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Uvodnik

Spoštovani,

Pred vami je druga številka revije Uprava v letu 2012, v kateri boste lahko med drugim prebrali prispevke o virtualni univerzi, namenjeni izseljenim strokovnjakom po svetu in njihovem povezovanju, o odprtih vprašanih visokega šolstva v Sloveniji ter informatizaciji zdravstva. Slednjemu namenjam tokratni razmislek.

Ni sporno, da je zdravje temeljni pogoj za kakovostno življenje človeka v najširšem smislu. Zdravje ni samo odsotnost bolezni in nemoči, temveč pomeni stanje čim boljše telesne in duševne kondicije ter socialno blaginjo, dosegljivo v danem okolju. Zato je zdravje najvišja vrednota in ena od osnovnih človekovih pravic. To pomeni, da skrb za zdravje ne more biti prepuščena le posamezniku, medicinski stroki ali zdravstvenim institucijam, pač pa odgovornost zanj prevzema celotna družbena skupnost. Pravica do zdravja je torej temeljna človekova pravica. Svetovna zdravstvena organizacija opredeljuje zdravje kot stanje najvišjega in dosegljivega telesnega, duševnega in socialnega blagostanja. S takšno definicijo dobiva zdravje posameznika ali naroda mnogo širšo razsežnost, kot je le stanje brez bolezni. V skladu s to opredelitvijo predstavlja zdravje kakovost življenja, človeštvo pa se temu cilju poskuša vse bolj približati.

Zdravstveno varstvo, ki ga zagotavlja in organizira država, je zato eno od ključnih področij sistema socialne varnosti. Opredeljujemo ga kot sistem družbenih, skupinskih in individualnih aktivnosti, ukrepov in storitev za krepitev zdravja, preprečevanja bolezni, zgodnje odkrivanje, pravočasno zdravljenje, nego in rehabilitacijo zbolelih, poškodovanih in drugih. Zdravstveno varstvo obsega tudi pravice zdravstvenega zavarovanja, s katerim se zagotavlja socialna varnost v primeru bolezni, poškodbe, poroda ali smrti. Splošne pravice do zdravstvenega varstva so opredeljene v določbi 11. člena Evropske socialne listine, ki zavezujejo tudi Slovenijo. Čeprav obstajajo v svetu različni sistemi zdravstvenega varstva, je osnovni cilj v večini držav enak. Vsaka država si prizadeva izboljšati svoj zdravstveni sistem in dosegati zastavljene cilje ter s tem omogočiti državljanom kakovostno zdravstveno oskrbo. Dostop do zdravstvenih pravic pa mora biti pravičen, kar pomeni, da so vsi državljani z enakimi zdravstvenimi težavami obravnavani enako.

Na okrogli mizi o izzivih v javnem sektorju Slovenije, ki smo jo pred kratkim organizirali na Fakulteti za upravo, je bilo več referatov namenjenih položaju v zdravstvu, ki se sooča s spremembami že vseh dvajset let samostojne države. Rezultati pa ne zadovoljujejo nikogar, niti izvajalcev storitev, predstavnikov zdravstvene blagajne niti državljanov.

Slovenska zdravstvena zakonodaja je stara več kot petnajst let in današnjim standardom in zahtevam ne ustreza več. Treba bi jo bilo posodobiti. Predvsem na področju podeljevanja koncesij v zdravstvu se srečujemo z nenehnimi zapleti. Podeljevanje koncesij v osnovnem in bolnišničnem zdravstvenem varstvu bi moralo potekati počasi in premišljeno, pri čemer bi bilo treba z ustrezno regulacijo in nadzorom poskrbeti za ravnotežje med javnimi in zasebnimi izvajalci. Praksa pa kaže, da se število zasebnih izvajalcev zdravstvene dejavnosti, ki zdravstvene storitve izvajajo v okviru javne zdravstvene mreže in z javnimi sredstvi, vse bolj povečuje.

Z naglo rastjo števila koncesionarjev se kažejo tudi pomanjkljivosti sedanje ureditve, ki se nanašajo predvsem na postopek podelitve koncesije, vlogo javnega zavoda, katerega del programa prehaja v koncesijo in ureditev razmerja med njim in koncesionarjem. S podelitvijo koncesije se na osebo zasebnega prava prenese le izvajanje javne službe, dejavnost pa ohrani režim javne službe. V praksi se kažejo nato problemi nadzora nad zagotavljanjem javnega interesa in s tem nad izvajalci zdravstvenih storitev.

Učinkovitost in uspešnost delovanja tovrstnih organizacij ter kakovost njihovih storitev je težko meriti. Uporabniki storitev imajo o kakovosti teh storitev različne predstave, zato prav prevladovanje družbenih vrednot nad finančnimi otežuje merjenje delovanja v neprofitnih organizacijah javnega sektorja.

Pri tem je pomembno razumeti povezanost zdravstvenega varstva z drugimi podsistemi v sistemu družbene blaginje. Pri vodenju zdravstvene politike in širše pri doseganju socialne blaginje države zasledujemo tako cilje socialne pravičnosti kot tudi cilje doseganja čim večje učinkovitosti. Predvsem stroka mora dati prave odgovore za doseganje zastavljenih ciljev.

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Diaspora Engagement Strategies and Policies

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ABSTRACT

Diasporas have been making contributions to their motherland for a long time, without waiting for policies to rally them and, if truth be told, very often finding them to be the major obstacles for establishing the partnership. However, diaspora-motherland partnership is closely related to institutional frameworks, socio-economic settings, political milieu as well as issues of perceptions, images, trust and social identification, in both the home and host country, most of which are within the scope of public administration. Moreover, the evolution of policy awareness and a thorough understanding of the diaspora and development nexus are, in some countries, the result of the efforts of public administration.

The development of diaspora strategies is essential because it demonstrates how state agencies, policy makers and individual citizens themselves have begun to think beyond national borders and make efforts to build non-territorial forms of organisation, such as Diaspora Virtual University. Promotion of networks, strategic alliances and sustained institutional cooperation between diaspora and the policy makers such as the Ministries for Diaspora, as well as other officials dealing with diaspora and development related issues have become the subject of primary interest in many countries, one of them being Serbia.

As a part of the effort to formulate effective and just policies used to respond to the brain drain, the paper analyses and recommends different policy types. Among different models of academic diaspora congregation is, no doubt, the alumni model, which proved to be very useful for both, developed and developing countries. The paper presents the concept as a part of the »brain gain« model and states the principles distilled from the alumni concept

experience, which summarize the current wisdom regarding development of a community which will serve as the »intelligence pool« for Diaspora Virtual University.

Different types of remittances, as well as pessimistic and optimistic perspectives on remittances, are analyzed in the paper, and recommendations are summarized for current and future policy makers. Recognizing diaspora as a valuable foreign investor a model of partnership through the Serbian Regional Chambers of Commerce is also proposed.

Key words: diaspora engagement policies, brain drain, brain gain, remittances, alumni model, diaspora investments

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1 Introduction

Diasporas have been making contributions to their motherlands for a long time (Ionescu, 2006), without waiting for policies to rally them and, if truth be told, very often finding them to be the major obstacles for establishing the partnership. However, diaspora-motherland partnership is closely related to institutional frameworks, socio-economic settings, political milieu as well as issues of perceptions, images, trust and social identification, in both the home and host country, most of which are within the scope of public administration. Moreover, the evolution of policy awareness and a thorough understanding of diaspora and development nexus are, in some countries, the result of the efforts of public administration.

In order to maximize the benefits of the potential diaspora-motherland partnership and assure that diasporas are not deprived of the ownership of their contributions, the policies that are increasingly developed in many countries to tap, flock and mobilize diaspora, should be realistic, well thought, fair and feasible (Ionescu, 2006). In diaspora lies precious intellectual, social and financial capital that sending countries must seek and nurture through networks and alliances (»brain chains«). Mobilisation of this latent »national« resource, as Gamlen (2006) calls it, through such connectivity programs do not require a large infrastructural investment, which is the advantage of any diaspora option. Here, diaspora option refers to one of the two brain gain alternatives. As Meyer & Brown (1999) state, brain gain can be achieved either through diaspora homecoming initiatives (return option) or through their remote mobilization and commitment to development of the home country (diaspora option). Assumption that many expatriates are not likely to return, at least in the short term, is the basis for significant number of diaspora policies.

The development of diaspora strategies is essential because it demonstrates how state agencies, policy makers and individual citizens themselves have begun to think beyond national borders and make efforts to build non-

territorial forms of organisation, such as Diaspora Virtual University (Filipovic & Putnik, 2009). Promotion of networks, strategic alliances and sustained institutional cooperation between the diaspora and the policy makers such as the Ministries for Diaspora, as well as other officials dealing with diaspora and development related issues have become the subject of primary interest in many countries, one of them being Serbia.

The role of the government, contrary to the actions of many administrations, including Serbian, should not be to manage their diasporas, but to promote public policy making which is sensitive to the needs and aspiration of the members of diaspora and their counterparts in the motherland, nurture ties with and within diaspora and, especially establish managerial practices directed at creating appropriate environment and providing necessary resources (enabling conditions) for the promotion of diaspora-motherland partnership.

Discussing the fairness of the policy-making process, Kunreuther (1980) emphasizes the negative long-term consequence of forcing decisions of the stakeholder with the greatest power upon the weaker stakeholders. As he says »this is likely to be counterproductive since ‚politically‘, exclusion may breed anger as well as ignorance«, not to mention the »loss« of the potential for reaching just and practical solutions. Fischhoff et al. (1981) offer a comprehensive and well-phrased statement of the importance to involve all the interested parties and stakeholders of a particular policy: »Citizens in a democratic society will eventually interfere with decisions in which they do not feel represented. When lay people do force their way into hazard decisions, the vehemence and technical naivety of their response may leave the paid professionals abash, reinforcing suspicions about the ‚stupidity of the public‘. By avoiding these conflicts, early public involvement may lead to decisions that take longer to make, but are more likely to stick.« Of similar opinion is The National Consumer Council (2004b, p. 7), which elaborates the necessity of the involvement of all the relevant parties: »In a world of increased pluralism, individualism and diversity of needs, it is increasingly difficult to know what users of services want. What is required above all is the active involvement of individuals in the determination of their own needs. ... When users are empowered, services become more responsive to rising expectations and demands.«

2 Policy Arena

Governments' actions concerning diaspora issue are most often hasty and clumsy. Consequently, more often than not, things related to diaspora in many countries, for example in Serbia, happen in spite of government policy, rather than because of it. Recently, a large number of strategies, policies, programmes and actions has been proposed and developed to improve partnership between motherlands and their diasporas.

In an attempt to come up with a »widely conceived and morally grounded strategy«, as well as an »overarching policy and associated practices that facilitate the ongoing development of the relationship between (motherland) and its diaspora« (Boyle & Kitchin, 2008, p. 6), we first need to clarify the meaning of strategies, policies, public policies in particular, and practices.

A strategy is a plan to do things a certain way to achieve a desired outcome, while a policy is a rule designed to ensure consistency in governance and to avoid undesirable outcomes. Policy should be a relatively stable, purposive course of action, followed by an actor or actors, in dealing with a problem or matter of concern such as, for example, diaspora engagement. On the other hand, like in the case of diaspora, strategies are seen as overarching frameworks which provide a certain level of coherence to the range of diaspora policies developed and implemented by various organizations.

Having examined numerous countries and their skilled diaspora approaches, we believe that countries which want to prosper need to embrace the following essential strategies to reduce their brain drain and advance the brain gain: (i) Promoting retention by providing incentives, (ii) Facilitating favorable conditions for returnees, (iii) Establishing a comprehensive and reliable database on the expert diaspora, (iv) Improving information provision to the diaspora, (v) Strengthening temporary engagement of the intellectual diaspora, (vi) Developing intellectual diaspora networks, (vii) Mobilizing the intellectual diaspora through Diaspora Virtual University (DVU), (viii) Establishing and improving mechanisms for remittances and investments, (ix) Tailoring a just and sound national diaspora policy, (x) Increasing commitment of the government, (xi) Establishing governmental diaspora office (Ministry), and (xii) Promoting international organizations participation (Woldetensae, 2007, p. 4).

Public policy, as defined by Kilpatrick (Kilpatrick, 2000) is a system of »courses of action, regulatory measures, laws, and funding priorities concerning a given topic promulgated by a governmental entity or its representatives.« It may be viewed as a political systems response to impetuses originating in its environment that might include both the motherland and the diaspora. Experts in diaspora should use their expertise not only in their respective fields of research and in academia, but as an input for policy makers, as well as shaping of political opinion. Through its Council, DVU makes efforts to optimize the interaction among policy, society and science, in terms of the development, usage and application of knowledge. As such, DVU serves as an »independent knowledge intermediary and as a unifying link between the policy arena and the knowledge arena« which significantly contributes to »a sustainable society where knowledge development and knowledge usage optimally meet the needs of society« (de Wit, 2004, p. 10).

The five stages of the policy cycle are: (i) Agenda-setting, which involves problem recognition, (ii) Policy Formulation, which deals with proposal of

solution, (iii) Decision-making, which involves choice of solution, (iv) Policy Implementation, which deals with putting solution into effect and (v) Policy Evaluation, which involves monitoring the results.

3 Agenda-setting model

The first stage in policy process is agenda setting (Kingdon, 1995). According to Dearing & Rogers (1996, p. 22) »The agenda setting process is an ongoing competition among issue proponents to gain the attention of media professionals, the public, and policy elites.« It is a political, highly conflictive and competitive process, contingent on: (i) competing entries on policy agenda, (ii) ability to influence groups to action, (iii) positions and views of key policymakers, (iv) preferences of interest groups and (v) preferences of decision maker (Puentes-Markides, 2007, p. 2).

There is a plethora of possible policy problems that might grasp the attention of the potential stakeholders, including government, media and the public. In our case, such a problem is the neglected motherland-diaspora relationship, the condition that is the source of both dissatisfaction and generator of needs for which relief or redress by government action is sought.

The policy agenda is defined by Kingdon (1995, p. 3) as »a list of subjects or problems to which government officials, and people outside of government closely associated with those officials, are paying some serious attention at any given time ... the agenda setting process narrows [a] set of conceivable subjects to the set that actually becomes the focus of attention.« In general, there are two types of agendas; systemic or macro agendas and institutional or micro agendas. The first type pertains to the widest range of potential issues that might be nominated for consideration by the government, such as the motherland-diaspora relationship in its broadest sense. The second type includes those issues that are the elements of a larger framework, which is already under consideration by decision makers (Puentes-Markides, 2007). In the case of motherland-diaspora relationship, it might be concerned with some of the numerous particular problems, for example, how to facilitate provision of certain services by a given Ministry for Diaspora.

Upon decision to put an idea on the policy agenda, which is based on thorough survey and analysis of a large number of relevant factors, agenda setting goes through three streams: problem stream, proposal stream, and political stream. Problem stream refers to the process of convincing the policy decision makers to pay attention to one problem over others, thus increasing its chances to be put on and elevated on the agenda. Problem definition (frame and label), as well as the way it was announced are the factors that significantly influence this process. As a part of this process, diaspora members and supporters of sound diaspora policy need to engage in order to persuade the policy decision makers of the validity and the justifiability of their claims and induce the acceptance of their position. Proposal stream involves the process by which

policy proposals are created, debated, reviewed, and adopted for serious consideration. It invokes the help of researchers, advisors and analysts, who need to contribute to shortlist the proposal. Among them, notably, are the experts in diaspora and other advocates of an appropriate diaspora policy. Political stream represents the collage of political will that is sometimes crucial for the fate of the agendas. This stream needs to be influenced by such factors as favorable national mood and public opinion towards diaspora, as well as to have inclination of influential interested parties.

As Kingdon (1995) claims, when these streams merge, a policy window opens, and stays open for only a short period of time. These situations require that problem is recognized, a solution is developed and presented to the policy community, a political situation is susceptible to policy change and constraints remain dormant. A chance of successful agenda setting considerably increases if all three constituents – problem, proposal, and politics – are optimized through an integrated process.

Following successful agenda setting, combined with policy formulation, decision-making, policy implementation and, subsequently evaluation, are performed, hopefully with participation of parties interested in existence and application of a just, smart and practical diaspora policy.

Countries that create the right policy and regulatory conditions to foster motherland – diaspora partnership, apart from being just and fair, are also able to effectively and efficiently employ all kinds of diaspora capital and pace up transformation of innovative research into desired outcomes, considerably contributing to local communities and the improvement of the lives of its citizens, while often having positive regional and in some cases global impact.

A common point in any debate over innovation programmes in Serbia has been that current policies were tailored for a time in the Serbian science and research that no longer exists. The research institution landscape, the national science budget, relations within the triangle science-government-society (industry), and especially the number and structure of highly talented and educated people, both in the motherland and in diaspora, has changed enormously over the last few decades to raise questions about the applicability of policies with roots in a long lost social economy.

