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Contents

The Ambiguities of the Loss and Damage Fund

Jernej Letnar Černič

How do we respond to the negative impacts of climate change on the enjoyment of human rights? Recent discussions and negotiations at the United Nations Climate Change Conference (COP28) resulted in establishing the Loss and Damage Fund (hereinafter the Fund). States parties at the 2009 United Nations Climate Change Conference (COP15) already envisaged the establishment of the Fund to respond to the negative impacts of climate change. They noted in the Copenhagen Accord that "New multilateral funding for adaptation will be delivered through effective and efficient fund arrangements, with a governance structure providing for equal representation of developed and developing countries" (Decision 2/CP.15, Copenhagen Accord, 2009, para. 9). Later, the Warsaw international mechanism for loss and damage associated with climate change impacts emphasized the importance of "... enhancing action and support, including finance, technology and capacity building, to address loss and damage associated with the adverse effects of climate change" (Decision 2/CP.19, para. 5 (c), 2014). The direct legal basis for establishing the Fund was established at the 2022 Sharm el-Sheikh United Nations Climate Change Conference (COP27). The States there decided "... to establish a fund for responding to loss and damage whose mandate includes a focus on addressing loss and damage" (Decision 2/CP.27, para. 3, 2022). The Fund was finally operationalized at the Dubai United Nations Climate Change Conference (COP28). The States there observed that the objective of the Fund: "... is to assist developing countries that are particularly vulnerable to the adverse effects of climate change in responding to economic and noneconomic loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events" (Decision -/CP.28 -/CMA.5, Annex I, p.5, para. 2, 2023).

The Fund will serve as a mechanism of a financial nature that would compensate those countries that were adversely impacted by different adverse impacts of climate change. It aims to compensate countries and provide them with financial support for all losses and damages sustained due to climate change that cannot be remedied through mitigation and adaptation measures. The Global South countries consider the Fund as the mechanism by which Global North countries would compensate them for historical injustices. They argue that the Global North countries have a moral obligation to aid countries adversely affected by their industrial activities over the past centuries. The Global South countries that are mainly affected are primarily coastal states, small island developing states, and least developed countries, which have carried the most harmful effects of climate change. Nonetheless, for the Fund to have credibility and legitimacy, it would have to ensure equality in assisting all countries affected by the negative impacts of climate change.

The concept of loss and damages includes economic losses, such as infrastructure deterioration and destruction, and non-economic losses (negative impacts on biodiversity, human dignity, cultural heritage, etc). States will have to agree on the exact definition of "loss and damage" in the future. The legal nature of the Fund is based on states' shared and joint responsibility for the adverse consequences of climate change. Its aim is not primarily preventive but mostly to compensate most affected states for losses and damages. It is embedded in the values of international cooperation, extraterritorial environmental and human rights obligations, solidarity, and shared responsibility to respond to the adverse effects of climate change on the enjoyment of human rights. Therefore, the Fund should assist states and other stakeholders in building capacity to prevent climate change risks for the enjoyment of human rights.

Nonetheless, several ambiguities exist. It needs to be made clear who the rights-holders and duty-holders under the Fund are and how at least its minimum funding will be secured. Some countries have already pledged contributions to the Fund (UN, 2023). However, the sustainability of such donations beyond Global North countries will have to be ensured. The United Nations should encourage the private sector's contribution to the fund. Most importantly, how the causal link and attribution be-

tween cause and adverse impacts on climate change will be established is still being determined. Nonetheless, the Fund should complement existing climate finance frameworks such as the Green Climate Fund, which at COP28 achieved the funding record (Green Climate Fund, 2023).

As the Fund is still in its early stages, how it will operate and administrate the funds is still being determined. One can expect a disagreement over who will be obliged to contribute to its functioning along the Global South – Global North divide that is often visible in the United Nations General Assembly. Nonetheless, establishing the Fund should be welcomed as an attempt to respond to the negative effect of climate change on countries in both the Global South and the Global North. The Fund will attempt to create financial incentives to rebuild countries and help vulnerable communities address the negative impacts of climate change. As climate change is an issue of urgency, the effectiveness of the Fund should not be lost in the governance, financial, and ideological disputes between the Global South and the Global North. Therefore, a robust mechanism should be established to ensure and monitor the independence, impartiality, and fairness of the Fund's functioning.

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Respect for the rule of law in the EU on the example of Slovenia

Tanja Teršar

ABSTRACT

The rule of law is one of the fundamental principles of the EU, but in the last few years in some member states, including Slovenia, challenges have arisen regarding respect for the rule of law. An analysis of the recommendations given to member states in 2022 and 2023 by the European Commission shows that Slovenia is generally located approximately in the middle or leans slightly more towards the upper (better) half of the EU member states despite the identified challenges, where one-off violations and not systemic threats to the rule of law prevail. In connection to the question of the effectiveness of the measures that the EU envisages to ensure respect for the rule of law, the mechanism under Regulation (EU) 2020/2092 has currently been recognized as the most effective for ensuring progress in the protection of the rule of law in the EU.

Keywords: Rule of Law, Slovenia, European Union, European Commission, mechanisms

Spoštovanje vladavine prava v EU na primeru Slovenije

POVZETEK

Vladavina prava je eno temeljnih načel EU, vendar se v zadnjih nekaj letih v nekaterih državah članicah, med njimi tudi v Sloveniji, pojavljajo izzivi na področju zagotavljanja spoštovanja vladavine prava. Analiza priporočil, ki jih je državam članicam v 2022 in 2023 podala Evropska komisija, kaže, da je Slovenija na splošno

približno na sredini oz. se nekoliko bolj nagiba proti zgornji (boljši) polovici držav članic EU kljub identificiranim izzivom, kjer prevladujejo enkratne kršitve, ne pa sistemske grožnje vladavini prava. V povezavi z vprašanji ali so ukrepi, ki jih EU predvideva za zagotavljanje spoštovanja vladavine prava učinkoviti, je kot najučinkovitejše sredstvo za zagotavljanje napredka v prizadevanjih za zaščito vladavine prava v EU zaenkrat prepoznan mehanizem pogojevanja koriščenja sredstev EU skladno z Uredbo (EU) 2020/2092.

Ključne besede: vladavina prava, Slovenija, Evropska unija, Evropska komisija, mehanizmi

1. The rule of law as a fundamental value of the EU

The rule of law is one of the fundamental values on which the European Union (hereinafter: EU) is based. In its most basic definition, the rule of law means that all members of society are equal before the law; therefore, strengthening the rule of law is the main goal of citizens, governments, civil society organizations, companies, and investors (Agrast et al., 2021, pp. 9, 13). Since one of the fundamental principles of the EU and its member states is that they are based on the rule of law, the promotion and preservation of the latter is of central importance to the work of the European Commission as the very legal, political and economic basis of the EU's functioning can be threatened by undermining the rule of law. Deficiencies related to the principle of the rule of law in one member state can affect other member states and the EU as a whole. Therefore, it is in the EU's common interest to resolve potential issues regarding the rule of law (Strengthening the rule of law within the Union: A blueprint for action, 2019, p. 1). Although all member states are, in principle, considered to respect the rule of law at all times, challenges have emerged in some member states over the past few years that make this no longer a self-evident claim. Among the examples of countries where threats to the rule of law are particularly prominent in the media and academia are Hungary and Poland, where the departure from EU values has been going on for a long time and political tensions are escalating.

In 2019, the European Commission highlighted cases of disrespect and threats to the principle of the rule of law, such as insuf-

ficient independence of the judicial process, weakened constitutional courts, the increasing use of executive decrees or repeated attacks by one branch of government on another, high-level corruption and abuse of official position in cases, when political power seeks to dominate the rule of law, attempts to limit media pluralism and the suppression of civil society and independent media (Strengthening the rule of law within the Union: A blueprint for action, 2019, p. 1). In its communication on strengthening the rule of law in the EU, the European Commission acknowledged that the aforementioned challenges also cause concern about the EU's ability to deal with such situations and that there is a need to strengthen it (Strengthening the rule of law within the Union: A blueprint for action, 2019, p. 1). The EU has a number of tools at its disposal to ensure and strengthen respect for the rule of law in all member states, which were developed and tested over the past decade (Rule of law: First Annual Report on the Rule of Law situation across the European Union, European commision, 2020, e-source). These tools include the judicial mechanism pursuant to Articles 258–260 of the Treaty on the Functioning of the European Union (hereinafter: TFEU) and the procedure pursuant to Article 7 of the Treaty on European Union (hereinafter: TEU). European Commission can also initiate the rule of law framework in the case of systemic threats to the rule of law in the EU member states. It includes the preparation of a report on the rule of law and the provision of specific recommendations to the member states. In 2020, when Europe and the rest of the world began to deal with the COVID-19 epidemic, in the financial framework for dealing with the epidemic, there was a proposal to condition the use of EU funds with respect for the rule of law. This entered into force in January 2021 with Regulation (EU) 2020/2092.

When reviewing the key areas for ensuring the rule of law, i.e., judicial system, anti-corruption framework, freedom and plurality of the media, and system of checks and balances, it can be observed that even in Slovenia, in recent years, there were quite a few examples of events that do not comply with the definition of rule of law. The European Commission clearly highlighted some of them as shortcomings in its reports on the rule of law in the years 2020–2023 (2020 Rule of Law Report: Country Chapter on the rule of law situation in Slovenia, 2020, p. 1; 2021 Rule of Law Report: Country Chapter on the rule of law situation in Slo-

venia, 2021, p. 1; 2022 Rule of Law Report: Country Chapter on the rule of law situation in Slovenia, 2022, p. 1; 2023 Rule of Law Report: Country Chapter on the rule of law situation in Slovenia, 2023, p. 1). The alarming situation in Slovenia was clearly demonstrated and condemned by the Resolution of the European Parliament of 16 December 2021 on fundamental rights and the rule of law in Slovenia, in particular, the delayed nomination of EPPO prosecutors (Resolution of the European Parliament no. P9_TA (2021)0512, points 2–9). With this, Slovenia also found itself on the list of problematic member states that are sliding away from the values they undertook to respect by becoming EU members.

When looking at the situation in various EU member states, including Slovenia, questions arise as to whether the measures that the EU envisages to ensure respect for the rule of law in the member states are effective, why, despite the efforts of the European Commission and threats of sanctions there are still violations or deviations from EU values, and how the rule of law can be strengthened and the situation corrected so that all member states would respect the rule of law as much as possible. Time should not be wasted in solving these challenges. In its communication on strengthening the rule of law in the EU in 2019, the European Commission made an important observation that in solving a potential crisis of the rule of law, it is necessary to act as soon as possible because otherwise, there is the risk of bad practices taking root, which would make eliminating their adverse effects in the future even more difficult (Strengthening the rule of law within the Union: A blueprint for action, 2019, p. 12). Based on this, questions arise regarding the state of the rule of law in Slovenia compared to other EU member states and how convincingly and successfully the European Commission responded to the state of the rule of law in Slovenia compared to other EU member states.

2. The rule of law in Slovenia

Based on the analysis of the European Commission's recommendations for the judicial and anti-corruption framework, media plurality and freedom, and system of checks and balances, the situation regarding respect for the rule of law in Slovenia was

compared to the rest of the EU member states. It was assessed whether Slovenia is comparable to the majority or better or worse than most of the other EU member states. We investigated the mechanisms available to the European Commission per EU law to ensure respect for the rule of law in EU member states, as well as how the European Commission reacts in case of threats or violations of the rule of law in member states and uses available tools. If the European Commission acted on such cases, we analyzed whether it succeeded in effectively suppressing law violations, nullifying the effects of such violations, and sanctioning the offending member states within the framework allowed by the established EU legal system.

A key objective of the European Commission's first annual rule of law report from 2020, which is part of the European rule of law framework, was to raise awareness and encourage open debate among member states on rule of law issues. This report did not identify serious risks for respect of the rule of law in Slovenia. According to some stakeholders, it was also insufficiently critical of the actual situation in Slovenia (Sedej, 2020, e-source; Bruselj objavil prvo poročilo o vladavini prava v članicah EU, Lexpera, 2020, e-source). The European Commission's second annual report presented findings that the state of the rule of law in Slovenia has deteriorated significantly (2021 Rule of Law Report: Country Chapter on the rule of law situation in Slovenia, 2021, p. 1). Even the third annual report of the European Commission, despite mentioning the progress concerning some of the challenges from the previous report, highlighted in particular the deterioration of media freedom, challenges regarding the independence or autonomy of law enforcement authorities, deficiencies in rules governing parliamentary investigations and concerns about the independence of the National Bureau of Investigation and other institutions for the fight against corruption (2022 Rule of Law Report: Country Chapter on the rule of law situation in Slovenia, 2022, p. 1). European Commission's fourth annual report reported on the improvement of the situation in the judicial framework and civil society, freedom and pluralism of the media, and the provision of greater independence of the National Bureau of Investigation; however, it highlighted the challenges of ensuring adequate resources and the independence of judges and risks regarding the fight against corruption

(2023 Rule of Law Report: Country Chapter on the rule of law situation in Slovenia, 2023, p. 1).

In recent years, the European Commission has made the most of specific recommendations to member states in connection to the successful fight against corruption and the efficient operation of judicial systems. These two fields are among the most essential for ensuring respect for the rule of law in the EU and, at the same time, the most under threat. In 2022 and 2023, Slovenia also had the most challenges identified regarding the judicial system, where it received four and two additional recommendations. Regarding anti-corruption framework and media freedom, it received three recommendations for each of these fields, while it earned one recommendation for the system of checks and balances. Among the challenges of the justice system, which have been most exposed in recent years, are ensuring the impartiality and independence of the judiciary, the prosecution, and the police, providing adequate resources, lack of adequate safeguards, and lengthy legal proceedings, especially in the corruption prosecution, while the internationally more resounding event was the delay in the appointment of European delegated prosecutors. Slovenia has not adopted a current valid national anti-corruption strategy, and the challenge is also the implementation of provisions for preventing and managing conflicts of interest in public administration. In connection with this, systemic corruption risks have been identified, which may be even greater due to obstacles to effective investigation and prosecution of corruption at the highest levels. Repeated reports by Slovenia's Commission for the Prevention of Corruption that its recommendations regarding identified challenges are not being heeded cause concerns. There are also concerns about the independence, organization, and effectiveness of the Commission for the Prevention of Corruption due to the lack of resources and adequate safeguards in the legislation. In addition, there have been reports of political pressure on independent and investigative institutions such as the Information Commissioner, the Commission for the Prevention of Corruption, the Audit Court, the Ombudsman, the police, and the National Bureau of Investigation. Moreover, political interference poses a risk to the independence of the media, in connection to which Slovenia is characterized by the non-transparency of media ownership and actual owners, verbal harassment of journalists,

lawsuits with an intimidating effect, while more internationally resounding were the complications with state financing of the national press agency STA, and the obstruction of its work. The noticeable trend of deterioration of media freedom from previous years started to improve in 2023. Challenges in connection to the system of checks and balances are represented by non-compliance with the recommendations of the Ombudsman, the overloading of the Constitutional Court and the resulting delays in adjudicating cases, the lack of opportunities for the participation of the public, independent bodies, and civil society in the legislative process, insufficient protective measures for the financial independence of independent bodies and financial restrictions for civil society organizations. In the crisis of the COVID-19 pandemic, challenges were identified regarding the insufficient respect for the rule of law by ruling with unconstitutional decrees (Teršar, 2023, pp. 118-119).

We can assess that in the case of all the described deviations from the principle of the rule of law, these are primarily isolated cases. At the same time, the risk of systemic threats is present in the judicial system regarding court backlogs, where there is a risk that the situation would gradually worsen in the future. Additionally, there is risk in the anti-corruption framework regarding the implementation of provisions on the prevention and management of conflicts of interest in public administration, in connection to which the Commission for the Prevention of Corruption detected systemic corruption risks (Ocena stanja Komisije za preprečevanje korupcije 2021, 2022, pp. 5–6). As they represent threats to respect for the rule of law, all identified challenges must be given additional attention and effective solutions must be prepared and implemented.

3. Comparison of the state of the rule of law between EU member states

What is the state of the rule of law in Slovenia compared to other EU member states? Based on the analysis of the total number of recommendations member states received from the European Commission in 2022 and 2023, this research classified member states into five groups. Despite all the identified challenges, Slovenia generally belongs to the third-best group of member states

(out of five groups), located roughly in the middle of all member states. In general, Slovenia leans slightly more towards the upper (better) half of the EU member states. At the top of the list, where the fewest challenges of respect for the rule of law are identified, are Estonia, Denmark, Finland, the Netherlands, Sweden, Latvia, and Belgium. Countries with the most issues regarding respect for the rule of law are Hungary, Poland, Romania, Bulgaria, and Malta, followed by Cyprus, the Czech Republic, Slovakia, Spain, Italy, Croatia, Greece, and Slovenia.

In contrast to the overall assessment based on the recommendations of the European Commission, in the assessment of the World Justice Project, Slovenia ranked 13th (out of 20) among EU member states in 2022 and 2023, which places it in the bottom half of the member states. In the ranking of all world countries, Slovenia reached 31st place in 2022, while in 2023 it climbed to 27th place with a slight improvement in the result (Agrast et al., 2022, p. 12; Agrast et al., 2023, p. 11). Slovenia seems to be slowly changing the direction and turning the respect for the rule of law into a positive trend. The findings from the analysis of the latest European Commission report on the rule of law from 2023 show an improvement after a notable decline, which was particularly evident in the annual reports from 2021 and 2022. The alarming state of respect for the rule of law in Slovenia was additionally recognized with the European Parliament's Resolution on fundamental rights and rule of law in Slovenia from December 2021, which theoretically ranked Slovenia even a little lower in respect of the rule of law, or into the group of the most problematic member states. However, in fulfilling the recommendations of the European Commission from 2022, Slovenia made the most significant progress of all the states, having fully fulfilled half of the recommendations, followed by Lithuania, Estonia, and Italy. On the other hand, the least progress was made by Poland. Among other states with the most challenges in terms of respecting the rule of law, slightly more progress was made in Romania, Bulgaria, Malta, and Hungary, where the latter made the most considerable progress (Annex to the 2022 Rule of Law Report: The Rule of Law Situation in the European Union, 2023, pp. 2, 6, 12, 15, 17–18, 21, 23–24).

When comparing the state of respect for the rule of law between member states, it is necessary to take into account the con-

cerns that the European Commission, in its annual reports on the rule of law and the recommendations, did not adequately cover all the challenges of respect for the rule of law in individual member states, but rather presented them in a deficient or non-objective way. As a result, the European Commission's reports do not necessarily reflect the real situation of the rule of law in the member states. Particularly problematic is the fact that the European Commission generally obtains information directly from the national stakeholders involved, which leaves no room for a broader sociological approach, based on which the respect for the rule of law in individual countries could be analyzed more comprehensively. Avbelj singled out Slovenia as an example of the flawed approach of the European Commission, as the entire situation regarding the decision-making on the matter of the new Radiotelevizija Slovenija Act was not presented. In relation to this, there is an indication of a risk that the political bias of the European Commission in the case of certain countries could be divisive for the actual state of the European rule of law and thus the existence of the EU as such, as it could present an argument against the directions of the EU and the European Commission on the part of the member states, where the challenges of the rule of law are the most serious (Avbelj, 2023, e-source).

4. The response of the EU and the European Commission to the challenges of the rule of law in the member states

Upon analysis of the reaction of the EU or the European Commission in cases of threats or disrespect for the rule of law in Slovenia and other EU member states, it was found that the only formal response of the European Commission in the case of Slovenia was the highlighting of identified challenges in the annual report on the state of the rule of law from 2020 onwards. In 2022 and 2023, specific recommendations for judicial and anti-corruption systems, pluralism and freedom of the media, and the system of checks and balances were also provided. The European Parliament was somewhat stricter with its resolution on fundamental freedoms and the rule of law in Slovenia, prepared in December 2021. All of the above responses highlighted problematic situ-

ations represented by one-off violations or potential emerging risks for systemic violations of the rule of law that resulted in generic recommendations to resolve these situations as soon as possible. Within the framework of ensuring the rule of law, the European Commission made specific recommendations to all member states, where Estonia received the fewest recommendations and Hungary the most. Additionally, the European Parliament issued resolutions for Bulgaria, Malta, Slovakia, Hungary, Poland and Slovenia. However, such recommendations and resolutions are not binding and have no concrete legal consequences for Slovenia or the other member states.

A stricter response from the European Commission occurred in the case of Hungary (2018) and Poland (2017), against which a procedure was initiated in accordance with Article 7 of the TEU due to controversial reforms of the Polish judicial system and concerns about the state of democracy, the rule of law and the protection of fundamental rights in Hungary. Against Germany (2021), a procedure was initiated in accordance with Article 258 of the TFEU regarding the issue of respecting the primacy of EU law. These cases required a more serious response because the rule of law violations were more systematic and not so much one-off in nature. At the same time, they also represented a dangerous precedent that the rest of the member states could follow their example.

Sanctions for non-respect for the rule of law can be primarily financial, or they can cause a possible loss of voting rights, which is supposed to be a temporary measure until the sanctioned member state stops its violations and thus returns to respecting the rule of law. Non-fulfillment of obligations in accordance with the TFEU and TEU can only be dealt with on the basis of Articles 258-260 TFEU or Article 7 TEU. From a legal point of view, there is no procedure in EU law that could force a member state to leave the EU due to non-fulfillment of obligations from the treaties. A member state can decide to leave the EU in accordance with the procedure under Article 50 of the TEU, as happened in 2020 in the case of the United Kingdom of Great Britain and Northern Ireland. Violation of the rule of law cannot, therefore, be a legal basis for sanctions in the form of exclusion from the EU, even if the member state strongly or persistently violates the principle of the rule of law. When assessing whether the introduction of such

a sanction in the EU treaties might be sensible, it must be taken into consideration that the exclusion of any member state is not in the interest of the EU. Still, the goal is that all member states follow the set rules, including respect for the rule of law.

In extreme cases, the use of Article 7 of the TEU is foreseen, where the threshold for activating response mechanisms is very high. At the same time, events in some member states have shown that these mechanisms are not always adequately effective or suitable for swift response to threats to the rule of law (Communication from the Commission to the European parliament and the Council: A new EU Framework to strengthen the Rule of Law, 2014, pp. 5–6). In the procedure under Article 7 of the TEU against Poland and Hungary, significant development of the cases has not yet been achieved, and the measures implemented solely based on these procedures have not led to improvements in any of these countries. The EU's efforts to ensure respect for the rule of law have been relatively unsuccessful, as the available legal tools have not been used forcefully enough. Although the dismantling of the rule of law in some countries is the result of deliberate political decisions (Strengthening the rule of law within the Union: A blueprint for action, 2019, p. 5), the EU has not responded to such deviations with mechanisms that would include sanctions but mainly relies on preventing violations and dialogue with member states (Priebus, 2022).

Which of the existing tools or the European Commission's responses is, therefore, the most effective or encouraging for member states to prevent deviations from respect for the rule of law? Member states' response depends primarily on the existence and severity of potential sanctions, which is why mere recommendations to achieve the desired standards of the rule of law are not effective enough, as member states are not sufficiently encouraged to strive for compliance. At the end of April 2022, the European Commission used, for the first time in the case of Hungary, the conditionality mechanism for the use of EU funds in accordance with Regulation (EU) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on the general regime of conditionality for the protection of the Union budget, thus directly sanctioning Hungary's rule of law non-respect (Bruselj proti Madžarski uradno sprožil mehanizem pogojevanja sredstev z vladavino prava (dopolnjeno), Tax-Fin-Lex, 2022, e-source). A

good indicator of the effectiveness of this type of mechanism for conditioning financial resources, even in the most problematic countries, is the undoubted fact that Hungary began to actively fulfill the recommendations given by the European Commission in 2022. From this point of view, it seems reasonable to establish a solution at the EU level, as was proposed by the European Parliament in a resolution from March 2023. Namely, the European Commission should more clearly define threats and violations of the rule of law in its annual cycle and report on the rule of law while also giving binding recommendations to member states and, thus, providing a direct basis for the automatic activation of the mechanism for conditioning the rule of law in accordance with Regulation (EU) 2020/2092 in case of violations of the rule of law (European Parliament's Resolution no. P9_TA(2023)0094, 30. 3. 2023, pp. 9–10; Rule of law: the Commission's reporting has improved, but EU values are still deteriorating, European Parliament, 2023, e-source).

5. Conclusion

Based on this research, possible solutions can be defined and potentially applied to the plan for ensuring respect for the rule of law in Slovenia's future or in key areas where the threats to the rule of law are the greatest. A comparison of Slovenia with other EU member states can provide examples of bad and good practices in ensuring respect for the rule of law in the judicial framework, the anti-corruption framework, media plurality and freedom, and the system of checks and balances. Based on this, solutions for the challenges faced by Slovenia regarding respect for the rule of law can be adapted accordingly. The present research can also represent a starting point for further research into the topic and related issues.

