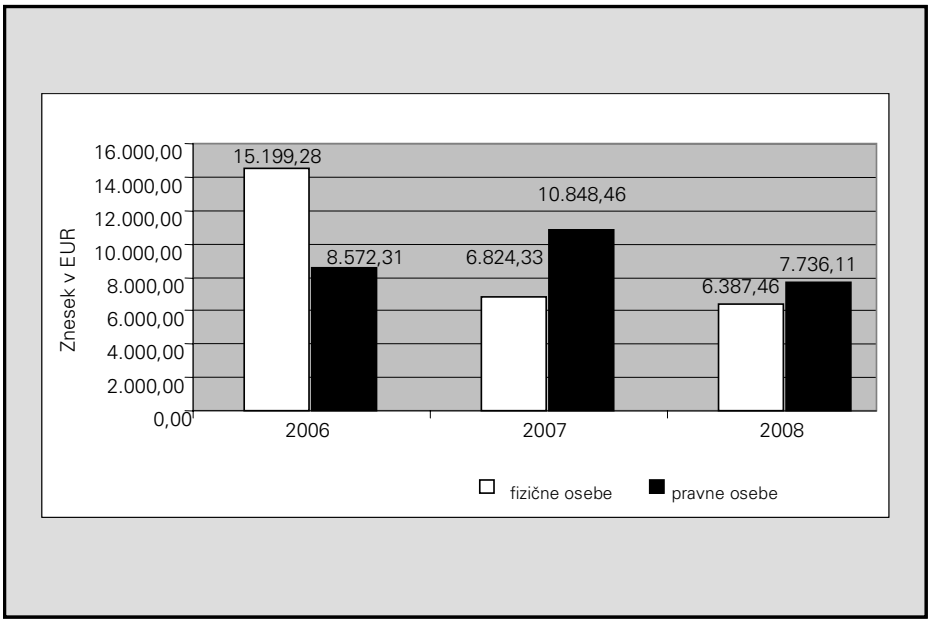


Porast obročnega plačevanja lahko brez dvoma pripišemo drugemu odstavku 103. člena ZDavP-2, ki se je izkazal kot izredno aktualen v obstoječi družbeni situaciji. To velja za vse obravnavane institute v luči iskanja skupnih interesov zavezancev (socialna zmožnost ob davčni obveznosti) in davčnega organa (prednost prostovoljne izpolnitve, da ni potreb po prisilnem nadzoru in izterjavi). Skupaj je bilo v letu 2008 namreč odpisanih za cca 4,2 mio EUR davkov, odloženih za cca 10 mio EUR in določenih za obročno plačilo za kar približno 31,5 mio EUR (leto prej gre za cca 7 mio (odpis), 6 mio (odlog) in 17 mio (obroki) EUR). Ugotovimo lahko, da je zakonodajalec podal roko zavezancem (žal) glede na globalno krizo celo predčasno. To potrjujejo podatki za leto 2009 (skoraj 50 % porast, v le prvih dveh mesecih prejetih 1300 zahtev za obročno plačevanje v primerjavi s cca 850 isto obdobje lani, po Hren, 2009). Ob pričakovani omilitvi krize bo institut še vedno potreben, zato naj se ohrani, morda celo poenostavi način uveljavljanja, če ne samih pogojev po 101. in 102. členu ZDavP-2.

Po uradni dolžnosti se meseca februarja od leta 2007 nadalje odpiše davčna obveznost po posamezni vrsti davka, ki konec koledarskega leta znaša manj kot 1 EUR (105. člen ZDavP-2), saj tako vrednost davka ne dosega niti 5 %

povprečnih stroškov postopka izvršbe (prim. Jerovšek, 2005). Institut odpisa oziroma saldacije se kaže kot pozitiven tudi za preglednost davčnih evidenc, sploh upoštevaje objektivni element teže dolga (upoštevan v ZDavP-2 npr. tudi pri določitvi zavezancev za nadzor, prim. Jerovšek et al., 2008). Slednje je očitno predvsem ob naslednjih podatkih v letih od 2006 do 2008:.

Graf 3: Odpis davka po višini neplačanega dolga glede na status zavezancev 2006-2008



Z odpisovanjem v plačilo dospelega bagatelnega zneska davka davčnemu organu ni treba voditi knjigovodstva za številne davčne zavezance, katerih dolg je v predhodnem letu zapadel v plačilo in ne preseže 1 EUR. Omenjeni institut nedvomno zasleduje ukrepe odprave administrativnih ovir predvsem za davčni organ in zavezance, čeprav določeno izgubo trpi skupni proračun. A ta izguba je v primerjavi s stroški vodenja evidenc, postopkov odmer, nadzorov in zlasti izterjav zanemarljiva, zato je predmetni institut *de lege ferenda* (ob predhodnih izračunih posledic) smiselno prek dviga cenzusa do 10 EUR (glede na analogijo *intra legem*) celo še bolj aktualizirati, zlasti ker pomaga izrazito socialno šibkim zavezancem.

2.6 Davčna preiskava

Davčna preiskava pomeni za zakon o davčnem postopku v letu 2007 nov institut (prej le v zakonu o davčni službi), s katerim se skuša davčnemu organu omogočiti nadzor nad praviloma večjimi nepravilnostmi oz. skupinami oseb, ki delujejo v transnacionalnih strukturah (Predlog ZDavP-2, 2006, str. 190), torej ko metode klasičnega inšpekcijskega nadzora odpovedo. Gre za neke vrste predupravni postopek, kajti če se razlogi za sum izkažejo za utemeljene, se začne inšpekcijski postopek in dokazi iz preiskave se v tem postopku uporabijo, zato se OAO pri tem institutu kaže v smeri večje učinkovitosti davčnega organa, nenazadnje pa zaščitenih poslovnih partnerjev obravnavanega zavezanca, sam zavezanec pa je varovan predvsem prek določb ZIN in ZUP (Androjna in Kerševan, 2006). Institut je lahko sistemsko sporen (Kovač, 2006). Kljub funkciji pregona se namreč zavezancu sklep o začetku in predmetu preiskave sploh ne vroči, ima le vlogo internega akta davčnega organa v razmerju do inšpektorja-preiskovalca; zavezanec ima možnost izjaviti se (samo) ob uvedbi inšpekcijskega postopka (prim. Šinkovec, 2002).

Iz zbranih podatkov (graf 4) je razvidno, da se je institut v praksi uveljavil že v letu 2007 (skupaj 358 prijav in 224 zaključenih inšpekcijskih pregledov na podlagi ugotovitev preiskav) in enako 2008 (397 prijav in 188 inšpekcijskih pregledov, tu manjši upad - indeks 0,84 glede na leto 2007). Po načinu prijave prevladuje delež anonimnih prijav, cca 60-70 %.[15]

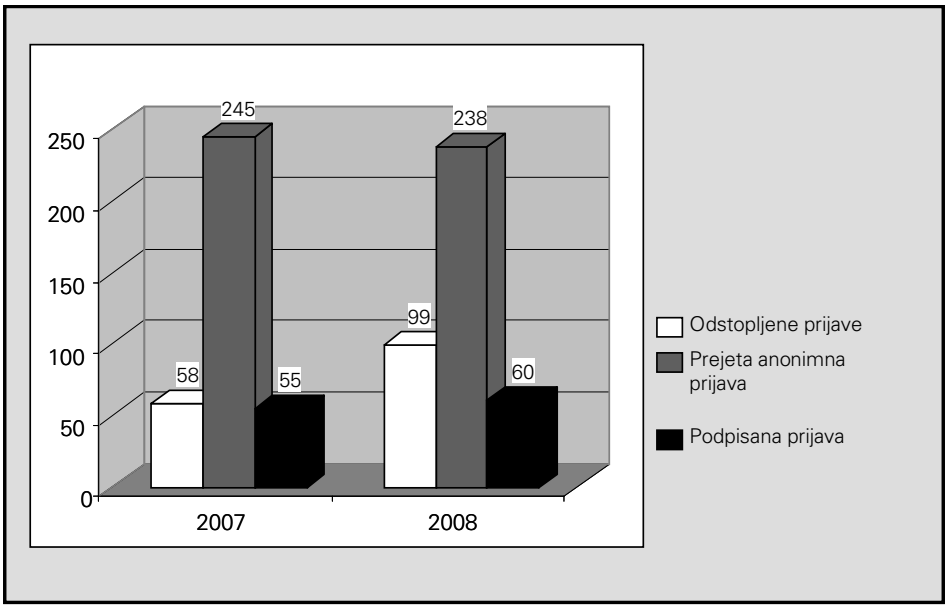
Po poročilu DURS za leto 2007 je bilo delovanje pristojnega preiskovalno-analitskega oddelka usmerjeno predvsem v odkrivanje davčnih goljufij s področja prometa z naftnimi derivati (odkritih 29 t. i. *missing trade* družb[16] in motornimi vozili (12 preiskav), posojilništva (15 preiskav) in gostinstva. Največkrat je prijavitelj fizična oseba, v letu 2008 prevladuje kot zaposleni pri delodajalcu, ki ga prijavlja v zvezi z delom na črno (zlasti v gradbeništvu), dvigi gotovine odgovornih oseb pri pravnih osebah in neizdajanjem računov. Med prijavljenimi prevladujejo po pričakovanju glede na večjo vrednost dolgov po vrsti davkov pravne

15 Poleg teh prijav deluje od aprila 2007 24-urna brezplačna telefonska linija, prek katere ljudje precej vlagajo prijave (leta 2007 kar 606, leta 2008 še 23 % več), a je uporabnih, ki bi vodile k pobranemu davku, komaj 12-15 % (90 od 606 oziroma 93 od 744).

16 V mesecu aprilu 2008 je zaživela za odkrivanje in pregon teh oseb aplikacija »Rdeča pika«, ki je bila uvedena na podlagi ugotovitve, da se kot »missing trader-ji« pojavljajo vedno iste osebe. S pomočjo aplikacije delajo inšpektorji in preiskovalci ter referenti na področju registracije DDV; v sistem je bilo po poročilu DURS za leto 2008 na dan 30. 6. 2008 vnesenih 452 zavezancev.

osebe, teh je bilo leta 2008 179, torej 45 %, skupaj s s.p. kot gospodarskimi subjekti pa 73 % (še 111 s.p. od skupaj 397 prijavljenih).

Graf 4: Število prijav za davčne preiskave po načinu prejema 2007 in 2008



Skupni izplen zaključenih inšpekcijskih pregledov na podlagi preiskav je bil leta 2007 skoraj 18,5 mio EUR (skoraj 7 mio EUR DDV) in leta 2008 cca 9,28 mio EUR. Izračun pokaže, da je povprečni donos končanega inšpekcijskega postopka cca 67.300 EUR (v letu 2008 sicer upad na indeks 0,6 glede na leto poprej). Temu gre prišteti še prihodek proračuna zaradi določenih prekrškovnih glob.

2.7 Obvestilo o neplačanem davku v izvršbi

Zakonodajalec je s ciljem prijaznosti (o tem kritično Jerovšek, 2005) uvedel v ZDavP-1 institut obvestila o neplačanem davku kot procesno predpostavko za začetek izvršbe. Dolžnik je imel od poziva (poslanega z osebno vročitvijo) 8 dnevni rok za plačilo dolga, da se izterjava ni uvedla. V praksi je to pomenilo velik strošek za državo (tako zaradi administriranja kot nepriliva dolgovanih davkov, ker izvršba še ni bila niti začeta), zavezancu pa je omogočalo učinkovito

zavlačevanje izvršbe (vse do 73 dni po izračunu Jerovška, prav tam). Zato je bil 128. člen že leta 2006 z novelo ZDavP-1B spremenjen in sicer se je v sklopu OAO odpravila določba, ki je določala osebno vročanje obvestila.

ZDavP-2 je zaradi OAO v celoti črtal določila o obvestilu o neplačanem davku, pri čemer se pojavlja vprašanje, ali je bil ta ukrep glede na pobrani znesek davkov na podlagi obvestil res (zgolj) administrativna ovira. Davčni organi ugotavljajo nasprotno, zato kljub neposredno neobstoječi pravni podlagi v ZDavP-2 zaradi v praksi ugotovljenega deleža bolj ali manj benevolentnih zavezancev, ki morda zavlačujejo plačilo, ne pa za ceno izvršbe, še vedno pošiljajo dolžnikom obvestila, še sploh zaradi navadnega vročanja po 85. členu ZDavP-2. Pri tem so trendi rasti še bolj ugodni po znesku plačanega kot samem številu postopkov (podatki po letnih poročilih DURS).[17]

Tabela 7: Število obvestil o neplačanem davku pred izvršbo in znesek plačil 2005-2008

	2005	2006 / trend na leto poprej	2007 / trend na leto poprej	2008 / trend na leto poprej
Število obvestil	349,213	437,355 ↑ 1.25	307,468 ↓ 0.70	333,473 ↑ 1.08
Znesek plačanega po obvestilu v EUR	*705,846,269	*986,614,355 ↑ 1.40	570,252,913 ↓ 0.58	690,279,812 ↑ 1.21

*Temu znesku je treba odšteti stroške osebnega vročanja (v letu 2006 gre po tarifi 1,73 EUR na pošiljko za skupaj 651.659 EUR razlike med stroški osebnega in navadnega vročanja obvestil).

Primer obvestila o neplačanem dolgu je zanimiv, ker nam osvetli več razsežnosti normiranja davčnega postopka in delovanja DURS. Prvič, davčni

17 Dodatno je nekaj izplena iz naslova vrstnega reda poplačil, saj se zavezancem obračunava dolgove po datumu prispetja, za preostali dolg pa se ne vroča ponovno (osebno), ampak se zavezanca obvesti in pozove k plačilu. Če zavezanec po prejetem obvestilu davčnemu organu potrdi, da je odločbo prejel oziroma bo obveznost plačal, se šteje, da je odločbo prejel. V prid ohranitve instituta govori tudi dejstvo, da je pošiljanje obvestila smotrno predvsem v primerih, ko gre za manjše davčne dolgove, saj bi uvedba takojšnje izvršbe za dolžnika pomenila dodatne stroške izterjave (20 evrov) in stroške banke (cca 35 evrov).

organ lahko deluje sploh v smislu varstva pravic zavezancev in ob hkratni neogroženosti javne koristi neposredno po temeljnih načelih, ne le na podlagi eksplicitnih pravil. Dalje, nekatera pravila, ki so se na prvi pogled, celo po enotnem mnenju stroke, kazala kot tipična administrativna ovira, prinašajo zelo koristne učinke že v finančni izdatnosti, kaj šele v zadovoljstvu v postopek vpletenih udeležencev. Sprememba zakonodaje je tako v letih 2006 in 2007 vplivala predvsem na znižanje stroškov pošiljanja obvestil, ne pa na izumrtje instituta. Tretjič, vsako pravilo je treba pri izvajanju in ocenjevanju, ali gre za administrativno oviro, gledati ob součinkovanju celega zakona in načina dela organa.

2.8 Informativni izračun pri odmeri dohodnine

V okviru odprave administrativnih ovir naj bi v praktičnem smislu največji doprinos novega ZDavP-2 predstavljal princip odmere dohodnine prek predhodnega informativnega izračuna z mešano naravo napovedi (ta kot predizpolnjena poslana po 421. členu ZDavP-2 že leta 2007 do 30. 4. 2007) in odločbe (od leta 2008 dalje), če ni vloženega ugovora (267. in nadaljnji členi ZDavP-2, (prim. Jerovšek, 2005a, Predlog ZDavP-2, 2006, str. 14). ZDavP-2 določa, da za dohodnino 2007 in nadaljnje, torej postopke od leta 2008 naprej, davčni organ s predhodno notranjo kontrolo na podlagi podatkov izplačevalcev oziroma registrov premoženja (ti pošljejo podatke do 31. 1. za preteklo leto) pripravi informativni izračun dohodnine do 31. 5., ki se šteje za napoved (zaradi zagotovitve skladnosti s splošnim delom zakona, predvsem pa prevzema odgovornosti zavezanca za resničnost, pravilnost in popolnost podatkov) in hkrati za osnutek odmerne odločbe, ki s potekom roka za ugovor, če ni vložen, postane izvršilni naslov. Če je vložen ugovor, se izda odmerna odločba do oktobra, prav tako odločba sledi vloženi napovedi do 30. 6. za preteklo leto, če zavezanec ni prejel informativnega izračuna, pa je stvarno legitimiran kot zavezanec.

Za leto 2007 je bilo vloženih le cca 34.000 napovedi neposredno od zavezancev, za leto 2008 pa 33.838 v primerjavi z 1.276.860 v letu 2005 oziroma 1.135.422 v letu 2006 (v vseh teh letih pa DURS beleži skupno od cca 1,012 do 1,275 mio aktov s pravno naravo odločbe). Opisana rešitev prinaša koristi tako za zavezance, ki so praviloma odvezani priprave napovedi, če izplačevalci pošljejo DURS pravilne podatke, kot davčne organe, saj se je naknadna kontrola na prvi stopnji prevesila v predhodno, a je bistveno manj ugovorov in zlasti pritožb (enako po podatkih OECD pri predizpolnjenih napovedih, Kovač, 2006a, Klun, 2009), rok plačila (ali vračila) pa prejkone bolj zgoden. O slednjem priča podatek, da je že

pred iztekom roka za pripravo izračuna, konkretno na dan 6. 5. za dohodnino za prejšnje leto v letih 2008 in 2009 postalo izvršilni naslov kar prek 470.000 informativnih izračunov. Torej predvidoma cca 46 % vseh dohodninskih zavezancev plača obveznost (oziroma prejme vračilo) že v juniju, medtem ko so se prve odločbe v letih 2005 in 2006 izdale konec maja ali še celo v drugi polovici junija. Poleg navedenega je pomembno ugotoviti, da je DURS zaradi vnosa napovedi v ustrezne aplikacije in še naknadne kontrole vsako leto do leta 2006 zaposloval tudi študente, zato ob sedanji organizaciji dela ta dodatna organizacija in stroški v veliki meri odpadejo. Same uradne osebe na DURS se lahko (bolj) posvetijo vsebinskemu nadzoru na račun odpada operativnih vnosov. Dodatno so prihranki zaradi navadnega vročanja informativnih izračunov.

Glede na podatek letnega poročila DURS za leto 2007 je bil delež vloženih ugovorov zoper informativne izračune kar več kot tri četrtine, tj. 76,64 %, v letu 2007 pretežno posledica »napak« zavezancev samih, ker niso pravočasno posredovali DURS podatka o vzdrževanih članih, da bi se olajšava obračunala po zahtevi staršev. Sicer je v prvi tranši izdanih izračunov (oziroma leta 2007 predizpolnjenih napovedi), teh na dan 31. 3. prek pol milijona, ugovore vložilo v letu 2007 le 7,3 %, leta 2008 pa celo (verjetno na osnovi izkušenj s prijavo vzdrževanih članov v letu 2007) zgolj 4,3 % zavezancev (22.408 od skupaj 518.973). Trend je torej v skladu s cilji instituta in opazno pozitiven po letih 2007-2008. Davčni organ se je izkazal kot učinkovit servis, sam institut predhodnega informativnega izračuna pa z nadgradnjo izvršilnega naslova in ne le pravno naravo predizpolnjene napovedi predstavlja slovensko regulacijo dohodninskega postopka kot eno najmodernejših in najučinkovitejših na svetu (prim. Kopp, 2003, Klun, 2009).

3. Sklepi

Sklepno lahko ugotovimo, da večina obravnavanih institutov, urejenih na novo s sklicem na program OAO v zakonu, ki ureja davčni postopek, od leta 2006 in 2007 naprej, dejansko dosega zastavljene cilje, torej poenostavljene postopke za zavezance in davčni organ. Navedeno je mogoče argumentirati s podatki o pogostnosti rabe institutov in izračuni prihrankov, vendar je treba dodati, da realizacija ciljev ne velja za vse institute. Tako na področju davčnega postopka kot širše pri normiranju v sklopu OAO se neredko le delno upošteva, da mora biti operacionalizacija načela usmerjenosti k uporabniku zaradi načel ekonomičnosti in učinkovitosti javne uprave omejena z izkazanimi potrebami (in

ne le željami) strank in poprejšnjo diferencirano analizo zmožnosti organa oziroma javne uprave kot celote.

Še pomembnejše je spoznanje, da uporabljeni podatki niso edini relevantni za zbirno oceno. Posamična pravila predpisov učinkujejo namreč večplastno, isto- ali nasprotnosmerno, zato se predvideni pozitivni učinki lahko celo sinergično povečujejo (tako npr. pri navadnem vročanju informativnih izračunov) ali pa se izničijo. Celo nekatere odpravljene obveznosti udeležencev postopkov (npr. obveščanje dolžnikov pred uvedbo izvršbe) so zato vredne premisleka, ali jih ne bi zaradi ugotovljenih pozitivnih koristi znova vpeljali v veljavno ureditev. Večino obravnavanih institutov, predvsem sistem obračunavanja dohodnine, navadno vročanje in posebne primere odpisa, odloga oziroma obročnega plačevanja davka, pa lahko ocenimo kot ustrezne družbeni realnosti in stremljenju k modernizaciji slovenske javne uprave.

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Original scientific article

Tax Procedure Law within the Reduction of Administrative Burdens – between Goals and Praxis

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ABSTRACT

The Tax Procedure Act (TPA; Slovenian ZDavP) is the key law regulating relations among the participants in tax collection procedures. Therefore, it has been more or less thoroughly changed several times in recent years, also within the government's programme of reduction of administrative burdens (RAB; Slovenian OAO). Procedures are being attempted to be simplified for both taxpayers and tax authorities. The paper explores a selection of institutes introduced to this end, such as tax assessment through a provisional specification, service by regular mail, advance rulings, etc. The author considers statistical data on how frequently those (new) institutes were used in 2006, 2007 and 2008 to establish whether, or how much, goals of the regulatory change in the tax procedure are actually being achieved in praxis. It is found that notwithstanding some exceptions, the majority of the considered institutes do amount to a realisation of the RAB programme.

Key words: tax procedure, law, reduction of administrative burdens.

JEL: H20, K40, D73

1. Overview of the tax procedure and the reduction of administrative burdens

The paper aims to consider whether, and in what elements, the adoption or amendment of tax procedure legislation carried out within the programme of reducing administrative burdens in recent years has actually reached the set goal. We have therefore selected some institutes defined in several materials

(primarily in Predlog ZDavP-2[1] and documents relating to Slovenia's development strategy) as RAB, and went on to compare statistical data recorded by the Tax Administration of the Republic of Slovenia (TARS; Slovenian DURS) on the realisation of those institutes.[2]

The tax procedure is a special administrative[3] procedure ensuring tax collection, i.e. the statement or assessment and payment or refund of taxes, control of tax liabilities, enforcement, and international cooperation in tax matters (Jerovšek & Kovač, 2008; general overview in Kopp & Ramsauer, 2003). The tax procedure is regulated by several laws. Some procedural provisions are included in the laws on particular tax types themselves; mainly the Tax Procedure Act is applied (having existed in Slovenia since 1996; more in Šinkovec, 2002; currently the TPA-2[4] is in force); subsidiarily, the tax administration and customs service laws, respectively, apply, as well as, partly, the Inspection Act (IA; Slovenian ZIN), the General Administrative Procedure Act (GAPA; Slovenian ZUP),[5] and implementing regulations of those laws (general overview of subsidiarity in Androjna & Kerševan, 2006). For the RAB as it relates to both taxpayers and tax authorities as well as others involved in tax proceedings (like banks, employers, registry institutions providing data), the key law is the Tax Procedure Act and, partly, the IA and the GAPA. The latter two have also been amended several times within the RAB.[6] However,

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1 Draft Tax Procedure Act-2; available at the website Slovenija jutri, EVA: 2006-1611-0024 (material for first reading, autumn 2006), and in Poročevalec Državnega zbora RS, no. 99/06 (20 September 2006).

2 Most of this data has been taken from the TARS annual work reports available at its website. Four graduate students helped the author collect and process the data within the Research Seminar course of the Faculty of Administration. I wish to express my gratitude to the TARS, particularly A. Kovač Arh and P. Jenko from the Legal Service of its General Tax Office, for their aid in collecting the data not (yet) publicly available online but judged as relevant for a consideration of the issues the paper is concerned with.

3 Tax authorities mainly conduct administrative proceedings, to which, however, expedited minor offence proceedings were added in 2005 within the tax inspection body's competences if a tax violation is legally classified as a minor offence, while tax investigations as *sui generis* (pre-administrative, or pre–minor-offence) proceedings were also introduced, by the TPA-2, in 2007. The administrative procedure is a point where the public and individual interests meet and are to be kept balanced and proportional (see commentary to Slovenian Constitution, Šturm et al., 2002). If a right, obligation or legal entitlement is defined as administrative in nature, the administrative procedure has to ensure that neither a public interest is excessively protected nor an individual interest has precedence (principle of protection of client rights and the public interest, Art. 7 of the General Administrative Procedure Act).

4 Published in Ur. l. RS (Official Gazette of the Republic of Slovenia), nos. 117/06, 24/08-ZDDKIS, 125/08-ZDavP-2A, 20/09-ZDoh-2D.

5 Ur. l. RS, nos. 80/99, 70/00-ZUP-A, 52/02-ZUP-B, 73/04-ZUP-C, 119/05-ZUP-D, 24/06-UPB2, 105/06-ZUS-1, 126/07-ZUP-E, 65/08-ZUP-F.

6 E.g.: data exchange required from the authorities, GAPA Arts. 66 & 139 (Androjna & Kerševan, 2006, p. 303); abolition of the professional competence exam on the administrative procedure, GAPA Art. 31; the preventive measure of a warning, IA Art. 28 (Pirnat et al., 2004); reception of applications outside tax offices, and Saturday office hours of tax offices

the tax procedure having a specific nature and a relatively comprehensive specific regulation (Šinkovec, 2002), all this likely only contributes to the RAB in tax proceedings to a minor extent, therefore the paper focuses on how the Tax Procedure Act has gradually been changed. A RAB programme has been carried out in Slovenian public administration for several years (especially since 2001 when the government established a committee for RAB; details on the development of the programme in Josevski, 2008). RAB-related goals and activities frequently involve regulatory measures, where Slovenia generally pursues good foreign practices (e.g. voluntary disclosure and advance ruling; more in Predlog ZDavP-2, 2006, and Jerovšek et al., 2008). As regards tax law, it has undergone change that is both substantive (e.g. new deductions, abolition of certain taxes) and, primarily, procedural in nature, since especially the way in which taxpayers' rights, obligations, and legal entitlements are realised can be made easier by simplifications for all involved (cf. Jerovšek, 2005, Kovač, 2006). Among other things, this makes taxpayers, as vital elements of the economy, better adaptable to market circumstances, and thus competitive. Some of the new arrangements aimed at procedural simplification – a key RAB goal in changing the tax procedure law in 2004-2009 – are clearly advantageous for taxpayers, while in other cases work is made easier for tax authorities although perhaps burdening the taxpayers (Jerovšek, 2005a, Kovač, 2007). The goal of RAB is to maximally disburden tax authorities and tax-paying individuals and corporations of time-consuming and costly administrative tasks bringing no added value because being doubled or not contributing to the objective of the tax procedure, i.e. the collection of tax. The tax reform, as a fairly comprehensive set of RAB-related measures mainly started in 2006 and 2007, has thus fundamentally been aimed at promoting competitiveness of the national economy and the system's integrity in relation to taxpayers and the society at large. It has pursued the general reform goals of promoting entrepreneurship and competitiveness of Slovenia as following from the Lisbon strategy, Slovenia's development strategy, and the Programme of measures of the Republic of Slovenia for the promotion of entrepreneurship and competitiveness for 2007-2013 (the Government, 2008). This is why a Tax Procedure Act indeed was drafted and passed[7] in 1996 (Slovenia priorly only having had some procedural provisions in substantive laws and an immediate use of the GAPA) and thereafter more or less

(under the Decree on administrative operations; see introductory notes in Kovač et al., 2008). Saturday office hours were introduced in 2007; although tax offices were visited by no more than approx. 0.9 client per 1 employee during this time in both 2007 and 2008, this requirement was only abolished in 2009.

7 Ur. l. RS, nos. 18/96, 78/96 Skl.US: U-I-376/96, 87/97, 35/98 Odl.US: U-I-376/96-9, 82/98, 91/98, 1/99-ZNIDC, 108/99, 37/01 Odl.US: U-I-18/98-20, 97/01, 31/03 Odl.US: U-I-72/00-15, 33/03 Skl.US: U-I-108/99-14, 105/03 Odl.US: U-I-252/00-12, 16/04 Odl.US: U-I-233/01-14, 42/04 Odl.US: U-I-329/02-7.

thoroughly changed several times. Thus there have been several laws and amending laws on whose basis several distinct periods of regulation of the tax procedure in Slovenia may be defined, as follows from Table 1.

Table 1: Tax procedure periods and (new or amending) laws

No.	Period	Legal basis	Time of being in force or applied[8]
1	Arrangement with no separate tax procedure law	Sector-specific taxation laws and the GAPA	Until 31 December 1996
2	Arrangement with a (first Slovenian) separate tax procedure law[9]	TPA	1 January 1997 - May 2004 / 1 January 2005
3	Arrangement after Slovenia's becoming a full EU member – a new (second Slovenian) law	TPA-1[10]	1 January 2005 - 31 December 2006 (partly already since May 2004)
4	Arrangement after tax reform measures – amending law	TPA-1B	1 January 2006 - 31 December 2006
5	A comprehensive arrangement of the tax procedure within the tax reform – a new (third Slovenian) law	TPA-2	In force since November 2006, applying since 1 January 2007
6	Amendments made within the economic crisis	TPA-2A PITA (Personal Income Tax Act; Slovenian ZDoh)-2D	Since 31 December 2008 In force since 14 March 2009, applying since January 2009[11]

8 Under the TPA-2 (Art. 418), laws not in force anymore are still applied for administrative matters/cases with regard to which an ordinary or extraordinary legal remedy had been filed when the TPA-2 began to apply, i.e. on 1 January 2007. In such cases the matter is concluded in accordance with the TPA-1 and, through this, possibly even in accordance with transitional and final provisions of still earlier laws if an administrative proceeding or dispute concludes with a modification or annulment of a tax decision. For the purpose of equal protection of rights (Art. 22 of the Constitution, see Šturm et al., 2002), however, the law applied in regard to substantive rules in a reopened proceeding is the one for that tax period to which the tax decision relates (except if a substantive provision of the TPA-2 is more favourable for the taxpayer, e.g. regarding the length of the period of limitation; according to Jerovšek et al., 2008).

9 It is appropriate to point out here that the tax procedure is the only one of the approximately 400-500 special administrative procedures of the Slovenian legal order that is regulated by a special procedural law, other procedures being partly provided for by special procedural provisions of substantive laws and by the GAPA (Androjna & Kerševan, 2006, Jerovšek & Kovač, 2008).

10 Ur. l. RS, nos. 54/04, 57/04-ZDS-1, 109/04 Odl. US: U-I-356/02-14, 128/04 Odl. US U-I-166/03-12, 139/04, 56/05 Skl. US U-I-159/05-4, 96/05-ZRTVS-1, 100/05 Odl. US U-I-159/05-14, 109/05, 21/06 Odl. US: U-I-32/04-10, 21/06-UPB2.

11 Under the PITA-2D, taxpayers have been allowed, regardless of Art. 54 of the PITA-2, to already apply for a reduction of their tax base for 2008 by submitting a correction of their tax statement within 30 days from when the amending law began to apply (the Act thus having had a retroactive temporal and procedural effect to taxpayers' benefit).

In the following sections we consider selected tax procedure institutes supposedly a part of the RAB programme, by absolute data for respective years and use trends, especially for the years:

- 2006 application of TPA-1B,
- 2007-2008 – application of TPA-2, which (mainly) took over TPA-1B institutes regarding the RAB, adding new ones.

2. Overview of use of selected TPA-2 institutes in praxis

2.1 Selection of considered institutes

In line with what we say in the introduction, the paper only considers certain legislative institutes, while it needs to be stressed that a comprehensive analysis of the tax procedure regulation and the RAB should involve different rules including those not relating to the RAB at first glance, as the totality of norms collectively results, in a complex manner, in the final outcome of non/realisation of reform goals (Pirnat et al., 2004). TPA institutes forming a part of the RAB programme are thus not deemed to include, say, fundamental principles of the tax procedure, although some (e.g. the principle of proportionality; see Šinkovec, 2002, Kovač, 2006a), even according to European case law, fairly directly contribute to a realisation of RAB goals in particular proceedings (while some are a direct basis for certain institutes, e.g. the principle of certainty for advance ruling).

In regulating the tax procedure, particularly since 2006, the RAB has played a major role, especially the TAP-2 clearly comprising a considerable number of norms aimed at RAB, or simplification (according to Predlog ZDavP-2, 2006, pp. 2-14). To be true, the RAB process is being realised in tax procedure law step by step; increasingly more RAB institutes are being introduced by new Acts and amending Acts (see Table 2). The data presented is thus relevant as a study of cases. Based on explicit statements on the RAB by the authors of the Draft TPA-2[12] and the available TARS data, seven institutes have

12 As regards, for example, personal income tax assessment (Predlog ZDavP-2, 2006, pp. 2 & 14), deferred payment of tax (ibid., pp. 9 & 185), service by regular mail (ibid., p. 182). Details in Jerovšek et al., 2008, commentaries to particular provisions; for the pre-filled personal income tax return cf. Klun, 2009 (e.g. the first country with a pre-filled return was Denmark in 1990).

finally been selected (given in the order of the article(s) of the TPA-2 regulating them):

Table 2: Overview of considered RAB-related tax procedure institutes

No.	Institute	Legal bases	Time of application (2006-2008)
1	Advance ruling	TPA-2 Art. 14	2007-2008
2	Voluntary disclosure	TPA-1 Arts. 390.a & 390.b TPA-2 Art. 55, & Arts. 63, 396, 399, and others	2006 2007-2008
3	Service (by regular mail)	TPA-2 Art. 85	2007-2008
4	Cancellation, deferral, and phased payment of tax due	TPA-1 Arts. 36 & 37 TPA-2 Arts. 101 & 102; and, newly, Arts. 103 (special cases) & 105 (cancellation of amounts of up to EUR 1)	2006 2007-2008
5	Tax investigation	TPA-2 Art. 131	2007-2008
6	Notice of tax arrears to be enforced	TPA-1 Art. 128 (abolished by TPA-2)	2006
7	Provisional specification in the assessment of personal income tax	TPA-2 Art. 421 (pre-filled personal income tax return for 2006, i.e. proceedings of 2007) TPA-2 Arts. 267 ff. (preliminary provisional specification)	2007 2008

Regarding these institutes, our hypothesis is that they are used with unequal frequency, but their statistical use trend should be upward if the RAB goal is to be achieved in praxis. In some cases taxpayer status is taken into account with a focus on economic operators (primarily legal entities as well as natural persons registered as autonomous economic operators), as in taxation, the RAB programme places a priority on active operation of the taxpayers vital for how the market, i.e. the economy, functions.