4 Diaspora engagement policies

Gamlen (2006, p. 1) used his original typology to systematically review diaspora engagement policies of over 70 states. His typology arises from a two-pronged argument: a) Diaspora engagement policies »consist of a diversity of measures« intended for »(re)producing citizen-sovereign relationships with expatriates«, and b) »these measures can be coordinated as part of states' attempts to manage the scale of their political and economic maneuvers«.

Based on the assumption of the transnationalization of governmentality, Gamlen (2006, p. 5) identifies »three higher-level types of diaspora engagement policy« being:

- capacity building, to tactfully produce a »state-centric, transnational national society«, and to develop a »set of corresponding state institutions«,
- extending rights to the diaspora, thus being a factor that »benefits a legitimate sovereign«,
- extracting obligations from the diaspora, founded on the premise that diaspora members »owe loyalty to this legitimate sovereign«. Figure 1 summarizes the situation in different countries with respect to the three types of diaspora engagement policy.

Figure 1: Situation in different countries with respect to the three types of diaspora engagement policy

Region	Country	Type of Diaspora Engagement Policy				
		Capacity building		Extending rights		Extracting Obligations
		Symbolic nation-building	Institution building	Political incorporation	Civil and social rights	Investment policies & lobby promotions
		Symbolic nation-building	Institution building	Political incorporation	Civil and social rights	Investment policies & lobby promotions
		Cultural promotion & induction Inclusive rhetoric & symbols	Ministerial level agency Dedicated bureaucracy Monitoring efforts Building transnational networks Consular and consultative bodies Special membership concessions	Special membership concessions Dual nationality (no vote) Must return to vote Embassy voting Postal voting Indefinite, unconditional vote Parliamentary representation Can run for office	Welfare protection Tourism services	Knowledge transfer programmes Remittance and FDI capture Special economic zones Mandatory payments Promoting expat lobby
Europe & Asia Minor	Armenia	█	█	█	█	█
	Turkey	█	█	█	█	█
	Greek Cyprus	█	█	█	█	█
	Serbia	⊗	⊗	⊗	⊗	⊗
Middle East & Africa	Morocco	█	█	█	█	█
	Eritrea	█	█	█	█	█
Asia & Indian Sub-continent	India	█	█	█	█	█
	China	█	█	█	█	█
Asia Pacific	Philippines	█	█	█	█	█
	Australia	█	█	█	█	█
	New Zealand	█	█	█	█	█
The Americas	Mexico	█	█	█	█	█
	Dominican Republic	█	█	█	█	█
	Argentina	█	█	█	█	█
	Brazil	█	█	█	█	█
	Haiti	█	█	█	█	█

Source: Gamlen (2006); Serbia included by J. Filipovic

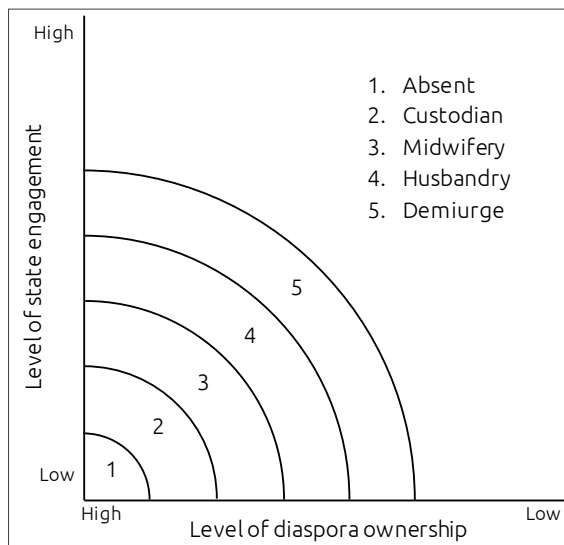
We included Serbia on the basis of the expertise with different types of diaspora engagement policy. Clearly, the situation in Serbia is not satisfactory. Although some elements of diaspora engagement policies do exist, they are often influenced by individuals and organizations that function in an

environment complacent to the interests of certain political groups, who ensure their propagation in policy documents on a national level.

According to the levels of state involvement, as a part of its overall philosophy/ethos, and corresponding diaspora ownership, Boyle et al. (2009) distinguish five different approaches of engagement with their diaspora (Figure 2):

1. Absent – low level of state engagement, with total diaspora ownership, formation of links between the motherland and the diaspora left to the market or to self-directed social, cultural and political movements, diaspora is self-organizing itself and the relationship with the motherland;
2. Custodian – the state fosters, acts as the guardian, regulates and polices existing and emerging diaspora networks. Slightly lower level of diaspora ownership;
3. Midwifery – the state identifies prospective engagements and potential champions/leaders and mobilizes and promotes them, with the ownership still staying firmly with the diaspora;
4. Husbandry – the state works in partnership with and facilitates existing diaspora organizations and networks in their activities, however with the diaspora ownership fading;
5. Demiurge (creator) – the state creates and controls diasporic initiatives and networks, with the intention, or not, of letting the market forces subsequently take over. Diaspora ownership is very small.

Figure 2: State approaches of engagement with their diaspora



4.1 Formulating a national diaspora policy

Diaspora engagement is very often hindered by the lack of a sound and applicable policy. Specifically, many scholars and some policymakers believe that the current Serbian, so called model of diaspora-motherland cooperation, is totally inappropriate mechanism for today's complex, challenging, but rich in opportunities environment.

In order to successfully manage the processes of linking national development priorities and diaspora resources, it is important to establish an appropriate policy framework. A concrete, credible and transparent national policy and regulatory framework should be designed and communicated to support state efforts to build strong partnership with the diaspora. When tailoring a national diaspora policy, all relevant stakeholders, intellectual diaspora among them, other diaspora communities, local institutions, government policy makers, as well as concerned international development partners should be represented (Woldetensae, 2007).

Boyle et al. (2009) developed a checklist with five core and eight peripheral dimensions that could serve as a convenient tool for policy makers currently formulating and implementing diaspora policies. Even though policy makers could experiment along both, core dimensions are presumably less subject to change. The five core dimensions are:

- Rationale, which provides the overall approach to the development of diaspora policy,
- Definition, clearly defines the semantic scope of diaspora to include all relevant populations which constitute the nation's diaspora,
- Philosophy/Ethos lays out an overall philosophy for the nation's diaspora strategy and disseminates it among stakeholders,
- Overall Strategy, which specifies the policy mix and prioritize specific policy,
- Institutional Design/Architecture, develops the structures, programmes and technologies of delivery, best suited for the current motherland-diaspora relationship constellation.

The peripheral dimensions include:

1. Culture building – Creating and fostering determination to bond with the motherland
2. Citizenship beyond the border – Enabling diaspora to exercise its rights and responsibilities.
3. Business network – Mutual fulfillment of motherland and diaspora economic interests
4. Information sharing – Developing and improving motherland-diaspora relationship

5. Philanthropy/Remittances/Investments – Optimizing the potential of diaspora capital
6. Returnees – Easing diaspora passage to the motherland
7. Affinity diaspora – Nurturing relations with those who established special affinity or affection for the nation state
8. Research capacity and knowledge – Expanding knowledge about diaspora, policy and acquiring best practice from elsewhere.

4.2 Policies used to respond to the brain drain

As Lowel (2001) states, some of the independent feedback loops, generated by highly skilled emigration, can be facilitated by policymakers. She identified the following policy typology:

- Return of migrants to their source country (migration)
- Restriction of international mobility (migration)
- Recruitment of international migrants (migration)
- Reparation for loss of human capital (monetary)
- Resourcing expatriates (diaspora options)
- Retention through educational sector policies and economic development (opportunities).

The so called migration policies, return, restriction, and recruitment, directly affect the movement of people. Monetary compensation to source countries for brain drain is the core of the reparation policy, while the resourcing expatriates, also known as diaspora option is the umbrella term for different approaches aimed to benefit from diaspora members. Retention policies are directed at lessening the incentives to emigrate, through improvements in the educational and economic sectors.

Through its activities and projects DVU will work towards outcomes that will contribute to the creation of a clearer picture of the number of experts from diaspora motivated to work on joint projects, as well as opportunities for partnerships on projects of mutual concern for the motherland and diaspora. Moreover, it is believed that these outcomes should include the potential to stimulate policy dialog at both national and European levels, as well as open the perspective for cooperation that will lead to a wise and just policy making and policy application processes.

Similar to the activities of the Brain Gain Malaysia (BGM, 2010) programme and its Diaspora Innovation Partnership (DIP) project, DVU will work to attract members of expert diaspora »with high-potential commercialization ready scientific/technological innovations« to either physically relocate to the motherland as technopreneurs or participate in all kinds of »distance techno-entrepreneurship« that will contribute to long-lasting partnership and benefit both sides. Through provision of a wide spectrum of incentives, DVU

will initiate and enable commercialization of »promising research outcomes through proof of concept development, technology development and business development«.

4.2.1 Alumni model

Analyzing Armenia's diaspora, authors of the study state that among the sectors of modern society, the university sector has been probably the most successful in congregating its members, known as academic, scientific, intellectual or expert diaspora, and mobilizing their intellectual, social and financial capital to advance its mission (Mitra et al., 2007). Among different models of academic diaspora congregation is, no doubt, the alumni model, which proved to be very useful for both developed and developing countries. This model, based on »simple but strict requirements«, has proven to be very instrumental in utilizing precious intellectual capital of academic diaspora. The model that was originally developed and perfected by elite American universities, has become an irreplaceable element of any »brain gain« programme. In essence, the alumni model has the craft of nurturing its dispersed alumni as the backbone, and can serve as the spring board from which many diaspora activities can be launched. Such activities include financial contributions, but most importantly, engagement of diaspora's intellectual and social capital for the benefit of the entire nation. Experience has shown that universities have to be very prudent in selecting and cultivating the core of the alumni organization, from where intellectual and financial leaders for the entire alumni community will emerge and who can be of vital importance for further alumni mobilization in endeavors such as Diaspora Virtual University (Filipovic & Putnik, 2009).

The following principles, distilled from the alumni concept experience, summarize current wisdom regarding development of a community which will serve as the DVU »intelligence pool« (Mitra et al., 2007):

1. it is an exclusive community of over-achievers and the most valuable supporters
2. it is of vital importance to exclude the traditional type of diaspora leadership, encapsulated in the strict rule of the organization, which says that members had to bring status to the group rather than obtain it there
3. its membership consists of people who have similar level of accomplishments
4. it is a matter of prestige to be affiliated with the DVU
5. through dialogue among themselves and with other stakeholders, the members tend to acquire a better understanding of the motherland's actual needs, which helps them to tailor their contributions to the mission of the DVU.

4.3 Diaspora remittances and remittance policy

According to Adebayo (2010, p. 16) remittances have long been seen as an important consequence of transnationalism, a »clear product of brain drain«, and one of the reasons that migration is tolerated, and very often encouraged. Although most people refer to remittances as the capital transfers in cash or in kind that a migrant makes to the country of origin which are, in fact, »monetary remittances«, it can also refer to the so called »social remittances«.

As Levitt (2001, pp. 54–60) states, there are three types of social remittances: (i) normative structure, (ii) systems of practice, and (iii) social capital. Normative structures include ideas, values and beliefs, systems of practice that are the actions created by normative structures and social capital that are the social networks and associated norms that have an effect on the productivity of a community. Combined by the entrepreneurial spirit and endeavors, monetary and social remittances contribute greatly to sustainable development of home countries. Some aspects of social remittances, like brain-gain, have been already analyzed and some, like social capital, will be treated further in the next chapters. In this section, we provide an overview of monetary remittances, necessary to comprehend their relation to social remittances, as well as the concept of Diaspora Virtual University.

Monetary remittances, as already stated, may be defined broadly as capital transfers in cash or in kind that a migrant makes to the country of origin. The World Bank estimates that in 2009 global remittances (around \$ 320 billion), from over 200 million migrants around the world (who make about 3 percent of the world's population), exceed as much as three times the overseas development assistance (ODA). Similar figures were reported by the UN's International Fund for Agricultural Development (IFAD). Remittances have grown faster than foreign direct investment (FDI) and official development aid in the past decade, doubling in several countries and rising by 10–15% per annum over 2001–05. In 2009, despite the economic crisis and contrary to the IMF estimates, remittances from Serbian diaspora grew 10%, reaching \$5.5 billion, which is close to 15 percent of the GDP (Serbian Minister for Diaspora). At any rate, Serbia is in the top 11 remittance-receiving countries in the world (Petree & Baruah, 2006).

The true value of remittances is considerably higher, since those data include only transfers through official channels, while large sums of money, as well as volumes of goods, remain unrecorded and transferred via informal channels. Moreover, in his analysis of the effect of remittances on Armenia' economy, Roberts (2004) concludes that the true amount of remittances is three times larger than officially reported. He further suggests that the insights gained on how remittance data are constructed might serve as guidance for other countries with significant diasporas.

Table 1: Different types of remittances

Type of remittance	Examples	Recorded as remittances
Money transfers through formal banking system to individuals or households in the motherland.	Known as family remittances, used mainly for basic consumption.	Recorded
Community (collective) remittances	Voluntary donations that organized groups (hometown associations) collect from their members to finance community investments or social events in their native towns.	Recorded
Donations by diaspora members to institutions and organizations operating in, or for the motherland.	Donations are often collected by the churches (humanitarian organizations) in the host countries and are held in bank accounts there, to be transferred overseas or used to settle international payments on behalf of the church (humanitarian organizations) in the home country.	Partially recorded
Deposits made into bank accounts held by the migrant overseas	Diaspora members transfer money to home countries as savings deposits or for the purpose of physical assets such as land, housing, farm equipment and supplies, inventories for small businesses, and so on.	Partially recorded
Payments made by the migrant on behalf of individuals in the motherland	Insurance premiums paid to host country based companies, educational and sophisticated medical treatment expenses, payments for international airfares made directly to the airlines.	Not recorded
Money transferred informally in cash or via an informal agent to motherland	Money sent through friends and relatives networks.	Not recorded
Transfers in-kind to motherland	Gifts, services, clothes and other goods donated to churches and humanitarian organizations.	Not recorded
Money that diaspora members spend while in the motherland	Money spent on local goods and services (medical examinations and treatments, spas, notaries, tourism, child camps, pilgrimages).	Partially recorded
Money that diaspora members use to pay taxes and duties	Property taxes for what they own in the motherland, custom duties, highway tolls.	Not recorded as remittances

Source: Modified table of Connell & Brown (2004, online)

Remittances account for all the money earned by diaspora members that is spent in, or for the motherland, and may be classified as remittances for the family essential needs, home construction and for entrepreneurial endeavors (remittances and transfers of accumulated savings as foreign investment); and collective or individual remittances aimed at furthering social and economic community development. (Stocchiero, 2004, p. 16). They can take different forms, as shown in Table 1.

A study of migrant-sending households in Serbia-Montenegro receiving remittances from Switzerland, confirms that in most of the cases, due to the lack of trust in financial institutions, as well as high transfer cost and inconvenience, remittances are sent informally (IOM, 2006). Only about 10% of the surveyed population preferred formal transfers through banks, while transfers through private money transfer organizations such as Western Union were not identified.

Remittances were generally used to support basic family needs and living costs, while remittances used as investment were mostly channeled towards housing and/or agricultural activities, with a small proportion (8% of respondents) investing remittances in entrepreneurial endeavors. It was reported that remittances had great impact of poverty alleviation and in many families they enabled people to buy houses that they could not otherwise afford. Remittances helped some people to afford medical care and medicines and in a smaller number of cases (11%) to pay for children's education.

The authors concluded that the use of remittances was influenced by four main factors: (1) socio-demographic profile of the recipient household, (2) the economic milieu in which remittances are received, (3) recipient's familiarity with and interest for investment opportunities, and (4) people's attitudes towards and access to financial services.

Although remittances are an important poverty reduction tool and interest of diaspora members in the economic future of their motherland is a noble goal, there is a danger, as Elton (2006, p. 3), from the MIT Center for International Studies claims, that »they are becoming a smokescreen to hide the pressing need to address the structural causes of unemployment and poverty in migrant sending nations« as well as to »to hide the negative effects of the neoliberal reforms«. Some other researchers and scholars share her skepticism and pessimism about remittances (Table 2).

Table 2: Pessimistic and optimistic perspectives on remittances

Fears Regarding Remittances (Stahl & Arnold, 1986)	Optimism Regarding Remittances
Remittances do not lead to productive investments but instead fuel profligate consumption.	Micro-level: non-productive investments and consumption improves standard of living and quality of life (Stahl & Arnold 1986). Can tide people over in times of crisis (Van Hear, cited in Østergaard-Nielsen 2003b) and help diversify household risks. Macro-level: consumption increases demand, producing multiplier effects that stimulate home-country industries and economies (Stahl & Arnold, 1986).
Distribution of remittances is uneven and increases income and wealth inequalities.	Remittance income is more evenly distributed than both overseas development aid and foreign direct investment (Hugo, 2003).
Remittance expenditures may result in inflation.	Price gains are mitigated by the allocation of resources to production of higher-priced goods (Stahl & Arnold, 1986).
Remittances may increase dependency with the risk of sudden decline.	Labor export should be seen as any other export sector which must be carefully managed to avoid dependence (Keely & Tran, 1989).
Remittances adversely affect agricultural development by removing incentives to laborers.	Decline in agricultural productivity is due to loss of labor power through emigration, not complacency amongst workers (Stahl & Arnold, 1986).

