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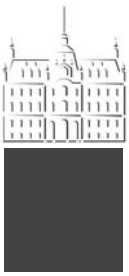

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Uvodnik

Spoštovani,

Fakulteta za upravo je februarja 2010 gostila tretjo konferenco evropskega dialoga o javni upravi Trans-European dialogue about Public Administration, katere organizatorici sta bili osrednji združenji za javno upravo v Evropi: European Group of Public Administration (EGPA) in Network of Schools and Institutes of Public Administration in Central and East Europe (NISPAcee). Organizaciji združujeta preko sto institucionalnih članic, med katerimi so predvsem univerze s svojimi fakultetami, ministrstva in druge organizacije s področja državne uprave, javne uprave in najširšega javnega sektorja. Vsako leto se strokovnjakom iz Evrope pridružijo tudi najvišji predstavniki ameriškega združenja za javno upravo.

Letošnje srečanje je bilo posvečeno vprašanjem bodočega razvoja tehnologije v javnem sektorju. Največ prispevkov se je nanašalo na informacijsko tehnologijo in njen vpliv predvsem na storitve za občane. Ni bilo mogoče spregledati, da je povzročila uvedba informatike v državno in javno upravo spremembe predvsem pri dostopu do storitev. Sodelujoči so ugotavljali, da so tehnične možnosti informatike v državni upravi izkoriščene samo v manjšem obsegu.

Pri tem je bila poudarjena predvsem podcenjenost pomena ekonomike informatizacije uprave. Nedvomno se je izjemno povečala tehnična možnost prenosa, obdelave in shranjevanja podatkov. Podcenjen pa je pomen ocene stroškov in koristi pri uvedbi poslovne informatike. Očitno je, da so ponudniki novih proizvodov na tem področju kapitalsko tako pomembni, da vedno bolj pridobivajo tudi ekonomski in politični vpliv. Povezava med proizvajalci in državno upravo kot velikimi kupci informacijske tehnologije je tako očitna, da ni mogoče govoriti o konkurenčnem trgu. Predstavniki iz Združenih držav Amerike so izpostavili dejstvo, da so ponudniki informacijskih storitev v javni upravi, ki prirediji rešitve pravnemu in ekonomskemu sistemu določene države, monopolisti ali oligopolisti. Podatki npr. za Slovenijo kažejo, da se povečuje delež javnih naročil s področja informacijskih storitev na državnem in na lokalnem nivoju, s tem pa posledično tudi odvisnost od zunanjih izvajalcev. Istočasno so bile informacijske storitve v ZDA med prvimi dvajsetimi odstotki proizvodov, ki so se najbolj podražili v zadnjih desetih letih. Če se je informatizacija javnega sektorja pričela približno pred tridesetimi leti, pa so prizadevanja za povečanje ekonomske

učinkovitosti zaradi investicij v informacijsko tehnologijo novejšega datuma. Žal še nikjer ni uspelo sistemsko rešiti tega vprašanja.

Ne samo v Sloveniji, v večini evropskih držav se ni upoštevala stroškovna učinkovitost uvajanja projektov na področju informatizacije državne in javne uprave. Ker je bilo nemoderno nasprotovati uvedbi novih tehnologij, ki so zahtevale velika finančna sredstva za opremo in programe, njihova uvedba pa je bila nedomišljena in necelovita, se srečujemo z novimi zahtevami po modernizacijah ali zamenjavah slabih rešitev, ki niso poceni. Kljub velikim stroškom pa nihče ni zadovoljen: ne uporabniki storitev, ker rešitve zanje niso optimalne, ne izvajalci storitev, ki imajo težave z izvedbo, nezanesljivostjo podatkov in naraščajočimi stroški poslovanja.

Očitno bo imela finačna kriza vsaj eno pozitivno posledico. Uvedba sprememb v javni sektor bo zahtevala predhodno presojo njihovih organizacijskih, kadrovskih, informacijskih in ekonomskih posledic. Zaradi primanjkljaja proračunskih prihodkov bo treba predhodno finančno ovrednotiti vse predvidljive posledice načrtovanih sprememb in se odločati tako, da se ob danih stroških povečajo koristi.

Končno sporočilo dvodnevnega posveta je bilo: tehnološke spremembe, predvsem nanotehnologija, bodo imele odločilen vpliv na obseg in kakovost storitev v javnem sektorju. Samo vlade, ki se bodo pravočasno vključile v njihovo optimalno uvedbo, bodo prispevale k ustvarjanju večje dodane vrednosti tako v gospodarstvu kot v negospodarstvu.

Odgovorna urednica
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Original scientific article

Decision-Making under Pillars Two and Three

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ABSTRACT

The paper focuses on the decision-making process in the European Union since approval of the Treaty of Maastricht. Special consideration is dedicated to pillars two and three. The second pillar is connected with Common Foreign and Security Policy, while the third pillar contributes with Justice and Home Affairs. The first part of this paper introduces the major tools which are commonly used and describes how pillars system works. The difference between intergovernmentalism and supranationalism is also addressed. In the second part the paper deals with some important changes under the Treaty of Nice and Treaty of Lisbon. The Treaty of Lisbon will cancel the pillars system, being replaced by one legal personality for the European Union. While the former treaties were partly based on intergovernmentalism, the Treaty of Lisbon is mostly oriented on supranationalism.

Key words: Second Pillar, Third Pillar, European Union, Treaty of Lisbon, supranationalism, intergovernmentalism

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1. Introduction

The Treaty of Maastricht has meant a shift towards the supranational character of the Community. But together with the separation of new agenda of Common Foreign and Security Policy (CFSP) and Justice and Home Affairs

(JHA), which are forged on the structure of Schengen Agreement, the intergovernmental principles of decision-making in this area have been retained.[1]

The three pillars of Maastricht Treaty rose from the texts, which had established the European Community. The main differences are in the level of supranationality, which is measured by the mechanism of decision-making. In the first pillar the competitions of legislation initiator were left by the supranational European Commission. Decision-making in the Council of Ministers is typically made by a majority of votes.[2] This agenda includes common trade, agriculture and transport policy, as well as common currency, the EU citizenship etc.[3]

The second pillar includes the newly defined Common Foreign and Security Policy (CFSP). The main reason for this is to focus on the problems of security, defence, human rights and foreign policy.[4] In these cases a consensus is needed for a final decision. The member states have become the main initiators of new activities, together with the Commission (Horčička, Kovár, 2005, p. 121). The same situation is seen in connection with the third pillar, which focuses on the Justice and Home Affairs.

2. Instruments of the Pillars Two and Three

After the Treaty of Maastricht had been approved, the main interest focused on the second and third pillars. These fields defined the new aims of the Community.[5] According to the Treaty, the aims were limited by the intergovernmental forms of decision-making. Nevertheless it moved the Community towards the development of other forms of integration.[6]

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1 The Treaty of Maastricht was signed by Germany, France, Italy, Spain, the United Kingdom, Portugal, Greece, Belgium, Luxembourg, the Netherlands, Denmark and Ireland (Kapteyn – Verloren van Themaat, 1998, p. 38).
2 To the first pillar belongs for example Customs union, Single market, Common Agriculture Policy, Social Policy etc. Further see http://europa.eu/scadplus/treaties/maastricht_en.htm (13. 4. 2009).
3 For more see http://europa.eu/scadplus/treaties/maastricht_en.htm (13. 4. 2009).
4 The other reason was to adopt system of intergovernmentalism in this area (Hartley, 1998, p. 24).
5 Due to it the system was divided on the three pillars. Sometimes it is also called the Maastricht temple (Fiala – Pitrová, 2003, p. 128 – 129).
6 For more information about intergovernmentalism see the next chapter.

Joint actions and common position were defined as the main tools for politics realization in both pillars. In many cases they were approved by the unanimous decision of member states in cooperation with the Commission and the European Parliament (Krejčí, 2001, p. 217). For the CFSP, the European Council was set as the main coordinator and the Council of Ministers unanimously approved common positions achieved. A draft could be suggested by each member state or by Commission, as well as the European Parliament. The Chairman of the Council had to consulate the European Parliament on all aspects and alternatives for CFSP and then inform Commission of the results.[7]

The CFSP can be divided into two parts. The first focuses on foreign policy, which advances the European Political Cooperation[8] and the second involves defence matters (Craig, De Búrca, 1999, p. 169). Defence issues made the most important contribution to integration. The Treaty of Maastricht clearly states that the European Union wants to deepen relations with the Western European Union and cooperate through it within Nato.[9] The Western European Union was also asked to work on the actions and decisions of the European Union in the field of defence (Fiala, Pitrová, 2003, p. 550).

The third pillar of the European Union focuses on the Justice and Home Affairs. This was marked as a sector covering the common interests of the member states in asylum policy, immigrant policy, the fight against organized crime and cooperation in justice and customs area (Craig – De Búrca, 2007, p. 18). The development of third pillar was a reaction to rising crime after the Schengen system was set up in 1985.[10] The main tool of the JHA was the founding of the common police office EUROPOL.[11]

7 See further http://www.mzv.cz/jnp/cz/zahranicni_vztahy/evropska_unie/spolecna_zahranicni_a_bezpecnostni/ spolecna_zahranicni_a_bezpecnostni_1.html (15. 4. 2009).
8 European Political Cooperation was set up in 1970 as a precursor of the Common Foreign and Security Policy (Hartley, 1998, p. 24).
9 NATO-EU cooperation is also progressing at a deeper level. One reason is, that 21 states are members of both organizations. See further:
http://www.nato.int/cps/en/natolive/topics_49217.htm#evolution (16. 4. 2009).
10 The Schengen Agreement eliminated internal borders between the signatory states. For more see http://www.euroskop.cz/290/sekce/r-s/ (18. 4. 2009).
11 http://www.europol.europa.eu/index.asp?page=facts (18. 4. 2009).

3. Intergovernmentalism and Supranationalism

Decision-making on the base of intergovernmentalism is typical of the second and third pillars. In comparison with supranationalism, used for the first pillar, intergovernmentalism is mostly based on a unanimous method of voting. The main reason for this is to protect the national interest of the member states. This system of voting is therefore mainly used for the areas of foreign policy, security policy or law. The same system is also used in the European Union (Nugent, 2006, p.565).

On the other hand, supranationalism features the most effective system of voting. In this case it is sufficient to find a majority to approve a draft. Since the Treaty of Maastricht came into force in 1993, everything except the CFSP and JHA has been approved using this model (Nugent, 2006, p. 558).

The difference between supranationalism and intergovernmentalism can be seen within the European institutions. While the European Commission or European Parliament are part of the supranationalism system, the European Council functions through intergovernmentalism.[12]

4. Decision-making under Pillar Two

As stated above, the second pillar includes the Common Foreign and Security Policy. This area is one of the most controversial in the European Union. Differences in opinions between the member states on the one side and the requirements for common positions led to the final decision to set up a specific pillar. The first step was made in 1970 with the European Political Cooperation, but the real leap was made with the Treaty of Maastricht.[13]

12 It's also depends on the subject being addressed and the specific section it falls under.
13 To the list of the all important treaties see http://europa.eu/abc/treaties/index_en.htm (20. 4. 2009).

The main events influencing improvements in the CFSP were the wars in the Persian Gulf and in former Yugoslavia.[14] During the 1990s the member states and the European institutions started consultations on the need for reforms in the area of the CFSP. The result of these consultations was part of the Amsterdam Treaty.[15] This treaty created a new office of High Representative for the Common Foreign and Security Policy which Javier Solana* held from 1999.[16] This change has helped to improve the system of decision-making in the second pillar. It has brought more flexibility to decision-making on foreign and security affairs questions. The European Union can be active in humanitarian operations, as well as in peacekeeping operations (Fiala, Pitrová, 2003, p. 564). Cooperation in field of common troop capacities was also strengthened.[17]

The main aim of the CFSP is to cover the common values, interests and security of the European Union and the member states. This should all be ensured by the consultations and cooperation of diplomatic offices of member states and the European institutions. The special role plays two main tools – joint actions and common positions (Nutall, 2000, p. 257 – 264). The main difference between them is that the common positions define the positions of the EU on foreign policy and are obligatory for all member states. The joint actions are on the other hand tools enabling the EU's active participation, like sanctions on non-members countries or observers during elections (Horčička, Kovár, 2005, p. 126 – 127). In the Treaty of Maastricht the European Council was appointed as the main CFSP coordinator. The European Council must, according of the Treaty, cooperate with the state holding the rotating presidency.[18] On the other hand the Treaty also made the Council of Ministers[19] the

14 The war in Persian Gulf started in 1990 due to an unexpected occupation of Kuwait by the Iraqi troops. The war in the former Yugoslavia started then in 1991 after the federation had started separating a year ago (Veselý, 2007, p. 543 – 549).
15 The Amsterdam Treaty was signed in October 1997 and entered into force on 1 May 1999. See further http://europa.eu/abc/treaties/index_en.htm (22. 4. 2009).
16 For specific information about Mr Javier Solana and Office of High Representative for the Common Foreign and Security Policy see http://ue.eu.int/App/solana/default.aspx?lang=EN&cmsid=246 (22. 4. 2009).
17 The discussion whether to establish a European army has not yet been resolved.
18 The state holding the rotating presidency formally presides over the EU for 6 months. The presidency at present, in April 2009, is held by the Czech Republic. Slovenia held it from January to June 2008.
19 The Council of Ministers is the principal decision-making institution. It has legislative codecision competence with the European Parliament. There are different Councils such as ministers of foreign affairs (GAERC) or ministers of finance (ECOFIN) etc. Between sessions of the Council, there is working COREPER which is represented by the ambassadors to the EU. Under qualified majority voting each state has different voting weight. The largest are

institution responsible for decision-making in this area, via unanimously approval for joint actions and common positions (Craig, De Búrca, 1999, p. 99).

From the point of view of many analyses, the main focus of the second pillar was concentrated on the using of tools and system of decision-making. The tools can be generally divided according to their effects. The first concentrated on the systematic cooperation – common positions; and the second on the pursuit of the CFSP – joint actions (Fiala, Pitrová, 2003, p. 552 – 553).

The role of the European Parliament must also be remembered. This institution should have control, if all decisions were really applied in practice. The main rule was that the President of the Council had to consult the European Parliament on all aspects of the CFSP. The European Parliament could also give the Council recommendations or question it (Hartley, 1998, p. 34).

The experience with the second pillar, according to the Treaty of Maastricht, showed that there were many weaknesses in the CFSP. This led the EU member states to reform the second pillar. The result of this was the Amsterdam Treaty, which was approved in 1999.[20] This new treaty retained the system of pillars which was launched in the Treaty of Maastricht while it made the CFSP more integrated and more effective (Peterson, Sjursen, 1998, p. 10).

The Amsterdam Treaty, of course, more specified the role of common positions and joint actions. The common position was defined as concrete EU position to the thematic or geographic matters. The joint action was then to describe the steps which should direct to the solutions of specific situations, where the action of EU is necessary (Krejčí, 2001, p. 222). The Amsterdam Treaty also defined a new tool – common strategy. The common strategy was supposed to activate EU in the matters where all the member states had important common interests. The common strategies are approved by the European Council on the base of a Council of EU recommendation. The Council of the EU then implements the strategy through common positions and joint actions (Craig, De Búrca, 1999, p. 106).

The decision-making mechanism in the second pillar was also reformed on the basis of the Amsterdam Treaty. A special form of voting was accepted in addition to the common strategy. Its working name is constructive absence. In other words it means that the member states received the possibility to disagree

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Germany, France, Italy and UK with 29 votes. The smallest is Malta with 3 votes. Slovenia has 4 votes and the Czech Republic 12.

20 For the Treaty see http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html (29. 4. 2009).

with concrete activity in CFSP, while not blocking the decision by veto (Bretherton, Vogler, 1999, p. 39). The Treaty states that a Council member can abstain from voting according to Article 23 of Amsterdam Treaty.[21] If a state exercises the right to abstain and the decision is approved, all member states must accept it as a decision of the EU (Fiala, Pitrová, 2003, p. 564 – 565).

The use of the constructive absence is predicated on application of Article 23 of Amsterdam Treaty by a limited number of member states. According to the Treaty this article can only be used by states, whose total vote in Council is less the one-third of all votes of member states in the Council.[22] If more states decide to use the constructive absence and this limit will be exceeded, then the decision is not passed.[23]

Furthermore, in the Amsterdam Treaty the unanimous voting system was retained for the CFSP. Article 23 of Amsterdam Treaty states that it is possible to use the qualified majority vote when the Council approves a joint action, common positions or makes any other decision based on the common strategy (Smith, 2008, p. 44). The use of qualified majority is not common and automatic, since the Treaty also states that this process can be stopped at any point.[24] If a member of the Council declares that due to national interests it will vote against, the voting is postponed. The final decision can be then reached by the European Council (Fiala, Pitrová, 203, p. 565).

The important institutional changes brought in by the Amsterdam Treaty included constituting the office of High Representative of Common Foreign and Security Policy.[25] The High Representative cooperates with the rotating presidency. He leads negotiations with non-member countries, if empowered by the Presidency.[26] But from the institutional point of view the European Council is responsible for the CFSP. The Council of Ministers is therefore responsible for unity, cohesion and operation (Fiala, Pitrová, 2003, p. 568).

When the Amsterdam Treaty was in preparation, the main questions raised concerned relations between the first and second pillars. The unclear position of the European Commission was the main issue. On one hand, the

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21 See further http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html#0135040040 (3. 5. 2009).
22 See further http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html (5. 5. 2009).
23 See ibid.
24 See ibid.
25 This position is sometimes referred to as Monsieur PECS (from the French original: Politique Étrangère et de Sécurité Commune).
26 See further http://www.eu2009.cz/en/eu-policies/general-affairs-and-external-relations/general-affairs-and-external-relations-595/ (9. 5. 2009).

Commission is responsible for the CFSP in cooperation with the Council; on the other, it has no tools to influence policy (Horčička, Kovár, 2005, p. 127). The only noticeable change was the institutionalization of the office of High Representative.

In the Amsterdam Treaty there was also a focus on the voting mechanism and decision-making. The most important change has been the institution of constructive absence mechanism. The Amsterdam Treaty has also reached the possibility of voting by qualified majority in area of CFSP. But before using this rule the European Council has to find a consensus. The joint actions and common positions are going out of the common strategies, which must be approved on the base of consensus.[27]

It also cannot be decided according to qualified majority, if a member state's considers its national interests are threatened (Smith, 2008, p. 44).

5. Decision-making under Pillar Three

The issues of Justice and Home Affairs belong to newer problematic of European integration. The main area was made via the Treaty of Maastricht, where the freedom of movement has been guaranteed.[28] Before that we could observe two lines of development. The first one was focused on intergovernmental cooperation of member states Ministers of Interior and Ministers of Justice under the working group which was called TREVI.[29] The second one was made by the activity of narrow group of member states which decide to go on in integration of free movement and signed the Schengen Agreements in 1985.[30] This Treaty created an area without internal borders between the signatory states (Kapteyn, Verloren van Themaat, 1998, p. 697).

The development of both lines was in parallel. In both cases one could speak of intergovernmental cooperation. When the Treaty of Maastricht was signed,

27 For further information see above.
28 See further http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html(14. 5. 2009).
29 TREVI means (Terrorisme, Radicalisme, Extremisme, Violence internationale).
30 The Treaty was signed by Germany, France, Belgium, the Netherlands and Luxembourg. Today 22 member states, Norway, Switzerland, Iceland and the microstates participate on this Agreement.

both systems were institutionalized by the third pillar (Fiala, Pitrová, 2003, p. 608), but one still could not talk of a unified system. The point of intersection was set up after the Amsterdam Treaty was created. Since this time both lines have been connected and the Schengen Agreements have become part of the EU Treaties (Steverson, 2007, p. 79).

The Treaty of Maastricht clearly defined the area of common interests, which was the part of third pillar. It chiefly addresses the problems of asylum policy, external borders and immigration policy, fighting against drugs dealers, custom cooperation or cooperation of police against the terrorism and organized crime (Hartley, 1998, p. 26).

Decision-making in the third pillar starts with the proposal of an initiative to the Council. According to the Treaty of Maastricht, the draft can be prepared by member states or by the European Commission (Craig, De Búrca, 2007, p. 126), but the European Commission has the right to reject initiatives. In the areas of court cooperation, customs cooperation and police cooperation the member states are only entitled to propose a draft (Fiala, Pitrová, 2003, p. 609). The Council acquired the power to adopt common positions, common procedure and then propose the final version of agreements (Craig, De Búrca, 1999, p. 112 – 113). The common position was the first tool to be created to support cooperation rulings to achieve EU aims. The common position should have been advocated by the member states in the international organizations. Before that it had to be unanimously approved by the Council (Hartley, 1998, p. 40).

The common procedure which was not clearly defined was also adopted unanimously but the Council could opt to use a qualified majority system (Hartley, 1998, p. 41). The measures of effecting of common procedure were approved by qualified majority, in other words by the majority of two-thirds member states. The Treaty of Maastricht also set up the coordinator committee which consisted of higher officers (Horčička, Kovár, 2005, p. 127). The main reason of this step was the requirement to prepare statements to the Council. The President of the Council has to regularly consult the Parliament on third pillar issues. The Parliament can also interpellate the Council, as well as offer recommendations.[31]

Because of the intergovernmental system of third pillar, the Treaty on EU constitutes a major legislative act that regulates the process of responsibility of member states for law and order (Fiala, Pitrová, 2003, p. 615). The third pillar

31 See further: http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=46&pageRank =3& langure =EN (18. 5. 2009).

should also not be a barrier to cooperation on the bilateral or multilateral level.[32]

Significant attention was also paid to the principles of democratic control. This was more important in the third pillar then in the first and second pillar. The reason this was so important was the issue of processing the personal data of citizens. In this case the European Parliament was appointed to check on the Council and the Commission. Both institutions were also required to notify the Parliament in relation to third pillar matters.[33] Part of this agenda also came under auspices of the European Court of Justice in Luxembourg.[34]

The area of Justice and Home Affairs was the most important part of all changes in Amsterdam Treaty. The reform which the Treaty brought better categorized, the agenda of third pillar and a part of this agenda shifted to the first pillar.[35] For this change the transition period of five years was set and the agenda was renamed as a Police and Judicial Cooperation in Criminal Matters (PJCC). Under the third pillar remained only area of Judicial and Police cooperation (Archer, 2008, p. 54). The Amsterdam Treaty revised the tools which had been used before. The Council can draw up common positions, general decisions, and decisions or prepare a number of other documents. The innovation came with general decisions and decisions.[36]

The general decisions are defined in the Treaty as a specific act which is approved for the coming the law and acts of the member states together. According to the Treaty they do not have primary influence and they are obligatory only in results which should be achieved. But it does not matter which tools are used. This falls within in the remit of the member states (Fiala, Pitrová, 2003, p. 621). The decisions, on the other hand, are approved for any purpose that does not contravene the principles of the Treaty. The decisions are obligatory and do not have direct effect.[37]

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32 It means that the member states can cooperate in specific way together in accordance with EU Law.
33 For the further information about the relation of European Parliament and other institutions see http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=46&pageRank=9&language=EN (20. 5. 2009).
34 For further information see http://curia.europa.eu/en/instit/txtdocfr/index.htm (21. 5. 2009).
35 The problematic of visa system, asylum policy and immigration policy were shifted from the third pillar to the first.
36 Further see http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html (21. 5. 2009).
37 For the difference between decision and general decision see above.

The general decisions and decisions should be approved unanimously in the Council. The initiator may be the Commission or a member state. The measures which are necessary to take according to the decision on the level of EU are approved by qualified majority (Fiala, Pitrová, 2003, p. 622). The Amsterdam Treaty also introduced changes in the institutional scheme of the system. The Coordinate committee was kept, as well as the influence of the European Commission. On the other hand, the European Parliament was more involved in the process of legislation approving.[38] The right of Parliament to interpellation and discussion with the Council is still valid.[39]

The European Court of Justice in Luxembourg gained significant influence, the right to decide in preliminary questions on the grounds of general decisions and decisions. The use of this procedure must be approved by the member states in advance (Krejčí, 2001, p. 222). The general decision is considered as a great achievement of the Amsterdam Treaty. It gives all member states the opportunity to influence the implementation of European legislation. The same positive view is seen also in context of approving declarations. The Council can set a term within which the ratification should be done. But if there is no date, then the declaration is valid when it is approved at least by the half of the member states (Fiala, Pitrová, 2003, p. 629).

6. Decision-making according to the Treaty of Nice

The Treaty of Nice[40] also introduced a number of changes.[41] The main purpose of this Treaty, soon after the Amsterdam Treaty, was to make membership possible for countries from central and eastern Europe.[42] This required amendments in the mechanism of EU decision-making.

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38 For example the European Parliament has cooperated on the approving of the general decisions, decisions or just takes the consultation.
39 See further: http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=46&
40 For more information about the Treaty of Nice see http://ec.europa.eu/dgs/ secretariat _ general/
41 The Treaty of Nice was signed in February 2001 and came into force in February 2003.
42 On 1 May 2004 the largest ever enlargement of the European Union took place. Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia became the members of the EU. Two and half years later, on 1 January 2007, also Bulgaria and Romania entered to the EU.

The first important change was that the agenda of the defunct European Coal and Steel Community was delegated to the European Community (Fiala, Pitrová, 2003, p. 163). It also changed the decision-making system. It was clear, that the EU with so many members had to be made more effective. This led to the introduction of votes by qualified majority, instead of unanimous majority (Archer, 2008, p. 36).

The Treaty introduced the principle of the double majority of member states and population. This means that the approval of a draft required the votes of 55% of members of the Council of Ministers, representing 62% of EU citizens (Chryssouchoou et al., 2003, p. 107). Furthermore, the Treaty raised the number of the European Parliament members to 732[43] and set the number of votes in the European Parliament and Council of Ministers.[44]

7. Decision-making according to the Treaty of Lisbon

The new reform treaty, the Treaty of Lisbon[45], whose ratification has now been completed[46], adjusts the former European Constitution, which was rejected by referendum in France and the Netherlands.[47] It comes from the two previous treaties, from the Treaty on EU (Maastricht Treaty) and the Treaty establishing the European Economic Community (Treaty of Rome).[48]

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43 For the distribution of the votes between the states see: http://www.europarl.europa.eu/members/ public/geoSearch.do?language=EN (24. 5. 2009).
44 See further http://www.consilium.europa.eu/showPage.aspx?id=242&lang=EN (25. 5. 2009).
45 For the whole reading of the Treaty see http://www.euroskop.cz/gallery/2/737-ls_pbtisk.pdf (26. 5. 2009).
46 The Czech Senate ratified the Treaty of Lisbon on 6 May 2009, but the ratification was completely finished on 3rd November 2009, when Czech President Václav Klaus signed it. Before that he had asked for other conditions, connected with post-war Beneš's Decrees, which were law framework for displacement of Non-Slavic citizens from Czechoslovakia. Also Czech Senators had handed a complaint about the Lisbon Treaty to Constitutional Court. Irish voters approved the Treaty in Referendum, held on 2 October 2009. One week later also Polish President Lech Kaćzynski signed the Treaty.
47 For the results of referendums see http://news.bbc.co.uk/1/hi/world/europe/3954327.stm (26. 5. 2009).
48 See http://www.euroskop.cz/297/sekce/vyjednavani-a-obsah/ (26. 5. 2009).

After the rejection of the EU Constitution it took two years Europe to decide how to proceed. The German Presidency and Chancellor Merkel opened the theme of European Union future during its presidency in the first half of 2007.[49] It was also one of the priorities of the German Presidency. The first step came with the Berlin Declaration, which was signed on the 50th anniversary of the establishment of the European Community.[50]

The main difference between the Constitutional Draft and the Lisbon Treaty is that the Constitution was intended to replace all other treaties. The Lisbon Treaty only adds to and amendment the previous treaties.

The base of the document is the former Constitution. The present treaty is based on the four principles. The first is about more transparency and democratic Europe. It gives more power to the European Parliament, which is considered to be supranational organ, and to national parliaments, which should have more power in legislative processes of EU institutions.

For the European Parliament, which is the only elected institution, it means that its position will be more similar to the Council. For the national parliaments it then means that they will only have control over whether the European Parliament makes decisions in fields which are effective for all of Europe.[51]

The second principle deals with a more effective Europe. It simplifies the decision-making mechanisms with the qualified majority voting spread into more areas. From 2014 the qualified majority vote will apply according to the double majority principle of member states and population. Proposal approval will require a majority of 55% member states, representing 65% of EU inhabitants. There will be also more areas in which qualified majority voting is used.[52]

The Treaty also introduces the position of President of the European Council, to be elected for a two-and-a-half year term. It also states that there should be a direct connection between the results of the elections to the European Parliament and the appointment of the President of the European Commission. From 2014, the number of European Commissioners was planned to be set at two-thirds of EU members, where the European Council could unanimously

49 For further information about German Presidency see http://www.eu2007.de/de/ (30. 5. 2009).
50 The Declaration was signed on 25 March 2007, exact date when the Treaties of Roma were signed in 1957. The Berliner Declaration proclaimed to rebuild the European Union till the elections to European Parliament in June 2009. Further see: http://www.eu2007.de/de/News/ Press_ Releases / June/0627AABilanz.html (30. 5. 2009).
51 Further see http://europa.eu/lisbon_treaty/glance/index_cs.htm (30. 5. 2009).
52 See ibid.

decide to change this number. Following the Irish referendum, however, the Council decided in December 2008 to retain one Commissioner for one state.[53]

The third principle is focused on the Europe as an area of freedom, solidarity and prosperity. Its main goal is to find the new mechanisms to make Europe the area of democracy. The most important part of this is Charter of Fundamental Rights, which is part of this Treaty.[54] The Treaty also strengthens the four basic freedoms: freedom of movement for people, goods, services, and capital. Of course, it also guarantees the economic, social and political rights of the people.[55]

The last principle is aimed at making Europe a global player. The High Representative for Foreign Policy becomes the vice-chairman of the European Commission. The European Union also receives the legal personality which makes it strong in a global policy.[56]

The other very important part of the Treaty is connected with the pillar system. In fact at present time only the first pillar has legal personality. When the Lisbon Treaty comes into power, all three pillars will be united under the one legal personality, i.e. the European Union.[57]

Formally some areas of policy will be also united. The best examples are the areas of the free movement of people, visa, asylum and immigration policy which are today under the first pillar, and justice and police cooperation in criminal law which is today under the third pillar. This change also entails the spread of system of qualified majority voting and a stronger position for the European Parliament. This agenda will be newly named the Area of Freedom, Security and Rights. The cancellation of the pillar structure means that unanimous voting will only be used in exceptional cases.[58]

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53 Further see http://euobserver.com/?aid=27265 (21. 10. 2009).
54 Poland, the Czech Republic and the United Kingdom have permanent exemption from this part of this Treaty. The Czech President Klaus addressed this exemption for the Czech Republic at the beginning of October 2009. The Slovak Prime Minister Robert Fico has confirmed that, if the Czech Republic receives the exemption, Slovakia will request it, but in the end he decided not to. Further see http://euobserver.com/18/28850 (20.10.2009).
55 Further see http://europa.eu/lisbon_treaty/glance/index_cs.htm (31. 5. 2009).
56 See ibid.
57 Further see http://www.euroskop.cz/gallery/13/4050-kdyz_se_rekne_lisabonska_smlova.pdf (31. 5. 2009).
58 http://www.euroskop.cz/gallery/13/4050-kdyz_se_rekne_lisabonska_smlova.pdf (1. 6. 2009).

8. Conclusion

The pillar system of the European Union is very important part of the organization. It was set up by the Treaty of Maastricht in 1993, but the first steps were made before. The Schengen Agreement which was signed in 1985 firstly opened the theme of cooperation in judicial and police affairs.

The pillar structure truly developed after 1993 as a way to find a compromise between the two concepts of integration – intergovernmentalism and supranationalism. The first is characterized by the unanimous decision-making process. This agenda often includes issues that are very important for member states. Within the European Union this involves the second and third pillars. The second pillar is focused on the agenda of Common Foreign and Security Policy (CFSP) and the third on Justice and Home Affair (JHA), later renamed as Police and Judicial Cooperation in Criminal Matters (PJCC).

The principle of supranationalism involves agenda that are the responsibility of the institutions, i.e. the first pillar in the case of the European Union. This system of voting means that the states delegate certain powers to EU bodies, in other words they give up some of their own power. The decision-making process under the theory of supranationalism is more effective and more useful for the European Union.

In my opinion, both decision-making systems are very useful. Following I would like to present some examples of Czech politicians or political parties and their opinions on the process of decision-making in the European Union.

The first party is the right-wing Civic Democratic Party (ODS) which belongs to the conservative branch of political parties. The members called themselves the euro-realist party, but according to many political scientists they are eurosceptics. Their opinion on the decision-making process in the European Union is focused on intergovernmentalism. They consider that the European Union has gone too far and now the organization should return to the roots, with most matters decided unanimously. For this reason they are strongly against the Lisbon Treaty and the Czech Republic was the last country to approve the Treaty.

The second party are Social Democrats (ČSSD). They are a typical left-wing party, more focused on the European affairs. They are strong supporters of the Lisbon Treaty because they believe that only strong, stable and unified Europe can be successful in competition with other parts of the world. Their

opinion on the process of decision-making is more comfortable with theory of supranationalism.

In my opinion both options are needed. The decision-making on the level of intergovernmentalism helps protect the national interest of the states.[59] If a state feels that its interests are threatened then it can apply a veto and block negotiations. It also helps protect small states against the larger states, or poorer states against the richer. On the other hand it leads to difficulties in making any progress. It is also difficult to find a consensus and for this reason the results of consultations are not as clear, or in other words it is still often possible to find many contrasting views within a supposed agreement.

The second theory, supranationalism, is more effective. It gives European institutions more power to solve the problems facing the continent. I personally think that at present it is the only way to overcome all the problems connected, for example, with the present financial and economical crisis. Looking back to the past, each time there has been economical and social problems in Europe they have led to political crises. In other words, only a strong and modern Europe can be successful.

But supranational mechanism of decision-making also raises some problems. The first and in my opinion the most important one is connected with question of legitimacy. The European Parliament is the only institution directly elected by the people.[60] The other institutions are then nominated by the governments of member states[61] or are formed by delegates of the member states.[62] For example, the Lisbon Treaty attempts to find some connection between the results of the elections to the European Parliament and the European Commission. Yet this is probably not enough to increase citizens respect for the European institutions.

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59 One of the examples of the using veto in decision-making in CFSP is Slovenian statement on the process of enlargement negotiation with Croatia. Last year, Slovenia decided to use a veto against the opening of the other chapters with Croatia until the dispute about the Piran Bay is solved.
60 The first election took place in 1979.
61 European Commission.
62 European Council and Council of Ministers.

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Abbreviations

- BBC News – www.news.bbc.co.uk
- Council of the European Union – www.ue.eu.int
- Czech Presidency of the European Union – www.eu2009.cz/en
- EUObserver – www.euobserver.com
- EurLex – www.eur-lex.europa.eu
- European Affairs Information Department – www.euroskop.cz
- European Commission – www.ec.europa.eu
- European Court – www.curia.europa.eu/en
- European Parliament – www.europarl.europa.eu
- European Union – www.europa.eu
- Europol – www.europol.europa.eu
- German Presidency of the European Union – www.eu2007.de
- Ministry of Foreign Affairs of the Czech Republic – www.mzv.cz
- NATO – www.nato.int

POVZETEK

SPREJEMANJE ODLOČITEV V SKLADU Z DRUGIM IN TRETJIM STEBROM

Članek obravnava postopek sprejemanja odločitev v Evropski uniji po sprejetju Maastrichtske pogodbe, ki je pomenila prehod na nadnacionalni značaj Skupnosti. Po drugi strani pa je ta pogodba prinesla ločevanje novih poslovnikov – skupne zunanje in varnostne politike (SZVP) ter pravosodja in notranjih zadev (PNZ), kjer se je ohranil medvladni način sprejemanja odločitev.