The EU is based on the common values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights. All EU member states must respect them since joining the EU and later as full EU members and democratic countries, where the rule of law and fundamental rights are mutually reinforcing values. Their threat could pose a risk to the rights and freedoms of EU citizens. Therefore, respect for the rule of law is binding on all levels of governance in EU member states

(European Parliament's Resolution no. P9_TA(2023)0094, 30. 3. 2023, p. 4).

Although the rule of law is, in principle, ubiquitous, its broad definition makes it very likely that its meaning is not sufficiently understood by the citizens of the member states, which also creates a high risk of its misuse or ideological abuse (Bingham, 2011, p. 5). For this reason, it is essential to increase awareness of the importance of the rule of law among people in Slovenia and the EU, which should start with educating the younger generations. The holders of public functions, especially the executive and legislative branches of government, also have their role in this, as they can raise the level of political culture and contribute by their own example so that the rule of law, democracy, and integrity will become a standard in our society. Conscious and critical civil society and the media can encourage this type of behavior and, at the same time, reveal those who, with their actions, insist on the opposite and contribute to the disintegration of the rule of law. Therefore, continuous proactive action is required by every EU citizen to protect European society from existing and potentially developing challenges of the rule of law.

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The right to be offended: should we toughen up? Legal argumentation analysis in the case of blackhorse v. pro-football inc.

Blaž Marinčič Udvanc

ABSTRACT

It is arguable that the use of the term »Redskins« is controversial, and thus should be supported by substantial evidence until proven as such. This paper explores the controversies associated with the Washington Football Team, formerly known as the Washington Redskins. It further analyzes the legal arguments and examines the logical strengths behind the conclusions outlined in this research paper. To achieve the aforementioned objectives, scholarly articles were revised alongside an analysis of the Blackhorse V. Pro-Football Inc. case. It is hypothesized that the judge in this case Gerald Bruce Lee's argumentation was flawed in the verdict of the infringement of the First Amendment right to free speech put forward by Pro Football Inc. in correlation with the Section 2(a) of the Lanham Act. The aforementioned conclusion was deduced on the basis of his argumentation being irrational and unsuppported by evidence. Whereby insufficient differentiation of the term "disparage" (among others) was inappropriately utilized in various contexts it causes legal ramifications as well. It is of questionable grounds to presume that the use of the word »Redskins« may be deemed offensive no matter the context. Notably, societal alterations, norms, and time periods contribute to the offensive and misconstrued nature of various terminology. Hence, good legal argumentation is dependent on the consideration of all circumstances and societal state of condition.

Keywords: Redskins, Disparagement, Argumentation, Society, Offensiveness

Pravica biti užaljen: se moramo utrditi? Analiza pravne argumentacije v zadevi Blackhorse V. Pro-Football Inc.

POVZETEK

Predmet raziskovanja je vprašanje ali je uporaba izraza »Redskins« sporna in ali bi bilo treba uporabo tega izraza podpreti s tehtnimi utemeljitvami, dokler se ne dokaže, da ta izraz ni sporen. Ta znanstveni članek raziskuje polemike, povezane s poimenovanjem športnega moštva Washington, prej znanega kot Washington Redskins, ki igra ameriški nogomet. Nadalje so v članku analizirani pravni argumenti za in proti, obenem pa članek preučuje logične prednosti zaključkov, opisanih v tej raziskavi. Da bi dosegli omenjene cilje, so v raziskavi analizirani relevantni akademski pogledi na to problematiko, opravljena pa je tudi analiza sodne odločbe v zadevi Blackhorse V. Pro-Football Inc. Domneva se, da je bila argumentacija, ki jo je v obrazložitvi navedene sodne odločbe uporabil sodnik Gerald Bruce Lee napačna v delu o ugotovitvi kršitve pravice do svobode govora iz prvega amandmaja ameriške ustave, ki jo je predložila stranka Pro Football Inc. v povezavi s členom 2(a) Lanhamovega zakona. Omenjeni sklep je sodnik izpeljal na podlagi argumentacije, ki je neracionalna in nepodprta z dokazi. Ker je bilo nujno razlikovanje izraza »zaničevanje« oziroma »omalovaževanje« (med drugim) neustrezno uporabljeno v različnih kontekstih, to povzroča tudi pravne posledice. Vprašljiva je namreč presumpcija, da je uporaba besede »Redskins« žaljiva vedno in povsod, ne glede na kontekst, v katerem je uporabljena. Predvsem družbene spremembe, norme in različna časovna obdobja prispevajo k napačno razumljeni naravi različnih izrazov oziroma njihovi (ne)žaljivosti. Zato je dobra pravna argumentacija zgolj tista, ki upošteva vse navedene okoliščine in družbeno stanje.

Ključne besede: »Redskins«, »Omalovaževanje«, »Argumentacija«, »Družba«, »Žaljivost«

1. Introduction

Washington Football Team, formerly known as the Washington Redskins is an American football team that was founded as the Boston Braves in the year 1932 but changed its name the following year. From 1933 (Kirkland, 2017, pp. 480) until the franchise moved to Washington D.C. in 1937 the football team was called the Boston Redskins. From 1937 to 2020 the team went under the name of the Washington Redskins. This name sparked many controversies. A group of people found the name to be racially offensive and inappropriate. That is why Amanda Blackhorse, Marcus Briggs-Cloud, Phillip Gover, Jillian Pappan and Courtney Tsotigh decided that it is time to end the use of the name »Redskins« and filed a case with the Trademark Trial and Appeal Board of the United States Patent and Trademark Office in order to cancel the trademarks of the aforementioned name. The Trademark Trial and Appeal Board of the United States Patent and Trademark Office decided (two to one) to cancel the trademarked names, stating the reason behind it as disparaging to a substantial number of Native Americans. They argued that their decision is based on the fact that there is a significant drop in the usage of the term amongst the members of the society which should indicate that the term has a negative connotation. The government agency also stated that it found the term »Redskins« to refer to Native Americans and it does not have a different meaning when it comes to the context of sports. The group of petitioners provided evidence of disparagement in the shape of references made by journalists and lines from movie scripts that refer to »Redskins« as enemies. The Trademark Trial and Appeal Board of the United States Patent and Trademark Office followed this evidence and did not put any weight to the claims of the football team that the term is solely descriptive and does not differ from any other term that uses color to racially differentiate people.

The Washington Redskins filed the appeal on the grounds that the government agency ignored the weight of the evidence which caused the infringement of their First Amendment right to free speech. The U.S. District Court of Alexandria in Virginia affirmed the decision of the Trademark Trial and Appeal Board finding that the evidence before the Court supports the legal con-

clusion that the use of the name »Redskins« may disparage Native Americans.

On October 30, 2015 Pro-Footbal Inc. filed an appeal with the United States Court of Appeals for the Fourth Circuit in Richmond, Virginia. In this appeal they argued that there are many more names that could be potentially deemed offensive but have been given trademarks by the same government agency that now states that one of that trademarks may disparage Native Americans.

United States Court of Appeals for the Fourth Circuit decided that while the aforementioned appeal number 15-1874 was still pending, the Supreme Court gave ruling in the Matal v. Tam (SCOTUS, 137 S. Ct 1744, 1751) case, finding a violation of the free speech clause of the First Amendment. In light of this case that was decided by the Supreme Court of the United States the United States Court of Appeals for the Fourth Circuit vacated the order made by the district court and remanded for further proceedings that should be consistent with the ruling in Matal v. Tam.

This paper aims to analyze the legal argumentation behind the verdict in the case mentioned at the beginning of this paper. The main objective is to showcase the arguments that lead to certain conclusions and test them for their logical strength.

2. Analysis

Before we start with our analysis we need to point out the legislation that Pro-Football Inc. argued as unconstitutional. According to Pro-Footbal Inc. Lanham Act, more precisely its Section 2(a) which prohibits registration of marks which may disparage others or bring them in contempt or dispute, causes unconstitutional restrictions on free speech. It argued in front of The U.S. District Court of Alexandria that such a restriction is too vague which is unconstitutional and as such the Trademark Trial and Appeal Board of the United States Patent and Trademark Office violated due process by issuing a cancellation of their trademarks based on unconstitutional legislation.

Judge Gerald Lee rejected the mentioned arguments and held that there are no free speech concerns regarding Section 2(a) of the Lanham Act. He went as far as saying that the federal trademark registration programme is government speech and thus

exempt from the First Amendment scrutiny that was argued by Pro-Football Inc.

In addition to that, judge Gerald Lee held that Section 2(a) of the Lanham Act is not unconstitutionally vague due to the fact that it provides a clear and fair warning regarding which conduct is prohibited and which is allowed. His opinion was that the relevant section does not encourage arbitrary and discriminatory enforcement. Is his argument based on solid grounds? To find out we must first analyze Section 2(a) of the Lanham Act which states:

»*No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it— (a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or a geographical indication which, when used on or in connection with wines or spirits, identifies a place other than the origin of the goods and is first used on or in connection with wines or spirits by the applicant on or after one year after the date on which the WTO Agreement (as defined in section 3501(9) of title 19) enters into force with respect to the United States.*" (U.S. Trademark Law Federal Statutes, U.S. Patent & Trademark Office, 25.11.2013, § 2 (15 U.S.C. § 1052), pp. 9).

We can clearly see that there is an exemption from the obligation not to refuse registration on account of its nature. The nature of the trademark needs to be of such matter that it either comprises immoral, deceptive, or scandalous matter, or it may disparage or falsely suggest a connection with persons (living or dead), institutions, beliefs or national symbols, or bring them into contempt or disrepute.

The wording of Section 2(a) is set out in a way that we can immediately see it needs some sort of judicial interpretation to enact the meaning of certain words such as »immoral«, »deceptive«, scandalous« onto a case which the judge has in front of them. Not to mention the wording »*may disparage*« and »*bring them into contempt or disrepute*« which also gives a broader field of interpretation to the judge. Such interpretation can potentially lead to judicial activism if the judge decides to go out of the frame that the legislator intended and provided with the bill. But did judge

Gerald Bruce Lee of the U.S. District Court of Alexandria impose more than the legislator intended when deciding in the Blackhorse v. Pro-Football Inc. case? We will try to resolve this question.

The position that judge Gerald Bruce Lee took was marred by the fact that the term »*Redskins*« was implied to be used in a derogatory way. The Section 2(a) of the Lanham Act uses the term »*may disparage*« but it is not clear whether Native Americans were actually represented as being of little worth. When someone or something is disparaged it is regarded or represented as being of less worth. The role of the judge here was not to deem what the name »*Redskins*« means but to rule in a case regarding the trademark of the name. Before deciding in this case, there was a need to decide if the use of the name »*Redskins*« regards Native Americans as being of less worth or not. This was not done, as it was by some absent logic decided that it does and then the Section 2(a) of the Lanham Act was applied onto the fact that was not proven beforehand. It was merely stated by Amanda Blackhorse and others. The court did not go deeper than that.

For example, we can highlight the Harjo v. Pro-Football Inc. case from the year 1992 (Rasul, 2015, pp. 340) in which the Trademark Trial and Appeal Board decided that the term »Redskins« may be disparaging of Native Americans because a group of Native Americans which were the petitioners in that case were offended. The Trademark Trial and Appeal Board followed entirely the claims of the petitioners that they found the name to be a racist designation for a Native American person which brings Native Americans into contempt, ridicule and disrepute only to have its ruling reversed in September of 2003 by the United States District Court for the District of Columbia which ruled that decision made by the Trademark Trial and Appeal Board regarding disparagement was not supported by substantial evidence (Paczkowski, 2004, pp. 1).

The mentioned case is important because it shows that the Trademark Trial and Appeal Board was quick to jump to a conclusion. A tad too quick if we recall the verdict of the United States District Court for the District of Columbia. The main objective that the Trademark Trial and Appeal Board had was to decide whether the standard of disparagement was met, which included looking at the dates when trademarks were registered and then decide if it was disparaging back then to use such names. For the

»Redskins« it was the time window from 1967 to 1990 regarding the Hanjo v. Pro-Football Inc. case. At the time of solving this case there was no precedent so the Trademark Trial and Appeal Board had to set a precedent by first determining what is the meaning of the word »*disparage*« (Paczkowski, 2004, pp. 2). On top of that, the Trademark Trial and Appeal Board decided that the perception of the word needs to be tied to a reference group instead of the views of the general population.

The United States District Court for the District of Columbia heavily criticized the conclusion that the term »Redskins« can refer to either a Native American person and a football team since there was no evidence supporting that. If the term was disparaging it would have already fallen out of use in society, to which the United States District Court for the District of Columbia concluded that even if the term was disparaging or even offensive to Native Americans, it would not mean that the use of this term would be automatically offensive when used in the context of the Washington Redskins football team (Paczkowski, 2004, pp. 3).

This is an important distinction that the United States District Court for the District of Columbia. Even if the general use of the term was to become virtually non-existent due to derogatory implications, this does not automatically disqualify the term from its use in the context of sports. Knowing this we can now firmly state, that there needs to be a line that is drawing at when and where a term is used. Such a conclusion enables us to differentiate between the different contexts of use, be it formal or informal, benevolent or malevolent. It would be of common logic to determine whether the context of the usage of the term wants to convey hostility or wants to link a certain tradition or historical meaning behind it. The proof of this is certainly the fans of the Washington Football Team that referred to the team by its registered name due to the historical linkage which was given when the team and franchise were founded, and not because they would want to mock, slander, traduce or defame Native Americans.

Here lies the problem. The legal argumentation that judge Gerald Bruce Lee used was flawed because he did not deduce the two operational uses for the term »Redskins«. His reasoning was based on a fact that was not yet proven by substantial evidence. His inductive reasoning was amiss because he failed to take into account the precedent set forth by the United States District Court

for the District of Columbia in giving terms their own context in which they are used. At this point we can see the problem that the slippery slope has caused. By not putting the right context around the use of the term »*Redskins*« judge Gerald Bruce Lee wrongly deemed it a disparaging term and then used it according to the Section 2(a) which could not have given good results due to the fact that the previous steps of legal reasoning that were done could not aid in the legal argumentation that followed.

This shows that the argumentation used was flawed. The mistake was done partially also due to the flawed logical argumentation that followed. This happens when the steps of the argumentation are weakly connected (Novak, 2010, pp. 69).

But what if the use of the term »*Redskins*« is offensive no matter the context in which it is used? Do all those plaintiffs have the right to be offended even if it was only used in sports jargon? Let us delve into that.

Native Americans have long argued that the term »Redskins« was racially unacceptable for the members of their tribes which are now considered an ethnic group in the United States of America. But the majority of trademark registrations which are today regarded as questionable was done in the 1960s and 1970s, which means that there is a period of fifty years that has passed since some of the registrations regarding sports teams. Undoubtedly society changes significantly in such an amount of time, many things that were once acceptable become (or are deemed) unacceptable by today`s standards. For example same can be said for a few examples from Europe, such as Nestlé`s Beso de Negra, Negroni`s Negerküsse, Sarotti-Mohr, Mohrenkopf also known as Super Dickmann`s, Tête-de-négre or tête au chocolat, Haribo`s Skipper Mix, Knorr`s Zigeuner sauce and La Negrita Rhum.

It is safe to say that the case of the Washington Football Team shows how something that is not offensive, questionable or disparaging at the time of registration may turn out to be such at a later time. Does that necessarily mean that people back in the day of the 1960s and 1970s did not think anything of these names for sports teams? This is difficult to determine. As it is known, the Washington Redskins are not the only sports team that is named with some sort of a derivative that implies there is something to do with the Native American tradition: Chicago Blackhawks, the Atlanta Braves, the Cleveland Indians, Gulf Coast Indians, Peoria

Chiefs, Spokane Indians, Moose Jaw Warriors, Golden State Warriors, Chiliwack Chiefs, Burlington Chiefs, Brooklin Redmen, Elora Mohawks and the Kansas City Chiefs (Tryce & Smith, 2015, pp. 2) to name a few are all connected to the tradition of the Native Americans in the United States of America. We can speculate of the reasons why these teams bear such names, be it for cultural reasons, reasons of respecting heritage, paying tribute, or just because it is a part of the American identity. One thing is certain, there was a period in time in which naming the teams after the Native American tradition or with the terms that are associated with the Native Americans was contemporary.

Looking at this phenomenon now makes it look oldfangled. Could this attribute to the legal argumentation used in the case we are analysing? The answer is yes. It all comes down to the perception that is relevant in society at any given time. For example, there were many sports teams that have either mascots or names that were associated with Native Americans, but no longer have them as it has become socially unnacceptable. In 1972, the University of Massachusetts replaced an Indian as the team mascot with a Minuteman and Stanford University replaced an Indian with a cardinal while Eastern Michigan, Syracuse and Dartmouth all put an end to their team names and mascots that were referencing Native Americans (Pace, 1995, pp. 11). All of these teams at some point felt that their names or mascots were either inappropriate or at least questionable from the societal point of view. At the same time we might add that they also felt that the names were appropriate at some point in time.

With this information we can set a claim, that the legal argumentation of the case we analyzed would have been completely different were it based in the 1970s. Much of it goes hand in hand with the fact that judge Gerald Bruce Lee decided in that case in the year 2015. The verdict was reached on the 8th of July 2015.

The predecessor to the Lanham Act was put in force in the year 1905 (Pace, 1995, pp. 23) and it had the same prohibitions as the Lanham Act, yet the name »*Redskins*« was still able to get registered even though it is now deemed to be disparaging. It was not deemed as such at the time of registration despite the same provisions that prohibited disparaging terms from being trademarked. This shows that we need to look at societal norms for the answer to why it has become disparaging now. What is disparaging to

society today might not have been disparaging to society at the time it was trademarked.

Pace argues that the case law does not provide an appropriate definition of disparagement or a workable test to determine when a mark is unregisterable because it could disparage, which means that we should turn to the definition in the dictionary at the time when Lanham Act was enacted which defines disparage as to speak slightly of, to undervalue, to discredit, depreciate and cheapen (Pace, 1995, pp. 32).

The Harjo case saw the Petition claim that the trademark was *at the time of registration* and continues to be a pejorative, derogatory, denigrating, offensive, scandalous, contemptuous, disreputable, disparaging, and racist designation for Native American persons (30 U.S.P.Q. 2d BNA, PP.1828).

It is important to point out that the claim extends to the moment in which the trademark was given as well as the moment in time when the petition was filed. This creates a window for interpretation according to the standards put in place at the time of trademark issue as well as in the present time. This is why it is important to acknowledge such facts when it comes to inferring the legal argumentation used in a verdict. A verdict that is surmised in a way that is not mindful of all the circumstances, including the state of society at any given historical time cannot provide good legal argumentation for it can be, as seen in the case above, anchored on weak arguments.

This brings us to the second part of this paper: Do Native Americans have the right to be offended by the names of sports teams? The answer to this question demands us to answer two prior questions:

1) Did Native Americans find the term offensive in 1967 when the »*Redskins*« trademark was registered?

2) Is the registered trademark in any way derogatory of Native Americans in the context of sports?

The answer to the first question is not straightforward. According to the petitioners in the abovementioned cases, it would seem affirmative. But this is only one group of people out of the entire ethnic group present in the United States of America. When the Trademark Trial and Appeal Board at the United States Patent and Trademark Office on the 18th of June 2014 cancelled the trademarks of the Washington Redskins football team it stated that the

petitioners have shown by a preponderance of the evidence that a substantial composite of Native Americans found the term to be disparaging in connection with respondent`s services between the years of 1967 to 1990. (Amanda Blackhorse, Marcus Briggs-Cloud, Philip Gover, Jillian Pappan and Courtney Tostigh v. Pro-Football Inc., 2014, Trademark Trial and Appeal Board, United States Patent and Trademark Office, Cancellation No. 92046185, pp. 72).

Board member Mark Bergsman dissented, stating that petitioners did not submit any evidence or argument as to what comprises a substantial composite of that population (Rimmer, 2016, pp. 5).

Siclari put forth an opinion that proving disparagement as it pertains to Section 2(a) of the Lanham Act is no easy task, mainly due to the fact that the America Invents Act has made it harder for petitioners to prevail on claims of disparagement, namely by placing a higher evidentiary burden on those parties to show disparagement. (Siclari, 2015, pp. 34).

According to Siclari, a careful examination of the evidence failed to show by a preponderance of the evidence that a substantial composite of Native Americans found the term to be disparaging, especially during the 1967-1990 period (Siclari, 2015, pp. 27).

What concerns most when it comes to the evidentiary burden is the fact that there is no given amount that would substantiate the prerequisite that is referred to as »*substantial composite of the referenced group*«. This can bring up absurd situations in which the Trademark Trial and Appeal Board at the United States Patent and Trademark Office could say that a substantial composite of the referenced group consists of (e.g.) dozen people that are affected by the term. The petitioners in the cases mentioned above stated that there were many Native Americans who were offended but did not actually meet the high evidentiary burden as it is set out by the legislator.

In the Harjo case, the Trademark Trial and Appeal Board at the United States Patent and Trademark Office admitted that determination of whether the matter may be disparaging is highly subjective, but it did not state how the subjectivity of the matter influenced their decision.

In addition to that, the Harjo case gave an insight into how Native Americans really feel about the use of the term »Redk-

sins«. Due to the fact that the survey was done on the behalf of the petitioners which provided their results obtained through the labour of their chosen survey expert Dr. Ivan Ross, the results are to be taken *cum grano salis*. Dr. Ross performed the survey amongst three hundred and one (301) non-Native Americans and three hundred and fifty-eight (358) Native Americans all over the United States of America which made the sample of all the Native American population stratified in order to determine the substantial composite. The performed telephone survey showed that 46.2% of the general population sample would be personally offended by the use of the term »redskin« while only 36.6% of the Native American population would be offended by the same term (Siclari, 2015, pp. 9). Not even half of the sample of Native Americans found the term to be offensive while almost half of the general population found it offensive. This leads us to believe that the use of the test by which the Trademark Trial and Appeal Board at the United States Patent and Trademark Office finds the disparagement amongst the referenced group is not showing the result that the legislator wanted. If they deem it to be disparaging but only when it comes to the general population, then it cannot be said that they need to look for disparagement in the referenced group, in this case the Native Americans. If we adopt this concept then it is no doubt left that the legal argumentation in the aforementioned case was weak, since it was based on the incorrect perception of the test for the occurrence of disparagement.

We asked if Native Americans found the term offensive in 1967 when the »*Redskins*« trademark was registered and ironically the answer shows that the circumstances around the naming might prove to be rather peculiar. In fact, according to the reports from Boston Globe, the name change from Braves to Redskins was in accordance with keeping up with the plan to sign several Native American players.

What is more, Kirkland points out that early historical records of the origin for the name “Redskin” indicate that the term was used by Native Americans themselves to differentiate themselves from Americans and even when they negotiated with the French and later with the Americans (Kirkland, 2017, pp.486). It goes against logic that those who coined the term exclusively for themselves would deem it derogatory or even disparaging. The more likely conclusion would be, that due to the origin of the

term, it has now become a part of their heritage and is in no way meant to disparage the Native Americans as it was not intended to disparage them from the beginning when they started calling themselves by that term. In addition to that, Rogers found that the name »*Redskins*« is not offensive to a large number of Native Americans, moreover, the literature presents numerous examples of universities with a predominantly Native American population that have team names reflective of their origin (Moore et al, 2014, pp. 10).

The dilemma which caused the weak legal argumentation in the analyzed case lies in the fact that there is a serious discrepancy between the historical continuity and the perceived usage of the name today. That is why we have questioned whether the registered trademark is in any way derogatory of Native Americans in the context of sports.

The concept of Native Americans having the right to be offended only if the abovementioned questions are resolved positively shows that if they found it to be offensive back in the year 1967 but today`s standards limit the use only to sports-related affairs then there is no right to be offended by it and *vice versa* if they did not find it to be offensive or disparaging in the year of 1967 then there is no higher likelihood that they would find the use offensive in the sports context today.

The element of heritage should not be forgotten when it comes to the linguistic part. The term was first used by and for Native Americans as they identified themselves through this term when dealing with the French and the Americans. This is part of their cultural history and heritage. Sports mascots are not meant to diverge the image of the Native Americans and subject it to ridicule but to connect with their heritage and keep it alive. Such is the nature of sports with its combativeness, that it needs mascots which become the identity of the team and by doing so serve as a way of fans identifying certain teams as theirs. The mascots` priority is not to gather negative emotions but to provide a boost to the fans. There should not be anything adversely connected with sports mascots which also means that those who dislike the mascots which link to the heritage of Native Americans wish not to see the historical importance of Native Americans and their cultural protagonism.