Source: Gamlen, (2006 p. 14)

4.4 Diaspora as a foreign investor: partnership through Serbian regional chambers of commerce

As previously stated, the end users of remittances use them for consumption purposes and hence the money is not invested in sustainable development of the recipient state. Besides monetary remittances and community development support, recognized as foreign investors, diaspora members can make significant contributions to the development of the countries of origin. A model, proposed by Filipovic (2007), which calls for the establishment of regional diasporic centers within each of the 17 regional chambers of commerce in Serbia, was used as the basis for a joint project initiated by the Ministry of Diaspora and the Serbian Chamber of Commerce System. The project, launched in the year 2007, was envisioned to enable partnership between the state and its diaspora on both local and regional levels. In addition to general goals of fostering development with the involvement of the diaspora, as well as the reduction in unemployment and poverty, channeling of remittances through legal institutions for investing in Serbia's businesses and informing the diaspora of business opportunities that the Republic of Serbia has to offer on both regional and local levels the project had a number of specific goals:

- To provide assistance for investors from the diaspora towards their integration into the economy of the Republic of Serbia.
- To provide diaspora with incentives to invest in Serbia (offering preferential interest rates, the »matching fund« programmes such as

the Mexican Tres Por Uno (for each dollar that comes from diaspora, government invests three dollars), foreign-currency-denominated bonds to expatriates...).

- To provide technical assistance and guide through bureaucratic procedures.
- To help mitigate corruption related to diaspora investments.
- To ease diaspora entrepreneurs access to credits in Serbia.
- Affirmation of successful examples of businesses in the aforementioned cases.
- Motivation of potential partners from the diaspora through affirmation of the already existing and successful examples.
- Recognition of the possible problems that investors from the diaspora may face and their identification for policy improvement.
- To provide assistance for investors from the diaspora towards their introduction to good world practice (education, quality, design, packaging, marketing, etc.).
- Creation of an information database containing: (i) information pertinent to the business diaspora, (ii) submitted business proposals – from the local and regional levels – and from the diaspora, with the goal to create partnership between the two and (iii) already established businesses with capital from diaspora.
- Creation of a positive picture towards the economic partnership potentials between Serbia and its diaspora.

5 Conclusion

The development of diaspora strategies is essential because it demonstrates how state agencies, policy makers and individual citizens themselves have begun to think beyond national borders and make efforts to build non-territorial forms of organisation, such as Diaspora Virtual University. Promotion of networks, strategic alliances and sustained institutional cooperation between the diaspora and the policy makers such as the Ministries for Diaspora, as well as other officials dealing with diaspora and development related issues have become the subject of primary interest in many countries, one of them being Serbia.

The role of the government, contrary to the actions of many administrations, including Serbian, should not be to manage their diasporas, but to promote public policy making which is sensitive to the needs and aspiration of the members of diaspora and their counterparts in the motherland, nurture ties with and within diaspora and especially establish managerial practices directed at creating appropriate environment and providing necessary resources (enabling conditions) for the promotion of diaspora-motherland partnership.

As a part of the effort to formulate effective and just policies used to respond to the brain drain, the paper analyses and recommends different policy types. Among different models of academic diaspora congregation is, no doubt, the alumni model, which proved to be very useful for both, developed and developing countries. The paper presents the concept as a part of the »brain gain« model and states the principles distilled from the alumni concept experience, which summarize the current wisdom regarding development of a community which will serve as the »intelligence pool« for Diaspora Virtual University.

Different types of remittances, as well as pessimistic and optimistic perspectives on remittances, are analyzed in the paper, and recommendations are summarized for current and future policy makers. Recognizing diaspora as a valuable foreign investor a model of partnership through the Serbian Regional Chambers of Commerce is also proposed.

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POVZETEK

STRATEGIJE IN POLITIKE ANGAŽIRANJA DIASPORE

Ključne besede: politike angažiranja diaspore, beg možganov, pridobitev možganov, nakazila, študentski model, naložbe v diasporo

Diaspore že dolgo prispevajo k svojim domovinom, ne da bi čakale, da jih v ta namen združijo različne politike, ki povedano po resnici, pogosto pomenijo glavno oviro vzpostavitvi partnerstva. Vseeno pa je partnerstvo med diasporo in domovino tesno povezano z institucionalnimi okviri, s socialno-ekonomskimi okoliščinami, političnim miljejem in z vprašanji zaznavanja, podob, zaupanja ter družbene identifikacije, tako v domači državi kot v državi gostiteljici, večina teh pa spada v okvir javne uprave. Poleg tega sta v nekaterih državah naraščanje ozaveščenosti o politiki in poglobljeno razumevanje povezave med diasporo in razvojem posledici prizadevanj javne uprave.

Da bi maksimirali koristi potencialnega partnerstva med diasporo in domovino ter zagotovili, da se diasporam ne odreka lastništva njihovih prispevkov, bi morale biti politike, ki jih številne države vedno bolj razvijajo in s katerimi želijo diaspore izkoristiti, zbrati skupaj in mobilizirati, realistične, dobro zasnovane, pravične ter izvedljive. Znotraj diaspore se nahaja dragocen intelektualni, družbeni in finančni kapital, ki ga morajo države pošiljateljice poiskati ter spodbujati preko mrež in zavezništev (»verige možganov«). Mobilizacija tega latentnega »naravnega« vira, kot ga imenuje Gamlen (2006), s pomočjo takšnih povezovalnih programov ne zahteva velike naložbe v infrastrukturo, kar je prednost katere koli možnosti diaspore. Na tem mestu možnost diaspore pomeni eno od dveh alternativ pridobitve možganov. Kot navajata Meyer in Brown (1999), se pridobitev možganov lahko doseže s pobudami za vrnitev diaspore domov (možnost povratka) ali pa z njeno mobilizacijo na daljavo in zavezanostjo k razvoju domovine (možnost diaspore). Predpostavka, da se veliko število izseljencev najverjetneje ne želi vrniti, vsaj ne na kratki rok, je podlaga za precejšnje število politik do diaspore.

Razvoj strategij diaspore je bistvenega pomena, saj kaže, kako so državne agencije, oblikovalci politike in posamezni državljani začeli razmišljati onkraj državnih meja in kako si prizadevajo ustvariti neteritorialne oblike organizacij, kot je Virtualna univerza Diaspore. Promocija mrež, strateških zavezništev in trajnostnega institucionalnega sodelovanja med diasporo in oblikovalci politike, kot je Ministrstvo za diasporo in drugi uradniki, ki se ukvarjajo z diasporo ter vprašanji razvoja, je postala predmet pogloblitnega interesa v mnogih državah, med katerimi je tudi Srbija.

V poskusu, da bi prišli do »široko zasnovane in moralno osnovane strategije« kot tudi do »krovne politike in povezanih praks, ki lajšajo tekoči razvoj odnosa

med (domovino) in njeno diasporo«, pričujoče delo najprej pojasni pomen strategij, politik, predvsem javnih politik, in praks.

Z uporabo enake tipologije, kot jo je uporabil Gamlen pri pregledu politik angažiranja diaspor v več kot 70 državah, je v članku analiziran primer Srbije. Da bi postavili temelje za razvoj politike, smo analizirali tudi model določanja programa in ga združili s priročnim orodjem za oblikovalce politike, ki trenutno oblikujejo in izvajajo politike diaspore.

Kot del prizadevanja, da bi oblikovali učinkovite in pravične politike, s katerimi bi se odzvali na beg možganov, so v članku analizirane in priporočene različne vrste politik. Med različnimi modeli akademskega združevanja diaspor je brez dvoma študentski model, ki se je izkazal kot zelo koristen tako v primeru razvitih držav kot v primeru držav v razvoju. Članek predstavi ta koncept kot del modela »pridobitve možganov« in navaja načela, izpeljana iz izkušnje študentskega koncepta, ki povzemajo trenutno védenje o razvoju skupnosti, ki bo služila kot »inteligentni sklad« za Virtualno univerzo Diaspore. Delo analizira različne vrste nakazil, vključno s pesimističnimi in optimističnimi vidiki nakazil, povzeta pa so tudi priporočila za trenutne ter bodoče oblikovalce politike. Ob zavedanju, da je diaspora dragocen tuj investitor, je predlagan tudi model partnerstva prek srbskih območnih gospodarskih zbornic.

V nasprotju z delovanjem številnih administracij pa vloga vlade, tako tudi srbske vlade, ne bi smela biti obvladovanje diaspor, temveč spodbujanje oblikovanja javne politike, ki bi upoštevala potrebe in želje pripadnikov diaspor ter njihovih ekvivalentov v domovini, negovanje vezi z diasporo in znotraj nje ter predvsem vzpostavljanje menedžerskih praks, ki bi se usmerjale k oblikovanju ustreznega okolja in zagotavljanju nujnih virov, omogočanju pogojev za promocijo partnerstva med diasporo in domovino.

Zaznavanje razvoja trajnostnega kmetijstva

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IZVLEČEK

V konceptu trajnostnega kmetijstva se srečujeta obe področji upravljanja Ministrstva za kmetijstvo in okolje, z vsemi družbenimi implikacijami. Kot prispevek k oblikovanju, izvajanju in vrednotenju trajnostnih aktivnosti analiziramo v članku odnos javnosti in kmetov do trajnostnega razvoja v kmetijstvu. Rezultati raziskave kažejo, da obstaja v Sloveniji podpora trajnostnemu kmetijstvu ne le na deklarativni ravni, ampak tudi v javnosti. Statistično značilne razlike med podporo splošne javnosti in kmetov pa so v dojemanju trajnostnega napredka kmetijstva na področju okolja. Vzporedno se kaže neskladje med načelno in dejansko podporo trajnostnemu kmetijstvu. Zato bi bilo smiselno razmisliti o spremembi fokusa ukrepov kmetijske politike iz okoljske na družbeno trajnost in preživetje kmeta, ob poudarjanju pozitivnih okoljskih informacij o slovenskem kmetijstvu.

Ključne besede: trajnostni razvoj kmetijstva, zaznavanje, javnost, kmetje, kazalniki trajnostnega kmetijstva

JEL: Q18, Q01

1 Uvod

Trajnostni razvoj, katerega sestavni del je tudi trajnostno kmetijstvo, je eden glavnih dolgoročnih prednostnih ciljev Evropske unije, usmerjen k večji kakovosti življenja ljudi. S svojo gospodarsko, okoljsko in družbeno vlogo se sooča z izzivi Lizbonske strategije (2000), kajti njen temeljni cilj – nova kakovostna delovna mesta in večja konkurenčnost – se lahko uresničuje v raznoliki državi kot je Slovenija, prav z razvojem podeželja. V tem smislu ustvarja trajnostno kmetijstvo ne le neposredne in posredne zaposlitve

na lokalnih ravneh in širše, v sinergiji z drugimi gospodarskimi dejavnostmi, temveč je vir zdrave in varne hrane, osnovni pogoj ohranjanja biotske raznovrstnosti in krajinske pestrosti, ohranja poseljenost podeželja, je temelj sonaravnega turizma ter omogoča udejanjanje drugih okoljskih in družbenih funkcij prostora, kot so ekosistemske, estetske, kulturne in rekreacijske, ki povečujejo kakovost življenja.

Evropska unija se je na deklarativni ravni odločila za trajnostni razvoj in v tem okviru tudi za trajnostno kmetijstvo. Zato mednarodne in nacionalne institucije, kot so Organizacija Združenih narodov za prehrano in kmetijstvo – FAO, in področna ministrstva za kmetijstvo spodbujajo kmete k izvajanju prakse trajnostnega kmetijstva, širšo javnost pa k sprejemanju te prakse. Pogoj za vzpostavitev takšnega odnosa do kmetijstva pa je vnaprejšnje zaupanje in védenje, da so te prakse resnično koristne (Tathdil et al., 2009).

Tudi prihodnja skupna kmetijska politika (Evropska komisija, 2012) bo morala biti trajnostno naravnana, uravnotežena, ciljno usmerjena, učinkovita in odgovorna. Kmetijstvo namreč desetletja izgublja svoj gospodarski pomen (kar se odraža npr. v deležu BDP), ohranja svoje prostorske in družbene razsežnosti, vse bolj pa ponovno postaja pomembna osnovna pridelovalna funkcija kmetijstva oziroma hrana kot strateška dobrina. Ključni izzivi nove kmetijske politike v naslednjem programskem obdobju so zato prehranska varnost, trajnostno upravljanje naravnih virov in uravnotežen ozemeljski razvoj.

Stopnja legitimnosti in sprejemljivosti družbenega cilja, v našem primeru trajnostnega kmetijstva, se povečuje z odprtostjo javne uprave tako, da zna le-ta prisluhniti mnenju državljanov o stanju in izvajanju politike. Zato je pomembno vedeti, kakšen je odnos javnosti do trajnostnega razvoja v kmetijstvu, kako javnost trajnost razume in kakšen pomen ji pripisuje. Poleg tega pa je tudi pomembno identificirati dejavnike, ki vplivajo na to zaznavanje. Zelo težko je namreč učinkovito in odgovorno izvajati politiko, če le-ta nima ustrezne podpore v javnosti, če ni razumljiva ali dovolj promovirana. V demokratičnih sistemih praviloma državni organi želijo pridobiti odziv javnosti na stanje/odločitve (in tudi strokovno podlago za svoje odločitve), čeprav se vključevanje oziroma vplivanje javnosti na javnopolitične odločitve lahko odraža v končni politični volji zelo omejeno. S tem člankom poskušamo zapolniti vrzel v empiričnem raziskovanju javnega mnenja o trajnostnem kmetijstvu v Sloveniji in soočanju le-tega z dejanskim stanjem, o katerem pričajo kazalniki trajnostnega kmetijstva.

Enotne definicije trajnostnega kmetijstva v tem trenutku ni. Gre bolj za filozofijo oz. način kmetovanja in hkrati tudi življenja, znotraj katerega so mogoče različne interpretacije in razumevanje. Ker pa se pojem trajnosti nanaša na enakovredno upoštevanje okoljske, družbene in ekonomske komponente v razvoju, bi moralo to veljati tudi za trajnostno kmetijstvo. Vendar je na primer že interpretacija trajnostnega razvoja kmetijstva v Zakonu o kmetijstvu (Ur. list

RS, št. 45/2008, 15. člen) zožena na okoljski segment: »trajnostno kmetijstvo vzdržuje biotsko raznovrstnost živalskih in rastlinskih vrst in ohranja tla ter njihovo rodovitnost ob varovanju naravnih razmer za življenje v tleh, vodi in zraku«. Takšna interpretacija bi bolj prisodila ekološkemu kmetijstvu, kjer je poudarjena okoljska (ekološka) trajnost.

Čeprav je kmetijstvo primarno povezano s podnebjem, prstjo, zemljišči, vodo, gozdovi, biotsko raznolikostjo, pridelavo poljščin in živalmi, pa ne gre pozabiti tudi na njegovo povezavo s kmeti, ruralnimi skupnostmi, revščino in drugimi družbenimi problemi. Zato trajnostna rast kmetijstva ne vpliva samo na proizvodnjo hrane in rabo naravnih virov, ampak je pomembna tudi za dobrobit ljudi v kmečki skupnosti in za družbo kot celoto. V tem smislu je treba pogled na trajnostno kmetijstvo nujno razširiti.

Ikerd (1996) je trajnostno kmetijstvo opredelil širše, to je kot okolju prijazno oz. neškodljivo z vidika rabe naravnih virov, ekonomsko upravičeno, družbeno podprto ter konkurenčno. Podobno, celovito interpretira trajnost tudi Plut (2004). Trajnostni razvoj zahteva premik v smer gospodarskega napredka glede omejitev okolja, hkrati pa mora stremeti k omogočanju zadovoljevanja potreb sedanjih generacij ob predpostavki, da ne ogroža življenja prihodnjih generacij (tako ljudi kot rastlinskih in živalskih vrst). Tako se v smislu trajnostnega razvoja kmetijstva zaznamuje odnos do narave, sposobnosti samoobnavljanja le-te kot tudi v odnosu do človeka in njegovih psihičnih in fizičnih zmogljivosti (Plut, 2004).

Zelo celovita je zakonska opredelitev trajnostnega kmetijstva ameriške vlade iz leta 1990 (Public Law 101-624, Title XVI, Subtitle A, Section 1683), in sicer kot »celovit sistem pridelovanja rastlin in vzreje živali v skladu z značilnostmi pridelovalnega območja, ki dolgoročno zagotavlja: (i) zadovoljevanje potreb po hrani za ljudi in živali, (ii) izboljšanje stanja okolja in tistih naravnih virov, ki so ključni za obstoj kmetijstva, (iii) najbolj optimalno rabo neobnovljivih virov in virov na sami kmetiji, (iv) vključevanje naravnega biološkega krogotoka in nadzora, (v) vzdrževanje ekonomske živosti kmetijske proizvodnje in (v) izboljševanje kakovosti življenja kmetov in družbe nasploh«.