Maastrichtska pogodba je razdelila postopek sprejemanja odločitev na tri stebre. Prvi steber, ki se osredotoča na gospodarske in socialne zadeve, temelji na načelu naddržavnosti. Naddržavnost je najbolj učinkovit sistem glasovanja, v katerem je za potrditev nekega osnutka zadostno pridobiti večino.

Za razliko od prvega stebra je sprejemanje odločitev, ki temelji na medvladnem načinu odločanja, značilno za drugi in tretji steber. V primerjavi z naddržavnostjo medvladni način večinoma temelji na glasovalni metodi soglasja. Glavni razlog za to je zaščita nacionalnih interesov držav članic. Zaradi tega se ta sistem glasovanja uporablja predvsem za področje zunanje politike, varnostne politike ali prava.

Prav tako lahko prikažemo razlike med naddržavnostjo in medvladnim načinom odločanja v Evropskih institucijah. Medtem ko Evropska komisija in Evropski parlament pripadata sistemu naddržavnosti, v Evropskem svetu velja medvladni način.

Ko preidemo na drugi steber, ki zajema področje skupne zunanje in varnostne politike, lahko opazimo enega najbolj kontroverznih pristopov sprejemanja odločitev v Evropski uniji. Razlike v mnenjih med državami članicami na eni strani in zahtevami skupnih stališč na drugi so pripeljale do končne odločitve, da se vzpostavi ta posebni steber.

Vendar pa so kmalu po vzpostavitvi sistema stebrov države članice in Evropske ustanove pričele razpravljati o potrebnosti reform na področju SZVP. Rezultat teh razprav je vsebovala Amsterdamska pogodba. V skladu s tem dokumentom je bil ustanovljen nov urad visokega predstavnika za skupno zunanjo in varnostno politiko. Ta sprememba je prinesla več prožnosti na odločitve v zunanjih in varnostnih zadevah. Evropska unija je bila

lahko aktivnejša v humanitarnih operacijah kot tudi v mirovnih operacijah. Prav tako se je okrepilo sodelovanje na področju zmogljivosti skupnih enot.

Splošni cilj SZVP je pokriti skupne vrednote, interese in varnost Evropske unije in njenih držav članic. Vse to bi morali zagotoviti v razpravah in s sodelovanjem diplomatskih uradov držav članic in Evropskih ustanov. Posebno vlogo pri tem igrata dve glavni orodji – skupni ukrepi in skupna stališča. Glavna razlika med njima je, da skupna stališča opredeljujejo stališča EU na področju zunanje politike in so zavezujoča za vse države članice. Skupni ukrepi pa so orodja za aktivno udeležbo EU, kot je sankcioniranje držav nečlanic ali uporaba opazovalcev med volitvami.

Amsterdamska pogodba seveda bolj opredeljuje vlogo skupnih stališč in skupnih ukrepov. Skupno stališče je bilo opredeljeno kot konkretno stališče EU glede tematskih ali geografskih zadev. Skupni ukrepi pa so nato opisani kot koraki, ki bi morali biti usmerjeni k rešitvam določenih situacij, v katerih je potrebno ukrepanje EU. Amsterdamska pogodba je prav tako opredelila novo orodje – skupno strategijo. Skupna strategija naj bi aktivirala EU v zadevah, v katerih imajo pomembne skupne interese vse države članice. Skupne strategije potrjuje Evropski svet na podlagi priporočila Sveta EU. Svet EU nato s pomočjo skupnih stališč in skupnih ukrepov izpelje strategijo v praksi.

Mehanizem sprejemanja odločitev v drugem stebru je bil prav tako obnovljen na podlagi Amsterdamske pogodbe. Poleg skupne strategije je bila sprejeta posebna vrsta glasovanja, tako imenovani konstruktivni zadržek. Z drugimi besedami to pomeni, da so države članice dobile možnost nestrinjanja s konkretno dejavnostjo v SZVP, vendar zaradi tega ne blokirajo odločitev z vlaganjem veta. Pogodba pravi, da se član Sveta lahko vzdrži glasovanja v skladu s 23. členom Amsterdamske pogodbe. Če katera od držav uporabi pravico neglasovanja in se odločitev ne glede na to potrdi, morajo vse države članice sprejeti to odločitev kot odločitev EU.

Drugi del Maastrichtske pogodbe je povezan z vprašanji pravosodja in notranjih zadev. Pogodba je jasno opredelila področje skupnih interesov, ki so del tretjega stebra. Ta govori predvsem o problemih azilne politike, zunanjih meja in politike priseljevanja, bori se proti prekupčevalcem z mamili ter govori o carinskem sodelovanju in sodelovanju policije v boju proti terorizmu in organiziranemu kriminalu.

Sprejemanje odločitev na področju tretjega stebra se prične s predlaganjem pobude Svetu. V skladu z Maastrichtsko pogodbo lahko osnutek

pripravijo države članice ali pa Evropska komisija. Vendar pa ima Evropska komisija izločitev. Na področju sodelovanja sodišč, carinskega sodelovanja in sodelovanja policije so države članice upravičene le do predlaganja osnutka. Svet pa je pridobil možnosti sprejemanja skupnih stališč, skupnih postopkov in nato predlaganja končne verzije sporazumov. Skupno stališče je bilo prvo orodje, ki je bilo ustvarjeno za podporo skupnega upravljanja za doseganje ciljev EU. Skupno stališče bi morale države članice v mednarodnih organizacijah zagovarjati. Pred tem je bila potrebna soglasna odločitev Sveta.

Področje pravosodja in notranjih zadev je bilo najbolj pomemben del vseh sprememb v Amsterdamski pogodbi. Reforma, ki jo je prinesla pogodba, je bolje kategorizirala načrt tretjega stebra in prenesla del tega načrta na prvi steber. Za to spremembo je bilo določeno prehodno obdobje petih let in načrt je bil preimenovan v Policijsko in pravosodno sodelovanje v kazenskih zadevah. V sklopu tretjega stebra je le področje pravosodnega in policijskega sodelovanja.

Amsterdamska pogodba je obnovila orodja, ki so bila uporabljena prej. Svet lahko zavzame skupno stališče, sprejme splošne odločitve in odločitve ali pa pripravi nekatere dokumente. Takratna novost so bile splošne odločitve in odločitve.

V skladu s Pogodbo v Nici pa so bile sprožene še druge reforme. Zaradi prihajajoče širitve na vzhod je bilo nujno potrebno malce spremeniti mehanizem sprejemanja odločitev v Evropski uniji. Prva pomembna sprememba je bila prenos pristojnosti ugasle Evropske skupnosti za premog in jeklo na Evropsko skupnost in na mnogih področjih je ta začela glasovati s kvalificirano večino namesto s soglasno večino.

Nato je pogodba opredelila načelo dvojne večine držav članic in prebivalstva. To pomeni, da mora za sprejetje osnutka glasovati 55 % članov Sveta ministrov, ki predstavljajo 62 % prebivalstva EU.

Zadnja sprememba je vsekakor povezana z Lizbonsko pogodbo. Ta daje več pristojnosti Evropskemu parlamentu, ki se šteje kot naddržavno telo, in državnim parlamentom, ki bi morali imeti več pristojnosti v zakonodajnih postopkih inštitucij EU. Prav tako poenostavlja mehanizem sprejemanja odločitev, ko se bo glasovanje s kvalificirano večino razširilo na več področij. Od leta 2014 se bo glasovanje s kvalificirano večino štelo glede na dvojno večino držav članic in prebivalstva. Za sprejetje predloga bo po novem treba doseči večino 55 % držav članic, ki predstavljajo 65 % prebivalstva EU. Prav tako bo več področij, kjer se bo uporabljala kvalificirana večina. Pogodba uvaja položaj predsednika Evropskega sveta. Ta se

izvoli za obdobje dveh let in pol. Visoki predstavnik za zunanjo politiko postane podpredsednik Evropske komisije. Evropska unija prav tako prejme pravno subjektivnost, ki jo v svetovni politiki naredi močnejšo.

Drugi zelo pomemben del te pogodbe je povezan s sistemom stebrov. Dejansko je imel le prvi steber pravno osebnost. Ko je Lizbonska pogodba stopila v veljavo, so bili vsi trije stebri združeni v eno pravno osebo, imenovano Evropska unija.

Original scientific article

Size and Development of the Third Sector: An Insight Into Cross-Country Differences

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ABSTRACT

Non-profit or third sector is a very diverse sector and its socio-economic importance is rising in modern societies, although the way in which this sector is operating is changing dramatically, causing that dividing lines with for-profit and government sector are blurring. Nevertheless, quite substantial differences can be observed in the development and relative size of non-profit sector across countries, several factors potentially contributing to those differences. Consequently, the purpose of the paper is to theoretically and empirically investigate the effect of governmental interventionism, level of economic development and extent of societal heterogeneity on the variations in the size of the non-profit sector across countries, since theory predicts certain macro relations between those variables. Furthermore, the paper tries to address certain limitation and pitfalls of the development of non-profit sector in the future, predominantly related to increased pressures for commercialisation and performance orientation.

Key words: third sector, policy issues, cross-country variations, determinants

JEL: L31

1. Introduction

As Hodgkinson and Weitzman (in Ott, 2001) point out, the so-called third or non-profit sector includes a diverse set of organisations, which basically serve public purposes, such as organisations in health, human services, arts, culture, education,

research, religious services, fund-raising and advocacy activities, etc. This sector is influenced by various factors, such as the state of national economy and public policies, changes in population and its preferences etc., but unique to this sector are certain sources of support, which are based on voluntary donations of time and other contributions. It should be noted that current economic crisis has more or less paralysed significant part of for-profit (business) sector, with the government policies in the majority countries being focused on the aftermath of such situation. Consequently, the relationship between the government and for-profit sector is increasingly changing from constitutionalism into paternalism, where economic activity is subjected to more intensive governmental subsidisation and regulation. However, economic slowdown actually positively affects the importance of the non-profit sector, as can we elaborate from the experience of previous economic crises. Namely, the non-profit sector is characterised by the fact that crisis situation increases demand for its products and services (such as charities, educational organizations, etc.), yet this sector is also characterised to be relatively less sensitive to economic trends, which refers to financial (and other) resources of organisations in the sector (NCVO, 2008).

Two main reasons for this lower sensitivity of non-profit sector are diversified resources and the in-build ability of non-profit organisations to mobilise resources, especially in crisis situations. Indeed, social networks, constituting a non-profit sector, allow extremely rapid and effective mobilisation of especially human resources, enabling the organisations within the sector to achieve certain objectives without necessity to establish state coercion or to provide economic incentives. In fact, the functioning of non-profit sector is based, according to Ott (2001), on the existence of so-called economies of grants, which include voluntary donation of time, money, etc. This enables the sector, contrary to state coercion or market economy, to operate in almost all areas of social life, often quite independently of the current political and economic conditions. Notwithstanding, substantial differences exist in the development and relative socio-economic importance of non-profit sector among countries, even among developed ones. In essence, demand as well as supply side hypotheses could be provided in relation to the development and size of the non-profit sector. Demand side hypotheses usually focus on the third sector role in providing goods and services that are not adequately provided by for-profit and government sector. In contrast, supply side hypotheses contemplate that size of the non-profit sector is related to the extent of resources available to the sector, which should, among others, depend also on the wealth of certain society. Indeed, previous research

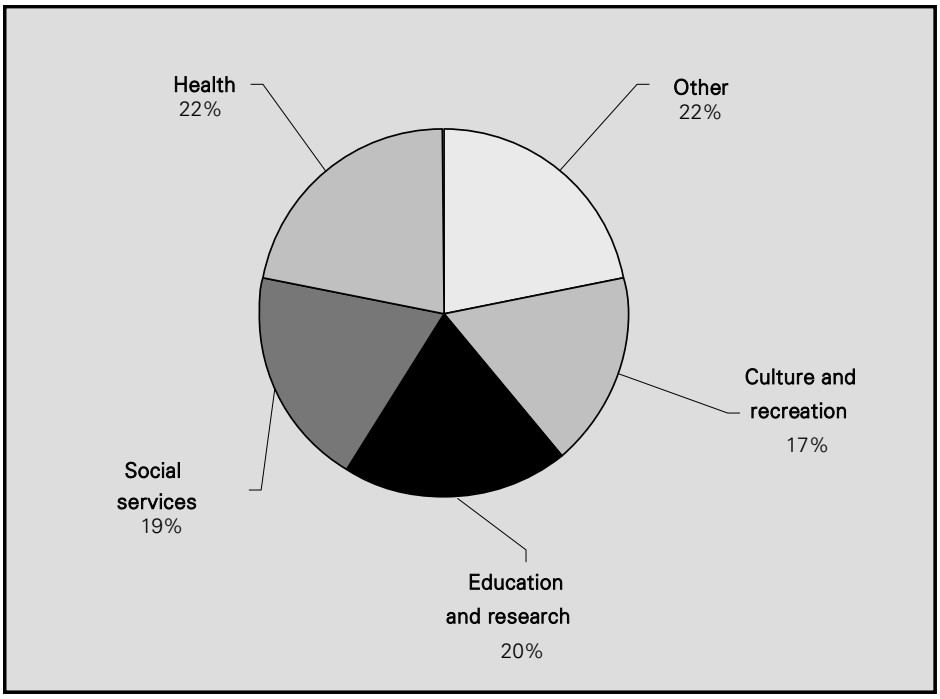
on the size of the non-profit sector, as for instance analysis presented by Grønbjerg and Paarlberg (2001) for selected counties in the United States, reveals that the size of the non-profit sector is most sensitive to opportunity structures created by community social and political conditions, meaning that supply side factors should be more important than demand side factors in determining the size of the non-profit sector. These differences in the size of the non-profit sector cause that different regime types of non-profit sector activities could be established in different countries. These regime types directly address the relationship between government and non-profit sector in providing certain public goods and services. Consequently, the main purpose of the paper is to investigate potential causes of cross-country differences in the extent of non-profit sector activities and empirically validate potential regime types of non-profit sector activities in selected countries. In essence, this paper in some way extends the research by Salamon and Sokolowski (2001) in a sense that it tries to group selected countries into different regime types of non-profit sector activities according to social origins theory. In addition, paper tries to relate the size of the non-profit sector to the level of economic development and ethno-cultural heterogeneity of selected countries, purpose being to gain insight into supply side and demand side perspectives of the determinants of the variations in the non-profit sector size across countries. In short, the purpose of the paper is to theoretically and empirically investigate the effect of governmental interventionism, level of economic development and extent of societal heterogeneity on the variations in the size of the non-profit sector across countries, since theory predicts certain macro relations between those variables. Furthermore, the paper addresses some potential pitfalls for the development of the non-profit sector in the future, especially the changes driven by commercialisation and performance orientation.

2. Structure and development of the non-profit sector

It should be noted that the non-profit sector is a very diverse sector, although much of its activities are concentrated in the fields of culture and recreation, education and research, health and social services (see figure 1). Actually, according to readings in Ott (2001), this sector emerged due to the four distinguished

forces, those forces being the existence of market and government failure in the provision of certain goods and services to citizens, the emergence of pluralism and individual freedom in modern societies as well as the increased pressures on solidarity among people. Basic characteristic of the non-profit organisations is that the main goal of their activities is not the recovery of investment costs and profit maximisation[1], but primarily the advancement of certain social (or public) goals.

Figure 1: Fields of non-profit sector activities and shares of their contribution to GDP, 7-country average for the period 1999-2004[2]

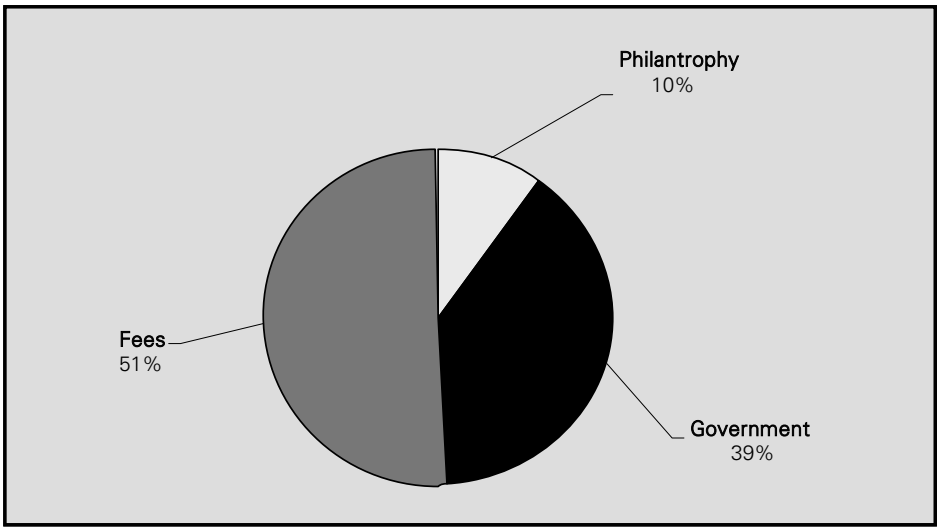


Source: Salamon et. al. (2007)

1 Although these contingent profits are desirable in order to be reinvested for development of existing and new organisational activities.
2 Data represent 7-country average for the period 1999-2004, analysed countries being Australia, Belgium, Canada, Czech Republic, France, Japan and New Zealand. For more information see Salamon et.al. (2007).

The essence of the non-profit sector (also called the independent[3] or third sector) is that it receives resources and revenues for its operation from many different sources. Actually, in the past the most important sources were voluntary donations by individuals and business sector. However, recently observed trends, which can be also elaborated from Figure 2, show, that user fees and other sources from commercial activities are increasingly replacing governmental funding, while grants have become, relatively speaking, quite negligible. This has occurred predominantly due to the fact that in recent years significant trends and pressures exist for larger commercialisation of the activities of non-profit organisations, which are caused predominantly by changes in the system and the amount of budgetary and grant financing.

Figure 2: Non-profit sector revenue sources, 26-country average for 1995[4]



Source: The John Hopkins Comparative Nonprofit Sector Project (2004)

3 The use of term independent can be highly misleading, since it is highly difficult to be pragmatically independent when you are dependent on external resources as are the non-profit organisations (Ott, 2001). Basically, the term independent describes the ability to carry out certain social goals and missions without being constrained by the need for economic efficiency or political support.

4 Data represent 26-country average for 1995. It should be noted that substantial regional differences exist in relative importance of each source of revenue. For instance, in analysed Western European countries government sources still represent the largest single source of revenue of non-profit organisations, whereas in analysed Latin American countries fees represent almost three quarters of all sources of non-profit organisations. For more detailed insight in data see The John Hopkins Comparative Nonprofit Sector Project (2004).

It should be acknowledged that the main cause for existence of the non-profit sector is the provision of certain public goods and services, which is similar to government sector activities, yet it should be noted that, technically, non-profit sector is not part of the government (public) sector. Namely, the non-profit sector activities rely primarily on the ideas of individualism and pluralism, rather than on ideas of equality and justice that are prevailing in the government sector, which also represents the dividing line between these two sectors. This means that in practice the non-profit organizations try to avoid delivering universal and compulsory public goods and services, as does the government sector, but rather those public (or better collective) goods and services, which are determined by the willingness of individuals, businesses, governments, and other institutions in society to cooperate with non-profit organizations in order to realise their missions and goals. The existence of the non-profit sector is, in fact, the result of the development of democratic society and the capitalist economic system, where non-profit sector exists for the purpose of elimination or reduction of market and government failures in provision of certain goods and services or in meeting certain needs of citizens.[5] Indeed, Weisbrod (1998) says that the relative importance of non-profit sector increases with the increasing heterogeneity of modern societies, which causes that the preferences and needs of citizens more and more differ, thereby decreasing demand for universal public goods and services but increasing demand for public goods and services with more individualistic and pluralistic characteristics.[6]

Furthermore, also the failures of for-profit sector increase the need for the existence of non-profit sector. These failures can be described as market or contract failures, which are predominantly caused by imperfections in market

5 Intuitively, it can be concluded that in crisis situation both market and government failures increase, indicating that the relative socio-economic importance of non-profit sector should increase.

6 In this context, particularly interesting should be the relationship between welfare state retrenchment and the role of the non-profit sector. Namely, the evidence exists for supporting the thesis that voters will find the redistribution policies, which can mainly be observed in government transfer spending, more appealing in socially more homogeneous societies (see e.g., Annett, 2000). Nevertheless, this should impose certain implicit restrictions on the further development of welfare state and its expansion, which is not connected to the prevailing fiscal limitations; it should be noted that increased social fractionalisation, which has characterised the majority of developed countries in recent years, obviously affects the political process and decreases preferences for any extensive formulation and implementation of certain social policies. Since this dynamic will obviously also predominate in the future, further limitations on welfare state development and expansion are to be expected. This means that the functions of welfare state should become increasingly the domain of non-profit organisations, as well as also in part the domain of the for-profit sector, predominantly through its so-called socially responsible activities.

relationship as well as informational asymmetry, which causes that providers can exploit market position and the ignorance of buyers to maximise their interest (Grønbjerg in Ott, 2001). In this sense, because non-profit sector organisations have less incentives and possibilities to exploit buyers' ignorance, they are usually more trusted in providing certain goods and services, which are characterised by large market imperfections or the existence of important informational asymmetries (e.g., education, counselling etc.).

3. Non-profit sector operations and pitfalls of contemporary policies in this area

In recent years and decades significant trends and pressures exist for larger commercialisation of the activities of non-profit organisations, which are caused predominantly by changes in the system and the amount of budgetary and grant financing. This section investigates some significant changes facing the sector, special emphasis given on particularly vulnerable aspect of the financing of the non-profit sector. Namely, the main force that the non-profit organisations are facing recently is the emergence of ever-increasing demand for commercialisation of their activities, which can be observed, also form figure 2 where user fees have, on average, become the most important revenue source of non-profit organisations.[7] This growing pattern has been described by Weisbrod (1998) with the fact that non-profit museums are opening retail shops, non-profit universities are engaging in research networks with private firms, non-profit hospitals are opening various health clubs etc. This commercialisation of the activities has been based on the ideology of the new public management, which heavily influenced governmental policy-making in recent decades, basically promoting the idea of increasing market orientation of governmental and

7 This assertion relates to non-profit organisations in general. It should be quite understandable that for some organisations, such as charities etc., this assertion does not hold. Similarly, Anheier (2000) reports that user fees and charges were in 1990 the most important source of revenues for third sector organisations in Hungary, Italy, Sweden, Japan, United Kingdom and United States, but not in France and Germany, although this share has, nevertheless, quite substantially increased till 1995 in those two countries. In particular, the commercialisation of third sector activities could be found particularly important in more liberal and corporatist regimes as described in section 4.

non-profit organisations.[8] These requirements and policy issues have usually been expressed more indirectly, mainly with the changes in the extent of governmental funding, which required from non-profit organisations to be more market oriented, if those organizations even wanted to operate normally. Although the commercialisation of activities is actually in contradiction with the basic purpose of non-profit organisations, that is to be non-profit, it has now become a predominant form of operation for a substantial part of non-profit organisations in practice.

In general, the majority of non-profit organisations have been relatively successful when facing the need of increased commercialisation of their activities, yet this has generated some possible problems for them. One of the problems is related to the increased cooperation with the for-profit sector, which can often result in certain limitations imposed on the activities of non-profit sector. This can seriously affect the autonomy of non-profit organisations, also possibly putting at risk the goals and values of their initial mission (Macedo and Pinho, 2006).[9] A typical example is the cooperation of universities with business corporations, where certain limitations can be put on the dissemination of scientific findings, especially those that are not in line with the expectations, needs or strategy of corporation. Moreover, another problem of such arrangements is their instability, but we should not neglect the fact that universities are usually less cost-effective organisations in relation to other competing research organisations, a real danger being the »outsourcing« of research activities from universities (Ott, 2001).

Nonetheless, a substantial change has also occurred in the forms of governmental funding of non-profit organisations, which has become increasingly performance oriented. It should be acknowledged that the positive effects of performance oriented budgeting - for instance increased allocative, managerial or stabilising role of the budget[10] - are usually addressed from the governmental point of view. However, certain traps exist for non-profit organisations when this concept of financing is introduced. First of all, performance oriented budgeting inevitably puts the focus on measurable efficiency of non-profit organisations, which, according to Euske (2003), forces non-profit organisations

8 It should be stressed that this ideology was, and in some instances still is, very influential in policy making, also in post-socialist countries.
9 This can potentially lead to so-called organisational isomorphism, where non-profit organisations can start to resemble their resource providers.
10 More on the issue of programme and performance oriented budgeting see Robinson (2007).

to seek economies of scale. Notwithstanding, this can cause the loss of the responsiveness of the non-profit organisations to certain societal needs.

Second, experience of certain countries, which have implemented performance oriented financing in the classical non-profit areas of education and health, reveals relative inefficiency and limitations of using performance indicators as a foundation for the amount of governmental financial support. Namely, those indicators and criteria for funding are usually based on the amount of »production« of each institution, as for instance so-called taximeter model used in Denmark (Ginnerup et.al., 2007).[11] It should be noted that such models of financing can easily cause unintended effects on motivation of organisations receiving funds as they can lower the criteria in order that more students actually pass the exam or patients receive more medical treatments that are actually needed.[12]

4. Socio-economic importance and cross-country differences in the size of the non-profit sector

The non-profit sector currently represents important part of economical, political and social environment of almost all developed countries. It namely complements government and markets in the provision of important services, especially in health, education and social fields.[13] However, relative socio-economic importance of the non-profit sector substantially differs among countries. For instance, as it can be observed from table 1, the size of the non-profit sector, if measured with the share of its workforce in economically active

11 For instance, educational institution obtains funds for each student that passes the each year required exams; health institution obtains funds on the number of medical treatments that it actually performs etc.

12 This was the experience of Norway, where they have experienced large difficulties in implementing performance oriented budgeting in practice (Anderson et.al., 2006). Similarly, the experience of the United States reveals that performance budgeting does not have immediate and substantial effect on the improved efficiency and effectiveness of organisations, where specifically graduation rates are seen as very biased form of measure, as it tends to increase artificially after it is put up as performance measure (Shin and Milton, 2004).

13 Furthermore, the trend exists of rapid growth in both scale and scope of the non-profit sector due to rising heterogeneity of population, caused by larger human migrations and information flows. This trend can be observed in the vast majority of democratic countries around the world, also termed as »associational revolution« (more on this see Salamon, 1994).

population[14], is relatively low in former socialist countries. In contrast, the size of non-profit sector is relatively large in Western and Northern European countries as well as in Anglo-Saxon countries.

Table 1: Non-profit sector workforce[15] as a percent of the economically active population in selected countries, 1995-2000

Country	NPS workforce (%)	Country	NPS workforce (%)
Australia	6,3	Japan	4,2
Austria	4,8	Netherlands	14,4
Belgium	10,9	Norway	7,2
Czech Republic	2,0	Poland	0,8
Finland	5,3	Romania	0,8
France	7,6	Slovakia	0,8
Germany	5,9	South Korea	2,4
Hungary	1,1	Spain	4,3
Ireland	10,4	Sweden	7,1
Israel	8,0	United Kingdom	8,5
Italy	3,8	United States	9,8

Source: The John Hopkins Comparative Nonprofit Sector Project (2004)

First of all, it should be stressed that the non-profit sector is relatively well developed in the United States, which is a direct consequence of certain historical circumstances related to the role of the government in society. Namely, significant sharing of control and accountability for the individuals to provide certain common needs of local communities was observed in the United States in the 19th century, which was a direct result of lack of governmental

14 Using this variable as a proxy for measuring the size of non-profit sector is quite reasonable, given the fact that the lack of internationally comparable data exists, which can be attributed, among others, to very large diversity of activities and organisational forms that non-profit organisations perform and exist in.
15 Data do not include religious organisations.

coercion mechanism that would ensure those needs. In contrast, governments in Europe already had the ability at that time to ensure certain common needs of citizens and communities, which was the reason volunteering and philanthropy were less needed in European countries. These differences can be observed even in recent times, as volunteering and philanthropy are much more developed in the United States than in the majority of European countries. Given the fact that these two concepts represent a »backbone« of the non-profit sector, it is quite understandable that non-profit sector is more developed in the United States than in Europe.[16] In addition, it should also be stressed that the activities of non-profit organizations are usually hampered in totalitarian political regimes, as the tendency exists there for political system and government to dominate civil society. For instance, this experience can be observed in post-socialist countries, where the size of the non-profit sector is still smaller than in compared industrial countries, following the data in Table 1.[17]

Notwithstanding, an important aspect on the discussion about non-profit sector is the question, how should we explain cross-country differences in the extent of non-profit activity, which can be observed from table 1. Basically, three different approaches can be taken for this purpose according to Salamon and Sokolowski (2001), these approaches being macro-structural approach, micro-structural approach and social origins theory. In general, authors argue that in particular micro-structural approach and social origins theory can be used as a solid backbone for explaining cross-country differences in non-profit activities, whereas macro-structural approach has relatively limited domain in forming solid explanations. In short, macro-structural approach contemplates that the greater governmental involvement in the production of (public) goods and services crowds out other providers of these goods and services, such as for instance non-profit organisations or various social solidarity networks, thereby also restricting the development of trust and philanthropy. In contrast, micro-structural approach envisages that the amount of non-profit activity is affected by the existence and the amount of social networks that encourage volunteering.

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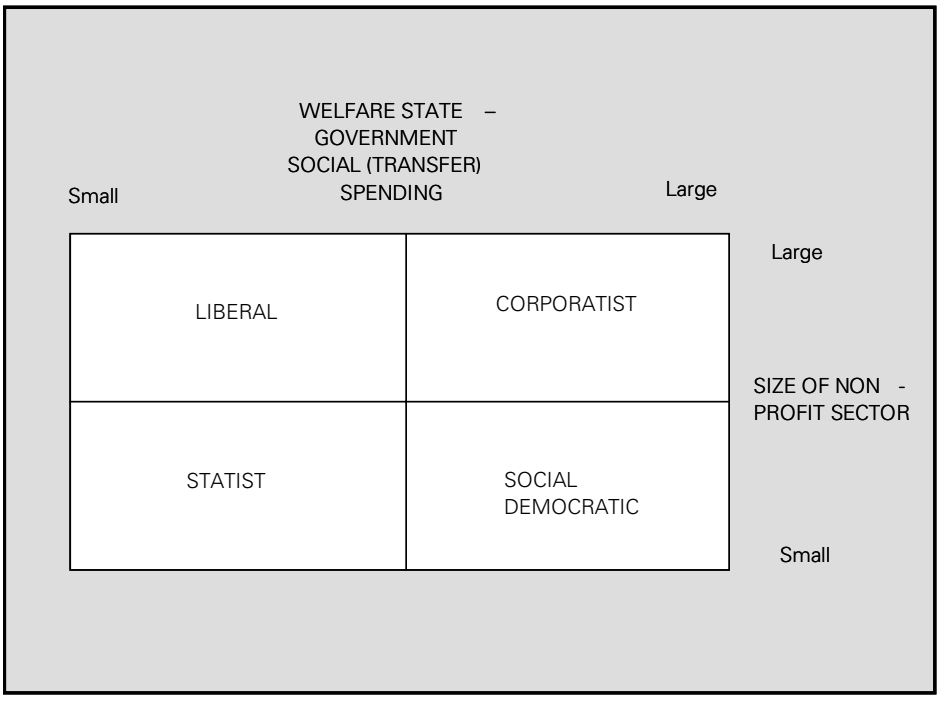
16 More on historical and social reasons for differences in the development of the non-profit sector between European countries and the United States see readings in Ott (2001). It should be noted, that this relationship could not be resumed for all European countries, since non-profit sector is, compared to the United States, relatively larger in the Netherlands, Belgium and Ireland (see table 1). This is due to the existence of some country-specific factors causing larger relative importance of the non-profit sector.
17 More on the development of non-profit sector in post-socialist countries see e.g. Brhlikova (2004), Svitkova (2004) or Giving in Europe (2009).

Finally, social origins theory argues that the size of non-profit sector is an outcome of power relations among social classes and key social institutions, describing those relations in four broad social regime types, that is statist, social-democratic, liberal and corporatist type. In general, statist and social-democratic social regimes are described by the fact that the importance of non-profit sector is relatively low, although in the latter regime due to vast existing social welfare and transfer spending of government; in the former regime predominantly due to limitations on social activities imposed from ruling elites in society. However, liberal and corporatist social regimes can be described by the fact that the importance of non-profit sector is relatively high, although in the former due to relatively low governmental interventionism in social welfare activities, which are left for non-profit sector to be carried out, whereas in the latter non-profit sector serves as traditional mechanism of extending governmental social welfare policies. The regime types can be represented in the following matrix.

Figure 3: Regime types of non-profit sector activity



Source: based on Salamon and Sokolowski (2001)

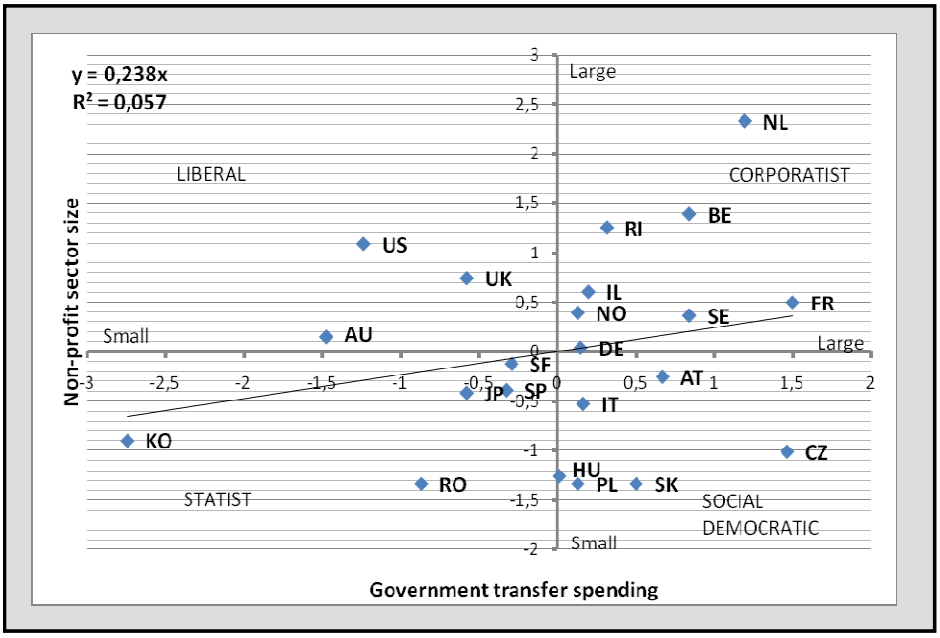
Consequently, given the fact that the measurement of social networks is relatively difficult on aggregate level, the empirical analysis and validation of social origins theory is presented in the next section. Furthermore, the relationships between the size of non-profit sector and the level of economic development as well as the social fractionalisation of population are also tested.

5. Variations in the size of the non-profit sector – empirical analysis

The purpose of the chapter is to empirically investigate the relationship between the size of the non-profit sector and the size of government spending, level of economic development, and ethno-cultural heterogeneity of society. The purpose of the empirical analysis is to gain insight into validity of social origins theory, as well as in supply and demand side factors that shape non-profit sector social importance and development across country. The empirical analysis is based on the sample of selected 22 countries with different social, political and economic traditions, for which internationally comparable data on the size of non-profit sector are available.[18] The presumption is that reasonable proxy for determining the size of non-profit sector is the share of non-profit sector workforce in economically active population and reasonable proxy for determining the extent of welfare state is the share of governmental transfer spending in GDP, which includes non-compensatory spending of government on welfare, social security, business subsidies, etc. The results of the analysis are presented in figure 4.[19]

18 It should be stressed that it is hard to obtain internationally comparable data for the size of the non-profit sector in different countries, potential reason being the diversity of the sector and variations in organisational forms within the sector. Therefore, the paper builds on the data gathered by The John Hopkins Comparative Nonprofit Sector Project (2004).
19 Both variables are standardised in order to enable presentation of the observed phenomenon in graphical form. Standardisation is based on the z-score transformation of actual percentages, which standardises variables to the same scale, which is to 22-country mean, thereby producing new variables with a mean of 0 and a standard deviation of 1. In some sense, this enables clearer graphical presentation of cross-country relationships than graphical presentation of original measures of variables would do. The same methodology has been applied also in figures 5 and 6.