In addition, the TPA-2 (as well as the prior TPA-1) has a number of other provisions relating to RAB. Of key importance is the primary status of self-assessment through a tax statement as a mode of settling the tax liability (more in Jerovšek & Kovač, 2008). A further important provision, for example, is that of Art. 50 regarding petty amounts of less than ten euros that are not assessed at all; here the proceeding is closed with an official note, as the assessed tax would not have amounted to the average costs of conducting the simple tax procedure (naturally, however, the liability is carried over into the next accounting period). Similarly, an overpaid tax is not refunded without the taxpayer's request (under Art. 97) and an enforcement proceeding is not initiated (under Art. 149) if these are amounts of less than EUR 10. Under applicable legislation, the TARS does not enforce tax liabilities for the national broadcasting service or chamber membership fees. Additional acceptable securities are provided for; the relation between submitting a tax return before or after the deadline is clearly set out; generally only documents are used as evidence in a proceeding; the burden of proof in assessing the tax base is reversed; costs of a proceeding are born according to a special clearly defined principle of success, and proportionally; a decision can only be issued in the form of a stamp; in case of non-matching figures, verification of a tax statement may be exerted by a direct payment of the difference; connections among proceedings are provided for (e.g. between verification and inspection procedures, or findings of inspections resulting in the reopening of particular proceedings; cf. Šinkovec, 2002); duration of inspection is generally limited to 6 months; time limit for filing a complaint against an inspection decision is extended to 30 days from service; a separate debt list is added as a basis for initiating a single enforcement procedure relating to several documents permitting enforcement; international cooperation in tax affairs is institutionalised, etc. (more in Jerovšek et al., 2008).

2.2 Advance ruling

An advance ruling (or, literally, "binding information") is issued to a taxpayer by the main tax or customs office with regard to a future taxation to facilitate the decision of whether the expected tax, as a part of expenses compared to the expected profit, is an acceptable burden for a business transaction to be undertaken (Jerovšek et al., 2008). Advance rulings were introduced in 2007 as an application of the principle of certainty, although in terms of procedure, a range of reservation clauses strongly limits the planned positive effect of the institute (e.g. the time limit for the issue being no less than 6 months; more in Kovač, 2006). The institute is supposed to be primarily relevant for legal entities, especially foreign investors, with regard to the actual application of tax legislation (Predlog ZDavP-2, 2006, p. 168). According to the TARS, the purpose of this institute has been largely misunderstood in practice, as it is not uncommon that under Art. 14 of the TPA-2, taxpayers in fact request information on transactions or events already implemented or apply for a general explication of the law. Contrary to this, an advance ruling is conceived of as an act that is abstract (relating to legal situations not yet existing) and at the same time individual (relating to a specific addressee or object of taxation).

Table 3: Data on advance rulings, 2007 and 2008

	2007	2008
Number of requests for an advance ruling	14	7
Number of issued advance rulings	2*	3*

* In both years one ruling related to value added tax and the rest to corporate income tax.

11 of the 14 requests in 2007, and 6 of the 7 in 2008, were submitted by a PLC or LTD. LTDs submitted 57% of all requests in both years. Advance rulings have not (yet) began to function in Slovenia – even requests that are submitted are not even procedurally adequate, and their chronological frequency trend has been negative. However, as regards the type of tax and applicants' status, advance rulings do seem to be relevant for rather large corporations or transactions, with some of them misinterpreting the tax authority's

work as tax consulting service (this is probably why more requests were submitted by LTDs than PLCs, for instance). Given the number of taxable economic operators according to the Business Register (approx. 84,000 legal entities and 78,000 individuals), we may conclude that the advance ruling is not achieving the set goals. In view of the fact that in the Netherlands, for example, the provision of advance rulings is a matter of how a tax authority is organised rather than *materia legis*, it is likely right to conclude that the Slovenian law is too bureaucratised in this respect.

2.3 Voluntary disclosure

The institute of voluntary disclosure (literally "self-report") was introduced in 2006 by the TPA-1B, and improved in substance and form (by a separation into a procedural and penal part and a determination of the sequence after reinstatement) by the TPA-2. Voluntary disclosure is admissible for corporations and individuals after the deadline for submitting a tax (or withholding tax) return has expired, with the taxpayer immediately paying the tax owed (Predlog ZDavP-2, 2006, p. 176). This institute is supposed to result in positive effects for both the public interest (with tax being collected that otherwise would probably not have been) and the taxpayer, who/which does pay the tax as well as late-payment and penal interest, but is not prosecuted if submitting the disclosure before non-compliance is detected by the tax authority (cf. Jerovšek, 2005a) – voluntary disclosure only being possible until a tax assessment decision has been issued or an inspection (administrative)[13] or minor-offence or criminal proceeding against the taxpayer has started. The institute is a practical application of the principles of substantive truth and settlement of tax liabilities (through a combination of sanctions according to Silvani & Baer, 1997, pp. 11, 25), although according to some authors, it interferes, through penal liability, with the constitutional privilege against self-incrimination, so that the TPA-2 ought to be more clearly formulated (Ferlinc, 2009).

[13] Under the TPA-2, voluntary disclosure is admissible until the decision on the start of inspection has been served. Priorly, it was disputable at what moment inspection started, since the taxpayer was allowed to submit a voluntary disclosure in 2006 after receiving the notice of an inspection proceeding, which destructed the very purpose of inspection (cf. Jerovšek et al., 2008). Within the fundamental principles of the TPA-2, tax offices may (while not being obliged to) notify taxpayers of planned inspections by telephone or an ordinary e-message to (legally) promote disclosures and decrease the inspections needed.

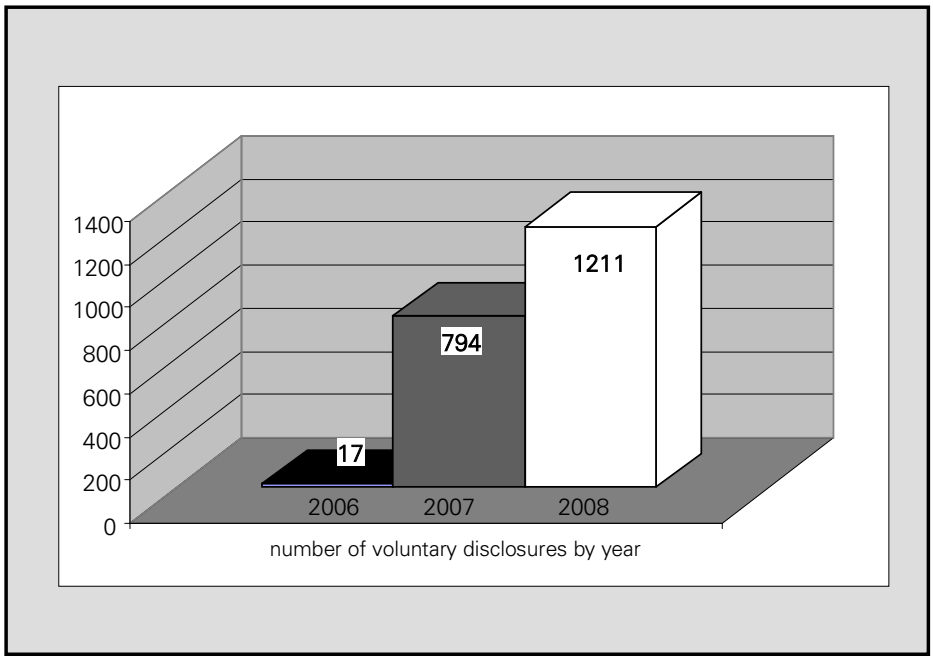
Table 4: Number and value of voluntary disclosures by type of tax, 2006-2008

	2006		2007		2008	
Type of tax	Number of voluntary disclosures	Amount of additionally collected tax in EUR	Number of voluntary disclosures (and trend over the year before)	Amount of additionally collected tax in EUR	Number of voluntary disclosures (and trend over the year before)	Amount of additionally collected tax in EUR
Individual income taxes and contributions	10	101,202	↑ 368	1,295,468.38	↑ 426	870,372.06
Personal income tax	425	165,957	↑ 3,188	364,478.24	↓ 1,089	163,962.85
Personal income tax prepayment	17	25,914	↑ 794	124,637.00	↑ 1,211	176,689.31
Corporate income tax	31	2,084,645	↑ 161	3,529,711,72	↓ 122	5,495,619.59
VAT	8	381,956	↑ 103	2,094,735.79	↑ 309	1,974,054.74
Other duties	0	0	↑ 3,948	598,654.95	↓ 656	400,183.74
Tax from capital gains	0	0	0	0.00	↑ 5,239	918,253.60
Performance of international treaties	0	0	0	0.00	↑ 1	488.45
TOTAL	491	2,759,674	8,562	8,007,686.44	9,053	9,999,624.34

As regards the type of tax, voluntary disclosures were the most numerous in personal income tax in 2006, other duties (primarily membership fees – 3,948 –, followed by tax on the disposal of real property, inheritance tax, etc.) in 2007, and tax from capital gains (primarily from interest – 4,022 out of 5,239) and, newly, international enforcements in 2008; the amount collected being, as expected, disproportional with the number of disclosures, as certain taxes, by

nature, are more voluminous than others. The most substantive yield from voluntary disclosures in all years is thus attributable to corporate income tax, having increased from approx. EUR 2 million in 2006 to 5.5 million two years later. According to all indicators, both the number of voluntary disclosures and the amount of duties collected on their basis were definitely increasing in 2006-2008, but their structure is changing. Taxpayers evidently need time to process new legislative arrangements, which, for example, is reflected in the remarkable increase in voluntary disclosures from 2006 (around 500) to 2007 (already over 8,500); a similar observation applies, for instance, for the sub-segment of sole trader personal income tax prepayments (from 17 to 794 and to 1,211 in 2006-2008):

Figure 1: Number of voluntary disclosures relating to personal income tax prepayment, 2006-2008



On the other hand, in certain taxes voluntary disclosures are decreasing in number, which in the case of personal income tax (by almost three times from 2007 to 2008) is definitely the combined result of the newly introduced preliminary data verification followed by a provisional tax specification as a pre-filled tax return; a similar observation applies for other duties. Given the new

sources it is clear that a further stabilisation of the number of voluntary disclosures and their structure by tax type is to be expected in the future.

In total, nearly 21 million euros were collected in three years on account of voluntary disclosures. To quantify the institute's benefits, at least the costs of non-initiated inspections should be added to this amount, indicating that this institute as such is to be preserved, though perhaps slightly technically improved. It is impossible, however, to measure out the positive effect of the significantly higher level of tax culture undoubtedly ensuing when liabilities are settled voluntarily.

2.4 Service by regular mail

Unlike Art. 87 of the GAPA, the TPA-2 introduced in 2007 service by regular mail (slightly adapted with regard to the GAPA because of the fiction of effected service) as sufficient for most written communications in the tax procedure with a declared goal of savings made on account of the costs of delivery to addressee only. Despite the possible reserve as to such arrangement being non-constitutional in relation to the GAPA (see Kovač, 2008), the data is so encouraging for the TARS that preparations are taking place in 2009 for an even broader application of the institute.[14] The calculated payment date thus roughly equals the sum of chronologic events: dispatch of the relevant act, 20 days for start of fiction of effected service, and a further 30 days from the service for enforceability, i.e. the payment of tax (general time limit for voluntary performance). Here the order of payments needs to be taken into account (by the order of becoming due for taxes specified on the payment instrument). Fiction of effected service, however, is just as important for filing legal remedies as it is for the payment deadline and enforcement, and the TARS, with a view to a more undisputable calculation of the relevant date, has therefore started to indicate the date of dispatch on the envelope (if these are centrally printed decisions or a dispatch in instalments, it is simply the outsourced contractor that prints the date).

14 The Act provides: "All decisions and orders and other documents from whose service a time limit begins to run except for decisions, orders and other documents issued in a tax control or tax enforcement proceeding, shall be served by regular mail. Service shall be deemed effected on the 20th day from the day of dispatch …" Service by regular mail was slightly limited at the end of 2008 by the TPA-2A, under which delivery to addressee only is also mandatory for decisions on phased payment of tax.

To quantify savings resulting from the shift from delivery to addressee only to regular mail delivery, we have compared the decisions issued for personal income tax (over 1.1 million annually), residential land use fee (approx. 0.7 million annually), tax on the disposal of real property, and income tax from property, interest, and capital gains in 2006 (i.e. when the TPA-2 had not yet applied), and in 2007 and 2008. The number of decisions has largely remained the same (about 2 million annually), while the difference in the costs of their service has been no less than approx. 2-3 million euros annually:

Table 5: Costs of service, and savings on account of service by regular mail, 2006-2008 in EUR

Year	Number of dispatched decisions for selected taxes	Applicable price of regular mail delivery per letter *(in euro)*	Total costs of service by regular mail *(in euro)*	Applicable price of delivery to addressee only *(in euro)*	Total costs of service by delivery to addressee only *(in euro)*	Savings on account of lower costs of delivery by regular mail as compared to delivery to addressee only *(in euro)*
2006	2,124,866	0.24	509,967*	1.73	3,676,018	3,166,051*
2007	2,012,670	0.25	503,167	1.78	3,582,552*	3,079,385
2008	2,013,327	0.26	523,465	1.83	3,684,388*	3,160,923

*Figure calculated for the case such service had been required by law.

These savings are somewhat reduced by the cost of serving acts that nevertheless have to be delivered to addressee only under Art. 85 of the TPA-2 because the taxpayer has not settled the liability in due time after the fictional service (because either not having received the letter or having thus deliberately extended the time in which the liability can be settled without sanctions).

The number of such cases is not monitored, but the assessment based on practical experience is somewhere around 5-10% of cases. OECD finds that taxpayers whose non-compliance is non-deliberate account for approx. 70% (67% in Denmark; according to Klun, 2009) so that the specified amount of savings is evidently notably smaller in reality. This is directly confirmed primarily by the competent enforcement staff asserting that enforcements have enormously increased in number in 2009 over the years when the relevant documents had not yet been delivered by regular mail (while empirical data on an annual basis has not yet been collected). Anyhow, in the 2,013,327 decisions issued for 2008, the costs of service would thus be EUR 523,465 for service by regular mail plus an additional EUR 1,105,317, i.e. (only?) EUR 2,055,606 in total. As we can see, the amount of savings is still considerable, especially as administrative costs are not being covered on account of collected tax with this money; still, compared with costs of enforcement proceedings, a benefit-cost comparison most likely yields a negative result.

2.5 Cancellation, deferral, and phased payment of tax due

Compared to the basic text of the Act, the TPA-1B extended the term of deferred or phased payment of a tax due from one to two years, allowing a cancellation, deferral, or phased payment to be granted by discretion to individuals facing a threat to their and their dependants' subsistence or, on the other hand, a deferral or instalments for legal entities or sole traders or other natural persons engaged in a registered activity if major economic damage would occur in case of timely payment (Jerovšek et al., 2008). However, a deferral or instalments cannot be granted for prepayments, tax withdrawals and certain taxes which, indeed, is technically arguable, as criteria of types of taxes and modes of meeting the obligation are being mixed in defining exceptions (according to Kovač, 2006; similarly according to Hren, 2009; differently according to Predlog ZDavP-2, 2006, p. 185). The TPA-2 brought further significant new arrangements relating to the RAB, such as the special case of deferred or phased payment if a taxpayer submits a security or gives assent to the entry of a lien in the register but, because no criteria are required to be met, only for up to 12 months (Art. 103). Further, a natural person not engaged in a registered activity is entitled to apply for three monthly instalments without having to submit a security or meet the conditions and criteria laid down in Art. 101. Although interest runs during the term of deferred or phased pay-

ment, it is only at the interbank interest rate for loans up to one year in order to preserve the real value of the debt (Jerovšek & Kovač, 2008). All those changes have been envisaged to result in more obligations met in accordance with the principle of legality, and therefore in fewer enforcement proceedings and, primarily, fewer negative outcomes for taxpayers on the personal and business levels. The TARS data for 2004-2008, however, does not substantiate this assumption, indicating no particular increase in taxpayer applications for cancellation despite increasingly more favourable legislative conditions.

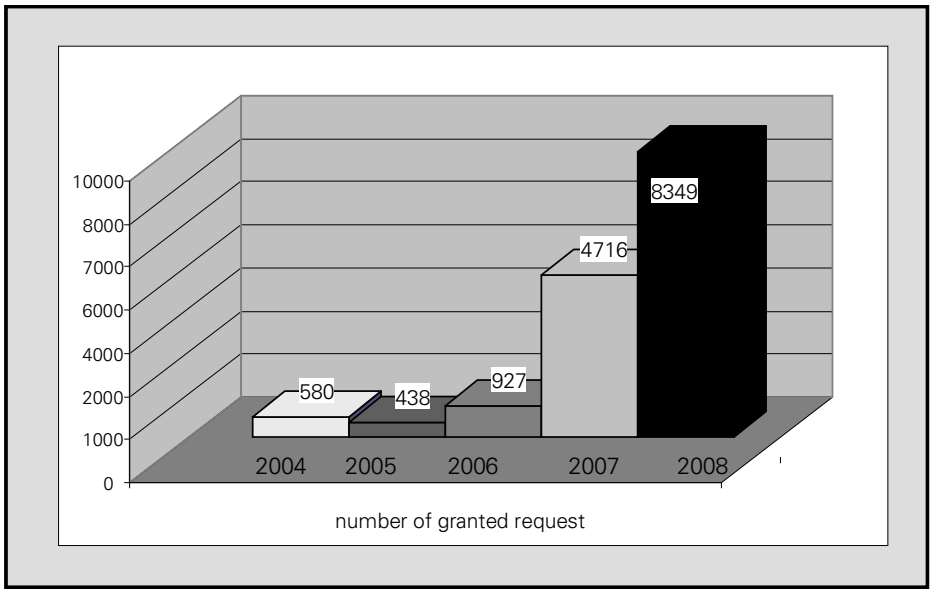
Table 6: Number of cancellations, deferrals, and phased payments, 2004-2008

	2004	2005	2006	2007	2008
Number of approved requests	Number	Number, and trend and index over the year before	Number, and trend and index over the year before	Number, and trend and index over the year before	Number, and trend and index over the year before
Cancellation	3,065	3,282 ↑ 1.07	3,274 → 0.998	1.816 ↓ 0.55	1,710 ↓ 0.94
Deferral	288	231 ↓ 0.80	948 ↑ 4.10	819 ↓ 0.86	494* ↓ 0.60
Phased payment	580	438 ↓ 0.76	927 ↑ 2.12	4,716 ↑ 5.09 (4,005 personal income tax)	8,349 ↑ 1.77 (7,314 personal income tax)

* 494 out of 1181 filed requests approved. This amounts to approx. 10 million euros (cf. to 1,120 million euros of collected income tax in 2007; according to Hren, 2009).

It is clear from the table that phased payment is the most currently relevant institute, especially in 2007-2008 as the time marked by an economic crisis (cf. Figure 2), while cancellation and deferral have been notably decreasing (with a remarkable increase of deferrals and phased payments in 2006, attributable to the longer term under the TPA-1B). As for the type of tax, personal income tax has been the most present one throughout the period (as well as social security contributions, general sales tax, and residential land use fee). Personal income tax has predominated primarily in cancellation (generally non-admissible for legal entities) and phased payment in the past two years since the TPA-2 began to apply.

Figure 2: Number of granted requests for phased payment of tax, 2004-2008

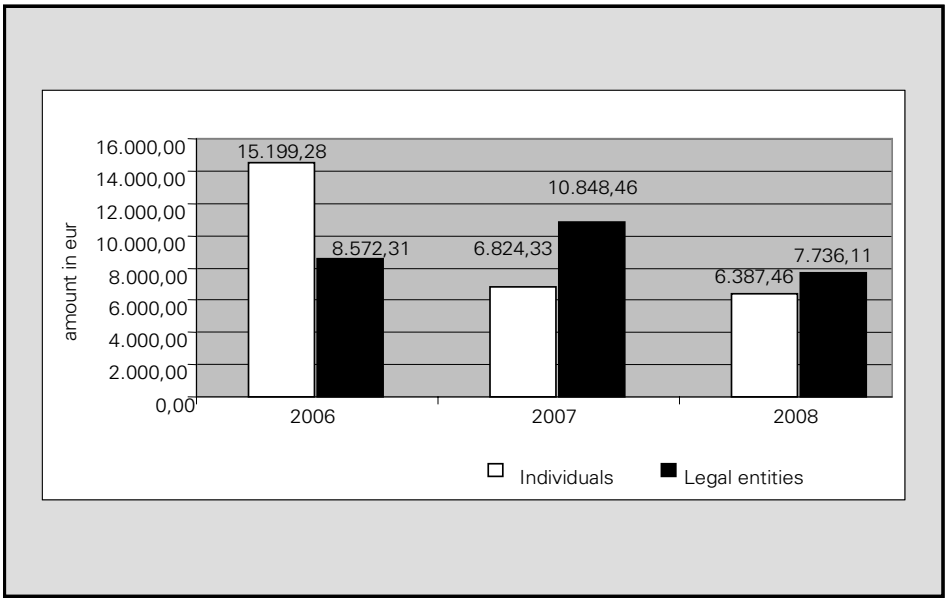


The increase in phased payment is undoubtedly attributable to the second paragraph of Art. 103 of the TPA-2, which has proved to be exceptionally currently relevant in the present social situation. This is true for all considered institutes in the light of seeking shared interests of taxpayers (social capability despite a tax liability) and tax authorities (preference of voluntary performance to avoid the need for compulsory control and enforcement). More precisely, there were approx. 4.2 million euros of cancelled taxes, 10 million euros of deferred taxes, and no less than 31.5 million euros of taxes to be paid in instalments granted in 2008 (the figures for the preceding year being approx. 7

(cancellation), 6 (deferral) and 17 (instalments) million euros). We can conclude that the legislator reached out to taxpayers (regretfully) in view of the global crisis even before due time. This is reflected in data for 2009, indicating an almost 50% increase in requests for a phased payment, totalling 1,300 in only the first two months compared to approx. 850 requests submitted in the corresponding period of last year (according to Hren, 2009). When the crisis expectedly eases, the institute will still be needed and should therefore be preserved; perhaps even the procedure of realising it, if not the very conditions under Arts. 101 and 102 of the TPA-2, might be simplified.

Further, from 2007 on, a tax liability by particular tax type having totalled less than EUR 1 at the end of the calendar year is automatically cancelled in February (TPA-2 Art. 105), as such liability does not even amount to 5% of the average enforcement proceeding costs (cf. Jerovšek, 2005). The institute of cancellation, or account balancing, is proving to also contribute to the transparency of tax records, especially if the objective element of a debt's weight is taken into account (as it is under the TPA-2, e.g. also in the determination of persons liable to control; cf. Jerovšek et al., 2008). This is evident primarily if considering the folowing data: from year 2006 to 2008

Figure 3: Tax cancelled on account of the amount owed with regard to taxpayer status, 2006-2008 in EUR



By cancelling petty amounts of tax due, tax authorities do not have to keep records for numerous taxpayers whose debt of less than EUR 1 had became due in the preceding year. This institute definitely pursues measures of reducing administrative burdens primarily for tax authorities and taxpayers, although the common budget suffers a certain loss. This loss, however, is negligible compared to the costs of record-keeping and assessment, control and, especially, enforcement proceedings, therefore it is sensible, *de lege ferenda*, to make the said institute even more currently relevant (upon priorly calculating the consequences) by raising the census to up to 10 euros (with regard to the *intra legem* analogy), especially because it aids socially very weak taxpayers.

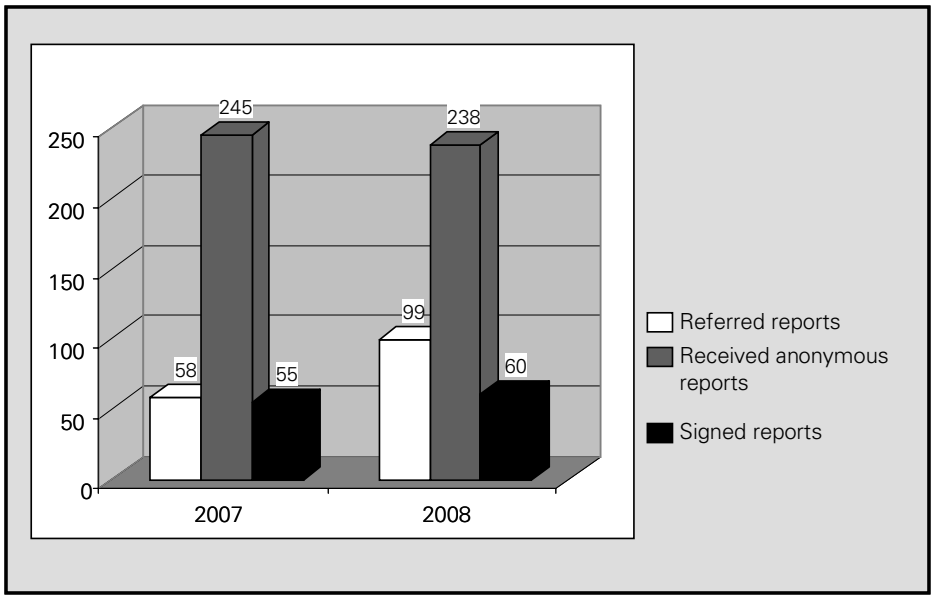
2.6 Tax investigation

Tax investigation is an institute newly introduced into the tax procedure law in 2007 (priorly only in the tax administration law), as an attempt to enable tax authorities to exert control over what generally are major violations or groups of persons active in transnational structures (Predlog ZDavP-2, 2006, p. 190), i.e. when traditional inspection methods fail. It is a type of pre-administrative procedure, as in case that suspicion proves to be grounded, an inspection proceeding starts and evidence from the investigation is used in this proceeding, the RAB aspect of the institute seeming to be tax authorities' greater efficiency and, ultimately, protected business partners of the taxpayer concerned, while the taxpayers themselves are primarily protected through the IA and the GAPA (Androjna & Kerševan, 2006). The institute may be disputable in terms of the system (Kovač, 2006), as despite the prosecutory function involved, the decision on the start and object of investigation is not even served on the taxpayer but only has the role of the tax authority's internal act in relation to the inspector-investigator, while the taxpayer (only) has the chance to give a statement when/if an inspection proceeding is initiated (cf. Šinkovec, 2002).

The collected data clearly indicates (Figure 4) that the institute already became established in practice in 2007 (with a total of 358 reports, and 224 inspections conducted on the basis of what was found in investigations), and equally in 2008 (397 reports and 188 inspections;

a minor decrease here – index 0.84 over 2007). By report mode, anonymous reports predominate, accounting for approx. 60-70%.[15]

Figure 4: Number of reports for a tax investigation by receipt mode, 2007 and 2008



According to the TARS report for 2007, activities of the competent investigation and analysis department were mainly focused on detecting tax frauds in the sales of oil derivatives (29 so-called missing trade companies[16] detected) and motor vehicles (12 investigations), loan industry (15 investigations), and pub and restaurant industry. The report is most frequently made by a natural person, in 2008 mainly an employee reporting their employer in relation to illegal work (especially in construction), cash withdrawals by legal entities' responsible persons, and the non-issue of invoices. As expected in view of the higher value of their debts by tax types, legal persons predominate among

15 In addition to those reports, a 24-hour free telephone line has been available since April 2007, through which a considerable number of reports are made (606 in 2007, and a further 23% more in 2008), of which, however, only 12-15% (90 out of 606, or 93 out of 744) are useful ones resulting in a collected tax.

16 The application "Red Dot" was launched in April 2009 for the detection and prosecution of those persons, based on the finding that certain persons keep appearing as "missing traders". It is used in the work of inspectors, investigators, and clerks covering VAT registration; according to the TARS 2008 report, 452 taxpayers had been entered into the system by 30 June 2008.

those reported; in 2008, there were 179, i.e. 45%, or, together with sole traders, 73% (another 111 of sole traders out of the 397 reported).

In total, inspections conducted on the basis of investigations yielded approx. 18.5 million (VAT approx. 7 million) euros in 2007, and approx. 9.28 million euros in 2008. The calculated average yield of a concluded inspection proceeding is approx. 67,300 euros (with the index, however, having decreased to 0.6 in 2008 over the year before). Moreover, budget revenue from certain minor offence fines is to be added to this.

2.7 Notice of tax arrears to be enforced

With the purpose of friendliness (critically discussed in Jerovšek, 2005), the legislator introduced through the TPA-1 the notice of tax arrears as a condition for beginning an enforcement proceeding. The debtor had an 8-day time limit from the notice (delivered to addressee only) to pay the debt to avoid the initiation of enforcement. In praxis, this was very costly for the state (due to both administrative work and the non-realised inflow of outstanding taxes, with enforcement not having even started yet), while enabling the taxpayer to efficiently delay enforcement (for up to 73 days, as calculated by Jerovšek, ibid.). Therefore, Art. 128 was already amended in 2006 by the TPA-1B which, within RAB, no more required that the notice should be delivered to addressee only (cf. Predlog ZdavP-1B, 2005).

For RAB purposes, provisions on the notice of tax arrears were cancelled in full by the TPA-2; here, however, the question arises of whether this institute, given the amount of taxes collected on its basis, indeed (only) was an administrative burden. Tax authorities find the opposite, and on account of the practically established share of more or less compliant taxpayers that may delay payment but not at the cost of enforcement they, despite the lack of any direct legal basis in the TPA-2, keep sending notices to debtors, especially so because of regular mail service under Art. 85 of the TPA-2. Here growth trends are even more favourable by the collected amount than the number of proceedings itself (data taken from the TARS annual reports).[17]

17 Additionally, there is some yield on account of the order of payments, since a taxpayer's debts are stated in accordance with the date of becoming due while a statement for a remaining debt is not served (to addressee only) again but the taxpayer is notified thereof and required to make the payment. If they thereafter confirm that they have received the relevant decision and/or that they will comply with it, it is deemed that the decision has been received. A further fact speaking in favour of preserving the institute is that it is primarily sensible

Table 7: Number of delivered notices of tax arrears to be enforced, and amount of payments made, 2005-2008

	2005	2006 / trend over the year before	2007 / trend over the year before	2008 / trend over the year before
Number of notices	349,213	437,355 ↑ 1.25	307,468 ↓ 0.70	333,473 ↑ 1.08
Amount paid after the notice in EUR	*705,846,269	*986,614,355 ↑ 1.40	570,252,913 ↓ 0.58	690,279,812 ↑ 1.21

*This amount has to be reduced by costs of delivery to addressee only (in 2006, the difference in costs between such delivery (EUR 1.73 per notice) and regular mail delivery totalled EUR 651,659).

The case of notice of arrears is interesting because it sheds light on several dimensions of legal regulation of the tax procedure and functioning of the TARS. First, tax authorities can function – especially to protect taxpayers' rights while not endangering the public interest – directly by the fundamental principles rather than only by explicit rules. Further, some rules that, even in the unanimous opinion of expert scholars, seemed to be a typical administrative burden at first glance in fact bring very positive effects, even in the financial volume, let alone in the accommodation of all involved. Legislative change of 2006 and 2007 thus primarily resulted in reduced costs of mailing the notices but not an extinction of the institute. Third, in the implementation of rules and the assessment of whether they are administrative burdens, each should be regarded in the context of the combined effect of an entire law and an authority's work organisation.

to dispatch a notice in cases of minor tax arrears, as immediate enforcement would entail additional enforcement and bank (20 and approx. 35, respectively) costs for the debtor.

2.8 Provisional specification in the assessment of personal income tax

As regards reduction of administrative burdens, the greatest contribution of the new TPA-2, in practical terms, is supposedly the principle of assessing personal income tax through a preliminary provisional specification with a mixed nature of a statement (which, as a pre-filled return, was already sent – by 30 April, under Art. 421 of the TPA-2 – in 2007) and an administrative decision (since 2008), provided that no protest is filed (TPA-2 Arts. 267 ff.; cf. Jerovšek, 2005a, Predlog ZDavP-2, 2006, p. 14). The TPA-2 provides that from 2008 on the tax authority, based on a preliminary internal verification of data for the past year that income payers and/or property registers submit by 31 January, prepares by 31 May a provisional personal income tax specification, which has the status of both a statement (to ensure harmony with the general part of the law and, primarily, that the taxpayer assumes responsibility for the truthfulness, correctness and completeness of the data) and a draft assessment decision which, upon the expiry of the time limit for a protest, if the latter is not filed, becomes a document permitting enforcement. If a protest is filed, an assessment decision is issued by October, and a decision also ensues if a return is filed by 30 June because a certain taxable person had not received a provisional specification.

There were only approx. 43,000 personal income tax returns filed directly by taxpayers for 2007, and 33,838 for 2008, as compared to 1,276,860 in 2005, or 1,135,422 in 2006 (with the TARS recording a total of approx. 1.012-1.275 million acts with the legal nature of an administrative decision in all those years). The described solution is advantageous to both taxpayers, who are generally relieved of preparing a return if their payers send correct data to the TARS, and tax authorities, since first-instance posterior verification has turned into a preliminary one while there are substantially fewer protests and, especially, complaints (the same according to the OECD data on pre-filled returns; Kovač, 2006a, Klun, 2009), and the payment (or refund) deadline is very likely earlier. In 2008 and 2009, for example, no less than approx. 470,000 provisional specifications for the year before became enforceable on 6 May, i.e. even before the deadline for preparing the specification. It is thus expected that approx. 46% of all personal income taxpayers already pay their liability (or are refunded) in June, while in 2005 and 2006 the first decisions were issued late in May or even in the second half of June. Further, it is important to note that each year until 2006, the TARS also employed students for entering income tax returns into the

appropriate software and exercising posterior verification, which has for the most part ceased within the present organisation. Tax officers themselves are able to concentrate (more) on the substantive aspect of control rather than operational entries. Additional savings occur because provisional specifications are served by regular mail.

According to the TARS 2007 annual report data, the predominant share of protests filed against provisional specifications – no less than three-quarters, i.e. 76.64% – in 2007 resulted from taxpayers' own "mistakes" of not having submitted on time data on their dependants so that the deduction would be specified by the TARS in accordance with the parents' request. In relation to the first instalment of issued specifications (or pre-filled returns in 2007; totalling over half a million on 31 March), only 7.3% of taxpayers filed a protest in 2007, and even only 4.3% (22,408 out of the total of 518,973) in 2008 (probably because having gained experience with reporting their dependants in 2007). The trend has thus been in line with the institute's goals, and notably positive in 2007-2008. The tax authority has proved an efficient servicing institution while the institute of preliminary provisional specification itself, with its legal status of a document permitting enforcement rather than just a pre-filled return, characterises the regulation of the personal income tax procedure in Slovenia as one of the most modern and efficient in the world (cf. Kopp, 2003, Klun, 2009).

3. Conclusions

In summary it may be concluded that the majority of the considered institutes incorporated into the tax procedure law in 2006 or 2007 for RAB purposes, do realise the set goals, i.e. simplified procedures for taxpayers and tax authorities. This can be confirmed by the recorded frequency of their use as well as the calculated savings, but it needs to be added that it does not apply for all the institutes. As regards both the tax procedure and, more broadly, regulation within the RAB, it is quite commonly not fully taken into account that operationalisation of the user focus principle – because of the principles of economy and efficiency of public administration – must be limited by the demonstrated needs (and not only wishes) of clients, and a preliminary differentiated analysis of capacities of an authority and the public administration in general.