Kako široko trajnostno kmetijstvo razumejo širša javnost in kmetje v Sloveniji, smo želeli ugotoviti z našo raziskavo. Poleg tega nas je zanimalo, kako ocenjujejo pomembnost razvoja trajnostnega kmetijstva s pomočjo različnih funkcij in ciljev kmetijske politike ter ali med širšo javnostjo in kmeti prihaja do razlik o mnenju, kako pomemben je v resnici trajnostni razvoj kmetijstva. V raziskavi smo uporabili metodo analize primarnih podatkov, ki smo jih pridobili na podlagi opravljenih anket med dvema ciljnim skupinama. Rezultate javnega mnenja primerjamo še z dejanskim stanjem, to je s kazalniki trajnostnega kmetijstva.

V članku je najprej predstavljen pregled podobnih raziskav v tujini in doma. Sledijo prikaz metodologije in vprašalnika ter rezultati raziskave. Zaključni pa se članek s temeljnimi ugotovitvami, implikacijami za prakso in razpravo.

2 Pregled do sedaj opravljenih raziskav

Kljub velikemu poudarku na politikah spodbujanja trajnostnega kmetijstva je bilo v praksi opravljenih malo raziskav o tem, kako ga dojemajo različne ciljne populacije. Merjenje zaznavanja javnosti ter dejavnikov, ki vplivajo na mnenje, bi moralo biti obvezen predhodni korak pri razvoju programov informiranja in osveščanja javnosti o pomenu trajnostnega kmetijstva v prostoru in družbi (Tathdil et al., 2009).

Eurobarometer spremlja na ravni EU javno mnenje tudi o trajnostnem kmetijstvu. Rezultati kažejo, da državljani EU vidijo kot najpomembnejši vidik politike trajnostnega kmetijstva zagotavljanje socialne stabilnosti kmetov (Special Eurobarometer, 2008), kar se ujema z rezultati naše raziskave na vzorcu populacije kmetov, predstavljenimi v nadaljevanju.

Parcialne študije o zaznavanju trajnostnega kmetijstva so bile izvedene tako v Evropi kot tudi drugje po svetu, saj je to področje interesa različnih družbenih sfer (od politike, znanstvene sfere, gospodarstva, ipd.), pri čemer so se raziskovalci osredotočali na različne dejavnike. Bolj celostna raziskava, ki je zelo podobna v nadaljevanju predstavljeni raziskavi za Slovenijo, pa je bila izvedena v Turčiji (Tathdil et al., 2009). Osnovni namen te študije je bil kvantitativno določiti dojemanje trajnostnega kmetijstva med kmeti ter ugotoviti, kako na to vplivajo različni družbenoekonomski dejavniki in informiranost kmetov. Družbenoekonomske značilnosti so zajemale kmetijski sistem, območje kmetije, pripadnost zadrugam in drugim organizacijam v lokalni skupnosti, starost, izobrazbo in dohodek kmeta. V komponento informiranosti in iskanje informacij pa so bili vključeni uporaba množičnih medijev (časopisi, radio, televizija), uporaba interneta, potovanja in udeležba na kmetijskih konferencah. Rezultati študije so pokazali, da višji družbenoekonomski status in boljši dostop do informacij pomeni, da kmetje pripisujejo večji pomen trajnostnemu kmetijstvu. Če bi se torej oblikovalci politik in druge kompetentne organizacije osredotočile na demografsko ciljne informacijske ukrepe, bi lahko kmete bolj uspešno usmerili v naklonjenost trajnostnemu kmetovanju.

Aerni (2009) v svoji raziskavi opozarja, da javne razprave o trajnostnem kmetijstvu ponavadi oblikujejo prevladujoče politične interesne skupine, ki hkrati prispevajo k oblikovanju javnega mnenja in se odzivajo nanj. Preverjal je, v kolikšni meri je odnos teh skupin povezan z mnenjem javnosti o trajnostnem kmetijstvu in kako se te predstave razlikujejo med državami z različnimi kmetijskimi politikami. Izvedeni sta bili dve raziskavi zaznavanja trajnostnega kmetijstva, in sicer v Švici in na Novi Zelandiji. Analiza podatkov je pokazala, da obstajajo precejšnje razlike v dojemanju trajnosti med državljani obeh

držav. Medtem ko so v Švici menili, da je švicarsko kmetijstvo že sedaj precej trajnostno naravnano, so anketiranci v Novi Zelandiji večinoma menili, da bi morali uvesti določene gospodarske in tehnološke spremembe, da bi bilo kmetijstvo bolj trajnostno naravnano. Rezultati so v skladu s tem, da je v Švici kmetijska politika bolj defenzivna, medtem ko je pristop v Novi Zelandiji bolj povezan s politiko trajnostnega kmetijstva, ki je povezana s konkurenčnostjo gospodarstva države kot celote.

Študije v državah v razvoju so zelo specifične glede vključevanja dejavnikov, ki vplivajo na zaznavanje trajnostnega razvoja kmetijstva. Skupno vsem pa je, da ugotavljajo občutljivost javnosti na zmanjševanje revščine, doseganje trajnostne rabe naravnih virov, nadzor erozije in degradacije tal, pravilno uporabo gnojil in pesticidov ter vlaganje v raziskave in širjenje storitev (Bhutto & Bazmi, 2007). Na primer Rao in Hall (2003) sta izvedla študijo v Indiji, podobno Rahman (2003) študijo v Bangladešu, kjer so ugotovili, da so razlogi za oteževanje zmanjševanja revščine in uvajanja trajnostnega razvoja v kmetijstvu bodisi v pomanjkanju državnih sredstev ali negativnega dojemanja sodobnih kmetijskih tehnologij med kmeti. Ti verjamejo, da ima sodobna tehnologija škodljive vplive na okolje, kot je na primer nižja rodovitnost zemlje, škodljive vplive na zdravje in na večjo pojavnost bolezni pri rastlinah (Tathdil et al., 2009). Podobno je tudi v drugih državah tretjega sveta (npr. Taylor et al., 1993, za Malezijo).

Medtem ko se v prej omenjenih državah soočajo s pomanjkanjem poznavanja koncepta trajnostnega kmetijstva, študije v ZDA kažejo na drugačne probleme. Alonge in Martin (1995) sta ugotovila, da se kmetje po eni strani sicer bolj zavedajo in poznajo negativne okoljske in socialne posledice konvencionalnega kmetijstva, po drugi strani pa se to ne kaže v sprejemanju in izvajanju trajnostnih kmetijskih praks. Poskusi, da bi pojasnili nizko stopnjo uveljavljanja trajnostnih kmetijskih praks, so bili številni in raznoliki. Pogosto se ta pojasnjuje z na primer željo po večji produktivnosti z uporabo strojev, ki pa so bili škodljivi za okolje (Swanson et al., 1986; Napier et al., 1984). Študije v ZDA so preučevale mnoge mogoče vplive na sprejemanje novega načina kmetovanja, ki so obsegali ekonomske, družbene, fizične in tehnične vidike kmetovanja. Rao in Rogers (2006) sta poudarila pomen naslednjih dejavnikov: zaznavanje tveganja in dobičkonosnosti, gotovost in negotovost glede sprejemanja trajnostnega kmetovanja, obseg potrebnih informacij ter odnos do trajnostnega kmetovanja. Identificirani so bili tudi nekateri vplivni dejavniki, kot so demografski dejavniki, znanje, zavedanje, skupinska miselnost, tehnološke značilnosti in informiranost. Rezultati so pokazali pozitivno in močno povezanost med starostjo, izkušnjami s kmetovanjem, izobrazbo in družbenoekonomskim statusom, intenzivnostjo obdelave, motivacijo, inovativnostjo, uporabo informacij ter sprejemanjem novega načina trajnostnega kmetovanja (Hosseini et al., 2011).

V Sloveniji sta se Juvančič in Slabe Erkerjeva (2006) ukvarjala z vprašanjem, v kolikšni meri so politični instrumenti usklajeni z javnim interesom na področju

večnamenskega kmetijstva. Rezultati raziskave so pokazali, da je široka politična podpora za trajnostno upravljanje zemljišč in ohranjanje podeželja v Sloveniji na splošno v skladu s preferencami javnosti. V nasprotju s tem pa javnost daje visoko prioriteto vidiku varne in kakovosti hrane, medtem ko je podpora politike temu vidiku nizka.

3 Metodologija

Podatkovni niz za našo raziskavo dobimo iz ankete, izvedene v okviru raziskovalnega projekta »Parametri trajnostnega razvoja kmetijstva« (2012). Za pridobivanje podatkov sta uporabljena dva različna vprašalnika, ki se razlikujeta po tem, ali so odgovarjale osebe, ki imajo doma kmetijo, ali širša javnost. Opazovane enote iz prvega in drugega vprašalnika razumemo kot dva neodvisna vzorca, vzorec »javnost« in vzorec »kmetje«.

Za testiranje domneve, da se odnos javnosti in kmetov do trajnostnega kmetijstva v Sloveniji ne razlikuje, uporabimo Mann-Whitney neparametrični test za dva neodvisna vzorca. Gre za test, ki je ekvivalenten t-testu in se uporabi, kadar imamo opravka z opisnimi spremenljivkami na ordinalni skali. Za izračun testne statistike se uporabijo vrednosti rangov. Zato se številske spremenljivke pretvorijo v range, tako da se najmanjši vrednosti pripiše najnižji rang. Mann-Whitney test temelji na testni statistiki U , opredeljeni za skupino i z: (Mann & Whitney, 1947)

$$U_i = n_1 n_2 + \frac{n_1(n_1 + 1)}{2} - R_i \quad (1)$$

kjer je R_i vsota rangov skupine i .

3.1 Vprašalnik

Zaradi lažje statistične obdelave podatkov so vprašanja v anketi zaprtega tipa z vnaprej ponujenimi odgovori. Vprašalnika za širšo javnost in kmete zajemata pet vsebinskih vprašanj z več trditvami, pri čemer vprašani izrazijo stopnjo strinjanja ali nestrinjanja v zvezi z obravnavano zadevo na petstopenjski lestvici. Evalvirano je bilo torej samo zaznavanje anketiranih, saj so ti pri vprašanih podajali zgolj ocene na postavljene trditve. Zadnje, šesto vprašanje, vsebuje splošna demografska vprašanja o anketirancu, ki so spol, starost, izobrazba in regija bivanja. Vprašalnik, ki je apliciran na ciljno skupino kmečke populacije, ima še dve dodatni vsebinski vprašanji ter dve dodatni demografski vprašanji v zvezi z velikostjo kmetije glede na katastrski dohodek in prevladujočo usmeritvijo na kmetiji.

Z vprašalnikom smo želeli preveriti, kaj od predstavljenih široko opredeljenih vsebin po mnenju anketirancev najbolj odraža trajnostno kmetijstvo, kako visoko anketiranci postavljajo trajnostni razvoj v kmetijstvu v primerjavi z drugimi družbenimi področji, pomembnost določenih funkcij oz. ciljev

kmetijstva. V naslednjem sklopu vprašanj so anketiranci ocenjevali razvojno komponento trajnostnega kmetijstva. Podali so oceno razvoja kmetijstva v Sloveniji v zadnjih deset letih z vidika preskrbe s hrano, preživetja kmeta in ohranjanja okolja ter ovrednotili posamezne razloge za smer razvoja, ki so ga označili.

Anketiranje je potekalo od novembra 2011 do konca februarja 2012. Izbran je bil naključni vzorec ljudi, kjer je bilo upoštevano, da so bili primerno razporejeni glede na spol, starost, izobrazbo in regijo, pri populaciji kmetov pa še glede na velikost in dejavnost kmetije. Izbor enot v vzorec je vključeval osebe, ki so bile pripravljene sodelovati pri anketi. Ta je potekala osebno.

Izpoljenih je bilo 507 anket za širšo javnost in 329 anket za populacijo kmetov, kar pomeni skupaj 836 anket. Pri anketah med širšo javnostjo je bilo ugotovljeno, da pet vprašalnikov ni bilo izpoljenih v celoti, zato ti v analizi niso upoštevani. Enako število nepopolnih anket je bilo tudi v primeru anketiranja populacije kmetov.

3.2 Opisne statistike

V podatkovni bazi imamo na voljo 826 veljavnih opazovanj (v nadaljevanju: vzorec). Večina, to je okoli tretjina anketirancev, iz vzorca »javnost« in dobra četrtnina anketirancev iz vzorca »kmetje« prihaja iz osrednjeslovenske regije. Druga najbolj pogosto zastopana regija pa je jugovzhodna Slovenija. Struktura anketirancev po regijah ustreza strukturi prebivalstva po regijah. Slabih 80 % anketirancev v vsakem vzorcu je starih od 24 do 64 let. V populaciji je ta, sicer široka, starostna skupina zastopana z dvotretjinskim deležem starejših od 64 let je skoraj 20 %, mladih pa okoli 8 %. To kaže na problematičnost našega vzorca z vidika starostne strukture, saj starejši niso želeli odgovarjati na vprašanja. Ženske so v vzorcu »javnost« zastopane le nekoliko bolj kot v populaciji, kjer jih je slabih 51 %. V vzorcu »kmetje« pa le z dobrimi 40 %. Takšen odziv je pri kmetijskih raziskavah pričakovan. Pri anketirancih iz vzorca »javnost« prevladuje višja in visokošolska stopnja izobrazbe, saj je teh anketirancev več kot polovica (v populaciji okoli 20 %), srednjo izobrazbo ima 31,1 % anketirancev (v populaciji okoli 32 %), sledi 11 % tistih z magisterijem in doktoratom ter 3,4 % tistih z osnovnošolsko izobrazbo (v populaciji okoli 20 %). V našem vzorcu »javnost« so glede na populacijo nadpovprečno zastopani anketiranci z višjo in visokošolsko izobrazbo na račun tistih z osnovnošolsko izobrazbo, ki niso želeli odgovarjati na vprašanja. V vzorcu »kmetje« prevladuje srednja izobrazba, saj je teh anketirancev približno polovica, sledi pa dobra tretjina anketirancev z višjo in visokošolsko izobrazbo. Glede na opažene razlike v demografskih značilnosti vzorca smo morebitne razlike v posameznih odgovorih preverili tudi glede na te značilnosti in ugotovili, da odgovori statistično značilno ne variirajo med različnimi anketiranci glede na spol, starost, izobrazbo ali regijo bivanja.

Tabela 1: Družbenoekonomske lastnosti vzorca anketirancev

Spremenljivka	Širša javnost (N=502)		Kmečka gospodinjstva (N=324)	
	1. najbolj frekventni odgovor	2. najbolj frekventni odgovor	1. najbolj frekventni odgovor	2. najbolj frekventni odgovor
Regija	Osrednje-slovenska (33,5 %)	Jugovzhodna (13,1 %)	Osrednje-slovenska (25,9 %)	Jugovzhodna (16 %)
Starostna skupina	24–44 (56,6 %)	44–64 (21,9 %)	44–64 (40,5 %)	24–44 (40,1 %)
Spol	ženski (61,8 %)	moški (35,7 %)	moški (56,5 %)	ženski (43,5 %)
Izobrazba	višja in visokošolska (52 %)	srednja (31,1 %)	srednja (50,2 %)	višja in visokošolska (36,1 %)

V vzorcu »kmeti« prevladujejo po velikosti tiste kmetije, ki dosegajo med 1000 € in 2500 € katastrskega dohodka (KD), sledi skupina kmetov katerih KD dosega med 500 € in 1000 €, 18,1 % je tistih, katerih KD je v razponu med 2500 € in 7500 €, 15,4 % tistih, ki imajo KD med 200 € in 500 €, najmanj je tistih nad 7500 € KD (8 %). Glede na prevladujočo dejavnost na kmetiji, prevladujejo mešane kmetije, sledijo kmetije, na katerih prevladuje živinoreja (33 %), 9,4 % kmetij je pretežno usmerjenih na poljedelstvo, trajni nasadi so prevladujoči pri 8 % anketirancev. V našem vzorcu je več mešanih kmetij in manj poljedelcev kot v populaciji. Po podatkih SURS-a je namreč v Sloveniji kmetij s prevladujočo živinorejo dobrih 56 %, kmetij s prevladujočim poljedelstvom pa 22 %. Razlike v odgovorih so bile zato preverjene tudi glede na te značilnosti in statistično značilnih razlik nismo ugotovili.

4 Rezultati

4.1 Razumevanje trajnostnega kmetijstva

Visoke povprečne ocene vseh trditev o tem, kaj najbolj označuje trajnostno kmetijstvo, in rezultati neparametričnega χ^2 testa za vsako od trditev, ki potrjujejo statistično značilne razlike med opazovanimi in pričakovanimi frekvencami ($p = 0,000$), dokazujejo, da javnost in kmetje v splošnem široko in enako pomembno razume vse vidike kmetijske trajnosti – okoljsko, družbeno in ekonomsko. Povprečne ocene trditev med obema skupinama anketirancev se le malenkostno razlikujejo (prim. grafikon 1).