Figure 4: Welfare state and size of the non-profit sector[20]



Source: Own calculations

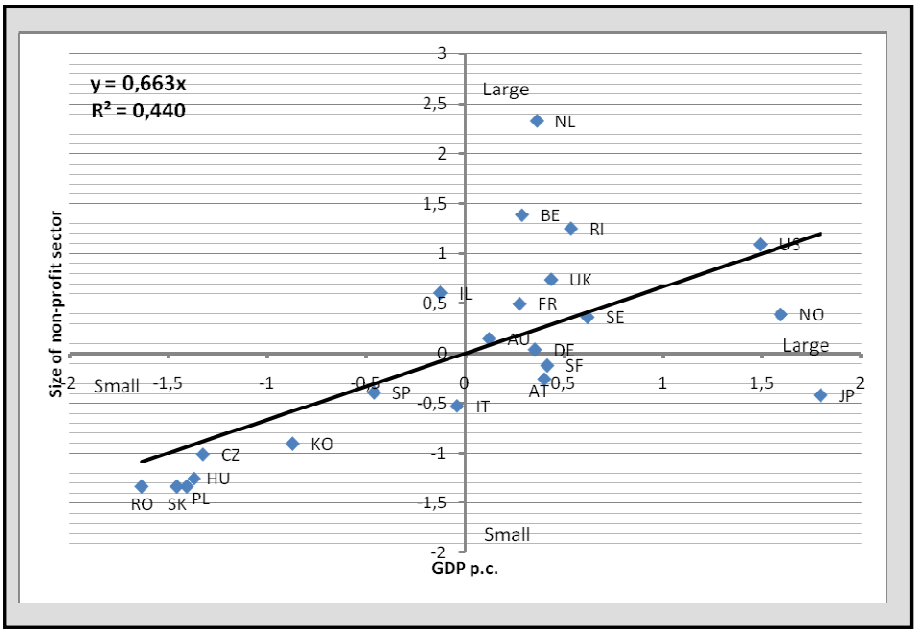
As it can be observed from the figure 4, selected countries can be grouped and sorted in four distinctive regime types of non-profit sector activity. For instance, the majority of Western and Northern European countries, with the exception of the United Kingdom and Finland, belong to corporatist social regimes, where non-profit sector is in fact the extension of governmental welfare policy institutions. Specifically, the majority of Anglo-Saxon countries belong to liberal social regime, where non-profit sector basically acts as a substitution for smaller extent of governmental interventionism in welfare policies. Interestingly, the size of the non-profit sector is relatively small in all of the selected post-socialist countries, where predominantly social-democratic social regimes can be observed, where non-profit sector activity is »crowded-out« by governmental welfare policy interventionism.[21] Basically, two extreme cases

20 The sources of data are The John Hopkins Comparative Nonprofit Sector Project (2004) for the variable non-profit sector size and Economic Freedom of the World (2002) index for the variable government transfer spending size. Given the fact, that reference period for the first variable is 1995-2000; the data for the second variable refer to year 2000. The selection of countries is based on the availability of data, referring to their inclusion into the John Hopkins study.

21 Indeed, Jenei and Kuti (2008) argue that third sector organisations are quite vulnerable in post-socialist countries, as they do not have large independent foundations yet. They argue that third sector in those countries is often seen as the extension of government, as it is very important in the

of statist social regimes can be observed, that is South Korea and Romania. In addition, the regression coefficient reveals that larger government transfer spending is associated the larger size of non-profit sector, although this relationship is relatively weak.[22] Nevertheless, this can somehow corroborate the hypothesis that both welfare state and non-profit activity are usually inclusive and not preclusive activities, meaning that they serve as an indication of socio-economic development of society. Furthermore, this hypothesis has been validated in figure below, as relative strong and positive relationship exists between the level of GDP per capita and the size of non-profit sector. Basically, this supports the idea that the development and the size of non-profit sector are related to the level of economic development.

Figure 5: The level of country's economic development, measured with GDP per capita, and the extent of non-profit sector activity[23]



Source: Own calculations

provision of certain government services. Similarly, Nemec (2008) reveals for the case of post-socialist country of Slovakia, that both left-wing as well as right-wing governments tend not to take the third sector as a real partner in social process, in particular left-wing governments preferring "state production" of activities usually undertaken by third sector organisations.

22 These findings somehow even contradict the premises of above mentioned macro-structural approach.

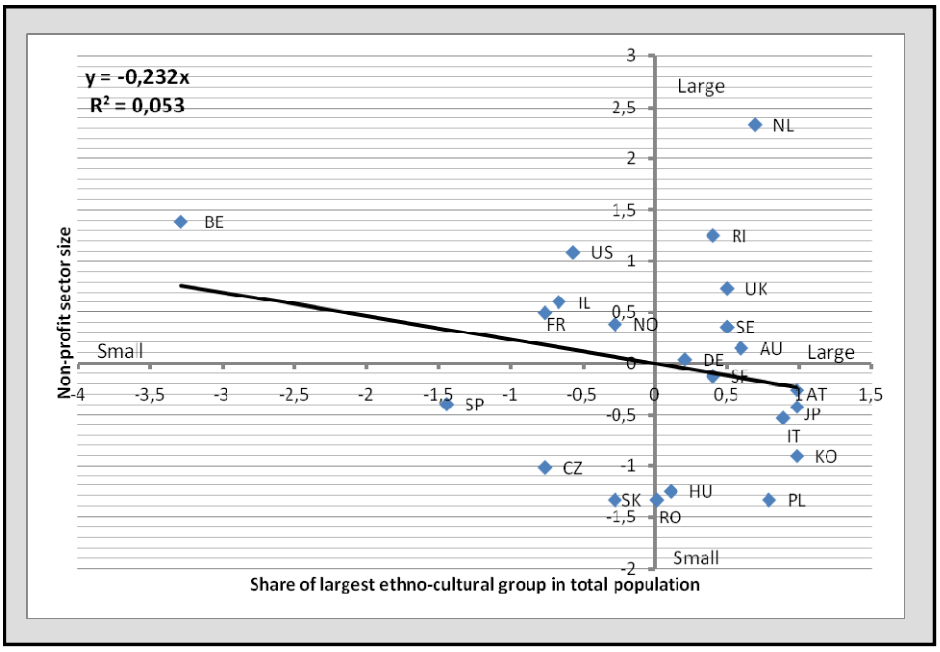
23 The source of data for variable real GDP per capita is World Development Indicators (2001). Data are in U.S. dollars. Besides, it should be stressed that gross domestic product per capita is used as proxy for measuring the level of economic development, although the

Furthermore, the hypothesis on the relationship between the size of non-profit sector and the level of ethno-cultural heterogeneity of society is tested below. A relatively viable proxy for determining the level of fragmentation of society is to determine the share of largest ethno-cultural group in total population, although the problems with clear definitions of such variable exist.[24] Nevertheless, this should be a relatively good, although quite subjective, indicator of homogeneity of society, so we should expect negative relationship between the ethno-cultural homogeneity of society and the extent of non-profit sector activity as there would be more demand for more universal type of collective goods. Still, as it can be observed from figure 6, the hypothesis could be validated, which is in line with Weisbrod's predictions, although the relationship is relatively weak in statistical terms.

later is much more broader concept, as it includes also social and technological progress of society not just progress in quantities of production. Namely, some non-mainstream economists claim that much of what had been taken as progress in modern societies is actually the consequence of a statistical fallacy, as conventional national income accounting systems do not take into account most of the real costs incurred to produce goods and services, simply because these costs do not pass through markets and, consequently, do not get prices. For instance, the costs of noise, air and water pollution are ignored because there is no easy way to measure them. If these costs of growth were taken into account, it would be seen that there had been much less of an increase in well-being than the conventional measures of national income implied (see Mishan, 1993). Following, gross domestic product does not, for instance, take into account environmentaly quality, social justice, leisure time, etc. However, given the fact that economists usually admit that it is difficult to measure social benefits and costs, and that, on aggregate, it is better to live in country with higher national income and domestic product levels, using this proxy seems quite plausible from economic perspective.

24 For instance, there is a problem with definition, which characteristics should be used when determining homogeneity of society, as population in certain country can be fragmented according to racial, cultural, ethnic or religious attributes, not excluding the combination of those attributes. Nevertheless, the approach taken here is to determine the fragmentation of society by exposing the attribute, which mostly affects fragmentation of society in each country. For instance, it is presumed that in United States the most important factor of fragmentation is race and in Belgium ethnic background. In contrast, in the case of Germany it is presumed that it is relatively homogenous society, although it is very divided in religious aspects - the presumption is that religion in this particular case does not play significant role in fragmentation process any more. The source of data for this variable is Encarta Encyclopaedia (2003).

Figure 6: Non-profit sector activity and ethno-cultural homogeneity of society[25]



Source: Own calculations

6. Concluding reflections

The non-profit sector, organisations of which predominantly operate in the fields of education, health and social services, is a very important part of social system in modern societies. Yet, substantial differences exist in the development and importance of non-profit sector activities even among developed countries. In part, this can be attributed to the differences in the level of economic development, which is found to be an important determinant causing differences in the size of non-profit sector across countries, or to existing differences in

25 Interestingly, it may seem from the graph, that the relationship could turn positive if Belgium is removed as an outlier. Nevertheless, if Belgium is dropped out from the sample, the relationship still remains negative, although it becomes weaker in statistical terms (beta coeficient is -0.007). The reason for this lies in the fact that removing one observation unit causes changes in the z-score values of all other variables included, since they become standardised to different scale.

social heterogeneity of society in each country. Moreover, those differences could also be addressed by changes and existing differences in socio-political environments of modern societies. Namely, the analysis presented in the paper reveals that selected countries can potentially be grouped in four different regime types of non-profit sector activities, each regime type denoting the relationship between the size of non-profit sector and the extent of governmental social activities in the form of matrix. Given the fact, that clear potential exist in grouping countries in four different regime types, those regime types being liberal, corporatist, statist and social democratic, the existence and validity of social origins theory of non-profit sector could be both theoretically and empirically validated and verified. Furthermore, it has been revealed that the size of non-profit sector is obviously positively related to the level of economic development and negatively related to the level of social homogeneity of society, both findings being in line with theoretical predictions.

Nonetheless, the issue of the cross-country variations in the size and development of non-profit sector should be further addressed, although problems exists in finding suitable and internationally comparable measures of non-profit sector activities, as only few data projects exist that are concerned with this issue. In particular, the research could be extended by performing multivariable regression analysis, including all potentially viable demand and supply side factors affecting differences in the size of the non-profit sector across countries, providing an insight into macro perspectives of non-profit sector development. Last but not least, the addressed issue of the commercialisation of non-profit organisations, which is changing thoroughly and dramatically the activities and operations of non-profit sector, has several pitfalls and limitations, which can ultimately lead to isomorphism of that sector with potentially severe adverse affects to society. Therefore, potential further research should also address the affect of commercialisation on the extent of non-profit sector activities, predominantly from the perspective of policy making in time.

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POVZETEK

OBSEG IN RAZVITOST TRETJEGA SEKTORJA: ANALIZA RAZLIK MED DRŽAVAMI

Tretji oziroma nepridobitni sektor vključuje različne organizacije, katerih namen je zadovoljevanje določenih potreb prebivalstva. Te organizacije delujejo predvsem na področju sociale, zdravstva, izobraževanja in raziskovalne dejavnosti, umetnosti ter kulture, športa itd. Razvitost nepridobitnega sektorja je povezana z ekonomskih stanjem v državi, z obsegom izvajanja določenih javnih politik, s spremembami v številu prebivalstva, s spremembami v strukturi preferenc posameznikov itd. Velika posebnost tega sektorja je v tem, da so pomemben delež virov za njegovo delovanje tudi prostovoljne donacije, ki jih organizacijam v teh sektorju namenjajo predvsem posamezniki in organizacije pridobitnega sektorja. Omeniti velja, da je trenutna gospodarska kriza bolj ali manj paralizirala precejšen del pridobitnega sektorja, pri čemer se politike vladnega sektorja v večini držav osredotočajo na odpravljanje posledic takšnega stanja. Politike dejansko povečujejo aktivno ekonomsko vlogo države, zato se odnos med vladnim in pridobitnim sektorjem vse bolj spreminja iz konstitucionalizma v paternalizem. V tem kontekstu se povečuje pomen tudi nepridobitnega sektorja. Namreč, izkušnje iz preteklih ekonomskih kriz kažejo, da se pomen nepridobitnega sektorja povečuje ravno v kriznih razmerah, saj je za ta sektor značilno, da prihaja v takšnih razmerah do povečevanja povpraševanja po njegovih produktih in storitvah (npr. dobrodelne organizacije, izobraževalne organizacije itd.), hkrati pa je za ta sektor značilna tudi relativno manjša občutljivost na gospodarska gibanja, kar velja tudi za finančne vire organizacij v tem sektorju (NCVO, 2008). Dva glavna razloga za povečevanje pomena nepridobitnega sektorja v kriznih razmerah naj bi bila, da so po eni strani viri organizacij tega sektorja pogosto precej razpršeni, po drugi strani pa je sektor neke vrste »bazen« družbe za mobilizacijo virov v kriznih razmerah. Namreč, družbene mreže, ki sestavljajo nepridobitni sektor, omogočajo izjemno hitro in učinkovito mobilizacijo človeških virov, povezanih v ta sektor, za uresničitev nekaterih ciljev družbe, ne da bi bilo treba vzpostavljati državno prisilo ali zagotavljati ekonomske spodbude. Delovanje nepridobitnega sektorja namreč po Ottu (2001) temelji na obstoju t. i. ekonomije dotacij, ki vključuje prostovoljno donacijo časa, denarja itd., kar v nasprotju z državno prisilo in tržno ekonomijo omogoča delovanje nepridobitnega sektorja dejansko na skoraj

vseh področjih družbenega življenja, pogostokrat precej neodvisno od aktualnih političnoekonomskih razmer.

Omeniti velja, da obstajajo precejšnje razlike med državami v velikosti in relativnem družbenoekonomskem pomenu nepridobitnega sektorja. Pri tem se v teoriji pojavljajo različne teze, ki pojasnjujejo potencialne razloge za razlike v velikosti nepridobitnega sektorja, pri čemer lahko te teze razvrstimo v dve skupini. Prva skupina tez, ki je usmerjena na t. i. povpraševalno stran, se osredotoča na vlogo tretjega sektorja pri zagotavljanju produktov in storitev, ki jih nista v ustreznem obsegu zagotovila pridobitni in vladni sektor. V nasprotju s tem se druga skupina tez, ki je usmerjena na t. i. ponudbeno stran, osredotoča predvsem na povezave med velikostjo nepridobitnega sektorja in obsegom sredstev, ki so na razpolago sektorju, kar implicira, da naj bi bil pomemben dejavnik razvitosti nepridobitnega sektorja ravno ekonomska razvitost družbe. Pri tem velja omeniti, da empirične analize v praksi potrjujejo predvsem veljavnost t. i. ponudbenih tez, predvsem v smislu, da na razvitost nepridobitnega sektorja vplivajo zlasti ustrezne in stimulativne družbenoekonomske razmere v družbi. Razlike v velikosti in razvitosti nepridobitnega sektorja med državami po drugi strani implicirajo obstoj različnih družbenih režimov, ki označujejo razmerja med vladnim in nepridobitnim sektorjem pri izvajanju določenih družbenih funkcij in zagotavljanju določenih produktov in storitev, ki zadovoljujejo potrebe prebivalstva. S tem v zvezi je glavni namen prispevka teoretično in empirično analizirati potencialne dejavnike, ki vplivajo na razlike v velikosti in razvitosti nepridobitnega sektorja na izbranem vzorcu 22 demokratičnih držav, posredno pa praktično preveriti obstoj različnih družbenih režimov, ki opisujejo razmerja med vladnim in nepridobitnim sektorjem. V bistvu prispevek nadgrajuje raziskave Salamona in Sokolowskega (2001) s preverjanjem veljavnosti obstoja različnih družbenih režimov v praksi, hkrati pa empirično ugotavlja povezave med gospodarsko razvitostju družbe, njeno etnokulturno raznovrstnostjo in velikostjo nepridobitnega sektorja. Namen prispevka je praktično preveriti veljavnost ponudbenih in povpraševalnih tez o razvitosti nepridobitnega sektorja. Rezultati empirične analize potrjujejo obstoj različnih družbenih režimov v praksi, kar pomeni, da lahko posamezne države razvrstimo v štiri različne družbene režime, ki opisujejo razmerja med vladnim in nepridobitnim sektorjem pri zagotavljanju določenih produktov in storitev prebivalstvu. Ti režimi so statični, socialno demokratski, liberalni in korporativistični. Za prva dva režima je značilen relativno majhen družbenoekonomski pomen nepridobitnega sektorja. V statičnem režimu naj bi bile glavni razlog za to omejitve, ki jih v delovanje

nepridobitnega sektorja vpeljuje politični sistem, v socialno demokratskem režimu pa obsežno vladno zagotavljanje dobrin in storitev prebivalstvu, ki zmanjšuje potrebo po delovanju nepridobitnih organizacij na tem področju. Po drugi strani je za liberalni in korporativistični režim značilno, da je relativni družbenoekonomski pomen nepridobitnega sektorja velik, pri čemer naj bi bil v liberalnem režimu glavni razlog za to izostanek državnega intervencionizma na področju družbenih dejavnosti, medtem ko je pri korporativističnem režimu vloga nepridobitnega sektorja poudarjena predvsem v obliki podpornega mehanizma vladnemu sektorju pri izvajanju določenih politik in zagotavljanju določenih produktov in storitev. Rezultati empirične analize kažejo, da je v grobem liberalni režim značilen predvsem za anglosaksonske države, korporativistični predvsem za zahodnoevropske države, socialno demokratski režim za srednje in južnoevropske države, medtem ko je statitični režim značilen predvsem za novo industrializirane oziroma relativno manj razvite države. Empirična analiza je tudi pokazala, da sta velikost in razvitost nepridobitnega sektorja pozitivno povezana z ekonomsko razvitostjo družbe in negativno povezana z njeno etnokulturno homogenostjo, kar je skladno s teoretičnimi pričakovanji, da naj bi bil pomemben dejavnik razvitosti nepridobitnega sektorja ravno razvitost družbe same, po drugi strani pa naj bi na povpraševalni strani na potrebo po obstoju nepridobitnega sektorja vplivale ravno razlike v preferencah posameznikov, ki so pozitivno povezane s heterogenostjo družbe. Namreč, v tem primeru nepridobitni sektor služi kot orodje zadovoljevanja specifičnih potreb prebivalstva, ki jih vladni sektor s pretežno univerzalnimi produkti in storitvami ne more.

Nenazadnje, prispevek poleg tega obravnava nekatere mogoče pasti v razvoju nepridobitnega sektorja v prihodnosti, ki se nanašajo predvsem na čedalje izrazitejše težnje po komercializaciji delovanja nepridobitnih organizacij in njihovi čedalje večji ekonomski učinkovitosti. Podatki kažejo, da so t. i. komercialni viri postali v povprečju že najpomembnejši viri, ki omogočajo delovanje nepridobitnih organizacij. Poudariti velja, da je na zahteve po komercializaciji delovanja imela še posebej velik vpliv v zadnjih desetletjih močno uveljavljena ideologija novega javnega menedžmenta, ki je tudi od teh institucij zahtevala bolj tržno ravnanje in usmeritev pri poslovanju. Te zahteve se po navadi izražajo bolj posredno, predvsem z različnimi spremembami v načinu financiranja, ki posledično zahtevajo večje pridobivanje sredstev na trgu, če te organizacije sploh želijo normalno delovati. Čeprav je komercializacija delovanja dejansko v nasprotju z namenom delovanja nepridobitnih organizacij, pa je danes v praksi postala za precejšen

delež teh organizacij že prevladujoči način delovanja. V splošnem velja, da se je nepridobitni sektor relativno uspešno spoprijel z nujo po večji komercializaciji delovanja, velja pa tudi omeniti, da to nepridobitnemu sektorju prinaša tudi določene probleme. Takšen primer je na primer tesno sodelovanje s pridobitnim sektorjem, ki pogosto prinaša določene omejitve oziroma »pogoje« v delovanju nepridobitnega sektorja, kar vpliva na njegovo že prej omenjeno neodvisnost oziroma avtonomijo, nenazadnje pa lahko pripelje tudi do pojava organizacijskega izomorfizma.

Professional article

State Supervision of Local Government Authorities

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ABSTRACT

State supervision of local government authorities, a requirement of the rule of law, is discussed in relation to municipalities. State supervisory authorities are required to advise and support local government authorities. Supervision at various state levels takes place as legal supervision, which only includes the supervision of legality in matters of the municipality's original competence, and as functional supervision that also supervises expediency in matters transferred by the state. The legality principle (intervention in all cases) is modified by the expediency principle (discretion). A number of remedies are available for implementing both legal and functional supervisory measures. Where municipalities consider that the supervisory measures, whether legal or functional, violate their rights of self-government, they have recourse to the courts.

Key words: municipalities, local government, state supervision, supervisory authority

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1. Required by Rule of Law

The functions of public administration are exercised in a decentralised state by state authorities and a multiplicity of public law bodies. These organisations include, in particular, the self-governing local government bodies.

It is characteristic of a decentralised fulfilment of public functions that decisions are not only made centrally. Instead, the decentralised bodies, particularly

the local self-governing bodies, make their own decisions in matters within their own competence. Various decision-making centres characterise the decentralised state. But all these bodies that exercise functions of public authority – state authorities as well as public law bodies – belong, in the context of separation of powers (legislature, executive, judiciary), to the executive. The self-governing bodies, local government decision-making centres with their own policy-making processes, do not stand aside from the state legal order; they are not "states within the state"; as "executive authorities" – in the terminology of the Basic Law (GG) – they are bound by "law and justice" (Article 20 par 3 GG). Adherence to law is an inalienable factor in a democratic state and, in accordance with the will of the Basic Law, cannot be infringed (Article 79 par 3 GG). To ensure this adherence to law by local government bodies, state supervision of them has been established by the *Länder* (states) of the Federal Republic of Germany. The *Länder* independently regulate the details of this supervision in their local government laws, as local government law is a *Länder* and not a federal matter. The main features of local-government supervision are nonetheless uniform throughout Germany.

In its judgment of 23 January 1957 (BVerfGE 6, 104 ff, 118), the Federal Constitutional Court declared local-government supervision to be the correlate of self-governing local government authorities. State supervision is accordingly the "natural counterpart" to the right of self-government of local authorities. It would not be in accordance with the rule of law if local authorities were able to act unlawfully without the possibility of intervention by the state. State supervision is thus a requirement of the rule of law. The Constitution of the Free State of Bavaria of 2 December 1946 (BV) accordingly provides in Article 83 par 4 sentence 1 that: "The Municipalities shall be subject to the supervision of State Administrative Authorities." According to Article 83 par 6 (BV), this provision also applies to other local authorities.

In the following, supervision of local authorities will be illustrated through the example of the municipality (Gemeinde); supervision of other local-government bodies has no special characteristics.

The Bavarian legislature has brought together the rules concerning "State supervision and legal proceedings" in the fourth part of the Local Government Law (Gemeindeordnung – GO), Art.108 to Art.120.

2. Supervision and Advice

The supervising state cannot be regarded as the "legal guardian of municipalities with limited capacity". The function of the state is also not limited to the control of municipal acts. The state is required by Art.83 par 4 BV to support local government authorities in carrying out their functions. The legislature expresses this obligation in more detail in Art.108 GO as follows: "The supervisory authorities ought to advise, encourage and protect with understanding the municipalities in the performance of their tasks, and they ought to reinforce the decision-making capability and the responsibility for their own action of the municipality bodies." This obligation to provide assistance is considerably wider than so-called repressive supervision. Smaller municipalities avail themselves more frequently of state assistance; but even the larger municipalities turn surprisingly often to the state supervisory authorities to obtain information and to resolve doubts about appropriate action in critical cases.

The advisory function has increased over the last few decades. This may be due to the fact that the relationship between the municipalities and the state has developed into a good relationship of mutual trust. Alternatively, tasks at all state and municipal levels are becoming more complex, which may also intensify communication between municipalities and the state.

An advisory obligation can be seen in the formulation in Art.108 GO ("The supervisory authorities ought to advise …"). This obligation can, for example, consist of providing the municipality with verbal and/or written information, or of drawing attention to legal and/or economic problems. The supervisory authorities can also point out alternatives for dealing with particular questions. But those concerned should always be conscious that the decision-making competence rests with the municipality. The officials of the supervisory authorities must therefore exercise their duty to advise with the necessary tact.

3. Legal Supervision and Functional Supervision

In the context of state supervision, a distinction is made between two kinds of supervision: legal supervision and functional supervision.

3.1 Legal Supervision

As far as the municipalities act within their own sphere of activity, they are subject to legal supervision. Here, legal supervision is restricted to supervising the performance of public law tasks and the obligations of the municipalities as laid down by law and adopted, as well as the legality of their administrative activity. The state may thus not interfere in the exercise of discretion where the municipalities have been given discretion by law and where they exercise this discretion lawfully. For example, whether. a municipality decides to build a swimming bath or a theatre is a matter for the municipality. It decides the question by exercising its discretion. The state cannot stipulate to the municipality which project it should adopt.

From the statutory formulation, it can be seen that private-law restrictions on the financial activities of the municipality are not overseen by the supervisory authorities. Where, for example, a commercial firm has sold office furniture to a municipality and asks the supervisory authorities to cause the municipality to pay the agreed price, the supervisory authorities must point out to the furniture dealer that the fulfilment by the municipality of obligations under a contract of purchase is not a matter subject to state supervision. The supervisory authority can inform the furniture dealer that he can bring any civil claim that he may have to the ordinary courts. In such a case, the supervisory authority should inform the municipality of the approach by the furniture dealer and the content of its response. The supervisory authorities do not have any more far-reaching responsibilities in cases of this kind.

Where the municipality has an obligation in concluding private-law transactions, e.g. in awarding a contract for the construction of a road, the obligation to observe public law provisions about invitations to tender for building work, and is in breach of them, the supervisory authority may intervene. The connecting factor for the intervention of the supervisory authorities is, however, public law, namely the provisions concerning the invitation to tender for certain works or services. The municipalities do not, after all, exist without restrictions; they are required to comport themselves within the framework of the law (Art.28 par 2 sentence 1 GG).

3.2 Functional Supervision

Municipalities have not only tasks in their own sphere of competence; they also have tasks that have been transferred to them. This transferred sphere encompasses all matters that have been assigned by law to the municipalities for them "to manage on behalf of the state or other institutions under public law" (Art.8 par 1 GO). In matters falling within the transferred sphere, state supervision goes beyond legal supervision and extends to the exercise of municipal discretion (Art.109 par 2 sentence 1 GO) More detailed discussion is contained below in 7.1. This means that the supervisory authorities have the right under certain conditions to intervene by way of directive in the exercise of administrative discretion by the municipalities (see Art.83 par 4 sentence 3 of the Bavarian Constitution). This is logical as the municipalities in the transferred sphere carry out tasks that have been specifically transferred to them by the state. These are therefore state tasks. The interest of the state in having these tasks carried out as it wishes is therefore understandable.

4. Supervisory Authorities

4.1 Legal Supervisory Authorities

Supervision of the municipalities is the responsibility of the state authorities. Since there are three levels of municipal authorities in Bavaria – municipalities (*Gemeinden*), districts (*Landkreise*) and regions (*Bezirke*) – state supervision takes place at three levels of state authority.

Legal supervision over municipalities belonging to a district is the responsibility of the district administrator's office (*Landratsamt*) as a state administrative function (Art.110 sentence 1 GO). Legal supervision of municipalities not belonging to a district is the responsibility of the regional government (Art.110 sentence 2 GO, Art.96 sentence 1 LkrO). Legal supervision of the regions is the responsibility of the State Ministry of the Interior (Art.92 BezO). The regional government acts as the higher legal supervisory authority for the municipalities belonging to a district (Art.110 sentence 3 GO). The State Ministry is the higher legal supervising authority for municipalities not belonging to

a district (Art.110 sentence 4 GO) and for the districts (Art.96 sentence 2 LkrO). The State Ministry is also the supreme legal supervising authority for municipalities belonging to a district, although this is not expressly regulated in the Local Government Law.

Because the legal supervisory authorities belong to hierarchically different levels of state administration, the higher authority can instruct the subordinate authority as to how legal supervision is to be handled, both in general and in specific cases.

4.2 Functional Supervisory Authorities

Competence for carrying out functional supervision in individual areas of the transferred activities is regulated by the relevant provisions (Art.115 par 1 sentence 1 GO, Art.101 sentence 1 LkrO, Art.97 sentence 1 BezO). Further discussion of this can be found in 7.2.

5. Legality Principle and Expediency Principle

How the legal supervisory authority should react to an unlawful act or omission of the municipalities is a fundamental question: is the legal supervisory authority obliged to intervene in every case (the legality principle) or does intervention lie in its – properly exercised – discretion (the expediency principle)? Until 1997 (see Law of 26 July 1997 – BayGVBl. p. 344), the legal position in Bavaria was differentiated: in the case of municipalities – both belonging and not belonging to districts – the legal supervisory authority, i.e. the district administrator's office or regional government, was obliged to object to unlawful resolutions and orders and to require their annulment or modification (Art.112 sentence 1 old version, which applied until 1977). To this extent, the legality principle applied.

The Bavarian legislature had based legal supervision of the districts and regions on the expediency principle (… can object). This was naturally inconsistent. There were, accordingly, opinions in legal literature and in cases that also called for the application of the legality principle for districts and regions. This was justified on the grounds that it could not be left to the discretion of the supervisory authority

whether it intervenes against contraventions of law. It was argued from the rule of law principle of the legality of administration that the supervisory function requires an objective obligation, not subject to the discretion of the authority, to intervene in all cases against legal contraventions.

The legality principle that applied in Bavaria until 1997 for the supervision of municipalities was an exceptional position in Germany. With the Law of 26 July 1997, the Bavarian legislature decided to introduce the expediency principle for legal supervision across the board, including the legal supervision of municipalities. According to the official justification by the Bavarian State Ministry of the Interior, the introduction of the expediency principle helped to strengthen the self-government of the municipalities (see printed paper of the Bavarian Parliament 13/8037, pp.10 ff). Different views are possible on the persuasiveness of this justification. Legal supervisory measures take place, after all, only against unlawful acts by the municipalities and it is questionable whether it is legitimate to strengthen municipal self-government in an unlawful area. To my view. it also cannot be a matter of improving the "partner relationship" of municipalities and state supervisory authorities by abolishing the legality principle (hence the official justification). That seems like legal encouragement of unlawful advantages. In my view, there are other considerations which could justify the expediency principle and these have been put forward in legal literature. The purpose of legal supervision is not simply "to pursue automatically and without exception every legal contravention and to prosecute as a matter of course every violation of law. It must rather be considered in the light of all the circumstances of the individual case the extent to which there is a public interest in remedying the legal contravention" (thus Rolf Stober, p. 257). The Law of 1997 is now generally approved (see e.g. Franz-Ludwig Knemeyer, Bayerisches Kommunalrecht, p. 293). Since the general introduction of the expediency principle in 1997, the district administrator's office acts legally when it does not pursue trivial legal contraventions of the municipalities (thus also Josef Prandl/Hans Zimmermann/ Hermann Büchner, Art.108 GO, number 7, also Josef Bauer/Thomas Böhle/Gerhard Eckter, Art.112 GO, number 4 and 7, also Meinhard Schröder, p. 374 with fundamental statements about the expediency principle of state supervision). There are no judgments after 1997 that criticise the expediency principle. On the contrary, the Administrative Court Regensburg decided by a judgment of 22 October 2003 that state intervention must be limited to necessary actions (Bayerische Verwaltungsblätter 2004, pp. 538; also Knemeyer, Die Staatsaufsicht… pp. 217, p. 228). In the case of a serious contravention, the public interest will continue to require the intervention of the supervisory authority.

6. Remedies of Legal Supervision

The powers of the state supervisory authorities are regulated in detail by law. This is necessary in view of the high value of local self-government. The municipalities are, after all, not the extended arm of the state; they are separate organisations with the right to form their own views.

6.1 Right to be Informed

"The legal supervisory authority is authorised to acquire information on all matters concerning the municipality. It may, in particular, inspect institutions and facilities of the municipality, examine the management and finances, and call for reports and files" (Art.111 GO). This does not give the legal supervisory authority the right to call for information on all council decisions. It must instead have a concrete reason for its requests.

Where, for example, a citizen complains to the district administrator's office about a payment notice from a municipality, the district administrator's office will call for the relevant files and a report from the municipality on the citizen's complaint. In this way, the supervisory authority can obtain a comprehensive picture of the matter in dispute, and form an independent judgment as to whether the citizen has suffered a wrong.

The right to information also gives the supervisory authority the right to participate in council meetings. This right of participation encompasses the putting of questions; it does not give a right of active participation in council deliberations. The supervising authority is well advised to be restrained in its use of this right of participation, as the sensitivities of local self-government can here be very easily affected. On the other hand, it can be observed in practice that in particular cases the municipality will, of its own accord, invite, alongside representatives of technical authorities, a representative of the supervisory authority to a council meeting. It is usual to accept such an invitation and in principle there is no objection to this.

6.2 Right to Object

The legal supervisory authority can object to unlawful resolutions and decisions of the municipality and require their annulment or modification (Art.112 sentence 1 GO). Unlawfulness can be assumed wherever the municipality

contravenes mandatory law – this can include rules of substantive law as well as procedural rules. As long as the municipality in the sphere of its own responsibility remains within the law, the supervisory authority cannot intervene, even where it considers a resolution of the council to be inappropriate.

Example 1:

When a council discusses whether the municipality should build a swimming bath or a local history museum and finally decides – assuming funding has been secured – to build a swimming bath, the supervisory authority cannot object to this decision on the ground that it considers the building of a local history museum to be more appropriate. An objection by the supervisory authority in this case would be an unlawful interference in the right of self-government of the municipality.

The state must respect the will of the municipalities. Where a state accepts the right of self-government of local authorities, it necessarily thereby recognises other decision-makers in addition to the central authorities. Legal boundaries are thereby set to the powers of the central authorities. It can be seen from this that decentralisation involves a renunciation of state authority.

Example 2:

When the population of a municipality receives its drinking water only from private sources, and the water is continually polluted and gives rise to illness in the population, the municipality is required to remedy the situation, as it is responsible for the provision of drinking water (Art.57 par 2 sentence 1 GO). Possibilities to be considered are, for example, construction of a municipal water supply with laying of water pipes and connection of the built-up areas accompanied by the closing down of the private water sources or a connection with the water supply of a neighbouring municipality. If the municipality does nothing to remedy the water supply situation and instead decides to build a swimming bath, then the legal supervisory authority will have to intervene.

Reason: The decision of the council is contrary to law because the municipality can only proceed with a non-mandatory project (construction of a swimming bath) when it has fulfilled its mandatory tasks. As supplying the population with pure drinking water is a mandatory task of the municipality (Art.57 par 2 sentence 1 GO), the construction of a swimming bath must be put to one side until the problem of the drinking water supply has been resolved. The district administrator's office will accordingly object to the decision

of the council to construct a swimming bath as unlawful and will require its annulment.

The concept of "directive" *(Verfügung)*, to which the supervisory authority may object, is given a broad meaning. It encompasses all acts of public authority which affect third parties, i.e. the establishment of rules (e.g. municipal by-laws) and administrative acts.

6.3 The Right to Issue Directives

The supervisory remedy against unlawful omissions is the right to issue directives.