Even more important is the realisation that the data employed is not the only relevant one for a cumulative evaluation, as individual regulatory rules produce complex combined effects working either in the same or opposed directions, so that their projected positive effects may even synergically intensify each other (like in the service of provisional specifications by regular mail), or they cancel each other out. Even some abolished obligations of those involved in proceedings (e.g. notification of debtors before enforcement is initiated) are therefore worthy of consideration whether, on account of their established positive effects, they might be reintroduced into the applicable system. The majority of the considered institutes – primarily the system of stating personal income tax, service by regular mail, and special cases of cancellation, deferral or phased payment of tax due –, on the other hand, may be assessed as suited to the social reality and the ambition to modernise the Slovenian public administration.

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Pregledni znanstveni članek

Visokošolsko izobraževanje - njegov pomen in financiranje v Sloveniji

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IZVLEČEK

Izobrazba postaja problematična predvsem glede zadostnosti sredstev, saj javno financiranje ne zadostuje več. Članek obravnava problematiko financiranja visokošolskega izobraževanja z vidika zadostnosti sredstev in z vidika pomena izobraževanja. Prikazani so načini neposrednega in posrednega financiranja izobraževanja v Sloveniji in rezultati raziskave, v kateri so študenti navedli svoje mnenje o pomenu izobraževanja in financiranju. Velika večina anketirancev se strinja, da bi uvedba šolnin povzročila manjšo udeležbo populacije v visokem šolstvu ter da bi se tako zmanjšale enake možnosti izobraževanja. Kljub temu pa se največji delež anketirancev ni strinjal s trditvijo, da se v primeru plačila šolnin ne bi šolali.

Ključne besede: visokošolsko izobraževanje, financiranje, pomen študija, Slovenija.

JEL: A23, H52

1. Uvod

Izobrazba že od nekdaj velja za pomembno družbeno vrednoto. Pridobiva se na visokošolskih ustanovah, ki so danes dostopnejše širšemu krogu ljudi, kot so bile nekoč, zato število študentov narašča. Posledično postaja problematična zadostnost sredstev, javno financiranje ne zadostuje več, zato strokovnjaki poleg javnega na tem področju čedalje bolj zagovarjajo zasebno financiranje

izobraževanja v obliki šolnin, posojil ipd. Zasebno financiranje izobraževanja vsekakor pripomore k zadostnosti sredstev, vendar je vprašljivo zagotavljanje enakih možnosti izobraževanja. Poleg tega je razlog za javno financiranje tudi ta, da izobraževanje ne prinaša koristi le posamezniku, temveč posredno celotni družbi. Za gospodarsko rast in uspešen razvoj potrebuje država izobražene ljudi. Interes posameznika pa se nanaša na pričakovanja o bodoči zaposlitvi in dohodku, kakovosti življenja, osebnostnem razvoju ipd.

Visoko šolstvo se torej danes sooča predvsem z naslednjimi problemi: v večini držav upadajo finančna sredstva univerz, saj so financirane iz davkov, pojavljajo se skrbi glede njihove kakovosti, nezadostna je pomoč študentom, delež študentov iz nižjih socialnih slojev je majhen, posledično je večina prejemnikov ugodnosti iz premožnejših družin.

Za evropske države je veljalo, da so visokošolske ustanove tradicionalno pretežno javno financirane. Čeprav so si strokovnjaki enotni, da je treba povečati udeležbo posameznikov pri financiranju, se večina javnosti še vedno ne strinja s tem. Omejitve so predvsem psihične in socialne narave, saj je vedno veljalo, da mora biti izobraževanje brezplačno ter enako dostopno vsem socialnim slojem. Pravica do brezplačnega študija pa je po večini zagotovljena z ustavo ali zakonom. Nekatere raziskave kažejo (Aghion et al., 2010), da zunanje financiranje visokošolskih institucij vodi v njihovo večjo produktivnost, če so institucije bolj avtonomne in soočene z večjo konkurenco. Glede na raziskave Del Rey in Racionero (2010) je kreditiranje glede na dohodkovne kontingente in s skupnim tveganjem najbolj optimalen način participacije študenta, ki istočasno upošteva stroške izobraževanja in izgubljeni dohodek v času študija.

V članku so predstavljeni načini in oblike javnega financiranja visokošolskega izobraževanja, in sicer tako ustanov kot študentov prek neposrednih ali posrednih oblik financiranja. Sledi predstavitev porabljenih finančnih sredstev za izobraževanje in primerjava s članicami EU. Zadnji del članka prikazuje rezultate obsežne raziskave med študenti o njihovem videnju pomena visokošolskega izobraževanja in financiranja.

2. Pomen visokošolskega izobraževanja in njegovo financiranje

Izobraževanje mnogi uvrščajo med mešane (oz. kvazi javne) dobrine, ki so zasebne v porabi, oskrba z njimi pa je v javnem interesu (javno financiranje in/ali

javna oskrba). Visokošolska izobrazba torej prinaša koristi tako posamezniku kot širši okolici (stranske koristi ali eksternalije). Glavni problem je merjenje dejanskega obsega koristi. Ni jih mogoče izmeriti po enotni lestvici, če jih je sploh mogoče izmeriti (Vossensteyn, 2004, str. 40). Bevc et al. (2001, str. 13) menijo, da gre pri visokem izobraževanju za vprašanje, ali je masovno visokošolsko izobraževanje primarno individualna ali primarno družbena dobrina, oz. ali imajo od tega izobraževanja večjo korist družba ali šolajoči. Dokler je število vključenih v to izobraževanje majhno, z vidika izdatkov to ni pomembno vprašanje, kasneje pa je treba naraščanje državnih izdatkov upravičiti ali z vidika pravičnosti ali učinkovitosti. Ocenjuje se, da čim večje je število oseb, ki imajo koristi od visokega izobraževanja (imajo visoko izobrazbo), tem večja je relativna neenakopravnost tistih, ki nimajo visoke izobrazbe. Za visoko šolstvo (redni študij) lahko zato rečemo, da je javna dobrina v tistem obsegu, ki ga je država pripravljena in sposobna financirati.

Po navadi povpraševanje po visokošolskem izobraževanju narašča v obdobju gospodarske krize. Posamezniki, ki ostanejo brezposelni ali imajo malo možnosti za zaposlitev, vidijo visokošolsko izobrazbo kot način do boljših zaposlitvenih možnosti. Vendar pa veliko število diplomantov vpliva na rast ponudbe delovne sile z visoko izobrazbo, kar posledično pomeni tudi nižjo ceno te delovne sile. Pri tem se pojavlja vprašanje, ali sploh še lahko govorimo o koristih, ki naj bi jih imel posameznik od višje izobrazbe. Leta 2008 so se grški študenti v demonstracijah proti izobraževalnemu sistemu v državi poimenovali 'Generacija 700 evrov', saj kljub višji izobrazbi ne dobijo boljše plačanih zaposlitev.

Javno financiranje visokošolskega izobraževanja ima tako več plati. Težja zaposljivost visokošolskih diplomantov namreč pomeni pritisk tudi na socialne izdatke in ne prinaša več le koristi. Glede na letno poročilo Zavoda RS za zaposlovanje stopnja izobrazbe, ki je v preteklosti igrala veliko vlogo pri zaposlitvenih možnostih, danes večinoma ni več tako pomembna (Zavod RS za zaposlovanje, 2009). Največjo skupino brezposelnih oseb so še vedno osebe z najnižjo stopnjo izobrazbe, ki jih je bilo v letu 2009 v povprečju 39,4 %. Brezposelnih s šesto in sedmo stopnjo izobrazbe ali več je bilo v letu 2009 10 %, vendar delež te skupine narašča v zadnjih letih bolj kot pri drugih skupinah.

3. Neposredno in posredno financiranje visokošolskega izobraževanja v sloveniji

Za sistem financiranja visokega šolstva v Sloveniji je značilno, da je financirano pretežno iz javnih sredstev. Državna sredstva prejemajo tako izobraževalne ustanove kot študenti. Prav tako so prejemniki državnih sredstev za izobraževanje zasebne visokošolske ustanove, ki imajo dodeljeno koncesijo za izvajanje javne službe.

Način financiranja visokega šolstva v Sloveniji ureja Zakon o visokem šolstvu (ZViS), in sicer v 8. poglavju (72.-78. člen). Po zakonu se sredstva za dejavnost visokošolskih ustanov določajo v državnem proračunu ob upoštevanju študijskega področja ter števila vpisanih študentov in diplomantov rednega študija prve in druge stopnje. Zakon predvideva podrobnejšo ureditev financiranja s posebnim predpisom, ki ga sprejme Vlada Republike Slovenije. Financiranje visokošolskih ustanov je torej podrobneje urejeno z Uredbo o javnem financiranju visokošolskih in drugih zavodov, članic univerz, od leta 2004 do leta 2008. V tem obdobju je bila Uredba štirikrat spremenjena in dopolnjena, nazadnje oktobra 2008, ko je bila sprejeta Uredba o spremembah in dopolnitvah Uredbe o javnem financiranju visokošolskih in drugih zavodov, članic univerz, od leta 2004 do leta 2008, s katero je bila podaljšana veljavnost sedanjega načina financiranja še za leto 2009. Za naslednje obdobje od leta 2010 naprej je v pripravi nova uredba, vendar bi za stabilnost financiranja tega področja bilo bolje, če bi le-to bilo urejeno z zakonom (kot to predvideva tudi Ustava RS).

V Sloveniji obstaja neposredna državna finančna pomoč študentom le v obliki štipendij, ki so omejene na nadarjene (Zoisova štipendija) in tiste, ki izhajajo iz družin z nižjim dohodkom na družinskega člana (državna štipendija). V novem Zakonu o štipendiranju je predvideno sofinanciranje kadrovskih štipendij z namenom povečanja števila le-teh. Sistem državno podprtih študentskih posojil je nerazvit, študenti lahko najamejo študentska posojila pri bankah, vendar pa so le-ta nenamenska (namen porabe ni znan).

Štipendije ureja Zakon o štipendiranju (Zštip, Ur. l. RS, št. 59/2007). V njem so štipendije opredeljene kot dopolnilni prejemek, namenjen za kritje stroškov v zvezi z izobraževanjem (5. člen ZŠtip). V 9. členu Zštip so določeni splošni pogoji za pridobitev štipendije: »Štipendijo po tem zakonu lahko pridobijo upravičenci, ki ob prvem vpisu v prvi letnik višješolskega ali visokošolskega izobraževanja oziroma ob prvem vpisu na prvo, drugo ali tretjo stopnjo izobraževanja niso starejši od 26 let, in:

– hkrati ne prejemajo katere od štipendij iz 5. člena tega zakona,
– ne prejemajo štipendije ali drugih prejemkov za izobraževanje po drugih predpisih,
– niso v delovnem razmerju oziroma ne opravljajo samostojne registrirane dejavnosti,
– niso vpisani v evidenco brezposelnih oseb pri Zavodu Republike Slovenije za zaposlovanje (v nadaljnjem besedilu: zavod).«

13. člen Zštip je bil spremenjen z Zakonom o spremembah in dopolnitvah Zakona o štipendiranju (Zštip-A, Ur. l. RS, št. 40/2009). Določa, da se državne štipendije dodelijo kandidatom, ki izpolnjujejo splošne pogoje iz tega zakona in pri katerih povprečni mesečni dohodek na družinskega člana v preteklem koledarskem letu pred vložitvijo vloge ne presega 65 % (pred spremembo je ta meja znašala 60 %) minimalne plače na družinskega člana v istem obdobju za tiste kandidate, ki se šolajo ali študirajo v kraju svojega stalnega bivališča, in od 66 % do 68 % (pred spremembo je bila meja od 60 % do 65 %) minimalne plače na družinskega člana za tiste kandidate, ki se šolajo ali študirajo izven kraja svojega stalnega bivališča.

Zoisovo štipendijo po 24. členu Zštip lahko pridobi dijak ali študent, ki izpolnjuje splošne pogoje in:

– ima v višješolskem ali visokošolskem izobraževanju povprečno oceno najmanj 8,5 ali več, ali
– je glede na povprečno oceno uvrščen med najboljših 5 % študentov v svoji generaciji, ali
– je dosegel izjemne dosežke na posameznem področju družbenega življenja ne glede na letnik šolanja.

Kot je že omenjeno, država namenja finančna sredstva tudi za posredno pomoč študentom. Subvencioniranje prehrane je bilo normativno urejeno šele leta 1996 s prvim upravno-pravnim aktom na tem področju, in sicer z Uredbo o subvencioniranju študentske prehrane (Ur. l. RS, št. 24/1996). Leta 2002 pa je bil sprejet tudi Zakon o subvencioniranju študentske prehrane (ZSšP, Ur. l. RS, 85/2002). Po ZSšP (6. člen) so upravičenci do subvencionirane študentske prehrane »vsi, ki imajo status študenta in niso zaposleni«. Za razliko od štipendij so tu upravičenci vsi, ne glede na socialni položaj. Pravilnik o subvencioniranju študentske prehrane (Ur. l. RS, št. 70/2007) pa natančneje opredeljuje upravičence, in

sicer so to tako redni kot tudi izredni študentje, ki niso zaposleni ali prijavljeni na Zavodu Republike Slovenije za zaposlovanje kot iskalci zaposlitve. Subvencioniranje prehrane se izvaja v obliki bonov za kosilo. Posameznik je upravičen do enega subvencioniranega obroka za vsak delovni dan, razen za čas šolskih počitnic (od 10. julija do 20. avgusta).

Subvencioniranje bivanja študentov je predpisano v ZViS. V njem so navedena merila, ki se upoštevajo pri izbiri: študijska uspešnost, materialni položaj, oddaljenost stalnega bivališča od kraja študija ter socialne in zdravstvene razmere študenta. Podrobnejše določbe so urejene v Pravilniku o subvencioniranju bivanja študentov (Ur. l. RS, št. 22/2001). Ureja tudi točkovanje omenjenih meril za izbiro. Subvencija znaša najmanj 20 % povprečne mesečne cene bivanja. Subvencijo lahko študenti uveljavljajo tudi za bivanje pri zasebnikih. Pravilnik določa minimalni standard, ki ga morajo študentski domovi in zasebniki zagotavljati študentu. Cena bivanja v študentskih domovih in pri zasebnikih se zmanjša za toliko, kolikor znaša subvencija.

Subvencioniranje prevoza prav tako predpisuje že ZViS. Do subvencije so upravičeni študenti, ki se izobražujejo v oddaljenosti 5 km ali več od kraja stalnega bivališča. Določena je minimalna subvencija, in sicer v višini 7 odstotkov od cene mesečne vozovnice. Višina subvencije je odvisna od socialnega položaja in oddaljenosti od kraja izobraževanja. Subvencije so podrobneje urejene v Pravilniku o subvencioniranju prevozov študentov (Ur. l. RS, št. 18/2004). Pravilnik razvršča višino subvencije v štiri razrede glede na bruto mesečni dohodek na družinskega člana v odstotku od bruto povprečne plače na zaposlenega v RS. Višina subvencije se v vsakem razredu zviša za 10 % za oddaljenost nad 40 km in do 60 km od stalnega prebivališča študenta od kraja izobraževanja in za 20 % za oddaljenost nad 60 km. Stroški prevoza pa so lahko dodatno pokriti v okviru štipendij. Mestni potniški promet pa subvencionira občina.

Zdravstveno varstvo (zavarovanje) študentov ureja Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju (ZZVZZ-UPB3, Ur. l. RS, št. 72/2006). Na njegovi podlagi imajo študenti pravico do vseh zdravstvenih storitev do konca rednega šolanja (22. člen). Zakon o spremembah in dopolnitvah Zakona o zdravstvenem varstvu in zdravstvenem zavarovanju (ZZVZZ-K, Ur. l. RS, št. 76/2008) je omejil upravičence do zdravstvenega zavarovanja na šolajoče do dopolnjenega 26. leta starosti. Davčne olajšave za šolajoče in njihove starše določa *Zakon o dohodnini* (ZDoh-2, Ur. l. RS, št. 117/2006). Splošna olajšava se prizna rezidentu pod pogojem, da zanj nihče drug ne uveljavlja posebne olajšave za vzdrževanega družinskega člana (111. člen ZDoh-2). To pomeni, da

so do splošne olajšave upravičeni tisti študenti, ki jih starši niso uveljavljali kot vzdrževane člane. Posebno olajšavo torej lahko izkoristijo starši, ki vzdržujejo šolajoče družinske člane, njena velikost pa je odvisna tudi od števila vzdrževanih članov in je določena v 114. členu ZDoh-2. 3. odstavek 113. člena ZDoh-2 določa posebno osebno olajšavo rezidentu, ki se izobražuje (ima status dijaka ali študenta, vendar do dopolnjenega 26. leta starosti) in začasno ali občasno dela na podlagi napotnice pooblaščene organizacije. Zneski olajšav se enkrat letno uskladijo s koeficientom rasti cen življenjskih potrebščin v Sloveniji za mesec november tekočega leta v primerjavi z mesecem novembrom prejšnjega leta po podatkih Statističnega urada Republike Slovenije (118. člen ZDoh-2). Študentu se v olajšavo šteje še 10 odstotkov normiranih stroškov od dohodka preko napotnic, ki jih ni potrebno posebej dokazovati.

Starši šolajočih so prav tako upravičeni do otroškega dodatka, ki je dopolnilni prejemek za preživljanje, vzgojo in izobraževanje otroka, kadar dohodek na družinskega člana ne presega 99 % povprečne plače v Republiki Sloveniji v preteklem koledarskem letu. Pravica do otroškega dodatka je opredeljena v Zakonu o starševskem varstvu in družinskih prejemkih (ZSDP-UPB2, Ur. l. RS, št. 110/2006) v 57. členu. Pravico lahko starši uveljavljajo do dopolnjenega 18. leta otroka oz. do dopolnjenega 26. leta starosti (izjemoma tudi po dopolnjenem 26. letu starosti), če ima status dijaka ali študenta.

4. Javni izdatki za visokošolsko izobraževanje

V Sloveniji so stroški rednega študija v celoti financirani iz javnih sredstev, saj izobraževalne ustanove prejemajo državna sredstva za izvajanje programov rednega dodiplomskega študija oz. 1. in 2. bolonjske stopnje (plačilo šolnin za redni študij prepoveduje ZViS). Izredni študij pa je financiran iz zasebnih virov (prispevek šolajočih in njihovih staršev oz. delodajalcev), in sicer s plačilom šolnin v višini celotnih stroškov poučevanja na študenta.

Javni izdatki države in občin, namenjeni za formalno izobraževanje v Sloveniji, so v letu 2007 znašali 1.795 milijonov EUR ali 5,21 % BDP, od tega 1,21 % za terciarno izobraževanje, skupaj je to pomenilo slabo petino (18 %) vseh javnih izdatkov za izobraževanje. Država je nekaj manj kot 28 % vseh sredstev za formalno izobraževanje namenila za terciarno izobraževanje, občine pa le dobre 3 % za srednješolsko in terciarno izobraževanje skupaj (SURS, 2009).

Proračunska sredstva države in občin za formalno izobraževanje, ki so bila namenjena izobraževalnim ustanovam, pomenijo 92 % teh sredstev, medtem ko se za transferje gospodinjstvom in za druge zasebne entitete porablja 8 %. Od navedenih 92% sredstev za izobraževalne ustanove se le slabih 20 % (ali 323 milijonov EUR) namenja za terciarno izobraževanje, njihov delež in višina pa sta se zmanjšala. Po drugi strani pa so bili skoraj vsi javni transferji namenjeni za terciarno izobraževanje, in sicer okoli dve tretjini. V sestavi vseh javnih izdatkov za terciarno izobraževanje v letu 2007 so tako transferji za gospodinjstva in druge zasebne entitete bili slaba četrtina skupnih javnih izdatkov (SURS, 2009).

Kot je že navedeno, država s subvencijami gospodinjstvom sodeluje pri kritju življenjskih stroškov študentov. Gospodarstvo prispeva h kritju življenjskih stroškov v okviru kadrovskih štipendij, vendar število le-teh pomeni majhen delež v celotnem sistemu štipendiranja (dobra desetina vseh podeljenih štipendij). Po podatkih SURS za leto 2007 število vseh štipendistov (dijakov in študentov) upada, le še dobra četrtina prejema štipendijo, tako da največje breme življenjskih stroškov nosijo študenti in njihovi starši (vendar je delež teh stroškov zaradi različnih okoliščin in potreb posameznikov težko merljiv).

V državah članicah EU imajo šolnino v 16 državah, vpisnino pa v 13. Znotraj EU se kaže trend k zaračunavanju šolnine za redni študij v javnih ustanovah. Nekatere države so šolnino vpeljale v zadnjih letih, v nekaterih pa o njeni vpeljavi razpravljajo. Šolnino za redni študij večinoma določi država in se v EU giblje med 200 in 1.000 EUR. V EU je vpisnina večinoma nižja od 200 EUR. Za daljši študij od uradno določenega študenti plačajo v 15 državah EU, v 9 med njimi študenti plačajo le v tem primeru (Eurostat, 2007; v Bevc, 2008, str. 9). Publikacija Eurostata o ključnih kazalnikih visokega izobraževanja v Evropi navaja kot edini primer nasprotnega trenda Slovenijo. Po deležu javnih izdatkov za izobraževanje v BDP za leto 2006 je bila Slovenija uvrščena na osmo mesto po deležu javnih izdatkov za terciarno izobraževanje v BDP med vsemi državami članicami EU. Delež sredstev namenjenih za terciarno izobraževanje v državah EU je prikazan v tabeli 1 na naslednji strani.

Delež državnih subvencij študentom, gospodinjstvom in drugim zasebnim entitetam je v državah OECD v letu 2005 v povprečju znašal 18 odstotkov celotnih javnih izdatkov za visokošolsko izobraževanje (manj kot v letu 2007 v Sloveniji). Močno nad povprečjem držav OECD pa sta bili Norveška in Nova Zelandija, katerih delež subvencij v celotnih javnih izdatkih za visokošolsko izobraževanje je znašal več kot 40 odstotkov v letu 2005 (Highlights from Education at a Glance, 2008, str. 60). V primerjavi s povprečjem v državah OECD je

delež zasebnih izdatkov v Sloveniji nekoliko nižji. V državah OECD se kaže trend upadanja deleža javnih izdatkov za visokošolske izobraževalne ustanove, delež zasebnih izdatkov se je v letih od 1995 do 2005 povečal za 6 odstotkov in je v navedenem letu znašal 27 odstotkov skupnih izdatkov za visokošolske ustanove (Highlights from Education at a Glance, 2008, str. 58).

Tabela 1: Delež javnih izdatkov za terciarno izobraževanje v % BDP

država	leto		
	2004	2005	2006
EU- 27	1.13	1.15	1.13
Belgija	1.29	1.29	1.32
Bolgarija	0.80	0.76	0.73
Češka	0.94	0.89	1.23
Danska	2.51	2.38	2.27
Nemčija	1.16	1.14	1.11
Estonija	0.86	0.93	0.92
Irska	1.10	1.11	1.14
Grčija	1.32	1.44	-
Španija	0.97	0.95	0.95
Francija	1.21	1.19	1.19
Italija	0.77	0.76	0.80
Ciper	1.48	1.58	1.65
Latvija	0.68	0.88	0.91
Litva	1.06	1.03	1.00
Luksemburg	-	-	-
Madžarska	1.02	1.03	1.04
Malta	0.53	1.06	-
Nizozemska	1.45	1.47	1.50
Avstrija	1.44	1.49	1.48
Poljska	1.15	1.19	0.96
Portugalska	0.83	0.98	1.00
Romunija	0.70	0.81	-
Slovenija	1.31	1.25	1.24
Slovaška	0.98	0.81	0.90
Finska	2.07	2.01	1.94
Švedska	2.04	1.92	1.84
Združeno Kraljestvo	1.00	1.20	1.10

Vir: Eurostat, 2010 - ni podatka

5. Izvedba raziskave

5.1 Potek raziskave in vzorec

V raziskavi smo ocenili pomen visokošolskega izobraževanja in njegovega financiranja. Vprašanja in trditve so bila oblikovana na podlagi teoretičnih ugotovitev in mnenj strokovnjakov s tega področja. Anketa je bila pripravljena s pomočjo spletne strani www.surveymonkey.com. Povezava na anketo je bila objavljena na študentskih forumih. Izpolnjevanje ankete je potekalo v obdobju od 28. 5. 2009 do 30. 06. 2009. Ankete ni bilo mogoče zaključiti, ne da bi bili podani odgovori na vsa vprašanja, tako so v analizi upoštevane le v celoti izpolnjene ankete. Pri posameznem vprašanju je bilo mogoče obkrožiti le en odgovor. Skupaj je bilo anketiranih 400 študentov različnih slovenskih univerz in samostojnih visokošolskih zavodov.

Anketa je bila sestavljena iz dveh delov. Prvi del je vseboval splošne podatke o anketirancih. V drugem delu so anketiranci odgovorili na vprašanja o visokošolskem izobraževanju in njegovem financiranju ter ovrednotili 16 trditev na lestvici od 1 do 4, pri čemer so ocene imele naslednji pomen: 1 – sploh se ne strinjam, 2 – se ne strinjam, 3 – strinjam se, 4 – popolnoma se strinjam. Lestvica je bila oblikovana s sodim številom možnosti zato, da se vsakdo opredeli, oz. da ni sredinskega odgovora, ko je nekomu vseeno.

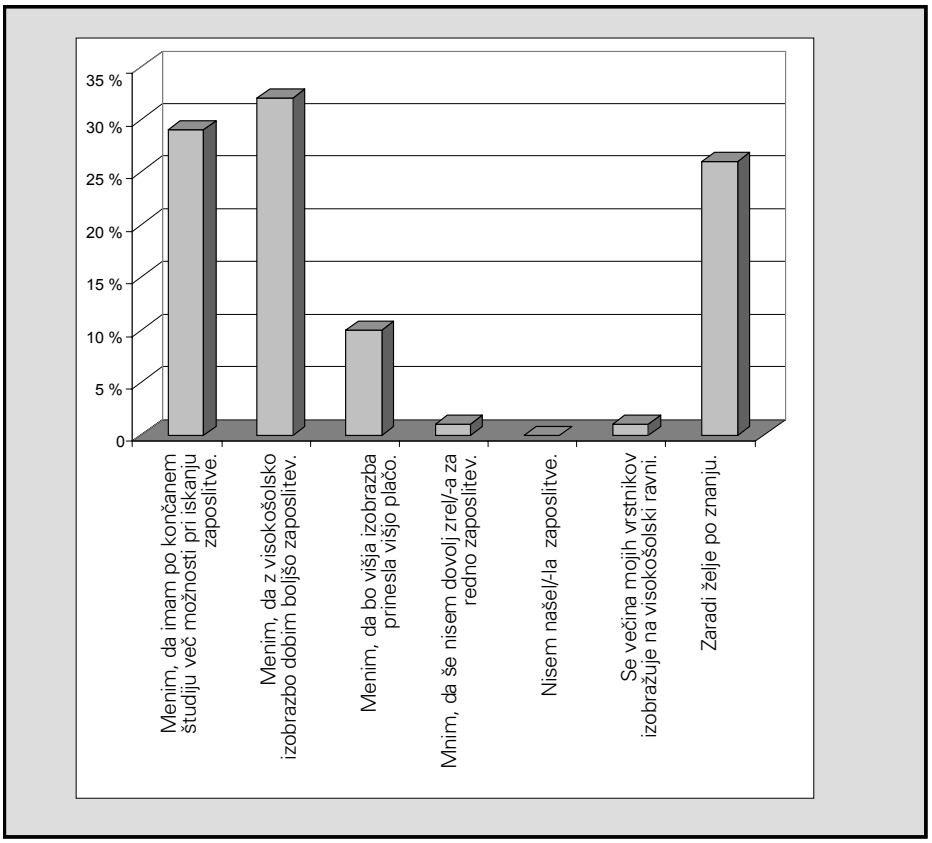
Anketni vprašalnik je izpolnilo 62 odstotkov žensk in 38 odstotkov moških. Med vsemi vprašanimi je bilo največ starih 23 in 24 let, in sicer je pri obeh starostih delež znašal 16 odstotkov. Velika večina anketiranih študira na dodiplomski ali prvi stopnji (95 odstotkov), le 5 odstotkov pa študira na podiplomski ali drugi stopnji. Večina anketiranih je vpisanih na redni študij (80 odstotkov), drugi študirajo izredno. Med vsemi največji delež predstavljajo absolventi, in sicer 35 odstotkov. Glede strukture vzorca lahko trdimo, da ta ne odstopa bistveno od strukture v celotni populaciji. Po podatkih Statističnega urada RS za leto 2008 je bilo v visokošolski študij vpisanih 59,7 % žensk, delež izrednih študentov je bil 27,4 %, delež absolventov je znašal 19,3 %, v dodiplomski študij oziroma na prvo stopnjo študija pa je bilo vpisanih 88,2 % študentov.

5.2 Analiza rezultatov raziskave

V nadaljevanju so prikazani rezultati raziskave, s katerimi je ocenjeno mnenje anketiranih študentov glede namena študija in ocena mnenja o financiranju. V Grafu

1 so prikazani odgovori študentov na vprašanje o razlogih, zakaj se izobražujejo na visokošolski ravni. Največ študentov (32 odstotkov) meni, da lahko z visokošolsko izobrazbo dobijo boljšo zaposlitev, nekaj odstotkov manj (29 odstotkov) je mnenja, da imajo po končanem študiju več možnosti pri iskanju zaposlitve. Zaradi želje po znanju pa se izobražuje 27 odstotkov vprašanih. Nihče ni navedel neuspešnega iskanja zaposlitve kot razlog za nadaljevanje šolanja na visokošolski ravni.

Graf 1: Razlogi za šolanje



Vir: Anketa.

Glede financiranja visokoolske izobrazbe je bila večina anketiranih (68 odstotkov) mnenja, da je visokošolsko izobraževanje javna dobrina in zato mora biti brezplačno. 30 odstotkov anketiranih je menilo, da imata koristi od visokošolske izobrazbe tako družba kot posameznik, zato bi si stroške izobraževanja morala deliti. Le 2 odstotka anketiranih pa je bilo mnenja, da ima od

visokošolske izobrazbe koristi predvsem posameznik in bi stroške visokošolskega izobraževanja moral kriti sam.

V Tabeli 2 je navedenih 16 trditev in povprečna ocena strinjanja anketiranih z njimi. Kot že rečeno, je bila ocenjevalna lestvica od 1 do 4, tako so tudi povprečne ocene v tem razponu. Za trditev, ki je bila ocenjena s povprečno oceno manj kot 2,5 velja, da se večina vprašanih ni strinjala z njo. S trditvami, ki so bile ocenjene s povprečno oceno več kot 2,5, pa se je večina vprašanih strinjala. Za trditve, ki so se najbolj približale povprečni oceni 2,5, velja, da so si bili anketiranci najmanj enotni. Anketirani študentje so se najbolj strinjali s trditvijo, da bi državno podprta posojila morala vsebovati spodbude za študente. Prav tako je bil velik delež anketiranih študentov mnenja, da bi se z uvedbo šolnin zmanjšale enake možnosti izobraževanja in bi uvedba šolnin povzročila manjšo udeležbo populacije v visokem šolstvu.

Najmanj pa so se strinjali s trditvijo, da se v primeru plačila šolnine ne bi šolali, češ da višja stopnja izobrazbe ne vpliva na višino plače. Torej lahko sklenemo, da bi bili pripravljeni investirati v izobrazbo, saj od nje pričakujejo denarne koristi v prihodnosti. Prav tako so bili mnenja, da kljub temu da je študij brezplačen in velik delež populacije študira in študij tudi zaključi, izobrazba vseeno pomeni boljše možnosti pri iskanju zaposlitve. Večina se tudi ni strinjala s trditvijo, da bi v primeru šolnin visokošolske ustanove bolj skrbele za kakovost in učinkovitost izvajanja programov.

Glede možnosti odplačevanja šolnin preko študentskih posojil so si bili anketiranci najmanj enotni. Polovica anketiranih se ni strinjala z navedeno trditvijo, druga polovica pa se v primeru plačila šolnine za študij ne bi odločila zaradi strahu pred prihodnjim dolgom. Mnenje anketirancev je bilo deljeno tudi glede trditve, da bi se v primeru šolnin vpisovali le tisti, ki imajo resen namen študirati. Prav tako si niso bili enotni glede morebitnega diskriminatornega zaračunavanja šolnin za izredne študente.

Glede na spol se odgovori niso veliko razlikovali in tudi niso odstopali od skupnega povprečja. Kot glavni razlog za šolanje so moški izrazili željo po znanju. Predvsem moški so bili mnenja, da imajo od visokošolske izobrazbe koristi posamezniki in bi si zato morali stroške kriti sami. Glede na vrsto študija je prihajalo do večjih razlik in odstopanj od povprečja predvsem pri podiplomskih študentih. Polovica vprašanih podiplomskih študentov (50 odstotkov) je kot razlog za šolanje navedla željo po znanju. Kar 64 odstotkov je bilo mnenja, da bi si družba in posameznik morala stroške izobraževanja deliti. Tudi zelo velik delež podiplomskih študentov (82 odstotkov) namerava študij dokončati v pred-

videnem času trajanja. Precej odstopanj od skupnega povprečja je bilo tudi pri povprečnih ocenah strinjanja s trditvami, ni pa prišlo do nasprotujočih mnenj.