Judge Gerald Bruce Lee failed to realize that in order for the

verdict to stay on the grounds of good legal argumentation he must use logic to see how the evidence of the case correlates to the case at hand and the law that needs to be applied. The representative for the Washington Redskins football team stated that a vast majority of Native Americans had no objection to the name when the trademarks were granted. The first one was granted in 1967. The first case that disputed the use of the term dating from 1992 (Harjo case). That shows a clear time frame of 25 years without any dispute regarding the offensiveness of the term and its disparagement. Judge Gerald Bruce Lee ignored this fact and did not agree with the argument of the representative for the Washington Redskins football team.

After a quarter of a century of being trademarked the term »Redskins« came under scrutiny with the Trademark Trial and Appeal Board at the United States Patent and Trademark Office and after almost half a century it was deemed to be offensive by the court. The reasoning behind it does not entirely convince one, especially due to the fact that all of a sudden many have voiced out their concerns with several names of sports teams, calling out the names as inappropriate or offensive.

Reiner points out a survey, published on September 24, 2004 by the Annenberg Public Policy Center of the University of Pennsylvania which found out that only ten percent of the Native Americans find the term offensive, while almost 65,000 thousand people surveyed of all races and nationalities do not find the term offensive at all, which brings Reiner to conclude that general public needs to be educated about the term and its racial origins for it to not be used as a denotative term for the Washington Redskins football team (Reiner, 2005, pp. 33).

His conclusions are largely intertwined with the fact that he got to experience the atmosphere at the stadium prior, during, and post-football games where, as he writes, throngs of fans, young and old, women and men, black and white, all wore headdresses of Native Americans that symbolized support for their beloved home team (Reiner, 2005, pp. 1).

The fans of the football team wore attire that was historically a part of the Native American heritage. They wore it to symbolize the support for the team, not to offend the Native Americans. In no way was the name intended, as we have now proven, to offend or disparage. We should not generalize the term to cover all

the prejudice that hovers over the Native Americans in American society, neither should we idolize it. But what we should do, prior to any verdicts made, be it regarding a trademark or its offensiveness, we should see in what way it is being used.

Where should we draw the line? Should we limit everything that has to do with Native Americans or other ethnical groups or should we allow everything as long as it is not derogatory? The latter seems to be a better place to start. The name of a sports team has no intention of offending anyone as long as it is not hostile towards a certain group of people or derogatory. The complicated part is allowing the margin for freedom of speech while also containing the correct amount of dignity and respect for those who might be involved with the content of this speech. The retention of Native American names might mean embracing the common historical tradition and heritage of the American people. The elimination of Native American names on the other hand might mean distancing oneself from the common historical heritage of the American people living on American soil.

The point we want to make is threefold: First, the Native American group should not be actively pushed out of the society in which they live, be it with eliminating all the Native American names or censoring anything that has to do with Native Americans. Second, by assigning positive connotations of valued cultural virtues instead of savagery and heathendom, the Native Americans should not feel that the name »Redskins« describes anything of despiteful nature. Third, the problematic term should not be evaluated solely with the intent to vilify it and observe it as a racial slur. We can now see why judge Gerald Bruce Lee used the legal argumentation that he used in the analyzed case, as he was coming from a point of view from which only negativity was seen upon the term »*Redskins*«.

Thornton, himself being a member of the Cherokees, spoke of the use of Native American names, mascots, terms, and tribe names with respect, adding that this only brings honor and recognition to Native Americans (Reiner, 2005, pp. 1).

Davidson, a Native American who supports the Washington professional football team stated that the Washington Redskins have chosen to honor Native Americans and their ancestors by using both Native American names and images for their football organization because those names and images represent a

great tribute to Native Americans (Grimshaw, 2016, pp. 58). Native Americans themselves have used the term in their own communities too (Phillips, 2018, pp. 1078).

On the other hand, Kirkland states that the name »*Redskins*« itself is derogatory, but it is not up to the government to decide whether it should or should not receive protection under the federal trademark laws, due to the fact that when it comes to governments regulating speech, no matter if the term was derogatory in the past or not, but if it is derogatory in the present and will be regarded as such in the future, it should not be up to the government to decide, especially if the decision is made on the basis of past beliefs of how the mark is currently perceived (Kirkland, 2017, pp. 505).

Epstein even goes so far as to say the name »Redskins« is culturally insensitive (Epstein, 2013, pp. 57). Hylton alternately says that the early Native American team names were just that – team names and the main idea behind naming teams after Native American cultural circumstances were to promote geographic identifiers and plainly as patriotic gestures (Hylton, 2010, pp. 902).

Hylton stated that the Native American community is actually divided on the issues of the Indian team mascots and names (Hylton, 2010, pp. 881). This is another indicator that the legal argumentation used by judge Gerald Bruce Lee was not backed up by solid facts. If the Native American community still remains divided upon this issue, there can be no (logical) assumption that the term is disparaging to a »*substantial composite of the referenced group*« since the entire community is divided on this issue. The judge had to make a fact solid, in order to build his argumentation onto this fact. The problem is that the fact he perceived as true was inasmuch true as he needed it to be true in order for his legal argument to stand. The reality of the matter is far from the picture that was painted in accordance with the result of the analyzed legal argumentation. The sheer preponderance of facts that speak of a different position is a sure sign that the judge should not have used the statement of disparagement to a substantial composite of the referenced group as a given fact because there is as much of those who are not offended by the term as is those who are (see *supra*).

The following dilemma occurs; if the Native Americans have the right to be offended by the term, then there is no need for

the petitioners to prove that a substantial composite of the referenced group finds it offensive. Because if there is a right to be offended by the term, there should not be additional checks to see if this right is exercised by everyone. If someone has the right to be offended, there is no use in checking whether everybody consumed this given right to be offended. We are going into extremes here, but the purpose of this is to find out why did the Lanham Act provide additional hoops to jump through? The main objective was to determine if a substantial composite of the referenced group finds the term disparaging. This means that the created standard presupposes a term to be disparaging but afterward limits the reach of the effects of such disparagement by putting a volume barrier. This volume barrier gives the court some leeway to determine if the effects of the presumed disparagement of the term have the extend that would comply with the wording of the statute, in this case Lanham Act, Section 2(a).

With this in mind, we can see where judge Gerald Bruce Lee was coming from. The basis, given in the Lanham Act and with the standards upheld by the court it is clear that there is little to no margin in which a term might be (potentially) analyzed as benevolent or at least contextualized without any negative agenda attached to it. This can surely be one of the reasons why the legal argumentation used by judge Gerald Bruce Lee was such. One of the options to mend this would be for the Congress to step in and reform the Lanham Act as it did for the National Football league with the Communications Act of 1934 regarding blackouts (Fecteau, 1995, pp. 233).

Changing the legislation is not the only way in solving this problem. Riley and Carpenter have shared their findings that the calls for action, coming from Native Americans are primarily not for laws, but education and understanding (Riley, 2016, pp. 917). This means that a lot of the desired progress in society can be achieved through education, which in turn means that amending the laws would come as a last resort.

We mentioned that naming professional sports teams with terms that are connected with the historic aspect of the American continent has become a part of the general American heritage. This statement is backed by the fact that the naming habit goes as far back as the year 1886 when this practice began. Hylton mentions that there were no Native American team names in 1885,

but the following year there were teams called the Indians in New York, Missouri, Arkansas, Ohio and Pennsylvania (Hylton, 2010, pp. 895). We can see that this practice of naming sports teams with names that derive from the Native American culture is more than 130 years old.

There is no evidence that the purpose of naming sports teams after Native American cultural heritage terms sprouted from hate or malice intent. There are no records that would show the purpose of naming teams was done with deprecatory means or with the intent to belittle the Native American community. After all, it is well known that the American people take sports seriously and can get very passionate about them. There is no logic in claims that derogatory names were used to mock Native Americans through the use of such terms of America`s favourite home teams. This is proven by the fact that the name »Braves« (the name initially given to the Boston Braves team) is in no way connected to the Native American community but was used due to the fact that the pretend »braves« threw the British tea overboard during the Boston Tea Party, and in addition to that the term was attached to the Honorable Artillery Company, an honorary military unit based in Boston, who also had nothing to do with the Native American cultural usage of the term (Hylton, 2010, pp. 897).

On top of that, it was the Boston sportswriters who started using the phrases »*going on the warpath*« and »*getting scalped*«, dubbing Braves Field »*the Wigwam*«, while the team did not do anything to exploit the Native American name, other than using the symbol on their uniform (Hylton, 2010, pp. 898).

Here we are at a point where we need to differentiate between the usage of the term in sports and the usage of the term as a racial slur. To accentuate that we need to remind once more, that there should not be a single-minded approach to understanding the meaning of the term »*Redskins*«. There is no doubt that any word can be used as an offensive racial slur if society wants to perceive it as such. In fact, it is up to each individual to assign certain meanings to certain words. Some words have more meanings and undoubtedly the term »*Redskins*« is one of them, but this does not limit the perceived disparagement to solely one meaning of the word. Oxford Living Dictionaries describes the word »Redskin« as dated and offensive but also adds an explanation, that the term originally had a neutral meaning and was used by

North American Indians themselves, only eventually did it acquire an unfavourable connotation (Lyne, 2019, pp. 16). As we can see, the complexity of this term is quite severe.

Regarding meanings, Gibbons explains that the semiotic theory of trademark law recognizes and symbols all exist prior to the creation of the mark, which means that the mark is created with the attachment of secondary meaning to it, basically the symbols add one additional meaning which functions as a source, origin or sponsorship indicator (Gibbons, 2005, pp. 198). By following the semiotic theory of trademark law it becomes evident that the term »*Redskins*« can also refer to the secondary meaning, which is of the football team from Washington and not solely as a term exclusively used to refer to Native Americans.

We mentioned at the beginning of this paper, that the Supreme Court of the United States ruled in the Tam case, wherein it found that the disparagement clause of the Lanham Act is unconstitutional as it violates the Free Speech Clause of the First Amendment, with Justice Samuel Alito adding that speech may not be banned on the ground that it expresses ideas that offend (Phillips, 2018, pp. 1065). This ruling shows that free speech is of utmost importance, it trumps the right of the individual to remain unoffended. In addition to that, it gave Washington Redskins a win against the 2014 decision to cancel six trademarks on the basis that they disparage Native Americans (Macinnis, 2017, pp. 26).

As the importance of free speech remains recognized as the most important aspect in American society, there exists a dilemma why should anyone feel the need to not use the term »*Redskins*« as they please. The reason behind it lies in the type of usage that the term is subjected to. Calling a football team by their name is not intended to hurt anyone`s feelings, but ridiculing Native Americans on the basis of their physiognomical traits definitely falls out of the protection of the free speech concept. This is where judge Gerald Bruce Lee failed to differentiate, before making his legal argumentation regarding disparagement. Disparagement clearly indicates degrading and depreciating intent of denigration. Without such intent, there is no case for disparagement and consequently no actual logic in connecting the name of a sports team with the intent of offending an ethnic group.

By limiting the access to the use of the name »Redskins« we not only shrink the concept of free speech but also go down the

rabbit hole of making potential exceptions to the use of the term.

For example, if only Native Americans can use the term »*Redskins*« then this might clearly lead to expostulation of all the words regarding the right to use it. Such concept is not only absurd, but also wrong.

Tsosie argues that the decisions of the Trademark Trial and Appeal Board at the United States Patent and Trademark Office to deny trademark protection are a positive development and adds that as long as individuals and corporations are allowed to exploit aspects of Native cultural identity as »property« the battle will continue (Tsosie, 2016, pp. 11).The problem with this statement is the fact that the petitioners did not want to be associated with the term »*Redskins*« and they did not want anything to do with it, let alone take it as part of their Native cultural identity, which means there is actually nothing to exploit if the name is to be denounced. This just comes to show, that the entire debate regarding symbols of the Native American culture and heritage boils down to a tug and pull contention. Grimshaw confirms this by stating that the »ideograph of equality dominates the controversy and serves as an organizing principle for both sides in ways that maintain the controversy« (Grimshaw, 2016, pp. 74).

Smith points out that Section 2(a) of the Lanham Act creates two distinct bars to trademark registration, the first one revolves around the scandalous meaning of the term and the second around the disparaging meaning of the term (Smith, 2002, p. 1304). The *Harjo* case showed these two distinctions greatly, as the Trademark Trial and Appeal Board at the United States Patent and Trademark Office came to a conclusion that a substantial composite of the general population would not find the term »Redskins« shocking to their sense of truth, decency or property, finding that the media coverage and fan support of the Washington Redskins since the 1940s was inconsistent with a sense of outrage from the general population that is necessary to prove a term scandalous (Smith, 2002, pp. 1313).

Out of the two significant distinctions between »scandalous matter« and »disparaging matter« the former was not found. That left to checking only whether the term »Redskins« was disparaging. To check this, the Trademark Trial and Appeal Board at the United States Patent and Trademark Office decided that the general public`s viewpoints are irrelevant when deciding whether

the term is disparaging (Smith, 2002, pp. 1314). By doing so a clear distinction between the two approaches was set, giving way to formulating a dissimilar standard independent to the approach for determining whether the term is scandalous.

The Disparagement standard was shaped through case law and formulated by the Trademark Trial and Appeal Board at the United States Patent and Trademark Office, thus labelling a mark as disparaging only if it is to be considered offensive or objectionable to a reasonable person of ordinary sensibilities (Guggenheim, 1999, pp. 296).

This in term means that the task at hand was to consider whether the term "*Redskins*" can be reasonably understood to refer to Native Americans and that such a term is offensive or objectionable from a Native American`s point of view. The legal argumentation from the analyzed case failed in connecting the latter. There is no clear fact that the Native Americans find it offensive or objectionable due to the fact that there are many who do not consider the term to be either of it.

The slippery slope argument was clearly manifested once judge Gerald Bruce Lee took it as a known fact that the Native Americans find the term offensive or objectionable. The fallacious nature of such legal argument shows in the fact that the presupposed actuality needed to have been structured beforehand, for the verdict to not be reversed due to weak arguments. Otherwise (if there was no known fact for the offensiveness or objectionableness to the Native Americans) such argument would not stand. The error in legal argumentation was made due to unconfirmed assumptions.

The standard was criticized by Smith, mainly due to the fact that the »substantial composite approach« ignores the majority of the implicated group members` viewpoints when deciding whether a trademark is disparaging (Smith, 2002, pp. 1315). Smith also disagreed with the decision of the Trademark Trial and Appeal Board at the United States Patent and Trademark Office to disregard the claims that Pro-Football Inc. made when stating that the trademarks were used in the context of temporary attitudes with respectful nature (Smith, 2002, pp. 1315).

Was this the reason why judge Gerald Bruce Lee erred in his legal argumentation? Was the standard set too wide? This paper disclosed that this was actually the case. Not only was there insuf-

ficient data of the amount of Native Americans who perceived the term as disparaging, but the data available showed that there was no such thing as a substantial composite of the referenced group that perceived the term as disparaging, judging by the numbers alone. Neither did the context in which the term was used show that it was used in a way that would be disparaging to the Native Americans (see *supra*).

A survey that was conducted exclusively amongst Native Americans (sample of three hundred and fifty-one) gave results that go against the whole »substantial composite« argument of disparagement. The survey revealed that seventy-five percent out of all the surveyed Native Americans were not offended by the name »*redskins*« and sixty-nine percent of all surveyed Native Americans feel it is acceptable for Pro-Football to continue using the name »*Redskins*« (Price, 2002, pp. 72).

This survey shows that a substantial composite of the referenced group does not find the name disparaging. In addition to the fact that the Washington football team is a respected organization that does not disparagingly use the trademarks, one is hard-pressed to see the reasoning behind the use of an unconfirmed assumption in the legal argumentation of the ruling that we have analyzed.

Would the outcome be any different if the standard for disparagement would not consider a substantial composite of the referenced group but instead a substantial composite of the general population? Not likely. A survey from 2015 conducted by Benson showed that (on a scale of 1 that equals minimum and 10 that equals maximum) a sample of 254 white/caucasian people out of 306 people surveyed, expressed a preference for the Washington Redskins logo, placed at 6.48 (Benson, 2015, pp. 21).

On top of that, the Washington football team appears to have had a much more attractive name and logo than other teams of the National Football league, judging by the increase in ranking of licensed merchandise sales in 1995 which was worth just less than one million dollars in additional sales (Nagel & Rascher, 2007, pp. 802).

This paper does not aim to disregard the social changes that happened from the year 1967 up to today, even though the Trademark Trial and Appeal Board at the United States Patent and Trademark Office found that the term »*Redskins*« was already dis-

paraging to a substantial composite of Native Americans during the time the registration was sought (Wasserman, 2016, pp. 1513) without taking into account the different societal aspects of that era. The main reason for concern lies in the fact that a judge`s argumentation in the ruling strayed away from the facts and data collected in the surveys, moving ostensibly in the direction of the societal narrative from recent years.

The Blackhorse case suffers from the same problems and inconsistencies of evidence when it comes to demonstrating the preponderance of the evidence for a conclusion that the term is disparaging to a substantial composite of Native Americans, just like the initial Harjo Litigation (Hopkins & Joraanstad, 2015, pp. 294). This is one of the reasons why it is difficult to logically decipher why similar evidence would yield different results. In addition to that, in the opening brief of the appellant that was filed on the 30th of October 2015 there is a clear mention of the fact that no one has identified how many Native Americans constitute a substantial composite which is an omission that precludes a meaningful defense (Page-Proof Opening Brief of Appellant Pro-Football, Inc. v. Amanda Blackhorse, Marcus Briggs-Cloud, Phillip Gover, Jillian Pappan, Courtney Tsotigh, No. 15-1874 In the United States Court of Appeals for the Forth Circuit, On Appeal from the United States District Court for the Eastern District of Virginia, Alexandria Division No. 1:14-cv-01043, pp. 48). This leads us to ponder whether it would be necessary to first determine the exact amount that constitutes the substantial composite even before the evidence was analyzed and the ruling was made. It would definitely add one more view of legitimacy to the overall definitive quality of the verdict at hand, mainly because there would be a solid foundation of the argument on why the »Disparagement standard« from the Sector 2(s) of the Lanham Act was met in the first place. We can project that the legal argumentation would be better once the substantial composite was determined and not left to the assumptions of the judge in the case.

3. Conclusion

When it comes to assuring legal argumentation of the highest quality there is no room for unconfirmed assumptions. This paper displayed the adverse effects of anchoring argumentation

on non-proven (so-called) facts. The term »*Redskins*« has been polarizing the opinion of society for decades but in recent years we saw an increase in the demands for the term to be removed from the use in the National Football league altogether. The term itself has at least two meanings, one of them clearly attached to the Washington football team. The meaning tied to the football team invoked reactions from the petitioners claiming it to be disparaging. Surveys did not prove such claims, even though the Disparagement standard demands the petitioners to prove a substantial composite of the referenced group is disparaged by the term. A judge should not and cannot hold true something that has not been proven. Any arguments that a judge makes, based on non-existent evidence should be avoided as this only shows unwanted judicial activism, possibly motivated by societal pressure. We showed in this paper that there are certain unequivocal requirements in accordance with Section 2(A) of the Lanham Act, especially when it comes to proving the existence of disparagement amongst the referenced group. The right to be offended does not constitute the same matter as to be regarded sufficient for the claim of disparagement amongst a substantial composite of Native Americans. This holds especially true when there are many circumstances regarding the term, that contradict the points made by the petitioners in the case we analyzed.

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Life Satisfaction and Real Estate Living Conditions of the Elderly in Slovenia

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ABSTRACT

One of the greater challenges of a democratic society is to find out how social housing policy should address the problems of housing for older people. The research objective of this study is to explore the differences in life satisfaction of participants in late adulthood in relation to their housing conditions and elderly care. We have focused on the maintenance costs of real estate in Slovenia. On this basis, we investigate whether rising costs can have a significant impact on older people moving to more appropriate surroundings. The basis for the analysis is data collected using a psychological measure of life satisfaction and a measure of living conditions and property maintenance developed for the needs of the present study. A statistical analysis, which includes a factor analysis of the questionnaire and an analysis of its reliability, is carried out using analysis of variance. We argue that housing policy should strengthen home care in the residential environment, in particular reduce the cost of property maintenance, as well as accelerate the intergenerational transfer of property in exchange for better home care and cohabitation.

Keywords: life satisfaction; real estate living conditions; late adulthood; social housing policy

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Življenjsko zadovoljstvo, bivalni pogoji in stanovanjska politika vezano na starejše prebivalce v Sloveniji

POVZETEK

Eden od večjih izzivov demokratične družbe je ugotoviti, kako bi se socialna stanovanjska politika morala ukvarjati v zvezi s problematiko stanovanjskega bivanja starejših. Raziskovalni cilj te študije je ugotoviti razlike v življenjskem zadovoljstvu strešjih udeležencev v povezavi s stanovanjskimi pogoji in njihovo oskrbo. Osredotočili smo se na stroške vzdrževanja njihovih nepremičnin v Sloveniji. Na tej osnovi preučujemo, ali lahko naraščajoči stroški pomembno vplivajo na to, da se starejši ljudje preselijo v bolj primerno okolje. Osnova za analizo merjenja življenjskega zadovoljstva in merjenja pogojev bivanja ter vzdrževanja lastnine so vprašalniki, razviti za potrebe te študije. Statistična analiza, ki vključuje faktorsko analizo vprašalnika in analizo njegove zanesljivosti, se izvaja z uporabo analize variance. Trdimo, da bi morala stanovanjska politika okrepiti oskrbo na domu v bivalnem okolju, zlasti zmanjšati stroške vzdrževanja lastnine, ter pospešiti prenos lastnine med generacijami v zameno za boljšo oskrbo na domu in sobivanje.

Ključne besede: življenjsko zadovoljstvo; pogoji bivanja nepremičnin; pozna odraslost; socialna stanovanjska politika

1. Introduction

The primary aim of this paper was to analyse the life satisfaction and real estate living conditions of older people in Slovenia. According to the World Health Organization (2011), most developed nations have accepted the age of 65 as the threshold for the group of people termed elderly. Therefore, an elderly person in this paper refers to one who is aged 65 years and over. One of the bigger challenges of a democratic society is finding answers to the questions how social housing policy address the problems of housing for the elderly. Addae-Dapaah and Shu Juan (2014) argue that this is the key issue, citing two reasons: first, that elderly need a safe and comfortable home, and second, for elderly

is important social inclusion, cohabitation and communication. Iwarsson (2005) even states that older people are significantly more sensitive to the social environment and related well-being, health. Rubinstein and De Medeiros (2004), however, cite a correlation between housing and existing sociocultural background of a person. Many researchers believe that housing satisfaction reflects the perceived quality of the home in terms of a broad attitudinal valuation (Weideman, Anderson, 1985; Aragonés et al., 2002, Boge et al., 2019). Our study focused on the question: do real estate maintenance costs have a statistically significant influence on the expressed life satisfaction of participants?

The World Health Organization (1997) defines life satisfaction as an individual's perception of their position in life in the context of the culture and value systems in which they live, and in relation to their expectations and standards. Life satisfaction can be affected by the person's physical health, level of independence, social relationships, and relationships to the salient features of his environment (Addae-Dapaah, Shu Juan, 2014). The global judgment of life satisfaction (Diener et al., 1999; Veenhoven, 1996) and also the differentiated assessment of specific psychological domains, such as the sense of mastery and competence in managing the environment, have been found to be associated with health in later life (Ryff, 1989; Ryff, Singer, Love, 2004). Life satisfaction in strongly related with quality of life (Grum, 2017). Higher the quality of life is, higher participants expressed life satisfaction (Grum, 2017). Many researchers referred that quality of life (especially is that significand for older people) strongly correlates with adequate living conditions (real estate living conditions), adequate socio - economic coexistence in a built environment and with health conditions (Rohe, Basolo, 1997; Erdogan et al., 2008; Addae-Dapaah, Shu Juan, 2014; Grum, 2017). In Slovenia, improving the quality of life has increasingly become a key political agenda as the country aspires to be an even more inclusive and vibrant society. As people age real estate living conditions become very important (Yen, 2009).

As people age, housing adjustments because of the declining functions of the elderly become crucial and have a significant impact on their well-being and independent in daily life (AARP, 2005; Gitlin, 2003; Wahl, 2001). Studies show that many elderly people, especially those who live alone or in retired households,

just barely cover current expenses and annual taxes (compensation for the use of building land, property tax), as well as other obligations related to the maintenance of real estate, and often do not have enough savings, which has a negative impact on the value of the property (Kerbler, 2012; Grum, Kobal Grum, 2015; Grum, 2017). That is why this study highlighted the problem of real estate maintenance costs. We are particularly interested in whether these costs significantly influence the expressed satisfaction of participants and, most importantly, whether these costs can influence their decision to sell their real estate and\or to move to cheaper, more suitable housing.