Grafikon 1: Primerjava povprečnih ocen trditev javnosti in kmetov o tem, kaj najbolj označuje trajnostno kmetijstvo

Mann-Whitney test je potrdil, da se odgovori statistično značilno razlikujejo med skupinama samo pri treh trditvah (tabela 2). Pri trditvah »manjša uporaba kemičnih sredstev, več ekološke pridelave« in »manjše obremenjevanje okolja in posledično njegovo ohranjanje« ($p = 0,000$) je večje strinjanje javnosti, pri trditvi »večji dohodki na kmetiji in dodatne donosne dejavnosti« ($p = 0,002$) pa je večje strinjanje kmetov. Splošna javnost pripisuje večji pomen okoljski determinanti trajnosti, kmetje pa ekonomski.

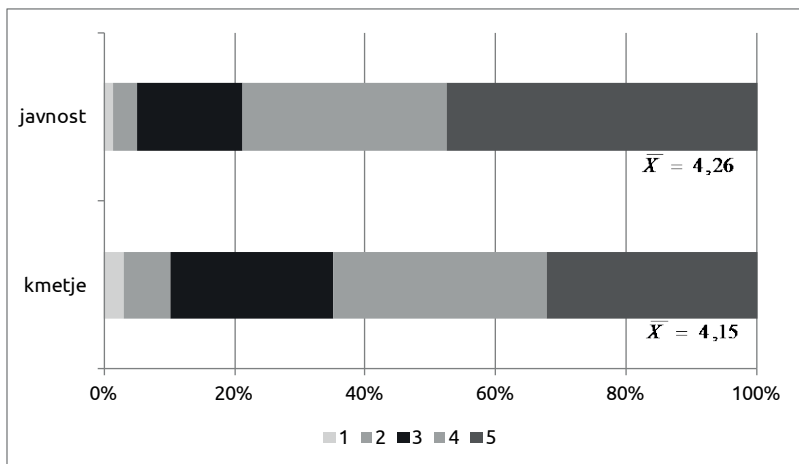
Tabela 2: Mann-Whitney test za trditve o tem, kaj najbolj odraža trajnostno kmetijstvo

	Mann-Whitney U	Wilcoxon W	Z	Asymp. Sig. (2-tailed)
Boljša preskrba s kakovostno hrano in večja varnost hrane	75865,000	128515,000	-1,715	,086
Manjša uporaba kemičnih sredstev, več ekološke pridelave	64993,500	117643,500	-5,131	,000
Večji dohodki na kmetiji in dodatne donosne dejavnosti	71279,000	197030,000	-3,079	,002
Manjše obremenjevanje okolja in posledično njegovo ohranjanje	68672,000	121322,000	-3,974	,000
Poseljenost in zaposlenost na podeželju	78695,000	131345,000	-,772	,440
Večja socialna varnost za kmete	75628,000	201379,000	-1,726	,084
Dobro ravnanje z živalmi	78208,500	130858,500	-,934	,350
Večja prehranska samooskrba	77986,000	203737,000	-1,021	,307

4.2 Pomembnost trajnostnega kmetijstva glede na druga družbena področja in glede njegovih funkcij

Povprečna ocena pomembnosti trajnostnega razvoja v kmetijstvu v primerjavi z drugimi družbenimi področji je zelo podobna pri obeh skupinah (grafikon 2).

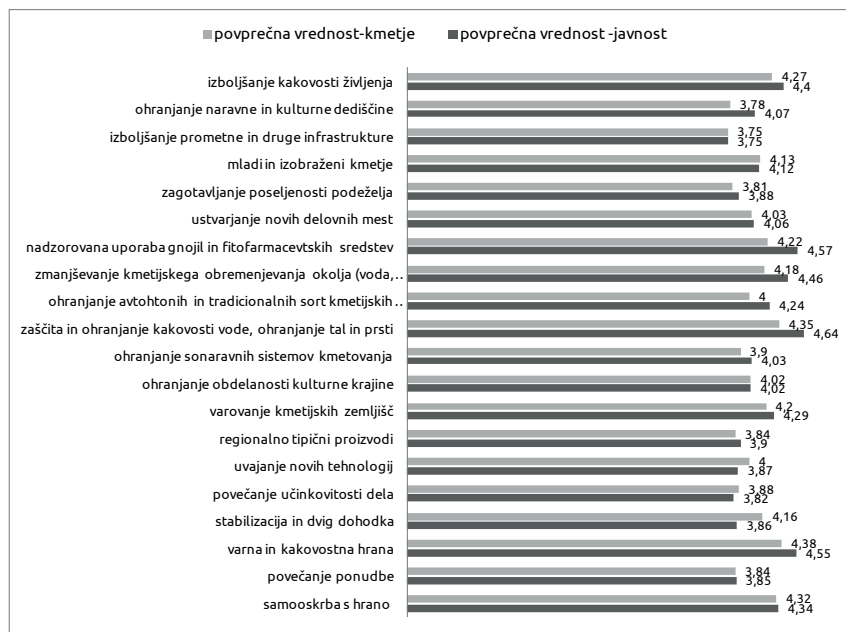
Grafikon 2: Pomembnost trajnostnega kmetijstva v primerjavi z drugimi področji (ocene 1–5, %)



Rezultati Mann-Whitney testa tudi niso statistično značilni ($p = 0,147$), kar pomeni, da pomembnost trajnostnega kmetijstva glede na druga družbena področja javnost in kmetje ocenjujejo enako.

Primerjava povprečnih ocen o pomembnosti posameznih funkcij oz. ciljev trajnostnega kmetijstva (grafikon 3) kaže, da se večje razlike v odgovorih kažejo pri oceni trditve »ohranjanje naravne in kulturne dediščine«, »nadzorovana uporaba gnojil in fitofarmaceutskih sredstev«, »stabilizacija in dvig dohodka«, »zmanjševanje kmetijskega obremenjevanja okolja« in pri trditvi »zaščita in ohranjanje kvalitetne vode, ohranjanje tal in prsti«. Trditve »stabilizacija in dvig dohodka« so bolje ocenili kmetje, medtem ko je druge trditve z okoljsko vsebino bolje ocenila splošna javnost.

Grafikon 3: Primerjava povprečnih ocen pomembnosti javnosti in kmetov o funkcijah in ciljih kmetijstva



Za navedene trditve smo izdelali tudi Mann-Whitney test, s katerim smo želeli ugotoviti, ali se trditve statistično značilno razlikujejo med obema skupinama anketirancev. Iz tabele 3 je razvidno, da se odgovori statistično razlikujejo med skupinama pri trditvah, pri katerih smo že omenili opaznejše razlike povprečnih ocen ($p \approx 0,00$), k tem pa lahko dodamo še dve trditvi: »varna in kakovostna hrana«, ki ji daje večjo pomembnost javnost, ter »ohranjanje avtohtonih in tradicionalnih sort kmetijskih rastlin in pasem živali«, ki mu dajejo večjo pomembnost kmetje. Ponovno se torej izkaže, da splošna javnost nekoliko višje vrednoti okoljsko dimenzijo trajnosti, kmetje pa ekonomsko. To kaže na konsistentnost anketirancev pri odgovarjanju na anketna vprašanja.

Tabela 3: Mann-Whitney test za trditve o pomembnosti posameznih funkcij oz. ciljev kmetijstva

	Mann-Whitney U	Wilcoxon W	Z	Asymp. Sig. (2-tailed)
samooskrba s hrano	79901,000	132551,000	-,419	,675
povečanje ponudbe	81012,500	133662,500	-,047	,962
varna in kakovostna hrana	71695,500	124345,500	-3,287	,001
stabilizacija in dvig dohodka	64922,000	190673,000	-5,139	,000
povečanje učinkovitosti dela	77218,000	202969,000	-1,252	,211
uvajanje novih tehnologij	75143,000	200894,000	-1,898	,058
regionalno tipični proizvodi	78210,000	130860,000	-,929	,353
varovanje kmetijskih zemljišč	78377,500	131027,500	-,906	,365
ohranjanje obdelanosti kulturne krajine	79998,500	132648,500	-,371	,711
ohranjanje sonaravnih sistemov kmetovanja	74820,500	127470,500	-2,008	,045
zaščita in ohranjanje kvalitetne vode, ohranjanje tal in prsti	67057,500	119707,500	-5,111	,000
ohranjanje avtohtonih in tradicionalnih sort kmetijskih rastlin in pasem živali	72578,000	125228,000	-2,758	,006
zmanjševanje kmetijskega obremenjevanja okolja (voda, zrak, tla)	68497,500	121147,500	-4,212	,000
nadzorovana uporaba gnojil in fitofarmaceutskih sredstev	63570,500	116220,500	-6,087	,000
ustvarjanje novih delovnih mest	81152,500	133802,500	-,003	,998
zagotavljanje poseljenosti podeželja	80810,000	133460,000	-,111	,912
mladi in izobraženi kmetje	80151,000	205902,000	-,324	,746
izboljšanje prometne in druge infrastrukture	79286,000	205037,000	-,588	,557
ohranjanje naravne in kulturne dediščine	67952,500	120602,500	-4,172	,000
izboljšanje kakovosti življenja	75733,500	128383,500	-1,802	,072

4.3 Zaznavanje razvoja kmetijstva v Sloveniji in ocena razlogov za takšen razvoj

Kot zadnje nas je zanimal pogled ljudi na to, kako se je razvijalo trajnostno kmetijstvo v zadnjih desetih letih s treh vidikov, in sicer preskrbe s hrano, preživetja kmeta in ohranjanja okolja. Iz primerjave odgovorov (tabela 4) je razvidno, da obe skupini večinoma menita, da je šel razvoj na slabše, predvsem z vidika preživetja kmeta. Glede preskrbe s hrano je odstotek javnosti, ki meni da gre na slabše, manjši, medtem ko ravno obratno velja pri vidiku ohranjanja

okolja. Zanimivo je, da obe skupini približno enako zaznavata razvoj v zadnjih desetih letih tudi glede prepričanja, da gre na bolje oziroma, da ostaja enako.

Tabela 4: Zaznavanje razvoja trajnostnega kmetijstva v zadnjih desetih letih s treh vidikov

	Preskrba s hrano		Preživetje kmeta		Ohranjanje okolja	
	kmetje %	javnost %	kmetje %	javnost %	kmetje %	javnost %
gre na bolje	24,4	30,5	11,1	8,5	33,3	22,6
gre na slabše	54,6	46,1	74,1	71,3	41	54,3
ostaja enako	21	23,4	14,8	20,2	25,6	23

Mann-Whitney test pokaže, da se odgovori statistično ne razlikujejo med obema skupinama pri opredelitvah ali gre na bolje ali slabše glede različnih vidikov trajnostnega razvoja kmetijstva. V obeh skupinah je delež tistih, ki menijo, da gre razvoj na slabše, največji.

Zaznavanje kmetov o razvoju kmetijstva se zdi glede na osredotočenost kmetijske politike v zadnjih desetih letih zelo realno. Država naj bi v tem času vlagala sredstva predvsem v trajnostno rabo naravnih virov in ohranjanje krajine (okrog 80 mio EUR v letu 2010), manj v kakovost življenja na podeželju (okrog 60 mio EUR v letu 2010) in najmanj v izboljšanje konkurenčnosti kmetijsko prehrabnega sektorja (okoli 20 mio EUR v letu 2010). Od leta 2000 do 2010 naj bi se delež skupnih javnih sredstev za kmetijsko politiko povečal kar za štirikrat (Juvančič & Slabe Erker, 2006). Tudi ekonomski podatki potrjujejo slabo stanje na ekonomskem področju. Kljub povečanju kmetijske proizvodnje je opazen trend zmanjševanja BDV. V obdobju 2000–2010 je delež BDV iz kmetijstva v Sloveniji padel za 0,8 odstotne točke, v povprečju držav EU-15 pa za 1 odstotno točko. Od leta 2002 do 2009 se je delež izdatkov za hrano v vseh izdatkih zmanjšal v Sloveniji za dobri 2 odstotni točki, pri čemer se večji delež izdatkov povezuje z uvoženo hrano. Sektor kmetijstva v Sloveniji že od leta 2005 naprej ni bil poslovno uspešen (razmerje med prihodki in izdatki je 0,9 oz. 0,8) (Eurostat, 2011).

Na drugi strani se zdi pesimizem splošne javnosti na področju doseganja okoljske trajnosti kmetijstva v tem trenutku pretiran, saj je v nasprotju z ugodnimi okoljsko-kmetijskimi dosežki in trenutno usmerjenostjo kmetijske politike.

Anketirance, ki so pri dveh zgornjih vidikih navedli, da gre razvoj na slabše, smo povprašali po razlogih, ki botrujejo takšni oceni (prim. grafikon 4). Največje razlikovanje povprečne ocene je pri trditvi o večji uporabi kemičnih sredstev, saj javnost meni, da je povečana uporaba le-teh razlog za slabši razvoj trajnostnega kmetijstva. Javnost je višjo oceno prisodila tudi trditvama, ki sta povezani s povečevanjem zaraščanja kmetijskih površin in odseljivanjem v mesta, medtem ko je od kmetov večjo povprečno oceno kot razlog za razvoj,

ki gre na slabše, prejela trditev o nižjem dobičku in pomanjkanju finančnih spodbud (subvencij).

Spet se pokaže, da za to, da gre razvoj na slabše, splošna javnost pripisuje večjo težo okoljskim in krajinskim dejavnikom, kmetje pa ekonomskim dejavnikom.

Grafikon 4: Primerjava povprečnih ocen trditev javnosti in kmetov o tem, zakaj gre razvoj trajnostnega kmetijstva v zadnjih desetih letih na slabše



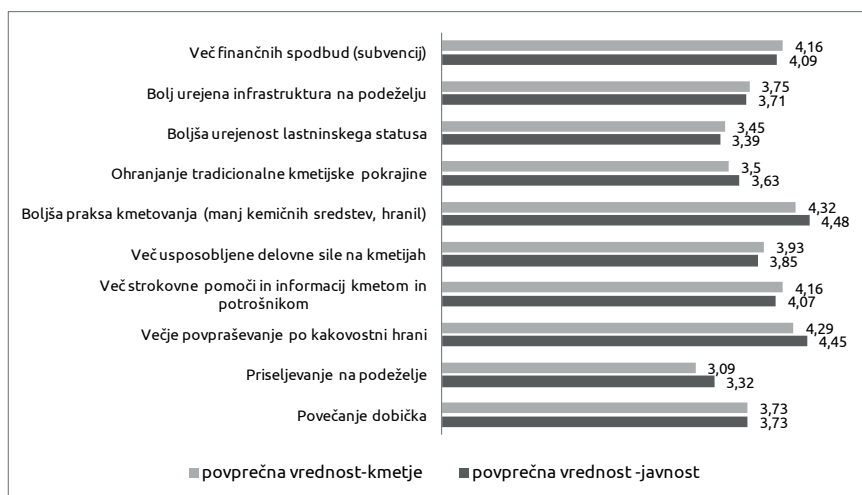
Tabela 5: Mann-Whitney test za trditve o razlogih, da gre razvoj trajnostnega kmetijstva na slabše

	Mann-Whitney U	Wilcoxon W	Z	Asymp. Sig. (2-tailed)
Zmanjšanje dobička	22352,500	59208,500	-2,833	,005
Odseljevanje v mesta	22815,000	41536,000	-2,469	,014
Večja uporaba kemičnih sredstev, hranil	18366,000	37087,000	-5,724	,000
Opuščanje kmetovanja, zaraščanje zemljišč	22591,500	41312,500	-2,688	,007
Neurejenost lastninskega statusa	25033,500	61889,500	-,820	,412
Pomanjkanje usposobljene delovne sile na kmetijah	24447,000	43168,000	-1,251	,211
Pomanjkanje strokovne pomoči in informacij kmetom in potrošnikom	25640,000	62496,000	-,375	,707
Vedno bolj dotrajana infrastruktura na podeželju	24504,500	61360,500	-1,210	,226
Manj finančnih spodbud (subvencij)	22842,000	59698,000	-2,459	,014

Ponovno smo za posamične trditve izdelali Mann-Whitney test. Iz rezultatov testa je razvidno (tabela 5), da se odgovori statistično značilno razlikujejo med obema skupinama anketirancev ravno pri omenjenih trditvah.

Večja usklajenost med skupinama je pri oceni razlogov, ki botrujejo razmišljanju, da gre razvoj na bolje, saj so povprečne ocene skupin precej podobne (grafikon 5). Drugi del javnosti, ki meni, da gre razvoj vendarle v pravo smer, vidi zasluge za takšen razvoj na strani proizvodnje v največji meri prav v boljši praksi kmetovanja, na strani potrošnje pa v kupcih, ki povprašujejo po kakovostni domači hrani. Ljudje pripisujejo le malo zaslug za izboljšanje razvoja priseljencem na podeželje. Javnost (zlasti splošna) je očitno zelo polarizirana pri zaznavi napredka na okoljskem področju.