Tabela 2: Povprečna ocena strinjanja vprašanih s trditvami

	povprečna ocena
Država ni sposobna financirati povečane vključenosti prebivalstva v visokošolskem izobraževanju na tradicionalen način (iz javnih sredstev).	2.42
Država bi morala nameniti več sredstev za neposredne oblike pomoči (štipendije, študentska posojila) kot za posredne (subvencije za prehrano, prevoz, bivanje …).	3.01
Plačilo šolnin za izredni študij je v primerjavi z brezplačnim rednim študijem diskriminatorno.	2.46
Študenti bi bili bolj motivirani za študij, če bi tudi sami krili del stroškov študija.	2.77
Uvedba šolnin bi povzročila manjšo udeležbo populacije v visokem šolstvu.	3.27
Z uvedbo šolnin bi se zmanjšale enake možnosti izobraževanja.	3.37
V primeru uvedbe šolnin bi se vpisovali le tisti, ki imajo resen namen študirati.	2.55
Šolnina bi pripomogla k skrajšanju trajanja študija in k večji prehodnosti študentov (manj ponavljanj).	2.69
Šolnino bi bil-a pripravljen-a odplačevati šele po dokončanem študiju (v obrokih in v primeru, da bi prejemal-a dovolj visoko plačo).	2.63
Višina odplačila študentskih posojil bi morala biti povezana z višino plače diplomanta.	2.69
Če bi obstajale šolnine in možnost njihovega odplačevanja preko študentskih posojil, se za študij ne bi odločil-a zaradi strahu pred bodočim dolgom.	2.48
Tudi če bi moral-a plačati šolnino, bi se kljub temu šolal-a in po potrebi zadolžil-a, ker menim, da imam z višjo izobrazbo več možnosti za boljšo in bolje plačano zaposlitev.	2.93
Državno podprta posojila bi morala vsebovati spodbude za študente (npr. zmanjšanje posojilnega dolga, če dokončajo študij v roku).	3.41
Če bi visokošolske ustanove lahko zaračunale šolnine, bi bolj skrbele za kakovost in učinkovitost izvajanja programov.	2.31
Če bi moral-a plačati šolnino, se ne bi šolal-a, ker menim, da višja stopnja izobrazbe ne vpliva na višino plače.	1.72
Glede na to, da je študij brezplačen, se večina šola in študij tudi zaključi, tako da izobrazba ne prinaša boljših možnosti za zaposlitev.	2.16

Vir: anketa

Po letniku študija so se odgovori razlikovali le pri trditvi, glede katere si je bila celotna populacija najmanj enotna. Študenti od 3. letnika naprej (brez absolventov) se ne strinjajo s trditvijo, da se za študij ne bi odločili, če bi morali šolnino v prihodnosti povrniti. Študenti 1. in 2. letnika pa se strinjajo s to trditvijo in se v primeru šolnin zaradi strahu pred bodočim dolgom za študij ne bi odločili.

Odgovore smo obravnavali tudi glede na način študija. Odstopanja od povprečja so se pojavila predvsem pri izrednih študentih. Polovica izrednih študentov (50 odstotkov) meni, da bi si družba in posameznik morala stroške izobraževanja deliti. Ta odstotek ni presenetljiv, saj si izredni študenti sami financirajo študij. Prav tako precej višji delež izrednih študentov (65 odstotkov) namerava študij dokončati v predvidenem času trajanja. Od skupnega povprečja se je njihovo mnenje razlikovalo v strinjanju s trditvijo, da država ni sposobna financirati povečano vključenost prebivalstva v visokošolskem izobraževanju na tradicionalen način. Pričakovano so se tudi, za razliko od skupnega povprečja, strinjali s trditvijo, da je plačilo šolnin za izredni študij v primerjavi z brezplačnim rednim študijem diskriminatorno.

6. Zaključek

Šolnine ostajajo »tabu« tema, čeprav ni nujno, da bi v primeru vpeljave šolnin le-te pokrivale celotne stroške izobraževanja. Strokovnjaki namreč zagovarjajo vpeljavo šolnine le v višini 20 do 30 odstotkov stroškov izobraževanja. Velika večina anketirancev se strinja, da bi uvedba šolnin povzročila manjšo udeležbo populacije v visokem šolstvu ter da bi se tako zmanjšale enake možnosti izobraževanja. Kljub temu pa se največji delež anketirancev ni strinjal s trditvijo, da se v primeru plačila šolnin ne bi šolali, češ da višja stopnja izobrazbe ne vpliva na višino plače. Torej bi bili vseeno pripravljeni plačati šolnino v pričakovanju bodočih koristi, predvsem denarnih. Nove razmere v visokem šolstvu (množičnost udeležbe, bolonjskih sistem) narekujejo prilagoditev sistema financiranja. Strokovnjaki opozarjajo, da zaradi pomanjkanja sredstev lahko pride do padca kakovosti izvajanja storitev. Kljub temu anketiranci dvomijo, da bi ob povečanju virov, predvsem zasebnih, visokošolske ustanove bolj skrbele za kakovost in učinkovitost izvajanja študijskih programov.

V luči povečanja udeležbe posameznikov pri financiranju visokošolske izobrazbe bi bilo v Sloveniji smiselno razmisliti o vpeljavi plačila »obresti« za tiste študente, ki študija ne dokončajo v uradno določenem času. Vsaka sprememba povzroča nezadovoljstvo. Potrebni so pogovori in usklajevanja med interesnimi skupinami. Glede na to, da so se študentje najbolj strinjali s trditvijo, da bi državno podprta posojila morala vsebovati spodbude za študente, npr. zmanjšanje posojilnega dolga, če dokončajo študij v roku, lahko sklenemo, da so naklonjeni spodbudam za dokončanje študija v določenem roku. Študij bi bil torej brezplačen za tiste, ki bi svoje študijske obveznosti opravljali pravočasno. S tem bi tudi dosegli večjo prehodnost študentov in manjši osip, saj so tudi rezultati ankete potrdili statistične podatke, da le polovica študentov dokonča študij v roku.

Spremembe na področju visokošolskega izobraževanja so nujne, vsi podatki kažejo na to, da bo tudi sistem financiranja na dolgi rok, kljub zmanjševanju generacij nevzdržen. Po drugi strani tako strokovna javnost kot študenti sami menijo, da je način financiranja nespodbuden za dokončanje študija v predvidenem roku. Reformni procesi bodo torej v prihodnosti nujni.

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1.02 Review article

Higher Education – Importance and Funding in Slovenia

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ABSTRACT

Funding of education is becoming a particularly problematic issue, because public funding is no longer sufficient. The article considers the problems of funding higher education from the point of view of the sufficiency of funds and from the point of view of the importance of education. It illustrates methods of direct and indirect funding of education in Slovenia and presents the results of a survey in which students gave their opinions on the importance of education and on education funding. A large majority of respondents agree that the introduction of tuition fees would cause a reduction in participation in higher education and a consequent reduction in equal opportunities for education. Despite this, the largest share of respondents did not agree with the statement that in case of the introduction of tuition fees they would not enrol in education.

Key words: higher education, funding, importance of studying, Slovenia

JEL: A23, H52

1. Introduction

Education has long been considered an important social value. Providing education is the task of higher education institutions, which today are more accessible to a wider circle of people than they were in the past, and as a result the number of students is growing. Funding is becoming a particularly problematic issue. Public funding is no longer sufficient and

experts are increasingly calling for private funding of education alongside public funding, in the form of fees, loans, etc. Private funding undoubtedly contributes to ensuring a sufficiency of funds but it is questionable whether it guarantees equal opportunities for education. Furthermore, one of the reasons for public funding is that education does not only benefit the individual but, indirectly, the whole of society. The country needs educated people for economic growth and successful development. The interest of the individual, meanwhile, relates to expectations of future employment and earnings, quality of life, personal development, and so on.

The main problems facing higher education today are therefore the following: in most countries university funding is falling, since universities are funded through taxation, while concerns are being raised about quality. Financial aid for students is insufficient and the proportion of students from lower socio-economic backgrounds is small. As a result, most of the beneficiaries are from wealthier families.

It has traditionally been the case in Europe that higher education institutions are mainly publicly funded. Although experts agree on the need to increase the participation of individuals in funding, the majority of the public has yet to be convinced of this. The limitations are mainly mental and social in nature, since it has always been considered the education should be free and equally accessible to people of all backgrounds. In most countries the right to free higher education is guaranteed by the constitution or by statute. Some research (Aghion et al., 2010) shows that an exogenous increase in a university's expenditure generates more output, if the university is more autonomous and faces more competition. According to the research by Del Rey and Racionero (2010) an income contingent loan with risk-pooling can induce the optimal level of student participation provided and at the same time it covers both financial costs of education and forgone earnings.

The article sets out the ways and forms of public funding of higher education, both the funding of institutions and the funding of students by means of direct or indirect forms of funding. This is followed by a presentation of the funds spent on education and a comparison with EU Member States. The final part of the article contains the results of an extensive survey among students on their views of the importance of higher education and its funding.

2. The importance of higher education and its funding

Many people place education in the category of mixed (or quasi-public) goods which are private in terms of consumption, while their provision is in the public interest (public funding and/or public provision). Higher education thus brings benefits both to the individual and to the wider environment (co-benefits or externalities). The main problem is measuring the actual scale of these benefits. It is not possible to measure them according to a single scale, if indeed it is possible to measure them at all (Vossensteyn, 2004). Bevc et al. (2001, p.13) believe that in the case of higher education the question is whether mass higher education is primarily an individual good or primarily a social good, or in other words whether it is society or those in education who receive greater benefit from the education. As long as the number of those enrolled in the education remains small, this is not an important question from the point of view of expenditure. Later, however, the increase in state expenditure needs to be justified from the point of view either of fairness or of efficiency. It is estimated that the greater the number of people receiving the benefits of higher education (they hold a higher education qualification), the greater the relative inequality of those who do not have a higher education qualification. We can therefore say that higher education (full-time study) is a public good to the extent to which the state is willing and able to fund it.

Demand for higher education usually increases in periods of economic crisis. Individuals unable to find employment or with few possibilities of finding employment see higher education as a way to improve their employment prospects. However, a large number of graduates have the effect of increasing the supply of a highly qualified workforce, with a consequent reduction of the cost of the workforce. This raises the question of whether it is still possible to talk about the benefits that an individual is supposed to derive from higher education. In 2008, Greek university students protesting against the country's education system dubbed themselves the '700-euro generation', since despite their higher education qualifications they were unable to obtain better paid employment.

There are thus several sides to the public funding of higher education. The fact that higher education graduates are more difficult to employ also places pressure on social expenditure and no longer brings only benefits. Judging from the annual report of the Employment Service of Slovenia (ESS), level of education, which in the past played a major role in terms of employment

opportunities, is today for the most part no longer so important (ESS, 2009). The largest group of the unemployed still consists of people with the lowest level of educational qualifications. In 2009 they accounted, on average, for 39.4% of the registered unemployed. Those with level 6 or 7 qualifications or higher accounted for 10% of the registered unemployed in 2009, although in recent years the share of this group has grown more than that of the other groups.

3. Direct and indirect funding of higher education in Slovenia

The system of funding higher education in Slovenia is characterised by the fact that it relies predominantly on public funds. State funds are received both by educational establishments and by students. Private higher education institutions which have been granted a concession to provide a public service are also recipients of state funds for education.

The method of funding higher education in Slovenia is regulated by the Higher Education Act (ZViS), specifically by Chapter 8 (Articles 72–78). Under this Act, funds for the activity of higher education institutions are defined in the national budget, taking into account the field of study and the number of enrolled students and graduates of full-time first- and second-cycle study. The Act envisages the more detailed regulation of funding by means of a special regulation adopted by the Government of the Republic of Slovenia. The funding of higher education institutions is thus regulated in more detail by the Decree on the budgetary financing of higher education and other university member institutions from 2004 to 2008. In this period the Decree was amended four times, most recently in October 2008 with the adoption of the Decree amending the Decree on the budgetary financing of higher education and other university member institutions from 2004 to 2008, which extended the validity of the current funding method to 2009. A new decree is currently in preparation for the next period, from 2010 onwards, although in terms of the stability of funding of this area it would be better if it were regulated by law (as envisaged by the Constitution of the Republic of Slovenia).

Direct state financial aid for students in Slovenia only exists in the form of scholarships, which are limited to particularly gifted candidates (Zois scholarships) and those from low-income families (state scholarships). The new

Scholarships Act envisages the co-financing of corporate scholarships for the purpose of increasing their number. A system of state-supported student loans has yet to be developed. Students can take out student loans with banks, but these are not purpose-specific loans (the purpose of use is not known).

Scholarships are regulated by the Scholarship Act (Zštip, OJ RS, No 59/2007). This Act defines scholarships as a supplementary receipt intended to cover costs relating to education (Article 5). Article 9 sets out the general conditions for obtaining a scholarship: 'Under this Act a scholarship may be obtained by beneficiaries who on first enrolment in the first year of further education or higher education or on first enrolment in the first, second or third cycle of education are under 26 years old and:

- are not simultaneously receiving any of the scholarships from article 5 of this Act,
- are not in receipt of a scholarship or other educational allowances under other regulations,
- are not in an employment relationship and do not perform an independent registered activity,
- are not registered as unemployed at the Employment Service of Slovenia (hereinafter: ESS).'

Article 13 of the ZViS was amended by the Act amending the Scholarships Act (Zštip-A, OJ RS, No 40/2009). It provides that state scholarships shall be granted to candidates who fulfil the general conditions from this Act and in whose case the average monthly income per family member in the past calendar year before submitting the application does not exceed 65% (before the amendment this threshold was 60%) of the minimum wage per family member in the same period for those candidates studying in their place of permanent residence, and from 66% to 68% (before the amendment the threshold was from 60% to 65%) of the minimum wage per family member for those candidates studying in a place other than their place of permanent residence.

Under Article 24 of the Zštip, a Zois scholarship may be obtained by a student who fulfils the general conditions and:

- has an average grade of at least 8.5 in further or higher education
- or is among the top 5% of students in his or her year group in terms of the average grade, or

– has exhibited outstanding achievements in an individual social sphere, irrespective of the year of education.

As already mentioned, the state also provides funds for indirect aid for students. Rules for subsidising meals were not laid down until 1996, with the adoption of the first administrative-legal act in this field, namely the Decree on subsidising student meals (OJ RS, No 24/1996). The Subsidising of Student Meals Act (ZSšP, OJ RS, No 85/2002) was adopted in 2002. Under this Act (article 6), 'All those who hold the status of student and who are not in employment' are entitled to subsidised student meals. Unlike scholarships, all students are entitled to subsidised meals, regardless of their socio-economic background. The Rules on subsidising student meals (OJ RS, No 70/2007), however, define beneficiaries in more detail, specifying that they are both full-time and part-time students who are neither in employment nor registered at the ESS as jobseekers. The subsidising of food takes place in the form of meal vouchers. Each individual is entitled to one subsidised meal per working day, except during the school holidays (from 10 July to 20 August).

The subsidising of student accommodation is prescribed by the ZViS, which sets out the relevant selection criteria: academic success, financial situation, distance of place of permanent residents from place of study, and the social and health conditions of the student. More detailed provisions are set out in the Rules on subsidising student accommodation (OJ RS, No 22/2001). These rules also set out the scoring system for the above selection criteria. The subsidy amounts to at least 20% of the average monthly cost of accommodation. Students may also claim the subsidy for private rented accommodation. The Rules set out the minimum standard which must be guaranteed by halls of residence and private providers of student accommodation. The cost of accommodation in halls of residence or private rented accommodation is reduced by the amount of the subsidy.

The subsidising of transport is also prescribed by the ZViS. Students studying five kilometres or more from their place of permanent residence are entitled to a subsidy. The minimum subsidy is defined as 7% of the cost of a monthly travel card. The amount of the subsidy depends on socio-economic status and distance from the place of study. Subsidies are regulated in more detail in the Rules on subsidising student transport (OJ RS, No 18/2004). The Rules divide the level of subsidy into four classes with regard to the gross monthly income per family member as a percentage of

the gross average wage per employee in the Republic of Slovenia. The level of the subsidy in each class increases by 10% where the place of study is between 40 and 60 kilometres from the student's place of permanent residence, and by 20% where the place of study is over 60 kilometres from the student's place of permanent residence. Transport costs may be additionally covered within the context of scholarships. Urban passenger transport is subsidised by the municipality.

Student health care (insurance) is regulated by the Health Care and Health Insurance Act (ZZVZZ-UPB3, OJ RS, No 72/2006). On the basis of this Act, students are entitled to all health care services until the completion of full-time education (Article 22). The Act amending the Health Care and Health Insurance Act (ZZVZZ-K, OJ RS, No 76/2008), however, limited the entitlement to health insurance to persons in education up to the age of 26.

Tax reliefs for students and their parents are set out in the Income Tax Act (ZDoh-2, OJ RS, No 117/2006). General relief is granted to a resident on condition that no one else has claimed special relief for a dependent family member on his behalf (Article 111). This means that those students whose parents have not claimed them as dependent family members are entitled to general tax relief. Special tax relief may therefore be claimed by parents with dependent family members enrolled in education, but the size of the relief also depends on the number of dependent family members and is set out in Article 114 of the ZDoh-2. Article 113(3) of the ZDoh-2 provides for a special personal tax relief for residents who are in education (i.e. who have student status, but only up to the age of 26) and who perform temporary or occasional work on the basis of a referral from an authorised organisation. Once a year the amounts of the reliefs are coordinated with the consumer price growth coefficient for November of the current year compared to November of the previous year, according to figures from SURS, the national statistics office (Article 118 of the ZDoh-2). Relief also applies to 10% of standard costs from students' income via referrals, which do not need to be shown separately.

The parents of students are also entitled to child allowance, which is a supplementary benefit for the maintenance, upbringing and education of a child, where the income per family member does not exceed 99% of the average wage in the Republic of Slovenia in the previous calendar year. The right to child allowance is defined in Article 57 of the Parental Care and Family Benefits Act ZSDP-UPB2, OJ RS, No 110/2006). Parents may claim

this right until the child reaches the age of 18 or, if he or she has student status, until the age of 26 (or older, in exceptional cases).

4. Public expenditure on higher education

The costs of full-time study in Slovenia are entirely covered by public funds, since educational establishments receive state funds for the implementation of full-time undergraduate programmes or the first and second Bologna cycles (the payment of fees for full-time study is prohibited by the ZViS). Part-time study is funded from private sources (a contribution from the students and their parents or employers), by the payment of fees in the amount of total teaching costs per student.

Public expenditure of the state and municipalities on formal education in Slovenia amounted in 2007 to 1,795 million euros or 5.21% of GDP, including 1.21% for tertiary education, which represented under a fifth (18%) of all public expenditure on education. The state devoted just under 28% of all funds for formal education to tertiary education, while municipalities earmarked just 3% for secondary and tertiary education together (SURS, 2009).

Of the state and municipal budget funds earmarked for formal education, 92% were destined for educational establishments, while transfers to households and funds for other private entities accounted for 8%. Of the above 92% of funds for educational establishments, just under 20% (or 323 million euros) were intended for tertiary education, with both the share and the amount of these funds having fallen. On the other hand, the majority (almost two thirds) of public transfers were intended for tertiary education. Within the structure of all public expenditure on tertiary education in 2007, transfers for households and other private entities together represented under a quarter of the total public expenditure (SURS, 2009).

As stated above, the state helps cover the living costs of students through subsidies to households. The business and industrial sector contributes to covering living costs through corporate scholarships, although these represent a small share within the overall scholarship system (just over a tenth of all scholarships granted). According to figures from SURS for 2007, the total number of scholarship holders (students in secondary and tertiary education) is falling, with just over a quarter receiving a

scholarship, with the result that the biggest burden of living costs is borne by students and their parents (although the share of these costs is difficult to measure because of the differing circumstances and needs of individuals).

Of the EU Member States, 16 states charge tuition fees and 13 charge enrolment fees. Within the EU a trend towards charging tuition fees for full-time study in public institutions can be observed. Some countries have introduced tuition fees in recent years, while others are debating their introduction. In most cases tuition fees for full-time study are set by the state and, in the EU, range from 200 to 1000 euros. Enrolment fees in the EU are generally below 200 euros. In 15 EU countries, students pay for studies that extend beyond the official length of the programme, while in nine countries students only pay in this case (Eurostat, 2007; in: Bevc, 2008, 9). The Eurostat publication on key higher education indicators in Europe cites Slovenia as the only example of an opposite trend.

In terms of public expenditure on education as a share of GDP in 2006, Slovenia occupied eighth place (among all EU Member States) in terms of share of public expenditure on tertiary education. The share of funds destined for tertiary education in EU countries is shown in the table on the next page.

The share of state subsidies to students, households and other private entities in OECD countries in 2005 amounted on average to 18% of total public expenditure on higher education (less than in 2007 in Slovenia). Norway and New Zealand were well above the OECD average, with subsidies accounting for over 40% of total public expenditure on higher education in 2005 (Highlights from Education at a Glance, 2008, 60). In comparison with the OECD average, the share of private expenditure in Slovenia is slightly lower. A downwards trend in the share of public expenditure for higher education establishments may be observed in OECD countries, while the share of private expenditure increased by 6% between 1995 and 2005, in the latter year reaching 27% of total expenditure for higher education establishments (Highlights from Education at a Glance, 2008, 58).

Table 1: Public expenditure on tertiary education as a share of GDP (%)

Country	Year		
	2004	2005	2006
EU-27	1.13	1.15	1.13
Belgium	1.29	1.29	1.32
Bulgaria	0.80	0.76	0.73
Czech Republic	0.94	0.89	1.23
Denmark	2.51	2.38	2.27
Germany	1.16	1.14	1.11
Estonia	0.86	0.93	0.92
Ireland	1.10	1.11	1.14
Greece	1.32	1.44	-
Spain	0.97	0.95	0.95
France	1.21	1.19	1.19
Italy	0.77	0.76	0.80
Cyprus	1.48	1.58	1.65
Latvia	0.68	0.88	0.91
Lithuania	1.06	1.03	1.00
Luxembourg	-	-	-
Hungary	1.02	1.03	1.04
Malta	0.53	1.06	-
Netherlands	1.45	1.47	1.50
Austria	1.44	1.49	1.48
Poland	1.15	1.19	0.96
Portugal	0.83	0.98	1.00
Romania	0.70	0.81	-
Slovenia	1.31	1.25	1.24
Slovakia	0.98	0.81	0.90
Finland	2.07	2.01	1.94
Sweden	2.04	1.92	1.84
United Kingdom	1.00	1.20	1.10

Source: Eurostat, 2010 - figure unavailable

5. Research procedure

5.1 Research method and sample

A survey was conducted to assess the importance of higher education and its funding from the point of view of students. The questions and statements were formulated on the basis of theoretical findings and the opinions of experts in this field. A questionnaire was prepared using the web-based survey tool SurveyMonkey (www.surveymonkey.com). A link to the questionnaire was posted on student forums. Students took part in the survey between 28 May 2009 and 30 June 2009. In order to submit the questionnaire it was necessary to answer all the questions, which means that only completed questionnaires were taken into account in the analysis. Only one answer was possible for each question. A total of 400 students from various universities and independent higher education institutions in Slovenia took part in the survey.

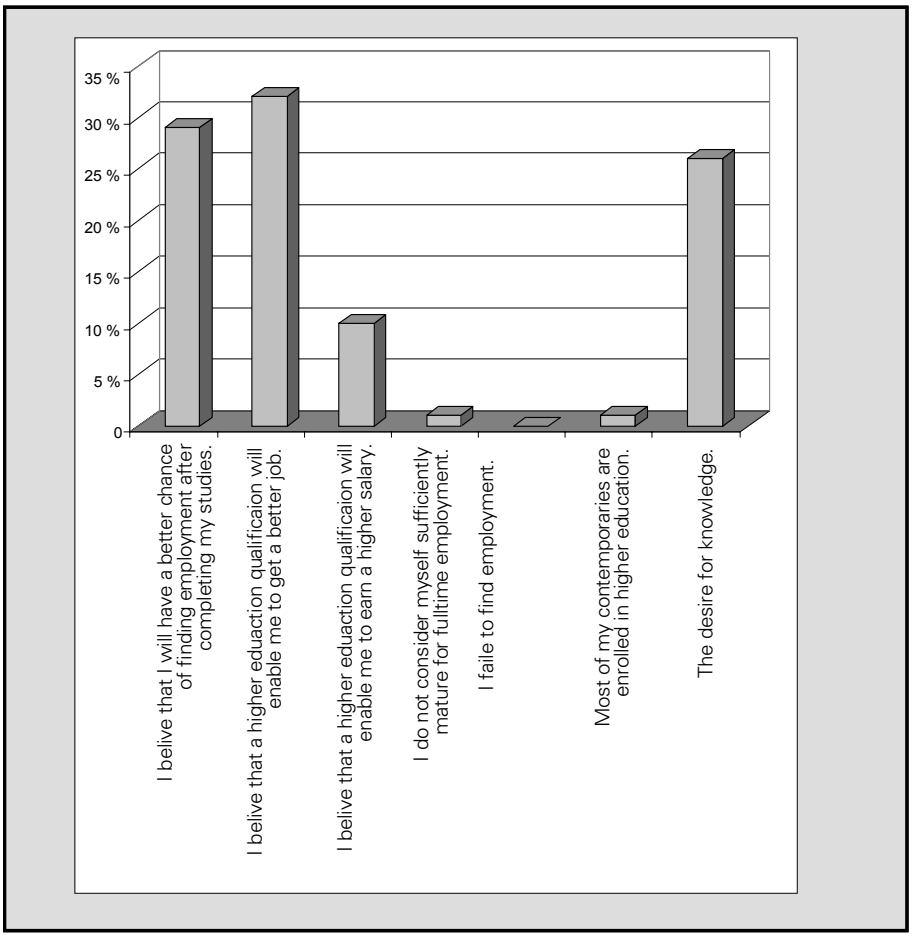
The survey consisted of two parts. The first part contained general data about the respondents. In the second part, respondents answered questions about higher education and its funding and rated 16 statements on a scale of 1 to 4, where the ratings had the following meaning: 1 – strongly disagree, 2 – disagree, 3 – agree, 4 – strongly agree. The scale was deliberately designed with an even number of possible responses, which means that every respondent had to give an opinion, or in other words that there was no middle response signifying 'neither agree nor disagree'.

More women (62%) than men (38%) completed the questionnaire. The largest number of respondents were aged 23 and 24 (16% in both cases). The vast majority of respondents were undergraduate or first-cycle students (95%), with just 5% studying at postgraduate or second-cycle level. The majority of respondents (80%) were enrolled in full-time study, with the remainder studying part time. The largest share (35%) was represented by absolvent students. With regard to the structure of the sample, it may be said that it did not deviate significantly from the structure of the overall population. According to SURS figures for 2008, 59.7% of those enrolled in higher education were women, the share of part-time students was 27.4%, the share of absolvent students was 19.3%, and 88.2% of students were enrolled in undergraduate or first-cycle programmes.

5.2 Analysis of the results of the survey

This section presents the survey results relating to students' reasons for studying and their opinions regarding funding. Graph 1 contains the students' answers regarding their reasons for studying at the higher education level. Most students (32%) believe that a higher education qualification will enable them to get a better job. A slightly smaller percentage (29%) believe that they will have more chance of finding a job after completing their studies. Desire for knowledge was the reason given by 27% of respondents. No one cited failure to find employment as their reason for continuing education at the higher education level.

Graph 1: Reasons for studying



Source: Survey

With regards to the funding of higher education, the majority of respondents (68%) were of the opinion that higher education is a public good and should therefore be free, while 30% of respondents believed that higher education benefits both society and the individual, and that therefore the costs of education should be shared. Only 2% of respondents believed that the main benefit of higher education is to the individual and that it is therefore the individual who should cover the costs of higher education.

Table 2 contains 16 statements from the survey and the average level of agreement of the respondents with each of them. As already stated, the scale of agreement was from 1 to 4, so the average levels of agreement are also within this scale. Thus an average agreement of less than 2.5 means that the majority of respondents did not agree with the statement, while an average agreement of over 2.5 means that the majority of respondents did agree with the statement. The closer the average agreement is to 2.5, the more the opinion of respondents is divided. Respondents agreed most with the statement that state-supported loans should include incentives for students. A large share of respondents also believed that the introduction of tuition fees would reduce equal opportunities for education and that the introduction of fees would cause a reduction in participation in higher education.

Respondents agreed least with the statement that in the case of the introduction of tuition fees they would not enrol in education, given that higher qualifications have no effect on earnings. We may therefore conclude that they would be prepared to invest in education, since they expect a financial benefit from it in the future. Respondents were also of the opinion that despite the fact that higher education was free and despite the large proportion of the population studying at the higher education level and also completing studies at this level, education nevertheless meant better opportunities when seeking employment. A majority also disagreed with the statement that, in the case of tuition fees, higher education establishments would focus more on quality and the efficiency of implementation of programmes.

Respondents were most divided with regard to the possibility of paying tuition fees by means of student loans. Half the respondents did not agree with this statement, while the other half would decide not to study in the case of the introduction of tuition fees, for fear of being in debt. The opinion of respondents was also divided with regard to the statement that in the case of the introduction of tuition fees, only those with a serious intention to study would enrol. Respondents also disagreed as to whether charging tuition fees for part-time study was discriminatory.

Table 2: Average level of agreement with statements

	average agreement
The state is not capable of funding increased take-up of higher education in the traditional way (i.e. from public funds).	2.42
The state should devote more funds to direct forms of aid (scholarships, student loans) than to indirect forms (subsidies for meals, transport, accommodation, etc.).	3.01
The payment of tuition fees for part-time study is discriminatory in comparison to free full-time study.	2.46
Students would be more motivated to study if they had to cover part of the costs of studying themselves.	2.77
The introduction of tuition fees would reduce participation in higher education.	3.27
The introduction of tuition fees would reduce equal opportunities for education.	3.37
In the case of the introduction of tuition fees, only those with a serious intention to study would enrol.	2.55
Tuition fees would contribute to reducing the duration of studies and increasing the rate of progress through the programme (fewer repeated years).	2.69
I would be willing to repay my tuition fees but only after completing my studies (in instalments and provided I am in a sufficiently well-paid job).	2.63
The amount of repayment of student loans should be linked to the earnings of the graduate.	2.69
If tuition fees and the possibility of repaying them via student loans were introduced, I would decide not to study for fear of future debt.	2.48
Even if I had to pay tuition fees, I would still enrol in education and, if necessary, get into debt, because I believe that with a higher education qualification I will have more chance of finding a better (and better paid) job.	2.93
State-supported loans should contain incentives for students (e.g. reduction of the loan debt if studies are completed within the prescribed period).	3.41
If higher education institutions were able to charge tuition fees, they would focus more on quality and the efficiency of implementation of programmes.	2.31
If I had to pay tuition fees I would not enrol in education because I believe that higher qualifications have no effect on earnings,	1.72
Given that studying is free, the majority of people study and also complete their studies, with the result that education does not bring better employment prospects.	2.16

Source: Survey

Answers did not differ significantly by gender, nor did they deviate from the overall average. Male respondents cited desire for knowledge as the main reason for studying. The respondents who were of the opinion that higher education benefits individuals, and that they should therefore cover the costs themselves, were for the most part men.

With regard to the type of study, greater differences and deviations from the average were noted, in particular in the case of postgraduate students. Half of the postgraduate students questioned (50%) gave desire for knowledge as their reason for studying, while 64% were of the opinion that society and the individual should share the costs of education. A very large share of postgraduate students (82%) intended to complete their studies within the envisaged duration. There were also considerable deviations from the overall average in the case of average agreement with statements, although opposing opinions were not expressed.

With regard to year of study, answers only differed in the case of the statement with regard to which there was least agreement among the overall population. Students from the third year onwards (excluding "absolvent" students) do not agree with the statement that they would decide not to study if they were required to repay tuition fees in the future. Students of the first and second years, on the other hand, agree with this statement and in the case of tuition fees would decide not to study for fear of future debt.

We have also analysed the answers in terms of the type of study. Deviations from the average were apparent above all on the part of part-time students. Half of part-time students (50%) believed that society and the individual should share the costs of education. This percentage is not surprising, since part-time students pay for their own studies. Similarly, a considerably larger share of part-time students (65%) intended to complete their studies within the envisaged duration. Their opinion differed from the overall average in terms of agreement with the statement that the state is not capable of funding increased take-up of higher education in the traditional way. As expected, and in contrast to the overall average, they also agreed with the statement that the payment of tuition fees for part-time study is discriminatory in comparison to free full-time study.

6. Conclusion

Tuition fees remain a 'taboo' topic, even though in the event of the introduction of tuition fees these would not necessarily have to cover the entire cost of education. Experts in fact advocate the introduction of tuition fees to cover between 20% and 30% of education costs. A large majority of respondents agree that the introduction of tuition fees would result in lower participation in higher education and that equal opportunities for education would therefore be reduced. Even so, the largest share of respondents did not agree with the statement that in the case of payment of tuition fees they would not enrol in education, given that higher qualifications have no effect on earnings. In other words, they would nevertheless be prepared to pay tuition fees in the expectation of future benefits, above all financial. New conditions in higher education (growing participation, the Bologna system) are dictating an adaptation of the system of funding. Experts warn that a lack of funds can lead to a fall in the quality of services. Despite this, respondents doubt that an increase of resources, above all private resources, would result in higher education establishments focusing more on quality and the efficiency of implementation of study programmes.

In the light of the increasing participation of individuals in the funding of higher education, it would make sense in Slovenia to consider the introduction of 'interest' payments for those students who do not complete their studies within the official programme duration. All changes cause a certain amount of dissatisfaction. Discussions and coordination of different interests are necessary. In view of the fact that students agreed most with the statement that state-supported loans should contain incentives for students, e.g. a reduction of the loan debt if studies are completed on schedule, we may conclude that they are in favour of incentives for completing studies within a specific time. Studying would therefore be free for those who complete their study obligations in good time. This would also ensure a greater rate of progress through study programmes and a lower dropout rate, since the results of the survey also confirmed the statistic that only half of all students complete their studies within the prescribed period.

Changes are urgently necessary in the field of higher education. All figures indicate that the funding system will be unsustainable in the long term, despite shrinking generations. On the other hand, both experts and students believe that the current funding method does not encourage students to complete

their studies within the envisaged time. Reform processes will therefore be necessary in the future.

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Strokovni članek

Problem nepopolnih pogodb in mehanizmi pogodbenih spodbud pri javnih naročilih

UDK: 351.712(045)

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IZVLEČEK

Problemi javnega naročanja in z njimi povezane izbire učinkovitega pogodbenega mehanizma pri javnih naročilih gradbenih del so zaradi svojega izjemnega ekonomskega pomena vzbudili precejšno pozornost pravnoekonomske znanosti. Iz tega članka izhajajoča glavna priporočila pogodbene ekonomske analize so naslednja: (1) Trenutno uporabljani pogodbeni mehanizmi po nepotrebnem podaljšujejo izvedbeni čas, povzročajo negativne eksternalije, povečujejo izvedbene stroške, spodbujajo oportunistično obnašanje in moralni hazard pri ponudnikih in po nepotrebnem trošijo sredstva ter tako resno zmanjšujejo družbeno blaginjo. (2) Načelno mora tip predmeta javnega naročila določiti tudi izbiro pogodbenega mehanizma. (3) Iz asimetričnih informacij in visokih transakcijskih stroškov izvirajoča nepopolnost pogodb definira problem javnih naročil predvsem kot problem ex post pogodbenih in izvedbenih prilagoditev, ki so plod spremenjenih in nepredvidljivih okoliščin pri sami izpolnitvi. (4) Minimiziranje ex post transakcijskih stroškov s pomočjo cost-plus pogodb je potencialni in pogosto spregledani vir zniževanja skupnih stroškov izvedbe zapletenih javnih naročil. (5) Načelno naj se pogodbe s fiksno ceno uporabijo v primerih enostavnih projektov (enostavna preverljivosti izpolnitve in nepomembne potencialne nepopolnosti pogodb), ki jih naj spremlja visoka stopnja pogodbene, specifikacijske in izvedbene določnosti. (6) V primerih nepreverljivosti ali z njimi povezanih visokih stroškov preverjanja kakovosti izpolnitve naj se uporabijo pogodbe s ceno, ki se oblikuje glede na stroške izpolnitve. (7) Načelno naj se v primerih predvidene visoke stopnje pogodbene nepopolnosti (zapleteni projekti) in zaželene pogodbene in izvedbene fleksibilnosti uporabijo pogodbo s ceno, ki se oblikuje glede na stroške izpolnitve. (8) Za preprečevanje moralnega hazarda je nujna uporaba učinkov ugleda in multiplikativnih motivacijskih mehanizmov.