Building maintenance costs can be defined as all costs incurred to maintain the condition of a building, but without the cost of functional, aesthetic or physical improvements, other than those that have to be made due to the deterioration of materials or components (Seeley, 1976). Mills (1980) defined maintenance cost as cost required for maintenance for work undertaken in order to keep, restore or improve every facility, i.e. every part of a building, its services and surrounds to a currently acceptable standard, and to sustain the utility and value of the building (Mills, 1980). Maintenance is synonymous with controlling the sustainable condition of a building, as is acceptable in a particular environment (Shear, 1983). Maintenance of the building can therefore be defined as the implementation of all measures that must be taken to maintain the acceptable condition of the building, but without any improvements that are not essential and not part of routine maintenance (Seeley, 1976). With the aging of the facility, maintenance costs increase (Seeley, 1976; Mills, 1980; Shear, 1983), but with the aging of users, their economic strength decreases (Grum, 2017).

2. Life satisfaction and real estate living conditions

Evidence from literature shows that life satisfaction is influenced by a broad array of objective and subjectively perceived conditions (Theodori, 2001; Grum, Temeljotov Salaj, 2013; Grum, Kobal Grum, 2015). Erdogan and others (2008) point out that overall life satisfaction is directly influenced by perceived living conditions, while perceived living conditions are related to

satisfaction with the physical surroundings, satisfaction with social relations, satisfaction with the performance of local authorities, and with the perceived quality of facilities, what we can broadly refer as residential satisfaction. Danquah and Afram's (2014) summary of findings from literature in relation to various perspectives from professionals points to ten parameters that influence residential satisfaction. According to them, these are: (1) the neighbourhood, (2) social demographic characteristics, (3) dwelling unit features, (4) dwelling unit support services, (5) housing conditions, (6) structure type, (7) housing and estate management, (8) facilities in the inhabited environment, (9) environmental features of housing, and (10) neighbour relationships. Literature documents certain parameters that predict people's residential satisfaction. For instance, some researchers (Theodori, 2001; Danquah, Afram, 2014; Grum, Temeljotov Salaj, 2013; Grum, Kobal Grum, 2015) state that housing conditions are one of the main parameters in determining residential satisfaction (size of dwelling unit, presence of balcony, natural lighting, peacefulness, age of building and neighbourhood, parking options, infrastructure of dwelling unit). They also impart that location and living environment factors (location, proximity to vital facilities, accessibility, transport links), as well as socioeconomic factors (maintenance costs, neighbourly relations, sense of security, sense of social connection, sense of suitable economic status) are important parameters in determining residential satisfaction. Many researchers point out that living in one's own home has many positive effects that are especially beneficial for the well-being and psycho-physical condition of elderly people. According to Maisel and others (2008), studies have shown that independent living promotes successful aging by improving health and life satisfaction, and increasing the self-esteem of the elderly, which can delay the transition of elderly people to the institutional form of stay. Older people still generally prefer to age in their own homes (Greenwald, Associates, 2003; Harper, Bayer, 2000; Secker et al., 2003; Wylde, 2008), often because they fear that moving to a collective or institutional living environment will inevitably mean losing their independence (Burholt, Windle, 2007; Imamoglu, 2007; Parry et al., 2004). Space as it relates to older people's relationships with their living environment (Kemp et al., 2012) as a symbolic representation of "home"

as independence (Parry et al., 2004) can also provide a basis for further conceptual refinement. Older people are not resilient in houses that are poorly repaired, cold, and expensive to run (James, Saville-Smith, 2015). They can become unhealthy, stressed and at risk of injury. British research has found that the costs of repair are clearly unaffordable for some groups (Leather, 2000). Those on low and uncertain incomes are also likely to under-invest. Again, older people are affected by this because they are marginal to the employment market and their earning power is limited by disability, illness or age (James, Saville-Smith, 2015). Roy and others (2018) found that important influences relate to the built environment, as well as to the social, psychological, psychosocial, spatiotemporal and decisional contexts of older adults. If the living environment (neighbourhood) is developed, orderly, clean and maintained, it is also expected for the individual residential building to be property maintained, in harmony with the neighbourhood, and in accordance with the built environment in which it is located (Grum, 2017). However, the environment usually affects the level of expected (or required) maintenance of the building itself (well-maintained infrastructure usually requires well-maintained accommodation facilities, otherwise the image of the neighbourhood is inconsistent and the welfare of users is worse) (Grum, 2017). Their review emphasizes the importance of adapting dwellings and communities to older adults wishing to stay at home in the residential environment that they know and value.

On this basis, we follow the question whether the rising maintenance cost can significantly influence the expressed satisfaction of participants and, most importantly, whether these costs can influence their decision to sell their real estate and\or to move to cheaper, more suitable housing.

3. Method

The instruments used to measure the views of participants were questionnaire created by the Satisfaction with Life Scale Questionnaire (hereinafter referred to as SWLS) as a measure of life satisfaction developed by Diener et al. (1985) and the Real Estate Living Conditions and Care Questionnaire (hereinafter referred to as RELCC) as an analysing participant's demograph-

ic characteristics developed by Grum (2014). In both questioners of the two main types of questions (Keats, 2000), multiple-choice and rank ordering were used. Participants answered the questions using the Likert scale, where value 5 indicated that they completely agree with a statement (very satisfied) and value 1 (very dissatisfied) that they completely disagree with a given statement. The data were collected via the internet and via personal correspondence (individually and collectively). The anonymity of participants included in the survey was assured. Before entering data into the SPSS statistical program, any incorrectly completed questionnaires were removed. The number of these accounted for 2.1 percent of all collected surveys. The exclusion criteria were an uncompleted questionnaire or incompletely completed questionnaire, when the respondent did answer the question, but chose non-standard possible answers.

A statistical analysis of the RELCC, which included a factor analysis of the questionnaire and an analysis of its reliability (Cronbach-alpha), was conducted using descriptive statistics and analysis of variance. The questionnaire included 14 variables. We defined 4 factors, which explain over 60% of the total variation (Bastič, 2006). The Kaiser-Meyer-Olkin measure of sampling adequacy was 0.7. Bartlett's Test (BT = 1037.1), which is statistically significant, showed that the defined factors can be interpreted. In our research we used the first extracted factor which reveals the demographic characteristics of the participants and combined it with a questionnaire SWLS that measures life satisfaction. SWLS is a short, 5-item instrument designed to measure global cognitive judgments of satisfaction with one's life. The reliability of the questionnaire, established by the inner consistency method or Cronbach's alpha coefficient, indicated that the questionnaire expresses a high level of reliability. Cronbach's alpha coefficient for the first set of the questionnaire was 0.89. The questions we asked regarding participants' demographic characteristic revealed in Table 1. The questions with which we measure participants' life satisfaction related to satisfaction with current living conditions, attachment to the living environment, resettlement in another environment because of better care, maintenance costs and possibility of selling property in exchange for better care. The choice was made between using

the analysis of variance and regression analysis and we followed Field (2017). The analysis of variance is often used in research or statistical method, such as a t-test for independent samples, but in the analysis of variance, we can compare the average of three or more groups. According to Field (2017) ANOVA is just a special case of regression. We used it because ANOVA is an *omnibus* test, with means that it tests for an overall experimental effect (Field, 2017).

The survey was conducted in Slovenia from February to April 2018. The sample included participants who were selected according to gender, age (65-70 years, 70-80 years, over 80 years), location (urban, rural, settlement), who they live with/their co-resident(s) (spouse, family, alone, etc.), type of property/dwelling (apartment, house, home for elderly, etc.), ownership of real estate (own, relatives, rented, etc.), and satisfaction with current living conditions. 375 participants took part in the survey. The structure of participants according to their demographic characteristics is shown in Table 1.

Table 1: Structure of the participants according to demographic characteristics

Variable	Number	Percentage
Genter		
Women	146	39.00%
Men	229	61.00%
Total	375	100.00%
Age		
65 to 70 years	114	30.50%
71 to 80 years	141	37.40%
81 and more	120	32.10%
Total	375	100.00%
Where do you live (location)		
In the city centre	221	59.10%
In a densely populated rural settlement	107	28.60%
In a dispersed rural settlement	47	12.30%
Total	375	100.00%

With whom you live		
With a spouse	136	36.40%
With children or grandchildren	63	16.60%
Alone	120	32.00%
Other	56	15.00%
Total	375	100.00%
According to type of apartment		
In block of flats	118	31.50%
House	142	38.00%
Home for elderly	112	29.70%
Other	3	0.80%
Total	375	100.00%
According to ownership of apartment		
Owned or co-owned	209	55.90%
Relatives	35	9.40%
Market rent	15	3.70%
Non-profit rent	20	5.30%
Other	96	25.70%
Total	375	100.00%
Satisfaction with current living conditions		
Very dissatisfied	5	1.30%
Dissatisfied	16	4.30%
Moderately satisfied	18	4.80%
Satisfied	207	55.30%
Very satisfied	129	34.30%
Total	375	100.00%

The participants were predominantly male. Some researchers (Bourque et al., 2003; Pinquart, Sörensen, 2000) have suggested that sense of life satisfaction is not determined by the same factors in men and women. Indeed, it has been shown (Pinquart, Sörensen, 2000) that for women, life satisfaction is more strongly dependent on social integration than for men, and the reverse

is true for socioeconomic status. Nonetheless, these results concern all elderly people, raising the question of the influence of living arrangements. As regards age structure, participants in the age range between 71 and 80 years (37.40%) were predominant. Most of the participants live in the city centre (59.10%), in a house (38.00%), and with their spouse (36.40%). Significant differences can be observed between participants with respect to ownership of housing. There were significantly more homeowners (55.90%). We attribute this to the structure of the proportion of homeowners in Slovenia, which is above 80 per cent (Statistics Portal, 2014). Regarding satisfaction, the participants expressed a high level of satisfaction (55.30 %) with their current living conditions. This can be explained by a survey in the case of Baltimore, where buyers and tenants were observed and, after a year and a half, the housing satisfaction of customers was found to be greater than the satisfaction of tenants (Rohe, Stegman, 1994). In a further three-year study, Rohe and Basalo (1997) found that after a three-year ownership, homeowners are still more complacent as tenants. Here, complacency was defined as a combination of overall satisfaction with life, home and neighbourhood (Rohe, Stewart, 1996). However, Kleinhans and Elsing (2010) note that there is a strong correlation between home ownership and a sense of independence, self-satisfaction and loyalty to one's neighbourhood.

4. Results and discussion

The results were statistically analyzed by the analysis of variance. As the dependent variable, sense of life satisfaction was selected with regard to the basic demographic characteristics of the participants (age, property location, with whom participant live, type of residential real estate, ownership of real estate,) and with regard to real estate living conditions in late adulthood (satisfaction with current living conditions, attachment to the living environment, resettlement in another environment because of better care, maintenance costs, possibility of selling property in exchange for better care). The results are shown in Table 2.

Table 2: Statistically significant differences according to the sense of life satisfaction regard to the basic demographic characteristics of the participants and to real estate living conditions in late adulthood

Dependent Variable		Sum of Squares	df	Mean Square	F	Sig.
Property location	***	6.000	2	3.134	2.353	0.037
With whom you live		5.144	3	1.715	1.281	0.281
Type of apartment	*	16.851	3	4.214	3.217	0.013
Ownership of apartment	*	14.458	4	3.614	2.746	0.028
Satisfaction with current living conditions	***	61.991	4	15.498	13.118	0.000
Attachment to the living environment	***	37.488	4	9.372	7.492	0.000
Resettlement in another environment	**	24.727	4	6.182	4.802	0.010
Maintenance cost	*	7.238	1	7.238	5.460	0.020
Selling the property in exchange for better care	**	23.03	4	5.757	4.456	0.002

*Note: *difference is statistically significant (p<0.05); **difference is statistically significant (p<0.01); ***difference is statistically significant (p<0.001)*

The results show that there are statistically significant differences in the degree of sense of life satisfaction ($p < 0.05$) regarding property location, type of real estate, ownership, and maintenance costs. The results show that there are statistically significant differences in the degree of sense of life satisfaction ($p < 0.01$) regarding resettlement in another environment, and the sale of property in exchange for better care. Statistically significant differences ($p < 0.001$) were expressed regarding satisfaction with current living conditions and attachment to the living environment. The average levels of agreement with sense of life satisfaction as regards the basic demographic characteristics of participants and real estate living conditions in late adulthood are shown in Table 3.

Table 3: Average level of agreement to the sense of life satisfaction

Variables	Average level of agreement				
Property location	Urban	Rural	Settlements		
	4.54	4.87	4.44		
Type of real estate	Apartment	House	Home for elderly	Other	
	4.68	4.92	4.40	4.20	
Ownership	Owned	Relatives	Market rent	Not-market rent	Other
	4.82	4.88	4.28	4.59	4.41
Satisfaction	Strong disagreement	Disagreement	Medium agreement	Agreement	Strong agreement
	3.35	3.70	3.68	4.63	4.10
Attachment	Strong disagreement	Disagreement	Medium agreement	Agreement	Strong agreement
	4.18	3.97	4.22	4.48	4.96
Resettlement	Strong disagreement	Disagreement	Medium agreement	Agreement	Strong agreement
	4.90	4.68	4.95	4.59	4.08
Maintenance cost	Agreement	Disagreement			
	4.76	4.43			
Selling the property	Strong disagreement	Disagreement	Medium agreement	Disagreement	Strong agreement
	4.93	4.86	4.65	4.33	4.16

The overall picture shows that those participants in Slovenia who live in a rural environment expressed a considerably higher sense of life satisfaction (average level of agreement 4.87) than those who live in urban areas (average level of agreement 4.54). The influence of the urban or rural environment in this regard is still not well understood in the scientific community (Oguzturk, 2008). Tavares et al. (2014) found that the elderly in rural areas had higher scores of quality of life than residents in urban areas

in most domains and facets. These data indicate that living in the urban environment of the elderly has a negative impact on their quality of life. A survey conducted in Concordia-Santa Catarina shows that older men in rural areas expressed higher social and health satisfaction than those living in urban areas. (Beltrame et al., 2012). The greater proximity between households and health facilities can improve access to health services and the active search of the elderly through home visits. In Slovenia, along with the relocation of caretaking activities into the home environment, services must be carried out effectively and their quality must be ensured through adaptation of the built living environment, the introduction of new organizational procedures, and technical and technological solutions (Kerbler, 2013).

The results show that the participants who live in houses expressed a considerably higher sense of life satisfaction (average level of agreement 4.92) than those who live in homes for the elderly (average level of agreement 4.40). The results also show that the participants who owned real estate or who live with relatives in their dwellings expressed a considerably higher sense of life satisfaction (average level of agreement 4.82 and 4.88, respectively) than those who live in rented property (average level of agreement 4.28 and 4.59, respectively). We explain the difference between the expressed satisfaction level among participants by findings of the researches conducted by Rohe and associates (1994, 1996, 1997, 2001). Rohe and associates (2001) studied social advantages of apartment owners and established that apartment owners compared to tenants express higher satisfaction with their living environment, they are socially more active in their living environment, relocate less often and contribute more to social stability of the neighbourhood. They estimate that the satisfaction level among apartment owners is higher (Rohne, Stewart, 1996). In the example of Baltimore they observed apartment purchasers and tenants and after a year and a half found that the apartment purchasers showed higher satisfaction than the apartment tenants (Rohe, Stegman, 1994). In a further three-year study Rohe and Basalo (1997) determined that even after a three-year ownership the apartment owners were still more self-satisfied than the tenants. They defined the self-satisfaction as the combination of common satisfaction with life, apartment and neighbourhood (Rohe, Stewart, 1996).

It has also been observed that people living alone are less satisfied with their lives than those living with a partner (Grum, Temeljotov Salaj, 2013). For those living alone or with a partner, taking part in leisure activities should be encouraged, since this is positivity linked to life satisfaction.

Most of the participants expressed a high level of agreement regarding satisfaction with current living conditions (average level of agreement 4.63). Participants expressed an extremely high level of agreement regarding attachment to their living environment (average level of agreement 4.96), but we noted with surprise that they expressed medium agreement regarding the possibility of resettlement in another environment because of better care (average level of agreement 4.95). As reported by Borges Luz and others (2011), their population-based study provided empirical evidence that satisfaction with the neighbourhood environment was directly associated with the health of the elderly. These results support the potential importance of including this indicator in an analysis of place and health among the elderly. Borges Luz et al (2011) conclude that it is important to support development programs and strategies that foster connection with the built environment. It is interesting to note that the participants expressed an extremely high level of disagreement by selling their property in exchange for better care or more suitable real estate (average disagreement rate 4.93). Stronegger and Titze (2010) explain this with the finding that it is precisely residential neighborhoods where the elderly establish social connections, daily routine activities, consumer beaver; that are why the familiar physical and social environment has a positive effect on their well-being and health. As indicated by Borges Luz and others (2011), this can be particularly relevant for the elderly, given the combination of declines in physical and cognitive functioning that tends to accompany ageing, which leads to a greater dependence on the immediate residential neighbourhood for their health and well-being. Our definition of neighbourhood refers to a person's immediate residential environment. Therefore, it is important to understand that the elderly want to continue living in an environment where they have spent most of their lives, and that this environment is most conducive to their satisfaction and, consequently, a positive health effect (Yen, 2009). Housing thus becomes of new

importance in later life as a result of being in the same environment for a long time, being attached to it and being familiar with it (Oswald, Wahl, 2005; Rubinstein, De Medeiros, 2004). Older people seem to be particularly adept at adapting to different objective living conditions and sustaining high levels of housing satisfaction (Rowles et al., 2004).

Most of the participants expressed a high level of agreement regarding high maintenance costs (average level of agreement 4.76). In another vein, the pension reforms being implemented throughout Europe could have major consequences on the future well-being of persons living with a partner, for whom financial security is a priority (Gaymu, Springer, 2012). On the other hand, most participants (despite high maintenance costs) expressed strong disagreement with the sale of their property (average level of disagreement 4.93). Research shows that the elderly want to stay in their homes in the same known environment for as long as possible, and they want to maintain their independence and autonomy for as long as possible. They do not want to sell their property or resettle in more suitable dwellings despite problems related to maintenance costs. Trček (2005) establishes that the factor most closely related to investing in real estate is the monthly household income. He notes that this factor mainly depends on the participants' education and the size of their household (Trček, 2005). Uršič (2005) further concluded that migration activity is also significantly influenced by housing status and the number of persons in a household (Uršič 2005). We attributed the lower degree of agreement regarding maintenance costs? in urban centres to the higher educational structure of elderly people who are more educated, consequently more financially strong, and who live in more suitable (smaller) dwellings (multi-apartment buildings) (Boge et al., 2018). Houses are often too large, difficult to access and expensive to maintain, inadequate, in locations that are difficult to access, and whose utility costs are higher year on year, etc. (Žmahar, 2013). And not surprisingly, those participants who already carried out intergenerational transmission expressed a lower level of maintenance cost problems in comparison to those who still owned real estate (Grum, 2017).

The study clearly shows that the issue of maintenance costs that burden the older generation is a major one. The problem is not only their distress, which in turn is reflected in their life satis-

faction, which, as a series of studies suggests, affects their health and well-being (Skela Savič et al., 2010; Yuan et al., 2015; Deng et al, 2017; Grum, 2017). The problem is also of concern to the wider community, because, in addition to all of the above, the older generation leaves behind unsupported, often later completely useless, real estate that aesthetically and safety-wise burdens the environment, and financially the owners who inherit such real estate. The research thus raises new, important questions that need more effort in the future.

4. Conclusions

Our main research goal was to investigate differences in the life satisfaction of participants in late adulthood based on their real estate living conditions and care for the elderly. The instruments used to measure the views of participants were questionnaire created by the Satisfaction with Life Scale Questionnaire (SWLS) developed by Diener et al. (1985) and the Real Estate Living Conditions and Care Questionnaire (RELCC) developed by Grum (2014). 357 participants aged over 65 years took part. The results show that there are statistically significant differences in the degree of sense of life satisfaction ($p < 0.05$) as regards property location, type of real estate, ownership, and maintenance costs. The results show that there are statistically significant differences in the degree of sense of life satisfaction ($p < 0.01$) regarding resettlement in another environment and sale of property in exchange for better care. Statistically significant differences ($p < 0.001$) were observed regarding satisfaction with current living conditions and attachment to the living environment.

The results show that most participants expressed a high level of agreement regarding high maintenance costs. On the other hand, most of them expressed strong disagreement with the sale of their property (despite the high maintenance costs). Elderly people want to stay in their homes in the same familiar environment for as long as possible, and they want to maintain their independence and autonomy for as long as possible. They do not want to sell their property or resettle in more suitable dwellings despite the problems related to high maintain costs. Older people exhibit a high attachment to their property and living environment, which provide them with a higher level of life satisfaction

than the possibility of moving to another dwelling place that provides better quality environment.

The overall picture shows that those participants who live in a rural environment expressed a considerably higher sense of life satisfaction than those who live in urban areas. The greater proximity between households and health facilities can improve access to health services and the active search of the elderly through home visits. In Slovenia, along with the relocation of caretaking activities into the home environment, services must be carried out effectively and their quality must be ensured through adaptation of the built living environment, the introduction of new organizational procedures, and technical and technological solutions. The results show that those participants who live in houses expressed a considerably higher sense of life satisfaction than those who live in homes for the elderly. The results also show that participants who own real estate or who live with relatives in their dwellings expressed a considerably higher sense of life satisfaction than those who live in rented property.

Most participants expressed a high level of agreement regarding satisfaction with their current living conditions. They expressed an extremely high level of agreement regarding attachment to their living environment, though we noted with surprise that they expressed medium agreement regarding the possibility of resettlement in another environment because of better care. On the other hand, they expressed an extremely high level of disagreement regarding the possibility of selling their property in exchange for better care. Neighbourhoods are the most important places to establish connections with other individuals, daily routine activities and consumption habits; therefore, their physical and social environments affect the health and health behaviour of residents. This can be particularly relevant for the elderly, given the combination of declines in physical and cognitive functioning that tends to accompany ageing, which leads to a greater dependence on the immediate residential neighbourhood for their health and well-being. Our definition of neighbourhood refers to a person's immediate residential environment. In this regard, however, it is important to remark/note that older adults tend to spend a greater proportion of their lives closer to home; therefore, their proximal environment could be more relevant to their health and well-being.

Elderly people exhibit a high attachment to their property and living environment, which provide them with a higher level of life satisfaction than the possibility of moving to another supposedly better quality environment. We suggest that social housing policy should increase home care in the living environment, as well as accelerate the intergenerational transmission of real estate in exchange for better home care and coexistence. Aging populations require innovative solutions to the problems of maintaining independence, dignity and home care, and assisted living technologies. As Smith (2001) points out, the elderly deserve to live their final years in dignity, understanding the relationship between health and (subjective) well-being in old age, which is of great socio-political importance. Moving elderly care activities to homes demands that effective service provision and service quality be adapted to the living environment, and that new organizational procedures and technological solutions be implemented. The research opens up a series of questions about how to provide elderly people with an adequate, safe and healthy home environment even at a late age, both in technical and economic terms. Therefore, we suggest further research in the indicated direction, because only a comprehensive treatment of the problem will be able to convince housing decision-makers to take action. Knowing these aspects can lead to policy subsidizing specific actions for a healthier environment taking into account all real facts. Older people deserve special consideration in government social housing policy, community support and industry response, but they are often a low priority for resource allocation or policy innovation because of their relative lack of economic and political power.

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»Guarding the cosmos«: exploring (non)existing legal frameworks for sustainable space activities

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ABSTRACT

The concept of sustainability in space may seem strange at first sight. After all, space is often seen as a vast, empty place without life and natural resources. However, our activities in space, including satellite deployment, space tourism and future plans for possible colonisation, pose potential risks to the delicate balance of this extraterrestrial environment. The legal framework for the sustainable implementation of space activities is examined in this article. A central chapter is devoted to the concept of sustainability and its extension to space, researching the existing legal regulation of space sustainability, or lack thereof. The link between the 2030 Agenda for Sustainable Development and space is also examined. The work analyses how the 2030 Agenda's goals of combating climate change, sustainable industry and sustainable resource management can be achieved through space technology. Finally, the legal and environmental aspects of space tourism are addressed. It explores how this form of space activity is (un) regulated and what are the environmental aspects that need to be taken into account. The aim of this work is to highlight the problem of the absence of binding legal regulation of the sustainable conduct of space activities and to point out that the adoption of appropriate legislation would be more akin to a natural evolution of the existing legal system than to a revolutionary change. Introducing the principles of sustainable development might offer a potential remedy for certain systemic issues within space law, especially concerning the safeguarding of outer space from space debris.