Example: In every municipality, the first mayor must at the request of the council call a meeting of the citizens to discuss municipal matters (Art.18 par 1 sentence 1 GO). If the mayor – for whatever reason – does not comply with this legal obligation, the legal supervisory authority can require, i.e. direct, the mayor to call a meeting of the citizens (Art. 112 sentence 2 GO).

6.4 Substitute Performance

Where the municipality does not comply with the directives of the legal supervisory authority within a reasonable time limit set by the authority, the authority can direct the necessary measures in place of the municipality and enforce them (Art.113 sentence 1 GO). The municipality does not thereby save any costs, since under Art.113 sentence 2 GO the municipality bears the costs of substitute performance.

In the example set out above, the legal supervisory authority can, if the municipality does not comply with the directives within a reasonable time,

- annul the resolution on the construction of the swimming bath;
- call a meeting of the citizens.

It follows from the words "in place of the municipality" that substitute performance has direct effect for and against the municipality. All legal acts that result from substitute performance are deemed to be the acts of the municipality. If such a legal act is, for example, addressed to a citizen, the opposing party in any litigation by the citizen concerning this act will be the municipality – not the state supervisory authority.

6.5 Appointment of a Commissioner

In general, the remedies described above suffice to ensure the legal conformity of municipal actions. The legislature has, however, made provision for more critical cases.

Art.114 GO provides as follows:

Par (1): "Where the orderly conduct of administration is seriously obstructed by the inability of the council to pass a resolution or by its refusal to implement directives of the legal supervisory authority in conformity with law, the legal supervisory authority can authorise the first mayor to act on behalf of the municipality until the unlawful situation has been remedied."

Par (2): "Where the first mayor refuses to act or is prevented for practical or legal reasons from acting in accordance with par. 1, the legal supervisory authority shall commission the other mayors in succession to act on behalf of the municipality as long as this is necessary. If no further mayors are available, or if they are unable or are unwilling to act, the legal supervisory authority shall act for the municipality."

These provisions have scarcely any practical significance as the system of local self-government functions well without the necessity of recourse to this possibility. There has been only one higher court case in Bavaria that has dealt with the provisions of Art.114, and that was in 1959.

6.6 Dissolution of the Municipal Council

Where the unlawful situation cannot otherwise be remedied, the Bavarian State Government can dissolve the municipal council and order a new election (Art.114 par 3 GO). This is the most powerful supervisory remedy, available only to the Bavarian State Government as the supreme governing and executory authority of the Free State of Bavaria. The State Government has not hitherto had to make use of this remedy. This is in accord with the view that for certain areas of the legal system the mere availability of legal sanctions suffices.

7. Functional Supervision

7.1 General

Municipalities – like all local government bodies – do not merely have their own sphere of responsibility. They also operate in the transferred sphere, and here they are subject to functional supervision. This means that state supervision also covers the exercise of municipal discretion (Art.83 par 4 sentence 3 BV, Art.109 par 2 sentence 1 GO). Functional supervision naturally includes legal supervision, but goes beyond it. This is logical, since local government bodies carry out in the transferred sphere tasks that have been specifically transferred by the state. It is a question here of matters that are state responsibilities. The interest of the state in having these responsibilities carried out as it wishes is therefore understandable. The state is thus permitted to intervene in the exercise of administrative discretion. Such intervention is, however, only permitted under certain narrow conditions. It is "to be restricted to the cases in which

1. the public good or public law claims of individuals require a directive or decision, or
2. the Federal Government issues a directive in accordance with Art.84 par 5 or Art.85 par 3 of the Basic Law" (Art.109 par 2 sentence 2 GO).

There is a structural difference between legal supervision and functional supervision. While legal supervisory measures take place after the event (repressive control), preventive measures are permissible in the context of functional supervision. The functional supervision authorities can influence future municipal decisions by general instructions in administrative regulations.

Uniform implementation of the law is justified above all by reasons of the public good. Numerous laws in the field of public safety and order are implemented by the state district administrative authorities and in the case of municipalities not belonging to a district are implemented by the municipalities themselves – naturally in the area of transferred responsibilities. To the extent that laws accord the executive authorities discretion, this discretion must generally be exercised on a state-wide uniform basis. Otherwise, each of the municipalities that does not belong to a district – of which there are 25 in Bavaria – could, for example, in the field of aliens law conduct its own aliens policies within

certain limits. This can be prevented through the remedies of functional supervision. Apart from this, the expanded competence resulting from the transferred responsibilities involves a strengthening of the local government bodies. In the field of transferred responsibilities, local government bodies act as local government and not as the long arm of the state. The areas of transferred responsibilities increase the intensity to which the citizen experiences local government. And, notwithstanding the possibilities of intervention enjoyed by the state in the context of functional supervision, there remains scope for local government authorities to act independently in the area of transferred responsibilities.

7.2 Functional Supervisory Authorities

Competence for exercising functional supervision in individual areas of transferred responsibilities is regulated by the relevant special provisions (Art.115 par 1 sentence 1 GO). The authority for exercising functional supervision is thus not vested in a single authority as in the case of legal supervision. At the ministerial level, the various functional ministries act as functional supervisory authorities. At the ministerial level, i.e. at the highest state level, functional supervision is exercised, e.g.

- in the field of education law by the State Ministry of Education and Culture;
- in the field of trade and industry law the State Ministry for Economics, Infrastructure, Transport and Technology;
- in the field of aliens law by the State Ministry of the Interior.

In the absence of special provisions, the legal supervisory authorities are also responsible for functional supervision (Art.115 par 1 sentence 2 GO, Art.101 sentence 2 LkrO, Art.97 sentence 2 BezO). Responsibility for functional supervision is thus assured in all cases.

7.3 Remedies of Functional Supervision

Functional supervisory authorities can obtain information in the same way as legal supervisory authorities, but naturally only about matters of transferred responsibilities (Art. 116 par 1 sentence 1, Art.111 GO). They can also, in accordance with Art.116 par 1 sentence 2 GO, give the municipality directives for dealing with transferred matters, subject to Art.109 par 2 sentence 2 GO (see

discussion under 7.1). The functional supervisory authorities do not have any more far-reaching powers to intervene in municipal administration (Art.116 par 1 sentence 3 GO). Where a municipality does not comply with a directive from the functional supervisory authority, that authority can turn to the legal supervisory authority, which alone is empowered to have recourse to other supervisory remedies (substitute performance, appointment of a commissioner, etc). The legal supervisory authority has a duty to support the functional supervisory authority in the exercise of its legal responsibilities (Art.116 par 2 sentence 1 GO).

8. Legal Disputes

Municipalities – like all local government authorities – are subject to the supervision but not to the arbitrary power of the state. Municipalities can instigate legal proceedings against supervisory measures; this is ensured by Art.19 par 4 GG. In accordance with this provision, every natural and legal person may have recourse to the courts when they establish that their rights have been violated by a public authority. The Administrative Courts are competent for legal disputes of this kind between municipality and state (§ 40 Administrative Court Procedure Law).

8.1 Legal Supervisory Acts

Legal supervisory measures that go beyond a demand for information, such as objections, substitute performance, appointment of a commissioner and dissolution of the municipal council, constitute adverse administrative acts for the municipality. Where a municipality asserts that a supervisory measure contravenes its right of self-administration, it can commence litigation in the administrative courts with an application to quash the administrative act. The administrative court then examines whether the legal conditions for the legal supervisory measures have been satisfied. Where the municipal action is found to be lawful, the legal supervisory act is unlawful and will be quashed by the administrative court.

8.2 Functional Supervisory Acts

Whether the municipality can also attack functional supervisory acts before the administrative courts depends on whether the functional supervisory measures, in particular the functional supervisory directive, constitutes an administrative act and whether the municipality can establish that its rights have been violated by the functional supervisory directive. The question of whether a functional supervisory directive constitutes an administrative act in relation to a municipality is disputed. According to Art.35 of the Bavarian Administrative Procedure Law, an administrative act has various characteristics, one of which is a "direct external legal effect". Thus the Bavarian Higher Administrative Court once declared in a judgment of 29 September 1976 that a functional supervisory directive only possesses a "direct external legal effect" when the municipality is affected in its own protected legal position. Against this view, it can be argued that the questions of whether an administrative act is present or whether there is a violation of rights should not be mixed. In the case of a functional supervisory directive – e.g. a directive by the state authority (regional government) to a municipality that does not belong to a district to close a business enterprise – there is always the external effect necessary for an administrative act: the state, on behalf of which the supervisory authority acts, and the municipality are different legal persons and different holders of rights. The state directive affects another legal person (i.e. the municipality), which is being told what to do. In a later decision – an order of 31 October 1984 – the Bavarian Higher Administrative Court stated that a functional supervisory directive represents an administrative act in relation to a municipality; and where the municipality has a legal position of its own to defend, then it has a right of action. Art.109 par 2 sentence 2 GO accords the municipality legal position of this kind – the state supervisory authority has only a restricted right to issue directives under this provision (see on this the discussion above under 7.1).

9. Final Comment

State supervisory authorities exercise their supervisory powers only within a legal framework and may not do so in an arbitrary manner. Where municipalities have the impression that a supervisory act of the states violates

their right of self-government, they do not in practice hesitate to bring an action against the state before the administrative court so that the court may quash the supervisory act. The state supervisory authorities must always be aware that their supervisory acts are subject to judicial control. Arbitrary supervisory acts are accordingly in general not a problem.

Overall, it can be said that the system of state supervision does not adversely affect the idea of local self-government – in theory or in practice.

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Abbreviations

- BayGVBl Bayerisches Gesetz- und Verordnungsblatt (Bavarian Law and Ordinance Gazette)
- BV Verfassung des Freistaates Bayern vom 2. Dezember 1946 (Constitution of the Bavarian Free State)
- BVerfGE Entscheidungen des Bundesverfassungsgerichts, Band ... (Decisions of the Federal Constitutional Court, vol. …)
- GG Grundgesetz für die Bundesrepublik Deutschland vom 23. Mai 1949 (Basic Law of the Federal Republic of Germany of 23 May 1949)
- BezO Bezirksordnung für den Freistaat Bayern (Regional Government Law for the Free State of Bavaria)
- GO Gemeindeordnung für den Freistaat Bayern (Local Government Law for the Free State of Bavaria)
- LkrO Landkreisordnung für den Freistaat Bayern (Administrative District Law for the Free State of Bavaria)

Jürgen Harbich
State Supervision of Local Government Authorities

POVZETEK

DRŽAVNI NADZOR NAD SAMOUPRAVNIMI LOKALNIMI SKUPNOSTMI

V demokratični državi imajo samoupravne lokalne skupnosti pristojnost odločati o izvirnih samoupravnih nalogah kot njihovem delokrogu neodvisno od centralne vlade. Samoupravne organe v demokratični državi zavezujejo načela pravne države in vladavina prava in pravičnosti, kot je navedeno v nemški ustavi. Naloga zakonsko določenih državnih organov je nadzor samoupravnih lokalnih skupnosti in skrb da le-ti ne prestopijo mej pravnega reda.

Ker Zakon o lokalni samoupravi v Zvezni Republiki Nemčiji ni v pristojnosti centralne vlade, temveč posameznih zveznih dežel, članek izhaja iz Zakona o lokalni upravi ene od 16 nemških (zveznih) dežel, tj. iz Zakona o lokalni samoupravi Svobodne države Bavarske. Vendar se ta načela ne razlikujejo od načel v drugih zveznih deželah.

Državni nadzor ni omejen na nadzor občin. Dolžnost nadzornih organov je tudi, da svetujejo občinam. Konec koncev, občine in država niso nasprotniki, temveč sodelujejo v skladu z osnovnim načelom na osnovi vzajemnega zaupanja.

Ker občine izvajajo funkcije delno iz izvirne pristojnosti in delno iz prenesene pristojnosti z države, se tudi državni nadzor nad njimi razlikuje glede na vrsto funkcij.

Država sme preverjati le akte lokalnih skupnosti, ki izhajajo iz njihovih izvirnih pristojnosti, da bi ugotovila, ali je lokalna skupnost ravnala v skladu z zakonom (nadzor nad zakonitostjo). Ko gre za prenesene obveznosti samoupravne lokalne skupnosti, je pravni položaj drugačen. Tukaj gre za državne naloge, zato je razumljiv interes države, da jih občina opravlja v skladu z »njenimi željami«. Drugače povedano, država pri tem ne preverja zgolj zakonitosti aktov, ki izhajajo iz posredovanih obveznosti, temveč tudi nadzira smotrnost izvajanja državnih nalog, torej, kako občine izvajajo prenesene pristojnosti po načelu primernosti.

V članku najprej razložimo, kateri državni organi izvajajo nadzor nad zakonitostjo in funkcijo, potem preidemo na vprašanje, ali je državni nadzor podvržen načelu zakonitosti ali primernosti.

Drugače povedano: ali mora nadzorni organ posredovati, če ugotovi, da je delovanje občine v nasprotju z zakonom, ali pa lahko ravna po lastni presoji?

Ali se lahko nadzorni organ vzdrži vmešavanja in le "opazuje", ko lokalna skupnost ravna v nasprotju z zakonom?

Do leta 1997 pravno stališče na Bavarskem – za razliko od drugih dežel Zvezne Republike Nemčije – ni bilo enotno: tako v primeru vseh lokalnih skupnosti, kot tudi najmanjše podeželske občine in glavnega deželnega mesta Münchna, so morali nadzorni organi posredovati, ko so odkrili nezakonite odloke ali odločbe občin.

V bavarski zakonodaji je nadzor okrožnih ali pokrajinskih oblasti vendarle vedno slonel na načelu smotrnosti, ki je nadzorne organe pooblastil, ne pa tudi obvezal, da posredujejo v primeru nezakonitosti. To je bilo popolnoma nedosledno. Od leta 1997 zakoniti nadzorni organi uporabljajo načelo primernosti v vseh deželah Zvezne Republike Nemčije.

Tudi bavarska zakonodaja sedaj zastopa stališče, da ni naloga države, da preganja vsako kršitev zakona na občinski ravni.

Sredstva, ki so na voljo državnim nadzornim organom, so zelo različna: segajo od pravice do obveščenosti, ugovora, izdaje smernic in odredbe o nadomestni izvršitvi do ustanovitve komisije, ki jo imenuje država, in - kot najbolj skrajno sredstvo - razpustitev občinskega sveta.

Kadar občine izvajajo postopke na področju prenesenih nalog, lahko tehnični nadzorni organi razširijo nadzor in poleg preverjanja zakonitosti vplivajo tudi na uveljavljanje diskrecije občin.

Vendar morajo tudi na tem področju državni nadzorni organi upoštevati določene omejitve. Organi državne oblasti morajo biti previdni pri izvajanju nadzora; občine - tako kot druge samoupravne lokalne skupnosti - imajo ustavno zagotovljeno legitimacijo na upravnem sodišču uveljavljati, da to oceni, ali so državni organi pri izvajanju nadzora ravnali v skladu z zakonom.

Lokalne oblasti v Nemčiji so dovolj samozavestne, da sprožijo pravni postopek proti državi, če se jim zdi, da so bile kršene njihove pravice.

Zato v praksi ne prihaja do samovoljnega izvajanja nadzora.

Zaradi tega lahko rečemo, da sistem državnega nadzora ne vpliva na idejo lokalne samouprave.

Strokovni članek

E-demokracija v Sloveniji: analiza strategij E-uprave

UDK: 004.738.5:35(497.4)(045)

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IZVLEČEK

Razvite zahodne demokracije v zadnjih letih e-demokraciji posvečajo vse več pozornosti, Slovenija pa v primerjavi z njimi vse bolj zaostaja. Eden izmed razlogov bi lahko bil tudi ta, da nimamo strateškega dokumenta, ki bi opredeljeval temeljna področja in mejnike prihodnjega razvoja e-demokracije pri nas. Ključen dokument na tem področju pri nas je tako Strategija e-uprave Republike Slovenije za obdobje 2006 do 2010. V prihodnosti pa bo to vlogo kot kaže igrala Strategija razvoja elektronskega poslovanja ter izmenjave podatkov iz uradnih evidenc. Namen članka je pokazati, da ne prva in ne druga ne izpolnjujeta niti najosnovnejših pogojev za uspešen razvoj e-demokracije in bo zato potrebna predstavitev specifičnega dokumenta oz. strategije.

Ključne besede: e-demokracija, e-uprava, e-participacija.

JEL : H11

1. Uvod

Informacijska družba oz. razvoj le-te v razvitem svetu ni več vprašanje. Informacijska revolucija, kot nekateri tudi imenujejo ta prehod, prinaša s seboj daljnosežne in globalne posledice. Alternative ni. Trenutno se informacijska družba izkazuje kot edina smer in pot v prihodnost. Sodobne informacijsko-komunikacijske tehnologije (IKT), ki vse bolj in bolj prodirajo v vsakdan vsakega izmed nas, so znanilke in obenem tudi glavne nosilke teh sprememb. Nove tehnologije pa ne spreminjajo samo delovanja družbe, temveč tudi njene osnovne strukture. Informacijska družba tako s seboj prinaša korenito družbeno in politično transformacijo.

Novo družbenopolitično realnost bi lahko predstavljala elektronska demokracija (v nadaljevanju e-demokracija). V e-demokraciji nekateri vidijo rešitev vseh sodobnih demokratičnih problemov, na določenih področjih pa bi lahko bila tudi odgovor na pomanjkljivosti družbenopolitičnih struktur v razvitih državah zahodnega sveta, ki jih je izpostavila trenutna gospodarska kriza. Konkretne družbenopolitične institucije, natančneje javna uprava, so se na pojav e-demokracije odzvale z informatizacijo in digitalizacijo lastnih delovnih procesov – z e-upravo. Ta se pogosto predstavlja kot najpomembnejši vidik elektronske demokracije. Kljub temu pa si nekatere bolj razvite države že dalj časa prizadevajo tudi za razvoj drugih področij e-demokracije. V skladu s tem so predstavile tudi nove strateške dokumente, ki naj bi usmerjali ta razvoj v prihodnosti. V Sloveniji takega dokumenta na področju e-demokracije žal še nimamo.

Osrednji dokument na področju e-demokracije v Sloveniji trenutno predstavlja Strategija e-uprave Republike Slovenije za obdobje 2006 do 2010 (SEP-2010). V prihodnosti pa bo to kot kaže Strategija razvoja elektronskega poslovanja ter izmenjave podatkov iz uradnih evidenc (SREP). Razvoj e-demokracije v Sloveniji bo tako očitno vsaj v bližnji prihodnosti popolnoma povezan z razvojem e-uprave. Kratki opredelitvi osnovnih pojmov zato v nadaljevanju prispevka sledita analiza Strategije e-uprave Republike Slovenije za obdobje 2006 do 2010 in komentar Strategije razvoja elektronskega poslovanja ter izmenjave podatkov iz uradnih evidenc z vidika e-demokracije. Namen prispevka je poudariti (ne)urejenost področja e-demokracije v Sloveniji in potrditi tezo, da Republika Slovenija za doseganje zastavljenih ciljev in ustrezen razvoj področja e-demokracije potrebuje specifičen dokument oz. strategijo, saj Strategija e-uprave Republike Slovenije za obdobje 2006 do 2010 in Strategija razvoja elektronskega poslovanja ter izmenjave podatkov iz uradnih evidenc ne izpolnjujeta niti najosnovnejših pogojev za uspešen razvoj e-demokracije.

2. E-demokracija

2.1 Opredelitev e-demokracije

Na začetku poglavja o elektronski demokraciji je najprej treba razčistiti uporabo različnih poimenovanj za različne vidike enotnega predmeta preučevanja. Uporabo sodobnih tehnologij v demokratičnih praksah obstoječih

političnih sistemov nekateri avtorji opredelijo s pojmom e-demokracija *(e-democracy)* (Oblak, 2002), spet drugi dajejo prednost pojmu digitalna demokracija *(digital democracy)* (Hacker & van Dijk, 2000) ali virtualna demokracija *(virtual democracy)* (Hagen, 1996). Poudariti je treba, da se med temi pojmovanji določene razlike pojavljajo le pri poudarkih avtorjev na določenem vidiku elektronske demokracije, v osnovi pa so njihova izhodišča zelo podobna. Pri uporabi pojmov teledemokracija *(teledemocracy),* kibernetska demokracija *(cyberdemocracy)* in elektronska demokratizacija *(electronic democratization)* pa moramo biti bolj pozorni, saj ti pojmi zaznamujejo različne koncepte na področju elektronske demokracije, zato jih je treba uporabljati v skladu s teoretičnimi izhodišči avtorjev[1]. Sam bom tudi v nadaljevanju uporabljal izraz e-demokracija, tako zaradi splošnosti in primernosti glede na obravnavano temo, kot tudi zaradi pozitivne konotacije tehnološkega in človeškega napredka predpone »e-« v vsakdanjem družbenem življenju.

Steven Clift o e-demokraciji pravi, da gre za vprašanje, kako lahko internet okrepi obstoječe demokratične procese in poveča možnosti za interakcijo posameznikov in skupin z odločevalci in le-tem omogoči, da dobijo več podatkov in informacij *(input)* o željah in zahtevah prvih. Za internet meni, da e-demokraciji omogoča nove možnosti komunikacije in participacije med državljani in državo (Clift v Riley, 2003, str. 11). Hacker in van Dijk pa digitalno demokracijo opredelita kot izvajanje demokratičnih praks brez omejitev prostora in časa ter katerih koli drugih fizičnih omejitev s pomočjo informacijsko-komunikacijskih tehnologij in računalniškega komuniciranja. Te nove demokratične prakse pomenijo dodatek oz. nadgradnjo že poznanih obstoječih analognih demokratičnih praks (Hacker & van Dijk, 2000).

Pomemben del e-demokracije predstavlja vidik demokratičnih institucij, procesov odločanja, predstavljanja interesov organiziranosti itn. Oblakova o tem zapiše: »Sodeč po dosedanjih izkušnjah elektronska demokracija ni projekt, ki bi tekmoval z obstoječimi demokratičnimi sistemi, temveč je kompatibilen z mnogimi različnimi in raznorodnimi obstoječimi institucijami, pri čemer je v praksi najpogosteje zastavljen tako, da bi popravil njihove očitne pomanjkljivosti.« (Oblak, 2002, str. 158). E-demokracija naj torej ne bi bila nova vrsta ali oblika demokracije, temveč naj bi bila zgolj prilagoditev že obstoječih form novim okoliščinam.

1 Za podrobnejšo opredelitev navedenih pojmov glej: Hagen, M. (1996). *A Road to Electronic Democracy?* Giessen: Justus-Liebig University of Giessen.

Sodobne tehnologije naj bi teorijam participativne demokracije končno omogočile, da svoje organizacijske in institucionalne ureditve prenesejo iz majhnih idealnotipskih skupnosti na velike kompleksne nacionalne države (Zittel v Gibson et al, 2004, str. 75). Andrej Lukšič ugotavlja, da predstavniška oblika demokracije kot koncept družbenega organiziranja, osnovanega na razumevanju politike v 18. in 19. st., ni več kos sodobnim družbenopolitičnim problemom. Kot rešitev izpostavi uporabo in izkoriščanje potencialov sodobnih tehnologij oz. uvajanje prvin e-demokracije. Kljub temu pa opozarja, da trenutni razvoj in uvajanje e-demokracije v zahodnih demokracijah favorizirata le določene vidike emancipatornih potencialov, drugi pa ostajajo neizkoriščeni (Lukšič & Oblak, 2003, str 4).

2.2 Elektronska politična participacija

E-participacija je eden izmed najpomembnejših vidikov e-demokracije. E-participacijo številni politični akterji vidijo kot rešitelja vedno bolj perečega problema demokratičnega deficita na vseh ravneh političnega sistema. Realnost e-participacije pa je nekoliko drugačna. E-participacija najverjetneje ne pomeni končne rešitve za zdajšnjo nizko raven politične participacije državljanov. Gotovo pa lahko e-participacija kot eden pomembnejših vidikov politične participacije pripomore k odpravljanju nekaterih ključnih problemov demokratičnega deficita v predstavniških demokracijah (Oblak, 2000, str. 121).

Elektronska participacija vključuje e-sodelovanje in e-soodločanje državljanov v procesu vladnega sprejemanja politik, v zakonodajnem postopku, pri nadzoru izvoljenih predstavnikov ter v postopku oblikovanja politik v političnih strankah in organizacijah civilne družbe (e-Envoy, 2002, str. 23). Organizacija za gospodarsko sodelovanje in razvoj (OECD) je razvila tristopenjski model vključevanja državljanov v politično odločanje oz. razvoja politične e-participacije (Coleman & Gotze, 2001, str. 13):

- *Informiranje*: Gre za enosmeren odnos med državo in državljani, v katerem ti aktivno in pasivno pridobivajo informacije, ki so osnova in pogoj za politično participacijo, primer so uradne spletne strani.
- *Posvetovanje*: Gre za dvosmeren odnos med državo in državljani, v katerem država pridobiva povratne informacije o mnenju državljanov. Država opredeli problematiko, o kateri želi izvedeti mnenja državljanov, primer so spletni posveti o zakonskih predlogih.

- *Aktivna participacija*: Gre za partnerski odnos med državo in državljanom, v katerem državljan aktivno sodeluje pri oblikovanju javnih politik in odločanju o njih. Čeprav končno odločitev še vedno sprejme država, je državljan v tem odnosu prepoznan kot pomemben akter na področju pobude in oblikovanja javnih politik ter tudi odločanja o njih.

Spletni portal E-demokracija predstavlja naslednjo klasifikacijo orodij e-participacije (Kvas, 2005):

- *E-dostop* je najosnovnejše orodje e-participacije in predstavlja pogoj za e-demokracijo.
- *E-posvetovanje/e-anketa* je orodje preverjanja javnega mnenja, v katerem lahko državljan aktivno izraža svoje mnenje, vendar v omejenem obsegu.
- *E-peticija* je orodje, s katerim lahko državljani postanejo pobudniki političnega delovanja.
- *E-forum* omogoča oblikovanje in izmenjavo političnih in vseh drugih stališč državljanov.
- *E-konzultacija* omogoča vključevanje različnih organiziranih ali neorganiziranih skupin in posameznikov, ki imajo možnost komentiranja in oblikovanja političnih odločitev.
- *E-referendum* omogoča neposredno vključevanje državljanov v odločevalski proces.
- *E-glasovanje* je digitalizacija volilnega procesa, v katerem lahko državljan s pomočjo sodobnih tehnologij voli svoje politične predstavnike.
- *Spletni dnevnik* je orodje, ki državljanom nudi možnost individualiziranega izražanja političnih stališč in komentiranja le-teh.

2.3 E-uprava in e-demokracija

Vse prepogosto prihaja v vsakdanjih pogovorih, medijih, pa tudi v strokovnih člankih do malomarne in pogosto celo zavajajoče uporabe pojmov e-uprava in e-demokracija. Kot da razlikovanje med tradicionalno demokracijo in javno upravo ne bi bilo dovolj jasno, da bi to lahko prenesli tudi na raven informacijske družbe. Ponovno poglejmo opredelitvi demokracije in javne uprave. Po Slovarju

slovenskega knjižnega jezika na spletu (Slovar slovenskega knjižnega jezika, 2000) je:

- Demokracija: »politična ureditev z vladavino večine, ki varuje osebne in politične pravice vseh državljanov«.
- Javna uprava: »odločanje o javnih zadevah; sistem organov, ki odločajo o javnih zadevah«.

Kot lahko vidimo, v primeru demokracije govorimo o tipu politične ureditve, v primeru javne uprave pa o upravnem sistemu, ki podpira določen način vladanja.

Pri vprašanju e-demokracije in e-uprave je stvar bolj ali manj enaka. Predpona »e-« nakazuje le določeno prevladujočo obliko ali medij delovanja demokracije in javne uprave. E-demokracijo in e-upravo lahko tako opredelimo kot:

- E-demokracija: »pomeni vsak demokratični politični sistem, v katerem so računalniki in računalniška omrežja uporabljeni za izvajanje ključnih funkcij demokratičnega procesa: informiranje in komuniciranje, artikulacija in združevanje interesov ter politično odločanje (tako posvetovanje kot glasovanje)« (Hagen, 1996, str. 64).
- E-uprava: »gre za intenzivno uvajanje interneta in elektronskega poslovanja v javno upravo, med upravnimi organi v upravi, navzven z občani, podjetji in drugimi organizacijami« (Silič v Cimolini, 2003, str. 17).

E-uprava je sicer pomemben element e-demokracije in na tem področju vsekakor pomeni tudi pomembno gonilno silo, nikakor pa teh dveh pojmov ne moremo uporabljati kot sopomenki (Clift, 2004). Gre za različna teoretična in praktična koncepta.

3. Strategija e-uprave Republike Slovenije za obdobje 2006 do 2010

3.1 Predstavitev

Vlada RS je na seji 20. aprila 2006 sprejela Strategijo e-uprave Republike Slovenije za obdobje 2006 do 2010 (SEP-2010). Namen strategije je določitev

načina in ciljev za nadaljnje uresničevanje dejavnosti e-uprave. Strategija predstavlja vizijo e-uprave, vplive drugih domačih in tujih strategij ter programov na tem področju, oceno stanja za preteklo obdobje, strateške usmeritve in cilje do leta 2010 ter pogoje za izvedbo zastavljene strategije. Poudarek je na zadovoljstvu uporabnikov, racionalizaciji poslovanja uprave in sodobnih elektronskih storitvah, ki bodo omogočile večjo kakovost življenja in lažje poslovanje z organi javne uprave (Ministrstvo za javno upravo RS, 2006).

Nastanek SEP-2010 sega v marec 2005. Takrat je projektna skupina na Ministrstvu za javno upravo RS začela snovati vizije in strateške cilje e-uprave ter nadaljevala pripravo drugih ključnih vsebin strategije. Do konca leta 2005 je bil oblikovan osnutek. 15. februarja 2006 je bil predlog strategije objavljen na spletnih straneh portala E-uprava ter s tem predstavljen širši javnosti. Po javni obravnavi je sledilo medresorsko usklajevanje strategije in oblikovanje končnega dokumenta (Ministrstvo za javno upravo RS, 2006).

3.2 Potek analize

Analitični aparat oz. kriterije analize sem razdelil na dva sklopa: akterji in uvajanje SEP-2010. Percepcija akterjev, njihova informiranost in participacija so namreč najpomembnejši vidiki e-demokracije (Hacker & van Dijk, 2000). Z vidika izvajanja javnih politik pa je gotovo uvajanje tista faza, ki jo vsi vključeni najbolj neposredno občutijo. Kriteriji analize pokrivajo tri od štirih ključnih področij, ki jih poudarjajo evalvacije pobud na področju e-demokracije, to so: obseg participacije, vključenost v odločevalski proces in poglobljenost razprave (Delakorda, 2007). četrto področje – tehnološki vidik, sem izpustil, ker je SEP-2010 preveč splošen dokument, da bi omenjal specifične tehnološke rešitve.

Na področju akterjev je analiza razdeljena na dva sklopa. V prvem se osredotoča na vprašanje, kako SEP-2010 naslavlja ključne akterje, kot državljane ali izključno kot uporabnike storitev – stranke, in na vprašanje informiranosti teh akterjev oz. ali strategija opredeljuje kakršne koli dodatne ali izredne aktivnost na področju informiranja državljanov o predvidenih spremembah v demokratičnih političnih praksah. Drugi sklop analize pa se osredotoča na participacijo akterjev in podrobneje odgovarja na vprašanja, kdo so subjekti participacije, kaj jim strategija prinaša ter kdaj in kako prihaja do njihovega vključevanja.

Na področju uvajanja SEP-2010 je analiza razdeljena v tri sklope in sicer na vprašanja orodij e-demokracije, institucionalnih sprememb in evalvacije strategije. Pri vprašanju orodij e-demokracije je pozornost posvečena predvsem tipom orodij, ki

jih strategija omenja. Na področju institucionalnih sprememb se analiza osredotoča na vprašanje, ali strategija te spremembe sploh uvaja. Pri vprašanju evalvacije SEP-2010 pa se analiza osredotoča na idejo vzpostavitve krovnega organa, ki bi nadziral izvajanje strategije, in doseganje zastavljenih ciljev ter nadaljevanje dela v prihodnosti.

3.3 Predstavitev rezultatov

3.3.1 Akterji

Razlikovanje med državljani in strankami je, kadar govorimo o razvoju e-uprave in še posebej e-demokracije, zelo pomembno, saj nakazuje neposredne odnose med udeleženci komunikacijskih procesov. Ko govorimo o strankah, gre za razmerje ponudnik storitev – stranka, ki pa ga nikakor ne moremo enačiti s sodobnim razmerjem med državljanom in oblastjo. V prvem primeru bi tako lahko govorili o tržnem modelu političnega komuniciranja, za katerega je značilen bolj ali manj enosmeren pretok informacij od centra proti uporabnikom, v drugem primeru pa o internetnem modelu komuniciranja, za katerega je značilna odprtost in dvosmernost pretoka informacij ter konzultacij (Hacker & van Dijk, 2000, str. 49). V Strategiji e-uprave Republike Slovenije za obdobje 2006 do 2010 prevladuje uporaba pojma državljani nad uporabo pojma stranke, kar z gotovostjo širi možnosti komunikacije.

Informiranost državljanov o novih storitvah in možnostih, ki jih prinašata e-uprava in e-demokracija, je zelo pomembna za nadaljnjo uporabo teh storitev. Vzpostavljanje storitev, ki jih državljani zaradi pomanjkljive informiranosti ne bi uporabljali, je nesmiselno. Zato mora razvoju novih storitev slediti njihovo ustrezno oglaševanje in informiranje državljanov o novih možnostih. Promocijo storitev in tehnologij ter informiranje državljanov SEP-2010 obravnava precej splošno. Del bremena tako prenaša na ponudnike tehnologij in storitev, neposredno pa opredeli le nove programe usposabljanja uporabnikov e-storitev, ki naj bi vključevali organizacijo tečajev in javnih predstavitev novosti.

Akcijski načrt razvoja e-uprave v Evropski uniji i2010, Načrt za inkluzivno e-upravo, *(A roadmap for Inclusive eGovernment),* vključenosti marginaliziranih in družbeno deprivilegiranih skupin v e-upravo namenja posebno pozornost. Enake možnosti naj bi bile prednostna naloga prihodnjega razvoja e-uprave, ki naj bi bila v prihodnosti sestavni del pravičnejše informacijske družbe (Evropska komisija, 2006, str. 8). SEP-2010 v tem pogledu akterje dojema v prvi vrsti kot

posameznike, uporabnike e-storitev. V skladu s tem jih nato deli v tri skupine: državljane, pravne osebe oz. poslovne subjekte in zaposlene v javni upravi. Strategija le na treh mestih bežno omeni deprivilegirane in marginalizirane posameznike in družbene skupine, pa še to le na deklarativni ravni; ko navaja strateške cilje, se zavzame za zmanjševanje digitalnega razkoraka v prihodnosti in prilagoditev spletnega portala E-uprava sodobnim standardom dostopa. V povezavi z digitalnim razkorakom se v teoriji in praksi pogosto pojavlja tudi vprašanje dostopa do tehnologij oz. ustrezne infrastrukture in potrebnega znanja. Internet in z njim povezane računalniške tehnologije so namreč v večini primerov še vedno, kljub eksponentni rasti v zadnjih letih, omejene na družbene, gospodarske in izobrazbene elite (Lock v Hague & Loader, 1999, str. 215). V skladu s temi ugotovitvami je pri razvoju e-uprave in e-demokracije v prihodnosti tema področjema treba posvetiti posebno pozornost. SEP-2010 se zavzema za nadaljnji infrastrukturni razvoj informacijske družbe z različnimi pristopi, kot so npr. javne internetne točke, ter za usposabljanje uporabnikov e-storitev in vzpostavitev kontaktnega centra za pomoč uporabnikom.