Ključne besede: javna naročila, pogajanja, nepopolne pogodbe, spodbude,transakcijski stroški, tveganja

JEL: K12

Mitja Kovač

Problem nepopolnih pogodb in mehanizmi pogodbenih spodbud pri javnih naročilih

1. Uvod

Pravnoekonomska znanost je v zadnjih dvajsetih letih precejšen del svoje pozornosti predvsem zaradi njihovega izjemnega ekonomskega pomena za nacionalne bruto družbene produkte[1] - namenila prav problemom javnega naročanja gradbenih del.[2] Članek predstavlja pravnoekonomsko analizo zakonske ureditve in uporabljenih pogodbenih mehanizmov s področja javnih naročil. Na dveh sklopih temelječa analiza najprej predstavi glavne izsledke in nova spoznanja pravnoekonomske znanosti s področja sklepanja in sestavljanja pogodb pri javnih naročilih (odsek 2), in potem s pomočjo teh izsledkov kritično analizira slovensko ureditev, izbiro pogodbenih mehanizmov in samo izvajanje javnih naročil gradbenih del (odsek 3).

Analiza z vidika ekonomske učinkovitosti podaja natančne predloge in smernice za prepotrebne izboljšave izvedbenih praks, opozarja na nejasnosti in iz njih izvirajoče mogoče neučinkovitosti, ki neposredno in posredno zmanjšujejo družbeno blaginjo v Sloveniji, prav tako pa za odpravo teh neučinkovitosti ponuja dodatna merila in predloge za zapolnjevanje pogodbenih praznin, optimalno sestavljanje pogodb in razpisnih pogojev javnih naročil gradbenih del.

Na tem mestu velja izpostaviti tudi temeljno omejitev tega članka, ki se nanaša na sam obseg, saj zaradi preobsežne materije ni mogoče zajeti celotnega spektra javnih naročil. Članek se zato posveča samo izbiri in uporabi različnih pogodbenih mehanizmov pri izvajanju javnih naročil gradbenih del. Pri tem pa se lahko izsledki aplicirajo tudi na vse druge vrste javnih naročil.

2. Ekonomska učinkovitost in gradbene pogodbe

Za učinkovito uporabo javnih sredstev in izvedbo javnega naročanja sta poleg mehanizmov dodeljevanja (javni razpisi), izbiranja, preprečevanja korupcije, nepotizma itd. izjemnega pomena tudi izbira pogodbenega mehanizma in njegova optimalna sestava.[3] Dobro sestavljene pogodbe tako ščitijo stranke

1 V ZDA predstavljajo javna naročila tako kar 10% BDP-ja, z dva milijona registriranih gradbenih podjetij (leto 1992), ki so opravila za 528 milijard $ dela, v letu 1998 pa je svetovna gradbena industrija prek javnih razpisov realizirala za kar 3,2 milijarde $ prometa (Bajari in Tadelis, 2001, str. 387- 407).

2 Za pregled literature glej Laffont in Tirole, 1993, ter McAfee in McMillan, 1988.

3 *US Federal Acquisition Regulation* in britanski *Department of Trade and Industry* na primer posvečata posebno pozornost prav izbiri pogodbenih tipov in tako celo zagotavljata številne

pred nepredvidljivimi spremembami v obnašanju pogodbenih strank, zagotavljajo učinkovito in stabilno načrtovanje ter financiranje investicij, in navsezadnje tudi skrbijo za pravilno izpolnitev pogodbenih obveznosti iz javnega naročila. Seveda pa so za dosego vseh teh ciljev na voljo najrazličnejše pogodbene oblike in izbira optimalnega pogodbenega mehanizma pri javnih naročilih ni vedno najenostavnejša naloga. Še več, izbira napačnega pogodbenega mehanizma lahko povzroči številne negativne posledice (višanje stroškov, slaba kakovost, zamude itd.). Ekonomisti se pri tem strinjajo, da so transakcijski stroški, dodeljevanje tveganj in zagotavljanje spodbud za pravočasno, kakovostno in učinkovito izpolnjevanje pogodbenih obveznosti najpomembnejši kriteriji za presojanje določenih pogodbenih mehanizmov in njihovo pravilno uporabo v primerih različnih javnih naročil (Albano et al., 2006). V nadaljevanju bodo tako na podlagi teh osnovnih kriterijev za natančno določene pogodbene predmete oziroma tipe javnih naročil predstavljeni tudi ustrezni optimalni pogodbeni mehanizmi. Pri tem pa se bo analiza osredotočila na tri širše kategorije, in sicer na pogodbe, kjer se cena oblikuje glede na stroške izpolnitve (*cost-plus*), na tiste, kjer je cena/plačilo fiksna (*fixed-price*), in na tako imenovane kombinirane, motivacijske pogodbe, kjer gre za mešani sistem med fiksno in stroškovno določeno ceno.

Pred samo analizo pa velja osvetliti še nekaj izhodiščnih predpostavk. Ekonomska teorija je do nedavnega videla problem javnih naročil predvsem kot z moralnim hazardom podvojeni normativni *ex ante* problem asimetričnih informacij med naročnikom in ponudnikom.[4] Najnovejša ekonomska teorija pa na podlagi dognanj konstrukcijskega menedžmenta[5] definira problem javnih naročil predvsem kot problem *ex post* pogodbenih in izvedbenih prilagoditev, ki so plod spremenjenih in nepredvidljivih okoliščin pri sami izpolnitvi (npr. na samem gradbišču, hribini, na nepredvidljivi geološki sestavi), sprememb zakonodaje, predpisov, okoljevarstvenih standardov itd. (Bajari in Tadelis, 2001). Čeprav sam problem *ex ante* asimetričnih informacij o stroških izpolnitve s tem seveda

tipe in sama navodila za izbiro najboljših pogodbenih tipov glede na vrsto javnega naročila (Albano et al., 2006, str. 82).

4 Izvajalec javnega naročila ima pri tem na voljo informacije o produkcijskih stroških, ki naročniku niso znani. Naročnik pa z različnimi pogodbenimi tipi izbira želenega izvajalca, ki te zasebne informacije o produkcijskih stroških z samo izbiro pogodbenega tipa potem tudi razkrije naročniku (Laffont in Tirole, 1993).

5 Ti izsledki kažejo, da se večinoma uporabljata samo dva pogodbena tipa, in sicer pogodba pri kateri je cena fiksna in tista, kjer se cena oblikuje glede na stroške izpolnitve, pri tem pa so empirične analize tudi pokazale, da niti naročnik niti izvajalec ponavadi nimata na voljo točnih *ex ante* informacij o izvedbi projekta (Sweet, 1994; Hester, Kuprenas, in Chang, 1991; Ibbs et al., 1986).

ni irelevanten, pa sama izbira pogodbenega mehanizma ne sme biti primarna oblika rešitve tega problema. Ta problem asimetričnih informacij in z njim povezanega problema negativne selekcije je dosti učinkoviteje rešljiv z mehanizmi konkurence in različnih oblik javnih razpisov, z učinkom ugleda, garancijami in drugimi mehanizmi projektnega vezanja podjetij (Bajari in Tadelis, 2001). Pri tem pa seveda velja poudariti, da se ekonomisti strinjajo, da so informacije bistven element našega življenja in je skoraj vse v takšni ali drugačni meri povezano z informacijami.[6] Informacije so tako temeljna sestavina odločanja, odločanje med omejenimi dobrinami pa je tudi centralno vprašanje ekonomije (McKaay, 1982, str. 107). Pomanjkanje informacij nam namreč onemogoča sprejemanje v ekonomiji predvidenih, popolnih, racionalnih odločitev, zato le-te nastanejo v pogojih negotovosti. Ta negotovost povzroči sprejemanje drugačnih odločitev od tistih, ki bi bile sprejete v svetu popolnih informacij.[7] Negotovost tako postane neposreden vir nezadovoljstva, informacije pa edino učinkovito sredstvo za odpravo takšnega nezadovoljstva. Iz teh predpostavk o nepopolnosti, asimetriji informacij in posledičnih *ex ante* visokih transakcijskih stroškov pisanja, vključevanja in predvidevanja bodočih negotovih dogodkov pri sestavi pogodb pa potem izhaja tudi tako imenovana teorija o temeljni nepopolnosti pogodb (Grossman in Hart, 1986; Hart in Moore, 1988; Tirole, 1999). V svetu nepopolnih informacij, kjer so stranke soočene z negotovostjo o prihodnjih dogodkih in okoliščinah, lahko strankama določena stopnja pogodbene nepopolnosti prinese vzajemne in dejanske koristi. Te koristi pa izhajajo iz preprostega dejstva, da so lahko včasih *ex ante* stroški pogajanj in sestave pogodb za primer določene okoliščine izjemno visoki in lahko celo presežejo pričakovane stroške takšnega dogodka.[8]

Prav zato, ker je dosedanja teorija javnih naročanj spregledala pojav nepopolnih pogodb in z njim povezane *ex post* stroške prenove pogodb (ponovna pogajanja, nove specifikacije, načrti, aneksi itd.) pa nam nepopolne informacije pri zapletenih primerih javnih naročil (gradnja predorov, viaduktov itd.) ponujajo dodatno razlago za njihove nenavadne in občutne podražitve, zamude in izsiljevanja izbranih, v delo že uvedenih ponudnikov javnih naročil. Z drugimi besedami, iz nepopolnih informacij (negotovost o bodočih dejstvih) izvirajoče

6 Za odličen pregled izsledkov o ekonomiji informacij glej Hirschleifer in Riley, 1995.
7 Takšne odločitve, katerim pa se bi v svetu popolnih informacij lahko izognili, pa lahko nato posledično pomenijo direktno izgubo ali pa nezmožnost pridobitve različnih koristi (McKaay, 1982, str. 108).
8 Pričakovani *ex ante* stroški takšne opustitve bodo tako minimalni, medtem ko so stroški vključitve, pogajanj in sestave dejanski in jih morata stranki nositi s 100% verjetnostjo (Shavell, 2004, str. 299).

nepopolne pogodbe pri zapletenih in negotovih projektih slej ko prej pripeljejo do potrebe po prenovi originalnih specifikacij.[9] Pri tem pa je minimiziranje *ex post* transakcijskih stroškov s pomočjo *cost-plus* pogodb potencialni in pogosto spregledani vir zniževanja skupnih stroškov izvedbe javnega naročila.

V nadaljevanju ekonomske analize sledi podrobnejša obravnava posameznih pogodbenih mehanizmov in konkretizacija dosedanjih izvajanj.

2.1 Tveganja in spodbude pri pogodbah s nespremenljivo ceno

Pogodbo z nespremenljivo ali fiksno ceno definiramo kot pogodbeni dogovor, pri katerem izbrani ponudnik javnega naročila v skladu z dogovorjenimi standardi za svojo pravilno izpolnitev prejme fiksno ceno/plačilo.[10] Takšna fiksna cena je po navadi rezultat konkurenčnega postopka na javnih razpisih (i. e. ponujena najnižja cena – bodisi oddaja naročila po odprtem postopku ali oddaja naročila po postopku s predhodnim ugotavljanjem sposobnosti), pri čemer pa izbrani ponudnik za morebitno višjo kakovost svoje izpolnitve ne dobi nikakršnega dodatnega plačila. V primerih takšnih pogodb se pogodbene kazni nanašajo na morebitno neustrezno kakovost. Pri tem si je ekonomska teorija enotna, da mora biti pogodbeno določena kazen v razmerju do pogodbene vrednosti dovolj velika, da lahko prepreči morebitno neustrezno kakovost.[11] Izbrani ponudnik pri takšni pogodbi nosi prav vse stroške izpolnitve, njegovo plačilo pa ni odvisno od višine stroškov izpolnitve. Takšna shema ponudnika nemudoma spodbudi k zniževanju stroškov izpolnitve, vendar pa lahko gredo ti znižani stroški prav na račun izvedbene kakovosti, kakovosti vgrajenih materialov itd. Izbrani ponudnik je namreč upravičen (Pp) do celotne razlike med izvedbenimi stroški (Is) in pogodbeno dogovorjeno ceno (Cp).[12] Povedano drugače, Holmström in Milgrom sta v svojem modelu dokazala, da takšen tip pogodbe ustvari neposredne *ex ante* spodbude pri izbranem ponudniku k zmanjševanju

9 Bajari, Hughton in Tadelis poročajo o 10% dodatnih stroškov (od celotne vrednosti) samo pri *ex post* noveliranju pogodb. Njihova raziskava je tudi pokazala da je ameriška družba Caltrans v letu 2000 porabila kar dodatnih 189 milijonov $ zaradi teh *ex post* stroškov prenove pogodb (Bajari, Hughton, Tadelis, 2007).
10 Seveda pa obstajajo tudi številne različice takšnih pogodb, kot so recimo pogodbe s fiksno ceno a avtomatskim cenovnim stabilizatorjem, ki zajema spremembe cen inputov (material in delo) – namen takšnih pogodb je ponudnikova zaščita pred takšnimi cenovnimi spreminjanji.
11 Italijanske pogodbe znašajo do 10% pogodbene vrednosti (Dimitri, Piga in Spagnolo, 2006, str. 90).
12 Pp = Cp-Is.

stroškov in posledično tudi same izvedbene kakovosti.[13] Takšne spodbude torej prenašajo na naročnika tveganja neustrezne in nezadostne kakovosti. Še posebej pa postane ta problem akuten pri zapletenih projektih, kjer so naročnikovi stroški nadzora veliki ali celo prohibitivni. Hkrati pa seveda izbrani ponudnik v celoti nosi tveganje morebitnih povečanih stroškov, ki bi presegali tako prvotno ponudnikovo oceno o potrebnih stroških izpolnitve, kot tudi pogodbeno dogovorjeno ceno. Pri tem je za ponudnika izjemnega pomena samo obvladovanje stroškov izpolnitve in odsotnost nepredvidljivih okoliščin, ki bi lahko gradnjo (izpolnitev) nepredvidljivo podražila.[14]

Iz povedanega izhaja, da je takšen pogodbeni mehanizem primeren za nezapletene projekte, kjer je majhna verjetnost nepredvidljivih sprememb in okoliščin. Če so dejanski stroški izvedbe projekta odvisni predvsem od ponudnika samega in ne od zunanjih nepredvidljivih okoliščin in so naročnikovi stroški nadzora zaradi enostavnosti projekta nizki, potem je za naročnika prava izbira pogodba s fiksno ceno. Takšna pogodba zagotavlja na ponudnikovi strani spodbude za zmanjševanje stroškov izpolnitve, nizki naročnikovi stroški nadzora[15] nad kakovostjo izpolnitve pa zagotavljajo tudi spodbude za ohranjanje kakovosti. Pri tem je treba dodati, da so tudi stroški natančne sestave pogodb (pogodbeni dizajn, specifikacije, opis nalog, projekta itd.) pri enostavnih projektih nizki, zato lahko tudi dosežemo visoko stopnjo ekonomsko učinkovite pogodbene popolnosti.[16]

Dodaten, še pomembnejši pogoj za uporabo pogodb s fiksno ceno pa je, kot je to izpostavil De Geest, *ex post* preverljivost kakovosti izpolnitve, npr. vgrajenih materialov, celotnega objekta, trdnosti in hrapavosti vozišča itd. (De Geest, Siegers, Vandenberghe, 1998, str. 38). O naknadni, *ex post* nepreverljivosti kakovosti govorimo takrat, kadar z neposrednim opazovanjem empirične realnosti kakovost izpolnitve *ex post* (na primer na sodišču) enostavno ni preverljiva, ali pa je ta preverljivost povezana z izjemno velikimi, včasih tudi prohibitivno visokimi, stroški.[17] Seveda je jasno, da bi se kakovost izpolnitve

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13 Holmström in Milgrom sta v začetku devetdesetih z enostavnim, *multitask* modelom obrazložila, kako vzpodbude za zniževanje stroškov (fiksna cena) povratno negativno vplivajo na samo kakovost (Holmström, Milgrom, 1991).
14 Takšni so enostavni projekti, kjer ni posebnih nepredvidljivih okoliščin (Dimitri, Piga in Spagnolo, 2006, str. 90).
15 Seveda pa mora naročnik za kredibilnost takšnih spodbud takšen nadzor tudi dejansko izvajati.
16 Z drugimi besedami, stroški sestave takšnih pogodb in celotnega javnega razpisa so nizki in manjši od pričakovanih stroškov nedoločenosti.
17 Primer takšnih visokih *ex post* stroškov preverljivosti bi bilo na primer ugotavljanje kakovosti vgrajenih veziv in materialov v celotni cevi in tudi v hribini trojanskega ali na primer

včasih dala z izjemnimi stroški tudi preveriti, vendar pa bi v primeru, če bi hoteli to dokazati na sodišču, imeli izjemne težave pri dokazovanju takšne neustrezne kakovosti in ponudnikove odgovornosti. [18] Takšne močne spodbude za zniževanje stroškov, ki so neposredna posledica izbire pogodbe s fiksno ceno, povzročijo, da tako izbrani ponudnik na naročnikovo škodo (degradacija kakovosti) varčuje pri *ex post* nepreverljivih aktivnostih (Albano et al., 2006).

V obratnem primeru, ko pa je izpolnitev *ex post* enostavno preverljiva in so posledično lahko vsi odkloni od pogodbene kakovosti vzrok za zadržanje plačil, to spodbuja ponudnika za pravilno in kakovostno izpolnjevanje naročnikovih zahtev (Bajari in Tadelis, 2001).

Vse dosedanje navedbe so poznane tako v teoriji kot v praksi pri sklepanju pogodb med zasebnimi strankami, ki pa lahko ob neupoštevanju vodijo do skrajno nezaželenih rezultatov (Kerr, 1995; Holmström in Milgrom, 1991; Baker, 1992). Hkrati tudi nedavna empirična študija pogodbenih oblik v indijski računalniški industriji Banerjeja in Dufloja kaže, da se za izdelavo enostavnih, *ex post* preverljivih projektov, z nizkimi stroški nadzora, uporabljajo pogodbe s fiksno ceno, pri katerih je tudi mogoče zaslediti visoko stopnjo pogodbene določenosti (Banerjee in Duflo, 2000). Z drugimi besedami, lahko bi rekli, da mora tip produkta, ki je predmet javnega naročila, določiti tudi izbiro pogodbenega mehanizma.

Če na kratko povzamemo, moramo takrat, kadar gre za enostaven, *ex post* kakovostno preverljiv projekt (enostaven *ex ante* opis predmeta javnega naročila, predvidljivi in splošno znani produkcijski stroški, enostavna specifikacija in nadzor izpolnitve), uporabiti pogodbo s fiksno določeno ceno. Pri tem pa je priporočljivo investirati v popoln, tako pogodbeni kot izvedbeni dizajn javnega naročila. Primer takšnih javnih naročil bi bil na primer nakup računalnikov, računalniških programov, papirja, enostavna gradbena dela itd. Pri tem pa, kot smo že izpostavili, morajo biti izvedba, obseg in načrt zaradi preprečitve kasnejših prilagoditev (oportunizem, moralni hazard), kar se da natančno določeni (visoka stopnja pogodbene in razpisne določnosti), uporabi pa naj se tudi javni razpis, ki temelji na načelu zagotavljanja konkurence med ponudniki - bodisi

karavanškega predora. Napake oziroma slabša kakovost vgrajenih materialov se tako po navadi pokažejo šele ob prenovah oziroma po izteku garancijske dobe.

18 Izbrani ponudnik lahko vedno trdi, da na primer problem hrapavosti oziroma vgrajenih materialov ni njegova subjektivna krivda, ali pa da je korozija vgrajenih materialov zaradi nepreverljivih vremenskih okoliščin v zadnjih petnajstih letih napredovala hitreje, kakor pa bi lahko to kdorkoli predvidel itd.

oddaja naročila po odprtem postopku ali oddaja naročila po postopku s predhodnim ugotavljanjem sposobnosti (Manelli in Vincent, 1995; Bower, 1993).

2.2 Mehanizem spodbud in tveganj pri pogodbah s spremenljivo ceno

Pogodbe z spremenljivo ceno definiramo kot tiste pogodbene dogovore, kjer se cena oblikuje glede na stroške izpolnitve (*cost-plus*). Pri tem kot glavna značilnost izstopa naročnikova privolitev, da izbranemu ponudniku ob plačilu določenega zneska[19] povrne tudi vse dokumentirane stroške izpolnitve javnega naročila. Ponudniku tako ni treba skrbeti zaradi razlike med ocenjenimi in dejanskimi stroški izpolnitve, prav tako pa je v celoti zavarovan pred kakršnim koli morebitnim zvišanjem stroškov izpolnitve (Albano et al., 2006). Na prvi pogled postane očitna (a včasih samo navidezna) velika primerjalna prednost pogodb s fiksno ceno, saj takšne »variabilne pogodbe« ne zagotavljajo spodbud ponudniku za zmanjševanje stroškov in za izvajanje aktivnosti in investicij za takšno zmanjševanje. Nasprotno, takšni pogodbeni mehanizmi lahko vzpostavijo spodbude za ponudnikov oportunizem (moralni hazard), saj so mu vsi njegovi produkcijski stroški povrnjeni, kar posledično lahko pripelje do tega, da jih ponudnik tudi namensko zvišuje.

Ali niso potem takšni pogodbeni mehanizmi, ki spodbujajo naročnika javnega naročila k zviševanju stroškov, potem popolnoma nezaželene oziroma nevarni? Ali potem sploh obstaja kakšna njihova pozitivna lastnost, oziroma prostor za uporabo? Sodobna pravnoekonomska teorija uporabo takšnih oblik pogodbenih mehanizmov pri enostavnih projektih dosledno zavrača, medtem ko je njihova prednost v primerih zapletenih in od prihodnjih, negotovih in nepredvidljivih dogodkov odvisnih projektih očitna in zaželena.[20] Glavna, do sedaj neopažena lastnost takšnega pogodbenega mehanizma pa je prav zniževanje (ali celo popolna odstranitev) stroškov ponovnega sklepanja pogodb (aneksi, ponovna pogajanja, nove izvedbene specifikacije, pogoji itd.), ki nastanejo takrat, kadar je zaradi nepredvidljivih okoljskih in gradbenih okoliščin, posledičnih nepopolnih načrtov in sprememb zakonodajnih zahtev, po podpisu same pogodbe (in po

19 Ta znesek je lahko fiksen ali pa v odstotku od stroškov in predstavlja ponudnikov profit.
20 Bajari, Tadelis pri tem izpostavita, da glavni problem javnih naročil pri zapletenih projektih ni v tem, da bi ponudniki imeli boljše informacije o stroških gradnje, ampak da obe strani delita enako negotovost o številnih pomembnih nepredvidljivih okoliščinah, spremembah projekta in njegovih specifikacij ali številnih možnih regulatornih sprememb, ki se pojavijo po samem podpisu pogodbe in začetku del (Bajari in Tadelis, 2001). Za podobne izsledke glej tudi Bartholomeu, 1998; Clough in Sears, 1994; Hinze, 1993.

uvedbi ponudnika v delo) potrebna temeljita sprememba celotnega dizajna javnega naročila (Albano et al., 2006).

Za ilustracijo vzemimo v pravnoekonomski teoriji pogosto uporabljeni primer izgradnje Gettyjevega muzeja v Los Angelesu, katerega ocenjena milijardna vrednost je zahtevala kar osem let do dokončanja (Dimitri, Piga in Spagnolo, 2006). Sam načrt celotnega projekta je moral biti zaradi številnih nepredvidljivih okoliščin kar nekajkrat v celoti spremenjen. Geologija in položaj gradbišča sta izbranim izvajalcem in arhitektom povzročala številna presenečenja. Pri sami izgradnji so izbrani ponudniki tako nepričakovano naleteli na drsečo hribino in so zaradi tega morali odpeljati in prestaviti več kot 75.000 kubičnih metrov zemljine. Zaradi kasnejših novih in dodatnih okoljevarstvenih zahtev, potrebnih za pridobitev uporabnega dovoljenja, je potem prišlo še do ene obsežne spremembe načrtov, v okviru katerih so morali vgraditi kar 107 novih tehnoloških elementov in rešitev.[21] Seveda so bile za obe pogodbeni stranki vse te spremembe, spremenjene okoliščine in z njimi povezane izjemne podražitve projekta povsem nepričakovane, vendar pa lahko z gotovostjo trdimo, da je imel izvajalec ob njihovi materializaciji o stroških in metodah uvajanja teh sprememb na voljo dosti boljše informacije kot pa sam naročnik. Takšni in podobni primeri po Bajarijevem in Tadelisovem mnenju nakazujejo, da je problem javnih naročil v bistvu bolj problem *ex post* pogodbenih, izvedbenih in naročniških prilagoditev, kakor pa *ex ante* problem razkrivanja asimetričnih informacij (Bajari in Tadelis, 2001; Corts in Singh, 2004; Chakravarty in Macleod, 2004) .

Ti primeri zapletenih in nepredvidljivih javnih naročil se tudi lepo ujemajo z omenjenim problemom *nepopolnih pogodb*. Pogodbe in načrti so pri takih zapletenih projektih (tuneli, viadukti itd.) javnih naročil tako praviloma zaradi *ex ante* stroškov njihove sestave[22] nepopolni, posledično pa so številni takšni projekti predmet kasnejših pogodbenih in specifikacijskih modifikacij. Te modifikacije pa potem vodijo do zviševanja dveh vrst stroškov, in sicer: a) neposrednih produkcijskih stroškov (dodatna dela); in b) stroškov pogodbene in specifi-

21 Podoben je v strokovni literaturi pogosto omenjeni primer gradnje glavne cestne vpadnice-avtoceste v Bostonu imenovan *Big Dig*, kjer je prišlo do 12.000 sprememb pri več kot 150 pogodbah, kar je rezultiralo v 1.5 milijardnem presežku prvotno ocenjenih stroškov izgradnje (Bajari, Houghton in Tadelis, 2007). *Boston Globe* pa je o tem primeru poročal, da: *about $ 1.1 billion of that can be traced back to deficiences in the designs, record show: $357 million because contractors found different conditions than appeared on the designs, and $737 million for labour and material costs associated with incomplete designs* (http://www.boston.com/news/specials/bechtel/part_1/).

22 Ti pa hkrati presegajo *ex ante* pričakovane stroške materializacije takšnega dogodka.

kacijske prenove, ki zajemajo vse dodatne stroške, ki niso sami neposredni produkcijski stroški (Bajari, Hughton in Tadelis, 2007). Stroški pogodbene in specifikacijske prenove pa zajemajo tako stroške ponovnih pogodbenih pogajanj, reševanj morebitnih sporov, oportunističnega obnašanja izbranega ponudnika (moralni hazard in problem *hold up-a*), kot tudi dodatne stroške gradbene organizacije, koordinacije dela, dobaviteljev, časovne vgradnje materialov itd. Po podatkih empiričnih analiz so ti dodatni stroški izjemno veliki in lahko pri zapletenih projektih presegajo tudi do 10 % skupne vrednosti projekta (Bajari, Hughton in Tadelis, 2007; Ibbs et al., 1986) .

Očitno bi uporaba pogodbe s fiksno ceno v takšnih primerih zapletenih javnih naročil kot so npr. veliki infrastrukturni objekti, kjer imamo opraviti s problemom nepopolnih pogodb, kjer je kakovost izvedenih del v povezavi z visokimi stroški monitoringa *ex post* nepreverljiva (popolna nezmožnost ali izjemno veliki stroški), imela številne negativne posledice. Pravnoekonomska teorija na čelu z Williamsonom je tako prikazala, da je izbrani ponudnik zaradi narave pogodb s fiksno ceno motiviran za zmanjševanje kakovosti gradnje (zniževanje stroškov izpolnitve na račun razlike do fiksne cene), čeprav je ta kakovost na primer ključnega pomena za učinkovito izvedbo zapletenega gradbenega projekta (Williamson, 1975; 1985). Visoki stroški monitoringa in pa problem *ex post* nepreverljivosti te kakovosti pri zapletenih in zahtevnih gradbenih projektih pa ta problem potem samo še potencirata in posledično vodita do oportunističnega obnašanja izbranega ponudnika pri sami izpolnitvi in do nezadostne kakovosti končanega projekta (Bajari in Tadelis, 2001; Corts in Singh, 2004; Chakravarty in McLeod, 2004).

Nadalje prihaja zaradi fiksne narave takšne pogodbe in akutne nepopolnosti pogodb v takšnih primerih po samem podpisu pogodbe in začetku del tudi do številnih zaustavitev del, zamud, dolgih pogajanj, nenačrtovanih podražitev in izsiljevanj (problem *hold up-a* kot rezultat različnih pogajalskih pozicij) – zaradi stroškov pogodbene in specifikacijske prenove (Bajarin in Tadelis, 2001). Za lažje razumevanje teh navedb si predstavljajmo zapleten projekt izgradnje večcevnega predora, pri katerem po začetku del naročnik želi od izvajalca še izgradnjo dodatnih priključnih cevi ali pa na primer izvajalec naleti na izjemno zahtevno in nepričakovano geološko sestavo hribine. Originalni načrti in dogovorjena fiksna cena za izvedbo projekta izvajalca pogodbeno obvezujeta do teh *ex ante* točno določenih načrtov in del, zato izbrani ponudnik bodisi ni pogodbeno zavezan izpolniti takšne dodatne naročnikove želje ali pa recimo zaradi izjemno povečanih del noče nadaljevati z vrtanjem predora brez dodatnih

plačil. V obeh hipotetičnih primerih je naročnik tako prisiljen v pogajanja s ponudnikom o vseh teh spremembah in dopolnitvah. Medtem, ko je naročnikov cilj takšne projekte izpeljati na čim bolj stroškovno učinkovit način, pa želi racionalni ponudnik na podlagi takšnih dogodkov samo maksimizirati svoj dobiček. Pri tem pa je izbrani ponudnik, zaradi dejstva, da je že sredi dela v predoru, v enkratni pogajalski poziciji (*hold up*), saj lahko ob dejanski odsotnosti konkurence, ki bi lahko disciplinirala njegovo obnašanje, izsiljuje naročnika. Pri tem bo verjetno za svoje delo zaračunal znatno previsoko ceno, prišlo bo do številnih pravd, pogajanj, zamud pri izpolnitvi, povečanja transakcijskih stroškov in oportunitetnih stroškov.[23]

Uporaba takšne pogodbe s fiksno ceno ima lahko pri zapletenih projektih torej številne negativne posledice. Za razliko od te pa ima uporaba pogodbe s ceno, ki je odvisna od stroškov izpolnitve, številne pozitivne učinke in lastnosti. Prvič, v primerih, ko je kakovost izpolnitve nepreverljiva, takšen tip pogodbe kot že rečeno zagotavlja stalne spodbude za zagotavljanje kakovosti vgrajenih materialov, izvedbe del itd., saj je ponudnik plačan glede na stroške izpolnjevanja pogodbe (Williamson, 1985; Holmström in Milgrom, 1991).

Poleg tega pa ima še eno s stroški prenove pogodb, povezano pozitivno značilnost. Takšen tip pogodbe namreč pospešuje in olajšuje pogodbene spremembe in modifikacije originalnih načrtov in specifikacij (Kerr, 1995; Holmström in Milgrom, 1991; Baker, 1992). V našem primeru, ko naročnik oziroma okoliščine zahtevajo pogodbeno in specifikacijsko spremembo, vsebuje takšna pogodba že vgrajen mehanizem za ponudnikovo avtomatično stroškovno kompenzacijo. Vsi ti dodatni stroški se namreč na podlagi pogodbene strukture, kjer se je plačilo odvisno od dejanskih stroškov izpolnitve, avtomatično plačujejo. To pa tudi pomeni, da sicer relevantni stroški pogodbene in specifikacijske prenove, ki zajemajo vse dodatne stroške, ki niso sami neposredni produkcijski stroški, zaradi vgrajenega avtomatične modifikacije odpadejo.

Ekonomizacija teh *ex post* pogodbenih in specifikacijskih stroškov sprememb pa je glede na empirične analize, ki ocenjuje te stroške v milijardah dolarjev, pomemben potencialni vir stroškovne učinkovitosti. Saj so prav ti stroški v moderni pravnoekonomski literaturi označeni kot poglaviten vir neučinkovitosti pri izvedbi zapletenih javnih naročil (Bajari in Tadelis, 2001). Analiza pogodb in adaptacijskih stroškov 414 projektov pri izgradnji avtocestnega omrežja v Kaliforniji je pokazala, da je *Caltrans* za te stroške prenove

23 Empirične raziskave so tudi v resnici potrdile takšno izvajanje, saj sta Hanna in Gunduz takšne stroške ocenila za kar okoli letnih 50 milijard dolarjev (Hanna, Gunduz, 2004).

pogodb med letoma 1999 in 2000 zapravil kar dodatnih 189 milijonov dolarjev.[24] Do podobnih rezultatov pa je prišel tudi Rogerson, ki je raziskoval obrambna javna naročila v ZDA (Rogerson, 1994).[25] V že omenjeni nedavni študiji indijske industrije računalniških programov pa sta Banjerjee in Duflo ugotovila, da se za velike in kompleksne projekte, pri katerih je dizajn dosti dražji in je značilna posledična nepopolnost pogodb, prav tako uporabljajo samo pogodbe z variabilno ceno, ki je odvisna od stroškov izpolnitve (Banjerjee in Duflo, 2000). Bajari, McMillan in Tadelis v svoji primerjalni študiji pogodb med zasebnimi gradbenimi podjetji ponovno potrjujejo te rezultate, saj ugotavljajo, da ameriška gradbena industrija pri sklepanju medsebojnih pogodb za izpeljavo zapletenih projektov prav tako uporablja pogodbe, katerih vrednost je odvisna od stroškov izpolnitve (Bajari, McMillan in Tadelis, 2004).