Keywords: space law, sustainable development, space activities, space debris, Agenda 2030, space tourism

»Varovanje vesolja«: analiza (ne)obstoječih pravnih okvirov za trajnostno izvajanje vesoljskih dejavnosti

POVZETEK

Koncept trajnosti v vesolju se morda na prvi pogled zdi nenavaden. Navsezadnje se vesolje pogosto obravnava kot ogromen, prazen prostor brez življenja in naravnih virov. Vendar pa naše dejavnosti v vesolju, vključno z nameščanjem satelitov, vesoljskim turizmom in prihodnjimi načrti za morebitno kolonizacijo, predstavljajo potencialna tveganja za občutljivo ravnovesje tega zunajzemeljskega okolja. V članku je obravnavana pravna ureditev trajnostnega izvajanja vesoljskih dejavnosti. Osrednje poglavje je namenjeno konceptu trajnosti ter njegovi razširitvi na vesolje, pri čemer se raziskuje obstoječo pravno ureditev trajnosti vesolja oziroma pomanjkanje le-te. Preučena je tudi povezava med Agendo 2030 za trajnostni razvoj in vesoljem. Članek predstavi, kako se lahko cilji Agende 2030, kot so boj proti podnebnim spremembam, trajnostna industrija in vzdržno upravljanje z viri, uresničijo s pomočjo vesoljske tehnologije. Nazadnje je obravnavan tudi pravni in okoljevarstveni vidik vesoljskega turizma. Raziskuje se, kako je ta oblika vesoljske dejavnosti (ne)urejena ter kakšni so okoljski vidiki, ki jih je treba upoštevati. Namen tega dela je izpostaviti problem odsotnosti zavezujoče pravne ureditve trajnostnega izvajanja vesoljskih dejavnosti in poudariti, da bi bilo sprejetje ustrezne zakonodaje bolj podobno naravnemu razvoju obstoječega pravnega sistema kot revolucionarni spremembi. Uvedba načel trajnostnega razvoja bi lahko ponudila potencialno rešitev za nekatera sistemska vprašanja v vesoljskem pravu, zlasti v zvezi z varovanjem vesolja pred vesoljskimi odpadki.

Ključne besede: vesoljsko pravo, trajnostni razvoj, vesoljske dejavnosti, vesoljski odpadki, Agenda 2030, vesoljski turizem

1. Introduction

On 4 October 1957, Soviet scientists launched the first artificial satellite, *Sputnik 1*, from the Baikonur Cosmodrome[1] into Earth

[1] Baikonur Cosmodrome is a space launch site in the desert steppes of Kazakhstan. It is one of the

orbit. The satellite became the first product of mankind to orbit the Earth, marking the official beginning of the Space Age (Lai, 2021, p. 8). The latter brought rapid advances in space technology and the exploration of space by humans and unmanned spacecraft. Over the past 60 years, the Space Age has produced some of the greatest scientific and technological advances in human history, from the landing of man on the Moon to the exploration of the outer reaches of our Solar System (Millbrooke, 2009, p. 1).

In the field of space law, the limitless vastness of outer space is combined with the complexity of legal frameworks. In an era of increasing exploration and exploitation beyond our planet, the need for rules and guidelines governing the sustainable use of outer space has become crucial. The concept of sustainability transcends earthly boundaries and includes the preservation of celestial environments, resources and the delicate balance of our interconnected universe.

As we head towards 2030, an important milestone marked by the 2030 Agenda for Sustainable Development on Earth, the space sector is inextricably intertwined with the global sustainability effort. From poverty eradication and environmental conservation to social equity and technological progress, the 2030 Agenda sets out a comprehensive roadmap to address humanity‘s pressing challenges.

In the vast expanse of outer space, one important area of interest is the developing field of space tourism. As private spaceflight gains prominence and offers civilians unparalleled opportunities to travel beyond the Earth‘s borders, the need for robust regulatory frameworks becomes apparent. Balancing safety, sustainability and equitable access to the space tourism experience is paramount in shaping this emerging industry.

The sustainable use of outer space is of paramount importance. The exploitation of space resources, space tourism and other space-related activities must comply with the principles of sustainability, ensuring long-term benefits for present and future generations. As humanity expands its presence beyond Earth, it is essential to strike a delicate balance between exploration and

oldest and largest space launch sites in the world and has been in operation since the late 1950s. It was originally built by the Soviet Union in response to the successful launch of Sputnik 1. The site was chosen because of its remoteness, flat terrain and proximity to the equator, which provides a natural boost for rockets launched from the site (Howell, 2018).

conservation, pioneering progress and protecting the integrity of celestial ecosystems. Space law, which is the legal basis for these efforts, has a crucial role to play in shaping the future of our space endeavours. It includes a range of legal principles, treaties and guidelines that govern the activities of States, organisations and individuals in outer space. Space law acts as a framework to ensure responsible behaviour, manage potential conflicts and protect the common interests of all humanity in outer space.

2. Space law essentials

International space law is defined as a branch of general (public) international law that covers the rules, rights and obligations of States relating to outer space and to activities in or relating to outer space (Von der Dunk, 2015, p. 29). Compared to other areas of law, space law is a relatively new area of law, the emergence of which is a process of new discoveries and achievements of mankind. International space law strives to secure the exploration and utilization of outer space in a manner that is peaceful, cooperative, and responsible (United Nations, 2023). Its goal is to advance the collective interests of all nations while ensuring the well-being of humanity as a whole.

The basic principles of space law are set out in five international treaties and agreements ratified by many States around the world. Together, they form the basis of modern space law, or *corpus juris spatialis* in the strict sense (Steer, 2017, p. 3). The Outer Space Treaty (hereafter »OST«) became effective on October 10, 1967, The Rescue Agreement, focusing on the rescue and return of astronauts and objects launched into outer space, took effect on December 3, 1968. Subsequently, The Liability Convention, addressing international liability for damage caused by space objects, came into force on September 1, 1972. The Registration Convention, focusing on the registration of objects launched into outer space, entered into force on September 15, 1976. Lastly, The Moon Agreement, governing state activities on the Moon and other celestial bodies, became effective on July 11, 1984 (Jankowitsch, 2015, p. 5).

But international space law is much more than these five instruments. It also encompasses the various conventions and

resolutions of the United Nations General Assembly, the rules, regulations and recommendations of international organisations, national laws that interact with the international system and, last but not least, »general international law« (Flis, 2018, p. 53). *Corpus juris spatialis* is therefore a term used in a broader sense to refer to a comprehensive legal framework that includes legal sources intended to regulate human activities in outer space (Steer, 2017, p. 3).

The United Nations Outer Space Treaties form a comprehensive global legal framework for regulating human activities in outer space. The pace at which states ratify these treaties may fluctuate, reflecting variations in adoption rates; however, their significance as the cornerstone of international space law remains indisputable (Von der Dunk, 2015, p. 29). Undoubtedly, these treaties constitute the primary legal foundation on the international stage, steering and overseeing a myriad of activities conducted in outer space. It's crucial to recognize that the evolving landscape of space exploration, technological advancements, and geopolitical dynamics underscores the enduring importance of these treaties (Von der Dunk, 2015, p. 29). As the linchpin of international space law, these agreements provide a foundational structure that not only addresses current challenges but also anticipates and adapts to the ever-changing nature of space activities. They serve as a testament to the collaborative efforts of nations to establish a coherent and universally applicable legal framework that transcends individual interests, fostering cooperation and responsible conduct in the exploration and use of outer space.

After the conclusion of the Moon Agreement, the progress of multilateral legislation through treaties under the United Nations (hereafter »UN«) experienced a significant slowdown, influenced by various factors (Jankowitsch, 2015, p. 6). In lieu of this slowdown, non-legally binding instruments meticulously crafted by Committee on the Peaceful Uses of Outer Space (hereafter »COPUOS«) and subsequently endorsed by the UN General Assembly have emerged as instrumental tools in fine-tuning the principles of space law. Good example are Guidelines for the Long-Term Sustainability of Outer Space Activities and Space Debris Mitigation Guidelines.[2]

[2] The LTS Guidelines developed by the United Nations, offer instructions for the sustainable oversight of space activities. This includes measures to prevent space debris and encourage collaboration

Furthermore, beyond the scope of COPUOS, an array of additional soft law instruments has emerged, significantly influencing the conduct of space actors. The diverse nature of these non-legally binding instruments adds a layer of flexibility, but it's noteworthy that their acknowledgment and adoption remain voluntary. However, this voluntariness doesn't diminish their impact; instead, it emphasizes the collaborative and cooperative nature of the international space community, allowing for a dynamic and adaptable framework that responds to the evolving challenges of space exploration and utilization (Palmroth et al., 2021, p. 3).

The growing adoption of non-binding guidelines and standards has sparked an increased commitment among nations to develop national space laws. These laws, extending beyond creating a binding framework for space activities within national borders, play a crucial role in bridging the gap between international and domestic legal systems and navigating the interface between legal obligations and soft law. The seamless integration of non-binding norms into national space laws transforms them into enforceable regulations within the jurisdiction of the state (Marboe, 2015, p. 128).

3. Sustainability beyond borders

The term »sustainability« has its origin in the Latin verb »*sustinere*«, with »*tenere*« meaning »to hold« and »*sus*« meaning »up«. Its essence lies in the ability to sustain an activity at a particular stage or level. Since the 1980s, this term has evolved beyond its original roots, expanding to encompass not only the capacity to maintain but also the responsible and enduring aspects of human habitation and the utilization of Earth and its resources. This evolution has culminated in the widely embraced concept of »sustainable development« (Martinez, 2015, p. 259). It is worth noting that the progression of the term reflects a growing global awareness of the interconnectedness between human activities, environmental well-being, and the responsible stewardship of natural resources. The adoption of »sustainable development« signifies a collective commitment to harmonizing societal progress with ecological

among stakeholders. On the other hand, the SDM Guidelines focus on tackling the problem of space debris. They provide guidance on the design, construction, and management of space objects to minimize collision risks and maintain long-term access to outer space.

integrity, acknowledging the imperative to strike a balance that ensures the well-being of present and future generations.

The idea of sustainable development hasn't been expressly applied to space. However, it's important to note that space has never been excluded from its consideration (Pogorzelska, 2013, p. 4). Interestingly, one of the principles in the Rio Declaration[3] emphasizes that states bear the responsibility of ensuring that activities within their jurisdiction or control do not result in environmental harm beyond national boundaries (Rio Declaration, 1992, Article 2).

According to Articles 1 and 2 of the OST, outer space is an area beyond national jurisdiction. It is part of the so-called »global commons« and its legal status is defined as »the domain of all mankind«, which cannot be subject to national appropriation (OST, 1967, Article 1 and 2). Two years following the Rio Declaration, the International Law Association explicitly stated that the responsibility to safeguard areas beyond national jurisdiction should be expanded to encompass Earth's orbital space (Pogorzelska, 2013, p. 3). This expansion of responsibility aligns with the dynamic nature of international law, adapting to the advancements and challenges posed by the ever-expanding realm of human activities, including those beyond our planet. Moreover, according to Article 3 of the OST, it is stipulated that States Parties are obligated to conduct activities related to the exploration and utilization of outer space in compliance with international law, including the UN Charter (OST, 1967, Article 3). This Article effectively incorporates the principles of space law into the broader framework of general international standards, of which sustainable development constitutes a vital component (Pogorzelska, 2013, p. 4). The recognition of sustainable development within the broader international standards reinforces the idea that responsible and ethical engagement in outer space activities should not only align with the specific principles of space law but also contribute to the overarching global goals of sustainability and harmonious coexistence.

So the idea of sustainable development isn't unfamiliar in the context of space regulations; instead, it appears to be a logical

[3] The Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992, consists of 27 principles that articulate the key elements of sustainable development.

progression of the system, more like a natural evolution than a radical transformation (Pogorzelska, 2013, p. 6). Interestingly, the OST anticipates the emergence of sustainability concepts. In Article 1, it asserts the freedom of outer space exploration for all nations on an equal basis, without any form of discrimination (OST, 1967, Article 1). This provision can be viewed as laying the groundwork for principles like intergenerational and intragenerational equality within space law. The emphasis on equal access to outer space, as enshrined in the OST, reflects a foundational commitment to fairness and cooperation among nations in the exploration of the cosmos. This equitable approach inherently aligns with the principles of sustainability, fostering a collective responsibility to ensure that the benefits and opportunities offered by space exploration are shared across generations. Therefore, the OST not only sets the stage for space law but also lays a solid foundation for integrating sustainable development principles into the fabric of international cooperation in outer space activities.

As both sustainable development and space law inherently prioritize human interests, their integration wouldn‘t usher in a drastic shift towards environmental-centric values. Rather, it implies that states should factor in environmental considerations when strategizing satellite launches or planning space missions (Viikari, 2008, p. 134).The essential tenets of sustainable development, such as the judicious use of natural resources, the amalgamation of environmental protection with economic progress, the right to development, and the pursuit of both intergenerational and intragenerational equity, can seamlessly align with the requisites of the space sector (Pogorzelska, 2013, p. 4). This alignment between sustainable development principles and space activities is not only pragmatic but also visionary. It recognizes the interconnectedness of human activities on Earth and in outer space and emphasizes the importance of responsible stewardship of resources. By integrating these principles, the space sector can contribute to a more holistic and balanced approach, ensuring that advancements in space exploration and utilization benefit not only the present generation but also future generations while safeguarding the delicate balance of our planetary ecosystem. This interconnected perspective reinforces the idea that responsible space endeavors can serve as a

model for sustainable and equitable development on a global scale.

Another compelling argument supporting the incorporation of sustainable development in outer space is its significant potential to tackle certain systemic challenges within space law regulation (Pogorzelska, 2013, p. 5). These challenges stem, in part, from the broad and ambiguous nature of space law norms concerning the safeguarding of outer space. A notable issue lies in the increasing disparity between regulation and the evolving reality of space activities. Without a revitalization of norms, this misalignment could impede the effectiveness of treaty instruments aimed at preserving outer space (Viikari, 2008, p. 134). Furthermore, within the treaty regimes, disagreements emerge. For instance, while the OST aims to facilitate the utilization of outer space, it overlooks the critical issue of space debris, posing a threat to the secure use of outer space (Pogorzelska, 2013, p. 5). It could be argued that the concept of sustainable development necessitates a reevaluation of norms with unsustainable consequences, urging their interpretation in alignment with the principles of sustainable development.

The sustainability of space activities faces an array of challenges that necessitate careful consideration and mitigation strategies. One key concern lies in the increasing congestion of Earth's orbit with satellites and space debris, posing risks of collisions and generating long-term environmental hazards. Effective space traffic management and debris mitigation efforts are imperative to ensure the long-term viability of space activities. Additionally, the rapid pace of technological advancements and the commercialization of space raise questions about resource utilization and exploitation. Striking a balance between economic interests and sustainable practices is crucial to prevent over-exploitation and the depletion of space resources. Furthermore, the environmental impacts of rocket launches and space exploration activities, including potential contamination of celestial bodies, demand comprehensive regulations and responsible practices (Viikari, 2008, p. 29).

Although the UN treaties governing outer space primarily focus on aspects like peaceful exploration and equitable resource sharing, they indirectly promote sustainability through fundamental principles. Despite the absence of an explicit reference

to sustainability and a formal definition within the UN treaties on outer space, it is crucial to acknowledge that these treaties do not neglect forward-looking environmental considerations. While sustainability may not be explicitly named, the principles embedded in the pursuit of utility, responsible behavior, and risk mitigation are essential foundations supporting the safe and sustainable use of outer space (Palmroth et al., 2021, p. 3). These principles not only align with the spirit of the UN Outer Space Treaties but also underscore a commitment to addressing evolving environmental challenges. Consequently, even without explicit terminology, the treaties lay a foundation for responsible and environmentally conscious conduct in space activities, contributing to the overarching goals of sustainability in the context of outer space exploration and utilization (Deva Prasad, 2019, p. 3).

A critical facet of space sustainability and the associated norms of responsible space behavior, extensively deliberated and regulated over the past two decades, primarily centers on the mitigation of space debris. Recognizing that an uncontrolled and uncoordinated surge in orbital debris could adversely affect the space activities of all stakeholders, whether governmental or private, established or emerging, has prompted the formulation of progressive regulatory measures (Palmroth et al., 2021, p. 4). Despite the primarily voluntary and technical nature of regulations targeting the reduction of space debris proliferation, numerous national legislators have not only embraced these rules but have also elevated them to mandatory conditions at the national level (Palmroth et al., 2021, p. 3). Recognizing that space activities inherently transcend national boundaries, the collaborative influence of international law, national regulations, and soft law is poised to uniquely contribute to the establishment of shared goals and ensure compliance among all space actors.

As the discussion around space sustainability continues to evolve, it becomes evident that responsible space behavior extends beyond the reduction of space debris. New challenges and opportunities arise, necessitating ongoing collaboration and adaptability in the legal and behavioral frameworks governing outer space activities. Issues such as resource utilization, space traffic management, and international cooperation in scientific exploration are gaining prominence, further emphasizing the need for a comprehensive and forward-looking approach to space law

that incorporates sustainability as a guiding principle for the benefit of all spacefaring nations.

4. Linking sustainability principles on earth with the cosmos

The 2030 Agenda and its 17 Sustainable Development Goals (hereafter »SDGs«) represent a transformative vision for a more sustainable and equitable future for our planet and its people. Achieving these ambitious goals requires innovative approaches and collaboration across sectors, and space technology is proving to be a powerful tool in this regard (Contribution to the »Space 2030« Agenda: EU Space Supporting a World of 8 Billion People, 2023, p. 29). In fact, space technology is an indispensable ally in achieving the SDGs, offering innovative solutions, comprehensive monitoring capabilities and global connectivity. By harnessing the power of satellites and space-based instruments, we can collect critical data, improve our understanding of complex challenges and implement targeted actions that contribute to sustainable development across multiple dimensions (Contribution to the »Space 2030« Agenda: EU Space Supporting a World of 8 Billion People, 2023, p. 30).

However, to ensure that space technology continues to be used for good and contributes to the 2030 Agenda, laws and regulations must be put in place that promote sustainable and responsible practices. Legislation should explicitly recognise and align with the SDGs. By incorporating the principles and goals of the 2030 Agenda into space-related laws, governments can create a legal framework that prioritises sustainable development, environmental protection and social well-being.

Space activities often involve multiple countries and stakeholders. Laws should promote international cooperation and collaboration and encourage the sharing of information, resources and expertise to jointly address global challenges. International agreements and guidelines, such as the OST and the SDGs, can provide a basis for collaborative efforts (Ferretti, Imhof, Balogh, 2020, p. 271). Legislation should also require transparency and accountability from space actors. This includes clear reporting mechanisms, disclosure of activities and their potential impacts, and mechanisms for stakeholder engagement. By promoting

transparency, governments and organisations can ensure that space technology is used responsibly and in line with the SDGs (Deva Prasad, 2019, p. 3).

It is also crucial that legislation contains provisions to manage and mitigate the environmental impact of space activities. This can include measures to reduce space debris, regulate satellite launches and operations, and promote sustainable use of resources. Environmental impact assessments and monitoring mechanisms can help identify and reduce potential environmental risks (Popova, Schaus, 2018, p. 6). It is also important that legislation supports ethical standards and ensures inclusiveness in space-related activities. It should address issues such as privacy, data protection and equitable access to space services. It should also promote diversity and equal opportunities in the space industry to ensure that the benefits of space technology are accessible to all.

Governments should establish or strengthen existing regulatory bodies to oversee space activities and ensure compliance with sustainable practices. These bodies can monitor compliance with laws, review applications for space missions and promote responsible behaviour by space actors. Collaboration between governments, industry, academia and civil society in the creation of these regulatory bodies can promote comprehensive and effective oversight (Di Pippo et al., 2021, p. 19). Laws and regulations governing space activities should be regularly reviewed and adapted to reflect technological advances, societal needs and changing environmental conditions. Regular evaluation ensures that the legal framework is up-to-date and responds to new challenges and opportunities (Contribution to the »Space 2030« Agenda: EU Space Supporting a World of 8 Billion People, 2023, p. 29).

By including these elements in legislation, governments can create an enabling environment that harnesses the potential of space technology for sustainable development. Legislation should provide clear guidance, promote responsible behaviour and ensure that space activities are in line with the 2030 Agenda, ultimately contributing to the achievement of the SDGs and improving society as a whole.

5. Space tourism's toll

Following the milestone of the inaugural »tourist« spaceflight in 2001, suborbital travel[4] has emerged as a novel dimension within commercial space activities. The rapid expansion of space tourism introduces unique legal challenges, demanding attention to ensure safety, accountability, and ethical practices in this dynamic industry. The current framework of space law, initially crafted for government-led exploration, proves inadequate in addressing the intricate legal issues associated with private space ventures (Von der Dunk, 2019, p. 178–179). As the momentum of space tourism accelerates, there arises a critical need to establish robust regulatory structures that skillfully navigate the delicate equilibrium between fostering innovation and safeguarding the broader public interest.

When space law was initially developed, the status of passengers on spacecraft did not pose any challenge, as only astronauts and cosmonauts participated in space flights and missions. Now, defining the legal status and rights of commercial space travelers, or tourists, becomes crucial. Ambiguity arises from using terms like »astronaut« and »spacecraft personnel« without clear definitions in international space law, as seen in treaties like the OST and Rescue Agreement (Hobe, 2007, p. 455.). Complicating matters, these terms vary in meaning across treaties. Stephan Hobe suggests a distinction, with »astronaut« reflecting a scientific role and »spacecraft personnel« having a functional meaning (Hobe, 2007, p. 455). This lack of clarity highlights the need for a nuanced approach in adapting space law to accommodate the commercialization of space activities.

The rapid technological strides in space tourism bring forth intricate legal dilemmas, with space vehicles embodying a hybrid nature, leveraging features from both conventional aircraft and spacecraft. These dual-purpose vehicles find themselves straddling the realms of both aviation and space laws, casting uncertainties on how to navigate registration and liability issues, par-

[4] Suborbital space tourism, exemplified by companies like Virgin Galactic, involves brief trips to the edge of space, providing passengers with a taste of weightlessness and stunning views of Earth's curvature. Moving into orbital space tourism, companies like SpaceX offer longer stays in Earth's orbit, allowing travelers to witness multiple orbits and experience extended weightlessness. Beyond these Earthly orbits lies the concept of tourism beyond Earth, envisioning interplanetary travel and stays in space habitats, including potential visits to the Moon or Mars.

ticularly concerning suborbital commercial space vehicles (Von der Dunk, 2019, p. 185). This quandary gains urgency as the production of two-part vehicles becomes a standard practice in the burgeoning field of space tourism. It's now paramount to shed light on these intricacies, emphasizing the pressing need to decipher the operational and legal complexities surrounding these cutting-edge vehicles. This evolving scenario underscores the necessity for regulatory frameworks to adeptly accommodate the distinct characteristics of the space tourism industry.

Engaging in space activities entails inherent risks and dangers. Thus, when delving into the legal aspects of space tourism, it becomes imperative to prioritize the intricacies and challenges within the existing liability framework outlined in the *corpus juris spatialis*. Since the 1963 UN Declaration on Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, alongside the 1967 OST and the 1972 Liability Convention, liability regulation has stood as a pivotal component in governing outer space activities. However, the present liability structure, narrowly defined, falls short of accommodating the demands of the commercial advancements witnessed in the past two decades. Despite various provisions in current national and international regulations addressing liability for commercial space activities, persistent legal issues arise concerning the commercialization and privatization of space endeavors (Masson-Zwaan, Freeland, 2010, p. 1598). The existing liability regime has never been practically applied, leaving room for ongoing legal challenges, although the COSMOS 954 accident in 1978 almost set a precedent.[5]

As we delve into the realm of space tourism and its technological strides, it's imperative to scrutinize the potential environmental repercussions associated with this burgeoning industry. In the context of space law's philosophy of the »common heritage of mankind«, safeguarding the cosmic environment becomes paramount (Masson-Zwaan, Freeland, 2010, p. 1606). The upsurge in commercial space activities, notably space flights, significantly impacts the environment by harming the ozone layer and releasing pollutants like black carbon. Suborbital journeys, exemplified by Virgin Galactic, introduce black carbon into the atmosphere,

[5] COSMOS 954 was a Soviet satellite that had a nuclear reactor on board to power its systems. On 24 January 1978, the satellite suffered a critical malfunction which caused it to disintegrate and scatter its debris over a wide area, including the Canadian Arctic region (Byers, Boley, 2023, p. 64).

potentially altering global weather patterns (Byers, Boley, 2023, p. 38–41). While U.S. agencies have urged companies to study and mitigate their atmospheric impact, a more extensive international collaboration and commitment to sustainable practices are essential (McCue, 2022, p. 1097).