Ted Becker ugotavlja, da bi morali biti državljani v resničnih demokracijah, še posebej pa v njihovih elektronskih variacijah, vključeni v vseh fazah demokratičnega procesa oblikovanja in izvajanja določene javne politike. Po Beckerju so te faze: 1. opredelitev problema oz. oblikovanje dnevnega reda, 2. oblikovanje predloga, 3. sprejem odločitve in 4. uvajanje politike. Možnost sodelovanja v celotnem procesu sprejemanja in izvajanja javnih politik je namreč za državljane demokratični institut samoodločanja (Becker v Hagen, 1996). Strategija e-uprave Republike Slovenije za obdobje 2006 do 2010 v določeni meri predpostavlja participacijo državljanov zgolj v prvih dveh fazah oblikovanja in izvajanja javnih politik. V teh dveh fazah pa je vloga državljanov omejena zgolj na informiranje in posvetovanje.

3.3.2 Uvajanje

E-orodja politične participacije so temelj e-participacije in posredno e-demokracije. Razvitost področja elektronske politične participacije kaže na razvitost področja e-demokracije. Največkrat se v teoriji pojavlja delitev na informacijska, komunikacijska in odločevalska orodja. V prvo skupino uvrščamo e-dostop in spletne oglasne deske; v drugo skupino uvrščamo e-posvetovanja, e-ankete, e-peticije, e-forume, politične spletne dnevnike in spletne klepetalnice; v tretjo skupino pa uvrščamo e-glasovanje oz. e-volitve, e-referendum in e-seje vlade (Delakorda, 2006). Strategija e-uprave Republike Slovenije za obdobje

2006 do 2010 našteva informacijska in komunikacijska orodja z namenom učinkovitejšega posredovanja informacij od državljanov k državi ter omenja možne informacijske rešitve v prihodnosti, med katerimi so se znašla tako informacijska in komunikacijska kot tudi odločevalska orodja.

Rachel Gibson ugotavlja, da bodo eksperimentiranje, inovacije in razvoj na področju e-demokracije v večini primerov neogibno potekali znotraj že določenih institucionalnih ureditev in procesov. Charles Raab in Christine Bellamey te ideje razvijata naprej, ko ugotavljata, da bodo te institucije zaradi njihove naraščajoče kompleksnosti prisiljene prilagoditi svoje delo novim okoliščinam, v katerih bodo pomembno vlogo igrale sodobne informacijsko-komunikacijske tehnologije (Gibson et al, 2004, str. 1). SEP-2010 z vidika e-demokracije dejansko ne predvideva nikakršnih institucionalnih ali delovno-procesnih sprememb, ki bi presegale uvajanje določenih sodobnih tehnologij (digitalna potrdila), s katerimi bi bilo v prihodnosti mogoče vzpostaviti specifične mehanizme e-demokracije; česar pa strategija ne predvideva. Javna politika mora že v svoji zasnovi imeti opredeljene kontrolne mehanizme, ki bodo pozneje ključ do vedenja, ali je bila določena javna politika uspešna ali ne. Ti kontrolni mehanizmi v različnih pojavnih oblikah pa v določeni meri tudi zagotavljajo nadaljevanje javne politike na določenem področju oz. ustrezne spremembe le-te, če se izkaže za neuspešno (Hogwood & Gunn 1984, str. 3). Strategija e-uprave Republike Slovenije za obdobje 2006 do 2010 na področju monitoringa in evalvacije nadaljuje delo Strategije e-poslovanja v javni upravi Republike Slovenije za obdobje 2001 do 2004. V poglavju Izvajanje strategije e-uprave v različnih podpoglavjih temeljito opredeli in razčleni sistem delovanja, nadzora in ukrepanja ter razdeli pristojnosti in odgovornosti za poročanje v povezavi z izvajanjem SEP-2010.

4. Strategija razvoja elektronskega poslovanja ter izmenjave podatkov iz uradnih evidenc

4.1 Predstavitev

Vlada Republike Slovenije je na svoji 34. redni seji 2. julija 2009 obravnavala in sprejela Strategijo razvoja elektronskega poslovanja ter izmenjave podatkov iz uradnih evidenc (SREP). Namen nove strategije na področju e-uprave

je »določitev okvira in ciljev za nadaljnje uresničevanje novih in že zastavljenih dejavnosti razvoja elektronskega poslovanja v javni upravi« (SREP, 2009, str. 8). Želeli ali ne, so z novo strategijo razvoja e-uprave odločevalci ponovno neposredno posegli v razvoj e-demokracije v Sloveniji. Zaradi odsotnosti specifičnega dokumenta, ki bi neposredno usmerjal razvoj e-demokracije v Sloveniji, se le-ta namreč posredno oblikuje in določa z dokumenti, ki so namenjeni razvoju e-demokraciji sorodnih področij najpogosteje e-uprave.

Prvi osnutek Strategije razvoja elektronskega poslovanja ter izmenjave podatkov iz uradnih evidenc je projektna skupina na Ministrstvu za javno upravo izdelala na začetku februarja 2009. Po določenih popravkih in prilagoditvah osnutka je z obravnavo le-tega konec meseca februarja pričela delovna skupina za izdelavo Strategije razvoja informacijske tehnologije in elektronskih storitev (SRITES). Ta je do 24. marca 2009 pripravila Delovno različico 10 SREP, ki je bila 22. aprila 2009 podana v javno razpravo širši javnosti na spletnem portalu E-uprava.

4.2 Komentar

E-demokracija je v Strategiji razvoja elektronskega poslovanja ter izmenjave podatkov iz uradnih evidenc omenjena le štirikrat. Nikoli kot osrednji pojem. Elektronske demokracije tako SREP ne prepoznava kot bistveni del razvoja informacijske družbe v Sloveniji oz. kot enega izmed temeljnih ciljev le-te. Kljub temu, da strategija izhaja iz domačih in tujih dokumentov (Strategija e-uprave Republike Slovenije za obdobje 2006 do 2010, Strategija razvoja informacijske družbe v Sloveniji, i2010 Strategija informacijske družbe EU idr.), katerih cilj so tudi določene spremembe na družbenopolitičnem področju, SREP le-teh ne zasleduje. E-demokracija kot eden osrednjih pojmov informacijske družbe tako ostaja izven konteksta strategije razvoja elektronskega poslovanja ter izmenjave podatkov iz uradnih evidenc.

Glede na vsebinsko odsotnost e-demokracije v SREP, v primerjavi s SEP-2010, je težko oceniti vpliv le-te na prihodnji razvoj e-demokracije v Sloveniji. Analitični aparat, zastavljen za analizo Strategije e-uprave Republike Slovenije za obdobje 2006 do 2010, je za analizo Strategije razvoja elektronskega poslovanja ter izmenjave podatkov iz uradnih evidenc neustrezen. Kljub temu, da SREP namenja precejšnjo pozornost vključenosti državljanov, deprivilegiranim skupinam, usposabljanju in izobraževanju posameznikov, premagovanju

digitalnega razkoraka ipd, pa se to ne nanaša na razvoj e-demokracije temveč izključno na razvoj e-uprave.

Po eni strani je razumljivo, da se relativno tehnokratski dokument na področju razvoja e-uprave neposredno ne ukvarja s splošnejšimi problemi e-demokracije. Po drugi strani pa bi pričakovali, glede na odsotnost specifičnejših dokumentov na tem področju, da bi SREP določeno pozornost namenil tudi razvoju tega področja. E-demokracije tako npr. ne najdemo niti v podpoglavju priloge, ki je namenjeno razvoju informacijske družbe. S stališča razvoja resnične informacijske družbe in e-demokracije, kot enega njenih osrednjih elementov, tako SREP z gotovostjo predstavlja korak nazaj od že zastavljenih ciljev v SEP-2010.

5. Sklep

Čeprav sta Strategija e-uprave Republike Slovenije za obdobje 2006 do 2010 in Strategija razvoja elektronskega poslovanja ter izmenjave podatkov iz uradnih evidenc predvsem strateška dokumenta na področju razvoja e-uprave, zaradi odsotnosti kakršnega koli drugega specifičnejšega dokumenta na tem področju neogibno vplivata tudi na prihodnji razvoj e-demokracije v Sloveniji. V SEP-2010 v poglavju Usmeritve in cilji do leta 2010 celo piše: »Država Slovenija je (leta 2010) med 10-imi najbolj razvitimi državami na področju e-demokracije na svetu« (SEP-2010, 2006, str. 16). SREP po drugi strani e-demokracijo komajda omeni.

Indeks e-participacije v poročilu Združenih narodov o splošnem stanju e-uprave v 192 državah za leto 2007 Slovenijo uvršča na 60. mesto, enako poročilo za leto 2005 jo je uvrstilo na 46. mesto[2]. Razvoj e-demokracije v Sloveniji je v zadnjih letih očitno zaostal za razvojem v drugih državah po svetu. Čeprav Slovenijo indeksi, ki merijo izključno razvitost e-uprave, uvrščajo razmeroma visoko, pa Slovenija na teh in podobnih lestvicah izrazito pade, ko gre za merjenje e-participacije kot enega izmed ključnih vidikov e-demokracije (Lukšič & Delakorda, 2006, str. 2). Slovenija počasi zaostaja tudi po splošni razvitosti na področju informacijskih in komunikacijskih tehnologij. Po raziskavi

2 United Nations E-government Knowledge Base (2007). *e-Government Readiness report 2007.* New York: United Nations E-government Knowledge Base.

Mednarodnega telekomunikacijskega združenja, objavljeni letos spomladi, je Slovenija z 22. padla na 28 mesto.[3] Cilje SEP-2010 bo tako zelo težko doseči.

Analiza Strategije e-uprave Republike Slovenije za obdobje 2006 do 2010 nam pokaže, da strategija ne predvideva dodatnih aktivnosti na področju informiranja državljanov o možnostih e-demokracije; se ne posveča marginaliziranim in deprivilegiranim posameznikom in skupinam; ne konkretizira pobud na področju zmanjševanja digitalnega razkoraka (dostop, infrastruktura, znanje); predpostavlja sodelovanje državljanov le v prvih dveh fazah oblikovanja in izvajanja javnih politik (oblikovanje dnevnega reda in oblikovanje predloga); participacijo državljanov omejuje na informiranje in posvetovanje; se le bežno dotakne orodij e-demokracije; novim institucionalnim in procesnim pristopom in oblikam e-demokracije pa ne posveča nobene pozornosti. SEP-2010 tako ne izpolnjuje večine v analizi zastavljenih kriterijev na področju e-demokracije.

Strategija razvoja elektronskega poslovanja ter izmenjave podatkov iz uradnih evidenc gre v kontekstu e-demokracije še korak nazaj. E-demokracije, kot pomembnega, če ne kar osrednjega dela razvoja informacijske družbe, v strategiji praktično ne najdemo. Kljub določenemu napredku pri premagovanju digitalnega razkoraka, e-demokraciji SREP ne posveča nobene pozornosti. S precejšnjo gotovostjo lahko tako zatrdimo, da Republika Slovenija za doseganje zastavljenih ciljev in ustrezen razvoj področja e-demokracije potrebuje specifičen dokument oz. strategijo, saj Strategija e-uprave Republike Slovenije za obdobje 2006 do 2010 in Strategija razvoja elektronskega poslovanja ter izmenjave podatkov iz uradnih evidenc ne izpolnjujeta niti najosnovnejših pogojev za uspešen razvoj e-demokracije.

Ker e-demokracija gotovo je ena izmed poti v prihodnost in ker jo v številnih pogledih omenjajo kot rešitelja težav, s katerimi se spopadajo sodobne razvite demokracije, bo v Sloveniji na tem področju potrebnega še veliko dela (Lukšič & Oblak, 2003). Ustrezen začetek bi pomenil strateški dokument, ki bi razvoj e-demokracije v Sloveniji s pozicije legalističnega modela demokracije, kjer informacijsko-komunikacijske tehnologije rešujejo zgolj vprašanje informiranosti, premaknil v smer participativnega modela demokracije, ki bi informiranost državljanov skušal nadgraditi s katerim od orodij, ki bolj spodbujajo participacijo državljanov in deliberacijo v demokratičnih procesih (Lukšič & Delakorda 2006, str. 4). Taka podlaga bi nato omogočala nadaljnji razvoj odločevalskih orodij e-demokracije in resnično ter vsebinsko participacijo

3 International Telecommunication Union (2009). *The ICT Development Index*. Geneva: International Telecommunication Union.

državljanov v odločevalskih procesih, kar je nenazadnje najverjetneje tudi bistvo same e-demokracije.

Andraž Bobovnik je svetovalec za odnose z javnostmi v kabinetu ministra za delo, družino in socialne zadeve. S sodobnimi informacijsko-komunikacijskimi tehnologijami in njihovim pomenom za razvoj družbe se je soočil med študijem politologije na Fakulteti za družbene vede Univerze v Ljubljani. Teoretične prispevke je dopolnjeval s praktičnim delom pri informacijskih projektih, kot npr. državni portal E-uprava, upravljanje spletnih vsebin in s povezovanjem tradicionalnih veščin odnosov z javnostmi s sodobnimi IKT. Trenutno s študijem nadaljuje na Pravni fakulteti Univerze v Mariboru.

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SUMMARY

E- DEMOCRACY IN SLOVENIA: ANALYSIS OF E-ADMINISTRATION STRATEGIES

The information society and its development is no longer an issue in the modern world. The information revolution, as some call this transition, brings with it long reaching and global consequences. There is no alternative. At the moment, the information society seems to be the only direction and a way into the future. Modern information communication technologies, which are increasingly present in our every day existence, are the messengers as well as the carriers of those changes. Besides changing the ways in which the society functions, these technologies are also changing its basic structures. Thus the information society brings with it a radical social and political transformation.

The new socio-political reality might be represented by electronic democracy (e-democracy). Some see it as the solution of all the modern democratic problems and in some areas it might also represent an answer to the shortcomings of socio-political structures in developed western countries, as exposed by the current economical crisis.

The Slovenian eAdministration Strategy (SEP-2010) is currently the central document on e-democracy in Slovenia. In the future, the Strategy on IT and electronic services development and connection of official records (SREP), will probably take its place. At least for the near future, the development of e-democracy in Slovenia will be linked to the development of e-administration. The purpose of this article is to highlight the position of e-democracy in Slovenia using an analysis of SEP-2010 and commentaries on SREP. It will also try to confirm the thesis that the Republic of Slovenia needs a specific document and strategy in order to reach the set goals in the area of e-democracy and ensure its further development.

Steven Clift describes e-democracy as the way the internet can reinforce the existing democratic processes and enhance the possibilities of interaction between individuals/groups and the people in charge of decision making, which enables the latter to gain more input and insight into the wishes and demands of the former. He feels that the internet offers to the e-democracy new possibilities of communication and participation between the citizens and the state. Another important part of e-democracy

is also the aspect of democratic institutions, decision making processes, the representation of interests in organisation etc. Tanja Oblak writes on the subject:" Judging from previous experience e-democracy is not a project which competes with the existing democratic systems but rather it is compatible with several different existing institutions and in practice it is usually conceived in a way that compensates for their obvious shortcomings. E-democracy does not represent a new form of democracy but the adaptation of existing forms to new circumstances".

On April 20th 2006, the Slovene government accepted the Slovenian e-Administration Strategy, with the objective to identify the means and the goals for further implementation of e-administration activities. The Strategy represents the vision of e-administration, the influences of other domestic and foreign strategies and programmes in this field, the condition assessment for the previous period, the strategic outlines and goals for 2010 and the conditions for implementing the set strategies. The emphasis is on user satisfaction, the rationalisation of administrative practices and on modern electronic services which will enable a higher quality of living and easier communication with the public administration bodies.

The analytical criteria have been divided into two sets: the actors and the implementation of SEP-2010. The area of actors has been further divided into two parts. The first part focuses on the positioning of the key actors in SEP-2010 and the question of how informed they are, while the second part focuses on their participation. In the area of participation the analysis is divided into three parts: the instruments of e-democracy, the institutional changes and the evaluation of the strategy.

The analysis of SEP-2010 shows that the strategy employs key actors as citizens and does not make provisions for additional activities regarding the information available to them; does not deal with marginalised and underprivileged individuals and groups; does not take specific initiatives in the field of minimising the digital divide; presupposes citizen participation only in the first two phases of developing and implementing public policies; limits citizen participation to informing and consulting; mentions only in passing the instruments of e-democracy; pays no attention to new institutional and process approaches and forms of e-democracy.

In its 34th regular session on July 2nd 2009, the Government of the Republic of Slovenia discussed and approved the Strategy on IT and electronic services development and connection of official records. The purpose of the new strategy in the field of e-administration is the definition of

the framework and the goals for further implementation of new and already set activities of the development of electronic services in public administration.

In SREP E-democracy is only mentioned four times and never as a central notion. It is not recognised in SREP as an integral part of the development of the information society in Slovenia or as one of its primary goals. Despite the fact that the strategy is based on domestic and foreign documents the goal of which is also change in the socio-political arena, SREP seems not to embrace that goal. E-democracy as one of the central notions of the information society is thus left out of the context of the Strategy on IT and electronic services development and connection of official records.

The Slovenian e-Administration Strategy and the Strategy on IT and electronic services development and connection of official records are the first and foremost strategic documents covering the field of e-administration. However, the absence of any other more specific document in this field suggests that they will have an unquestionable effect on the further development of e-democracy in Slovenia. SEP-2010, in the chapter Outlines and goals until 2010, even states: »Slovenia (in 2010) is one of the most developed countries in the world regarding e-democracy«.

The index of e-participation in the UN report on the general state of e-administration in 192 countries for the year 2007 ranks Slovenia in the 60th place, the same report for the year 2005 ranks it as 46th. The development of e-democracy in Slovenia seems to have been slowed down compared to other countries. And even though the indexes which show exclusively the development of e-administration tend to rank Slovenia relatively high, the ranking falls considerably when e-participation is considered as one of the key elements of e-democracy.

The analysis of SEP-2010 and the commentary on SREP clearly show that both strategies fail to fulfil the basic conditions for the successful development of e-democracy in Slovenia. We can therefore maintain with considerable certainty that the Republic of Slovenia needs a specific document and strategy in order to reach the set goals and ensure the proper development of e-democracy. A suitable start would be a strategic document which would shift the development of e-democracy in Slovenia from the position of a legalistic model of democracy where the information communication technologies only address the issue of providing

information, towards the participative model of democracy which would upgrade providing information to citizens with one of the tools which encourage the participation of citizens as well as deliberation in the democratic processes. Such a basis would enable further development of decision making tools of e-democracy as well as a true participation of citizens in the decision making processes, which after all represents the very essence of e-democracy.

Strokovni članek

Ekonomske imigracije v Republiko Slovenijo

UDK: 331.556.44(497.4)(045)

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IZVLEČEK

Republika Slovenija se je z osamosvojitvijo znašla v novem položaju v sistemu meddržavnih selitev in urejanja tokov delovnih migracij. Med prvimi zakoni po osamosvojitvi je bil sprejet Zakon o zaposlovanju tujcev (Ur.l. RS, št. 33/92). Na podlagi resolucije in v skladu z Državnim programom Republike Slovenije za prevzem pravnega reda Evropske unije do konca 2002 je Republika Slovenija sprejela nov sistemski zakon o zaposlovanju in delu tujcev (Ur. l. RS, št. 66/00), ki je kot glavni instrument za regulacijo priliva tuje delovne sile uvedel kvotni sistem (prag je 5% aktivnega prebivalstva). V osmih letih izvajanja Zakona o zaposlovanju in delu tujcev so se pokazale nejasnosti in pomanjkljivosti zakonske ureditve, ki so omogočale tudi zlorabo zakona, zato so bile v letih 2005 in 2007 sprejete spremembe in dopolnitve ZZDT.

Ključne besede: Republika Slovenija, Evropska unija, migracijski sistem, delovne migracije, zaposlovanje tujcev, prosto gibanje delavcev.

JEL: J61, J48

1. Uvod

Migracije so v svetu prisotne že od nekdaj, ko so države odpirale ali zapirale svoje meje za delavce migrante, glede na stanje ekonomije oziroma potreb trga dela. Neurejen položaj delavcev migrantov in njihova odvisnost od delodajalcev oziroma od države gostiteljice sta vodila k diskriminaciji tujih delavcev migrantov glede njihovega vstopa na ozemlje države gostiteljice in dela.

Na ravni Evropske unije načelo prostega gibanja delavcev državam članicam preprečuje, da bi neposredno ali posredno razlikovale med delavci EU

in njihovimi družinami na podlagi državljanstva v zadevah, povezanih z zaposlovanjem. Zagotavlja tudi enako obravnavo glede nastanitev ter davčnih in socialnih ugodnosti. Prosto gibanje delavcev je bil tudi eden od prvih ciljev, za uresničitev katerega so si prizadevali utemeljitelji evropskih integracij. Že v Rimski pogodbi iz leta 1957 je bil princip prostega gibanja delavcev eden od štirih temeljev prostega trga: prost pretok blaga, storitev, kapitala in oseb.

Prosto gibanje delavcev pa ni bilo uveljavljeno čez noč. Vlade držav članice EU so se bale takojšnjega odpiranja nacionalnih trgov dela za delavce migrante, tudi zaradi ohranjanja socialnega miru. Korak za korakom so načelo prostega gibanja delavcev dokončno uresničili leta 1968 s sprejetjem Uredbe Sveta 1612/68/EGS o svobodnem gibanju delavcev znotraj skupnosti.

Strah pred takojšnjim odpiranjem nacionalnih trgov dela držav članic je bil prisoten pri vseh nadaljnjih širitvah EU, še posebej pri vstopu novih manj razvitih držav (Grčija, Španija in Portugalska). Takrat so države članice uveljavile 5-letno prehodno obdobje, ki pa ni veljalo pri vključevanju bogatih držav (Anglija, Irska, Danska, Švedska in Avstrija). V času izvajanja prehodnega obdobja so države članice lahko ohranile omejitve glede prostega pretoka državljanov novih držav članic, niso pa smele omejitev zaostrovati.

Princip prostega gibanja delavcev je bil dejansko uveljavljen s sekundarno zakonodajo in sicer z Uredbo 1612/68/EGS o svobodnem gibanju delavcev znotraj Skupnosti in Uredbo1408/71/EGS o uporabi sistemov socialne varnosti za zaposlene osebe, samozaposlene osebe in njihove družinske člane, ki se gibljejo v Skupnosti. Direktiva 68/360/EGS pa je uzakonila pravico zapustiti ozemlje svoje države, pravico vstopiti v drugo državo članico in pravico bivanja v drugi državi članici na podlagi »dovoljenja za prebivanje za državljana države članice«. Določbe navedenih predpisov morajo spoštovati vse države članice. Noben akt državnega parlamenta jih ne more preklicati. Pri tem je treba poudariti, da se zakonodaja EU na področju prostega gibanja oseb nenehno spreminja in nadgrajuje. Sedaj veljavna Direktiva 2004/38/ES Evropskega parlamenta in Sveta z dne 29. aprila 2004 o pravici državljanov Unije in njihovih družinskih članov do prostega gibanja in prebivanja na ozemlju držav članic, je spremenila Uredbo (EGS) št. 1612/68 in razveljavila Direktive: 64/221/ EGS, 68/360/EGS, 72/194/EGS, 73/148/EGS,75/34/EGS, 75/35/EGS, 90/364/EGS, 90/365/EGS in 93/96/EEC. Direktiva velja tudi za države članice Evropskega gospodarskega prostora.

Namen članka je predstaviti ekonomske imigracije v Slovenijo po osamosvojitvi in predstaviti spremembe po polnopravnem članstvu Republike

Slovenije v Evropski uniji. V drugem poglavju so predstavljene razmere po osamosvojitvi in razvoj zakonodaje do vstopa Republike Slovenije v Evropsko unijo. V tretjem poglavju je predstavljena zakonodaja EU na področju prostega pretoka oseb in ureditev v Pristopni pogodbi, predvsem prehodno obdobje in pravice slovenskih državljanov do dostopa na trg dela starih in novih držav članic in obratno. V četrtem poglavju so opisane spremembe Zakona o zaposlovanju in delu tujcev (ZZDT) na katere je vplivala zakonodaja EU in razmere na trgu dela, predvsem visoka gospodarska rast v letih od 2006 do leta 2008. V zaključku so nakazani nadaljnji potrebni ukrepi Slovenije na področju ekonomskih imigracij.

2. Pregled ekonomskih imigracij v samostojni Sloveniji

2.1 Od osamosvojitve do leta 2000

Republika Slovenija se je z osamosvojitvijo znašla v novem položaju v sistemu meddržavnih selitev. Priseljevanje v Republiko Slovenijo pred razpadom SFR Jugoslavije je v glavnem potekalo v kontekstu notranjih jugoslovanskih selitev glede na obstoječe gospodarske potrebe. V obdobju tranzicije so se spremenile potrebe na trgu dela in struktura domačih iskalcev zaposlitve. Povečalo se je tudi povpraševanje po tujih storitvah, pogojenih z možnostjo gibanja napotenih delavcev.

Pogoje pod katerimi se je lahko tuj državljan oziroma oseba brez državljanstva zaposlila, oziroma delala v Republiki Sloveniji, je urejal Zakon o zaposlovanju tujcev (ZZT)[1], ki je bil sprejet med prvimi po osamosvojitvi.

V okviru tedanjih zakonskih rešitev so bile podrobneje urejene le tiste oblike dela, ki so vezane na delovna razmerja (zaposlitve pri delodajalcih in pogodbeno delo, kot jih je določal Zakon o delovnih razmerjih) ob upoštevanju stanja in razmer na trgu dela. Druge oblike dela, ki izhajajo iz pravice oseb, da z osebnim delom opravljajo dejavnost (obrtne in obrti podobne dejavnosti) pa je ZZT prepuščal urejanju v drugih zakonih (10. člen ZZT) in ga je dovoljeval, kadar je tujec pridobil dovoljenje drugega pristojnega organa. Tudi dela drugih tujih fizičnih in pravnih oseb, ki so pod različnimi pogoji pridobivali dohodke iz dela v

1 Ur.l. RS, št. 33/92.

Republiki Sloveniji, ZZT podrobneje ni urejal. Najpogosteje so bili to interesi za izvajanje storitev tujih podjetij z napotenimi delavci. Za izvajanje storitev z napotenimi delavci je tuje podjetje moralo za svoje napotene delavce pridobiti poslovni vizum (11. člen ZZT). Te primere je določal 8. člen Zakona o tujcih, ki pa ni določal, kdaj so izpolnjeni pogoji za pridobitev poslovnega vizuma. Zakon o tujcih se je skliceval na predpise, ki so urejali tuja vlaganja in opravljanje zunanjetrgovinskega poslovanja ali opravljanje strokovnega dela, določenega s pogodbo o poslovno-tehničnem sodelovanju oz. dolgoročni proizvodnji kooperaciji oziroma prenosu tehnologije. Področje ekonomskih migracij je poleg ZZT urejalo več zakonov in sicer:

- Zakon o tujcih (Ur.l. RS, 61/99),
- Zakon o tujih vlaganjih (Ur. l. SFRJ, št. 77/88, Ur. l. RS, št. 20/95,23/99-ZDP-1),
- Zakon o gospodarskih družbah (Ur. l. RS, št. 30/93, 29/94, 82/94, 20/98, 32/98, 37/98, 84/98, 6/99),
- Zakon o zunanjetrgovinskem poslovanju (Ur. l. RS, št. 13/93, 66/93, 7/94, 58/95) in
- Marakeški sporazum o ustanovitvi svetovne trgovinske organizacije, Aneks 1B: Splošni sporazum o trgovini s storitvami - Lista specifičnih obvez RS (Ur. l. RS, št. 36/95).

ZZT je bil restriktiven in selektiven, saj so tujci lahko delali na območju Republike Slovenije le na podlagi pridobljenega delovnega dovoljenja oziroma drugih dovoljenj, ki so nadomeščala delovno dovoljenje in jih je ZZT taksativno našteval. Pri tem velja izpostaviti, da je tujcu s statusom dnevnega migranta ZZT omogočal, da za razliko od drugih tujcev pridobi osebno delovno dovoljenje. S tem mu je bila dana možnost zaposlitve pri kateremkoli delodajalcu na območju RS, delo ni bilo vezano na obmejno območje, dovoljenje pa je bilo časovno omejeno na eno leto.

Delovna dovoljenja so bila glede njihove veljavnosti omejena na čas do enega leta. V zakonu ni bilo materialne podlage za podaljševanje veljavnosti delovnih dovoljenj. Tujec je lahko pridobil tudi osebno delovno dovoljenje za nedoločen čas in sicer po prehodnih določbah takoj, če je imel najmanj 10 let delovne dobe, ali pa po 10 letnem prebivanju na podlagi dovoljenja za stalno prebivanje (8. in 23. člen ZZT). Poleg dela tujcev pod pogoji, ki jih je določal ZZT, je bilo v Republiki Sloveniji dopustno tudi delo oseb, ki jim je država dajala začasno zatočišče in sicer pod pogoji in na način, ki jih je določal poseben zakon in sicer Zakon o začasnem zatočišču iz leta 1997.

Iz vsebine tedaj veljavnega zakona in zakonodaje na katero se je zakon navezoval je mogoče povzeti načelni zakonodajni pristop primarnega zakonskega urejanja nujnih področij, ki so zahtevala novo zakonsko ureditev zaradi novonastalih razmer z uveljavitvijo državnosti Republike Slovenije.

Z razvojem sodobne postindustrijske družbe in s tem povezane selitve aktivnosti v storitvene dejavnosti so se spreminjale tudi oblike dela in dejavnosti prebivalstva, kakor tudi drugi migracijski tokovi. Uvajale so se neformalne oblike dela in zaslužka, pogosto tudi na meji legalnosti, kar je bil splošen pojav, tako v razvitih državah Evrope kot v državah t.i. tranzicije, in je bil posledica brezposelnosti ter ekonomske negotovosti. Obenem je naraščal tudi delež samozaposlenega prebivalstva. Vse to je bilo še bolj izraženo pri tujcih - ekonomskih migrantih, ki so bili po eni strani pripravljeni sprejeti delo za minimalno plačilo in brez vsake delovnopravne in socialne zaščite (socialni dumping), po drugi strani pa so se tujci, zaradi liberalnih pogojev za opravljanje pridobitnih in drugih dejavnosti, zlahka uveljavljali kot menedžerji v novoustanovljenih podjetjih in kot ponudniki tujih storitev.

Statistični podatki v tem obdobju kažejo skoraj enako število osebnih delovnih dovoljenj za nedoločen čas, porast števila delovnih dovoljenj na vlogo delodajalca ter predvsem v zadnjih dveh letih porast števila osebnih delovnih dovoljenj za določen čas.

Tabela 1: število veljavnih delovnih dovoljenj v letih od 1992 do 2000

Datum: 31/12	Delovna dovoljenja	Osebna delovna dovoljenja za nedoločen čas	Osebna delovna dovoljenja za določen čas	Skupaj
1992	4.429	13.352	18.853	**36.643**
1993	17.011	13.663	871	**31.545**
1994	20.906	13.660	801	**35.367**
1995	23.504	13.727	716	**37.947**
1996	23.804	13.738	653	**38.194**
1997	20.883	13.744	661	**35.287**
1998	20.373	13.693	702	**34.768**
1999	22.965	13.680	1.146	**37.791**
2000	24.429	13.668	2.223	**40.320**

Vir: ZRSZ

2.2 Od leta 2000 do polnopravnega članstva Slovenije v Evropski uniji

Z Resolucijo o imigracijski politiki Republike Slovenije[2], ki jo je Državni zbor Republike Slovenije sprejel 14. maja 1999, so bili prvič določeni temelji imigracijske politike Republike Slovenije, kakor tudi najnujnejši splošni ukrepi za doseganje uresničevanja stališč resolucije na področju pravnih sredstev.

Resolucija je določila, da je treba zakon, s katerim se urejajo pogoji za delo tujih državljanov ali oseb brez državljanstva v Republiki Sloveniji, spremeniti tako, da ga bo kot temeljni materialni in procesni predpis mogoče uporabiti za zaščito domačega trga dela in uravnavanja novega pritoka delovne sile. Zakonske spremembe v posameznih področnih zakonih naj bi omogočile izvajanje stališč sprejete resolucije.

Na tej podlagi in v skladu z Državnim programom Republike Slovenije za prevzem pravnega reda Evropske unije do konca leta 2002 je bil 14. julija 2000 v Državnem zboru sprejet nov sistemski zakon o zaposlovanju in delu tujcev (ZZDT)[3], s čimer je bil realiziran tudi sprejeti resolucijski ukrep na zakonodajnem področju urejanja zaposlovanja in dela tujcev.

Z novim sistemskim zakonom so bili uzakonjeni predvsem naslednji resolucijski cilji na zakonodajnem področju:

- sistemska povezanost zakona o zaposlovanju in delu tujcev z zakonom o tujcih,
- regulacija dostopa do trga dela v odvisnosti od vrste oziroma namena dela in trajanja dejavnosti (z različnimi vrstami delovnih dovoljenj: osebno delovno dovoljenje, dovoljenje za zaposlitev, dovoljenje za delo, prijava dela),
- selektivnost pri omejevanju dostopa do zaposlitve in dela odvisno od narave dela ter razmer na trgu dela,
- prioritetna obravnava že priseljenih tujcev pred novimi iskalci zaposlitve in dela,
- združevanje pravice do zaposlitve in dela s pravico do bivanja (rezidenti, tujci, ki že dalj časa bivajo v državi, begunci, potomci slovenskih državljanov, družinski člani),

2 Ur.l. RS, št. 40/99
3 Ur. l. RS, št. 66/00

- možnost uravnavanja ekonomske imigracije z zakonsko določenimi omejitvenimi instrumenti (kvote, prepovedi in omejitve, ki jih lahko sprejme Vlada Republike Slovenije pod pogoji in na način določen z ZZDT).

ZZDT je kot glavni instrument za regulacijo priliva tuje delovne sile uvedel kvotni sistem (prag je 5% aktivnega prebivalstva). Omejitev s kvoto je namenjena kategorijam tujcev, ki na novo oziroma letno prihajajo v državo z namenom zaposlitve ali izvajanja drugih občasnih oblik dela na različnih pogodbenih osnovah. Poleg kvote ima zakon tudi druge instrumente za uravnavanje razmer na trgu dela, ki so v pristojnosti Vlade Republike Slovenije. Vlada jih lahko sprejme, kadar bi prevelik priliv tuje delovne sile v okviru različnih oblik lahko vplival na poslabšanje stanja zaposlenosti na domačem trgu dela.

ZZDT je v skladu s pravom Evropske unije definiral vrste in pogoje za čezmejno delo in izvajanje storitev z napotenimi delavci, ki sicer formalno med opravljanjem dela v Republiki Sloveniji še naprej ostajajo v delovnem razmerju v tujini. Na novo so bili uzakonjeni tudi posebni, manj zahtevni postopki in pogoji za opravljanje storitev tujih izvajalcev, omejenih na kratko časovno obdobje.

ZZDT je določil, da so državljani držav članic EU, do uveljavitve *acquisa* oziroma do sprostitve trgov dela za slovenske državljane obravnavani enako kot tujci iz tretjih držav, če prihajajo v državo z namenom zaposlitve ali dela.

Statistični podatki v tem obdobju kažejo konstanten porast osebnih delovnih dovoljenj, padec števila dovoljenj za zaposlitev ter porast števila dovoljenj za delo. V skupnem številu se je število delovnih dovoljenj od konca leta 2001 do konca leta 2003 povečalo za 5.595 delovnih dovoljenj.