Vendar pa ima takšen pogodbeni mehanizem ob vseh prednostih zmanjševanja stroškov pogodbene in specifikacijske adaptacije še vedno eno veliko pomanjkljivost. Kot smo že omenili, je kakovost izvedbe pri zapletenih del *ex post* težko preverljiva in če dodamo še velike stroške monitoringa izvajanja projekta, lahko takšen tip pogodbe spodbuja ponudnika k namernem napihovanju stroškov izgradnje (namerna uporaba najdražjih materialov). Namreč, struktura pogodbene cene, ki se oblikuje glede na stroške izpolnitve, spodbuja izbranega ponudnika k zviševanju teh stroškov prek potrebnih in razumnih meja. Za preprečitev takšnih spodbud je zato pri takšnem pogodbenem mehanizmu potreben strog nadzor izvajalčevih aktivnosti (vgrajenih materialov), cenovne omejitve ali naročnikove odobritve vgrajenih materialov. Zaradi visokih stroškov monitoringa in multiplikativnega učinka sankcij, kot priporočata Dari-Mattiachi in De Geest, velja uporabiti tudi tako imenovane mehanizme palice in korenčka (Dari-Mattiachi in De Geest, 2009). Za preprečevanje naročnikove preračunljivosti lahko za pravočasno in stroškovno učinkovito izvedbo gradbenega projekta tako uporabimo nagrade, bonuse,[26] podaljšanje pogodb, ter pogodbene kazni, grožnje predhodne odpovedi (Vandenberghe in Kovač, 2009) in zmanjševanje procenta dogovorjenega zneska. Z uporabo učinka ugleda pa velja ustvariti tudi črno listo ponudnikov, lestvico točk glede na pretekle izpolnitve, ki

24 Povprečen količnik od vrednosti projekta je pri tem znašal kar 0.1048 (Bajari, Houghton in Tadelis, 2007).
25 *Significant unaticipated changes almost always occur, which leads to renegotiation where there is an inevitable tendency to ascribe all cost overruns to the changes* (Rogerson 1994). Do identičnega rezultata sta prišla tudi Crocker in Reynolds, ki sta odkrila, da se za razvoj vojaških letalskih motorjev uporabljajo pogodbe z ceno, ki je odvisna od produkcijskih stroškov, pri izdelavi že razvitega letalskega motorja pa potem pogodbe s fiksno ceno (Crocker in Reynolds, 1993).
26 Tako denarne, kot na primer prednost pri naslednjih javnih naročilih.

v primeru odkritih nepravilnosti, enormnih višanj stroškov itd. preprosto ne morejo več sodelovati na bodočih javnih razpisih ali pa jih slabo število doseženih točk iz prejšnjih izvedb javnih naročil potiska proti koncu lestvice možnih kandidatov. Takšen učinek ugleda se je v pravnoekonomski znanosti izkazal za izjemno učinkovitega in pomaga preprečevati primere moralnega hazarda in oportunizma izbranega ponudnika (De Geest, 1994; Kim, 1998; Guerrero in Kirkpatrick, 2001; Vandenberghe in Kovač, 2009).

Pri tem velja še poudariti, da velja pri zapletenih projektih do neke mere (po kriteriju učinkovitosti) izboljšati in dodatno investirati tudi v pripravo, specifikacijo projekta in pogodb.[27] Vendar pa sta navkljub takšnim dodatnim stroškom takšen projekt in pogodba zaradi nepopolnih informacij in visokih transakcijskih stroškov *ex ante* še vedno nepopolna, in je zato uporaba pogodbe z variabilno, od stroškov izpolnitve odvisno ceno (skupaj z vsemi dodatnimi mehanizmi) še vedno ekonomsko učinkovita in priporočljiva.

Če na kratko povzamemo, naj se pri zapletenih projektih (i. e. zapletena sestava dokumentacije, težavnost in obsežnost projekta, velika verjetnost presenečenj, spremenjenih okoliščin itd.), kjer je kakovost izpolnitve *ex post* neprevrljiva, za izvedbo uporabijo pogodbe o izvedbi javnega naročila s ceno, ki se izoblikuje glede na stroške izpolnitve,[28] ki naj jo zaradi velike verjetnosti pogodbenih sprememb spremlja učinkovita stopnja določnosti projekta, pri tem pa naj se za izbiro izvajalca javnega naročila (ta mora biti ugleden in kvalificiran) uporabijo pogajanja - bodisi konkurenčni dialog,[29] oddaja javnega naročila po postopku s pogajanji,[30] ali pa katera izmed izvedenih različic.[31] Glede dela o načinu izbire izvajalca si je ekonomska teorija enotna in priporoča prav takšne izbirne mehanizme (Manelli, in Vincent, 1995; Bower, 1993).

2.3 Kombinirani pogodbeni mehanizmi

Na kratko opišimo še tako imenovane kombinirane, motivacijske pogodbene mehanizme, kjer gre za mešani sistem med fiksno in stroškovno določeno ceno. Ti pogodbeni mehanizmi so bile razviti zaradi odprave pomanjkljivosti prej opisanih dveh tipov. Zaradi prostorske omejenosti jih velja

27 Do točke kjer se mejni stroški priprave in specifikacije izenačijo z mejnimi koristmi takšne podrobne specifikacije, MC = MB.
28 Oziroma tako imenovana različica motivacijske pogodbe (*incentive contract*).
29 Člen 27. Zakon o javnem naročanju, Uradni list 128/06, z dne 08.12.2006.
30 Člen 28. Zakon o javnem naročanju, Uradni list 128/06, z dne 08.12.2006.
31 Člen 30. i n člen 31. Zakon o javnem naročanju, Uradni list 128/06, z dne 08.12.2006.

samo okvirno orisati, vsi dosedanji pravnoekonomski zaključki pa veljajo tudi za takšen tip pogodbe. Motivacijski pogodbeni mehanizmi tako po navadi vključujejo ciljne stroške izpolnitve, ciljne dobičke ponudnika in adaptacijsko formulo, ki zagotavlja: a) da so dejanski stroški ali kakovost, ki dosegajo cilje, podlaga za ciljni dobiček ali nagrado; b) da imajo dejanski stroški oziroma kakovost, ki presegajo ciljne stroške ali kakovost, za posledico zmanjševanje ciljnega dobička ali nagrade (in seveda kvaliteta ki je pod ciljno); in da c) imajo dejanski stroški, ki so pod ciljnimi, za posledico povečevanje dobička ali nagrade (oziroma kakovost, ki presega ciljno kakovost; Albano et al., 2006). Pri tem je znesek dobička ali nagrade vedno odvisen od ponudnikove izpolnitve, vendar pa ponudnik celotnega tveganja v fluktuaciji stroškov izpolnitve nikoli ne nosi povsem sam (delitev tveganj). Najbolj pogosta oblika takšnega tipa pogodbe je linearna in jo lahko opišemo s naslednjo formulo:

$$T = P + pS$$

Pri čemer je T skupno plačilo izbranemu ponudniku, P je fiksno temeljno plačilo, S so realizirani in preverljivi stroški, p pa je pozitivna konstanta med nič in ena, ki predstavlja delež stroškov, ki jih nosi ponudnik. V skrajnih primerih, ko je p enako 0 gre za pogodbo s fiksno ceno, in ko je p enako 1 pa gre za pogodbo s ceno, ki je odvisna od produkcijskih stroškov. Takšen pogodbeni mehanizem je izjemno primeren tako za stimuliranje kakovosti, kot za zmanjševanje stroškov izpolnitve, izvedbe projekta in združuje pozitivne lastnosti obeh prej omenjenih pogodbenih mehanizmov. Vendar pa ima tudi določene pomanjkljivosti in lahko kaj hitro privede do ekonomskih neučinkovitosti. Namreč izjemno velike transakcijske stroške upravljanja, sestavljanja in nadzorovanja takšnih pogodb, ki lahko v številnih primerih povsem izničijo vse prednosti takšnega pogodbenega mehanizma. Še več, pomanjkanje zanesljivih računovodskih in revizijskih standardov in mehanizmov lahko povsem onemogoči njihovo uporabo in učinkovitost.[32] V takšnem primeru so potem transakcijski stroški večji od koristi učinkovite delitve tveganj in naročnik je prisiljen uporabiti enega izmed prej omenjenih pogodbenih mehanizmov.

32 Takšen primer so panoge z nizkimi računovodskimi in revizijskimi standardi, ki ponavadi jamčijo za pravilnost in zanesljivost računovodskih podatkov podjetja. Pri tem pa se je izkazalo, da so tudi v razvitih zahodnih demokracijah ti standardi vprašljivi, še posebej kadar so revizorji in kontrolorji delničarji ali kako drugače povezani z relevantnim podjetjem (Albano et al., 2006).

3. Javna naročila gradbenih del

Po predstavljenih glavnih izsledkih in spoznanjih pravnoekonomske znanosti v zadnjem delu s pomočjo teh izsledkov kritično na kratko analizirajmo slovensko ureditev, izbiro pogodbenih mehanizmov in samo izvajanje javnih naročil gradbenih del. Na podlagi povedanega se nam tako zastavlja vprašanje ali v praksi tip produkta predmeta javnega naročila določa tudi izbiro samega pogodbenega mehanizma in so izbrani tipi pogodb v skladu s predstavljenimi pravnoekonomskimi izsledki in priporočili. V nadaljevanju se članek tako osredotoča na dva sklopa projektov in z njima povezanih pogodb, in sicer na preproste in na zapletene projekte. Uvodno velja tudi poudariti dejstvo, da novi, na podlagi Direktive 2004/18/EC pripravljeni Zakon o javnem naročanju, Uradni list 128/06, z dne 08.12.2006 (v nadaljevanju ZJN-2) ne ureja pogodbenega mehanizma, ki naj ga naročnik uporabi, in tako posledično izbiro le-tega prepušča samemu naročniku (Čampa et al., 2007). Podobno stanje kaže tudi državni portal javnih naročil,[33] kjer priporočil o izbiri določenih pogodbenih mehanizmov ni, zato članek analizira pogodbe, ki so že pri dodeljenih javnih naročil dostopne prav na tem portalu.[34]

3.1 Javna naročila nizke vrednosti

Kot primer preprostega, enostavnega projekta iz celotnega spektra javnih naročil velikih vrednosti v letu 2009 vzemimo najprej javno naročilo št. JNO2/2009-OP, katerega predmet je bila nabava natančno določenih računalniških strežnikov. Razpisna dokumentacija je popolna z vsemi osnovnimi podatki o razpisu natančnimi in obsežnimi specifikacijami, z vsemi obrazci za ugotavljanje usposobljenosti ponudnika garancijami itd. Pravnoekonomska teorija v primerih takšnih enostavnih javnih naročil, kjer gre za enostavno sestavo dokumentacije, projekta, majhno ali nično verjetnost sprememb, spremenjenih okoliščin itd. in kjer je kakovost izpolnitve *ex post* preverljiva, za učinkovito izvedbo priporoča uporabo pogodbe o izvedbi javnega naročila s fiksno ceno, kjer pa morajo biti izvedba, obseg in načrt zaradi preprečitve kasnejših prilagoditev (oportunizma) kar se da točno določeni (visoka stopnja

33 Vzpostavitev portala javnih naročil urejata določbi 113. člena ZJN-2 in 108. člena Zakona o javnem naročanju na vodnem, energetskem, transportnem področju in področju poštnih storitev (Uradni list 128/06), v skladu s katerima so vsi naročniki dolžni vse vrste objav v zvezi z javnimi naročili poslati v objavo portalu javnih naročil.
34 Uradni list Republike Slovenije, eNaročanje.

določnosti),[35] pri tem pa naj se uporabi po načelu zagotavljanja konkurence med ponudniki temelječi javni razpis (bodisi oddaja naročila po odprtem postopku ali oddaja naročila po postopku s predhodnim ugotavljanjem sposobnosti). Priloženi vzorec pogodbe je v vseh pogledih ustrezal takšnim priporočilom in je v skladu z pravnoekonomskimi izsledki, saj je bila priložena pogodba s fiksno ceno in z visoko stopnjo pogodbene določnosti.[36]

Za drug primer preprostega projekta pa vzemimo javno naročilo dela na zgornjem ustroju cest št. JN6977/2009 Občine Krško, kjer v razpisni dokumentaciji prav tako najdemo pogodbo s fiksno ceno, z natančno specifikacijo del, časovnimi roki itd. Ker gre za enostavno odstranitev starega asfalta, kjer je verjetnost nepredvidljivih okoliščin, asimetričnih informacij in iz njih izhajajoče nepopolnosti pogodb izjemno majhna, je izbira pogodbe s fiksno ceno v skladu z pravnoekonomskimi izsledki, in tako ustreza kriteriju ekonomske učinkovitosti. Tudi pregled drugih objavljenih preprostih projektov javnih naročil nam postreže z enakim odgovorom, saj je uporabljeni mehanizem vedno pogodba s fiksno ceno (ob natančni specifikaciji – visoka stopnja določnosti razpisa, dokumentacije in same pogodbe), prav tako pa je bil pri postopku izbire uporabljen bodisi odprti postopek bodisi postopek z predhodnim ugotavljanjem sposobnosti, kar je prav tako v skladu z pravnoekonomskimi izsledki. Če povzamemo, se na splošno v Sloveniji pri preprostih projektih javnih naročil uporablja učinkovit, z pravnoekonomskimi izsledki skladen, tip pogodb z fiksno ceno.

3.2 Javna naročila velike vrednosti

Pri pregledu vzorcev pogodb zapletenih javnih naročil, kot so izgradnje viaduktov, predorov in podobnih velikih infrastrukturnih objektov, pa je slika žal popolnoma drugačna. Objavljeni podatki kažejo, da se tudi pri teh zapletenih projektih uporabljajo pogodbe s fiksno določeno ceno,[37] kot je to na primer izgradnja premostitvenega objekta viadukta Sejanca na avtocestnem odseku Gorišnica – Ormož (JN7593/2008). Tudi pri izgradnji vseh drugih slovenskih predorov in viaduktov, ki so predmet javnih naročil, so bile uporabljene po-

35 Ali s samo pogodbo ali z razpisno dokumentacijo.
36 Podobna pravnoekonomsko ustrezna priporočila najdemo tudi v vzorčni razpisni dokumentaciji za postopke oddaje javnih naročil v teoriji in praksi (Matas, Škufca, in Mrzel, 2006).
37 Enako, z izsledki pravnoekonomske znanosti neskladno, priporočilo najdemo tudi v vzorčni razpisni dokumentaciji, kjer se tudi za primer zapletene izgradnje čistilne naprave in vseh pripadajočih objektov priporoča uporaba fiksne cene (Matas, Škufca in Mrzel, 2006, str. 260).

godbe s fiksno ceno, ki pa za primer vseh dodatnih ter nepredvidenih del (potrjenih od inženirja) predvidevajo sklenitev aneksa k tej pogodbi. Takšen morebitni aneks pa se sklepa po predhodni odobritvi zahtevka izvajalca.

Pravnoekonomska analiza razkrije številne možne vire neučinkovitosti, ki jih prinaša uporaba takšnih pogodb s fiksno ceno. Uporaba takšne pogodbe s fiksno ceno v takšnih primerih zapletenih javnih naročil, kot so npr. veliki infrastrukturni objekti, kjer imamo opraviti s problemom nepopolnih pogodb in je kakovost izvedenih del, v povezavi z visokimi stroški monitoringa, *ex post* nepreverljiva (popolna nezmožnost ali izjemno veliki stroški), bi imela številne negativne posledice. Kot že rečeno, bo zaradi narave pogodb s fiksno ceno izbrani ponudnik motiviran za zmanjševanje kakovosti gradnje (zniževanje stroškov izpolnitve na račun razlike do fiksne cene), čeprav je ta kakovost na primer ključnega pomena za učinkovito izvedbo zapletenega gradbenega projekta (Williamson, 1975; Williamson, 1985). Visoki stroški monitoringa in pa problem *ex post* nepreverljivosti te kakovosti pri zapletenih in zahtevnih gradbenih projektih pa ta problem potem samo še potencirata in posledično vodita do prilagodljivega obnašanja izbranega ponudnika pri sami izpolnitvi in nezadostne kakovosti končanega projekta (Bajari in Tadelis, 2001; Corts in Singh, 2004; Chakravarty in McLeod, 2004).

Nadalje bo zaradi fiksne narave takšne pogodbe in akutne nepopolnosti pogodb v takšnih primerih po samem podpisu pogodbe in začetku del prišlo tudi do primerov številnih dodatnih ali pa nepredvidljivih del, posledično do zaustavitve del, zamud, dolgih pogajanj, nenačrtovanih podražitev in izsiljevanj (*hold up* kot rezultat različnih pogajalskih pozicij) – stroškov pogodbene in specifikacijske prenove (Bajari in Tadelis, 2001). Originalni načrti in dogovorjena fiksna cena za izvedbo projekta izvajalca pogodbeno obvezujeta do teh, *ex ante* točno določenih načrtov in del, zato izbrani ponudnik bodisi ni pogodbeno zavezan izpolniti takšne dodatne naročnikove želje oziroma jo izpolni samo na podlagi sklenitve aneksa. V takšnem primeru je potem naročnik prisiljen v pogajanja s ponudnikom o vseh teh spremembah in dopolnitvah. Medtem, ko je naročnikov cilj takšne projekte izpeljati na čim bolj stroškovno učinkovit način, pa želi racionalni ponudnik na podlagi takšnih dogodkov samo maksimizirati svoj profit. Pri tem pa je izbrani ponudnik zaradi dejstva, da je že sredi dela na viaduktu ali predoru, v enkratni pogajalski poziciji (*hold up*) saj lahko ob dejanski odsotnosti konkurence, ki bi lahko disciplinirala njegovo obnašanje, izsiljuje naročnika (moralni hazard). Pri tem bo verjetno za svoje delo zaračunal znatno previsoko ceno, prišlo bo do številnih pravd, pogajanj, zamud pri izpolnitvi itd. –

povečanja transakcijskih stroškov in oportunitetnih stroškov.[38] Vsi ti viri ekonomske neučinkovitosti pa posledično vodijo do zmanjševanja družbene blaginje v Sloveniji.

Dejanski primeri potrjujejo vse te navedbe, saj so pri izvedbi takih zahtevnih projektov aneksi, spremembe pogodb in specifikacij popolnoma običajna stvar, prav tako pa izsiljevanja in zamude izbranih ponudnikov. Tudi sama kakovost izgradnje je, tako kakor to predvideva pravnoekonomska teorija, pogosto vprašljiva. Še več, v skladu s pravnoekonomskimi izsledki problem *ex post* nepreverljivosti kakovosti še dodatno potencira vire ekonomskih neučinkovitosti.

Uporaba takšne pogodbe s fiksno ceno ima tako pri zapletenih projektih torej številne negativne posledice, o čemer pa navsezadnje pričajo tudi naše, slovenske izkušnje. Za razliko od tega pa ima uporaba pogodbe s ceno, ki je odvisna od stroškov izpolnitve, številne pozitivne učinke in lastnosti. Uporaba takšnega ali pa mešanega tipa pogodbe (motivacijske pogodbe) bi tako te vire ekonomske neučinkovitosti in izgub vsaj deloma izničila, oziroma jih že vnaprej preprečila.

4. Zaključek

Članek predstavlja pravnoekonomsko analizo zakonske ureditve in uporabljenih pogodbenih tipov s področja javnih naročil, pri tem pa ob ugotovljenih številnih virih ekonomskih neučinkovitosti pri uporabi pogodbenih mehanizmov v primeru zapletenih javnih naročil podaja naslednja priporočila: 1) pri preprostih projektih, kjer je kakovost izpolnitve *ex post* preverljiva, naj se za izvedbo uporabijo pogodbe o izvedbi javnega naročila s fiksno ceno, pri tem pa morajo biti izvedba, obseg in načrt zaradi preprečitve kasnejših izvajalčevih prilagoditev kar se da natančno določeni (visoka stopnja določnosti),[39] pri tem pa naj se uporabi, po načelu zagotavljanja konkurence med ponudniki, temelječi javni razpis (bodisi oddaja naročila po odprtem postopku ali oddaja naročila po postopku s predhodnim ugotavljanjem sposobnosti);[40] 2) pri zapletenih projektih (i. e. zapletena sestava dokumentacije, težavnost in obsežnost projekta, velika

38 Empirične raziskave so tudi v resnici potrdile takšno izvajanje saj sta Hanna in Gunduz takšne stroške ocenila za kar okoli letnih 50 milijard dolarjev (Hanna in Gunduz, 2004).
39 Ali s samo pogodbo ali z razpisno dokumentacijo.
40 Zakon o javnem naročanju, Uradni list 128/06, z dne 08.12.2006, v nadaljevanju ZJN-2.

verjetnost presenečenj, spremenjenih okoliščin itd.), kjer je kakovost izpolnitve *ex post* nepreverljiva, naj se za izvedbo uporabijo pogodbe o izvedbi javnega naročila s ceno, ki se izoblikuje glede na stroške (*cost-plus*),[41] ki naj jo zaradi velike verjetnosti pogodbenih sprememb spremlja učinkovita stopnja določnosti projekta,[42] pri tem pa naj se za izbiro izvajalca (ki mora biti ugleden in kvalificiran) javnega naročila uporabijo pogajanja – bodisi konkurenčni dialog,[43] oddaja javnega naročila po postopku s pogajanji,[44] ali pa katera izmed izvedenih različic.[45]

Izbira pregledanih pogodbenih mehanizmov v primerih zapletenih javnih naročil je s pravnoekonomskega stališča tako neustrezna in resno zmanjšuje družbeno blaginjo. Vendar pa moramo v zaključku opozoriti, da raziskava zaradi omejenega dostopa do podatkov ni zajela celotnega spektra dejansko uporabljenih pogodb in so tako dobljeni rezultati omejeni z obsegom razpoložljivih informacij.

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41 Oziroma tako imenovana različica motivacijske pogodbe (*incentive contract*).
42 Do točke kjer se mejni stroški priprave in specifikacije izenačijo z mejnimi koristmi takšne podrobne specifikacije, MC = MB.
43 Člen 27. ZJN-2.
44 Člen 28. ZJN-2.
45 Člen 30. in člen 31. ZJN-2.

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SUMMARY

PUBLIC PROCUREMENT - A PROBLEM OF EFFICIENT CONTRACTUAL DESIGN

Recent law and economics literature has devoted much attention in the area of public procurement to the problems of efficient contractual design and selection of optimal contractual practices. The article surveys related economic literature and offers an economic assessment of the Slovenian public procurement practices and derived contractual types and techniques. The first part of the paper offers a set of economic criteria for establishing when and under what conditions the use of fixed-price or cost-plus contracts is efficient and hence recommended. Whereas the second part (upon the provided set of economic criteria) critically comments the current Slovenian contractual practices and the choice of public procurement's contracts.

The article offers in deep law and economics analysis of current practices and offers a set of specific and detailed recommendations for necessary improvements and efficiency enhancing public procurement practices. The observed inefficient use of different types of contracts, which seriously impairs the Slovenian social welfare, calls for immediate interaction and offers an ample opportunity for efficiency enhancing improvements. In addition, the analysis offers a set of criteria for the efficient design and interpretation of public procurement contracts.

The main propositions and conclusions are the following: (1) The currently applied contractual types in the Slovenian public procurement system unnecessarily prolong the completion times, increase costs of performance, cause negative externalities, spur opportunism and moral hazard, inefficiently waste scare resources and hence seriously impair social welfare; (2) In principle, the subject of public procurement ought also determine the corresponding type of contract; (3) The public procurement problem is primarily characterized as an ex post performance and contract adaptation problem, which is caused by asymmetric information problem. This informational asymmetry and high transaction costs reflects as in literature extensively discussed, phenomena of imperfect contracts, which then eventually materializes in the performance stage as the instance of unforeseen contingencies; (4) The employment of cost-plus contracts and derived economization on ex post transaction costs is

in case of complicated public procurement projects a frequently overlooked source of possible performance savings of cost; (5) In principle, the fixed-price contracts should be used in instances of simple projects (verifiable performance and insignificant potential contractual incompleteness). Fixed-price contracts should be accompanied by high contractual, specification and performance completeness; (6) The cost-plus contracts should be employed in instances of unverifiable quality of performances or in cases where such assessment could be made only under substantial costs; (7) In principle, the cost-plus contract should be employed in instances where substantial contractual incompleteness is expected (complicated public procurement projects) and where contractual and performance flexibility is required; (8) The carrot and the stick mechanism should be applied in order to deter and prevent opportunistic behaviour (moral hazard).

A caveat related to the scope of the article should be made. Namely, since it is not possible to cover all the aspects of the public procurement, the article merely focuses on use of different types of contracts in daily public procurement's practices, and omits the economic comment on the efficient design of tenders and negotiations – which goes well beyond the scope of this article. Yet, the law and economics purpose is to find out what good law (contract) is by analysing incentive, risk and transaction cost effects of applied contract types. The term »good« can have two dimensions: good with respect to the content, and good with respect to the technical formulation. Most of the law and economics literature is focused on the first dimension. It tries to determine which contractual types have the most desirable effects, irrespective of how these types are formulated. Yet, law and economics may also offer useful advice on how to improve the technical formulation of such contracts. The reason is that lawmakers (legislators and judges) usually balance the advantages and disadvantages of alternative solutions – even though this balancing is often hidden behind a veil of fairness rhetoric. Law and economics try to describe these advantages and disadvantages in a more accurate way. As a result, it may also accurately describe what lawmakers do, and hence, more accurately describe the law and derived contract types (De Geest and Kovač, 2009). Moreover, one should note that any legal system in the eyes of law and economics scholar is not merely an *ex post* dispute resolution mechanism but also a highly sophisticated *ex ante* incentive and risk shifting mechanism. This *ex ante* mechanism should spur the efficient allocation of resources, foster an efficient exchange of goods and deter

opportunism and moral hazard. Hence, the use of law and economic tools (incentive, risk and transaction costs analysis) should enable a better, more efficient design of contracts and appropriate contractual types which would efficiently correspond to the according type of public procurement project.

Economic analysis thus shows that current contractual types in Slovenian public procurement practices in instances of complicated projects unnecessarily prolong the needed performance time, cause negative externalities, hold up problems, increase performance costs, spur opportunism (moral hazard), inefficiently waste scarce resources and consequently impair social welfare. In other words, the employed contractual types in instances of complicated public procurement projects are unsuitable and a source of serious inefficiencies. However, the same assessment of the simple public procurement projects reveals the employment of appropriate, efficiency based fixed-price contracts. This result, however, indeed corresponds with our findings and recommendations.

Yet, a certain amount of self-restrain should be at stake. Namely, a highly limited sample of assessed contracts, probably corresponding incomplete results and available information calls for further research and evaluation.

Strokovni članek

Zagotavljanje enakosti spolov v slovenski lokalni samoupravi

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IZVLEČEK

V slovenski strokovni in politični javnosti je zagotavljanje enakosti spolov v zadnjem desetletju v primerjavi s preteklim obdobjem deležno večje pozornosti. Številni spodbujevalni ukrepi, podprti z zakonodajo in ustanovitev posebnega državnega organa, ki sistematično spremlja omenjeno vsebino, so povzročili velikanski skok tako pri razumevanju družbene teže razmerja med spoloma kot tudi konkretne rezultate pri zagotavljanju enakosti spolov v Republiki Sloveniji. V prispevku avtor sistematično ovrednoti razmere v sistemu lokalne samouprave, kot vertikalno decentraliziranem podsistemu javne oblasti. S kvantitativnega vidika tudi pri sodelovanju žensk v odločanju na lokalni ravni beleži opazen napredek. Avtor napoveduje še nadaljnjo krepitev vloge žensk pri lokalnem političnem odločanju, saj se bo s povečevanjem zahtevanega števila obeh spolov na kandidatnih listah ustvarila kritična masa lokalnih političark in vzpostavila razmerje, v katerem se bosta h kvotam in zadrgi v prihodnje zatekala oba spola.

Ključne besede: enakost spolov, lokalna samouprava, občina, volitve, participacija

JEL: K39, Z1

1. Demokracija in ženske

Z današnjega vidika je bila antična grška mestna državica vse prej kot demokratična, saj so se pravice sodelovati pri upravljanju javnih zadev nanašale izključno na svobodne moške. Ženske, sužnji in tujci so bili iz teh procesov izključeni (Held, 1989: str. 45). Od sredine 15. stoletja, ko se je Machiavelli kot prvi teoretik sodobne države oddaljil od srednjeveškega pogleda na državo in demokracijo, pa do konca 19. stoletja so teoretiki demokracije vztrajali pri

zahtevi, da lahko volijo le beli moški z lastnino. Sodoben pogled na državljanske in politične pravice je radikalno drugačen. Zlasti v novejšem obdobju se je razvila tudi t. i. ženska politika, ki jo opredeljujejo kot politiko proti podreditvenim razmerjem, povezanimi s spolom in ki hoče oblikovati tako zakonodajo in prakso, ki bi ženskam omogočila zasedanje enakih položajev kot moškim in ki bi deklarirano enakost uveljavila tudi v praski. To ni politika zgolj žensk, čeprav so te v gibanju najbolj številne. Med različne načine zastopanja posebnih ženskih interesov in organiziranja žensk uvrščajo posebne ženske politične stranke, krovne organizacije ali civilno družbena gibanja, večina političnih strank pa ima v svojih političnih programih posebne programske resolucije ali celo sistem kvot za znotraj strankarske organe ali/in oblikovanje kandidatnih list na volitvah (Antic in Mencin, 1992: 107). Zavedanje o nujnosti posebnega varovanja posameznih družbenih skupin so veliko mlajša od izuma demokracije. John Stuart Mill je, ko je opredeljeval liberalno demokratično državo, tej predpisoval dejavno vlogo pri zavarovanju pravic ljudi s sprejemanjem zakonov, ki varujejo skupine, kakršne so etnične manjšine in ženske. Še posebej položaj slednjih je bil predmet njegovega izrecnega zanimanja. Po Millu lahko ustvari ustrezne razmere za človeško svobodo in demokracijo le popolna enakost med moškimi in ženskami v vseh političnih in družbenih strukturah. V eseju, objavljenem v letu 1859, O svobodi je zapisal, da za ukinitev despotske oblasti moža nad ženo ni treba nič drugega, kot dati ženskam enake pravice in jih z zakonom enako varovati kot moške (Mill, 1988: 187). Njegov predlog, da bi leta 1867 britanski parlament izglasoval zakon, s katerim so približno milijonu delavcev dali volilno pravico, da bi jo hkrati priznali tudi ženskam, pa je doživel neuspeh. Prva država, ki je uvedla žensko volilno pravico, je bila tako leta 1893 Nova Zelandija. Že več kot pol stoletja pred Millom je z Zagovorom pravic ženske, objavljenim leta 1792, do podobnih ugotovitev prišla Wollstonecraftova, po krivici zapostavljena ena ključnih teoretičark razvojne demokracije, ko je pritrjevala misli, da je to, da ena polovica človeškega rodu izključuje drugo iz vsakega sodelovanja pri vladanju, politični fenomen, ki ga z abstraktnimi načeli ni mogoče pojasniti (Wollstonecraft, 1993: 5). Uvedba ženske volilne pravice kot enega najpomembnejših načinov participacije žensk v političnem odločanju je na Slovenskem povezana z uvedbo volilne pravice v stari Avstriji sploh. Po zlomu absolutizma sredi 19. stoletja so imele ženske volilno pravico na občinski in deželni ravni od leta 1863, kadar so bile davkoplačevalke. Kljub volilni pravici niso smele na volišča, ampak so zanje volili možje, očetje ali bratje. Na državni ravni so splošno volilno pravico dobile šele leta 1907, sicer različno po posameznih deželah, na Goriškem na primer šele po razpadu monarhije (Melik, 1965: 115 – 116).

V zadnjem četrt stoletju se je tako v svetu kot pri nas bolj kot kdajkoli prej postavilo vprašanje, ali je demokracija brez enake zastopanosti obeh spolov sploh demokracija. T. i. paritetna demokracija predvideva enako zastopanost obeh spolov na vseh področjih življenja, tudi političnega. Še leta 1991 je bilo v nacionalnih parlamentih držav po svetu v povprečju le 11 % žensk, v takratnih članicah Evropske unije 12,5 %. Po padcu berlinskega zidu pa je v Evropi stopnja še padla, kar dokazuje, da več demokracije ne pomeni nujno več žensk v politiki. Koncept paritetne demokracije zahteva *de iure* in *de facto* enako zastopanost spolov, zavrača kulturni relativizem kot oviro (kulture, vera ali tradicija ne morejo biti ovira za uresničevanje paritetne demokracije) in zahteva od držav, da s konkretnimi ukrepi zagotovijo legitimne zahteve žensk, saj gre za univerzalno in nedeljivo človekovo pravico (The gender parspective, 1995: 12 - 14). V tabeli 1 so podatki iz leta 2002, po katerih so se slabše od Slovenije uvrščale le še nekatere evropske države.

Tabela 1: Odstotek žensk med župani in svetniki v nekaterih evropskih državah 2002

Država	% žensk med župani	% žensk med svetniki
Albanija	3,0	10,6
Avstrija	1,7	…
Belgija	7,6	27,0
Bolgarija	8,0	20,0
Ciper	3,0	19,8
Finska	…	34,0
Francija	…	47,5
Hrvaška	…	4,0
Islandija	3,0	29,0
Italija	6,6	16,7
Liechenstein	…	21,4
Litva	5,0	21,4
Luksemburg	10,2	16,7
Madžarska	13,0	9,1
Makedonija	21,4	8,4
Malta	7,6	20,2
Norveška	15,0	34,0
Poljska	5,3	13,2
Portugalska	4,9	…
Romunija	3,4	…
Slovaška	16,9	…
Slovenija	**5,7**	**13,1**
Španija	9,6	…
Švedska	…	42,0
Švica	…	28,0
Turčija	0,4	…

Vir: http://www.unece.org/stats/trends/ch12/12.7.xls, povzeto po Statistični urad Republike Slovenije, 2007

2. Slovenija po osamosvojitvi in participacija žensk

Razprava o enakosti moških in žensk ima v Sloveniji v obdobju osamosvojitve kot politična tema precej dolgo tradicijo. Parlament je že leta 1990 ustanovil Komisijo za žensko politiko, v obdobju 1996 – 2000 je ustanovil Komisijo za politiko enakih možnosti, leta 1992 je vlada dobila poseben Urad za žensko politiko, ki se je po letu 2000 preimenoval v Urad za enake možnosti. Prav Komisija za žensko politiko je ob obravnavi Zakona o političnih strankah leta 1994 predlagala dopolnitev, s katero so v besedilu pričeli uporabljati žensko in moško slovnično obliko. Njen predlog, da bi se politične stranke bolj odločno zavezale k zagotavljanju enakih možnosti pri določanju kandidatur za volitve (z eno tretjino kandidatk), pa državni zbor ni sprejel. Komisija je zahtevala obvezno razlago določbe 5. točke 19. člena zakona na način, da bi statut politične stranke natančno določal ukrepe in postopke pri določanju kandidatnih list za volitve, vendar tudi te razlage državni zbor leta 2000 ni podprl. Do bolj določnih zakonodajnih potez je moralo preteči še nekaj časa.