Grafikon 5: Primerjava povprečnih ocen trditev javnosti in kmetov o tem, zakaj gre razvoj trajnostnega kmetijstva v zadnjih desetih letih na bolje



Tudi rezultati Mann-Whitney testa dokazujejo relativno enako vrednotenje razlogov obeh skupin anketirancev.

Glede na podatke o stanju okolja in zdravi hrani pa si kljub neenotnem mnenju in zaznavam javnosti upamo trditi, da se oba dejavnika spreminjata na bolje. To namreč dokazuje že hiter pregled nekaterih podatkov o stanju okolja. Tako se je na primer v zadnjih letih izboljšala bilanca dušika, t.j. razlika med vnosom ter odvzemom dušika s kmetijskih zemljišč, iz 101 kg N/ha v letu 2003 na 64 kg N/ha v letu 2007 (Eurostat, 2011). Povprečna poraba rastlinskih hranil je bila v obdobju 2000-2007 v Sloveniji dobrih 125 kg na hektar. Od leta 2000 je poraba rastlinskih hranil padala tako, da je znašala v letu 2007 16 % manj kot leta 2002 (SURSTAT, 2009). Prodaja fitofarmacevtskih sredstev se je v Sloveniji v obdobju 2000-2005 zmanjšala za približno 5 % (Eurostat, 2011). Odziv kmetijskih gospodarstev na kmetijsko politiko, ki podpira širjenje ekološkega

kmetovanja, je prav tako iz leta v leto večji. Površine zemljišč, namenjene ekološkemu kmetovanju, so se v obdobju 1999–2008 povečale od 2.400 ha na 29.836 ha oziroma od 0,5 % na 6,1 % vseh kmetijskih zemljišč v uporabi (ARSO, 2009). Da država namenja skrb vprašanju varne in kakovostne hrane, priča tudi podatek, da je delež izdatkov za raziskave in razvoj povezanih z varnostjo hrane v bruto družbenem proizvodu nekaj več kot pol odstotka, kar je popolnoma primerljivo z povprečjem EU-27 (0,53 %) (Eurostat, 2011).

5 Zaključek

V Sloveniji, razen na deklarativni ravni, ni na razpolago strokovnih podlag, ki bi argumentirano prikazovale raven trajnostne naravnosti kmetijstva in kmetijske politike. Prav tako je deficitarno raziskovalno področje podpora javnosti temu konceptu, ki se ga lotevamo v tem članku.

Preučevali smo mnenje širše javnosti in kmetov o pomenu trajnostnega kmetijstva v Sloveniji. Ugotovljeno je bilo, da se ljudem trajnostni razvoj kmetijstva zdi zelo pomemben, pri čemer javnost bolj izpostavlja okoljsko dimenzijo trajnosti, kmetje pa družbeno dimenzijo trajnosti, s poudarkom tudi na njihovem dohodkovnem položaju. Po mnenju obeh ciljnih skupin pa trajnostno kmetijstvo najbolj označujejo pojmi samooskrba s hrano, varna hrana in kakovostna hrana. To kaže na dobre obete za prodajo doma pridelane hrane v prihodnosti. Zato so v tem trenutku, ko trajnostne kmetijske prakse praviloma niso ekonomsko upravičene, državljani pa se že zavedajo zdravstvenih in okoljskih koristi kakovostne in varne hrane (kar v praksi nakupovanja še ni zabeleženo), obstoječe spodbude politike zelo dobrodošle. Tu mislimo na spodbude tako na strani proizvodnje, kot so na primer ukrepi za spodbujanje domače porabe, neposredna plačila za ekstenzivno rejo, za mlečno proizvodnjo v hribovskih območjih, podpore skupinam proizvajalcev pri dejavnostih informiranja in pospeševanja prodaje za proizvode, ki so vključeni v sheme kakovosti hrane (PRP – ukrep 133), kot na strani povpraševanja, npr. programi informiranja in promocije.

Velik pomen pa ljudje pripisujejo tudi ohranjanju okolja, ki bi ga lahko dosegli z manjšim obremenjevanjem okolja, z zaščito in ohranjanjem kakovostne (pitne) vode, tal in prsti, kar zahteva predvsem manjšo uporabo kemičnih sredstev oziroma nadzorovano uporabo gnojil in fitofarmaceutskih sredstev ter boljšo kmetijsko prakso. Vse to se uresničuje v ekološkem kmetovanju. Ukrepi politike, ki vplivajo na ta segment, pa se nanašajo predvsem na ukrepe za izboljšanje okolja in krajine (kmetijsko okoljska plačila in plačila za območja z omejenimi dejavniki). Tudi v praksi se ta vidik vedno bolj upošteva, medtem ko javnost očitno tega ne zaznava, oziroma je razdvojena pri zaznavanju te situacije. Pozitivne informacije o dogajanju na tem področju so zato nujne.

V raziskavi ugotavljamo, da javnost zaznava, da gre razvoj kmetijstva v Sloveniji z vidika preživetja kmeta na slabše. Kmetom je sicer zagotovljeno veliko finančnih pomoči, ki se kažejo v obliki različnih subvencij, a jih nekateri

kmetje težje pridobijo in zato so odvisni le od financ, ki jih pridobijo s prodajo pridelane hrane. Tudi ekonomski podatki potrjujejo slabo stanje na tem področju. Statistično značilne razlike med splošno javnostjo in kmeti so se pokazale ravno pri dojetanju trajnostnega napredka kmetijstva na področju okolja. Splošna javnost je precej polarizirana. Po eni strani večina meni, da gre razvoj na področju okoljske trajnosti kmetijstva na slabše, čeprav kmetijsko okoljski kazalniki kažejo, da je dejansko stanje na tem področju v zadnjih letih izjemno napredovalo in je primerljivo z drugimi evropskimi državami. Po drugi strani pa velik del splošne javnosti (čeprav ne večinski) nasprotno pripisuje prav okoljskim faktorjem zasluge za razvojne premike na bolje. Primerjalno s tem so zaznave kmetov bližje realnosti in se dobro zavedajo šibkega področja kakovosti življenja in slabega dohodkovnega položaja kmeta. Ta ugotovitev kliče po tem, da bi se javnosti zagotovile uravnotežene in objektivne informacije.

Ideja o trajnostnem kmetijstvu je predmet razprav že zelo dolgo časa. Opaziti je določene premike v to smer, vendar še zmeraj ne v tolikšni meri, kot bi bilo potrebno. Delež tistih, ki kupujejo ekološko pridelano domačo hrano, je namreč v Sloveniji še vedno nizek. Prodaja lastnih kmetijskih pridelkov in proizvodov na živilskih trgih je v letu 2010 znašala dobre 3 % BDV kmetijstva (SURS, 2011). S tako šibko dejansko podporo potrošnikov trajnostnemu kmetijstvu je kljub pomoči države težko zagotavljati ekonomsko in socialno varnost kmeta. Pomembno je, da o tem ne govorimo samo na teoretični ravni ter da ne skušamo vsiliti ljudem način ravnanja samo preko predpisov, ampak moramo vplivati na prepričanja in vrednote ljudi, da bi lahko spremenili in opustili prevladujoče vzorce življenja in delovanja. To je zelo dolgotrajen proces, ki ga najlažje uresničimo z ustreznim vzgojnim in izobraževalnim sistemom. Ljudje bodo spremenili svoje vedenjske vzorce, če bodo ustrezno motivirani, informirani in ozaveščeni. K temu lahko zgledno prispevajo zajamčeni trgi za hitro pokvarljivo sadje in zelenjavo (npr. javni sektor).

V raziskavi je bil poudarek na osebnih mnenjih, kaj si ljudje mislijo o posamezni stvari oz. posamezni funkciji trajnostnega razvoja kmetijstva, kar se da kvantitativno izmeriti samo z javnomnenjskimi anketami, ki pa kot vemo, niso najbolj objektivne. Poleg tega osebno mnenje ne odraža vedno dejanskega stanja oziroma je zaznavanje lahko drugačno od realnosti. Zato naše rezultate soočamo z dejanskim stanjem. Našo raziskavo bi lahko izboljšali tako, da bi jo opravili na večjem statističnem vzorcu, saj bi na podlagi tega potem lahko trdili, da so ugotovitve in mnenja posameznikov res takšna, kot smo ugotovili v tej manjši raziskavi. Bilo pa bi zanimivo, če bi v nadaljnjih raziskavah preučili, kaj vpliva na mnenje ljudi, da je takšno kakršno je. Lahko bi se osredotočili na osebne vrednote ali pa na vplive različnih medijev na mnenje posameznika in s tem identificirali dejavnike, prek katerih je smiselno in možno spreminjati oziroma krepiti trajnostno zavedanje, proizvodne in potrošniške oziroma prehranjevalne vzorce. Verjamemo, da je na ta način možno doseči sinergijske učinke na ekonomskem, družbenem in okoljskem področju razvoja.

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Perceived Development of Sustainable Agriculture

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ABSTRACT

Within the concept of sustainable agriculture, the two fields of administration of the Ministry of Agriculture and the Environment come face to face, resulting in a number of social implications. In order to provide assistance in the shaping, execution and assessment of sustainable activities, in this article we analyse the attitude of the public and farmers towards sustainable development in agriculture. The results reveal that in Slovenia, sustainable agriculture has support not only on the level of declarations, but also among the public. Statistically significant differences between the general public and farmers can be noted in the groups' respective understandings of the sustainable advancement of agriculture in the field of the environment. In parallel to this, a rift can be noted between support for sustainable agriculture in principle and in practice. For this reason, it would be wise to consider shifting the focus of agricultural policy measures from environmental sustainability to social sustainability and the survival of farmers, along with an emphasis on positive environmental information regarding Slovenian farmers.

Key words: sustainable development of agriculture, perceptions, public, farmers, indicators of sustainable agriculture

JEL: Q18, Q01

1 Introduction

Sustainable development, of which sustainable agriculture constitutes a key part, is one of the main long-term priority objectives of the European Union in its focus on enhancing the quality of life of people. Through its economic, environmental and social role, the European Union is addressing the challenges laid out in the Lisbon Strategy (2000); in a diverse country such

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as Slovenia, the fundamental objective of the Strategy – new, quality jobs and enhanced competitiveness – can be fulfilled through the development of the countryside. In this sense, sustainable development not only creates, directly and indirectly, employment on the local level and beyond in synergy with other economic activities, but is also a source of healthy, safe food, a basic condition of the preservation of biological and regional diversity, a counterweight to population decline in rural areas, a corner stone of natural tourism, and a factor that enables the implementation of other environmental and social functions of space which enhance the quality of life, such as ecosystem functions, aesthetic functions, cultural functions and recreational functions.

On the level of declarations, the European Union has decided on sustainable development and, in this framework, for sustainable agriculture. This is why state and international institutions such as the UN Food and Agriculture Organisation (FAO) and Ministries whose work intersects with the field of agriculture are encouraging farmers to implement sustainable agricultural practices and encouraging the public to embrace these practices. A condition for establishing this type of relationship between the public and agriculture is the trust and knowledge, generated in advance, that these practices do in fact offer real benefits (Tathdil et al., 2009).

In the future, the Common Agricultural Policy (European Commission, 2012) will have to be sustainability-oriented, balanced, goal-oriented, effective and responsible. For decades, agriculture has been losing its economic importance (which is expressed, among other things, in its share of the GDP), while at the same time maintaining its spatial and social dimensions; furthermore, the basic cultivation function of agriculture, that is, the role of food as a strategic commodity, is once again coming to the fore. It follows that the key challenges of the new agricultural policy in the next programme period are food safety, the sustainable management of natural resources and balanced territorial development.

The level of legitimacy and acceptability of a social objective – in this case, sustainable agriculture – increases with the openness of public administration, in the sense that the latter knows how to listen to citizens' opinions regarding the state and execution of policy. This is why it is important to know what the attitude of the public is towards sustainable development in agriculture, how the public interprets sustainability and what meaning and importance it attaches to it. Furthermore, it is important to identify factors that have an impact on these perceptions. It is very difficult to effectively and responsibly execute a policy without sufficient public support and/or if the policy in question is difficult to understand and insufficiently promoted. In democratic systems, the bodies of state generally wish to gauge the public's reaction to the current state/decisions (and also to the expert basis for their decisions), even if the inclusion or impact of the public in/on public-political decisions can only be expressed to a very limited extent in the ultimate political will. This article aims to fill the void in empirical research of public opinion on sustainable

agriculture in Slovenia and to provide an analysis of public opinion vis-à-vis the actual situation as revealed by indicators of sustainable agriculture.

For the time being, there is no one uniform definition of sustainable agriculture. It is more of a philosophy or a way of farming and, at the same time, a way of life, within which a variety of interpretations and understandings are possible. Because the term »sustainability« applies to a balanced emphasis on environmental, social and economic components of development, the same should also hold true for sustainable agriculture. And yet, to take one example, the interpretation of sustainable development found in Article 15 of the Agriculture Act of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, no. 45/2008) is limited to the environmental component: »Sustainable agriculture preserves the biological diversity of plant and animal life and preserves the soil and its fertility while protecting the natural conditions of life on the ground, in the water and in the air.« Such an interpretation would be more in line with »ecological« agriculture, a concept which places emphasis on environmental (ecological) sustainability.

Although agriculture is primarily linked to climate, soil, land, water, woodlands, biological diversity, the cultivation of arable land, and livestock, one cannot overlook its connection to farmers, rural communities, poverty and other social issues. It follows that the sustainable growth of agriculture not only impacts the production of food and the use of natural resources, but is also important for the well-being of people in the agricultural community and for society as a whole. In this sense it is necessary to expand our perspective on sustainable agriculture.

Ikerd (1996) offers a broader definition of sustainable development, which sees it as environmentally friendly or harmless from the standpoint of the use of natural resources, economically justifiable, socially supported and competitive. Plut (2004) offers a similar, holistic interpretation of sustainability. Sustainable development demands a shift towards economic advancement in the sense of limiting environmental impacts, and at the same time must strive to enable the fulfilment of the needs of current generations while not presenting a threat to the life of future generations (of both people and flora and fauna). In terms of the sustainable development of agriculture, sustainable development therefore indicates an attitude towards nature and the self-renewability of the latter and an attitude towards man and his psychic and physical capabilities (Plut, 2004).

The US government offers a very comprehensive legal definition of sustainable agriculture: »An integrated system of plant and animal production practices having a site-specific application that will, over the long term, satisfy: (i) human food and fiber needs; (ii) enhance environmental quality and the natural resource base upon which the agricultural economy depends; (iii) make the most efficient use of nonrenewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls; (iv)

sustain the economic viability of farm operations; and (v) enhance the quality of life for farmers and society as a whole» (Public Law 101-624, Title XVI, Subtitle A, Section 1683).

In our research, we wished to gauge how broadly the general public and farmers in Slovenia understand sustainable agriculture. Furthermore, we were interested in assessing how they rank the importance of the development of sustainable agriculture through the use of various functions and objectives of agricultural policy and determining whether deviations occur between the opinion of the general public on the one hand and the opinion of farmers on the other regarding how important the sustainable development of agriculture actually is. The method of primary data analysis was used in the research. Data was obtained using surveys conducted among the two target groups. The results of the public opinion research were then compared with the actual situation, that is, with indicators of the sustainable agriculture.

The article is structured in such a way that it first presents an overview of similar research conducted in Slovenia and in other countries. This is followed by a presentation of the methodology and survey forms used and the results of the research. The article concludes with the key findings, implications for practice and a discussion.

2 An overview of research conducted to date

Despite the great emphasis placed on policies for encouraging sustainable agriculture, in practice very little research on how sustainable agriculture is understood by different target groups has been conducted. Gauging public perception and the factors that impact public opinion should be an obligatory first step in the development of programmes for informing the public about the importance of sustainable agriculture in a given place and society (Tathdil et al., 2009).

Public opinion on sustainable agriculture is one of the things that the Eurobarometer tracks on the level of the EU. The results reveal that EU citizens view providing social stability for farmers as the most important aspect of sustainable agricultural policy (Special Eurobarometer, 2008), which is in line with the results of our research on a sample of the population of farmers (see below).

Partial studies on the perception of sustainable agriculture have been undertaken both in Europe and elsewhere, as this field is of interest to a number of social spheres (politics, science, the economy, etc.). These research undertakings focused on various factors. More comprehensive research very similar to the research on the situation in Slovenia presented below has been conducted in Turkey (Tathdil et al., 2009). The basic purpose of the Turkish study was to provide a quantitative assessment of the understanding of sustainable development among farmers and to determine how various socio-economic

factors and the information available to farmers impact this understanding. The socio-economic characteristics encompassed the agricultural system, the size of the farm, inclusion in co-operatives and other organisations in the local community, age, education and the farmer's income. The component of access to information and searching information included the use of mass media (newspapers, radio, television), internet use, travel and participation in agricultural conferences. The results of the study show higher socio-economic status and greater access to information mean that farmers attach greater importance to sustainable agriculture. Therefore if policy shapers and other competent organisations were to focus on demographically targeted information measures, they would meet with greater success in their efforts to steer farmers towards embracing sustainable agriculture.