Beyond environmental concerns, ethical considerations emerge. Embarking on space tourism comes with a hefty price tag, making it an exclusive experience for a fortunate few. Critics contend that this exacerbates social disparities, sparking concerns about fairness and justice. The considerable financial and technological assets required for space tourism could instead be directed towards addressing urgent global issues like poverty, education, or climate change. Sooner or later, the status of important sites in space that are (and will be) historically significant will have to be regulated. Legislation will be needed to provide for »heritage zones« to protect certain sites, such as the site of the first manned lunar landing, from accidental or deliberate damage by space tourists (Masson-Zwaan, Freeland, 2010, p. 1606).

The current state of space law struggles to keep up with the dynamic landscape of the growing space tourism industry. It's seen as too inflexible to serve as a reliable foundation for space tourism. There's a pressing need for a fresh international convention solely dedicated to regulating commercial space tourism, aiming to clear up uncertainties in the field. Such a unified tool should consider and adopt elements from existing aviation law, treating it as a guiding model, especially when it comes to dealing with questions of liability. Establishing a comprehensive legal strategy is a key component in advancing the broader development of commercial aspects in space. This means that as we venture into economic activities in space, there should be a parallel implementation of a legal framework, overseen by an international body, to ensure robust support as a coherent system (Masson-Zwaan, Freeland, 2010, p. 1607).

6. The path forward

Space-age developments and innovations have led to a growing number of space actors, transforming a traditionally government-led industry into an increasingly commercialised one (Gaspari, Oliva, 2019, p. 188). The range of possible space applications

is expanding and the international community is becoming increasingly dependent on space activities. Space helps to improve the lives of people around the world and helps us to face the challenges of our time. Space imagery and data allow experts to develop strategies to combat climate change and reduce the damage caused by environmental disasters.

The issue of space debris and other challenges to the sustainability of outer space clearly shows that space activities, if carried out without proper legal and environmental considerations, can pose a major threat to humanity and the environment, and shows us that the international community must work towards a more effective and comprehensive legal regime that ensures and contributes to sustainability on Earth and in outer space.

Existing international space law addresses the sustainability of outer space indirectly and does not provide a comprehensive legal framework for the protection of the space environment, nor does it contain strict sustainability guidelines and principles on how to conduct space activities. The general obligations relating to the environmental aspects of space exploration and use found in UN treaties or principles need to be adapted to current scientific, technological and industrial developments.

The lack of adequate regulation for the sustainable implementation of space activities is like an ominous black hole that threatens the space environment, the implementation of the 2030 Agenda and future generations. While humanity is struggling to achieve sustainable development on Earth, a »Wild West« is unfolding in space without real rules. Space, which could be our partner in achieving the global goals, is becoming an arena for private space actors who indulge in a privileged experience at the expense of social inequality and environmental destruction.

It is time for the international community to come together and set clear guidelines to steer space activities in a direction that benefits all and ensures the long-term sustainability of our exploration and exploitation of space. Humanity deserves more than a chaotic space circus - it deserves a sustainable and responsible exploration of the unknown depths of space for the benefit of us all.

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Liability for damages in case of sports injuries

Nik Šabec

ABSTRACT

For sports and its participants, injuries are something entirely common. Upon the occurrence of an injury, certain damage always occurs to the individual, raising the question in such situations of who or if anyone is liable for the resulting damage.

Due to the nature of sports, the liability for damages in cases of sports injuries is supposed to be more of an exception than a rule. Otherwise, individuals could potentially lose motivation for sports participation, and in such a scenario, the sport itself might lose its meaning and attractiveness.

Every sport is to some extent specific, and individuals can participate in sports in various ways or roles. Consequently, liability relationships for injuries in sports can be diverse but can generally be categorized into two groups: reciprocal liability for damages of athletes and liability for damages of organizers of sports events and managers of sports equipment.

By the very nature of things in the case of sports injuries, each specific case is unique, so only judicial practice can offer definitive answers to questions about liability for damages in the respective cases.

Keywords: sports, sports injuries, liability for damages, reciprocal liability for damages of athletes, liability for damages of organizers of sports events and managers of sports equipment

Odškodninska odgovornost ob nastanku poškodbe pri športu

POVZETEK

Za šport in njegove udeležence so poškodbe nekaj povsem običajnega. Ob nastanku poškodbe posamezniku vselej nastane določena škoda, pri čemer se v takšnih situacijah vedno pojavi vprašanje, kdo oz. če kdo odškodninsko odgovoren za nastalo škodo.

Zaradi narave športa naj bi odškodninska odgovornost za poškodbe pri športu predstavljala bolj izjemo kot pravilo. V nasprotnem primeru bi namreč lahko posamezniki izgubili motivacijo za športno udejstvovanje, šport kot tak pa bi v tem primeru izgubil svoj smisel in atraktivnost.

Vsak šport je do neke mere specifičen, posamezniki pa lahko v športu sodelujejo na različne načine oz. v različnih vlogah. Posledično so lahko odškodninska razmerja v primeru nastanka poškodbe pri športu različna, vendar jih je v osnovi mogoče razdeliti na dve skupni primerov, in sicer na medsebojno odškodninsko odgovornost športnikov in na odškodninsko odgovornost organizatorjev športnih prireditev ter upravljalcev športne opreme.

Že po naravi stvari pri poškodbah v športu vsak konkretni primer predstavlja posebnost zase, zato lahko šele pravna kazuistika ponudi dokončne odgovore na vprašanja o odškodninski odgovornosti v tovrstnih primerih.

Ključne besede: šport, poškodbe pri športu, odškodninska odgovornost, medsebojna odškodninska odgovornost športnikov, odškodninska odgovornost organizatorjev športnih prireditev in upravljalcev športne opreme

1. Introduction

Sports is a highly diverse and complex activity that is both beneficial and, to some extent, also risky. Individuals can participate in sports in various roles – as professional or amateur athletes, coaches or instructors, organizers of sports events, managers of sports facilities, manufacturers of sports equipment, spectators, etc. (Možina, 2020, p. 115).

Injuries are quite common in sports and for its participants. Their occurrence always results in some form of harm to the individual, prompting the question of who, if anyone, is liable for the incurred damage and whether the injured individual is entitled to compensation for the suffered harm (Možina, 2020, p. 115).

In legal theory, especially in the theory of sports law, three different perspectives on liability for damages in case of sports injuries have emerged. Two are diametrically opposed in their approach to determining liability, while the third falls somewhere between these two extremes (Králík, 2015, p. 1021).

The first group of theorists believes that sports participants should be held liable for injuries in sports without limitations. They do not consider sports to be such a specific area of human activity that justifies the potential application of a special legal regime when determining liability for damages in case of sports injuries (Králík, 2015, p. 1021).

In contrast, the second group of theorists almost completely excludes the application of rules on liability for damages in case of sports injuries. Advocates of this viewpoint argue that the world of sports is a sphere into which the law should not intrude (Králík, 2015, p. 1022).

The third group of theorists accepts the role of law in sports-related matters but modifies the traditional idea of liability for damages in case of sports injuries by considering the unique nature of sports (Králík, 2015, p. 1022).

Due to the nature of sports, liability for damages in cases of sports injuries is seen as an exception rather than a rule; otherwise, individuals might be discouraged from participating in sports, and the sports themselves would lose their meaning and appeal (Šabec, 2023, p. 70). Consequently, assessing liability for damages in cases of sports injuries poses a special challenge for courts worldwide. This often leads to situations where, in certain cases, especially in foreign jurisdictions, legal precedents refer to the practices of other countries in similar cases (Králík, p. 1032).

The question of liability for damages in cases of sports injuries can arise in various situations, depending on the role played by the injured party and the party potentially liable for damages. Liability relationships for injuries in sports can be diverse but can generally be categorized into two groups: reciprocal liability for damages of athletes and liability for damages of organizers of

sports events and managers of sports equipment (Možina, 2020, p. 116).

Liability for damages in cases of sports injuries can be contractual or non-contractual. In the Republic of Slovenia, general rules of law of damages (the provisions of the Obligations Code (OZ)) apply to matters concerning injuries in sports. For someone to be held liable for damages, and for the injured party to be entitled to compensation, the prerequisites of liability for damages must be satisfied. In other words, a foundation for liability for damages must exist for the awarding of compensation (Možina, 2020, p. 115).

The Slovenian legal system distinguishes between objective and fault-based liability for damages, differing in whether fault is one of the prerequisites for the emergence of liability for damages or not. The distinction lies in the fact that in fault-based liability for damages, fault is a prerequisite for the emergence of liability, whereas in objective liability for damages, fault is not a condition that must be fulfilled for the occurrence of liability for damages (Plavšak et al., 2003, str. 690).

In determining or assessing the basis of liability, the evaluation of unlawfulness is crucial, where the autonomous rules of individual sports play a key role (Možina, 2020, p. 117–119)

Given that each sport is governed by autonomous rules, any injury in sports is, by its nature, a unique case. Therefore, only judicial practice can provide definitive answers to questions about liability for damages arising from sports injuries (Cerar, 2007, e-source).

In the following parts of this article, it will be presented how Slovenian judicial practice assesses the existence of the prerequisites for liability for damages in cases where the question of liability for damages in cases of sports injuries arises. It will also be presented what determines the type of liability (subjective or objective) attributed to organizers of sports events or managers of sports equipment for the damage.

2. The peculiarity of assessing unlawfulness in sports

When assessing the unlawfulness of actions resulting in injury in sports, circumstances such as freedom of movement, the at-

tractiveness of sports competitions, and individual sports for all stakeholders are crucial. Additionally, autonomous rules established by sports associations, which have been adopted by sports federations, are highly significant in determining unlawfulness (Možina, 2020, p. 116–117).

These rules can serve as a valuable guide in determining the expected behaviour of athletes, organizers of sports events, or managers of sports facilities or equipment. They also define the permissible scope of the so-called *"combat element"*, preventing injuries caused by dangerous play, roughness, and unsportsmanlike behaviour (Možina, 2020, p. 117). Despite this, it is necessary to emphasize that sports rules do not constitute the sole source for distinguishing between permissible yet firm (rough) play and conduct that is prohibited, dangerous, or unsportsmanlike. Besides rules, other circumstances must be considered, especially the nature of each individual sport. Additionally, when evaluating what constitutes sportsmanlike or unsportsmanlike behaviour, a certain degree of discretion should be entrusted to the sports referee. (Možina, 2020, p. 129).

A drawback of sports rules is that they do not regulate all sports or all situations that may arise in a particular sport. Consequently, when assessing the unlawfulness of actions resulting in injury in sports, it is primarily necessary to consider the general obligation of exercising due diligence and avoiding causing harm. While sports rules can complement this obligation, they cannot replace it (Možina, 2020, p. 117).

The standard of due diligence also plays a crucial role as it is necessary, when assessing unlawfulness of actions resulting in injury in sports, to determine whether the responsible party, despite violating sports rules, acted differently than an average careful athlete would have in a comparable situation (VSRS Sodba II Ips 108/2016, 5. 1. 2017).

In any case, it holds true that an athlete who causes harm to another through their actions is not liable for damages if their behaviour is in accordance with the rules of the game, as it is not considered unlawful in such cases (Stanec, Milanović, 2019, p. 28).

Similarly, not every violation of sports rules implies unacceptable conduct as an element of liability for damages, as some rule violations in a particular sport are so common and characteristic that they have become an integral part of that sport. Without

such violations, the game/sport could become uninteresting, or at least significantly less appealing to both athletes and spectators. Demanding strict adherence to the rules during play could negatively impact the ongoing development of a sport. Athletes are undoubtedly aware that rule violations will occur during the game, as they often intentionally break the rules, creating hazardous situations for themselves and others. Consequently, minor rule violations committed through negligence during sports play cannot be considered unlawful or unacceptable conduct (VSRS Sodba II Ips 108/2016, 5. 1. 2017).

Within the framework of sports games, the basis for liability for damages should only be a violation of the rules that, by its nature and intensity, exceeds the framework of the rules of the game. Due to the nature of sports and sports delicts, each being unique, when answering the crucial question of what constitutes a violation of sports rules sufficient to deem it an unlawful act, it is necessary to assess the circumstances of each individual case and consider existing judicial practice (Cerar, 2007, e-source).

3. Reciprocal liability for damages of athletes

Sports can be divided into two groups based on their nature: individual sports, where participants generally do not have physical contact, and sports with a combat element, where physical contact among participants is quite common or even necessary. (Možina, 2020, p. 120).

The group of sports with a combat element includes various team sports such as football (soccer), basketball, handball, hockey (Stanec, Milanović, 2019, p. 28), and combat sports like boxing, where mutual physical contact among participants is inevitable (Možina, 2020, p. 120). Consequently, the risk and likelihood of injuries in these sports are much higher (Možina, 2020, p. 127).

Sports with a combat element are practically inconceivable without mutual physical contact among participants or without violations of sports rules. In these sports, rule violations are practically an integral part, such as tactical fouls committed for strategic reasons and not with the intent to harm opposing participants (Praprotnik, 2017, p. 20–22).

As a result, in assessing the liability for damages of athletes,

the law must consider the fact that sports with a combat element inherently involve an increased probability of participant injuries. Moreover, the rules of these sports allow and anticipate physical contact, especially in the context of the sporting battle. In this type of sports, the principle of *alterum non laedere* is limited to the extent that participants are not held liable for injuries sustained by others, even if caused by a rule violation, if the violation occurred *»in the heat of the game«*, due to fatigue, thoughtlessness, or other similar reasons (Možina, 2020, p. 127).

In Slovenian judicial practice, for some time there was a prevailing view that the conduct of an athlete (specifically a football player) is not unlawful only in the case of intentional injury but also in the case of a serious violation of rules or when it involves particularly audacious moves. The conduct was deemed unlawful even if the athlete committing the offense should (just) have been aware that their actions could result in either hitting an opposing player or the ball (VSL Sodba II Cp 3900/2010, 20. 4. 2011; VSK Sodba I Cp 244/2015, 2. 9. 2015).

The described position of the judicial practice could be understood in a way that every foul, committed with a tackle from behind or any other intentionally committed offense, regardless of its intensity, constitutes unlawful conduct that forms the basis for liability for damages. However, this position was considered untenable, even by legal theorists, as such offenses are common in football matches (Praprotnik, 2017, p. 21). The Supreme Court of the Republic of Slovenia shared the same view, emphasizing that in sports with a combat element characterized by frequent direct contact between players, it would be overly strict for the court to label every action by a player who knowingly hits an opponent as unlawful. Fouls are an integral part of football, and the mere violation of the rules of the game, even when the perpetrator intentionally hits an opposing player, cannot be decisive in assessing the unlawfulness of the player's conduct. Consequently, the Supreme Court of the Republic of Slovenia defined a serious violation of the rules of football, emphasizing that such a violation occurs only when the player's behaviour is inappropriate and of an extreme nature. In simpler terms, a serious violation occurs when a player commits a foul using excessive force that the other player could not reasonably anticipate (VSRS Sodba II Ips 108/2016, 5. 1. 2017).

The same stance was taken by the courts in the case of other team sports. For instance, the Supreme Court of the Republic of Slovenia, when assessing unlawfulness in handball, concluded that the actions of a handball player are not unlawful if the rule violation was not committed in an unsportsmanlike or audacious manner or in excessively rough play (VSRS Sklep II Ips 208/2003, 11. 3. 2004). The absolute prohibition of physical contact and violations of handball rules, whether intentional or unintentional, would, in the view of the Slovenian judicial practice, effectively negate the essence of the handball game (VSL Sodba II Cp 2008/2011, 30. 11. 2011).

The Higher Court in Ljubljana made the same decision in a case where an injury occurred during a basketball game, emphasizing that the basketball player's conduct would be considered unlawful only if it was unusual for basketball and deviated from typical fouls in terms of aggression, excessive roughness, unsportsmanlike behaviour, and recklessness (VSL Sodba I Cp 1486/2013, 2. 10. 2013).

Similarly, this applies to martial arts, where an athlete's conduct is not unlawful if it adheres to the rules. It only becomes unlawful if the athlete intentionally and grossly violates the rules of the sport (Donnellan, 2016, e-source). This means that athletes, in these cases, are not liable for injuries, including those that may result in death, if the injury is a consequence of conduct in accordance with the rules (Možina, 2020, p. 130). This is also linked to the concept of the injured party's consent, as a person who voluntarily participates in sports activities is considered to consent to the risks inherent in that sport (VSRS Sodba II Ips 284/2016, 30. 8. 2018).

In the second group of sports, i.e., individual sports, there are activities in which physical contact between athletes is neither necessary nor desirable. However, this does not mean that injuries cannot occur. In most cases, injuries happen in sports conducted in confined spaces. Athletes must exercise care and behave towards others in a manner that does not endanger or inappropriately obstruct each other (Možina, 2020, p. 121).

The assessment of unlawfulness in individual sports has been much less common in Slovenian judicial practice compared to the evaluation of unlawfulness in sports with a combat element.

For example, the Higher Court in Ljubljana determined that a cyclist who collided with a parked car was deemed liable for damages. This was because he fell behind the closed section of the cycling marathon to the extent that he was actually riding outside of the closed section. As a result, he was subject to road traffic regulations, which he violated in his actions (VSL Sodba I Cp 312/2010, 24. 5. 2010).

In general, participants in a cycling race are required to comply with safety rules, as rule violations form the basis for assessing unlawfulness in the event of an accident (Možina, 2020, p. 127). Similarly, this applies to golf, where it is possible to speak of a player's liability if they violate the rules of the game and golf ethics (VSL Sodba II Cp 1518/2022, 14. 11. 2022).

Unlike Slovenian judicial practice, German case law has also addressed the assessment of unlawfulness in other sports, such as skating, tennis, and squash. Decisions of German courts suggest that, especially in cases where there are no specific sports rules (e.g., in skating), it is necessary to consider the standard of due diligence in assessing unlawfulness. In cases where such rules exist, it must be determined whether they were violated at all, and if so, whether it was done intentionally or negligently, as otherwise, there is no liability for damages (Možina, 2020, p. 122–123).

A unique aspect of individual sports is represented by skiing, a sport in which participants move at high speeds in various directions on a limited surface. Despite its nature, i.e., its association with certain dangers or risks, skiing does not constitute a hazardous activity, and in the event of damage, it is not possible to speak of objective liability for damages (VSRS Sodba II Ips 787/2009, 25. 4. 2013).

The skier must assume the risks that are normal for skiing, such as the speed of skiing, specialized equipment, and the high likelihood of situations that are unpredictable for skiers (VSRS Sodba II Ips 661/2007, 10. 9. 2008). This does not include the improper conduct of other participants, especially if they violate regulations regarding prohibited and mandatory actions on the ski slopes (VSRS Sodba II Ips 1129/2008, 16. 2. 2012).

One of the key sources of rules for behaviour on the ski slopes is the International Ski Federation rules, which are in Republic of Slovenia largely reflected in Article 23 of the Ski Area Safety Act (ZVSmuč-1) (Možina, 2020, p. 121).

In assessing the liability of a skier, it is not only the skiing (sports) rules that matter but also general rules prohibiting causing harm to others. Consequently, when an injury occurs on the ski slope, it is necessary to evaluate on a case-by-case basis whether the skier primarily adhered to skiing rules and, secondarily, exercised appropriate due diligence, or behaved in a manner consistent with how an average careful skier would act in a comparable situation (VSRS Sodba II Ips 1129/2008, 16. 2. 2012).

4. Liability for damages of sports event organizers

In sports, in addition to the reciprocal liability for damages of athletes, there is also a multitude of various relationships of liability. Besides athletes, liability for damages can also be attributed to sports event organizers, associations, federations, teachers, coaches, facility managers, manufacturers, and sellers of sports equipment, etc. (Možina, 2020, p. 122–123).

The legal basis for the liability for damages of these entities, in addition to unlawful conduct, is also contractual relationships established between athletes and competition or event organizers, as well as facility managers, and also between organizers and spectators (Možina, 2020, p. 134). The organizer of a sports event or the manager of sports equipment can be held liable for damages to spectators under Article 157 of the OZ (VSL Sodba III Cp 3032/2010, 31. 8. 2010). This applies equally to damages incurred by those who gather in larger numbers in a specific area solely due to a sports event and who may be endangered precisely because of exceptional circumstances related to an unusually large number of people (VSC Sodba Cp 356/2021, 3. 11. 2021).

The organizer has a duty to, in accordance with relevant regulations (laws, rules of sports associations, technical rules, etc.), implement appropriate safety measures that can prevent those dangers exceeding the usual risks associated with the execution of a particular sports event (Možina, 2020, p. 134–135).

Stated differently, the organizer must take safety measures against all risks that are not typical for the execution of a particular sports activity and clearly visible to the participants and are such that participants cannot avoid them with average care (VSRS Sodba II Ips 313/2017, 7. 2. 2019).

The safety measures taken must prevent the danger that can be reasonably expected. Their intensity depends on the probability of damage, the extent of the danger, the imminent harm, and the possibilities and costs of averting the danger (Možina, 2020, p. 134–135).

In this regard, the Supreme Court of the Republic of Slovenia emphasized that the organizer is not free from the obligation to organize sports activities in accordance with the standards of professional care, even if the risk typical for a particular sport is assumed by the participant themselves (VSRS Sodba II Ips 690/2008, 9. 6. 2011). Nevertheless, these requirements should not be understood in a way that the organizer must take measures to prevent the occurrence of any accident or injury, as such a demand would establish the organizer's objective liability for all injuries, which would be contrary to the purpose of sports (VSL Sodba II Cp 1518/2022, 14. 11. 2022). In other words, it is not the organizer's duty to arrange the sports activity in a way that injuries could never occur (VSRS Sklep II Ips 208/2003, 11. 3. 2004). However, measures must be provided to ensure the safety and protection of spectators, judges, and residents in the vicinity of the sports facility where the sports activity is taking place (Možina, 2020, p. 140).

In certain cases, the organizer may also have a duty to alert the athlete to an impending danger, unless it is obvious or apparent. Warning beginners and younger athletes about the impending danger is even more crucial (Možina, 2020, p. 135).

From established Slovenian judicial practice, it can be inferred that the liability for damages of the organizer towards athletes is mostly assessed based on the principle of fault, whether for contractual or non-contractual liability for damages. The organizer's objective liability for damages arises only exceptionally, i.e., in cases where particularly dangerous circumstances exist (VSL Sklep II Cp 1561/2018, 16. 1. 2019).

It is also crucial to distinguish between cases where an individual voluntarily chooses to engage in a sports activity (recreation and/or entertainment) and cases where participation in or at a sports activity is mandatory (in school or as part of work tasks). If an individual engages in sports voluntarily, the organizer of the sports event can only be held liable for damage resulting from their negligence. In such cases, the organizer is not liable for

damage caused by the inherent risks of the sport (VSL Sodba I Cp 641/2020, 4. 11. 2020).

Participants who voluntarily join an association engaged in a dangerous sport accept the dangers, risks, and the possibility of damage. Consequently, an association involved in a dangerous sport cannot be held objectively liable for the damage but only for negligence. In one of the cases, the sports club was not held liable for damages when the plaintiff suffered catastrophic injuries resulting in tetraplegia during the landing phase of a parachute training jump. The sole reason for plaintiff's fall upon landing was her sudden loss of consciousness while maneuvering before the landing, which no one could have anticipated (VSRS Sodba II Ips 222/2005, 26. 4. 2007).

The communicative significance of the cited decision of the Supreme Court of the Republic of Slovenia is that the positive aspects of a sports activity, even if it is dangerous, outweigh the risks associated with it, and the operator of the activity assumes these risks. The operator, defined as someone with an interest in the positive aspects of the activity, is considered the bearer of the activity. This is also linked to the voluntary participation or engagement in this activity. Nonetheless, this by no means implies that voluntary participation in a (sports) activity excludes the operator's liability for negligence (VSRS Vmesna sodba II Ips 110/2021, 1. 12. 2021).

When assessing the liability of a coach, it is necessary to consider that coaching requires professional knowledge, and coaches are expected to act with a higher due diligence, namely, with professional diligence or the care of a good expert. Due to the constant development of sports, coaches must continually update their knowledge, as neglecting such conduct could jeopardize athletes or expose them to unpredictable risks. In this regard, it can be concluded that the expected standard of conduct from a coach is dynamic and depends on the experience, abilities, and age of the individual athlete. Coaches are expected to exercise supervision over athletes, provide them with appropriate instructions, ensure the safe use of sports equipment, and, in the event of injuries, provide suitable and prompt medical care. It is also the coach's responsibility to prevent injured athletes from participating in sports activities, whether during training or competition (Zuljan, 2022, p. 65).

In connection with the question of the coach's duty of care in team sports, the Supreme Court of the Republic of Slovenia emphasized that such duty arises only when the athlete's behaviour deviates from the normal and customary aspects of the sports game, which a coach could have prevented through vigilant observation (VSRS Sodba II Ips 788/2008, 30. 9. 2010).