Tabela 2: število veljavnih delovnih dovoljenj v letih od 2001 do 2003

Datum: 31/12	Osebna delovna dovoljenja	Dovoljenja za zaposlitev	Dovoljenja za delo	Skupaj
2001	15.090	16.434	2408	33.932
2002	17.995	13.580	4484	36.059
2003	20.794	12.381	6352	39.527

Vir: ZRSZ

Porast števila osebnih delovnih dovoljenj in dovoljenj za delo je posledica novih določb ZZDT. Pri osebnih delovnih dovoljenjih je ZZDT uvedel osebna delovna dovoljenja z veljavnostjo treh let, za katera so lahko zaprosili ožji družinski člani slovenskega državljana, ožji družinski člani tujca z osebnim delovnim dovoljenjem za nedoločen čas, slovenski izseljenci do tretjega kolena v ravni črti, tujci, ki so bili pet let neprekinjeno zaposleni pri istem delodajalcu in samozaposleni tujci, ki so bili tri leta neprekinjeno samozaposleni. Pri dovoljenjih za delo pa je ZZDT prinesel 5 novih vrst dovoljenj za delo in sicer za: delo z napotenimi tujci, za usposabljanje in izpopolnjevanje, za sezonsko delo tujcev, za delo tujih poslovodnih delavcev in za individualne storitve tujcev.

3. Polnopravno članstvo Slovenije v Evropski uniji

3.1 Mobilnost znotraj EU

Statistični podatki za Evropsko unijo pred širitvijo 1. maja 2004 so kazali, da pravila prostega gibanja delavcev znotraj držav članic EU-15 bistveno ne povečujejo mobilnosti delavcev med državami članicami. Od takratnega skupnega števila 370 mio. prebivalcev v EU, jih je le 5 mio. (1,35%) živelo v drugi državi članici, dodatnih 2 mio. oseb (0,5%) pa jih je živelo v svoji državi in delalo v drugi državi članici (čezmejni delavci). V zadnjih letih pa je prišlo do postopnega povečanja mobilnosti. Število mobilnih delavcev v EU-15 se je povečalo od okrog 470 000 oseb leta 2000 na okrog 610 000 leta 2005 (Raziskava o evropski delovni sili)[4].

Razlogi za nizko mobilnost so različni: selitev v drugo okolje, premajhno poznavanje socialnih in drugih pravic, ki jim gredo v drugi državi, vsakodnevno ali tedensko potovanje, jezikovne ovire in podobno. Delavce, še posebej nižje plačane, tudi višja plača v drugi državi članici ne prepriča v selitev oziroma potovanje na delo v drugo državo.

Glede na opravljene raziskave in trende Slovenija ob polnopravnem članstvu v EU na področju prostega gibanja delavcev ni pričakovala bistvenih

4 Vpliv priključitve novih držav članic je prav tako obravnavan v „Poročilu o delovanju prehodnih ureditev, določenih v pristopni pogodbi iz leta 2003 (obdobje od 1. maja 2004 do 30. aprila 2006)" Komisije, COM(2006) 48, 8.2.2006.

sprememb, oziroma bistvenega povečanja migracijskih gibanj. Večja migracijska gibanja smo pričakovali le na obmejnih področjih s sosednjimi državami (Italija, Avstrija, Madžarska), po uveljavitvi prostega gibanja delavcev.

3.2 Pogodba o pristopu in ureditev prehodnega obdobja za gibanje delavcev

S podpisom Pogodbe o pristopu 10 novih držav članic k Evropski uniji v Atenah 16.4.2003 so se zaključila pogajanja s 15 »starimi« državami članicami o pogojih pristopa. Prost pretok oseb vključuje prosto gibanje delavcev, priznavanje poklicnih kvalifikacij, koordinacijo sistemov socialnih varnosti in državljanske pravice. Prehodno obdobje je veljalo, oziroma velja le za prosto gibanje delavcev, medtem ko se je za priznavanje poklicnih kvalifikacij, koordinacijo sistemov socialnih varnosti in državljanske pravice od prvega dne pristopa Republike Slovenije v EU uporabljal evropski pravni red. V skladu s Pogodbo o pristopu od 16. aprila 2003 ni smela nobena stara država članica uvajati novih omejevalnih ukrepov v svojo nacionalno zakonodajo zoper državljane novih držav članic niti niso smele nove države članice nasproti državljanom sedanjih držav članic.

3.2.1 »Stare« države članice

Prvi dve leti po pristopu, od 1. maja 2004, stare države članice niso uporabljale prvih 6 členov Uredbe 1612/68, ki določajo prosto gibanje delavcev med državami članicami, temveč nacionalno zakonodajo ali ukrepe iz dvostranskih sporazumov, ki urejajo dostop slovenskih državljanov na njihove trge dela z možnostjo, da uvedejo večjo svobodo prostega gibanja na dan pristopa, vključno s popolnim dostopom na trg dela. Pred iztekom prvih 2 let oziroma pred začetkom naslednjega triletnega obdobja je morala vsaka stara država članica, glede na stanje na svojem trgu dela, Komisiji sporočiti, ali bo še naprej uporabljala nacionalno zakonodajo. V nasprotnem primeru bi veljalo prosto gibanje delavcev. Zadnji dve leti prehodnega obdobja lahko sedanje države članice uporabljajo svojo nacionalno zakonodajo le v primeru resnih motenj, ali grožnje le-teh na trgu dela.

Republika Slovenija je v pogajalskih izhodiščih uveljavila načelo vzajemnosti. To pomeni, da bi lahko tudi Slovenija v času 7-letnega prehodnega obdobja nasproti vsake stare države članice, ki uveljavlja nacionalne ukrepe v zvezi z gibanjem delavcev, uveljavljala enakovredne ukrepe. Zakon o

zaposlovanju in delu tujcev iz leta 2000 je v tretjem odstavku 3. člena določal, da se določbe tega zakona ne uporabljajo za državljane držav članic EU, če so z mednarodnim sporazumom vzajemno omogočeni prost dostop do trga dela in zaposlovanja in prost pretok storitev, ki se izvajajo z napotenimi delavci, ter druge oblike dela po tem zakonu. V kolikor posamezna država članica EU ne bi liberalizirala dostopa na svoj trg dela za slovenske državljane in bi za njihovo zaposlovanje uporabljala svojo nacionalno zakonodajo, bi se tudi njeni državljani v Sloveniji obravnavali po določbah Zakona o zaposlovanju in delu tujcev. Vlada Republike Slovenije je po zaključku dveletnega prehodnega obdobja, na podlagi lastnih in skupnih pobud z novimi državami članicami EU za odpravo prehodnega obdobja in glede na podatke o nizkem številu državljanov starih držav članic EU na slovenskem trgu dela, dne 25. maja 2006 sprejela sklep o ukinitvi vzajemnosti do starih držav članic EU in tako od tega dne odprla svoj trg dela za vse državljane EU.

Po zaključku druge (tri letne) faze prehodnega obdobja, ki je trajala do 30. aprila 2009, le še dve državi članici EU (Republika Avstrija in Zvezna Republika Nemčija) uveljavljata prehodno obdobje. Zadnja faza prehodnega obdobja lahko traja še največ dve leti, oziroma do 30. aprila 2011.

3.2.2 Slovenski državljani na delu v starih državah članicah

Četudi bi katerakoli stara država članica uveljavljala prehodno obdobje, Pogodba o pristopu določa, da imajo slovenski državljani dostop na trg dela stare države članice, če so na dan pristopa (1. maja 2004) zakonito delali v tej državi članici in imeli dovoljenje za neprekinjeno obdobje 12 mesecev ali več. Isto bi veljalo tudi za slovenske državljane, ki bi pridobili delovno dovoljenje v stari državi članici za čas 12 mesecev ali več po 1. maju 2004. Če jim je izdano dovoljenje za čas krajši od 12 mesecev, ne uživajo pravice dostopa na trg dela te države članice. Pravico dostopa na trg dela stare države članice bi slovenski državljani izgubili, če bi prostovoljno zapustili trg dela stare države članice.

3.2.3 Družinski člani

Zakonec in nepreskrbljeni otroci do starosti 21 let, ki so na dan pristopa zakonito prebivali z delavcem na ozemlju stare države članice, so imeli po pristopu neposreden dostop na trg dela te države članice, če je delavcu dovoljen dostop na trg dela te države članice za čas 12 mesecev ali več. Zakonec in nepreskrbljeni otroci do starosti 21 let, ki so pridobili dovoljenje za zakonito

prebivanje z delavcem na ozemlju stare države članice po dnevu pristopa, so imeli dostop na trg dela te države članice po 18 mesecih zakonitega prebivanja v tej državi, ali od tretjega leta od dneva pristopa, glede na to kar je za družinskega člana ugodneje.

3.2.4 Nove države članice

Med novimi državami članicami je ob vstopu v EU (1. maj 2004) veljalo prosto gibanje delavcev, z možnostjo, da so lahko takoj po polnopravnem članstvu v EU uvedle varnostno klavzulo nasproti katerikoli novi državi članici. Varnostno klavzulo lahko nova država članica uvede nasproti katerikoli novi državi članici v času 7-letnega prehodnega obdobja, če katerakoli stara država članica uporablja nacionalno zakonodajo oziroma nacionalne ukrepe nasproti katerekoli nove države članice.

3.2.5 Varnostna klavzula

Stare države članice lahko uporabijo t.i. varnostno klavzulo, če bi po 2-letnem prehodnem obdobju uvedle prosto gibanje delavcev (uporabljale pravila EU glede prostega gibanja delavcev) in bi v času do konca 7-letnega prehodnega obdobja ugotovile, da imajo ali pričakujejo resne motnje na svojem trgu dela, ki bi lahko resno ogrozile življenjsko raven ali raven zaposlenosti v določeni regiji ali poklicu. Varnostno klavzulo lahko uvedejo zoper katerokoli novo državo članico in odložijo uporabo pravil EU glede prostega gibanja delavcev, da se vzpostavi stabilno stanje na trgu dela v tej regiji oziroma poklicu. Varnostna klavzula do sedaj še nikoli ni bila uvedena.

3.2.6 EURES

Slovenija je v Evropske službe za zaposlovanje (EURES)[5] vstopila s polnopravnim članstvom v EU, 1. maja 2004. V Evropske službe za zaposlovanje je vključen Zavod Republike Slovenije za zaposlovanje (ZRSZ). EURES je bil zaradi zagotavljanja prostega gibanja delavcev ustanovljen leta 1993 s posebno Odločbo evropske Komisije. Predstavlja skupno omrežje Komisije, javnih služb za zaposlovanje in njihovih nacionalnih partnerjev iz držav, ki obsegajo skupni Evropski gospodarski prostor. Njegova temeljna naloga je posredovanje in izmenjava

5 European Employment Services Network.

informacij o prostih delovnih mestih, prosilcih za zaposlitev ter o življenjskih in delovnih razmerah v posameznih državah članicah.

3.2.7 Priznavanje kvalifikacij

Za vzpostavitev sistema priznavanja reguliranih poklicev prehodno obdobje ni veljalo, zato je Slovenija pričela izvajati postopke priznavanja kvalifikacij za opravljanje reguliranih poklicev oziroma reguliranih poklicnih dejavnosti z dnem polnopravnega članstva v Evropski uniji.

3.2.8 Koordinacija sistemov socialne varnosti

Pravila koordinacije sistemov socialne varnosti določata Uredba Sveta (EGS) 1408/71 z dne 14. junija 1971 o uporabi sistemov socialne varnosti za zaposlene osebe, samozaposlene osebe in njihove družinske člane, ki se gibljejo znotraj Skupnosti ter Uredba Sveta 574/72 (EGS) z dne 21. marca 1972 o določitvi postopka za izvajanje Uredbe (EGS) št. 1408/71 o uporabi sistemov socialne varnosti za zaposlene osebe, samozaposlene osebe in njihove družinske člane, ki se gibljejo znotraj Skupnosti. Oba predpisa sta direktno uporabna v pravnem redu držav članic Evropske unije, kar pomeni, da Sloveniji ni bilo treba sprejemati zakonodaje za prenos njunih določb v pravni red, ampak so te določbe za Slovenijo začele veljati z dnem polnopravnega članstva v Evropski uniji.

Uredba sveta št. 1408/71 omogoča gibanje delavcev in njihovih družinskih članov znotraj skupnosti s pravili koordinacije sistemov socialne varnosti. Z Uredbo so med drugim zajeta naslednja področja socialne varnosti:

- dajatve za bolezen in materinstvo;
- dajatve za invalidnost, vključno s tistimi za vzdrževanje ali izboljšavo zmožnosti ustvarjanja dohodka;
- dajatve za starost;
- dajatve preživelim družinskim članom;
- dajatve za nesreče pri delu ali poklicne bolezni;
- posmrtnine;
- dajatve za brezposelnost in
- družinske dajatve.

29. aprila 2004, torej dva dni pred uradnim pričetkom članstva novih držav članic v EU, je bila sprejeta nova osnovna uredba, to je Uredba 883/2004, ki bo nadomestila Uredbo št. 1408/71. Določeno je bilo, da se bo uredba začela uporabljati, ko bo pričela veljati tudi nova izvedbena uredba, ki bo nadomestila dosedanjo izvedbeno uredbo 574/72, in bo sprejeta vsebina aneksov k osnovni uredbi, kar bo predvidoma 1. 3. 2010.

4. Spremembe Zakona o zaposlovanju in delu tujcev po letu 2004

V osmih letih izvajanja Zakona o zaposlovanju in delu tujcev so se pokazale nejasnosti in pomanjkljivosti zakonske ureditve, ki so omogočale tudi zlorabo zakona, zato so bile v letih 2005 in 2007 sprejete spremembe in dopolnitve ZZDT.

4.1 Spremembe in dopolnitve Zakona o zaposlovanju in delu tujcev iz leta 2005[6]

Cilj sprememb je bil:

- odpraviti pomanjkljivosti, ki so bile ugotovljene vse od uveljavitve zakona leta 2001,
- jasneje definirati posamezne kriterije ali omejitve za pridobitev delovnega dovoljenja in
- preprečiti zlorabe, ki jih je ZZDT zaradi nejasnosti ali nedorečenosti omogočal.

Po nekaj mesecih izmenjave mnenj in iskanja najboljših rešitev z izvajalci in uporabniki so bile pripravljene spremembe in dopolnitve ZZDT. Glavne vsebinske spremembe in dopolnitve so bile:

- za pridobitev delovnega dovoljenja za samozaposlene tujce je ZZDT zaostril pogoje in določil enoletno predhodno prebivanje v Sloveniji. Tujci so namreč izkoriščali možnost lahke in finančno ugodne pridobitve delovnega

6 Ur. l. RS, št. 101/05, z dne 11.11.2005

dovoljenja zgolj na podlagi vpisa v vpisnik samostojnih podjetnikov posameznikov in so na tej podlagi vstopali na slovenski trg dela.

- uvedena je bila možnost dodatnega izobraževanja tako tujih kot slovenskih delavcev v slovenskih gospodarskih družbah v primerih, ko je slovenska družba kapitalsko ali poslovno povezana s tujo družbo. Na ta način je bila realizirana pobuda gospodarstva za širitev in večji vpliv slovenskega gospodarstva v tretjih državah, predvsem v državah bivše Jugoslavije in Sovjetske zveze,
- pri čezmejnem opravljanju storitev z napotenimi ali nameščenimi delavci oziroma pri gibanju oseb znotraj združb je ZZDT zaostril pogoje in zahteval predhodno enoletno zaposlitev tujca pri delodajalcu, ki ga napotuje na delo v Slovenijo, kar je v skladu s politiko EU pri pogajanjih v okviru Svetove trgovinske organizacije za izvajanje storitev podjetij iz tretjih držav,
- pri sezonskem delu tujcev je ZZDT dal možnost zaposlitve takoj po izteku sezonskega dela, kar je omogočilo delodajalcem, da zaposlijo tujca, ki ga že dobro poznajo,
- omejeno je bilo število zastopnikov na enega zastopnika v gospodarskih družbah in pri samostojnih podjetnikih, ki zaposlujejo deset ali manj delavcev, določen je bil čas veljavnosti delovnega dovoljenja na 2 leti in določeni so bili pogoji za ponovno izdajo delovnega dovoljenja.

Že dve leti kasneje so bile sprejete nove spremembe in dopolnitve ZZDT.

4.2 Spremembe in dopolnitve Zakona o zaposlovanju in delu tujcev iz leta 2007[7]

Glavne vsebinske spremembe in dopolnitve so bile:

- Uskladitev z zakonodajo**,** kjer so bile glavne spremembe prenos novih pojmov v skladu s sprejetimi določbami uredb in direktiv na ravni Evropske unije ter natančnejša določitev pristojnosti Vlade RS pri uveljavitvi možnih ukrepov ob motnjah na trgu dela. Dodano je bilo novo poglavje XV. A, v katerem sta zakonsko urejena zaposlovanje in izvajanje storitev državljanov EU in njihovih družinskih članov.

7 Ur. l. RS, št. 52/07, z dne 12.6.2007

- Odprave pomanjkljivosti, oziroma izboljšave starega ZZDT, na katere so opozarjali uporabniki zakona, ZRSZ in socialni partnerji:
  - osebno delovno dovoljenje (ODD) za tri leta lahko tujec z najmanj poklicno izobrazbo pridobi po najmanj dveletni neprekinjeni zaposlitvi pri istem delodajalcu. S tem se je bistveno zmanjšalo število postopkov na ZRSZ, tujcu pa je omogočena bistveno lažja prezaposlitev, oziroma prehod k drugemu delodajalcu;
  - v agencijah, ki posredujejo delavca drugemu uporabniku, se lahko zaposlujejo tudi tujci z ODD z veljavnostjo treh let, ali za nedoločen čas;
  - zaostrili so se pogoji za tujce, ki se želijo v Sloveniji samozaposliti kot samostojni podjetniki ali kot ustanovitelji osebne gospodarske družbe. Za vpis v Poslovni register morajo, poleg že zahtevanega enoletnega prebivanja, izkazati še lastna finančna sredstva in lastništvo ali najem poslovnih ali prostorov, kjer imajo sedež. S temi pogoji so bili odpravljeni fiktivni naslovi in težave različnih inšpekcijskih organov in DURS-a v primerih, ko tujcev ni bilo na vpisanem naslovu;
  - s ciljem privabljanja raziskovalcev in študentov je tujcem omogočen enostavnejši vstop na slovenski trg dela. Oboji imajo možnost pridobiti ODD za tri leta, če si najdejo delodajalca v roku enega leta po zaključku študija ali raziskovalnega dela;
  - prepovedi novega zaposlovanja in dela so na novo opredeljene le za težje kršitve ZZDT, zakona o preprečevanju dela in zaposlovanja na črno in zakona o delovnih razmerjih ter razdeljene na tri, dve in enoletno prepoved novega zaposlovanja, glede na težo kršitve.

- Odprava administrativnih ovir. Z natančno določitvijo pogojev, ki jih morata izpolnjevati delodajalec in tujec pri izdaji delovnega dovoljenja za različne vrste zaposlitve ali dela, so se odpravile nekatere nejasnosti v dotedanji praksi.
- Druge pomembnejše spremembe s ciljem odpravljanja administrativnih ovir so bile:
  - namesto pozitivnega poslovanja v preteklem letu in prepovedi novega zaposlovanja za novoustanovljena podjetja mora delodajalec izkazati 6-mesečno poslovanje v višini, ki zagotavlja izplačilo minimalnih plač za

najmanj dva delavca in poravnane davke in prispevke iz naslova zaposlitve in dela v času vložitve vloge za izdajo delovnega dovoljenja;

- poudarek je na postopku pridobivanja prvega delovnega dovoljenja, postopek podaljšanja pa je zelo poenostavljen;
- večino dokazil ZRSZ pridobi po uradni dolžnosti.

Zaradi številnih sprememb in dopolnitev ZZDT so bile spremenjene tudi podzakonske določbe. V Pravilnik o delovnih dovoljenjih, prijavi in odjavi dela ter nadzoru nad zaposlovanjem in delom tujcev[8] je bilo združenih osem do tedaj veljavnih podzakonskih aktov, kar je prispevalo k bistveno boljši preglednosti. Pravilnik omogoča tudi hitrejše postopke izdaje dovoljenj za zaposlitev in zaposlitev tujcev v deficitarnih poklicih.

4.2.1 Prvi ukrepi Vlade v recesiji

Zaradi svetovne gospodarske krize in števila brezposelnih oseb, ki je naraščalo od septembra 2008, ko je bilo le 59.303 brezposelnih oseb, konec leta 2008 66.239, konec maja 2009 84.519, konec leta 2009 pa že 96.672 brezposelnih oseb, je Vlada 11. junija 2009 sprejela Uredbo o omejitvah in prepovedih zaposlovanja in dela tujcev[9]. Uredba je bila izdana na podlagi sedmega odstavka 5. člena ZZDT, ki določa, da lahko Vlada RS poleg kvote določi tudi omejitve in prepovedi zaposlovanja in dela tujcev po regijah, področjih dejavnosti, podjetjih in poklicih, kakor tudi omeji ali prepove pritok novih tujih delavcev v celoti ali iz določenih regionalnih področij, kadar je to utemeljeno z javnim ali splošnim gospodarskim interesom. Uredba je stopila v veljavo 13. junija 2009 in je uvedla naslednje omejitve in prepovedi:

- Prepoved sezonskega zaposlovanja, razen v kmetijstvu in gozdarstvu. Tujci se lahko zaposlujejo tudi v drugih dveh gospodarskih panogah (gradbeništvo ter gostinstvo in turizem, v katerih je z ZZDT sicer omogočeno sezonsko zaposlovanje), vendar na podlagi dovoljenja za zaposlitev, ki se izda po kontroli trga dela, oziroma po preverjanju ali so v evidenci brezposelnih oseb ustrezne domače, ali z njimi izenačene osebe.
- Prepoved izdajanja novih dovoljenj za delo za zastopnike mikro in majhnih podjetij in za zastopnike podružnic, tujcem s prebivališčem na območju Republike Kosovo, ki nimajo dovoljenja za prebivanje v Republiki Sloveniji.

8 Ur. l. RS, št. 37/08
9 Ur. l. RS, št. 44/09

Razlog za prepoved je bilo veliko število zlorab delovnih dovoljenj in dovoljenj za prebivanje ter opozoril drugih držav članic EU in EGP, da tujci s slovenskim dovoljenjem za prebivanje opravljajo nedovoljene dejavnosti v njihovih državah.

- Prepoved izdaje novih dovoljenj za zaposlitev delodajalcem, ki tujcev, za katere so že pridobili dovoljenja za zaposlitev, v štirih mesecih niso zaposlili – t.i. dovoljenja »na zalogo«.
- Omejitev zaposlovanja iz določenih regionalnih področij. Glede na dolgoletno statistično povprečje zaposlovanja tujcev iz posameznih tretjih držav je določeno, da se preostanek kvote, določene za dovoljenja za nove zaposlitve v višini 11.000 dovoljenj za zaposlitev v letu 2009, od uveljavitev Uredbe dalje razdeli na 95% za državljane bivše skupne države, razen Kosova, 5% pa za državljane vseh drugih tretjih držav z državljani Republike Kosovo vred. Razlog, zakaj so bili v tem ukrepu vlade državljani Kosova obravnavani posebej, je v dejstvu, da je bilo do konca maja 2009, od skupno 6.554 dovoljenj za zaposlitev, državljanom Kosova izdanih 3.491 dovoljenj za zaposlitev, oziroma 53%.
- Omejitve in prepovedi izdaje dovoljenj za zaposlitev po poklicih. Zaradi sumov zlorabe, oziroma kaznivih dejanj prostitucije in trgovine z ljudmi je prepovedano novo zaposlovanje t.i. barskih plesalk iz držav, ki za vstop v Republiko Slovenijo potrebujejo vizum, razen iz držav, ki imajo z Evropsko unijo sklenjen sporazum o vizumskih olajšavah. Zaradi lažjega nadzora se lahko programi izvajajo le na eni lokaciji, ki jo delodajalec navede na vlogi za izdajo dovoljenja za zaposlitev.
- Izdaja dovoljenj za zaposlitev za visokokvalificirane tujce. V primeru, da bi bila kvota dovoljenj za zaposlitev (11.000 dovoljenj) izkoriščena, je Vlada določila, da se nerazporejeni del kvote v višini 1.000 dovoljenj za zaposlitve nameni za zaposlovanje t. i. visokokvalificiranih delavcev. Tujci morajo imeti izobrazbo, primerljivo z najmanj višješolsko oziroma višjo strokovno izobrazbo na šesti ravni, delodajalec pa mora tujcu izplačevati plačo najmanj v višini 2,5 minimalnih plač.

Statistični podatki v tem obdobju kažejo izreden porast števila dovoljenj za zaposlitev, predvsem v letih 2007 in 2008 ter konstanten prirast osebnih delovnih dovoljenj. V skupnem številu se je število delovnih dovoljenj od leta 2004 do konca leta 2008 več kot podvojilo, število EU-prijav (zaposlitve in izvajanje storitev z napotenimi delavci) pa se je do leta 2006 rahlo povečevalo, v letih 2007 in 2008 pa se tudi v tem segmentu kaže izrazito povečanje števila

državljanov EU na slovenskem trgu dela. V prvih mesecih letošnjega leta pa se kaže upad tako števila delovnih dovoljenj, kot EU-prijav.

Tabela 3: Število veljavnih delovnih dovoljenj in EU-prijav v letih od 2004 do 2009

Datum: 31/12	Osebna delovna dovoljenja	Dovoljenja za zaposlitev	Dovoljenja za delo	Skupaj delovna dovoljenja	EU-prijave	Brez delovnih dovoljenj	Skupaj VSE
2004	22.712	12.233	4.085	39.030	1.662		40.692
2005	25.782	12.360	4.825	42.967	2.482	27	45.476
2006	29.871	14.501	6.362	50.734	2.895	32	53.661
2007	31.751	24.489	9.821	66.061	5.928[10]	28	72.017
2008	37.196	44.329	9.171	90.696	6.038[11]	53	96.787
2009	44.463	28.160	5.764	78.387	3.240[12]	37	86.647

Vir: ZRSZ

Porast števila osebnih delovnih dovoljenj je posledica sprememb ZZDT v letih 2005 in 2007. S spremembami ZZDT so osebno delovno dovoljenje lahko pridobili še:

- tujec z najmanj poklicno izobrazbo, ki je bil zadnji dve leti pred vložitvijo vloge neprekinjeno zaposlen pri istem delodajalcu,

10 Število zaposlitev v letu 2007.
11 Število zaposlitev v letu 2008.
12 Število zaposlitev v letu 2009.

- delovni migrant, ki je bil zadnji dve leti pred vložitvijo vloge neprekinjeno zaposlen pri istem delodajalcu,
- tujec, ki je zadnji letnik šolanja končal v Republiki Sloveniji in pridobil najmanj visokošolsko izobrazbo, če si v roku enega leta od pridobljenega naziva najde delodajalca ali se samozaposli,
- tujec, ki je v Sloveniji zaključil program raziskovalnega dela in si v roku enega leta najde delodajalca ali se samozaposli,
- ožji družinski član raziskovalca in
- oseba s subsidiarno zaščito.

Rast števila dovoljenj za zaposlitev, dovoljenj za delo in EU-prijav je bila posledica velike gospodarske rasti, v letu 2009 pa se kaže izrazit padec števila teh dovoljenj zaradi svetovne gospodarske krize.

Tudi na ravni Evropske unije so si države članice prizadevale vzpostaviti boljši pravni red na področju ekonomskih imigracij iz t.i. tretjih držav.

Cilj vseh politik na področju notranjih zadev iz prvega stebra "vizumi, azil, priseljevanje in druge politike v zvezi s prostim gibanjem oseb" (Naslov IV Pogodbe o ustanovitvi Evropske skupnosti) v prihodnosti bo njihova medsebojna povezanost in sodelovanje, celovit pristop, vzpostavitev njihove zunanje dimenzije ter večji poudarek na solidarnosti, pravični delitvi odgovornosti vključno s finančnimi posledicami in na tesnejšem praktičnem sodelovanju med državami članicami. V okviru razvoja navedenih politik je Evropski svet 5. novembra 2004 v petletnem strateškem Haaškem programu za krepitev svobode, varnosti in pravice v EU 2004-2009 poudaril pomen celovitega upravljanja mednarodnih migracij. Glede migracij se Haaški program osredotoča predvsem na zakonito priseljevanje, boj proti nezakonitemu zaposlovanju, vključevanju zakonitih priseljencev, partnerstvo s tretjimi državami, vračanje nezakonitih priseljencev in ponovni sprejem, kontrolo meja in boj proti nezakonitemu priseljevanju.

Kot prvi resnejši poskus vzpostavljanja enotnejše migracijske politike na ravni Evropske skupnosti lahko štejemo predlog direktive o ekonomskem priseljevanju iz leta 2001[13], ki jo je Evropska komisija predlagala zaradi urejanja pogojev vstopa in bivanja vseh državljanov tretjih držav, ki opravljajo plačane dejavnosti in dejavnosti na področju samozaposlitev. Predlog je bil splošen okvir za vse tipe ekonomskih migrantov, vendar pa zaradi različnih pogledov in

13 Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities, COM(2001) 386 final.

interesov držav članic ni dobil zadostne podpore v Svetu, čeprav je formalna ureditev sprejema ekonomskih migrantov eden od temeljev vsake migracijske politike.

Trenutno pogoje vstopa in prebivanja državljanov tretjih držav urejajo naslednje direktive:

- Direktiva o pravici do združitve družine[14],
- Direktiva o statusu državljanov tretjih držav, ki so rezidenti za daljši čas[15],
- Direktiva o pogojih za sprejem državljanov tretjih držav za namen študija, izmenjav učencev, neplačanega usposabljanja ali prostovoljnega dela[16],
- Direktiva o posebnem postopku za dovolitev vstopa državljanom tretjih držav za namene znanstvenega raziskovanja[17],
- Direktiva o minimalnih standardih glede sankcij in ukrepov zoper delodajalce, ki zaposlujejo nezakonito prebivajoče državljane tretjih držav[18] in
- Direktiva o pogojih za vstop in prebivanje državljanov tretjih držav za namene visokokvalificirane zaposlitve[19].

V obliki predloga, oziroma delovnega gradiva Komisije pa so še naslednje direktive:

- Splošna okvirna direktiva o pravicah priseljencev iz tretjih držav in enotnem dovoljenju za delo in prebivanje,
- Direktiva v zvezi s pogoji vstopa in prebivanja sezonskih delavcev,
- Direktiva v zvezi s postopki urejanja vstopa ter bivanja premeščencev znotraj podjetja in
- Direktiva v zvezi s pogoji vstopa in prebivanja plačanih pripravnikov.

14 Direktiva Sveta 2003/86/ES o združitvi družine.
15 Direktiva Sveta 2003/109/ES o statusu državljanov tretjih držav, ki so rezidenti za daljši čas.
16 Direktiva Sveta 2004/114/ES o pogojih za sprejem državljanov tretjih držav za namen študija, izmenjav učencev, neplačanega usposabljanja ali prostovoljnega dela.
17 Direktiva Sveta 2005/71/ES o posebnem postopku za dovolitev vstopa državljanom tretjih držav za namene znanstvenega raziskovanja.
18 Direktiva 2009/52/ES Evropskega parlamenta in Sveta o minimalnih standardih glede sankcij in ukrepov zoper delodajalce, ki zaposlujejo nezakonito prebivajoče državljane tretjih držav.
19 Direktiva Sveta 2009/50/ES o pogojih za vstop in prebivanje državljanov tretjih držav za namene visokokvalificirane zaposlitve.

5. Zaključek

Zakon o zaposlovanju tujcev, od leta 2000 Zakon o zaposlovanju in delu tujcev, se je spreminjal in dopolnjeval glede na potrebe gospodarstva, oziroma stanje na trgu dela. Od urejanja statusa delavcev bivše skupne države in osnovnih razmerij med delodajalci in tujimi delavci (delovno dovoljenje na vlogo delodajalca), urejenih v prvem Zakonu o zaposlovanju tujcev, je Zakon o zaposlovanju in delu tujcev uredil vse oblike dela in zaposlovanja tujcev, ki jih poznajo tudi druge države članice Evropske unije. S polnopravnim članstvom Slovenije v Evropski uniji je Slovenija prevzela pravni red Evropske unije na področju prostega pretoka oseb in dodatno posodobila Zakon o zaposlovanju in delu tujcev. Slovenija, oziroma njeni predstavniki danes aktivno sodelujejo pri pripravi evropske zakonodaje na tem področju.

Novi izzivi za države članice Evropske unije se kažejo v dolgoročnem pomanjkanju delovne sile, kot posledice staranja aktivnega dela prebivalstva. Zato morata Slovenija in Evropska unija, ob upoštevanju demografskih gibanj in potreb trga dela, čim prej odgovoriti na vprašanje, kakšen bo trg dela v prihodnosti. Prvi ukrep na tem področju je sprejem Direktive o visokokvalificiranih delavcih (t.i. *EU Blue card*), s katero so se države članice na ravni Evropske unije vključile v boj z Združenimi državami Amerike, Kanado in Avstralijo za kadre iz t.i. tretjih držav. Še bolj pomemben ukrep za oblikovanje skupne migracijske politike držav EU pa je načrtovani sprejem predloga Direktive o enotnem postopku za izdajo enotnega dovoljenja ter o skupnem okvirju pravic za delavce iz tretjih držav, ki zakonito prebivajo v državi članici.

Zaradi zgodovinskih, kulturnih in jezikovnih razlogov so slovenski delodajalci najbolj zadovoljni z delavci iz bivših republik skupne države, kar se kaže tudi na številu delovnih dovoljenj, izdanih državljanom teh držav. Zaradi navedenega in enostavnejšega ter učinkovitejšega načina upravljanja z delovnimi imigracijami, se Ministrstvo za delo, družino in socialne zadeve načrtno usmerja v sklepanje bilateralnih sporazumov o zaposlovanju z državami nekdanje Jugoslavije. Ena prvih tretjih držav, s katero se bodo že v februarju 2010 začeli pogovori o sklenitvi sporazuma o zaposlovanju, je Bosna in Hercegovina, iz katere prihaja največ tujih delavcev na slovenski trg dela.

Radivoj Radak je univerzitetni diplomirani pravnik, ki že 15 let dela na Ministrstvu za delo, družino in socialne zadeve, ves čas na področju delovnih migracij. Pred tem je več kot 9 let delal kot pravnik v Iskri Polprevodniki, oziroma Iskri Semicon iz Trbovelj.

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SUMMARY

LABOUR MIGRATION TO THE REPUBLIC OF SLOVENIA

After the independence the Republic of Slovenia has found itself in a new position concerning the system of international migration flows and regulation of labour migration. The conditions for work and employment of third country citizens or stateless persons were defined by the Employment of Aliens Act (Official Gazette of RS, No. 33/92), which was among the first laws adopted after independence. Only with the Resolution on the Migration Policy of the Republic of Slovenia (Official Gazette of RS, No. 40/99) a few years later the first basis of the immigration policy of the Republic of Slovenia has been set out.

In the context of the legislative solutions only those forms of work have been covered in detail, which were related to the employment relationship (employment with employers and contract work, as stipulated by the Employment Relationships Act) taking into account the labour market conditions. Other forms of work arising from the right of people to perform activities with personal work (craft and craft related activities) were regulated in other laws (Article 10). The Employment of Aliens Act allowed this only when an alien was given permission by other competent authority. Even the work of other foreign natural and legal persons, who have under different conditions obtained income from work in the Republic of Slovenia, the Employment of Aliens Act has not regulated in detail. Most often, this was in the interest of foreign companies, which provided services by using posted workers. For providing services with the posted workers, the foreign company had to obtain a business visa for its posted workers (Article 11). These cases were stipulated in Article 8 of the Aliens Act, but they were not stipulated when the conditions for obtaining a business visa has been fulfilled. Aliens Act referred to the rules which governed foreign investment and foreign trade business or the exercise of professional work specified in the contract on business-technical cooperation or cooperative long-term production or technology transfer.

On the basis of resolution and in accordance with the National Program of the Republic of Slovenia for the adoption of the Acquis by the end of 2002 the Republic of Slovenia adopted a new Employment and work of Aliens Act (Official Gazette of RS, No. 66/00), which introduced a

quota system as the main instrument for regulation of influx of foreign labour force (the threshold was 5% of the working population).