Temelji za uravnoteženo zastopanost žensk in moških v predstavniških organih so opredeljeni v Ustavi Republike Slovenije. Ta v četrtem odstavku 43. člena v povezavi s 44. členom [1] določa, da zakon določi ukrepe za spodbujanje enakih možnosti moških in žensk pri kandidiranju na volitvah v državne organe in organe lokalnih skupnosti. Na podlagi te določbe, ki jo je prinesel Ustavni zakon o spremembi 43. člena Ustave Republike Slovenije, ki ga je Državni zbor Republike Slovenije sprejel na seji dne 15. junija 2004, je zakonodajalec kasneje sprejel ukrepe v več zakonskih predpisih. Julija 2002 je bil sprejet Zakon o enakih možnostih žensk in moških (ZEMŽM) U. l. RS, št. 59/02 in 61/07), s katerim je določil temelje za izboljšanje položaja žensk in ustvarjanje enakih možnosti žensk in moških na političnem, ekonomskem, socialnem, vzgojno-izobraževalnem ter na drugih področjih družbenega življenja (1. člen). Na tej podlagi sta bili kasneje sprejeti še Uredba o pogojih in merilih za sofinanciranje projektov na področju enakih možnosti žensk in moških, Ur. l. RS, št. 80/03 in Uredba o pogojih in merilih za sofinanciranje projektov na področju enakih možnosti žensk in moških, Ur. l. RS, št. 103/04. Maja 2004 je bil sprejet Zakon o uresničevanju načela enakega obravnavanja (uradno prečiščeno besedilo) (ZUNEO-UPB1) Ur.l. RS, št. 93/2007, ki določa skupne temelje in izhodišča za

1 Vsak državljan ima pravico, da v skladu z zakonom neposredno ali po izvoljenih predstavnikih sodeluje pri upravljanju javnih zadev.

zagotavljanje enakega obravnavanja vsakogar pri uveljavljanju njegovih ali njenih pravic in obveznosti ter pri uresničevanju človekovih pravic in temeljnih svoboščin (1. člen). Zakon odloča tudi subjekte, ki z ukrepi v okviru svojih pristojnosti ustvarjajo pogoje za uresničevanja načela enakega obravnavanja in vzpostavlja institucionalne pogoje za delovanje novega instituta, zagovornika oziroma zagovornice načela enakosti, ki z obravnavo primerov domnevnega neenakega obravnavanja nudi pomoč diskriminiranim osebam. Z ZUNEO je država v slovenski pravni red prenesla tudi šest direktiv Evropske skupnosti, ki se nanašajo na to vsebinsko področje[2].

Zakonodajalec se pri tem ni ustavil, pač pa je načelo enakega obravnavanja vgrajeval tudi v nekatere druge sprejete predpise. Tako je prav gotovo zelo pomemben Zakon o delovnih razmerjih (ZDR), Ur.l. RS, št. 42/02, 79/06, 46/07 in 103/07. Šesti člen opredeljuje prepoved diskriminacije pri zaposlovanju, obema spoloma pa morajo biti zagotovljene enake možnosti in enaka obravnava pri zaposlovanju, napredovanju, usposabljanju, izobraževanju, prekvalifikaciji, plačah in drugih prejemkih iz delovnega razmerja, odsotnostih z dela, delovnih razmerah, delovnem času in odpovedi pogodbe o zaposlitvi. Zakon je podlaga za vladno Uredbo o ukrepih za varovanje dostojanstva zaposlenih v organih državne uprave Ur. l. RS, št. 36/09, ki določa ukrepe, s pomočjo katerih se v organih državne uprave zagotavlja delovno okolje, v katerem se spoštuje dostojanstvo vseh zaposlenih in kjer ni spolnega in drugega nadlegovanja in trpinčenja.

2 Direktiva Sveta 76/207/EGS z dne 9. februarja 1976 o izvrševanju načela enakega obravnavanja moških in žensk v zvezi z dostopom do zaposlitve, poklicnega usposabljanja in napredovanja ter delovnih pogojev (UL L št. 39 z dne 14. februarja 1976, str. 40), Direktiva Sveta 86/378/EGS z dne 24. julija 1986 o izvajanju načela enakega obravnavanja moških in žensk v poklicnih sistemih socialne varnosti (UL L št. 225 z dne 12. avgusta 1986, str. 40), Direktiva Sveta 2000/43/ES z dne 29. junija 2000 o izvajanju načela enakega obravnavanja oseb ne glede na raso ali narodnost (UL L št. 180 z dne 19. julija 2000, str. 22), Direktiva Sveta 2000/78/ES z dne 27. novembra 2000 o splošnih okvirih enakega obravnavanja pri zaposlovanju in delu (UL L št. 303 z dne 2. decembra 2000, str. 23), Direktiva 2002/73/ES Evropskega parlamenta in Sveta z dne 23. septembra 2002 o spremembi Direktive Sveta 76/207/EGS o izvrševanju načela enakega obravnavanja moških in žensk v zvezi z dostopom do zaposlitve, poklicnega usposabljanja in napredovanja ter delovnih pogojev (UL L št. 269 z dne 5. oktobra 2002, str. 15), Direktiva Sveta 2004/113/ES z dne 13. decembra 2004 o izvajanju načela enakega obravnavanja moških in žensk pri dostopu do blaga in storitev ter oskrbi z njimi (UL L št. 373 z dne 21. decembra 2004, str. 37) in Direktiva 2006/54/ES Evropskega parlamenta in Sveta z dne 5. julija 2006 o uresničevanju načela enakih možnosti ter enakega obravnavanja moških in žensk pri zaposlovanju in poklicnem delu (preoblikovano) (UL L št. 204 z dne 26. julija 2006, str. 23)

Državni zbor je oktobra 2005 sprejel še Resolucijo o nacionalnem programu za enake možnosti žensk in moških, 2005–2013 (ReNPEMZM) Ur. l. RS, št. 100/05 kot temeljni programski dokument za uresničevanje politike enakih možnosti. Resolucija določa šest prednostnih področij za uresničevanje enakosti spolov: integracija načela enakosti spolov, delo, družba znanja, družbena blaginja žensk in moških, odnosi med spoloma in procesi odločanja. Programski cilji in ukrepi, določeni z resolucijo, pa se določijo vsaki dve leti s periodičnim načrtom za izvajanje resolucije.

3. Procesi odločanja in uresničevanje enakih možnosti moških in žensk

V našem prispevku nas posebej zanima področje procesov odločanja in v tem kontekstu še posebej politično odločanje na lokalni ravni. Politična prizadevanja za določitev neposrednih ukrepov za povečanje udeležbe žensk v procesu političnega odločanja sicer segajo v prva leta po osamosvojitvi. Že v obdobju 1994 do 2002 je v državnem zboru potekala živahna razprava o spremembah Zakona o političnih strankah, ki naj bi zavezoval politične stranke, da v svojih statutih določijo postopke in ukrepe za zagotavljanje enakih možnosti moških in žensk pri kandidiranju za volitve, vendar je bil zakon leta 2000 zavrnjen. Že omenjeni leta 2002 sprejeti Zakon o enakih možnostih žensk in moških pa je opredeljeval posebne ukrepe za uravnoteženo zastopanost zgolj kot priporočljive in ne pravno zavezujoče (Gortnar, 2004: 1034).

Ukrepe za doseganje uravnotežene zastopanost obeh spolov delimo v tri sklope:

1. formalni (zakonska ureditev določenih ravnanj) in neformalni ukrepi (ki jih sprejmejo politične stranke ali druge interesne organizacije v svojih notranjih pravilih in programskih dokumentih);
2. ukrepi, ki vplivajo na kandidacijski postopek, in ukrepi, ki vplivajo na izvolitev, ter
3. ukrepi za financiranje in druge načine nagrajevanja in kaznovanja političnih strank za uravnoteženo sodelovanje obeh spolov v političnem življenju (Grad, Nerad in Zagorc, 2004: 75).

Na politično zastopanost žensk vplivajo tri skupine dejavnikov: institucionalni, kulturni in socialnoekonomski. Med institucionalnimi je na prvem mestu

volilni sistem. Ob številnih ukrepih bi za zagotovitev uravnotežene zastopanosti obeh spolov najbolje učinkovala določitev vnaprejšnjih kvot izvoljenih v posameznem organu (ang. *parity threshold*), vendar bi bila taka rešitev sporna z vidika načela enakosti in enake volilne pravice. Zato se zakonodajalci odločajo za določitev kvot na kandidatnih listah ali določitev načina kandidiranja, po katerem morajo predlagatelji na kandidatnih listah zagotoviti tudi določen vrstni red kandidatov po spolu (sistem zadrge) ali kombinacijo obojega. V večinskem sistemu se rešitve nekoliko zapletejo, toda tudi tam je mogoče v volilnih enotah, kjer se voli več kot enega kandidata, zagotoviti enakomerno zastopanost spolov na kandidatni listi.

Zakonodajne rešitve, ki so v Sloveniji sledile v naslednjih letih za izenačevanja pogojev pri vključevanju v procese odločanja o javnih zadevah, so v materijo posegle z uporabo kvot in zadrge. Najprej je februarja 2004 z dopolnitvijo 16. člena Zakon o volitvah poslancev iz Republike Slovenije v Evropski parlament določil, da na kandidatni listi noben spol ne sme biti zastopan z manj kot 40 odstotki in da mora biti vsaka lista sestavljena tako, da je najmanj en kandidat vsakega od spolov uvrščen v zgornjo polovico liste (ZVPEP-UPB1) (Ur. l. RS, štev. 40/04). Tako je bila to prva v praksi uveljavljena zakonodajna rešitev na prvih volitvah v Evropski parlament, ki so se jih udeležili tudi kandidati iz Republike Slovenije junija 2004 in ki je z neposrednim zakonodajnim ukrepom vzpostavila uravnoteženo spolno sestavo kandidatnih list. Zaradi specifičnosti volitev (majhnega števila sedežev, ki se jih voli po proporcionalnem volilnem sistemu) je bilo število izvoljenih evropskih poslancev leta 2004 po spolu zelo uravnoteženo (štirje poslanci in tri poslanke), na volitvah 7. junija 2009 se je slika obrnila v škodo ženskih poslank (pet poslancev in dve poslanki).

Julija 2005 je bil dopolnjen Zakon o lokalnih volitvah (Ur. l. RS, štev. 72/05). Določba 70.b člena določa, da morajo predlagatelji kandidatnih list na lokalnih volitvah upoštevati zakonsko zahtevo po enakopravnem zastopanju obeh spolov na kandidatnih listah. Konkretna rešitev je podrobneje analizirana v 4. poglavju tega članka.

Med skoraj dvema ducatoma sprememb in dopolnitev, ki jih je bil deležen Zakon o volitvah v državni zbor, sprejet leta 1992 (Ur. l. RS, štev. 54/07), je bila z vidika zagotavljanja enakih možnosti obeh spolov pomembna sprememba leta 2007. Šesti odstavek 43. člena Zakona o volitvah v državni zbor odtlej določa, da na kandidatni listi noben spol ne sme biti zastopan z manj kakor 35% od skupnega dejanskega števila kandidatk in kandidatov na listi. Ta zakonodajna norma je bila prvič v praksi uveljavljena na državnozborskih volitvah leta 2008.

Zaradi načina oblikovanja enajstih volilnih enot in znotraj njih volilnih okrajev ter zaradi načina izračunavanja volilnega rezultata (volitve po načelu sorazmernosti in D'Hontova formula izračunavanja in dodeljevanja ostanka glasov) številčna sestava izvoljenih poslank in poslancev ne odseva višine zapovedane kvote, zato med kvoto in volilnim rezultatom ni neposredne vzročne zveze: na od skupno 88 poslanskih sedežih (brez predstavnikov manjšin) v parlamentu sedi le dvanajst žensk.

4. Načelo enakih možnosti in normativne spremembe v lokalni samoupravi

Omenili smo že, da je bil julija 2005 dopolnjen Zakon o lokalnih volitvah. Določba 70. b člena določa, da morajo predlagatelji kandidatnih list na lokalnih volitvah upoštevati zakonsko zahtevo po enakopravnem zastopanju obeh spolov na kandidatnih listah tako, da zagotovijo najmanj 40 % vsakega od spolov, pri čemer morajo biti v prvi polovici na kandidatni listi kandidati zapisani izmenično. Kvota in zadrga, gre torej za identično rešitev, ki jo je zakonodajalec uveljavil pri volitvah v Evropski parlament. Vendar bo ta rešitev v celoti uveljavljena šele na rednih lokalnih volitvah leta 2014, saj zakon določa prehodno obdobje. Zakon postopno zvišuje kvoto, ki jo morajo upoštevati predlagatelji kandidatnih list, na obdobje dveh mandatov in razredči vrstni red kandidatov po spolu z vsakega drugega na vsakega tretjega (namesto moški - ženska predlagatelji lahko predlagajo moški – moški – ženska ali ženska – ženska - moški) in ustvari nepopolno zadrgo. Tako so na prvih rednih volitvah po spremembi zakona jeseni 2006 predlagatelji morali zagotoviti najmanj 20 % kandidatov vsakega od spolov, na naslednjih lokalnih volitvah 2010 pa jih bodo morali najmanj 30 %, pri čemer bodo morali kandidate v prvi polovici kandidatne liste razporediti izmenično najmanj vsakega tretjega kandidata drugega spola.

Ne glede na morebitni vtis o polovičarski rešitvi zaradi prehodnega obdobja so se prvi učinki pokazali že na volitvah 2006. Pred tem je bilo v mandatnem obdobju med letom 2002 in letom 2006 občinskih svetih povprečno le 12 % žensk, v kar 30 slovenskih občinah pa sploh nobene. Leta 1998 je bilo od 3830 kandidatk za občinski svet izvoljenih 380 (9,9 %), kar je pomenilo 12, 04 % od vseh izvoljenih članov občinskih svetov. V letu 2002 se je ta številka povečala na 423, vendar je to pomenilo le 13,09 % od vseh izvoljenih občinskih svetnikov (tabela 2).

Tabela 2: Kandidati in izvoljeni za župane in občinske svetnike po spolu

	1994	1998	2002	2006
Kandidati za župane/županje	635	750	724	847
od tega število žensk	31	53	77	91
Izvoljeni župani/županje	147	192	193	210
od tega število žensk	2	8	11	7
Kandidati za svetnike/svetnice	16.820	20.786	23.426	26.721
od tega število žensk	2.921	3.830	4.976	8.762
Delež žensk med kandidati za svetnike (%)	17,4	18,4	21,2	32,8
Izvoljeni svetniki/svetnice	2.779	3.188	3.231	3.386
od tega število žensk	299	384	423	728
Delež žensk med izvoljenimi svetniki (%)	10,8	12	13,1	21,5

Vir: Lokalne volitve 1994 – 2006, Statistični urad Republike Slovenije, 2007

Rezultati za leto 2006 pa že kažejo izrazit vpliv nove zakonodajne rešitve. Število žensk se je pomembno povečalo med kandidati za občinske svétnike, od prvih volitev do volitev v 2006 se je skoraj podvojilo, medtem ko se je število izvoljenih občinskih svétnic v enakem razdobju več kot podvojilo: z 10,8 % v letu 1994 na 21,5 % v letu 2006. Učinek zadrge in kvote je očiten, ko primerjamo rezultata iz let 2002 in 2006. Čeprav se je število žensk med kandidati nenehno povečevalo (resda nekaj tudi na račun porasta števila občin), se je število izvoljenih žensk med svétniki pomembno zvišalo šele po tem, ko so bile te kandidatke uvrščene na kandidatne liste na izvoljiva mesta. Morebitni vpliv preferenčnih glasov je tozadevno nepomemben, ne glede na spol pa ima zaradi relativno visokega praga učinek v izrazito majhnih volilnih enotah. Z več kot petino žensk med izvoljenimi občinskimi svétniki se je Slovenija zavihtela v povprečje, ki so ga imele države članice Evropske unije pred desetimi leti, ko je bilo v povprečju z občinskih svetih 19,9 % žensk (European Database: Women in Decision-making 1999, podatki dostopni na Uradu za enake možnosti Vlade Republike Slovenije). Stanje znotraj države se značilno ne razlikuje glede na razvitost, velikost slovenske občine in glede na njeno ozemeljsko razmestitev. Pregled stanja po statističnih regijah daje precej različno podobo, zastopanost

žensk v na primer najmanj razviti regiji Pomurju je skoraj enaka kot na Gorenjskem, ki spada med razvitejše regije.

Rezultati deležev izvoljenih občinskih svétnic glede na liste kandidatov ne kažejo izrazitega odstopanja. Če opazujemo samo parlamentarne stranke in njihove rezultate na lokalnih volitvah, se je med letoma 2002 in 2006 opazno povečalo število svétnic iz vrst Slovenske demokratske stranke SDS (za 61,3 %), Slovenske ljudske stranke SLS (za 42 %), Liberalne demokracije Slovenije LDS (za 41,2 %), Demokratične stranke upokojencev DeSUS (za 39 %) in Socialnih demokratov SD (za 30 %). Delež žensk kljub zakonodajnim ukrepom beleži manjšo rast v Slovenski nacionalni stranki SNS (samo za 20 %) in v Novi Sloveniji NSi (skromnih 8 %) (Tabela 3). Seveda bi bilo treba za objektivno sliko te rezultate primerjati z doseženim celotnim rezultatom, ne glede na to pa je nedvoumno, da so vse stranke v primerjanem obdobju povečale število kandidatk na kandidatnih listah za 11,6 %. Večina kandidatnih list na volitvah 2006 v primerjavi z letom 2002 je presegla 30 odstotni delež žensk, kar se prej ni nikoli zgodilo in temu primeren je tudi skupen porast števila izvoljenih žensk iz 13,1 % na kar 21,5 % (Lokalne volitve .., 2007: 18).

Tabela 3: Delež izvoljenih občinskih svétnic glede na liste kandidatov

	1994	1998	2002	2006
DeSUS	13,4	15,0	12,7	20,8
LDS	12,0	13,0	14,7	25,0
Nsi (SKD)	10,5	11,4	13,3	14,5
SD (ZL, ZLSD)	18,2	18,5	19,1	27,5
SDS (SDSS)	9,0	9,9	9,2	23,8
SLS	7,8	9,9	10,3	17,8
SMS	-	-	15,8	25,0
SNS	12,7	9,1	9,5	11,8
Neodvisni kandidati	9,3	12,3	13,5	19,7
SKUPAJ	10,8	12,0	13,1	21,5

Vir: Lokalne volitve 2004 – 2006, Statistični urad Republike Slovenije, 2007

V treh četrtinah vseh občin volitve potekajo po proporcionalnem volilnem sistemu, tam volijo od 12 do 45 svetnikov, v preostalih manjših občinah volijo od 7 do največ 11 svétnikov po večinskem načelu. Slednje največkrat nimajo več kot 2000 prebivalcev.

Tabela 4: Občine glede na volilni sistem

	1994	1998	2002	2006
Občine s proporcionalnim volilnim sistemom	131	144	145	150
Občine z večinskim volilnim sistemom				
Število občin - skupaj	147	192	193	210

Vir: Lokalne volitve 1004 – 2006, Statistični urad Republike Slovenije, 2007

Primerjava med volilnima sistemoma ne kaže pomembnih razlik (Tabela 4), vendar je proporcionalni volilni sistem nekoliko bolj naklonjen svétnicam kot večinski. V občinah s proporcionalnim volilnim sistemom je bilo namreč na volitvah 2002 izvoljenih 13 % svétnic, v preostalih pa 10 % (Lavtar, 2007: 74 - 75). Razlika se utegne v prihodnje povečevati, saj v večinskem volilnem sistemu ni mogoče v celoti zagotoviti načela kvot in zadrge. Hkrati je pri sodbi o vlogi volilnega sistema na število žensk v občinskih svetih pomembno upoštevati, da se je število občin s proporcionalnim volilnim sistemom od leta 1994 do 2006 povečalo za trikrat in da so v prvem krogu lokalnih volitev 2006 po večinskem načelu volili v 60 občinah, toda v teh je prebivalo le 6,1 % vseh volilnih upravičencev (Lokalne volitve, 2007: 4).

5. Sklep

Urad Vlade Republike Slovenije za enake možnosti je leta 2007 ob finančni pomoči Evropske unije izdal Smernice za enakost žensk in moških v lokalnem razvoju[3] v katerih je sistematično razčlenil različne vrste aktivnosti, ki jih za doseganje enakih možnosti poleg zakonodajnih ukrepov države lahko izvedejo lokalne oblasti. Raziskava, izvedena v slovenskih lokalnih skupnostih v letu

3 Smernice za enakost žensk in moških v lokalnem razvoju so nastale v okviru mednarodnega projekta »Enakost spolov v lokalnem razvoju« *(»Gender equality in Local Development«),* v katerem so sodelovali Luksemburg, Danska in Slovenija.

2003, navaja nekaj predlogov strateških ciljev za lokalne skupnosti (Dobnikar, 2004: 51): seznaniti lokalne skupnosti in njihove organe z obstojem, mnenji, cilji, strategijami, mogočimi ukrepi in učinki politike enakih možnosti, motivirati lokalne skupnosti za uveljavljanje ter oblikovanje politike enakih možnosti, imenovanje koordinatoric/koordinatorjev enakih možnosti v lokalnih skupnostih, medsebojno sodelovanje lokalnih skupnosti in koordinatorjev enakih možnosti, seznanjanje organov lokalnih skupnosti z delom nevladnih organizacij za enake možnosti itd.

Pozivom h konkretnim aktivnostim lokalnih skupnosti se pridružuje tudi Kongres lokalnih in regionalnih oblasti (CLRAE) pri Svetu Evrope, ki od lokalnih skupnosti pričakuje, da se bodo trdneje obvezale k uresničevanju akcijskih načrtov za uveljavitev enakosti spolov, da bodo promovirale enake možnosti, da bodo temu prilagodile odločevalske procese, da bodo sistematično zbirale podatke o zastopanosti spolov, zagotovile usposabljanje za lokalne politike in političarke itd. K zgodnjemu spodbujanju enakopravnosti spolov nas opozarja Evropska listina o sodelovanju mladih v občinskem in regionalnem življenju (2003: Revised Charter, poglavje I.7). V njej je izraženo pričakovanje, da bodo lokalne in regionalne oblasti spodbujale enakopravnost »od zgodnjega otroštva dalje«, da bodo pripravile načrt, kako bodo to počele, preverjale in ocenjevale metode, s katerimi bodo zagotavljale enakopravnost med spoloma pri mladih in omogočale dekletom in mladim ženskam informacije o izobraževalnih možnostih ter pridobivanje poklicnih kvalifikacij tudi za tradicionalno moške poklice.

Že prej omenjena Resolucija o nacionalnem programu za enake možnosti žensk in moških za obdobje 2005–2013 kot temeljni slovenski programski dokument za uresničevanje politike enakih možnosti določa šest prednostnih področij za uresničevanje enakosti spolov. Poleg procesov odločanja, ki smo jih podrobneje obravnavali v našem prispevku, resolucija opredeljuje tudi integracijo načela enakosti spolov v vsa področja družbenega življenja, v svet dela in izobraževanja, obravnava družbeno blaginjo žensk in moških in se posebej opredeljuje do odnosov med spoloma.

Skratka, niso le kvote tiste, ki vodijo k doseganju zastavljenih ciljev, so pa pomemben vzvod za doseganje drugih ciljev. V prispevku smo ugotovili, da na politično zastopanost žensk vplivajo tri skupine dejavnikov: poleg institucionalnih, kamor sodijo zakonodajni posegi v volilno zakonodajo, niso nič manj pomembni tudi kulturni in socialnoekonomski dejavniki. Število žensk v politiki, državni in lokalni, pritrjuje v prid tezi, da Slovenija poleg urejenih institucionalnih

mehanizmov za spodbujanje enake zastopanosti žensk in moških potrebuje še druge, mehke ukrepe in spremembo družbenih vrednot.

Dr. Roman Lavtar je magisterij in doktorat opravil na Fakulteti za družbene vede Univerze v Ljubljani. Trenutno je zaposlen v Službi Vlade Republike Slovenije za lokalno samoupravo in regionalno politiko. Predava na strokovnih srečanjih s področja javne uprave in lokalne samouprave na Upravni akademiji Ministrstva za javno upravo, občasno pa tudi na Fakulteti za družbene vede Univerze v Ljubljani. Sodeluje s Fakulteto za upravo Univerze v Ljubljani pri predmetih Lokalno samouprava in Teorija javne uprave. Teme njegovega strokovnega in teoretskega zanimanja so lokalna samouprava, teorija javne uprave, usposabljanje javnih uslužbencev in participacija prebivalcev pri odločanju.

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SUMMARY

GENDER MAINSTREAMING IN SLOVENE LOCAL SELF-GOVERNMENT

In the last decade gender mainstreaming gets in professional and political public more attention than in the past years. Numerous incentives supported by legislative measures and establishment of a specialised government body which exercises a systematic survey of the topic enabled a giant leap in understanding the social role of gender relationship as well as concrete results in achieving goals in gender mainstreaming in Slovenia. The author systematically evaluates circumstances in system of local self-government as vertically decentralized subsystem of public authority. From the quantitative point of view he assesses improvement in women's participation in decision making process at local level. The author predicts further improvement and strengthening of women's role in local political life as in future increased number of women's candidates will create a significant number of local women politicians and conditions in which both men and women will tend to use quota and other measures for protecting their rights.

In the first part of the article the author shortly describes the history of gender mainstreaming movement with political and philosophical background of struggle for women's equality in public life. For a long period of time woman was understood as politically unfit and immature. Even in the oldest known democracy in ancient Greece women, slaves and foreigners were not allowed to participate in decision-making process. The situation was not altered after the birth of the modern state when Machiavelli changed the understanding of the medieval times. It took almost further four centuries for John Stuart Mill and Mary Wollstonecraft to define that the modern liberal state has to protect ethnic minorities and women. In accordance to Mill only an absolute equality of men and women can create circumstances for human freedom and democracy. And Wollstonecraft pointed out that the fact that one half of the mankind was excluded from governing was a phenomenon that could not be explained by abstract principles. In spite of the fact they were both English Great Britain was not the first state to recognise women's right to vote and stand as a candidate, but New Zealand was in 1893. Slovene women got the voting right only before and after Word War I, although for some period of time under Habsburg monarchy they were not allowed to execute it on their own but through their fathers, brothers and husbands.

Roman Lavtar

Zagotavljanje enakosti spolov v slovenski lokalni samoupravi

In last quarter of the 20-th century the question of women's participation in public life came to the top of the political agenda of many international organisations. Universal suffrage is not the only today's issue. More than before the so-called parity democracy puts the question whether the democracy is still democracy without equal representation of men and women. Parity democracy demands equal representation in all aspects of public life, political as well. In 1991 there were only 11 % of women in national parliaments all over the world and only 12, 5 % in European Union. After the fall of Berlin wall the numbers decreased which proves that more democracy doesn't necessary mean more women in politics. The concept of parity democracy is *de iure* and *de facto* equality and rejects cultural relativism as an argument against. Culture, religion or tradition ought not be obstacles. It also requires from states taking explicit measures to fulfil the legitimate rights of women.

In the second part of the article the author analyses the development of gender mainstreaming in Slovenia after becoming an independent state in 1991. He presents the legal documents that provided realisation of women's rights in public life including those related to work place, health, education and political representation. In the third part of the article the author develops this subject in detail, expounding that measures for equal participation of women in public life can be divided in three groups: 1) formal (legal instruments introduced through legislative state organs) and informal measures (internal rules of procedure or program documents of political parties and other organizations), 2) measures related to candidacy and election procedures and 3) financial bonuses or fines of political parties for promoting gender equality. He also points out that there are other three groups of factors influencing the level of women's participation in public life: institutional, cultural and socioeconomic.

Further he describes the legal instruments adopted in Slovenia as incentives for women's participation in political life. First, in February 2004 the European Election Act was adopted, including the obligation of political parties or other submitters of candidacy lists to put at least 40 % of both men and women on the list. In addition in the first half of the list candidates must be classified in turn. In July 2005 the Local Election Act was amended in similar way but with a transitional period of twelve years i.e. 40 % of both genders will be obligatory only in local elections in 2014. And lastly, in 2007 the National Parliament Election Act was amended. It provides obligation for 35 % of each gender on candidacy lists of political

parties. Since the election rules provide also eight constituencies, this measure doesn't have the same impact on women's representation in national parliament. So in spite of that legislative measure only 13,6 % of women were elected in the general elections in 2008.

In the last part of the article the author analyses in detail the participation of women at local level. He compares numbers of nominated and elected women candidates in all four elections since Slovene independence. He finds out that before introducing incentive legal measures for more women in local politics only one tenth of members of local councils were women. But after amendment of the Local election Act in 2005 in the local elections next year the outcome was doubled. In the local elections in 2006 the share of women candidates rose from 17,4 % in 1994 to 32,8 % in 2006 and number of elected women members of local councils rose from 10,8 % in 1998 to 21,5 % in 2006. The result varied from political part to party but did not from region to region.

Strokovni članek

Konfliktni položaji med uradno osebo in stranko v postopku izdaje gradbenega dovoljenja

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IZVLEČEK

Postopek izdaje gradbenega dovoljenja je posebni upravni postopek, ki ga ureja Zakon o graditvi objektov (ZGO-1), subsidiarno pa Zakon o splošnem upravnem postopku (ZUP). Uradne osebe so pri vodenju gradbenega postopka soočene z usklajevanjem in odločanjem med javnim in zasebnim interesom, poleg tega so v postopku poleg vložnika zahtevka udeleženi tudi stranski udeleženci, kar lahko pripelje do uveljavljanja nasprotujočih si zahtevkov. Ravno zato so uradne osebe pri vodenju in odločanju vse bolj priča neprimernemu vedenju in ravnanju strank, njihovim pritiskom, ustrahovanjem in grožnjam. Cilj prispevka je prikazati dejavnike, ki onemogočajo, da bi bili postopki hitrejši in učinkovitejši in osvetliti pomen odnosa med uradno osebo ter stranko. Članek poleg razlogov, ki povzročajo nezadovoljstvo strank, s pomočjo izvedene ankete prikazuje neraziskano in neevidentirano področje nedopustnih in nezakonitih posegov v delo uradnih oseb pri vodenju in odločanju v postopku izdaje gradbenega dovoljenja.

Ključne besede: postopek izdaje gradbenega dovoljenja, nezadovoljstvo strank, neprimerno vedenje strank, nedopustni in nezakoniti posegi v delo uradnih oseb.

JEL: H83

1. Odnos med uradno osebo in stranko v postopku izdaje gradbenega dovoljenja

Za uradnike, ki vodijo postopke izdaje gradbenih dovoljenj in v njih odločajo, veljajo načela uslužbenskega sistema, kot so določena z Zakonom o javnih uslužbencih (ZJU). Tako morajo med drugim pri izvrševanju svojih nalog

ravnati zakonito, strokovno, častno, zaupno, zanje veljajo omejitve in dolžnosti v zvezi s sprejemanjem daril, svoje naloge morajo opravljati tudi politično nevtralno in nepristransko. V ravnanje uradnih oseb torej ni vključeno le zakonito in strokovno izvrševanje nalog, temveč zanje veljajo tudi moralne in etične norme, glede na to, da v postopku prihajajo v stik s strankami. Ustrezne odnose med uradnimi osebami in strankami prav tako ureja Zakon o državni upravi (ZDU-1), ki varuje posameznika pred neustavnim, nezakonitim in neetičnim ravnanjem uprave. Zapovedi ravnanja, ki ustrezajo liku etičnega uradnika, določa tudi Kodeks ravnanja javnih uslužbencev, ki vsebuje zbirko moralnih pravil za to poklicno skupino. Po določbah tega kodeksa je uradna oseba med drugim zavezana, da pri opravljanju svojih nalog spoštuje človekovo dostojanstvo in je v odnosih z državljani spoštljiva.

Po drugi strani mora biti tudi odnos strank do uradnih oseb korekten in pošten. Uradne osebe, ki postopke izdaje gradbenih dovoljenj vodijo oziroma v njih odločajo, so vse bolj priča neprimernemu vedenju in ravnanju strank, konfliktnost med javno koristjo in interesom stranke pa nedvomno povzroča pritiske in nedopustno vmešavanje strank v proces odločanja. Tudi sicer velja, da uradniki ne uživajo ravno visokega družbenega ugleda, nizka pravna kultura in potrošniška družba pa vse bolj povzročata, da se agresivnost strank – zlasti investitorjev – v odnosu do uradne osebe stopnjuje.

2. Razlogi, ki onemogočajo hitro in učinkovito vodenje postopka

Tudi na področju izdajanja gradbenih dovoljenj se z antibirokratskimi programi ter s programi odpravljanja administrativnih ovir, prijazne in učinkovite državne uprave skuša doseči zadovoljstvo in usmerjenost k stranki. Vendar zadovoljstva uporabnika ne smemo postavljati pred interese drugih ali pred javni interes. Javna uprava namreč včasih svojo kakovost izkaže tudi tako, da uporabnika ne zadovolji, ko npr. zavrne njegovo zahtevo za gradbeno dovoljenje (Virant, 2003, str. 68).

Zadovoljstvo stranke so poudarjali tudi ob sprejemu novega ZGO-1, saj se je napovedovala poenostavitev postopka, novi zakon pa naj bi po besedah takratnega ministra predvsem bistveno skrajšal postopke. V praksi obljub o poenostavitvi in skrajšanju postopka že zgolj zaradi dejstva, da se je število stranskih udeležencev

zaradi območja za določitev strank[1] povečalo in da izvedba skrajšanega ugotovitvenega postopka skorajda ni več možna, večinoma ni mogoče izpolniti. Dodatno postopke izdaje »klasičnih« gradbenih dovoljenj upravnim enotam podaljšuje tudi z ZGO-1B uvedena novost – izdaja gradbenih dovoljenj za nezahtevne objekte, saj je povečala obseg dela prvostopenjskih upravnih organov. Posledično se zaradi obljub o poenostavitvi in skrajšanju postopka, s katerimi se skuša velikokrat doseči zgolj večjo prijaznost do volilcev, izvajajo pritiski na uradne osebe, ki te postopke vodijo. Vsebinsko ustrezno bi bilo uporabnike tudi opozoriti na njihove obveznosti in tudi na druge pravice, ki brez ogrožanja javne koristi omogočajo hitrejše potekanje postopkov (Kovač, 2008, str. 8).

Vendar dejavniki, ki onemogočajo hitro vodenje postopka, še zdaleč niso samo na strani uradne osebe. Velika večina projektov, predloženih zahtevkom, je namreč pomanjkljivo izdelanih, zato jih je treba vračati v dopolnitev, saj ne vsebujejo niti najosnovnejših podatkov, ki so potrebni za presojo upravičenosti izdaje dovoljenja. Že samo morebitna manjkajoča soglasja lahko podaljšajo postopek za več mesecev.