In this regard, the Higher Court in Ljubljana concluded that the omission of the coach's duty was not established in a case where, before the start of judo practice, another participant in the judo junior class ran past one of the judokas and pushed him, causing him to collide headfirst with the victim's nose. The court reached this decision because the coach managed to prove that he had been observing the children throughout the time (they were not running uncontrollably in the gym), but despite that, he could not have prevented the harmful event as he was not obliged to anticipate it (VSL Sodba I Cp 1635/2010, 9. 6. 2010).

Slovenian courts have addressed the evaluation of a coach's due diligence over several years in a case involving an injury to a ski jumper. The injury occurred when the ski jumper, following the coach's instructions, took off from a higher starting point (compared to previous jumps) during the last jump of the first training session of the new season. Consequently, he jumped too far and, upon landing, suffered injuries to the ligaments of his right knee due to excessive forces. In the end, an interim judgment was issued, which became final, establishing the basis for full (100%) liability for damages because the coach's conduct was deemed professionally unfounded. This conclusion was reached by the first-instance and second-instance courts based on expert opinion, which indicated that the coach's actions were inconsistent with professional standards. The appellate court added that proper training planning is one of the most critical aspects of the competitive sports process (VSL Sodba II Cp 1785/2020, 6. 1. 2021).

As mentioned earlier, it is necessary to distinguish between cases where an individual voluntarily decides to engage in a sports activity (recreation and/or entertainment) and cases where participation in or attendance at a sports activity is mandatory (school, professional activity). Thus, Slovenian judicial practice has repeatedly dealt with assessing unlawfulness when an injury occurred during the performance of work duties or at school, and

when the sports activity was organized either by the employer or an educational institution. In connection with this, the question of the objective liability of the organizer arises. Slovenian judicial practice has addressed this issue in several cases.

For example, in the case of an employee's injury during a basketball game played by employees as part of practical training in martial arts (within the scope of regular work duties), the employer's liability was not established (VSRS Sodba II Ips 760/2005, 31. 1. 2008). The same decision was taken in the case of a police officer's injury during self-defence skills training as part of an exercise within the police officer's educational process. The court justified its decision by stating that the injured party was familiar with the execution of the exercise, having performed it several times before. Additionally, he chose his sparring partner himself, and the training took place after the warm-up and under the supervision of the instructor (VSL Sodba II Cp 2293/2009, 21. 10. 2009).

A diametrically opposite decision was made in a case where the injured party (a police candidate) was harmed during the execution of a martial arts exercise that he was not familiar with, and it was not practically presented to him, even though he was performing it for the first time. The decision regarding objective liability was justified by stating that, in this specific case, it did not involve an experienced fighter, or an individual engaged in martial arts for an extended period. Therefore, the specific situation had to be treated differently. In this particular instance, the activity was deemed unpredictable and dangerous because the injured party was performing the exercise for the first time, which was unfamiliar to him, and he lacked experience or knowledge of martial arts; therefore, the objective liability of the employer was established (VDSS Sodba Pdp 1376/2010, 11. 3. 2011).

The same decision was reached in cases where a soldier was injured during the execution of an exercise on a combined (gripping) climbing frame, popularly known as »Tarzan.« In this regard, the established Slovenian judicial practice holds the view that this exercise is considered a dangerous activity due to the height of the obstacle and the way it is overcome, especially if the bars are wet (VDSS Sodba Pdp 35/2014, 20. 2. 2014).

In assessing the liability for damages of the school or teacher, the courts must first determine the cause of the damage. They

must assess whether the damage is either the result of any unlawful conduct or the failure to perform the required actions by the teacher (acting with insufficient care), or it is the result of an unfortunate accident (Mandič, 2019, p. 8).

The school must organize classes and sports activities to prevent harm to participants and instructors, adhering to the principle of *"neminem leadere"* (VSRS Sodba II Ips 487/98, 26. 5. 1999) and acting in accordance with the rules of the profession, customs, and the diligence of a good professional (VSRS Sodba II Ips 299/2002, 19. 2. 2003).

The school must organize classes and a teacher must exercise careful supervision over students in their work, with the intensity of supervision varying according to the age of the students or pupils. The level of supervision that teachers must provide is highest in the first three years of schooling and gradually decreases thereafter. In high schools, it should be such that teachers, through their occasional presence, clearly communicate to students that they are not left to themselves or allowed to exceed the limits of what is permitted. Complete abandonment of supervision is never allowed (Mandič, 2019, p. 9).

Careful supervision represents a legal standard that needs to be filled with the use of substantive law, thus determining, from case to case, how a prudent teacher would act in a specific situation (VSRS Sodba II Ips 741/2006, 12. 7. 2007). In doing so, it is essential to consider that it would be excessive and contrary to the fundamental goals of the educational process to demand from educators the implementation of overly strict supervision. In such cases, educators might begin to avoid activities that are unpredictable yet essential for the healthy psychophysical development of children (Mandič, 2019, p. 8).

Consequently, when fulfilling the legal standard of careful supervision, it is necessary to seek a balance between the demand for ensuring the safety of children and the need to structure the educational process in a way that allows children a certain level of autonomy based on their age and abilities (VSRS Sodba II Ips 238/2011, 21. 3. 2013). Implementing excessive supervision could negatively impact the personal development and upbringing of children (Mandič, 2019, p. 8).

While the injured party can seek compensation directly from the teacher if they can prove that the teacher intentionally caused

the damage (OZ, Article 147, Paragraph 2), generally, the school, as the teacher's employer, is liable for damage incurred by students due to the teacher's unlawful actions or insufficient care, unless it can be proven that the teacher acted appropriately in the given circumstances (OZ, Article 147, Paragraph 1).

This was demonstrated in the case of a student's injury during a football game on an asphalt playground when a violation occurred against him during physical education class, leading to his fall and a broken arm. In this specific instance, the court concluded that the teacher could not have prevented the injury through more careful supervision, given that football is a sport involving physical contact, is highly unpredictable, and injuries are difficult to avoid (VSRS Sodba II Ips 414/2006, 9. 10. 2008).

On the contrary, the school's liability for damages was established in a case where a student was injured during a sports day involving ice-skating. At that time, other skaters were also on the ice rink, behaving recklessly and disturbing the students on the sports day. Consequently, the accompanying teachers should have either demanded that the rink operator remove the dangerous skaters from the rink or relocated the students away from the rink, as they are expected to act with greater care, equivalent to that of a good professional. However, they failed to take any of these actions (VSRS Sodba II Ips 299/2002, 19. 2. 2003).

The failure of careful supervision was also determined in a case where a student was injured during physical education class, specifically when falling from gymnastics parallel bars. According to the court, the physical education teacher should have anticipated that, without his presence, assistance, and supervision, a fall from the gymnastic equipment could occur. He should have expected it and consequently organized physical education class accordingly. In this particular case, it was found that although the physical education teacher provided instructions to the students regarding the exercise, he did not supervise the execution or was present during the exercise, as he was evaluating other students on the opposite side of the gymnasium. Consequently, the school was found liable for the damages incurred by the student (VSRS Sodba II Ips 668/2007, 23. 7. 2009).

A different standpoint, asserting that the school is not liable for damages, emerged in a case where a student was injured while jumping from playground equipment. The injured party accused

the school of negligence, contending that the teachers should have even prohibited her from using the playground equipment. The courts determined that the injured party had received warnings about using the playground equipment that, given her age, she was capable of understanding and should have heeded. Furthermore, the courts found that the injured party had used the playground equipment, which was not inherently dangerous, on multiple occasions before. The present teachers had monitored it through collaborative supervision at an appropriate distance, evident from their prompt detection of an awkward landing. The level of supervision advocated by the injured party, considering the minimal risk of injury during play in this specific situation, was deemed excessive by the courts and contrary to the goals of the pedagogical process (VSRS Sodba II Ips 594/2007, 16. 9. 2010).

5. Liability for damages of managers of sports parks and sports equipment

For the fault-based liability for damages of the manager of a sports park and/or sports equipment, it is not necessary for any legal norm to specifically prohibit or command certain conduct. The manager's actions can be unlawful even if their conduct (act or omission) is generally impermissible (contrary to commonly accepted rules). In these cases, when assessing unlawfulness, it must be determined whether it was (objectively) foreseeable that the omission would lead to the occurrence of damage (VSRS Sklep II Ips 46/2016, 1. 2. 2018). Throughout all of this, it is necessary to consider the general principle of *neminem leadere*, which, according to the stance of the Supreme Court of the Republic of Slovenia, is not so broad that injured parties can invoke it solely because the damage occurred on sports surfaces intended for a wider range of users. Consequently, they cannot demand compensation from the owners or managers based solely on this principle. It is entirely normal for various obstacles or devices to be present on sports surfaces, as they can be an integral or functional part of them. Users must also expect this and use sports facilities with the necessary care in a way that ensures their own safety. If they fail to do so, the actions of the manager or owner are not considered unlawful (VSRS Sodba II Ips 252/2016, 21. 6. 2018).

Considering the above, the Higher Court in Ljubljana, in a case involving an injury during rollerblading in a sports park (the injured party hit a stone on the asphalt surface, fell, and injured their wrist), upheld the decision of the first-instance court, which dismissed the injured party's lawsuit. The court based its decision on the fact that the occurrence of the damage was not objectively foreseeable because the manager regularly maintained and cleaned the sports park and periodically inspected it. Another crucial finding was that the stones on the sports park were evidently brought there, as the sports park was fenced and delimited by concrete curbs and greenery, and unquestionably flawless at all times (except for the critical day). In addition, the Higher Court in Ljubljana concluded that the injured party, by using the external asphalt surface, assumed the risk of the asphalt surface being scattered with small stones, a consequence of the sports park being located in nature. The court criticized the injured party for not acting diligently, as he did not inspect the asphalt surface before starting rollerblading (VSL Sodba II Cp 2555/2018, 8. 5. 2019).

Just like when using a sports facility, the user of fitness equipment must also be attentive and mindful of typical and foreseeable risks. Therefore, according to Slovenian judicial practice, the duty of the manager of fitness equipment is to ensure safety measures that go beyond ordinary risk, excluding the provision of a person who would constantly monitor or control each individual user of fitness equipment. Similarly, the manager of fitness equipment is not obligated to employ a person with a personal trainer license (VSC Sodba Cp 192/2013, 29. 8. 2013).

If the occurrence of damage or injury were due to the incorrect use of fitness equipment, which would be a direct result of the absence of instructions (especially if fitness equipment did not have labels with information about the manufacturer and instructions for use) and supervision by the manager of sports equipment, the latter could be accused of acting with insufficient due diligence (unless the injury occurred when the participant was not using the equipment, as in that case, instructions on the correct use of the equipment and supervision could not prevent the injury). The same could be concluded if the manager of fitness equipment did not provide appropriate protective equipment (VSL Sodba II Cp 138/2021, 3. 6. 2021).

Despite the above, the manager of fitness equipment is not liable for damages that occur to the user of fitness equipment if, after being informed of the correct use, they still use the fitness equipment incorrectly or in a manner that exceeds their physical capabilities (VSRS Sodba in sklep II Ips 187/2011, 20. 3. 2014).

A certain peculiarity exists when it comes to ski area operators, as they bear a specific responsibility to ensure that avalanche protection is arranged on avalanche-prone parts of the ski slopes. Additionally, they must provide protection for dangerous areas unsuitable for skiing, secure areas around the pillars of ski lifts and snowmaking devices. Furthermore, they are required to safeguard waiting lines in front of ski lifts and organize skiing programs on connecting, entry, and exit trails. They must also ensure proper marking and surveillance of the ski slopes, as well as emergency services or a rescuer with rescue equipment for smaller ski resorts. Moreover, they should appropriately arrange and mark the space for the arrival of the rescue vehicle, ensure an adequate number and equipped supervisors, and provide devices (auditory and visual) to inform skiers that motor vehicles are used on the ski slopes during operation (ZVSmuč-1, Article 5 Paragraph 1).

In addition to the mentioned responsibilities, ski area operators must conduct safety inspections of the ski slopes before the start of operation, during operation, and after the end of operation. They should ensure that all trails (including entry and exit paths) are properly prepared, and the snow surface is appropriately treated with a snow groomer. Surfaces that are not groomed must be adequately marked and maintained in another suitable manner. Ski area operators must also develop an emergency response plan for cases of injury or sudden illness on the ski slopes (ZVSmuč-1, Article 6 Paragraph 1–3).

In simpler terms, ski area operators are obligated to implement safety measures on the slopes in accordance with the ZVSmuč-1, professional standards, and common practices (VSRS Sodba II Ips 1129/2008, 16. 2. 2012). However, this doesn't mean that skiers can use the ski resort entirely carefree; they must also take actions to protect themselves and other skiers (VSRS Sodba II Ips 116/2005, 28. 4. 2005).

Contrary to users of the ski area, its operator is generally always liable for damages according to the principles of fault-based

liability for damages (VSRS Sodba in sklep II Ips 525/92, 17. 2. 1993), i.e., if they act improperly or with insufficient due diligence when managing the ski area (VSRS Sodba in sklep II Ips 246/2007, 8. 10. 2009). Their liability for damages could only become objective in extremely exceptional circumstances that would transform the ski area into a hazardous object, which is not inherently the case (VSRS Sodba in sklep II Ips 525/92, 17. 2. 1993). Similarly, managing a ski area is not considered a hazardous activity (VSRS Sodba in sklep II Ips 246/2007, 8. 10. 2009).

The ski area operator can be relieved of liability if they prove that the skier's damage occurred without their fault because they ensured the proper maintenance of the ski area in accordance with the provisions of the ZVSmuč-1 (VSL Sodba II Cp 358/99, 12. 12. 1999), professional rules, and customs (VSRS Sodba II Ips 1129/2008, 16. 2. 2012).

For damage caused among skiers themselves, the ski area operator is liable for damages only if the skier's actions that caused the damage are a result of the operator's negligence. The operator is not liable for damages resulting from the unauthorized actions of the skiers themselves (VSRS Sodba II Ips 1129/2008, 16. 2. 2012).

The requirements for a properly maintained ski slope cannot be understood in a way that the ski area operator must eliminate slippery spots, clumps, ridges, or minor bumps on the slope. The occurrence of these features is entirely common on ski slopes, and a skier must expect and adapt their skiing to them. According to the Supreme Court of the Republic of Slovenia, clumpy remnants from grooming and frozen ridges or depressions on the ski slope do not pose such a danger that the operator should remove them or specifically warn skiers about them. Similarly, the ski area operator is not obliged to provide specific protection, such as a fence or net, for the strip of untouched snow located next to the slope, as it does not constitute a hazardous area like a gap. Consequently, when fulfilling the legal standard for the other dangerous place from the second indent of the first paragraph of Article 1 of ZVSmuč-1, it must be interpreted restrictively (VSRS Sodba II Ips 661/2007, 10. 9. 2008).

Although ZVSmuč-1 prescribes that the ski area operator must ensure an adequate number and equipment of supervisors, these requirements should not be interpreted in a way that the ski area

operator (through supervisors) must exercise absolute control over all skiers and snowboarders. It would be excessively strict and unreasonable to demand that supervisors prevent every unsafe skiing (VSRS Sodba II Ips 1023/2008, 19. 1. 2012) and, in the case of unsafe skiing, exclude a skier or snowboarder from the ski slope (VSL Sodba I Cp 1104/2017, 10. 1. 2018).

However, the failure to suspend operations in dense fog or adverse weather conditions, which are so deteriorated that a skier cannot follow signs and other participants on the ski slopes, constitutes conduct contrary to the due diligence expected of the ski area operator (VSRS Sodba II Ips 116/2005, 28. 4. 2005).

6. Conclusion

In light of the above, it can be concluded that the assessment of unlawfulness in cases of sports injuries could be divided into two groups, both sharing the commonality that unlawfulness in sports is more of an exception than a rule.

In sports with an element of combat, only those extreme actions and serious violations of sports rules that clearly deviate from the criteria of ordinary rule violations for a particular sport can be considered unlawful.

Such a violation can occur in practice either when the perpetrator intentionally and/or grossly violates sports rules and aims to cause harmful consequences (injury), i. e, acts with direct intent or when they are aware that their actions can cause harmful consequences and accept the possibility of their occurrence, but nevertheless continue with their actions and carry them out with the thought »whatever happens, happens«, i. e., acts with eventual intent.

Consequently, in practice, actions in sports with an element of combat could be defined as unlawful only when the perpetrator acts intentionally (either with direct or eventual intent), as in sports with an element of combat, a sportsperson, in a practical sense, cannot »seriously or grossly« violate sports rules merely through negligent (unintentional) actions.

On the other hand, in individual sports, unlawfulness is established if the athlete violates sports rules even through negligent behaviour (or omission) or acts contrary to the general prohibition of causing harm (the principle of *neminem leadere*).

The basis for the »stricter« treatment of athletes in individual sports undoubtedly lies in the fact that in this type of sports, physical contact between athletes should not occur in principle. Consequently, the possibility of injuries due to the actions of another athlete in these sports is considered to be much smaller. Therefore, in cases of such injuries, they are subjected to a stricter assessment due to their exceptional nature.

A special position is held in assessing the unlawfulness in the individual sport of skiing since permissible and impermissible actions in this sport are regulated in the International Ski Federation rules, which are in Republic of Slovenia largely reflected in Article 23 of ZVSmuč-1. Consequently, the unlawfulness of a skier's conduct is already established *ex lege* if it does not comply with the provisions of the International Ski Federation rules or, in the Republic of Slovenia, with the provisions of ZVSmuč-1.

In the context of liability for damages for organizers of sports events, gatherings, and managers of sports parks and equipment, the conclusion can be drawn that, in Slovenian judicial practice, the predominant decisions generally affirm the liability of these entities for damages to participants or users, relying on the principles of fault-based liability for damages. Nonetheless, it cannot be unequivocally asserted that the mentioned entities would never be held liable for damages to participants or users based on the principles of objective liability for damages.

One could say that the use of rules regarding the fault-based liability for damages of organizers and managers is the norm, while the use of rules regarding objective liability for damages is the exception and a rarity in practice. Rules of objective liability for organizers or managers can only be applied when circumstances are present that exceed the ordinary for a specific sport and collectively make the sports activity hazardous. Such circumstances are extremely rare in practice and mostly occur in cases where the injured party does not voluntarily participate in the sports activity but rather as part of their work duties. An additional argument in favour of applying rules of objective liability for damages in such cases is the circumstance in which the injured party encounters a specific sports activity for the first time.

When participants voluntarily engage in hazardous (adrenaline) sports activities, the use of rules regarding objective liability for damages is conceptually excluded, and in these cases (in

adrenaline or dangerous sports), organizers and managers can be held liable for damages solely based on the principles of fault-based liability for damages.

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Naravne nesreče, človekove pravice in okolje: Vloga in obveznosti države in gospodarstva*

Tanja Malovrh, Petra Weingerl, Gorazd Justinek, Jernej Letnar Černič

Jernej Letnar Černič: Lep pozdrav. Dobrodošli na Akademskem forumu Nove univerze z naslovom »Naravne sreče, človekove pravice in okolje: Vloga in obveznosti države in gospodarstva«. Današnji akademski forum poteka v okviru Jean Monnet modula o spoštovanju človekovih pravic v gospodarstvu v Evropski uniji, ki se s finančno pomočjo Evropske unije že drugo leto izvaja na Fakulteti za državne in evropske študije Nove univerze. Moje ime je Jernej Letnar Černič, sem profesor na Novi univerzi. Zahvaljujem se kolegicam in kolegom, da ste si danes vzeli čas. Z menoj so še gospa Tanja Malovrh iz podjetja Elum d.o.o., kolegica profesorica Petra Weingerl z Univerze v Mariboru in kolega profesor Gorazd Justinek, dekan Fakultete za državne in evropske študije Nove univerze. Tema današnjega foruma so naravne nesreče, ki smo jim bili priča v začetku avgusta v Sloveniji. V zadnjih tednih je prišlo do številnih naravnih nesreč od Maroka, Libije in Bolgarije do Grčije. Povzročene so bile obsežne škode, izgubljena številna življenja. V Maroku, na primer, je bilo več kot 3.000 smrtnih žrtev, v Libiji še več, prav tako so poplave povzročile žrtve tudi v Sloveniji. Smrtne žrtve so bile tudi v Grčiji. Bolgarija je prav tako utrpela izjemno finančno škodo, ki je prizadela tako običajne ljudi kot gospodarske družbe.

Trenutno je zabeležena škoda, ki so jo sporočile občine, blizu treh milijard evrov. Gospodarstvo, po drugi strani, poroča o skoraj 300 milijonih evrov povzročene škode, kmetijstvo pa o skoraj 150 milijonih povzročene škode. Poplave so povzročile izjemno škodo na številnih proizvodnih obratih gospodarskih družb v najbolj ogroženih področjih, ki so doživela obilna deževja. Naj naš-

* Uredniško urejeno besedilo Jean Monnet Akademskega foruma Nove univerze, Naravne nesreče, človekove pravice in okolje: Vloga in obveznosti države in gospodarstva, ki je potekal 25. septembra 2023. Besedilo Akademskega foruma je objavljeno v okviru projekta »Jean Monnet Module: EU Human Rights and Business Law«, ki med 1. oktobrom 2022 in 30. septembrom 2025 poteka na Fakulteti za državne in evropske študije Nove univerze. Jean Monnet Modul sofinancira Evropska unija.

jem nekaj primerov podjetij, ki so utrpela največjo škodo: denimo podjetje Bisol, nato pa tudi podjetje KLS Ljubno, ki poroča o nekaj deset milijonov evrov visoki škodi. Potem pa tudi podjetje BSH Hišni aparati, ki je del skupine Bosch, prav tako poroča o številnih škodnih dogodkih. In ko govorimo o odgovornosti države in gospodarskih družb, se pogosto poraja vprašanje, kje so meje državne odgovornosti in kje meje odgovornosti gospodarskih družb. Nedavno sem v medijih zasledil izjavo odgovornih iz podjetja KLS Ljubno, kjer poudarjajo, da je škoda, ki so jo utrpeli, deloma posledica tega, da država v zadnjih desetletjih ni izvedla ustreznih preventivnih del za preprečevanje poplav v Savinjski dolini, kar je privedlo do obsežne škode.

Mogoče začnemo z vprašanjem, kakšne so obveznosti držav na splošno, da preprečijo naravne nesreče. Kako bi, spoštovani kolegici in kolega, lahko izpostavili kakšne dobre ali slabe prakse? Ali morda obstaja tudi kakšna povezava med stopnjo korupcije, vladavine prava in posledicami naravnih nesreč? Mogoče, če začnemo z vami, gospa Malovrh.

Tanja Malovrh: Vsekakor je tukaj ogromno dejavnikov, ki so se zgodili ob istem času. Naravne nesreče so bile prisotne v preteklosti in bodo tudi v prihodnje. Vprašanje je kako odreagirati v takšnih trenutkih. Kot ste že omenili, prizadetih je bilo ogromno podjetij in družin. Če gledamo iz vidika države, kaj je razlika med podobnimi naravnimi nesrečami v preteklosti in danes. Govorimo o dogodkih izpred 20, 30 ali celo 100 let. Razlika je to, da imamo tehnologijo, ki nam omogoča predvidevanje naravnih nesreč. Ne moremo točno vedeti kdaj se bo zgodilo in v kakšnem obsegu, vseeno pa lahko na podlagi obstoječih podatkov predvidevamo mogoče rešitve za naprej. Izhajam iz svojega področja dela, ki ne zajema zgolj pravnega vidika, temveč tudi ustrezne rešitve v dobi digitalizacije.

Na splošno lahko zaznamo kar nekaj nedelujočih državnih mehanizmov, kot so na primer vidno pomanjkanje ustreznih preventivnih del, neprimerno urbano planiranje, dovoljenja za gradnjo na lokacijah katere v današnjem času sploh niso ustrezne za gradnjo. Na tem mestu lahko govorimo o korupciji. Če se vprašamo kaj lahko država naredi za naprej, obstaja tu veliko rešitev, ki temeljijo na tehnologiji, trajnostnih pogledih in sodelovanju skupnosti pri pripravi urbanih načrtov z namenom zmanjšanja učinka naravnih nesreč.

Pogovarjamo se o tem kako lahko preprečimo korupcijo in učinkovito obvladujemo nastalo situacijo. Kot primer mi pade na misel razdeljevanje pomoči. V novicah je gospa povedala, da so ji dostavili štirideset štruc kruha. Ker so zgolj ena družina takšne količine niso potrebovali, hkrati tudi ni njihova naloga razdeljevati prejete dobrine naprej. To so praktični primeri na katerih se učimo kako voditi donacije skozi zbirni center ob naravnih nesrečah. Pa to niso samo poplave, so tudi požari in pa še marsikaj drugega, kar se lahko v bistvu zgodi iz danes na jutri. Takšne dobre ali slabe prakse so osnova za prihodnja leta, da bo lahko država bolj učinkovito odreagirala, morda nekatere stvari naredila preventivno in bo v prihodnje drugače kot je bilo do sedaj.