In his research, Aerni (2009) warns that public debates on sustainable agriculture are usually shaped by the dominant political interest groups, which simultaneously contribute to and respond to the shaping of public opinion. He assessed the extent to which the attitude of these groups is linked to the public's opinion about sustainable agriculture and how these understandings differ between countries with different agricultural policies. Two research projects focusing on perceptions of sustainable agriculture were carried out, one in Switzerland and one in New Zealand. Analysis of the data showed that between citizens of the two countries there exist considerable differences in how sustainability is understood. While in Switzerland citizens felt that agriculture in Switzerland is already considerably sustainability-oriented, the respondents in New Zealand felt for the most part that certain economic and technological changes need to be implemented in order to make agriculture more sustainability-oriented. The results accord with the fact that in Switzerland, agricultural policy is more defensive, while the approach in New Zealand is more linked to that country's sustainable agricultural policy, which is in turn linked to the competitiveness of the economy as a whole.

Studies conducted in developing countries are very specific regarding the inclusion of factors that impact the perception of the sustainable development of agriculture. A common point of all those studies is that they reveal the public's sensitivity to reducing poverty, achieving the sustainable use of natural resources, controlling erosion and soil degradation, the correct use of fertilisers and pesticides and investments in research and expanding services (Bhutto & Bazmi, 2007). For example, Rao & Hall (2003) conducted a study in India (for a similar study from Bangladesh see Rahman, 2003) which showed that the reasons for the barriers to reducing poverty and implementing sustainable development in agriculture lie in either a lack of state funds or a negative perception of modern agricultural technologies among farmers. Farmers believe that modern technology has harmful effects on the environment such as reduced fertility of the soil and harmful effects on health and lead to a greater occurrence of diseases in plants (Tathdil et

al., 2009). A similar situation exists in other third-world countries (see, for example, Taylor et al., 1993 regarding Malaysia).

While the above mentioned countries face a lack of recognition of the concept of sustainable agriculture, studies conducted in the US reveal different problems. Alonge & Marting (1995) found that, on the one hand, farmers are more aware of and acquainted with the negative environmental and social effects of conventional agriculture; on the other hand, this is not making an impact on the acceptance and implementation of sustainable agricultural practices. Attempts to explain the low rate of implementation of sustainable agricultural practices have been numerous and diverse. This phenomenon is often explained, for example, through a desire for increased productivity through the use of machines which make a negative impact on the environment (Swanson et al., 1986; Naper et al., 1984). Studies in the US have examined the many possible impacts on the acceptance of the new method of farming, taking into account economic, social, physical and technical aspects of agriculture. Rao & Rogers (2006) stressed the importance of the following factors: the perception of risk and profitability, certainty and uncertainty regarding the acceptance of sustainable agriculture; the volume of the required information; and attitude towards sustainable agriculture. Certain influential factors were also identified: demographic factors, knowledge, awareness, group mentality, technological characteristics and access to information. The results reveal a positive and strong correlation between age, experience in farming, education and socio-economic status, intensiveness of cultivation, motivation and innovation, and the use of information, and the acceptance of sustainable agriculture (Hosseini et al., 2011).

In Slovenia, Juvančič & Slabe Erker (2006) dealt with the question of the extent to which political instruments are harmonised with the public interest in the field of multi-purpose farming. The results of the research revealed that broad political support for the sustainable management of arable land and the preservation of the countryside in Slovenia is generally in accordance with the public's preferences. Conversely, the public gives high priority to the aspect of safe and quality food, while political support for this aspect is low.

3 Methodology

The data set used in the research was obtained through a survey conducted in the framework of the »Parameters of the Sustainable Development of Agriculture« research project (2012). Two different survey forms were used to obtain the data; the forms differ based on whether they were completed by people who have a farm at home or the general public. The observed units from the first and the second survey form are understood as two independent samples, the »public« sample and the »farmers« sample.

To test the hypothesis that the attitudes of the public on the one hand and of farmers on the other towards sustainable agriculture in Slovenia do not

differ, a Mann-Whitney non-parametric test for two independent samples was used. This test is equivalent to a t-test and is used when dealing with descriptive variables on an ordinal scale. Rank values are used to calculate the test statistics. This is why numeric variables are converted to ranks so that the lowest values are assigned the lowest rank. The Mann-Whitney test is based on the test statistic U , defined for the group i , whereby: (Mann & Whitney, 1947)

$$U_i = n_1 n_2 + \frac{n_1(n_1 + 1)}{2} - R_i \quad (1)$$

with R_i being the total of ranks of the group i .

3.1 Survey form

To facilitate easier statistical data processing, the questions used in the survey were of the closed type and had pre-defined answers. The survey forms for the general public and for farmers encompass 5 content questions with multiple statements, whereby the respondent was asked the degree to which he/she does or does not agree with the statement in question; responses were given on a scale of 1 to 5. Therefore only the perception of the respondents was assessed, as they only gave a mark or grade to each statement. The sixth and final question contains general demographic questions about the respondent: gender, age, education, region where the respondent lives. The survey form completed by the target group of farmers also contains two additional content questions and two additional demographic questions pertaining to the size of the farm in terms of cadastral income and the predominant orientation of the farm.

We wished to use the survey form to assess which of the highlighted, broadly defined contents best characterises sustainable agriculture in the opinion of the respondents; how high a priority the respondents attach to sustainable development in agriculture as opposed to other areas of society; and the importance of certain functions or objectives of agriculture. In the next set of questions, the respondents assessed the developmental component of sustainable agriculture. They rated the development of agriculture in Slovenia in the past ten years in terms of the provision of food, enabling the sustenance of farmers and environmental preservation and evaluated individual reasons behind the developmental path they had chosen.

The surveys were conducted from November 2011 to the end of February 2012. A random sample of people was selected, whereby efforts were made to ensure that the respondents were suitably distributed in terms of gender, age, education and region, and also in terms of farm size and farm activities in the case of respondents to the survey for the farmers target group. The selection of units for the sample included people who were willing to participate in the survey. The survey was conducted in person.

507 survey forms were completed for the general public and 329 survey forms were completed for the farmers group, for a total of 836 survey forms. Among the survey forms completed for the general public group, it was found that five forms were not completed in their entirety; these forms were not included in the analysis. The same number of incomplete forms was found among the survey forms for the farmers group.

3.2 Descriptive statistics

826 valid observations are available in our database (hereinafter the sample). Most of the respondents (about a third) from the »public« sample, and about a fourth of the respondents from the »farmers« sample come from the Central Slovene region. The second most represented region in the survey is Southeast Slovenia. The structure of the respondents by region matches the structure of the population of Slovenia by region. Just under 80% of the respondents in each sample were between the ages of 24 and 64. In the population of Slovenia this broad age category is represented by a share of two-thirds; persons over 64 years of age represent about 20% of the population, and young people about 8%. This reveals a problem in our sample from the standpoint of age structure, which was a result of the fact that older people did not wish to respond to the survey. Women are slightly more represented in the »public« sample than in the population, where they account for 51% of the population. They made up only a little more than 40% of the respondents in the »farmers« sample. This response was to be expected for the surveys conducted among farmers. Higher and vocational education were prevalent among respondents from the »public« sample, with more than half the respondents falling in these categories (compared to 20% in the population); 31.3% of the respondents had a secondary education (compared to 32% in the population), followed by 11% with a Masters or a Doctorate and 3.4% with a primary education (compared to 20% in the population). The above average share of respondents with a higher or vocational education relative to the general population is a result of the fact that people with a primary education did not wish to complete the survey. In the »farmers« sample, secondary education predominates, with approximately half the respondents falling in this category; a little over a third of the respondents had a higher or vocational education. In light of the noted differences in the demographic characteristics of the sample, we also checked any differences in individual answers in terms of these characteristics; it was found that the answers do not vary to a statistically significant degree among respondents when cross-checked with the categories of gender, age, education or region of residence.

Table 1: Socio-economic characteristics of the sample of respondents

Variable	General public (N=502)		Farm households (N=324)	
	1st most frequent reply	2nd most frequent reply	1st most frequent reply	2nd most frequent reply
Region	Central Slovenia (33.5%)	Southeast (13.1%)	Central Slovenia (25.9%)	Southeast (16%)
Age category	24–44 (56.6%)	44–64 (21.9%)	44–64 (40.5%)	24–44 (40.1%)
Gender	Female (61.8%)	Male (35.7%)	Male (56.5%)	Female (43.5%)
Education	Higher and vocational (52%)	Secondary (31.1%)	Secondary (50.2%)	Higher and vocational (36.1%)

In the »farmers« sample, farms with a cadastral income of between €1000 and €2500 predominate, followed by the category of farms with a cadastral income of between €500 and €1000; 18.1% of the respondents reported farms with a cadastral income in the €2500–€7500 range, and 15% reported farms with a cadastral income of between €200 and €500; the least represented category was farms with a cadastral income in excess of €7500 (8%). In terms of the main activity at the farm, mixed farms predominate, followed by farms where animal husbandry is the main activity (33%); 9.4% of farms have a predominant emphasis on arable farming, and permanent crops were the predominant activity at the farms of 8% of the respondents. Compared to the population, our sample had more mixed farms and fewer farms focused on arable farming. Data from the Statistical Office of the Republic of Slovenia shows that a little over 56% of farms in Slovenia focus on animal husbandry, with 22% of farms focusing on arable farming. Differences in responses were cross-checked using these characteristics and no statistically significant differences were found.

4 Results

4.1 How the general public and farmers understand sustainable agriculture

High average marks for all statements regarding what best characterises sustainable agriculture and the results of a non-parametric χ^2 test for each statement, which confirms statistically significant differences between the observed and expected frequencies ($p = 0.000$), prove that the public and farmers generally have a broad understanding of and attach the same degree of importance to all aspects of agricultural sustainability – environmental aspects, social aspects and economic aspects. Average marks for the statements differ only slightly between the two groups of respondents (cf. Graph 1).

Graph 1: A comparison of average marks given by the public and farmers on what best characterises sustainable agriculture

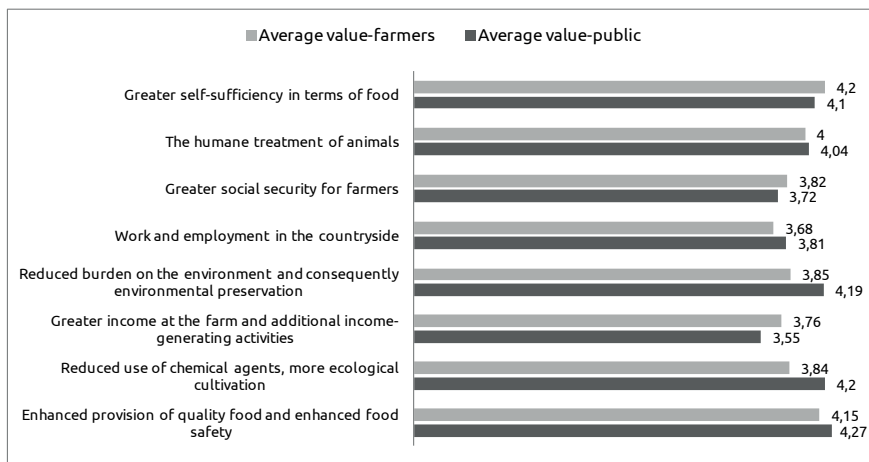


Table 2: Mann-Whitney test for statements about what best characterises sustainable agriculture

	Mann-Whitney U	Wilcoxon W	Z	Asymp. Sig. (2-tailed)
Enhanced provision of quality food and enhanced food safety	75865.000	128515.000	-1.715	.086
Reduced use of chemical agents, more ecological cultivation	64993.500	117643.500	-5.131	.000
Greater income at the farm and additional income-generating activities	71279.000	197030.000	-3.079	.002
Reduced burden on the environment and consequently environmental preservation	68672.000	121322.000	-3.974	.000
Work and employment in the countryside	78695.000	131345.000	-.772	.440
Greater social security for farmers	75628.000	201379.000	-1.726	.084
The humane treatment of animals	78208.500	130858.500	-.934	.350
Greater self-sufficiency in terms of food	77986.000	203737.000	-1.021	.307

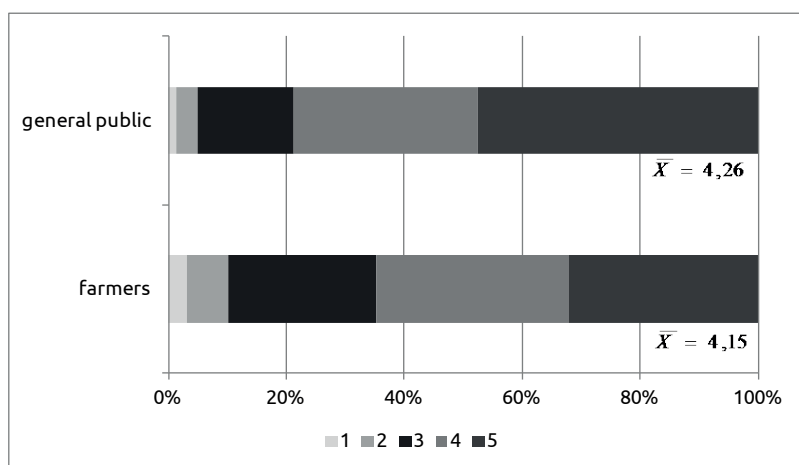
The Mann-Whitney test confirmed that the responses given by the two groups display a statistically significant difference in the case of only three of the statements (Table 2). For the statements »The reduced use of chemical agents, more ecological cultivation« and »Reduced burden on the environment, and consequently environmental preservation« ($p = 0.000$) there was a greater degree of agreement among the public, while for the statement »Greater income at the farm and additional income-generating activities« ($p = 0.002$)

there was a greater degree of agreement among farmers. The general public attaches greater importance to the environmental determinants of sustainability, while farmers attach greater importance to economic determinants.

4.2 The importance of sustainable agriculture compared to other areas of society and in terms of its functions

The average mark for the importance of sustainable development in agriculture compared to other areas of society was very similar in both groups (Graph 2).

Graph 2: Importance of sustainable agriculture compared to other areas of society (on a scale of 1 to 5, %)



The results of the Mann-Whitney test were also not statistically significant ($p = 0.147$), which means that the public and farmers attach a similar degree of importance to sustainable agriculture compared to other areas of society.

A comparison of the average marks given to the importance of individual functions or objectives of sustainable agriculture (Graph 3) reveals that considerable differences appear in marks for the statements »Preserving the natural and cultural heritage«, »Supervised use of fertilisers and phytopharmaceutical agents«, »Stabilisation and growth of income«, »Reduced burden of agriculture on the environment« and »Protecting and maintaining the quality of the water, soil preservation«. The statement »Stabilisation and growth of income« received the highest marks among farmers, while statements that apply to the environment were given the highest marks by the general public.

Graph 3: A comparison of average marks given by the public and by farmers for the importance of functions and objectives of agriculture



We also conducted a Mann-Whitney test for the statements listed above in order to determine whether a statistically significant difference could be noted between responses from the two groups of respondents. Table 3 shows that responses statistically differ between the groups for those statements for which a notable difference in average marks ($p \approx 0.000$) has already been noted, and also for two more statements: »Safe, quality food«, to which the public attaches greater importance, and »Preserving autochthonous and traditional varieties of cultivated plants and approaches to animal husbandry«, to which farmers attached greater importance. Again, it appears that the general public attaches somewhat greater value to the environmental dimension of sustainability, while farmers stress the economic dimension. This indicates the consistency of respondents in responding to the questions in the survey form.