Projekti se velikokrat izdelujejo izključno na podlagi zahtev investitorjev, ne pa na podlagi predpisov, zato je treba zahteve zavrniti, mnogokrat tudi zato, ker gradnja sploh ni mogoča. Tudi sama vsebina projekta se stalno spreminja, dodajajo se nove vsebine ter povečuje obseg izjav in raznih potrdil. Arhitekt Peter Gabrijelčič (v: M. M., 2009) ugotavlja, da se je na postopek priprave projektne dokumentacije v nekaj letih »obesilo« kar nekaj novih strok, ki želijo primakniti lonček k delitvi investicijskega denarja, in da je zato pridobitev gradbenega

1 Zakon o spremembah in dopolnitvah Zakona o graditvi objektov (ZGO-1B, Uradni list RS, št. 126/2007) je močno posegel na področje določanja strank v postopku. ZGO-1B nadomešča določitev vplivnega območja objekta kot podlage za določanje stranskih udeležencev z območjem za določitev strank. V praksi kriteriji za določitev območja že sprožajo številne pomisleke, zlasti zato, ker je treba pri posameznih gradnjah vključiti v postopek veliko število stranskih udeležencev (npr. v primeru spremembe namembnosti prostora v večstanovanjskem objektu se določi izredno široko območje, ker je treba upoštevati stavbo kot celoto (tudi pri dozidavah). Pri gradnji objektov gospodarske javne infrastrukture se območje določi nekaj metrov od osi kanala, tako da je v postopek vključenih tudi do sto stranskih udeležencev, čeprav ima izgradnja takšnega omrežja vpliv na okolico le v času gradnje)). Večje kot je območje za določitev strank, večje je tudi število stranskih udeležencev, ki so v postopek vključeni zaradi služnostnega razmerja. Poleg tega je ZGO-1B položaj stranskega udeleženca podelil tudi občini, a le če na poziv upravnega organa priglasi udeležbo v konkretnem postopku, zaradi česar se postopek podaljša za osem dni.
Tudi sama sem v okviru magistrske naloge, na vzorcu 30 konkretnih postopkov izdaje gradbenih dovoljenj, ki sem jih vodila v letih 2003-2008 ugotavljala, kolikšno bi bilo število stranskih udeležencev, če bi se določali po merilih, ki jih je uveljavil ZGO-1B. Rezultat analize je pokazal, da bi bilo v kar 60% izpostavljenih zadev število stranskih udeležencev večje, kot jih je dejansko sodelovalo v postopkih, ki so bili vodeni po določbah ZGO-1, oziroma celo v 90%, če bi občine v vseh postopkih priglasile svojo udeležbo.

dovoljenja za enodružinsko hišo skorajda tak podvig, kot bi pridobivali dovoljenje za jedrski reaktor.

Omembe vreden razlog, ki otežuje odločanje v postopku, so tudi preohlapni in nedoločni prostorski akti. Če so ti namreč jasni, se preveritev skladnosti projekta s prostorskim aktom lažje opravi, zato se tudi postopki hitreje izvedejo. Počasen pristop občin k ažuriranju obstoječih prostorskih aktov in sprejemanju novih se odraža tudi v nezadovoljstvu investitorjev, saj zastareli prostorski akt, ki se oklepa starih vzorcev, praviloma ne omogoča realizacije investitorjevih ciljev.

Za popolno obravnavo predmetnega področja morajo uradne osebe obvladati veliko število predpisov, saj ne zadošča zgolj poznavanje ZUP in ZGO-1, ampak je vsaka gradnja vezana tudi na pogoje, ki jih določajo drugi predpisi. Zlasti se je razbohotila okoljevarstvena zakonodaja, saj je sestavljena iz več zakonov in preko 200 uredb, pravilnikov in odredb. Obširnost zakonodaje sama po sebi ne bi bila problematična, če se ne bi pogosto menjavala – tudi z nedomišljenimi in hitrimi spremembami in dopolnitvami. Tudi ZGO-1 je primer predpisa, ki zadeva veliko ljudi in pravnih oseb, pa se praktično dnevno spreminja, kar vnaša v delovanje države vprašljivo pravno varnost (Kovač, 2004, str. 321, opomba 31). Tudi ZUP se v kontekstu družbenih sprememb seveda stalno spreminja. Toda praksa zadnjih let kaže na pretirano dinamiko noveliranja, ki zlasti pri sistemskih zakonih v končni posledici ustvarja nasprotje pravni državi, saj spremembam tako, da bi jih vsebinsko obvladale, ne sledijo niti uradne osebe, kaj šele stranke. V letih 2000–2008 se je ZUP spremenil in dopolnjeval kar s sedmimi posegi v osnovno besedilo (novele A–F in ZUS-1), kar je tudi v primerjavi s spreminjanjem jugoslovanskega ZUP – v letih 1956–1986 namreč štirikrat – očitno pretirano (Kovač, 2008, str. 2–3).

3. Nezadovoljstvo strank in konfliktni položaji

Nezadovoljstvo uporabnikov storitev javne uprave je delno vgrajeno v poslovanje javne uprave, saj javnost njenega delovanja pogosto ne dojema kot zadovoljevanje svojih potreb, temveč kot (birokratsko) oviro na poti do zadovoljevanja potreb (npr. pri gradnji hiše) ali pa vsaj kot nujno zlo (po: Virant, 2003, str. 68). Določeno mero nezadovoljstva pri strankah še vedno povzroča ukoreninjena miselnost, da se »v javni upravi bolj malo dela«.

Uravnoteženje različnih interesov, vpletenih v gradbeni postopek, in veliki finančni vložki posameznih udeležencev postopka oziroma njihova tveganja tudi na obravnavanem področju povzročajo nezadovoljstvo strank. Področje nepremičnin je namreč ena izmed najbolj donosnih gospodarskih panog v naši državi; vsak kvadratni meter stanovanjske površine pomeni pravo bogastvo. V primeru, ko investitor želi postaviti npr. za tretjino večji objekt od dovoljenega, bi si pridobil nekaj sto tisoč evrov protipravne premoženjske koristi, zato so apetiti investitorjev včasih brezmejni. Vse, kar stoji med njimi in še bolj bajnimi dobički, po njihovem mnenju ni prostorski akt, temveč uradnik, ki skrbi za dosledno izvajanje tega predpisa (po: K. M., 2007).

Uradne osebe so zato pogosto izpostavljene neprimernemu vedenju in ravnanju strank, njihovim »navodilom«, »spodbudam« ter različnim oblikam pritiskov in ustrahovanj, in sicer z namenom, da bi bilo njihovo delo usmerjeno v odločitve, ki so za stranke najugodnejše ter pomenijo hitro in ugodno rešitev zadeve. Redki niso niti primeri, ko so uradne osebe izpostavljene celo različnim oblikam groženj – tako neposrednim kot posrednim. Direktne grožnje se izrekajo po telefonu ali na način, da je dokazovanje, da so sploh bile izrečene, težje. Še bolj problematične so grožnje, ki so izrečene po »posrednikih«. Za ustrahovanje uradnikov se uporabljajo tudi bolj prefinjene metode, kot so zasledovanja uradnikov v zasebnem življenju, poškodovanje njihovega premoženja, »vljudnostni obiski« ipd. (po: OZP, 2008). Nezadovoljne stranke se vse pogosteje poslužujejo tudi kazenskih ovadb uradnih oseb, najpogosteje zaradi zlorabe uradnega položaja in uradnih pravic.

Po mnenju Vrtačnika (2007, str. 466) do tako številnih kazenskih ovadb za to kaznivo dejanje prihaja tudi zato, ker nezadovoljni občani pa tudi osebe, ki so nagnjene k temu, da se pogosto obračajo na različne institucije, vlagajo kazenske ovadbe zoper policiste, tožilce, sodnike, državne uradnike in funkcionarje, ker so nezadovoljni z njihovimi odločitvami ali izidom postopkov, ki so se zanje končali neugodno. Nadalje navaja, da tožilci celo ugotavljajo, da so nekatere kazenske ovadbe posameznikov motivirane z maščevalnostjo do uradnih oseb, ko stranke ne uspejo s svojimi zahtevami – predvsem v sodnih in upravnih postopkih na prvi stopnji.

4. Raziskava o prisotnosti neprimernega vedenja strank in o njihovih nedopustnih posegih v delo uradnih oseb

4.1 Zasnova in izvedba raziskave

Z empirično raziskavo, ki je bila izvedena po metodi anketiranja[2] zaposlenih[3], sem želela ugotoviti, ali so uradne osebe v praksi pogosto izpostavljene neprimernemu vedenju in ravnanju strank oziroma celo ali so podvržene različnim pritiskom, grožnjam, ustrahovanju in drugim oblikam nedovoljenih posegov v njihovo vodenje postopka in odločanje. V raziskavo so bile vključene tiste uradne osebe, ki so bile pripravljene sodelovati v raziskavi in ki vodijo in odločajo v postopkih izdaje gradbenih dovoljenj za zahtevne in manj zahtevne objekte na prvi stopnji.

Prejela sem 75 izpolnjenih anket, kar je relativno dober odziv. Glede na specifično populacijo in usmerjenost ankete na uradne osebe, ki dobro poznajo preučevano problematiko, saj se z njo vsakodnevno srečujejo, lahko rezultate raziskave štejem za dokaj zanesljive in verodostojne. Odgovori seveda odražajo tudi subjektivna stališča anketirancev.

4.2 Predstavitev rezultatov raziskave

Na anketni vprašalnik je odgovorilo nekaj več kot 81 % žensk in skoraj 19 % moških, kar odraža splošno strukturo vseh zaposlenih glede na spol v upravnih enotah. Glavnina vseh anketirancev je bila starejših od 35 let, le dobra četrtina sodelujočih je bila mlajših od njih. V analizo je bilo zajetih približno enako število anketirancev upravne, pravne in gradbene oziroma arhitekturne smeri, vsakih približno četrtina, kar pomeni, da je bila strokovna usposobljenost anketirancev na visoki ravni.

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2 Anketiranje je bilo izvedeno s pomočjo anketnih vprašalnikov. Anketiranci so bili opozorjeni, da želim z anketo izmeriti morebitno prisotnost neprimernega vedenja, pritiskov in groženj, povzročenih oziroma usmerjenih nanje le od strank, torej investitorja, stranskih udeležencev in tretjih oseb, ki želijo vstopiti v postopek izdaje gradbenega dovoljenja z uveljavljanjem pravnega interesa. Anketni vprašalnik je bil zasnovan kot vprašalnik z 19 vprašanji zaprtega tipa in enega vprašanja odprtega tipa, pri katerem je bila ponujena možnost, da anketiranci komentar vpišejo sami. V tem prispevku so predstavljeni odgovori na večino vprašanj. Anketa je bila izvedena od 7. 9. 2009 do 5. 10. 2009.

3 Anketirance sem izbrala tako, da so bile v raziskavo zajete uradne osebe s petnajstih teritorialno različnih upravnih enot, pomemben kriterij za izbor pa je bila tudi velikost upravne enote. Anketni vprašalniki so bili namreč poslani v manjše upravne enote in tudi v t. i. večje. Zaradi zagotovitve popolne anonimnosti anketirancev upravnih enot poimensko ne navajam.

Anketiranci so bili najprej vprašani, ali so pri svojem delu pogosto izpostavljeni neprimernemu vedenju in ravnanju strank. V anketi sem podala šest izbranih oblik neprimernega vedenja in ravnanja. Rezultati so pokazali – kar je zaskrbljujoče – da je bila skorajda polovica anketirancev (49,33 %) pogosto izpostavljena nevljudnemu ali nespoštljivemu govoru oziroma obnašanju strank. Podatki kažejo na visok delež tistih, ki so bili pogosto izpostavljeni tudi omalovažujočem ali žaljivem govoru in obnašanju (37,33 %) ter smešenju, podcenjujočemu govoru in obnašanju (34,67 %). Na četrtino anketirancev (25,33 %) so stranke pogosto kričale ali jih zmerjale, kar slaba petina (18,67 %) jih je bila pogosto deležna kletvic ali prostaških izrazov. Upam si trditi, da je anketirani, ki je obkrožil, da je pogosto izpostavljen telesnemu napadu, nekoliko nedosledno odgovoril na vprašanje. Predvidevam, da je bila ta uradna oseba pri svojem delu že izpostavljena telesnemu napadu in da je to storila stranka, kar je zagotovo zelo zaskrbljujoče. Glede na to, da število odgovorov ni bilo omejeno, rezultati kažejo, da anketiranci pogosto doživljajo več oblik neprimernega vedenja in ravnanja strank.

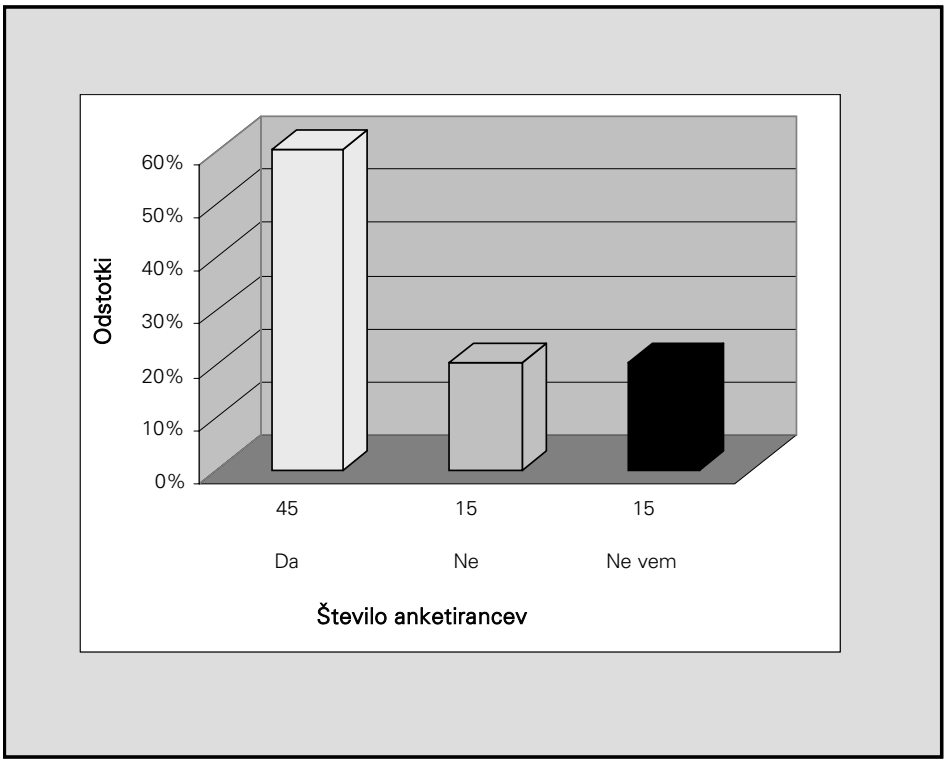
Rezultati vprašanja, ali so anketirani že bili deležni očitkov, navedenih v anketnem vprašalniku, pokažejo, da so stranke največkrat (86,67 %) očitale uradnim osebam odgovornost za ureditev, za katero te niso odgovorne. Temu pričakovano sledi očitek o birokratskem odnosu in togosti (77,33 %). Dokaj pogosto (v nekaj več kot 40 %) so uradnim osebam stranke očitale pristranskost ali nezakonitost, sledijo očitki, da uradne osebe načrtno nagajajo (30,67 %), da so nestrokovne (22,67 %) in koruptivne (17,33 %). Izsledki analize kažejo, da stranke najredkeje očitajo arogantnost (14,67 %), pomanjkanje delovnih navad in lenobo (10,67 %), maščevalnost (9,33 %) ter politično pristranskost (4,00 %). Zadnji očitek so zaznali le trije anketiranci.

Z anketo sem želela tudi izmeriti prisotnost nedovoljenih usmeritev in navodil strank uradnim osebam, kako naj se vodijo postopki izdaje gradbenih dovoljenj, kateri dokazi naj se izvajajo in kako naj se v upravni zadevi odloči. Velika večina anketirancev, kar 84 %, je navedla, da je bila priča tovrstnim usmeritvam ali pa da se stranke niso strinjale z njihovimi strokovnimi odločitvami. Če sem iz odgovorov na gornje vprašanje ugotovila, da je bila velika večina anketirancev že deležna nedopustnih posegov v svoje delo, sem iz odgovorov na naslednje zastavljeno anketno vprašanje ugotovila, da je skupni delež odgovorov, ki potrjujejo, da so bile anketirane osebe že »napeljevane« h kršitvi zakonov in drugih predpisov, skoraj 58,67-odstoten.

Za merjenje pojavnosti korupcije s stranko kot pobudnikom je bilo zastavljeno vprašanje: Ali vam je bila od strank že posredno ali neposredno obljubljena, ponujena ali dana podkupnina, da bi opravili dejanje, ki ga ne bi smeli opraviti, da ne bi opravili dejanja, ki bi ga morali ali smeli opraviti, oziroma da bi kako drugače zlorabili svoj položaj? Natanko 80 % anketirancev je na zastavljeno vprašanje odgovorilo negativno, preostala petina (20 %) pa je potrdila, da so stranke z zaznanimi koruptivnimi dejanji želele vplivati na postopek in vsebino odločitve.

Iz spodnjega grafikona je razvidno, da se pritiski in grožnje strank povečujejo – temu pritrjuje 60 % anketirancev. 20 % anketirancev je očitno v dvomu, povsem enak delež je tudi tistih, ki menijo, da to ne drži, torej da se pritiski in grožnje ne povečujejo. Vprašanje je bilo časovno navezano na obdobje od uveljavitve ZGO-1, poleg tega pa ravno v obdobju od leta 2003 do 2008 beležimo največjo povprečno letno rast cen nepremičnin v RS, kar se je odražalo tudi v povečanem številu izdanih gradbenih dovoljenj.

Grafikon 1: Mnenja anketirancev o tem, ali se pritiski in grožnje strank povečujejo

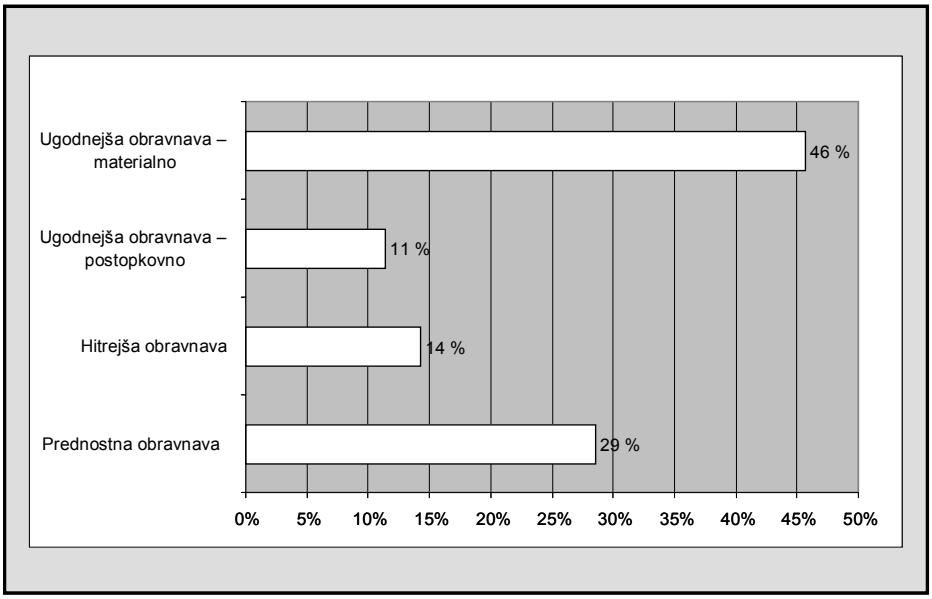


Glede na pogostost izpostavljenosti pritiskom in grožnjam so rezultati pokazali, da je bila nekaj več kot polovica anketirancev (53,33 %) redko izpostavljena pritiskom in grožnjam, medtem ko nihče ni označil, da jim je bil izpostavljen dnevno. Slaba četrtina (24,00 %) je ocenila, da so bili pogosto izpostavljeni, kar je zelo zaskrbljujoče in problematično, saj vpliva na kakovost dela, še zlasti če zanemarimo notranje pritiske nadrejenih. 22,67 % anketirancev pritiskov in groženj nikoli ni zaznalo. Na vprašanje, kdo je tisti, ki najpogosteje izvaja pritiske in grožnje, lahko ugotovimo, da z absolutno večino vodi investitor, kot je navedlo 65,38 % anketirancev, nato pa se podatki o povzročiteljih precej uravnovesijo. Na drugem mestu je stranski udeleženec (13,46 %), nizko sta ocenjena tretja oseba in predstavnik občine (9,62 % oziroma 7,69 %). 3,85 % anketirancev je navedlo, da so bili pritiskov in groženj deležni od izdelovalca projekta, ki sicer ni stranka v obravnavanem postopku, a je bil vseeno naveden v vprašalniku kot možni povzročitelj.

Kot ključne vzroke, ki vplivajo in pripomorejo k temu, da so bile izpostavljene različnim oblikam pritiskov, ustrahovanj in grožnjam, so uradne osebe najpogosteje prepoznale nizek ugled institucij oziroma javnih uslužbencev (80,65 %). Sledijo odgovori, da so to osebna nestrpnost posameznikov oziroma njihova nizka osebna kultura (77,42 %), dobičkonosnost na področju graditve objektov (77,42 %) in normativna neurejenost zaščite javnih uslužbencev oziroma njena nedorečenost (69,35 %). Nekoliko manj anketiranih je vzrok pripisalo dejstvu, da se storilcev, ki grozijo uradnim osebam, ne preganja (59,68 %), za njim pa so uvrstili visoko stopnjo tolerance v družbi (51,61 %), nizko pravno kulturo (48,39 %) in sodobno potrošniško družbo (48,55 %).

Iz Grafikona 2 je razvidno, da so stranke s pritiski in grožnjami najpogosteje želele doseči ugodnejšo obravnavo vloge v materialnem smislu (npr. neusklajenost projekta z določbami prostorskega akta), kot je to navedlo 46 % anketirancev, malo manj (29 %) jih je odgovorilo, da je bil razlog v zahtevi stranke po prednostni obravnavi vloge, kar je razumljivo, saj se strankam vedno zdi prednostna večinoma le njihova vloga. 14 % anketirancev je kot razlog prepoznalo zahtevo po hitrejši obravnavi vloge (npr. neupoštevanje zakonskih rokov), saj je hitrost reševanja za nekatere stranke ključna, le dobra desetina (11 %) pa je navedla, da je bil razlog v ugodnejši obravnavi zahteve v postopkovnem smislu (npr. nevabljenje stranskih udeležencev v postopek).

Grafikon 2: Razlogi, zaradi katerih so stranke izvajale pritiske in grožnje



Glede na to, da verodostojne statistike o omenjenih ogrožanjih uradnih oseb ni, saj se različno evidentirajo, še večji problem pa je t. i. sivo polje, to je število neprijavljenih, a zaznanih dejanj (po: OZP, 2008), sem v anketo skušala zajeti podatke, ali so anketiranci nadrejenega seznanili, da so bili pri svojem delu deležni pritiskov in groženj, ter ali so grožnjo prijavili organom pregona. Analiza je pokazala, da je velika večina anketirancev, kar 92 %, svojega nadrejenega obvestila o pritiskih in grožnjah, ki so jih bili deležni od strank. Povsem nasprotna pa je slika pri vprašanju: Ali ste grožnjo, ki vam jo je izrekla stranka, prijavili organom odkrivanja oziroma pregona? To je namreč storilo le 3,33 % anketirancev, preostalih 96,67 % pa ne. Zakaj tega niso storili, sem skušala ugotoviti iz podvprašanja – z njim sem tiste anketirance, ki so odgovorili negativno, pozvala, naj se izmed podanih razlogov odločijo za tiste, ki so v njihovem primeru pretehtali, pri čemer je bilo mogoče navesti več odgovorov. 39,76 % anketirancev je kot razlog navedlo relativno neprijetne postopke in težko dokazovanje, sledi odgovor, da obstaja majhna verjetnost, da bo storilec kaznovan (31,33 %), nato pa odgovor, da naj bi uradnik imel višjo stopnjo tolerance pri prejemanju izrečenih groženj (26,30 %). Strah pred storilcem očitno ni bil pogost razlog, saj se je zanj odločilo le 3,61 % anketirancev.

K dodatnim mnenjem in komentarjem so bili anketiranci pozvani z vprašanjem, ali želijo glede obravnavane teme kaj dodati, s čimer naj bi dosegli

subjektivnejši in izvirnejši odziv anketirancev. Anketiranci so navajali, da investitorji grozijo uradnim osebam z odškodninskimi tožbami ali s tem, da bo uradnik izgubil službo ter da nezadovoljstvo razglašajo povsod in tudi predpostavljenim, urgence za pospešitev postopka pa prihajajo z vseh mogočih strani, in to tudi takrat, ko je vloga komaj prispela na upravno enoto. Nadalje je bilo iz opisnih odgovorov zaslediti, da se večina pritiskov nanaša na predolge postopke, saj naj delodajalec ne bi zagotovil normalne količine dela, ki bi ga bilo mogoče opraviti v rokih, zaradi česar so uradne osebe neprestano preobremenjene. Spet drugi so prepričani, da se pritiski in grožnje sicer zgodijo, vendar so bolj posledica nesocialnosti posameznika. Nekateri so v odgovorih napisali, da imajo stranke vedno prav, da je treba biti do njih prijazen, četudi so žaljive, ter da takšne servilnosti in hlapčevstva delavcev upravnih organov proti strankam še ni bilo nikoli in sta nepotrebna, saj ni nujno, da se prijaznost do strank izkazuje s servilnostjo.

Zanimiva je ugotovitev, da so uradne osebe, čeprav so bile opozorjene, da je osnovni namen raziskave ugotavljati odnos med njo in stranko, v odgovorih izpostavljale pritiske od nadrejenih. Tako so navedle, da se zadeva dostikrat hitreje obravnava in odobri, ker to zahteva vodja, da delodajalec izvaja pritiske in da vodstvo vselej verjame strankam in nikoli delavcem, zaradi česar so upravni delavci izgubili svoj ugled. To naj bi bilo po mnenju anketiranca povezano z nastankom upravnih enot, ko vodstva delno iz strahu in delno iz preračunljivosti svojim ministrom ne pove, kaj se v resnici dogaja.

5. Sklepna misel

Izvedena anketa je pokazala, da pritiski, grožnje in druga nedovoljena dejanja strank obstajajo, kar uradne osebe, ki postopke izdaje gradbenih dovoljenj vodijo oziroma v njih odločajo, uvršča med javne uslužbence, kot so policisti, sodniki, cariniki in pazniki, ki so najpogosteje izpostavljeni tovrstnim oblikam nedovoljenih pritiskov in groženj. Pri tem je treba opozoriti, da anketiranci pritiskov in groženj, ki jih nanje izvajajo stranke, praviloma formalno ne prijavljajo, saj se bodisi ne želijo izpostavljati zaradi neprijetnih postopkov, bodisi je raven tolerance in občutljivosti do takšnih kršitev visoka. Da je to tako, je kriva tudi normativna neurejenost zaščite javnih uslužbencev. Tudi ta usmerja storilce k takšnemu delovanju, saj štejejo, da so nedovoljena dejanja povsem družbeno sprejemljiva. Kaže pa, da grožnje uradnim osebam povzročijo hujše posledice kot korupcija, saj so nemalokrat javne, imajo svojo odmevnost in ustvarjajo

splošno negativno klimo v delovnih okoljih, v katerih lahko ustvarjajo prave psihoze (po: OZP, 2008).

V prihodnosti bi bilo treba zato več pozornosti posvetiti preprečevanju takšnih dejanj in ravnanj. Uradnik namreč ne more voditi postopka in v njem odločati, če prihaja do nedovoljenih in nezakonitih posegov v njegovo delo, poleg tega pa takšna dejanja vplivajo tudi na njegovo samozavest in motiviranost.

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Ksenija Oblak
Konfliktni položaji med uradno osebo in stranko v postopku izdaje gradbenega dovoljenja

SUMMARY

CONFLICTS BETWEEN OFFICIALS AND CLIENTS APPLYING FOR BUILDING PERMIT

The procedure of issuing a building permit is a special administrative procedure, regulated by the Construction Act which sets out the laws regarding the construction of buildings. Officials in charge of the procedure are nowadays facing serious misconduct from their clients, which is leading to pressures and inadmissible interference of clients in the procedure and decision making process. Often officials are accused of irregularities which they are not responsible for. Clients themselves of course strive for a quick positive resolution of the matter. There are many factors which prolong the whole procedure: insufficient and superficially realised projects, undefined spatial planning documents, constant change of numerous regulations. In addition to those factors there was an amending act put forward in the year 2008 that enabled more people to interfere in the procedure.

The empirical study the author conducted in the autumn of 2009 helped with her research on the exposure of officials to inappropriate behaviour of clients, to verbal abuse and other forms of threats. Seventy five people from different municipalities in Slovenia took part in the survey, eighty one percent of them were female, nineteen percent male, with three quarters of the respondents younger than thirty five years.

The survey shows that the respondents often encountered different forms of misconduct and mistreatment from their clients. Almost half of them were exposed to verbal abuse. Most of them (37 percent) were often verbally abused and ridiculed (35 percent). A quarter of the respondents reported being yelled at and insulted, a fifth of them often encountered foul language used by their clients. Furthermore, the officials were accused of responsibility of the decree which they were not responsible for. As expected there was reproach about typical bureaucratic attitude (77 percent), biased and illegal approach (more than 40 percent) followed by accusation that officials did decide negatively on purpose (31 percent), that they were unprofessional (23 percent) and corrupt (17 percent). They were also accused of arrogance, lack of working habits, revenge and political bias.

A fifth of the respondents confirmed that the clients tried corruption in order to influence the procedure and the final decision. They (60 percent)

also confirmed that the pressures and threats of the clients had increased since 2003, twenty percent of them doubted about that, and twenty percent of them did not agree with the fact that threats and pressures were increasing.

The survey shows that half of the respondents were rarely exposed to pressures and threats, and not a single person was exposed to them daily. A quarter of them thought that threats and pressure were quite common, a fifth of them never noticed any. Pressure mainly came from the investor as stated by 65 percent of the people surveyed, followed by a second party – (e.g. a neighbour) (13 percent), a third party (10 percent) and a municipality member (8 percent), four percent of them stated that they were threatened by project managers who were not clients in the ongoing procedure.

The main reason for being mistreated and threatened by the clients is most often low reputation of institutions and civil servants (81 percent). Another reason is personal intolerance of individuals (77 percent), followed by lucrative business of building (77 percent) and unregulated protection of civil servants (69 percent). There were some more possible reasons mentioned: people who threatened officials were not prosecuted; the society was too tolerant, it was a consumer society. As stated by 46 percent of the respondents, most clients wanted financially favourable solution.

The analysis shows that the majority of the respondents (92 percent) told their superiors about the pressures and threats, while only one third of them reported them to the law enforcement institutions.

Many respondents stated that the investors threatened them with compensation claim and even loss of job. Most of the pressures were related to long procedures and too short deadlines. Some of them think that threats are mainly conditioned by social immaturity of client, most of them think that clients are always right so they ought to be kind towards them even though they are offensive. The respondents also experienced some pressure from their superiors, demanding preferential treatment.

The survey proves that threats, pressures and other inappropriate acts exist and thus classify officials in the group of exposed civil servants like policemen, judges, customs officers, prison wardens. Illegally interfering with officials work hinders the procedure and also leads to a negative working environment. This is why in the future more attention should be paid to prevent such behaviour.

Navodila avtorjem

V reviji Uprava objavljamo izvirne članke, ki obravnavajo teoretična in praktična vprašanja razvoja in delovanja javne uprave.

Znanstvene članke objavljamo v slovenskem in v angleškem jeziku, izjemoma v nemškem ali francoskem jeziku. Druge članke objavljamo v slovenskem, angleškem, nemškem ali francoskem jeziku, z daljšim povzetkom v angleškem oziroma slovenskem jeziku.

Uredniški postopek:

Uredništvo lahko še pred recenzijo zavrne objavo članka, če njegova vsebina ne ustreza najavljeni temi, če je bil podoben članek v reviji že objavljen, ali če članek ne ustreza kriterijem za objavo v reviji. O tem uredništvo pisno obvesti avtorja. Pred sprejemom članka v recenzijo mora avtor podpisati Izjavo o avtorstvu, s katero avtor prenese materialne avtorske pravice na izdajatelja revije in dovoli objavo članka na spletu.

Članek naj bo lektoriran, v uredništvu se opravlja samo korektura. Izjemoma se po dogovoru z avtorjem besedilo tudi lektorira.

Vsi članki se recenzirajo in razvrstijo.[1] Med recenziranjem avtorji in recenzenti niso imenovani. članki po 1.01, 1.02 morajo za objavo prejeti dve pozitivni recenziji, od tega eno od tujega recenzenta. če recenzenti razvrstijo članek različno, o končni razvrstitvi odloči uredniški odbor.

Članek, ki ga je avtor poslal v slovenskem jeziku in sta ga recenzenta razvrstila po 1.01, 1.02, mora avtor nato poslati še v prevodu v angleški jezik.

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1 Članke razvrščamo po tipologiji COBISS:
1.01 Izvirni znanstveni članek – prva objava originalnih raziskovalnih rezultatov v takšni obliki, da se raziskava lahko ponovi, ugotovitve pa preverijo.
1.02 Pregledni znanstveni članek – pregled najnovejših del o določenem predmetnem področju, del posameznega raziskovalca ali skupine raziskovalcev z namenom povzemati, analizirati, ovrednotiti ali sintetizirati informacije, ki so že bile objavljene. Prinaša nove sinteze, ki vključujejo tudi rezultate lastnega raziskovanja avtorja.
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1.08 Objavljeni znanstveni prispevek na konferenci - predavanje, referat, načeloma organiziran kot znanstveni članek.

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Naslovu prispevka naj sledi: polno ime avtorja/avtorjev, naziv institucije/institucij in elektronski naslov/naslovi. Članek mora vsebovati še:

- izvleček, ki naj v 8 do 10 vrsticah opiše vsebino prispevka in dosežene rezultate raziskave;
- ključne besede: 1-5 ključnih besed, kodo iz klasifikacije po Journal of Economic Literature - JEL (http://www.aeaweb.org/journal/jel_classsystem.html)

Članek, ki je bil razvrščen po 1.04 ali 1.08, naj vsebuje tudi povzetek v angleškem jeziku v obsegu 3 strani. V povzetku prevedite naslov in ključne besede ter predstavite vsebino članka (opredelitev problema in ugotovitve). Prevod povzetka članka tujih avtorjev v slovenski jezik zagotovi uredništvo.

Članek naj bo napisan v urejevalniku besedil Word (*.doc, *.docx) v enojnem razmiku, brez posebnih ali poudarjenih črk. Ne uporabljajte zamika pri odstavkih. Razdelki od Uvoda do Sklepnih ugotovitev naj bodo naslovljeni in oštevilčeni z arabskimi številkami.

Slike in tabele, ki jih omenjate v članku, vključite v besedilo. Opremite jih z naslovom in oštevilčite z arabskimi številkami. Revijo tiskamo v črno-beli tehniki, zato barvne slike ali grafikoni kot original niso primerni. Če v članku uporabljate slike ali tabele drugih avtorjev, navedite sklic pod sliko, tabelo ali kot sprotno opombo. Enačbe oštevilčite v oklepajih desno od enačbe.

Članek naj obsega največ 30.000 znakov. V besedilu se sklicujte na navedeno literaturo na način: (Novak, 1999, str. 456).

Na koncu članka navedite literaturo po abecednem redu avtorjev in vire, po naslednjem vzorcu:

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- Gilber, G., & Pierre, P. (1996). Incentives and optimal size of local jurisdictions. *European Economic Review* (40), 19–41.

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

Knjiga z urednikom:

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

Prispevek na konferenci:

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

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Kadar ima publikacija več kot pet avtorjev, navedite samo prvega avtorja, npr. Novak et al. če navajate dve deli ali več del istega avtorja, letnico označite, npr. 2005a, 2005b… Priporočamo, da uporabite samodejni zapis literature, ki ga omogoča Word 2007 (zapis APA).

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

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

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