The Republic of Slovenia became a member of the European Union on 1st May 2004 and began to exercise the principle of free movement of workers, which has been since the Treaty of Rome in 1957, one of the cornerstones of a free market: free movement of goods, services, capital and persons.

With the new systemic law main resolution objectives in the legislative field were codified, namely the systemic link of the Employment and work of Aliens Act with the Aliens Act, regulation of access to the labour market depending on the type or purpose of the work and duration of activities (with different types of work permits, a personal work permit, employment permit, work permit, registration of work), selectivity in limiting access to employment and work depending on the nature of work and labour market conditions, priority treatment of already settled immigrants before the new aliens seeking employment and work, combining the right of employment and work with the right of residence (residents, aliens who were a long term residents, refugees, descendants of Slovenian citizens, family members) and the possibility of managing economic immigration with restrictive statutory instruments (quotas, prohibitions and restrictions, which may be adopted by The Government of the Republic of Slovenia under the conditions and manner specified by the Employment and work of Aliens Act).

Employment and work of Aliens Act imposed a quota system as the main instrument for regulation of the influx of alien labour force, with the threshold 5% of the working population. The quota restriction was intended for categories of aliens who came yearly in the Republic of Slovenia for the purpose of employment or the provision of other temporary forms of work on different contractual bases. In addition to the quota law also had other instruments to regulate the labour market conditions, which were the responsibility of the Government of the Republic of Slovenia. The government could adopt them if there was a too large influx of foreign labour force which in various forms can affect the deterioration of employment on the domestic labour market.

By signing the Treaty of Accession of 10 new Member States to the European Union, in Athens on 16 of April 2003, negotiations with the 15 "old" Member States on the conditions of accession were completed. The transition period applied only to the free movement of workers, while for

the recognition of professional qualifications, the coordination of social security and civil rights EU Acquis applied from the first day of Slovenia's accession to EU. In accordance with the Treaty of Accession of 16 April 2003 old Member State could not introduce new restrictive measures in their national legislation against the citizens of new Member States nor could the new Member States introduce them against citizens of the current Member States.

In the eight years of implementation of the Employment and work of Aliens Act some ambiguities and shortcomings had been revealed, which allowed the misuse of the law, therefore in the years 2005 and 2007 amendments to Act were adopted.

The global economic crisis and the number of unemployed persons in Slovenia grew since September 2008 when there were only 59,303 unemployed persons, at the end of 2008 66,239, at the end of May 2009 84,519, and at the end of 2009 96,672 unemployed persons. Therefore the Government adopted a Regulation on restrictions and prohibitions of employment and work of Aliens on 11 June 2009. The regulation was issued on the basis of the seventh paragraph Article 5 of Employment and work of Aliens Act, which stipulates, that the Government can in addition to the overall quota, also set restrictions and prohibitions on the employment of or work by aliens by region, area of activity, company and occupation, as well as restrict or prohibit the inflow of new alien workers, in its entirety or from specific regions if there are well-founded reasons that this is in the public interest or the general commercial interest. Regulation came into force on 13 June 2009.

On 5 November 2004, in the context of development common policies, the European Council emphasized the importance of integrated management of international migration by adopting The Hague Five-year Strategic Program for Strengthening Freedom, Security and Justice in the EU 2004-2009. New challenges for European Union Member States are reflected in long-term labour shortages, as a result of active aging of the population. Taking into account demographic trends and labour market needs, Slovenia and the European Union will have to define the future labour market as soon as possible. The first action in this area has been adoption of the Directive on highly-skilled workers (so-called EU Blue Card directive) with which the Member States at European Union level can step into "the fight" with the United States, Canada and Australia for highly skilled workers from third countries.

Strokovni članek

Javno zasebno partnerstvo v zdravstvu

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IZVLEČEK

Prispevek obravnava javno zasebno partnerstvo (JZP) z vidika mešanega javno zasebnega zdravstva v Sloveniji ob upoštevanju ekonomskih pogojev, zakonodaje za področje javnih zavodov, značilnosti, prednosti in slabosti, kot jih ugotavljajo v okoljih z izkušnjami s tovrstnim načinom izvajanja projektov na področju zdravstva.

Prikazane so mogoče oblike sodelovanja v zdravstvu, najpogostejši modeli JZP v bolnišnicah in navedene izkušnje z JZP v nekaterih državah z daljšo tradicijo tovrstnih oblik izvajanja projektov v zdravstvu. Za investicijska vlaganja v zdravstvene zmogljivosti javnofinančni viri niso zadostni, zato so nekateri zdravstveni zavodi v Sloveniji pristopili k pripravi ali izvedbi projektov v JZP. V prispevku so obravnavani primeri JZP v SB Brežice, OZ Gorenjske, Bolnišnici Sežana in IRI Ljubljana.

Ključne besede: javno zasebno partnerstvo, zdravstveno varstvo, investicijska vlaganja, zdravstveni zavodi

JEL: I19

1. Javno zasebno partnerstvo v zdravstvu - priložnosti in izkušnje

Javno zasebno partnerstvo (v nadaljevanju: JZP) so različne oblike sodelovanja med javnimi organi in poslovnim svetom s ciljem zagotavljanja zasebne pobude za financiranje, upravljanje, vzpostavitev, prenovo, vodenje in vzdrževanje infrastrukture, oziroma za izvajanje javnih storitev. Značilnost javno zasebnega partnerstva so dolgoročne pogodbe ter delitev tveganja in učinkov poslovanja. Po vsebini so projekti JZP povezani z zasebnimi vlaganji v javne projekte, lahko pa tudi pomenijo javno financiranje zasebnih projektov, ki so v javnem interesu. JZP kot oblika strateškega partnerstva med institucijami javnega

in zasebnega sektorja lahko uspešno prispeva k zmanjšanju javnih izdatkov za javne storitve in k ohranjanju dosežene ravni javnih storitev, če so ustrezno opredeljeni vsebina sodelovanja, tveganje in drugi pogodbeni odnosi med javnim in zasebnim partnerjem ter je preverjen javni interes. (Mužina, 2007, str.30)

Na področju zdravstvenega varstva Svetovna zdravstvena organizacija podaja definicijo JZP, ki opisuje partnerstvo kot sredstvo za povezovanje javnega in zasebnega partnerja, zaradi cilja izboljšanja zdravja prebivalstva na podlagi sporazumno določenih vlog in principov. Vzdrževanje ravnotežja moči med posameznimi stranmi je bistvenega pomena, pri čemer mora sodelovanje slediti ciljem doseganja javnega zdravja, enakomerni dostopnosti do zdravstvenih storitev in preprečevati poslabšanje zdravja prebivalstva. (Buse&Walt, 2000, Global public–private partnerships: part I–a new development in health?)

V teoriji so razvidne številne prednosti JZP, ki navajajo sodelovanje z zasebnim sektorjem zaradi zagotavljanja prednosti, kot so zasebna sredstva in vlaganja v projekte v javnem interesu, znanja (*know-how*) in upravljalske izkušnje ter z njimi povezana učinkovitost. V praksi je zelo pogosto glavni namen JZP razbremeniti proračun in zmanjšati zadolževanje. JZP lahko neposredno zmanjša trenutne javne izdatke z izvajanjem javnih storitev z nižjimi stroški, zmanjša stroške za investicijska vlaganja v javni sektor ter lahko oblikuje nove vire prihodkov javnemu sektorju, če gre za določene projekte v infrastrukturo (Loxley, J. & J. Loxley, A., 2007, str. 267–276).

Po drugi strani pridobljene izkušnje z izvajanjem projektov v JZP vse pogosteje izpostavljajo slabosti JZP. Nikakor ni nujno, da so storitve v primeru uporabe JZP cenejše, pogosto so dražje, kljub ekonomičnemu poslovanju, kar naj bi bilo pogojeno z razlogom, da ob večji preglednosti stroškov uporabnik plača tudi tiste, ki so bili predhodno pokriti iz javnih sredstev. Med glavnimi slabostmi JZP se navajajo zmanjšanje nadzora javnega sektorja pri zagotavljanju storitev, tveganje, povezano z neizkušenostjo javnega sektorja, nejasna razdelitev odgovornosti in s tem tveganje za oba sektorja, odpor javnosti do zasebnega kapitala, možnost dražjega kreditiranja zasebnikov v primerjavi s kreditiranjem države ter pristranskost pri izbiri zasebnega partnerja (Mužina, 2005, str. 15).

Izvajanje zdravstvenega varstva v vseh okoljih zajema številne oblike javno zasebnega sodelovanja, zato ima s tega vidika JZP v zdravstvu dolgotrajno tradicijo. V državah s pretežno javnim sistemom zdravstvenega varstva zagotavlja zasebni sektor pomemben del "inputov", kot so farmacevtski proizvodi, medicinsko tehnični pripomočki, oprema ter različne podporne storitve. V državah s

pretežno zasebnim lastništvom zdravstvene infrastrukture država posega v sistem zdravstvenega varstva z regulacijo in finančnimi vzpodbudami. Posebej v bolnišnicah se kaže ta potreba zaradi izvajanja nekih dejavnosti, kot so raziskovalna dejavnost, učni proces in razvojni programi.

V svetu se je po letu 1980 privatizacija javnih storitev, vključno z zdravstvenimi, občutneje razširila, sklicujoč se na sporazumno sprejeti cilj zmanjševanja vloge države v javni sferi. Na področju zdravstva zasledimo izkušnje z JZP in modele JZP zlasti po letu 1980 za področje bolnišničnega zdravstvenega varstva v evropskih državah, kot npr. v Veliki Britaniji, Španiji, Portugalski, Avstriji, Nemčiji, Grčiji, Italiji, pa tudi v Avstraliji, ZDA in Kanadi. Poudarek na oblikah in modelih JZP v bolnišničnem zdravstvenem varstvu je mogoče pripisati dejstvu, da so na primarni ravni zdravstvene dejavnosti v teh okoljih drugačna organiziranost in statusne oblike.

Sodelovanje javnega sektorja z zasebnim na področju bolnišnične dejavnosti se po mnenju številnih avtorjev obravnava kot področje, kjer je zasebna pobuda koristna in kjer JZP lahko pomembno vpliva na nadzorovanje stroškov in izboljšanje kakovosti storitev s sodelovanjem v segmentu gradnje in upravljanja javnih bolnišnic. Možnosti za vključitev zasebnega sektorja so različne in zelo razvejane, od oddajanja podpornih dejavnosti zunanjim izvajalcem *(outsourcing)* vse do privatizacije z odprodajo kapacitet ter s številnimi možnostmi med navedenima, kar prikazuje Tabela1. Različne možnosti sodelovanja zasebnega sektorja se razlikujejo glede na to, kako se vključuje zasebni sektor, lahko pa zagotavlja upravljanje medicinskih storitev, ima v lasti ali daje v postopen odkup bolnišnične zmogljivosti, zaposluje osebje in financira ter upravlja investicije (povzeto po: Grimsey, M.K. Lewis, Public Private Partnerships, str. 96-99).

Primeri storitev, ki jih lahko zagotavlja zasebni sektor v bolnišnicah z zasebnim financiranjem (PFI), so npr.: vzdrževanje okolja bolnišnice, vzdrževanje stavb in opreme, catering, pranje, odpadki, dezinfekcija, varnostna služba in recepcija, nenujni prevozi pacientov, informacijski sistemi, finančne storitve, parkiranje, telekomunikacije, ogrevalni sistemi, storitve sterilizacije, ponudba trgovskih in gostinskih storitev, poštne storitve, hotelska namestitev, dnevna oskrba (Felicetti, Cecilia, 2003: Focus on advisory activity of Finlomarda on PF:PPP: experiences in Healthcare sector, dostopno na http: www.hellaskps.gr/7eppa/files/Finlombarda.ppt).

Tabela 1: Oblike sodelovanja zasebnega sektorja v bolnišnicah s prikazom odgovornosti javnega in zasebnega partnerja

Možnosti	Odgovornost zasebnega partnerja	Odgovornost javnega partnerja
Oddajanje nekliničnih podpornih storitev zunanjim izvajalcem (outsourcing)	Zagotavlja neklinične storitve (čiščenje, oskrba, pranje, varnost, investic.vzdrževanje).	Zagotavlja vse klinične storitve (vključno z osebjem) in bolnišnično upravljanje.
Oddajanje kliničnih podpornih storitev zunanjim izvajalcem (outsourcing)	Zagotavlja klinične podporne storitve kot npr. radiologija in laboratorijske storitve.	Upravljanje bolnišnice in zagotavljanje kliničnih storitev.
Oddajanje specializiranih kliničnih storitev zunanjim izvajalcem (outsourcing)	Zagotavlja specializirane klinične storitve, kot npr. lithotripsija ali rutinske posege (odstranitev katarakte).	Upravljanje bolnišnice in zagotavljanje izvajanje kliničnih storitev.
Umestitev zasebnega dela bolnišnice znotraj le-te ali ob javni bolnišnici	Izvajanje zasebnega bolnišničnega programa (za zasebne paciente), lahko zagotavlja le storitev namestitve ali tudi klinične storitve.	Upravljanje javne bolnišnice za javni del in pogodbeno razmerje z zasebnim delom zaradi delitve stroškov, osebja in opreme.
Najem in upravljanje javne bolnišnice	Upravljanje javne bolnišnice v skladu s pogodbo z vlado ali zavarovalnico ter zagotavljanje kliničnih, oz. nekliničnih storitev. Lahko zaposluje celotno osebje bolnišnice in je odgovoren za vlaganja, v skladu s pogodbo.	Pogodbeno urejanje javnih bolnišničnih storitev z zasebnim partnerjem, plačilo zasebnemu upravljalcu za opravljene storitve, nadzor izvajanja in usmerjanje izvajanja programa.
Zasebna izgradnja, financiranje in oddaja v najem javne bolnišnice	Izgradnja, financiranje in razpolaganje z novo javno bolnišnico ter oddaja v najem s postopnim odkupom državi.	Upravlja bolnišnico in oblikuje načrt postopnega odkupa.
Zasebna izgradnja, financiranje in upravljanje nove javne bolnišnice	Izgradnja, financiranje in upravljanje nove javne bolnišnice ter zagotavljanje nekliničnih ali kliničnih storitev, lahko oboje.	Zagotavlja letno nadomestilo za stroške kapitala in za stroške tekočega izvajanja storitev.
Prodaja javne bolnišnice	Vzdrževanje kapacitet in nadaljevanje z dejavnostjo bolnišnice v skladu s pogodbo.	Skrbi za plačilo izvajalcu za klinične storitve, usmerja in nadzira v skladu s pogodbo.

Vir: Prirejeno po Taylor and Blair, 2002 v Darrin Grimsey and Mervyn K. Lewis, Private Public Partnerships, str. 97

Odločitev države o obliki sodelovanja je odvisna od bolnišničnih potreb po storitvah in sposobnosti države usmerjati in učinkovito nadzorovati kakovost zdravstvenih storitev. Zelo pomembno je javno mnenje o potrebnosti reformnih sprememb in vlogi države pri zagotavljanju zdravstvenega varstva. Najpogostejši modeli javno zasebnega partnerstva v bolnišnicah so prikazani v Tabeli 2.

Tabela 2: Modeli javno zasebnega partnerstva v bolnišnicah

Model	Opis
Franšizing	Javni partner s pogodbo prenese upravljanje bolnišnice.
D B F O (projektiranje, gradnja, financiranje, delovanje)	Zasebni partner planira in zgradi objekt, financira in upravlja bolnišnico.
B O O (izgradnja, lastništvo, izvajanje)	Javni partner s pogodbo odda izgradnjo lastništvo in vodenje bolnišnice.
B O O T (izgradnja, lastništvo, izvajanje, prenos)	Javni partner s pogodbo dogovori za določeno obdobje, poleg izgradnje objekta tudi izvajanje zdr. storitev, zasebni partner prenese lastništvo na javnega partnerja.
B O L B (nakup, lastništvo, lizing, prenos)	Zasebni izvajalec zgradi bolnišnico, ima v lastni objekt, prenese v lizing ter po določenem obdobju prenese objekt v last javnemu partnerju.
A L Z I R A	Zasebni izvajalec zgradi in upravlja bolnišnico ter s pogodbo dogovori izvajanje zdravstvenih storitev.

Vir: Povzeto po: McKee, Nigel Edvards, Rifat Atun 2006, Bulletin of the WHO

Upoštevaje izkušnje z JZP v državah z mešanim javno zasebnim načinom izvajanja zdravstvenega varstva, kot so Avstralija, Španija in Velika Britanija, so nekatere oblike JZP značilne za gradnjo in delovanje bolnišnic z modelom, v sklopu katerega javni partner odda projektiranje, izgradnjo in vodenje bolnišnice. Pregled izkušenj je omejen in strogega vrednotenja tovrstnih modelov primanjkuje. Pomembna so štiri vprašanja: stroški, kakovost, kompleksnost ter fleksibilnost. Novi objekti, zgrajeni v JZP, so bili po dosegljivih izkušnjah v državah z daljšo tradicijo izvajanja v JZP dražji v primerjavi z izvedbo

na tradicionalen način. Izgradnjo objektov v sicer planiranem času ter upoštevaje razpoložjiva finančna sredstva v ta namen, kar je mogoče šteti kot prednost izvedbe projektov v JZP, spremlja dejstvo, da gre to tudi na račun kakovosti izgradnje (povzeto po: M.McKee,Nigel Edvards, Rifat Atun, Bulletin of the World Health Organization 2006;84:890-896).

Proučitev situacij, kjer je javni sektor izvajal projekte v javno zasebnem partnerstvu z zasebnim sektorjem za vodenje in v določenih primerih izgradnjo bolnišnic, izkazuje, da se pričakovanja javnega sektorja glede privatnega financiranja zdravstvenih projektov niso v celoti izpolnila. Nove zmogljivosti so bile, upoštevaje celovite stroške in gledano v daljšem časovnem obdobju, v splošnem dražje, zlasti upoštevaje kasnejše stroške za odpravo napak pri izgradnji.

Da bi zmanjšali tveganje javnega partnerja, tako da bi del tveganja prevzel zasebni partner, kar bi izboljšalo pogoje za sklenitev JZP, je po izkušnjah težko izpolniti, zlasti zaradi zahtevnosti zdravstvenih projektov in hitro se spreminjajočih razmer (Martin McKee, Nigel Edvards, Rifat Atun, WHO 2006).

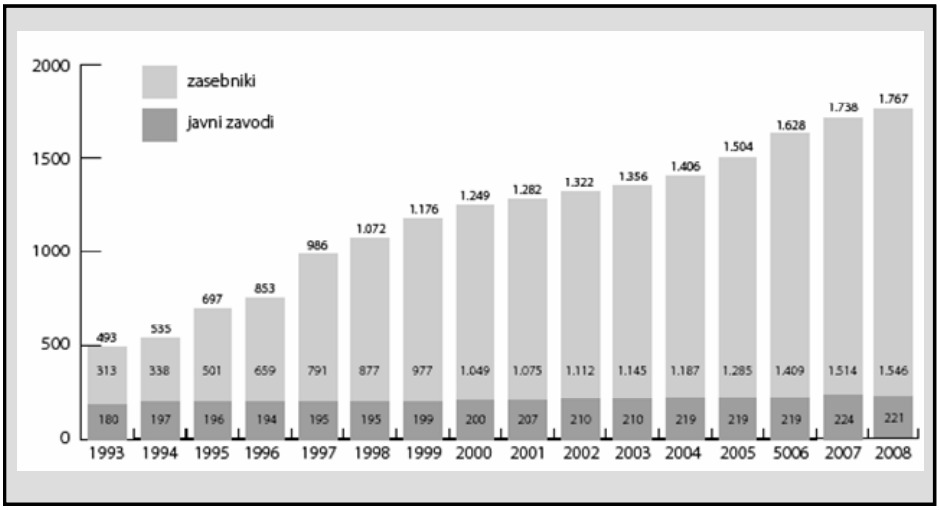
2. JZP v mešanem javno zasebnem zdravstu v Sloveniji

V mešanem javno zasebnem zdravstvu v Sloveniji imamo med različnimi možnimi oblikami JZP v pretežni meri razvit le zasebni način izvajanja zdravstvenih programov s koncesijami in oddajanje izvajanja storitev zunanjim, zasebnim izvajalcem (*outsourcing*) zaradi konkurenčnejšega izvajanja zlasti podpornih, nemedicinskih storitev.

Po obsežni zdravstveni reformi zdravstva v Sloveniji v letu 1992, ko smo spremenili povsem državni v mešani javno zasebni način zagotavljanja sredstev za zdravstveno varstvo ter omogočili tudi zasebni način izvajanja zdravstvenih storitev, v zdravstvu ni prišlo do temeljitejših sistemskih sprememb. V Sloveniji so do leta 1992 izvajali zdravstveno dejavnost javni zdravstveni zavodi. S podeljevanjem koncesij je bilo omogočeno zasebno izvajanje zdravstvenih storitev v javni zdravstveni službi. Obseg zasebnega načina izvajanja zdravstvenih storitev s podeljevanjem koncesij se je v tem obdobju povečeval z naraščajočim trendom, kar nazorno prikazujejo podatki Zavoda za zdravstveno

zavarovanje Slovenije (v nadaljevanju ZZZS) na Sliki 1, ki pa upoštevajo število nosilcev sklenjenih pogodb. Prikaz števila le-teh je treba obravnavati v povezavi s podatki o obsegu in vrednostjo programa zdravstvenih storitev, za katerega sklepajo javni zavodi in zasebni izvajalci pogodbe z ZZZS in izkazuje 13,8 odstotno udeležbo zasebnih izvajalcev v finančnih sredstvih za zdravstvene storitve. V letu 2008 je ZZZS sklenil pogodbe skupno s 1767 izvajalci, od tega z 221 javnimi zavodi in s 1546 zasebnimi izvajalci s koncesijo.

Slika 1: število sklenjenih pogodb ZZZS z zdravstvenimi zavodi med letoma 1993 – 2008



Vir: Poslovno poročilo ZZZS za leto 2008, april 2009

V celotnem obdobju, od spremembe zdravstvene zakonodaje, se je število zasebnih izvajalcev povečevalo najhitreje med leti 1994 in 2000 ter ponovno po letu 2004. Na primarni ravni je trenutno ena tretjina koncesionarjev, večina je organiziranih v samostojne prakse, ki so del sistema javnega zdravstvenega varstva (Poslovno poročilo ZZZS za leto 2008, ZZZS, Ljubljana, april 2009).

Po letu 2000 imamo v Sloveniji na področju zdravstva poleg koncesij in oddaje nekaterih storitev zasebnim zunanjim izvajalcem tudi posamične primere drugih oblik JZP, ki so podrobneje obravnavani v petem poglavju prispevka. Gre za izvedbo projektov v OZ Gorenjske, kjer lahko govorimo o modelu BOO v kombinaciji s koncesijo izvajanja storitev, načrtovanega projekta novega vhoda na IRI Ljubljana, kjer lahko govorimo o poslovnem modelu BOT, projektu pogodbenega zagotavljanja prihrankov energije, ki ga lahko označimo kot model

DFBO. Pri primeru izgradnje dializnega centra v Bolnišnici Sežana ni mogoče govoriti o pravi obliki JZP, temveč o pogodbenem investitorjevem financiranju.

Kljub veljavnosti Zakona o JZP od marca 2007 v zdravstvu v Sloveniji ne zasledimo projektov za večja vlaganja v opremo ali objekte, ki bi bili načrtovani v partnerstvu z zasebnim sektorjem, kar potrjujejo podatki Poročila o sklenjenih oblikah javno-zasebnega partnerstva v Republiki Sloveniji v letu 2008, ki ga je pripravilo Ministrstvo za finance. Vsa navedena dejstva navajajo na sklepanje, da je poleg normativnega okvira treba vzpostaviti spodbudno okolje, v katerem bodo vodstva zdravstvenih zavodov motivirana za iskanje najboljših možnosti za izvedbo načrtovanih projektov. V ta namen bi morali zdravstveni zavodi pridobiti ustrezno raven samostojnosti in odgovornost za ravnanje s premoženjem, s tem pa možnost avtonomnejšega sprejemanja poslovnih odločitev. Pomembno mesto ima strategija razvoja področja, v kateri je jasno izražen interes za javno zasebno sodelovanje in splošen okvir, ki nakazuje področja in posamezne programe, ki bodo imeli prednost v prihodnjem razvoju zdravstva, kot so na primer programi podaljšanega bolnišničnega zdravljenja ob zmanjševanju bolnišničnih zmogljivosti, programi za zdravstveno nego kroničnih bolnikov, programi diagnostičnih storitev.

3. Razpoložljivi viri javnofinančnih sredstev za vlaganja v zdravstvu

Izvajanje projektov načrtovanja in izgradnje v javno zasebnem sodelovanju je v veliki meri odvisno od finančnih virov in pogojev za pridobitev le-teh. V Sloveniji je država pristojna za zagotavljanje prostorskih in opremskih zmogljivosti v zdravstvu kot enega ključnih pogojev za kvalitetne zdravstvene storitve in stroškovno učinkovito zdravstveno varstvo. V skladu z veljavno zdravstveno zakonodajo in Zakonom o investicijah v javne zdravstvene zavode za obdobje 2008-2011 izvaja država to pristojnost z investicijskimi vlaganji v javne zdravstvene zavode na sekundarni in terciarni ravni.

Pri investicijskih vlaganjih v zdravstvu je poleg zagotavljanja finančnih sredstev pomembno vzpostaviti pogoje investiranja, da bodo investicijska vlaganja ustrezala zdravstvenim potrebam prebivalstva in da bodo investicije izvedene učinkovito. Čeprav je npr. izgradnja nove bolnišnice finančno zahtevna, je pri odločanju o investiciji še toliko bolj pomembno upoštevati, da

bo izvajanje zdravstvenih programov v novozgrajeni bolnišnici zahtevalo finančna sredstva za delovanje v prihodnosti. Ustrezne investicijske odločitve pripomorejo k izvajanju strukturnih sprememb na področju zdravstva, kot so npr. preusmeritve pri načinu izvajanja zdravstvenih programov, povečanje dnevnih obravnav, skrajševanje ležalne dobe, druge oblike izvenbolnišničnega zdravljenja (povzeto po Martin McKee, Judith Healy, Investing in Hospitals).

Z investicijami v zdravstveno mrežo se oblikujejo pogoji za delovanje, spremembe in razvoj zdravstvenih dejavnosti ter programov na državni ravni. V Sloveniji smo glede na stanje zdravstvene mreže, ki je na tem mestu obravnavana kot materialni, prostorski in drugi viri, v letu 1994 sprejeli Zakon o investicijah v javne zdravstvene zavode, na podlagi katerega so z letnimi programi določeni investicijski projekti za izgradnjo prioritetnih zmogljivosti v zdravstveni mreži.

Višina in gibanje proračunskih sredstev za investicije v zdravstvene zavode v letih 2002-2007 sta prikazani v Tabeli 3. Podatki o realiziranih investicijskih vlaganjih v zdravstveno mrežo za obdobje 2002-2008 izkazujejo zmerno povečanje obsega vlaganj, vendar višina v odnosu na načrtovana vlaganja ne zagotavlja uspešnega zaključevanja planiranih investicijskih vlaganj.

Finančni viri za investicijska vlaganja v zdravstvu so poleg proračunskih sredstev, sredstva združene amortizacije, lastni finančni viri zdravstvenih zavodov ter sredstva od odprodaje državnega premoženja, ki se združujejo v proračunskem skladu[1] za investicije v javne zdravstvene zavode.

Amortizacija je sicer namenjena obnavljanju in izboljšanju osnovnih in drugih sredstev (neopredmetenih dolgoročnih sredstev, nepremičnin, opreme), katerih vrednost se zmanjšuje z odpisanostjo, zato ta vir v zdravstvenih zavodih niti po namenu, kot tudi glede na višino, ne zadošča za večja investicijska vlaganja. Delež obračunane amortizacije v celotnem prihodku bolnišnic je v letu 2008 znašal 4,23 % (Vir: Poročilo o doseženih poslovnih rezultatih JZZ in lekarn v letu 2008, Ministrstvo za zdravje, junij 2009). Amortizacijska sredstva zdravstveni zavodi v pretežni meri namenjajo za najnujneša investicijska

1 Proračunski sklad je podračun, ustanovljen na podlagi Zakona o investicijah v javne zdravstvene zavode, katerih ustanovitelj je RS, za obdobje 2008-2011. Viri financiranja sklada so:
-namenski prihodki proračuna, ki se preko pravic uporabe namenske postavke sredstev amortizacije in drugih virov po ZIJZ izločajo na podračun proračunskega sklada, in integralni prihodki proračuna, ki se preko postavke »investicije v javne zdravstvene zavode« izločijo na podračun proračunskega sklada
- del amortizacije javnih zdravstvenih zavodov
- darila, volila in druga namenska sredstva
- prejemki od sredstev, ki jih osebe zasebnega prava namenijo za investicije v opremo in objekte javnih zdravstvenih zavodov.

vlaganja za nadomeščanje opreme, investicijsko vzdrževanje, obnavljanje in izboljšave obstoječih prostorskih zmogljivosti, medtem ko za večja investicijska vlaganja za nadomestitev zahtevnejše medicinske in druge opreme ter za vlaganja v nove prostorske zmogljivosti obstoječi finančni viri ne zadoščajo. V povezavi s tem je visoka stopnja odpisanosti osnovnih sredstev zdravstvenih zavodov, ki izkazuje za leto 2008 78,03 % iztrošenost opreme in 53,7 % iztrošenost vseh osnovnih sredstev in je posledica prepočasnega nadomeščanja in obnove zaradi pomanjkanja finančnih virov (Podatki in kazalci poslovanja zdravstvenih zavodov Slovenije za leto 2008, ZZZS).

Tabela 3: Višina in gibanje proračunskih sredstev za investicije v zdravstvene zavode v letih 2002-2008, v 000 EUR

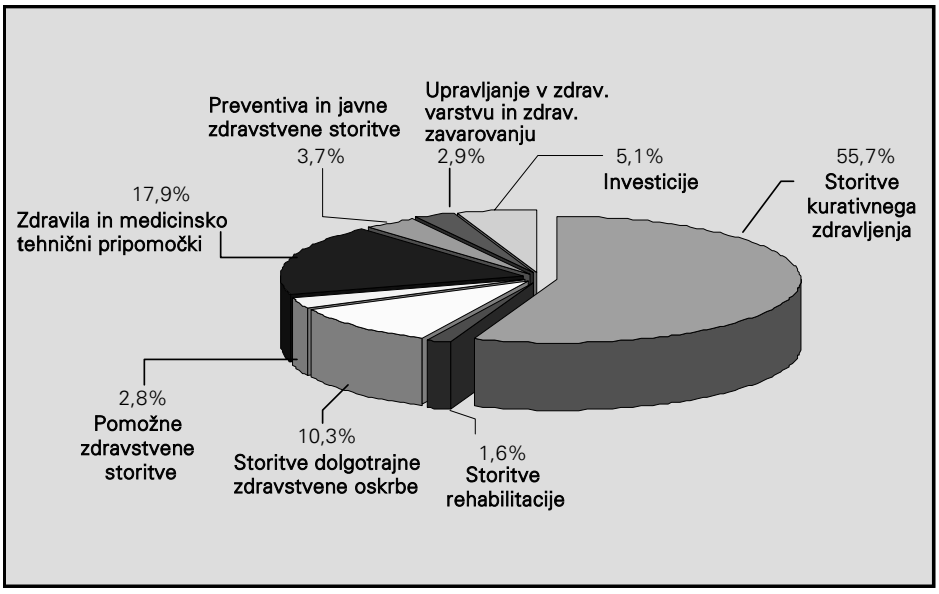
	2002	2003	2004	2005	2006	2007	2008
Investicijska vlaganja v bolnišnice	25.872,29	40.503,99	37.569,57	27.132,32	41.406,10	46.396,75	51.825,78
Investicijska vlaganja v bolnišnice - proračun	14.420,88	28.709,56	30.590,93	20.868,29	34.565,58	42.532,69	45.681,05
Sredstva amortizacije in drugi viri	6.430,29	11.484,08	6.978,64	6.261,82	6.840,52	3.826,26	6.143,08
Izgradnja Pediatrične klinike	5.021,12	0	0	0	0	0	0
Investicije – Prodaja in menjava premoženja JZZ	0	0	0	2,21	0	37,80	1,65
Sofinanciranje investicij v osn. ZV	0	0	822,79	1.851,12	1.952,45	1.586,06	1.431,02
Skupaj	**25.872,29**	**40.503,99**	**38.392,36**	**28.983,44**	**43.358,55**	**47.982,81**	**53.256,80**

Vir podatkov: Podatki MF, Direktorat za proračun, Podatki za leto 2007 in 2008 - MFERAC

V Sloveniji znaša delež javnofinančnih sredstev za infrastrukturne naložbe le 5,1 % javnofinančnih sredstev za zdravstvo (Slika 2). Zaradi javnofinančnih pritiskov bodo čedalje večje potrebe po alternativnih virih financiranja, zlasti za investicijska vlaganja v zdravstvene zmogljivosti, med katerimi so posebej finančno zahtevne naložbe v zdravstveno opremo in objekte. Tudi spremembe v načinu izvajanja zdravstvenih programov in v potrebah uporabnikov bodo imele za posledico spremembo namembnosti zdravstvenih objektov ali gradnjo novih, kar bo zahtevalo večja finančna sredstva za investicije v zdravstvu, ki jih bo potrebno zagotavljati tudi iz nejavnih virov.

Javnofinančni okviri za financiranje zdravstvenega varstva ne omogočajo zadostnih sredstev za investicijska vlaganja. Za investicijska vlaganja v obnovo, izboljšanje ali nadomeščanje obstoječih nepremičnin v zdravstvenih zavodih, obstoječi finančni viri zdravstvenih zavodov in proračunski viri, določeni z letnimi finančnimi načrti ne zadoščajo. Tudi projekcije javnofinančnih odhodkov za zdravstveno varstvo za obdobje 2008-2013 predvidevajo nadaljnje postopno znižanje deleža javnofinančnih odhodkov v obveznem zdravstvenem zavarovanju.

Slika 2: Izdatki za zdravstvo po vrstah obravnav in virih financiranja 2003-2008



Vir: Podatki Statističnega urada Republike Slovenije

4. Prikaz nekaterih Projektov JZP v zdravstvu v Sloveniji

Tako kot v drugih okoljih je tudi v Sloveniji glavni motiv javnega sektorja za projekte JZP zagotovitev sredstev za vlaganja in zagotavljanje kakovostnejših storitev uporabnikom v okviru omejenih javnih sredstev. Ker vseh potrebnih investicijskih vlaganj v zdravstveno mrežo s proračunskimi viri ni mogoče zagotoviti, so se nekateri zdravstveni zavodi že v obdobju pred veljavnostjo ZJZP odločali za pridobitev zasebnih sredstev za izvedbo načrtovanih investicij. Prvi primeri izvedbe projektov skupnih vlaganj v JZP so bili izvedeni že pred desetimi leti, kot je primer treh objektov Osnovnega zdravstva Gorenjske, zgrajen in financiran v sistemu JZP na osnovi dokaj dobrega skupnega sodelovanja in cilja treh partnerjev, in sicer občin, države (ministrstva), javnih zdravstvenih zavodov in zasebnih vlagateljev. Bolnišnica Sežana je v letih 2004-2005 izvedla izgradnjo dializnega centra v obliki javno-zasebnega sodelovanja z investitorjem. Splošna bolnišnica Brežice je leta 2006 sklenila pogodbeno partnerstvo za zagotavljanje prihranka energije in dobave energentov ter rekonstrukcijo kotlarne. Inštitut za rehabilitacijo invalidov RS je v letu 2007 pripravil projekt novega vhoda in spremljajočih prostorov na IRI po modelu BOT, preveril interes zasebnih vlagateljev, vendar do realizacije projekta še ni prišlo.

V teku ali v pripravi so tudi zasebna vlaganja za izgradnjo parkirišč ob nekaterih bolnišnicah.