Jernej Letnar Černič: Ja, res je. Čez čas se tudi obveznosti države spreminjajo. Tudi če pogledamo nesreče iz zadnjih tednov po Evropi in Severni Afriki, lahko vidimo različno kakovost odzivov držav, na primer na potres v Maroku ali na naravno nesrečo v Boliviji, pa tudi v Bolgariji in Grčiji. In če to primerjamo z odzivom naše države, lahko vidimo, da morda v naši državi marsikaj dobro deluje. Primerjava s temi tremi državami zagotovo ponuja številne priložnosti za izboljšanje.

Petra Weingerl: Lepo pozdravljeni vsi! Tudi sama se strinjam s tem, kar je bilo povedano. Idealno bi bilo, da bi preventiva zadoščala in kurativa niti ne bi bila potrebna. Torej da bi zadostoval dober regulativni okvir skupaj z učinkovitim izvajanjem v praksi, kar bi zadoščalo za večino primerov. Do kurative pa bi potem prišlo v izrednih razmerah, kot smo jim bili priča. Zavedati pa se moramo, da tudi v izrednih razmerah ni vse neprepričljivo. V takih primerih je ključen regulativni okvir, torej, da se določi odgovorne organe, osebe za vzdrževanje vodotokov, jarkov, cest in tako dalje. Glede teh zadev naj bi se kar pogosto kršila zakonodaja. V praksi se dogaja, da recimo občine kdaj zamižijo na eno oko. Današnji članek na spletnem portalu govori ravno o tem, in sicer o neki inšpekcijski odločbi, ker v občini odpadne vode odtekajo v kanalizacijsko omrežje, kar seveda povzroča probleme ob večji količini dežja in tako naprej. Tudi taka neustrezna stanja so prispevala k obsegu škode. Ni dovolj, da so zgolj določena področja dobro regulirana, kar pri nas verjetno v veliki meri so. Potrebna je tudi učinkovita implementacija v praksi, da ne prihaja do kršitev. Kar se kurative tiče, se seveda strinjam s prej povedanim. Imamo srečo, da imamo res dobro organizirano lokalno raven civilne

zaščite in gasilcev. Problemi v praksi, o katerih se pogovarjamo, so drugačne narave. Ampak kar se tiče neposredne pomoči pri reševanju življenj in premoženja, glede tega se mi zdi, da imamo dobro urejeno. Kar se pa tiče drugih vprašanj, glede povrnitve škode in tako naprej, tu pa lahko pričakujemo določene probleme v praksi.

Če povzamem, kar se tiče obveznosti držav, se mi zdi ključno, da se regulativni okvir spoštuje in da se torej tudi izvršuje v praksi. Kot drugo pa se mi zdi izjemno pomembno, da se obvešča deležnike. V tej točki povezujem naravne nesreče s podnebnimi spremembami in pomenom osveščanja deležnikov. Na primer, da se jih obvešča o določenih obveznostih, ki jih ima država. V mislih imam recimo obveznosti glede Nature 2000, o čemer beremo v medijih. Potem recimo obveznosti gospodarskih družb, trajnostno poročanje itd. Torej neke nove obveznosti, ki jih bo prinašala zakonodaja. Kar se tiče teh novih obveznosti, ki se nanašajo tudi na prehod na krožno gospodarstvo, gre v bistvu za spremembe navad. Tega pa se ne more vsiljevati, potreben bo dialog, da se doseže nek družbeni konsenz. Se mi zdi, da je to ključno, da bomo potem sprejemali te novosti kot potrošniki, kmetje, družbe itd. No, toliko na kratko, kar se tiče obveznosti držav. Lahko kasneje še kaj dodam. Glede omenjenih tožb – Slovenija še ni bila tožena individualno v takih primerih, je pa tožena kot članica EU v zadevi, v katerih šest mladih Portugalcev pred Evropskim sodiščem za človekove pravice toži 32 držav. Imamo tudi že kar nekaj nacionalnih sodb, v katerih so sodišča že ugotovila, da so bile države krive za okoljsko škodo, glede prispevanja k podnebnim spremembam itd. Npr. Nizozemska, Francija, Irska, gre za zelo zanimiva vprašanja, ampak bi zaenkrat o tem zgolj na kratko.

Jernej Letnar Černič: Ta pravni in normativni okvir je zagotovo pomemben. In tukaj smo znova pri načelu pravne države, ki ga vedno izpostavljamo v naši državi. Načelo pravne države in njegovo pomanjkljivo uresničevanje lahko opazujemo v vseh porah slovenske družbe. Zadnje poplave in analize avgusta letošnjega leta so v bistvu odkrile določene pomanjkljivosti iz prejšnjih desetletij. Če se spomnimo, kaj se je dogajalo v prejšnjih desetletjih v Zgornji Mežiški dolini, ki je tudi v zadnjih poplavah utrpela veliko škodo. Poplave so na vrh znova prinesle s svincem onesnaženo zemljo, ki je še vedno problematična zaradi rudarjenja v Mežiški dolini. Država tam kljub normativnemu okviru in

številnim mednarodnim obveznostim ni storila še dovolj, da bi zagotovila učinkovito varstvo pravice do življenja. Hkrati pa ima gospodarstvo v naši državi zagotovo odločilno vlogo; gospodarstvo je generator dodane vrednosti in tudi rasti v slovenski družbi ter bolj kakovostnega življenja. Kako vidiš, Gorazd, povezavo med pravno državo, gospodarstvom in naravnimi nesrečami?

Gorazd Justinek: Ja, hvala lepa Jernej. Lep pozdrav z moje strani in pohvale za organizacijo. Naj postrežem nekaj podatkov recimo za izhodišče. To so sicer podatki za prvo polovico letošnjega leta in pa globalno, torej za cel svet. Recimo. Nekako je ocena škode v ameriških dolarjih približno za 110 milijonov USD za prvo poletje zaradi naravnih nesreč. Gledano globalno je to pač neka visoka številka, ampak je treba seveda dati to v kontekst. kajti, če vzamemo desetletno povprečje, torej teh stroškov za zadnjih deset let, je to bilo približno 98 milijonov. Letos torej odstopa vsaj za 10% od dolgoletnega povprečja. So pa potem tu še zavarovanja, kjer je mogoče škod zelo natančno izmeriti. Škoda, ki je bila zavarovana in pri tem ocenjena spet gledamo polovico letošnjega leta, znaša na globalni ravni 43 milijonov USD. In spet, če damo to nek relativni kontekst gledano na 10 letno povprečje je bilo slednje nekje 34 milijonov USD. Tukaj pa se še bolj natančno vidi, saj gre za 30% povečanje, saj gre za čisto konkretne oprijemljive stroške, ki se potem prelijejo tudi v premije in tako dalje, ki jih potem vsi, ki pač plačujemo zavarovalnine, tako ali drugače nekako poplačamo.

Stroški so torej bili enormni. Če se spomnimo na ukrepe za časa Covida, ko so države močno intervenirale v gospodarstvo, so tudi tam nastali izjemno stroški, kar se pozna v zadolžitvah teh držav. Ob tem pa je potrebno imeti v mislih, da je zgolj v zahodnem delu sveta bilo tako, torej zgolj cca. 1/8 prebivalstva je bila deležena takih intervencij in ekspanzivne ekonomske politike. Večina preostalega sveta, v Afriki, Aziji itd., takih ukrepov ni sprejemala. Daleč od tega, da je to bila praksa, predvsem svetovna. In tudi tele nesreče, ki se jih našteva v Afriki, Aziji, ne tu. Turčija je npr. poleti zabeležila ogromen potresa, kjer je nastala tudi ogromna škoda. In pa še glede civilne zaščite v Sloveniji. Slednja je res dobro organizirana, ker gre tudi za večstoletno tradicijo organiziranosti prostovoljnega gasilstva pri nas.

Jernej Letnar Černič: Hvala, Gorazd, za te komentarje. Je pa res, da je gospodarstvo utrpelo obsežno škodo. Škoda je zelo

visoka, podobno kot v drugih državah. A med podjetji se škoda razlikuje. Razlikuje se tudi odziv podjetij oziroma utrpela škoda glede na to, za kakšna podjetja gre – ali gre za srednje velika podjetja ali za majhna. Denimo, če povzamem podatek, podjetje BSH Hišni aparati, ki je del skupine Bosch, je utrpelo nekaj deset milijonsko škodo. Podjetje, ki je del kolektivne zavarovalne sheme korporacije Bosch, sploh ni zaprosilo oziroma naj ne bi zaprosilo za povrnitev dela škode s strani države, medtem ko se večina drugih podjetij sooča s številnimi težavami pri povračilu škode. Kot smo omenili, lahko države že prej storijo več pri preventivnih ukrepih. Če vas zdaj vprašam, kakšno vlogo imajo lokalne skupnosti in gospodarske družbe pri teh preventivnih ukrepih? Vemo, da so številne industrijske cone zgrajene na območjih, ki so že desetletja označena kot poplavna, kjer je tveganje za poplave zelo visoko, a so se številna podjetja kljub temu odločila postaviti proizvodnjo tudi tam. Ta odziv na posledice poplav je bil najboljši in najhitrejši na horizontalni ravni, ko so se ljudje in civilno družbene organizacije hitro odzvale na te res grozne posledice. Kako je z vlogo zasebnih akterjev, denimo gospodarskih družb? Kakšne obveznosti ima morda tudi civilna družba?

Tanja Malovrh: Tu se morda lahko dotaknemo tematike pravičnosti, percepcije okolice, delovanja v lokalni skupnosti, nekih lastnih prepričanj ali interesov. Mislim, da tukaj ljudje igramo zelo veliko vlogo kako se bomo odzvali. Vsekakor imamo vrsto primerov dobre prakse, ki jih lahko uporabimo za naprej. Moramo pa se zavedati, da so se lastniki na lastno pest odločili za takšne tvegane investicije, kjer so bili v ozadju bodisi kratkoročni dobički ali druge osebne koristi. Na tem mestu se moramo torej vprašati kaj lahko storimo, da ne bo prihajalo do tega v prihodnje.

Poleg tega se mi je porajalo še eno vprašanje, saj ni vse tako črno belo kot je predstavljeno v medijih. Poslušamo namreč, da se dogaja nepravično razdeljevanje državne pomoči. Podjetja kot ste omenili na eni strani ne potrebujejo pomoči, ker so sposobna sama sanirati škodo, medtem ko na drugi strani prihaja veliko takšnih, ki pomoči ne dobijo a so mnenja, da so do nje upravičeni. Kako zastaviti takšen sistem, ki bo pravičen za vse?

Pravičnost ima namreč lahko zelo različne definicije. Če vprašam vsakega izmed vas po definiciji, bo vsak imel svoje mnenje o tem. Vsak ima svojo osebno ali poslovno zgodbo pri kateri izhaja iz nekih svojih okoliščin, ko si ustvarja definicijo pravičnosti.

Kako bi torej po vašem mnenju lahko sestavili takšen sistem, ki bo pravičen za vse in bo v prihodnje pomagal, da se ne bomo znašli v takšni krizi ali situaciji, ki ne ščiti človekovih pravic?

Jernej Letnar Černič: Drži, težka vprašanja.

Petra Weingerl: Delno, vsekakor nimam namena razviti teorije pravičnosti, ki bo univerzalno veljavna, ampak bi se povezala s tem, kar ste že malo odprli, tj. zavarovalne premije. Omenjena družba, ki je bila zmagovalka glede spoštovanja človekovih pravic v gospodarstvu, je torej to imela urejeno. To je gotovo stvar, ki se pričakuje, sploh od dobrega gospodarstvenika, da zavaruje svoje premoženje, pa tudi od dobrega gospodarja, torej tudi vsakega zasebnega lastnika. Jasno je, da si vsi tega ne morejo privoščiti. To je druga zgodba, ki se potem rešuje na neki drugi ravni. Druga stvar pa je, da nekateri si to lahko privoščijo, pa mogoče niso niti vedeli, kaj in kako so zavarovali. In to se je dogajalo recimo po tej naravni nesreči, ko so ljudje, ki jih poznam, pregledovali svoje zavarovalne police, in so ugotovili, da imajo v bistvu kritje za poplavo v višini tisoč evrov, kritje v višini 200.000 evrov bi pa lahko imeli v bistvu za podobno zavarovalno premijo. Tu je nekaj odgovornosti tudi na zavarovalnicah, kar se tiče obveščanja in drobnega tiska. Če imamo sistem, po katerem se premoženjska škoda lahko zavaruje, je gotovo pričakovano, da se zavaruje, če se lahko. Toda spet opozarjam na izjeme, ki tega ne zmorejo. Pri podjetjih se verjetno pričakuje, da se to zmore.

Pomembno je tudi ozaveščanje ljudi in podjetij, da vedo, kaj je potrebno že preventivno storiti, da se obseg morebitne škode zmanjša. Informacij je dovolj, v današnjem času morda še celo preveč, ampak do tistih pravih informacij pa mogoče ne pridemo ali pa se o njih niti ne sprašujemo, dokler ne pride do nesreče. Tukaj bi se povsem strinjala z že povedanim.

Jernej Letnar Černič: Se strinjam s teboj, Petra. V našem okolju se morda tako zasebniki kot tudi poslovni subjekti preveč zanašamo na odgovornost države, saj bo že bolje poskrbela za vse nas, če bo šlo kaj narobe. In v teh odzivih na poplave je to moč videti v različnih korakih, v različnih koncih, enako tudi pri podjetjih. Po eni strani določeni zasebniki pričakujejo, da bo država povrnila sto in še več odstotkov škode. Ali je pravično, da država povrne podjetjem škodo v višini 100 odstotkov, zasebnikom, ki so izgubili hiše, pa na višini 100 odstotkov ali še več? Ali je to pravično v razmerju do celotnega prebivalstva, celotnih davčnih

zavezancev v slovenski državi? Lahko se vprašamo, za koliko let bo naša država izgubila razvojno moč. Strokovnjaki napovedujejo, da bomo izgubili od treh do pet let razvoja. In seveda, če gre za povrnitev škode, ali se naj država odloči za dodatno obdavčitev pravnih subjektov?. Vprašanje je, kaj je pravično. Zagotovo načrtovanje pravičnosti poskuša odgovoriti na to vprašanje, kaj je predmet nekega družbenega konsenza. Seveda pa to mora biti tudi ustavno skladno, skladno tudi s človekovimi pravicami. Gorazd, mogoče še tvoj komentar glede same odgovornosti gospodarskih družb, oziroma kaj je pravično. Kako mora država oziroma kako morajo gospodarske družbe ravnati pravično v primeru naravnih nesreč?

Gorazd Justinek: Glede pravičnosti so najbrž ostali sogovorniki bolj kvalificirani, sam pa bom poizkusil zadev osvetliti iz druge perspektive. Tekom covida 19 so države, spet mislimo na naš del sveta, izvajale zelo ekstenzivno ekonomsko politiko in subvencionirale številne zadeve. Ne bomo se na tem mestu spuščali v debate, kaj je prav in ne. in kaj bi bilo bolj, saj je vprašanje, kaj pa bi sploh lahko bil plan b. Je pa to bil nedvomno nek precedens, da bi države praktično dve leti subvencionirale številne zadeve. Ampak vsako tako deljenje denarja in subvencioniranje privede v končni fazi do inflacije, kaj račun se vedno plača na koncu. In ključno je torej zame vprašanje z vidika pravičnosti, ali je prav, da država subvencionira delovanje nekega zasebnega podjetja, račun za to pa bomo plačali vsi ostali, preko višjih zavarovalnih premij, oz. visoke inflacije.

Je pa tak način politično oportun, saj politika rada deli bombončke in so nasploh obnaša širokogrudno. Ampak kot rečeno, nobeno kosilo ni zastonj in vedno je na koncu potrebno plačati račun. Ta račun v Evropi plačujemo v obliki visoke inflacije, predvsem pa ko pogledamo na račun v trgovini ali na položnico za elektriko itd. Sam se niti ne spomnim, kdaj bi v Evropi beležili dvomestno inflacijo.

Jernej Letnar Černič: Kdo bo pokril stroške odprave posledic poplave? Do katere mere bo država povrnila te stroške? Ali bomo škodo krili vsi davčni zavezanci? Ali bo država pokrila stroške iz svojega premoženja? In še eno od odprtih vprašanj nove slovenske družbe: Ali bo uveden dodaten davek na dohodnino ali dodatni davki na kapitalske dobičke, dividende in tako naprej? Ali pa bo država morda uporabila nekaj svojih depozi-

tov, ki jih ima pri Evropski centralni banki? Ali pa morda porabila dobičke nekaterih slovenskih, denimo energetskih podjetij, ki so bila izjemno uspešna v zadnjih letih, vsaj po prihodkih in dobičkih? Kakšne obveznosti ima država, pa tudi gospodarske družbe, da preprečijo podnebne spremembe ali da sprejmejo preventivne ukrepe? Vemo, da je trenutno v pripravi predlog novega zakona o energetski politiki, ki, če se ne motim, predvideva zelo visoke cilje tako za gospodarstvo kot za državo, glede obnovljivih virov energije. To bo res zahtevalo spremembo paradigme. Kot pravi naš anonimni komentator, kako vidite ta prehod in spremembo paradigme tako na strani države kot tudi v gospodarstvu? Kaj je potrebno, da v Sloveniji resnično preprečimo te hude naravne nesreče? Negativnih podnebnih sprememb bo verjetno v prihodnosti kar precej, če ne bomo konkretno spremenili svojega ravnanja.

Tanja Malovrh: Naravnih pojavov ne moremo preprečiti, ker se bodo zgodili ne glede na naša dejanja. Ne znamo jih popolnoma napovedati, kdaj in v kakšnem obsegu. Kot sem omenila že v začetku, bodo morala podjetja na nek način ukrepati, da zmanjšajo vpliv na okolje. Zdi se mi, da je to bolj sprememba v razmišljanju. Ali obstajajo posamezniki, ki so kot vodje sposobni vpeljati to drugačno razmišljanje v podjetje, da je potem tudi celoten tim pripravljen sprejeti to spremembo?

Kot posamezniki se lahko borimo za marsikatero stvar na tem svetu, ampak podjetja še vedno predstavljajo velik del okoljskega onesnaževanja. Lahko si ogledamo ogromno, ne samo dokumentarcev, ampak tudi novic in drugih informacij na spletu, koliko je dejansko onesnaževanja multinacionalk nenaklonjenim rešitvam v trajnostno smer. Kljub temu obstajajo izjeme in dobre prakse.

Danes sem recimo prebrala takšen plastičen primer. Proizvajalec LEGO kock je vključil 150 svojih strokovnjakov v razvoj alternativne rešitve izdelave kock iz plastenk. Ugotovili so, da predelana plastika iz plastenk potrebuje določene dodatke, da lahko zagotovijo kvaliteto in trdnost LEGO kock. Pri tem bi porabili bistveno več energije kot v obstoječem procesu. Po treh letih razvoja in iskanja različnih kombinacij okolju prijaznih materialov so tako ugotovili, da s ponovno uporabljeno plastiko ne morejo doseči želenega rezultata. Pa vendar so se odločili potrojiti svojo investicijo v razvoj trajnostnih rešitev in nadaljujejo svoja prizadevanja k izboljšavi njihovega procesa.

Jaz vidim to kot primer iniciative, kjer so pripravljeni narediti spremembo. Torej v primeru, ko je podjetje pripravljeno investirati v področje trajnosti, se bo dolgoročno sprememba tudi zgodila. Takšna podjetja je potrebno tudi primerno podpreti. Ne trdim, da je LEGO podjetje popoln primer, ampak te kocke lahko večkrat ponovno uporabimo in potujejo tudi v roke naslednjih generacij. Če bi šli z logiko kock v proizvodnjo drugih dobrin, ki jih uporabljamo vsakodnevno že v samem začetku procesa, bi lahko marsikaj izboljšali in razbremenili okolje. Dejstvo pa je, da so si podjetja različna.

Mi lahko kot posamezniki vplivamo na dogajanje na lokalni ravni, medtem ko lahko podjetja te spremembe uvajajo bistveno širše. V nobenem primeru ne moremo preprečiti spremembe v okolju, saj so se dogajale kot rečeno že v preteklosti in se bodo tudi v prihodnje. Moramo pa najti mehanizme znotraj posamezne države in pozvati lokalne skupnosti, da pri tem pomagajo. Predvsem se moramo naučiti spoprijeti s težavami v danem trenutku. O tem smo razpravljali že med samim pogovorom in podali nekaj primerov, ki predstavljajo dobro osnovo za prihodnje razmišljanje.

Jernej Letnar Černič: Tudi poseben poročevalec OZN za razvoj in človekove pravice, Surya Deva, je v svojem letnem poročilu, ki je bilo objavljeno pred nekaj tedni, v bistvu podal enako misel. Podjetja morajo spremeniti svoje poslanstvo. Ne samo pehanje za dobičkom, temveč tudi spremeniti poslanstvo poslovanja v bolj družbeno odgovorno smer, ki je skladna z okoljem, človekovimi pravicami in bojem zoper korupcijo. Ja, morda še Petra in Gorazd, vajino mnenje glede samega poslanstva podjetij v kontekstu podnebnih sprememb. Kako se lotiti preventivnih ukrepov?

Petra Weingerl: Se popolnoma strinjam s Tanjo. Posamezniki imamo glede tega res pomembno vlogo, recimo kot potrošniki, ki lahko taka podjetja, ki se dejansko trudijo in se odločajo za trajnostne rešitve, nagradimo. Nagradimo jih tako, da se odločamo za trajnostne rešitve, proizvode, storitve. Pred kratkim je bila predstavljena nova cargo ladja družbe Maersk, njena botra je Ursula von der Leyen. Gre za prvo tovorno ladjo na zeleni metanol. V okviru te predstavitve so povedali, da se velika večina blaga prevozi z ladjami. Skozi čas bo vse več plovb temeljijo na zelenem metanolu. Torej mogoče je to en primer, da se podjetja,

ki se trudijo vpeljevati trajnostne rešitve, pri tem podprejo. Vsi ti izdelki so za nas potrošnike. Tudi električni avtomobili so za nas. Na nas pa je, da se odločamo za rešitve, ki so trajnostne.

Jernej Letnar Černič: Ja, drži, ne gre samo za to, so tudi težke odločitve. Če se navežem na ladje, Petra, tudi v Benetkah so se že pred dvema ali tremi leti odločili, da ne bodo več spuščali teh velikih križark v center mesta. Zdaj pa te križarke bolj pogosto prihajajo k nam v Koper. Ena križarka, mimogrede, onesnaži okolje tako, kot če bi se v Koper prišlo 10.000 tovornjakov vsak dan. Zato so takšne odločitve težke za lokalno skupnost glede potencialne prihodke, dodano vrednost, gospodarsko rast in razvoj lokalne skupnosti. Niso lahke odločitve, a zagotovo se lahko strinjamo s tabo, da se vse začne pri vsakem izmed nas. Gorazd, izvoli.

Gorazd Justinek: Ja, hvala za to zanimivo debato. Če se navežem na trajnost o kateri je Tanja govorila. Pred časom sem bil presenečen, da so npr. prenehali polniti Donat v steklenice, saj da je polnjenje v bio plastiko bolj trajnostno. Torej bolj okoljsko sprejemljivo, kot pa uporaba steklenic. To me je presenetilo. Podobno je tudi z električnimi avtomobili. Na prvo žogo res deluje to bolj okoljsko sprejemljivo, ampak tudi elektrika mora od nekod priti. In v Sloveniji je to primarno ali nuklearka ali pa termoelektrarna.

Globalno pa bi na tem področju morala več storiti mednarodna skupnost, v prvi vrsti z OZN na čelu. Res smo sprejeli milenijske cilje in potem še SDGje, ampak organizacija kot je OZN bi morala tukaj prevzeti vodilno vlogo, saj so učinki podnebnih sprememb in okoljskih vidikov mednarodni in čezmejni. Če se samo spomnim pred leti, ko je na Štajerskem poplavljala Drava, ker so v Avstriji povečali njen pretok itd. Skratka, večja vloga mednarodne skupnosti je potrebna.

Jernej Letnar Černič: Ja, res. OZN ima pomembno vlogo. V zadnjih dneh smo lahko spremljali govore generalnega sekretarja Guterresa, ki je govoril v tej smeri, a sam ne more spremeniti situacije. OZN je bolj telo, ki ustvarja javne politike. Potrebno je tudi na terenu storiti korake naprej. V osrednji Sloveniji smo denimo pred težko odločitvijo glede izgradnje nove sežigalnice v Ljubljani. Hvala lepa, dragi kolegici, dragi kolega, hvala za vaš čas, pa tudi občinstvu, da ste ste nas poslušali.

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