4.1 Osnovno zdravstvo Gorenjske (OZG)

JZP v primeru OZG predstavlja skupno javno zasebno investiranje gorenjskih občin, zasebnih vlagateljev in javnega zavoda s ciljem zagotovitve poslovnih prostorov na skupni lokaciji zaradi ohranitve zdravstvenega doma kot načina izvajanja zdravstvenih storitev na primarni ravni v mešanem javno zasebnem zdravstvu.

Izgradnja skupnih zdravstvenih objektov (Škofja Loka, Radovljica, Tržič) v obliki financiranja JZP, se je izkazala kot pravilna v pogojih mešanega javno zasebnega zdravstva na primarni ravni na območju gorenjskih občin. Vse tri investicije so bile finančno precej zahteven projekt, saj je bila vrednost objekta v Škofji Loki 1,1 mio EUR, v Radovljici 450.000 EUR in v Kranju 5 mio EUR. Zasebna sredstva so skupno s proračunskimi (občinskimi in delno sredstva

Ministrstva za zdravje) omogočila realizacijo investicije, pri čemer je bil uveden boljši nadzor izvedbe investicije. Z izgradnjo novih prostorov za izvajanje zdravstvene dejavnosti na primarni ravni je bila omogočena koncentracija vseh zmogljivosti na eni lokaciji, s tem pa tudi razpoložljivost zdravstvenih dejavnosti za paciente na skupni lokaciji. K uspešni realizaciji projekta je v veliki meri prispeval premoženjski sporazum med 18 gorenjskimi občinami in OZG, ki zavezuje občine za ureditev lastništva v zemljiški knjigi in za oddajo v upravljanje OZG. Sredstva v upravljanju – vrednost premičnin in nepremičnin ter najemnina so prenesena v upravljanje OZG, kar predstavlja pomembno spodbudo za javni zavod, saj lahko prihodek iz tega naslova namenja za vlaganja v objekt in za nagrajevanje zaposlenih (povzeto po Veternik J., Javno zasebne investicije pri izgradnji prostorov Osnovnega zdravstva Gorenjske, 14. strokovno srečanje ekonomistov in poslovodnih delavcev v zdravstvu, Radenci 2007).

Javno zasebno sodelovanje je bilo vzpostavljeno pri zagotovitvi zainteresiranih vlagateljev, pri pogodbenem urejanju financiranja gradnje, uporabi in vzdrževanju zgrajenih objektov, prav tako pa tudi pri izvajanju dejavnosti, kjer zasebni vlagatelji nastopajo kot etažni lastniki poslovnih prostorov in so bodisi zasebniki - koncesionarji ali zasebna podjetja, ki izvajajo z zdravstvom povezano dejavnost. V pogledu modela JZP lahko govorimo o modelu BOO (*built own operate*) v kombinaciji s koncesijo izvajanja storitev. Za model je značilno, da ostajata javni in zasebni partner trajneje povezana. Ob izteku koncesije običajno javni partner prevzame odgovornost za uporabo in upravljanje objekta z namenom ohranitve izvajanja koncesijske dejavnosti. Ker gre za uporabo oblike JZP na področju primarnega zdravstvenega varstva, ki izkazuje tudi druge pozitivne učinke povezanega delovanja javnih in zasebnih izvajalcev, je ta primer JZP v našem okolju vreden pozornosti.

4.2 Izgradnja novega vhoda in spremljajočih prostorov na Inštitutu RS za rehabilitacijo invalidov (IRI)

IRI je ocenil, da sta projekt izgradnje spremljajočih prostorov za izvajanje podpornih dejavnosti za uporabnike in njegova funkcija primerna za iskanje investicijskih virov v JZP. Lastni finančni viri IRI niso omogočali izvedbe tovrstne investicije, plan investicijskih vlaganj v javne zdravstvene zavode s proračunskimi sredstvi pa te investicije ne predvideva. Projekt v vrednosti 4,7 mio EUR je namenjen celostni ponudbi storitev za obiskovalce, paciente in

invalide. Zasebni vlagatelj bi zgradil objekte ter zagotovil opremo, koncedentov vložek bi bilo zemljišče in priprava dokumentacije JZP.

Glede na več možnih načinov upravljanja vložka je inštitut za projekt novega vhoda kot najprimernejšega izbral sistem, ko objekti in naprave postanejo last javnega partnerja po določenem času (BOT), saj se s tem prenese celotna investicija, upravljanje in vzdrževanje objekta na zasebnega partnerja. Odločitev je smiselna, glede na to da bi bilo v tem primeru sklenjeno koncesijsko JZP, katerega predmet bi bila koncesija gradnje in bi zasebni partner lahko zagotovil povrnitev vloženih sredstev iz naslova prihodkov za oddajo prostorov, v katerih bi potekalo izvajanje storitev, pri čemer je treba upoštevati maksimalni rok za podelitev koncesije. Izračun upravičenosti investicije je pokazal, da bi se investicija začela vračati po preteku 24 let. IRI bi ob primerno opredeljeni pogodbi za izvedbo projekta z zasebnim partnerjem v javno zasebnem sodelovanju zagotovil celostno in funkcionalno zaključeno podobo inštituta, možnost uporabe prostorov v novem vhodu in avle, ki bi bila namenjena pacientom in obiskovalcem ter bi zagotavljala širšo in kvalitetnejšo ponudbo storitev. Tveganje je v primeru pripravljenega projekta v prvi vrsti na strani zasebnega vlagatelja, ob predpostavki, da bo moral zgrajene prostore oddajati, kar pa mu bo lahko zagotavljalo pričakovani donos, če se bodo v novih prostorih uspešno izvajale predvidene dopolnilne in podporne dejavnosti. Inštitut bo v primeru odločitve za JZP sklenil koncesijsko JZP s predmetom koncesija gradnje. Na strani javnega partnerja je po zakonu RS, lahko pa bi Vlada RS to vlogo prenesla na IRI (povzeto: Cugelj R., Možnost JZP pri izgradnji novega vhoda in spremljajočih prostorov na IRI, 14. strokovno srečanje ekonomistov in poslovodnih delavcev v zdravstvu, Radenci 2007).

Za izvedbo projekta v JZP bi sicer lahko izbirali med oblikami JZP, kot so BTO, BOT in BOO. Za projekt JZP pri izgradnji »novega vhoda IRI« se bo inštitut predvidoma odločil, ko bodo zasebni vlagatelji izkazali interes.

4.3 Splošna bolnišnica Brežice – pogodbeno partnerstvo na področju pogodbenega zagotavljanja prihranka energije in dobave energentov – rekonstrukcije kotlarne

Vodstvo bolnišnice se je za prenovo ogrevalnega sistema v JZP odločilo zaradi okoliščin, ko kot manjša bolnišnica nimajo veliko možnosti za pridobitev proračunskih sredstev za vse investicijske potrebe. Tudi ocena možnosti najetja kredita se je izkazala kot zahtevnejši in dolgotrajnejši postopek, zato so se

odločili za alternativni način izvedbe investicije, in sicer z JZP. Obenem je obstajal motiv zasebnega partnerja Petrola d.d. Ljubljana za vložek v ogrevalni sistem bolnišnice, ki se je izkazal tudi s pripravljenostjo za pripravo projektne naloge, oz. s sodelovanjem v procesu planiranja in priprave investicije. Zasebni partner je bil pripravljen prevzeti odgovornost za ustvarjanje prihrankov pri ogrevanju in tveganje. Posebej zahteven postopek načrtovanja prihrankov in cene energentov so v fazah pogajanj o pogodbi izvedli v daljšem obdobju, zavedajoč se pomembnosti opredelitve vseh tveganj, skrbne ocene stroškov in koristi.

Bolnišnica je preverila ekonomsko upravičenost investicije in izračunala prihranke zaradi posodobitve naprav, toplotnih postaj in preostalih posodobitev ter prihranke zamenjave energenta. Ob upoštevanju končnega izračuna prihrankov, ki temelji na referenčni porabi ELKO in propana v letu 2005, s spremembo energenta in prehodom na zemeljski plin, sanacijo rezervoarjev ter z investicijo v termični del kuhinje s prezračevanjem je bilo ocenjeno, da bi bolnišnica letno zmanjšala stroške ogrevanja za 26,6 %, kar se je s spremljanjem učinkov v naslednjih letih izkazalo kot realno, oziroma so bili prihranki celo višji. Velikost bolnišnice ni omogočala poplačila investicije iz prihrankov energije. Zato Bolnišnica Brežice zagotavlja plačila iz treh delov, in sicer iz osnovnega fiksnega plačila za glavno storitev, ki se nanaša na Petrolovo jamstvo prihranka okoli 25 %, iz odstotka bonusa - variabilno plačilo, kot dodatna stimulacija za dosego višjih prihrankov od zagotovljenih (25 % Petrol, 75 % SB Brežice) in iz dodatnega fiksnega plačila za zagotavljanje izvedbe celotnega projekta.

V pogledu prevzema tveganja v projektu JZP SB Brežice je na osnovi sklenjene pogodbe mogoče ugotoviti, da sta oba partnerja, tako javni – SB Brežice kot zasebni – Petrol d.d. Ljubljana tveganje opredelila odgovorno in podrobno. Predvideno je, da ima bolnišnica pravico veta za primere ravnanj ali stanj, da bi bili ukrepi za prihranke energije nezdružljivi z zakoni ali predpisi, da bi bili v nasprotju z osnovnim namenom pogodbe ali če bi se pri naročniku pojavil dvom o ukrepih za prihranek energije glede izpolnjevanja zahtev glede kakovosti ali o transparentnosti. Za primer, da ne bi bil dosežen vnaprej opredeljeni obseg investicije, lahko naročnik do konca trajanja pogodbe uveljavlja zmanjšanje v obliki znižanja udeležbe, ki pripada izvajalcu za odstotek, sorazmeren neizvršenemu obsegu investicije. Za naročnika je glavno tveganje, da ne bi bilo doseženo zmanjšanje porabe in stroškov energije, zato je predvideno jamstvo prihranka, ki ga izvajalec garantira kot glavno storitev, in sicer na način,

da bodo za čas pogodbe prihranki zagotovljeni v vnaprej opredeljeni višini. Bolnišnica ima dogovorjeno pravico prenehanja dobave energenta, če naročnik dobi na trgu cenejši energent. Tveganje na strani bolnišnice je za primer likvidacije ali stečaja izvajalca, za kar pogodba predvidi predkupno pravico naročnika na neamortiziranem delu naprav in stvari, ki jih je vgradil izvajalec.

Zasebni partner je za preprečitev tveganj na svoji strani v pogodbi dogovoril odškodninske zahteve, če so razlogi za preprečitev izvajanja ukrepov nastali zaradi nepoznavanja ovir in jih izvajalec ni poznal. Naročnik nosi tveganje, če izvajalec ne doseže vsote investicije ali pride do odstopanj pri strukturi investicije, saj naročniku v tem primeru ne pripadajo zahteve za zmanjšanje, ker so odstopanja nastala po njegovi krivdi. Izvajalec se je ustrezno zavaroval za primer odsvojitve stavbe, pravnega nasledstva ali opustitve stavbe, saj je v tem primeru v pogodbi predvideno, da se z odsvojitvijo ali prepustitvijo, prenesejo na novega lastnika obveznosti iz pogodbe.

Lastništvo vseh naprav in stvari, ki jih vgradi izvajalec, ostaja do polnega poplačila vseh finančnih obveznosti naročnika do izvajalca iz te pogodbe, pri izvajalcu, Petrolu d.d. Po preteku pogodbenega obdobja preidejo vse naprave in stvari, vključno z dopolnitvami v času trajanja pogodbe, v last naročnika, SB Brežice (povzeto: Zorko T., Primer javno zasebnega partnerstva na področju zagotavljanja učinkovite rabe energije v Splošni bolnišnici Brežice, 14. strokovno srečanje ekonomistov in poslovodnih delavcev v zdravstvu, Radenci 2007).

Projekt pogodbenega zagotavljanja prihrankov energije v primeru SB Brežice predstavlja model pogodbenega financiranja, ki zajema tudi načrtovanje in vgradnjo novih naprav, vodenje in nadzor obratovanja, servisiranje in vzdrževanje, odpravo motenj ter motiviranje porabnikov energije. Z vidika poslovnega modela JZP gre za skupno načrtovanje, izgradnjo, obratovanje in financiranje za določen čas ter koncesijo v smislu vnaprejšnjega pogodbenega zagotavljanja energenta (DFBO). Glavno gonilo je izraba zasebnega kapitala ter prenos tveganj zasnovanja, izgradnje in obratovanja na zasebni sektor. Prednosti so povezane z motiviranostjo zasebnega sektorja za vložke, kar omogoča večji potencial za pospešeno gradnjo, večji prenos tveganj pa pomeni večjo motivacijo za t. i. *whole-life costing* pristop.

4.4 Splošna bolnišnica Sežana - izgradnja dializnega centra

Bolnišnica Sežana glede na obseg in vsebino dogovorjenega zdravstvenega programa ni imela možnosti za pridobitev proračunskih sredstev za investicijo od Ministrstva za zdravje, prav tako tudi razpoložjivi finančni viri bolnišnice niso omogočali pričetka investicije v izgradnjo dializnega centra. Bolnišnica je leta 2004 na podlagi elaborata o ekonomski upravičenosti investicije in določitvi velikosti dializnega centra pričela s projektom adaptacije gospodarskega dela bolnišnice v vrednosti 2,5 mio EUR. Bolnišnica je poslovala z izgubo v tekočem poslovanju in z nepokritimi izgubami iz preteklih let, zato ni bilo možnosti za izvedbo projekta z lastnimi sredstvi. Najem kredita je bil glede na javnofinančno zakonodajo pogojen s soglasjem ustanovitelja, ki so ga ocenili kot vprašljivega. Zato je Bolnišnica Sežana pridobila investitorja, ki je bil pripravljen izvesti gradbena dela in nabaviti opremo za dializni center; investicijo je bolnišnica končala v letu 2005. Postopek izbire izvajalca za gradbena dela in za dobavo opreme so izvedli z javnim naročilom. Sredstva za izvedbo projekta je bolnišnica zagotovila na način, da je pridobila donacije za izdelavo projektov ter kritje deleža stroškov za nadomestne prostore. Na največje težave so naleteli pri pridobivanju garancije. Izkazalo se je, da je za pridobivanje zasebnih vložkov v javne zavode problem v lastninskih upravičenjih in ni v pristojnostih javnega zavoda. V primeru Bolnišnice Sežana jim je kljub navedenim oviram uspelo doseči soglasje z investitorjem in zgraditi dializni center, za katerega odplačujejo sredstva na podlagi pogodbe z investitorjem (povzeto: Šonc S., Javno zasebna investicija pri izgradnji in opremi prostorov Dializnega centra Sežana, 14. strokovno srečanje ekonomistov in poslovodnih delavcev v zdravstvu, Radenci, 2007). Razpoložljivi podatki o pogodbenem odnosu med bolnišnico in zasebnim vlagateljem ne potrjujejo, da gre v tem primeru za obliko JZP, pač pa za pogodbeno financiranje.

5. Zaključek

V pogojih, ko mreža javne zdravstvene službe še ni določena, so zanimivi projekti za JZP v zdravstvenem sektorju zlasti s področja nemedicinskih in podpornih dejavnosti, kot npr. obnova ali modernizacija ogrevalnih sistemov, pranje perila, čiščenje, storitve prehrane in druge. To so potrdili tudi posamični primeri

javno zasebnih vlaganj v zdravstvu (IRI, SB Brežice), katerih vsebina so podporne in nemedicinske dejavnosti. Vlaganja zasebnega kapitala v medicinske dejavnosti v javno zasebnem partnerstvu so zahtevnejša in zahtevajo večjo stopnjo regulacije sistema zdravstvenega varstva v smislu določitve in sprejema standardov, normativov, mreže in vzpostavljene usmerjevalne ter nadzorne vloge države.

Za izvedbo projektov v javno zasebnem partnerstvu so se odločali predvsem v tistih zdravstvenih zavodih, ki so bili zaradi pogojev poslovanja in nujnosti iskanja zasebnih finančnih virov pri izvedbi projektov za nadaljevanje razvoja zavoda v večji meri motivirani za sklepanje partnerstva z zasebnim sektorjem. Dosedanje izkušnje zdravstvenih zavodov pri vstopanju v JZP v Sloveniji potrjujejo dejstvo, da javno zasebno partnerstvo ne pomeni prednostnega načina za izvajanje javne službe, oziroma za zagotavljanje finančnih virov za investicijska vlaganja, a je lahko pomemben izhod zaradi nezadostnih javnih sredstev za investicijska vlaganja, če so oblike javno zasebnega izvajanja projektov dobro načrtovane, kvalitetno upravljane ter nadzorovane. To potrjujejo tudi izkušnje drugih okolij, kjer imajo daljšo tradicijo sodelovanja javnega z zasebnim sektorjem.

Pred vstopanjem v javno zasebna partnerstva je posebej pomembno upoštevati dejstvo, da so te oblike sodelovanja izjemno zahtevne, tako v fazi načrtovanja, kot tudi v fazah realizacije in upravljanja. Za javni sektor mora biti pri tem osnovno vodilo, da bo z izvedbo javno zasebnega partnerstva prednost za uporabnika večja in bo zastopan javni interes, da bo uporabljena ustrezna pravno organizacijska oblika ter bo tveganje enakomerno porazdeljeno, hkrati pa, da bodo udeleženci partnerstva dosegli zastavljene cilje.

Skupna vlaganja bi morala slediti ključnim ciljem razvoja, opredeljenimi v strategiji razvoja zdravstva. Predpostavlja pa se, da bo država dosledno izvajala usmerjevalno in nadzorno vlogo pri izvajanju projektov in vzpostavila vzvode, da bo pri javno zasebnem sodelovanju za izvajanje projektov ustrezno zavarovan javni interes.

Na področju zdravstva v Sloveniji je za izvajanje projektov v javno zasebnem sodelovanju poleg sprememb zakonodaje, ki bi uredila statusna in premoženjska vprašanja ter področje upravljanja, prav tako pomemben razvojni koncept področja.

Mag. Elda Gregorič Rogelj je generalna direktorica Direktorata za zdravstveno ekonomiko na Ministrstvu za zdravje. Direktorat vodi od konca leta 2008. Ima dolgoletne izkušnje na področju neprofitnega menedžmenta in zdravstvene ekonomike. V letih 1983 do 2001 je bila odgovorna za financiranje zdravstvenega varstva in za proračun v okviru Ministrstva za zdravje. Njena znanja so široka, tako s področja upravljanja v zdravstvu, kot tudi s področja vodenja v državni uprave.

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SUMMARY

PUBLIC-PRIVATE PARTNERSHIPS IN HEALTH CARE

The aim of Public-Private Partnerships in health care is collaboration with public and private partners in order to improve the health of population on the basis of roles and principles, defined in agreement. Collaboration must follow standards of health care and equality of access to health services. At the same time collaboration must respect partners' autonomy and prevent worsening of population health.

Because of restricted public financing resources and growing medical expenditure, there is an increasing demand for alternative financial resourcing in health care as regards investing into health care buildings, equipment and facilities.

After 1980 privatisation of health services has spread all over the world. In Western Europe countries (Great Britain, Spain, Portugal, Germany), in the USA, Canada and Australia collaboration models in private sector partnerships with hospital private sector have developed quite intensively. Private sector collaboration models are very different – they vary from outsourcing nonclinical support services to the most extreme, like privatisation of public hospital with public partner responsibility for controlling programme realisation and assuring programme financing. There is limited experience examination and there is also a lack of rigorous evaluation models.

Four issues are exposed: cost, quality, complexity and flexibility.

Researching situations where public sector has been realising projects of private-public partnerships in collaboration with private sector for operating and in some cases hospitals building, shows us that public sector expectations, regarding private financing of health projects, have not been completely fulfilled.

Taking into account all costs and observing the process through a longer period, new facilities have been in general more expensive, especially if we consider later costs for elimination of building defects.

Nevertheless positive experience is that all so realised projects in PPP have been finished in time and in frame of agreed financial means. Parallel to this it could be established that the realisation of projects has been reached on the account of quality. The need for risk diminishing as one of

the conditions for PPP on the side of public partnership and risk takeover on the side of private partner is hard to fulfil, especially in demanding conditions of health projects and in quickly modifying circumstances.

Public-private partnership in Slovenia is at the beginning phase of development, with the exception of concessions as models of PPP. In spite of validity of Law of PPP since March 2007 not many projects for larger investments in equipment or infrastructure can be traced.

In Slovenia 5.1% public financing resources are assigned for health care capacity investments. Because of public financing pressure there will be increasing needs for finding alternative financing sources, especially for health capacity investments, among which there are very demanding investments in health equipment and buildings. Changes in the way of carrying out health programmes and services and changes in consumers' needs will consequently cause the change of intended use of health buildings or the building of new ones. All this will demand larger financial costs for investment interventions, where in the case of lack of public financial means the possibilities of private sector investments will have to be taken into account.

Current situation shows that for investments in reconstruction, improvement or replacement of existent properties in health institutions, existent financial sources of health institutions and budget sources are not sufficient. The projections of public financing expenses for health care in the period 2008 – 2013 also anticipate increasing gradual lowering of public financing expenses in public health insurance.

As all investments in health through the means of budget sources cannot be assured, some of health care centres took the decisions – already in the period before validity of PPP – to provide private investments for planned investments.

First cases of carrying out projects in collaboration investments in public health care were realised ten years ago – for example three facility buildings of primary health care in the Gorenjska region, built and financed on the basis of good collaboration and aiming of three partners – communities, Ministry of Health (State), public health care institutions and private investors.

Hospital Sežana carried out building of the new Dialysis centre in the period 2004 – 2005 in the model of public-private investment. In 2006 General hospital Brežice conducted contractual partnership for providing reduced energy use and energy generating products. In 2007 Institute for

Rehabilitation in Slovenia prepared a project for constructing the new entrance and additional facilities following the model BOT and taking into account interest of private investors but the project has not been realised.

Public –private collaboration in Primary Health Care of the Gorenjska region was carried out with assurance of interested investors, contractual arranging of building funding as well as with realisation of activities, where private investors are partial owners of business facilities as private concessionaires or as private enterprises, where they perform activities related to health care.

For the new entrance Institute for Rehabilitation in Slovenia has chosen the system which determines that facilities and equipment come into the ownership of public partner after specific period. In this way the whole investment, leadership and maintenance of the building transfers to private partner. Such decision is reasonable, considering that in this case the concessionary private public partnership would be signed, the subject of which would be facility concession, so private partner would have to assure refunding of invested costs from renting out the business places, where the health services would be performed under the circumstances that the maximum time period for a granting of concession should be defined. Institute for Rehabilitation will guarantee realisation of the acceptable contract with private partner in public private partnership to build an integrated and functional image of the institute, offering the possibility to use the new entrance and corridor, intended for patients and visitors. In this way the quality of services would be much improved. The risk is mainly on the side of private partner, if we suppose that business facilities will have to be rented for the purpose to carry out the planned supplementary and support services successfully so that expected yield can be assured. Institute for Rehabilitation will sign concessionary public private partnership with the subject of building concession if this decision will be taken.

General Hospital Brežice has used the model of contractual funding for the project of contractual assuring of energy saving, which also contains planning and building new equipment, leading and control of functioning, service and maintenance, elimination of interferences and motivation of energy consumers.

Public-private partnership here means that planning, building, functioning and funding for specific time will be held together and the concession will be conditioned with henceforth contractual assuring of energent. Main

driving force is the utilisation of private capital and risk initiative transfer, building and functioning transfer to private sector. The advantages are connected to private sector motivation for inputs, which enable larger potential for accelerated building, while bigger risk transfer means bigger motivation for the so called whole-life costing approach.

In the conditions where public health care service net has not been defined yet, the projects from the non-medical and support areas are interesting for public-private partnership, such as reconstruction and modernisation of warming systems, linen washing, cleaning, food services and other. Some individual cases of public-private partnerships have confirmed these suppositions (Institute for Rehabilitation, General Hospital Brežice) as such support and non-medicine services were performed here. Private capital investments into medical activities in public-private partnership are more demanding and claim bigger degree of health care system regulation which means that standards, normatives, nets will have to be specified by government controlling and directing.

Before entering PPP it is important to take into account the fact, that these models of collaboration are exceptionally demanding in the initiative phase as well as in the realisation phase and leading. The main guidance for public sector should be the advantage for consumer and importance of public interest as well as the consideration of legal organisational model, so that the risk would be equally balanced while at the same time the partner members have the opportunity to reach their aims.

Common investments should follow key development aims, defined in health development strategy. It is expected that government will control and play the leading role in the phase of project realisation and restoration order so that public interest will be protected.

Besides changes of law, which will arrange status and property problems and leadership spheres, also the development concept of the region is of importance.

So far existing experiences of health institutions in entering the system of private-public partnership in Slovenia confirm the fact that PPP does not represent priority choice of public service offer and it does not assure financial sources for investment inputs, nevertheless it can be an important solution because of the lack of public financial sources for investment inputs on the condition that the models of public-private partnership are well planned, led and controlled.

English in Public Administration

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English in Public Administration is a coursebook for the first-year university study foreign language program in Administration at the Faculty of Administration, University of Ljubljana. The coursebook consists of a foreword that clearly states the authors' approach to the coursebook production, eight units and two mock exams with a key (after U 4 and U 8) - useful signposts on the language learners' road to achieving learner autonomy. The authors' choice of the material for the eight units clearly shows that they have taken into account the fact that the graduates in administration have to be knowledgeable about different areas, such as economics, management, law, public finance, informatics, human resources etc. Hence, the topics Student of Public Administration, State, Government, Municipality and administrative unit, Judiciary, Parliament, The European Union and A Career in (EU) Administration.

The coursebook was created with a view to satisfying several key requirements. Firstly, the authors were clearly aware of the fact that the term 'public administration' in Slovenia encompasses a scope of various job positions and employments that need to be catered for by graduates from the Faculty of Administration. As they point out in the foreword, their main goal with the coursebook was to satisfy the practical language needs relevant to an extremely wide spectrum of employment possibilities that the graduates of the Faculty of Administration encounter in Slovenian reality.

Put simply, the coursebook is intended for a specific target group of foreign language learners, and is therefore based on their concrete language needs. The

fact that the use of English in the coursebook is specific and associated with professions, institutional procedures and occupational requirements, makes it also an important source of learning material in the field of English for Specific Purposes (ESP). The authors have, as they emphasize in the foreword, based all the decisions as to content and teaching methods on the language learners' specific reasons for learning a foreign language. Their main orientations were need, relevance and usability (slov. *potreba, relevantnost in uporabnost*), i.e., satisfying the target group's language needs by producing a relevant and usable coursebook.

By and large, two features are usually thought to be criterial of ESP, firstly, its orientation toward learners' goals, and secondly, the necessity for performing the analysis of needs. In view of this, the coursebook meets both, since in 2006/07, prior to producing the coursebook; the authors performed a needs analysis that was taken as a basis for the subsequent coursebook production. The selection of reading comprehension texts in the coursebook is varied and carefully hand-picked according to the results of the target group of learners' needs analysis. The texts are always presented in expected, appropriate contexts. In addition, they are authentic, i.e., not created for pedagogical, language learning purposes in classrooms.

One of the reasons why the present coursebook can be categorized as modern and topical is the approach that the authors have chosen when selecting reading comprehension texts - they appear in the coursebook strictly according to two selection criteria: they must contain public administration-specific vocabulary, and secondly, they must meet the public administration target group of learners' needs. Due to the fact that a variety of reading texts from the coursebook were taken from the everyday reality of native speakers of English, it is possible to assume that a life cycle of such texts, along with the coursebook, is going to be quite long.

To illustrate, the coursebook is full of useful topics and information for the public administration target group of foreign language learners, such as:

- language to do with working part-time as a student and paying income tax
- names of various institutions, ministries and types of courts in Slovenia
- names of civil servants' titles in Slovenian and English
- learning about the features of a state, the Slovenian Constitution, the Slovenian Parliament, the Slovenian National Council and National Assembly

- language to do with the procedure of applying for citizenship or obtaining a residence permit in Slovenia
- information on the EU, its history, EU acronyms and jargon (e.g. EMU, OSCE, acceding state, acquis communautaire, subsidiary, enlargement etc.), the EU as a multicultural society
- key information about places to see in Slovenia, Slovenian food and drinks, the economy, accommodation, traditions and customs etc. when presenting Slovenia as a tourist destination
- language to do with reading a conference invitation, applying for and attending a conference abroad or in English.
- information on career prospects in the EU institutions in the EPSO leaflet

In practice, a potential source of difficulty when reading authentic texts could be the fact that foreign language learners are not always able to distinguish between useful, key public administration-specific vocabulary and less important vocabulary, i.e., between active and passive vocabulary. In the coursebook, this has been successfully dealt with via a quite simple device: the authors have decided to assist learners by adding a shorter, simplified English-English glossary, along with a Slovenian translation. By doing this, the authors have possibly extended the usefulness of the coursebook from a solely university program for language learners to less able language learners.

In terms of the logical organization of units, each unit progresses from the contextualized input in form of reading comprehension towards a more controlled, guided practice, leading the language learners step by step to production and understanding. Predictably, not just reading comprehension texts, also language learning activities and tasks that complement the texts and recycle the key vocabulary are ingenious and creative, chosen merely on the basis of their relevance to would-be public administration graduates. They appear to be personally engaging and reflexive (e.g. applying for citizenship, obtaining a residence permit in Slovenia, applying for and attending a conference, career prospects in the EU etc.). The activities and tasks also include work with mind-maps, gap filling, T/F, matching and transformation type of exercises. The learners are also encouraged to develop a variety of reading, dictionary and online strategies, such as to read between the lines, to follow the main idea in the text and to

use different online databases for language learning purposes. From a wide range of potentially useful activities and tasks the following seem worth mentioning:

- writing e-mails, formal letters, letters of application and CVs
- writing abstracts (e.g. for a thesis) based on IMRAD structure
- a writing practice in the use of linking words
- frequent Latin expressions (e.g., i.e., etc., vs., ibid.)
- the use of numbers in speech and writing
- describing graphs, trends and movements
- learning English idioms
- a practice in distinguishing between pairs of similarly looking or sounding words (e.g. policy/politics, audit/revision, incur/occur etc.)

Since experts in the language learning field have again started recommending the use of a mother tongue for foreign language purposes the topical trends in modern foreign language coursebook production are clearly evident also in the authors' decision to devote a good deal of language learning activities and tasks to translating from Slovenian to English and vice versa with an emphasis on public administration-specific vocabulary (e.g. slov. *biti zavezan zakonu, odložilni veto, člen, odstavek, alineja, določba, uredba* etc.). It is common knowledge that such activities may be potentially difficult for language learners, so the authors have opted for an inclusion of suggestions for easier work in the instructions. For instance, they may remind the students of the key vocabulary from the unit or suggest using dictionary entries from the coursebook unit (p. 5, p. 12, p.59, p. 83). However, all the translations do not carry such instructions, so the coursebook sometimes presupposes foreign language teachers input assistance in order to enable language learners to take full advantage of translations as language learning activities.

The coursebook mainly focuses on covering the four skills, both expressive and receptive, and language structures while there is practicaly no work on language functions. The most covered skill is reading, the least dealt with is listening. A point worth mentioning here are glossaries not just after reading but also before listening activities (e.g. p.26) to introduce the context and attune the learners for listening comprehension.

It is highly commendable that the coursebook also incorporates listening comprehension and watching videos/films to cater for various cognitive variations in human learning, also referred to as learning styles. Most certainly, this is a quality

that must make the coursebook particularly appealing to a young generation of language learners. However, the adequacy, appropriacy and relevance of the proposed listening materials cannot be fully evaluated on any other basis but their effect and the corresponding reaction that they evoke in the classroom. In a similar vein, the learning materials intended for e-learning cannot be evaluated due to the fact that they have not been included in the coursebook.

In terms of structures, vocabulary is paid more attention to than grammar. Equally, also grammar topics selection procedure clearly shows the signs of striving to be public administration specific. The learners are presented with the following grammatical choices:

- passive voice
- word formation exercises (including prefixes and suffixes)
- expressing contrast
- modal verbs (esp. the use of 'shall' to indicate obligation and 'may' for permission in legal documents)
- infinitival and gerundial constructions
- phrasal verbs
- conditional clauses
- and very little work with prepositions, tenses and, collocations.

As a rule, grammar is not first presented, then practiced and finally produced – this fact shows that the authors have not opted for a traditional 'PPP approach' on purpose. Apparently, their aim was to produce a different, motivating and fresher coursebook. Grammar does not even appear in each unit, and is dealt with lightly and with minimum input.

Overall, we could safely conclude that the main appeal of the coursebook for the target learners lies in its relevance to learners' future professions, that is in its public administration-specific orientation, both in terms of the authors' choice of topics, and language content and language learning activities. Moreover, the coursebook's appeal for a young target group of learners is provided by watching videos and films, by being able to work with databases for language learning purposes, by being offered glossaries in the coursebook and not having to look up the words in the dictionaries, to mention but a few. Anyway, to make the coursebook really learner-friendly and to encourage

learner autonomy, we suggest that the coursebook should include a key to all its exercises, not just to two mock tests.

In view of all the above, it seems as if one of the potential shortcomings of the coursebook could be the fact that certain activities appear to be quite exacting. For instance, explaining differences between words such as 'income-revenue-earnings' or 'insure-assure-ensure' and others (p. 8/ex. 4), reading the UK Civil Service Code (pp. 40-42), translating the text into Slovenian about seeking asylum (p. 89), translating the text into English about advertising Slovenia in National Geographic Traveler (p.125), summarizing a Slovenian text in English (p.144) or watching a film about European Court of Human Rights (p. 81). The truth of the matter is that in practice there are never enough dictionaries available in any classroom to use for such an activity. Given the fact that most language learners in the first-year foreign language program in Administration at the Faculty of Administration have not yet reached really high levels of foreign language knowledge such activities would need to be approached with caution: they would either need teacher intervention in the classroom or learners' pre-preparation work before classes.

In addition, we feel that there could be more emphasis on listening/watching/speaking skills, as well as more use of color, pictures and visual stimuli since incorporating and utilizing a variety of methods and tools is the key to becoming proficient at English. Coursebooks are the traditional way to study, however foreign language students cannot hope to become good listeners without practicing listening. A great resource and a valuable aural tool could be an inclusion of a CD to be used in the classroom or at home.

Another suggestion for improving the listening skill emphasis in the coursebook are also second language prerecorded audio/video podcasts (also netcasts) available online in varying levels, also free. Typically, these audio/video podcasts are recorded by native speakers so they are a great way to practise listening to native speakers. They cover a wide variety of topics, from basic to more advanced subjects, and are easy to find at the appropriate level (e.g. http://digitalpodcast.com/). Most are updated regularly and several include written transcripts of the podcasts so students can read along. Moreover, they are quite short and therefore more learner- and teacher-friendly in comparison with quite long listening ativity about European Court of Human Rights (p. 81).

Since the coursebook is intended for 60 hours' teaching time certain reading and writing activities seem rather long. The assumption is that they may take up too much classroom time without the pre-preparation phase at home.

Taking into consideration all the coursebook's aspirations, its features, advantages and possible pitfalls, the coursebook *English in Public Administration* appears to be a motivational coursebook, appropriate for the target group of public administration language learners to whom it speaks without talking down.

In conclusion, let us remember that teaching/learning a foreign language as a whole is not viable, therefore only certain aspects of a foreign language have to be selected by teachers and learners to focus on. Incredibly, the authors have accomplished just that – in the form of the coursebook *English in Public Administration* they have given us their view of what a successful selection of learning materials based on a target group's language needs should be like. Eventually, however good the coursebook, it will never be perfect for every teacher's teaching situation, and in some respect it will always need adapting, modifying or supplementing. In case of listening/watching activities and e-learning materials this is only good, since nowadays any possible shortcomings may be remedied in no time.

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