Table 3: Mann-Whitney test for statements about the importance of individual functions or objectives of sustainable agriculture

	Mann-Whitney U	Wilcoxon W	Z	Asymp. Sig. (2-tailed)
Provision of food	79901.000	132551.000	-.419	.675
Increasing supply	81012.500	133662.500	-.047	.962
Safe, quality food	71695.500	124345.500	-3.287	.001
Stabilisation and growth of income	64922.000	190673.000	-5.139	.000
Increased efficiency of work	77218.000	202969.000	-1.252	.211
Implementing new technologies	75143.000	200894.000	-1.898	.058
Products typical of a region	78210.000	130860.000	-.929	.353
Protecting farm lands	78377.500	131027.500	-.906	.365
Maintaining farm activity in the cultural region	79998.500	132648.500	-.371	.711
The preservation of semi-natural systems of farming	74820.500	127470.500	-2.008	.045
Protecting and preserving the quality of water and soil	67057.500	119707.500	-5.111	.000
Preserving autochthonous and traditional varieties of cultivated plants and approaches to animal husbandry	72578.000	125228.000	-2.758	.006
Reduced burden of agriculture on the environment (water, air, earth)	68497.500	121147.500	-4.212	.000
Supervised use of fertilisers and phytopharmaceutical agents	63570.500	116220.500	-6.087	.000
Creating new jobs	81152.500	133802.500	-.003	.998
Ensuring the habitation of the countryside	80810.000	133460.000	-.111	.912
Young, educated farmers	80151.000	205902.000	-.324	.746
Improving road and other infrastructures	79286.000	205037.000	-.588	.557
Preserving the natural and cultural heritage	67952.500	120602.500	-4.172	.000
Improving the quality of life	75733.500	128383.500	-1.802	.072

4.3 Perception of the development of agriculture in Slovenia and assessing reasons for this development

Lastly, we were interested in people's views regarding how sustainable agriculture has developed over the past ten years (Table 4). Respondents were asked to assess development from three perspectives: the provision of food, the sustenance of farmers, and preserving the environment. A comparison of responses makes it clear that for the most part, both groups felt that development has taken a turn for the worse, in particular from the

perspective of the sustenance of farmers. Regarding the provision of food, the percentage of the public that felt that the situation is deteriorating is lower, while the opposite is true for the aspect of environmental preservation. It is interesting that in both groups, the share of those who noted that development over the past ten years is taking a turn for the better or remains on the same level is roughly the same.

Table 4: Perceptions of the development of sustainable agriculture in the past ten years from three perspectives

	Provision of food		Sustenance of farmers		Environmental preservation	
	Farmers %	Public %	Farmers %	Public %	Farmers %	Public %
Turn for the better	24.4	30.5	11.1	8.5	33.3	22.6
Turn for the worse	54.6	46.1	74.1	71.3	41	54.3
At the same level	21	23.4	14.8	20.2	25.6	23

The Mann-Whitney test shows that in defining their opinion on whether the situation has taken a turn for the better or a turn for the worse in terms of the different aspects of the sustainable development of agriculture, responses do not statistically differ between the two groups. In both groups, the largest share consisted of those who felt that development has taken a turn for the worse.

In light of the focus of agricultural policy in the past ten years, farmers' perception of the development of agriculture seems very realistic. In this period, the state was supposed to invest funds primarily in the sustainable use of natural resources and regional preservation (approx. 80 million euros in 2010), with fewer funds going to enhancing the quality of life in the countryside (approx. 60 million euros in 2010) and the fewest going to improving the competitiveness of the agricultural foods sector (approx. 20 million euros in 2010). From 2000 to 2010, the share of total public funds for agricultural policy experienced a four-fold increase (Juvančič & Slabe Erker, 2006). Economic data also confirms the poor state of affairs in the economic sector. Despite increases in agricultural production, a trend of declining GVA could be noted. In the 2000-2010 period, the share of GVA from agriculture in Slovenia fell by 0.8%, and by an average of 1% for the EU-15 countries. From 2002 to 2009, the share of food expenditure among total expenditure fell in Slovenia by a little over 2%, with the largest share of expenditure linked to imported food. Since 2005, the agricultural sector in Slovenia has not been commercially viable (the income-to-cost ratio is 0.9 or 0.8) (Eurostat, 2011).

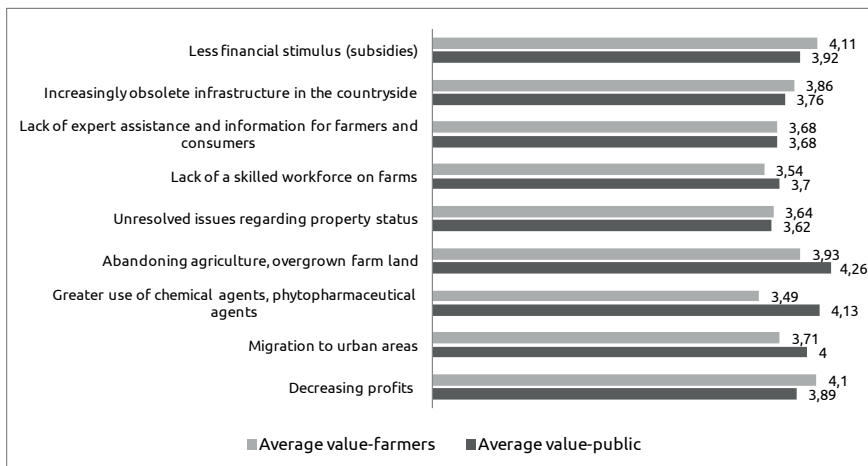
On the other hand, the general public's pessimism about achieving the environmental sustainability of agriculture is exaggerated, contrasting as

it does with favourable environmental-agricultural achievements and the current orientation of agricultural policy.

Respondents who said that development has taken a turn for the worse in terms of these two aspects were asked to state the reasons for their opinion (cf. Graph 4). The greatest differences in average marks were noted for the statement about the use of chemical agents, as the public felt that the increased use of these is a reason for the poor development of sustainable agriculture. The public also gave higher marks to statements linked to an increase in the overgrowth of arable land and migration to urban areas, while among farmers, a higher average mark was given to the statement about lower profits and lack of financial stimulus (subsidies) as a reason for the turn for the worse that in their opinion agricultural development has taken.

Once again, it appears the general public gives greater weight to environmental and spatial factors as reasons for the turn for the worse they feel agricultural development has taken, while farmers cite economic factors.

Graph 4: Comparison of average marks for statements from the public and farmers regarding why the development of sustainable agriculture has taken a turn for the worse over the past ten years

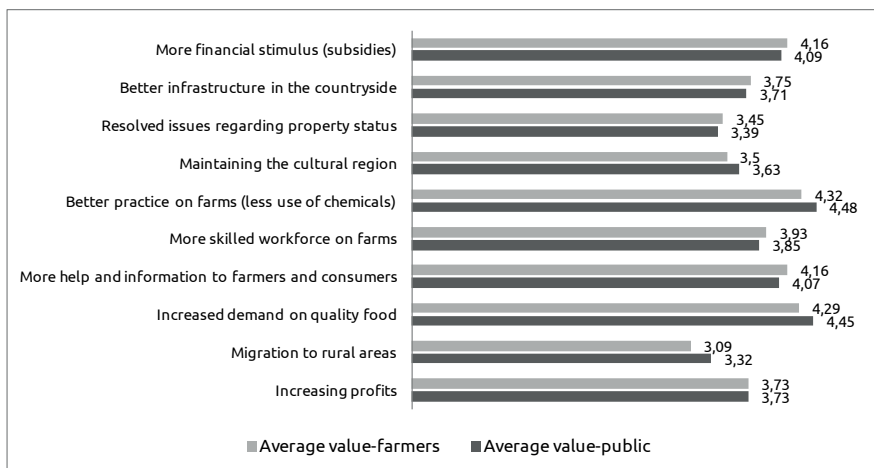


Here as well, a Mann-Whitney test was conducted for the individual statements. The results of the test (Table 5) make it clear that the differences between responses from the two groups to the statements discussed above are statistically significant.

Table 5: Mann-Whitney test for statements about reasons why the development of sustainable agriculture has taken a turn for the worse

	Mann-Whitney U	Wilcoxon W	Z	Asymp. Sig. (2-tailed)
Decreasing profits	22352.500	59208.500	-2.833	.005
Migration to urban areas	22815.000	41536.000	-2.469	.014
Greater use of chemical agents, phytopharmaceutical agents	18366.000	37087.000	-5.724	.000
Abandoning agriculture, overgrown farm land	22591.500	41312.500	-2.688	.007
Unresolved issues regarding property status	25033.500	61889.500	-.820	.412
Lack of a skilled workforce on farms	24447.000	43168.000	-1.251	.211
Lack of expert assistance and information for farmers and consumers	25640.000	62496.000	-.375	.707
Increasingly obsolete infrastructure in the countryside	24504.500	61360.500	-1.210	.226
Less financial stimulus (subsidies)	22842.000	59698.000	-2.459	.014

Graph 5: Comparison of average marks for statements from the public and farmers regarding why they feel the development of sustainable agriculture has taken a turn for the better over the past ten years



A greater degree of harmonisation between the responses from the two groups could be noted in reasons behind the view that development is taking a turn for the better (cf. Graph 5), as the average marks in the two groups are quite similar. The part of the public which felt that development is

in fact headed in the right direction gives credit for this development, on the production side, to improved farming practices and, on the consumption side, to customers who demand quality, domestically produced foods. People attach little weight to migration to the countryside as a factor behind the perceived improvement in agricultural development. The public (especially the general public) is obviously very polarised in its perception of advances in the field of the environment.

The results of the Mann-Whitney test also show a relatively similar assessment of reasons between the two groups of respondents.

Taking into account data on the condition of the environment and healthy food, we feel it is safe to say that despite differences in the public's opinion and perceptions, both factors are changing for the better. This is also borne out by a cursory overview of certain data on the condition of the environment. Over the past ten years, for example, the so-called oxygen balance, that is the difference between intake and output of oxygen of arable land, has improved, from 101 kg N/ha in 2003 to 64 kg N/ha in 2007 (Eurostat, 2011). Average use of phytopharmaceutical agents in Slovenia in the period 2000–2007 was a little over 125 kg per hectare. Since 2000, the use of phytopharmaceutical agents has fallen: in 2007, it was 16% lower than in 2002 (Statistical Office of the Republic of Slovenia, 2009). The sale of phytopharmaceutical agents in Slovenia in the period 2000–2005 decreased by approximately 5% (Eurostat, 2011). The positive response of agricultural economies to agricultural policies which support the expansion of ecological agriculture has also grown from year to year. From 1999 to 2008, the area of land intended for ecological agriculture increased from 2,400 hectares to 29,836 hectares, from 0.5% to 6.1% of all arable lands in use (ARSO, 2009). Another piece of data which confirms that the state is devoting attention to the question of safe and quality food is the share of expenditure of research and development linked to food safety within the gross social product (GSP); at over 0.5%, it is wholly comparable with the average for the EU-27 (0.53%) (Eurostat, 2011).

5 Conclusion

Except on the declarative level, expert bases which would provide a well-argued demonstration of the level of sustainable orientation in agriculture and agricultural policy are not available. A similar deficit is to be noted in the area of research of support for this concept among the public; this was the focus of this article.

We studied the opinion of the general public and farmers about the importance of sustainable agriculture in Slovenia. It was determined that people feel that the sustainable development of agriculture is very important, and that the public places more of an emphasis on the environmental dimensions of sustainability, while farmers emphasise the social dimension of sustainability, with specific emphasis on their income situation. In the

opinion of both target groups, sustainable agriculture is best characterised by the terms self-sufficiency in terms of food, safe food and quality food. This indicates a favourable prognosis for sales of domestically produced food in the future. That is why at the present, at a time when sustainable agricultural practices are in general not economically justifiable and citizens are already aware of the health and environmental benefits of quality, safe food (though this awareness has yet to be borne out by actual consumer habits), existing stimulus measures from the political sphere are very welcome. Here we have in mind stimulus on the production side, such as measures for encouraging domestic consumption, direct payments for extensive grazing systems and for dairy products in hilly areas, support for groups of manufacturers in disseminating information and accelerating sales of products included in food quality certification schemes (PRP – measure 133), and stimulus on the consumption side, such as programmes for disseminating information and promoting safe food.

People also attach a great deal of importance to environmental preservation, which could be achieved through a reduced burden on the environment and through the protection and preservation of quality (drinking) water and soil. This primarily implies the reduced use of chemical agents or the reduced unsupervised use of fertilisers and phytofarmaceutical agents and improved agricultural practices. Ecological agriculture fulfils all these demands. Measures taken by politics which impact this segment apply for the most part to measures for improving the environment and areas (agricultural-environmental payments and payments for areas with restrictive factors). This aspect is also being increasingly taken into account in practice; the public, on the other hand, fails to perceive this or is split in its perception of the situation. For this reason, positive information about developments in this field is urgently needed.

In the research project, we found that the public perceives that the sustainable development of agriculture in Slovenia is taking a turn for the worse in terms of the sustenance of farmers. While a considerable amount of financial assistance in the form of various subsidies is provided for farmers, some farmers meet with difficulty in obtaining this assistance and are therefore solely dependent on income generated through the sale of the food they produce. Economic data also confirms the poor state of affairs in this field. Statistically significant differences between the general public and farmers appeared precisely in understandings of sustainable advances in agriculture in the field of the environment. The general public is considerably polarised. On the one hand, a majority feel that development in the field of the environmental sustainability of agriculture is taking a turn for the worse, even though environmental-agricultural indicators paint a different picture, namely that the actual situation in this field has seen extraordinary advances and that in this regard Slovenia is comparable to other European countries. On the other hand, a large part of the general public (though not

a majority) credits environmental factors with bringing about improvements in development. By comparison, the perceptions of farmers are nearer to reality and farmers are well aware of shortcomings in the fields of quality of life and farmers' poor income situation. This finding is a call for the provision of well-balanced, objective information to the public.

The idea of sustainable agriculture has been a subject of debate for quite some time. Certain movements in this direction can be noted; however, the extent of these developments is not what it should be. The share of those who purchase ecologically processed domestically produced food in Slovenia remains low. The own sale by farmers of agricultural products in food markets in 2010 amounted to little over 3% of the total GVA of agriculture (Statistical Office of the Republic of Slovenia, 2011). With such weak support for sustainable agriculture from consumers, it is difficult, even with assistance from the state, to ensure the economic and social security of the farmer. It is important that these matters not only be discussed on the theoretical level; attempts to force changes in peoples' behaviour must not be limited to rules and regulations, but must also seek to change their convictions and values in order to get them to change and ultimately abandon currently dominant patterns of life and behaviour. This is a long-term process, and as such would be easiest to implement through the use of a suitable system of education. People will change their patterns of behaviour if they are appropriately motivated, informed and notified. An exemplary step in this direction could be guaranteed markets for fruits and vegetables that spoil quickly (the public sector, for example).

The focus of the research was on personal opinions: what people think about an individual thing or an individual function of sustainable agricultural development. A quantitative measure of these views can only be provided through the use of public opinion surveys, which, as we know, are not very objective. Additionally, personal opinions do not always express the current situation; in other words, perceptions can deviate from reality. That is why we confronted the results of our research with the actual situation. We could have improved our research by conducting the surveys on a larger statistical sample, as this would have provided a basis for stating that the conclusions and opinions of individuals are in reality those deduced in the research. It would be interesting if, in further research projects, we were to study what impacts and shapes people's opinions. We could have focused on personal values or on the effects of various media on individuals' opinions, which would have enabled us to identify factors which need to be addressed in efforts to change or strengthen awareness of sustainability, production practices, consumer habits and/or food consumption patterns. We believe that in this manner it would be possible to achieve synergetic effects in the economic, social and environmental fields of development.

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Temeljne dileme o ustavni ureditvi oblikovanja vlade v Republiki Sloveniji

UDK: 321(497.4)(045)

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IZVLEČEK

Tudi dvajset let po sprejemu ustave so ena od temeljnih ustavnih dilem političnih elit in ustavnopravne stroke spremembe ustavne ureditve imenovanja ministrov. Pri tem sta aktualni predvsem naslednji varianti: po prvi naj bi ministre po zgledu na nemško ustavo imenoval predsednik republike na predlog v državnem zboru izvoljenega predsednika vlade, po drugi pa naj bi državni zbor volil predsednika vlade skupaj s predloženo listo kandidatov za ministre. Toda imenovanje ministrov po kanclerskem modelu, po katerem parlament sploh ne glasuje o njihovem imenovanju in tudi ne o investiturni zaupnici vladi, bi oslabilo njihovo legitimnost in preveč okrepilo ustavni položaj predsednika vlade. Po drugi strani pa bi bile volitve predsednika vlade skupaj s kandidati za ministre bolj pregledne in legitimne. Toda brez spremembe volilnega sistema, iz katerega sistemsko izhaja strankarska fragmentacija parlamenta, ne bo mogoče vzpostaviti stabilne vlade.

Ključne besede: parlamentarni sistem, kanclerski model, imenovanje ministrov, primerjalne ureditve, volilni sistem

JEL: K0

1 Opustitev imenovanja ministrov v državnem zboru kot odklik od parlamentarnega sistema

Tudi dvajset let po sprejemu ustave je še vedno aktualna dilema o spremembi ustavne ureditve o imenovanju ministrov, po kateri ministre imenuje in razrešuje državni zbor na predlog predsednika vlade (112/1. člen) in ki ni primerljiva z ustavnimi ureditvami imenovanja ministrov niti v klasičnih parlamentarnih sistemih niti v nemškem parlamentarno-vladnem sistemu. Na podlagi prevladujočega mnenja, po katerem naj bi imenovanje ministrov v državnem zboru ne bilo niti konceptualno niti funkcionalno povsem v skladu s temeljnimi načeli parlamentarnega sistema, sta vlada in skupina poslancev leta 2001 vložili v ustavnorevidijski postopek predloga za spremembo ustavne

ureditve imenovanja ministrov, ki sta še danes v središču pozornosti politične in strokovne javnosti.

Vlada je na podlagi mnenja, po katerem naj bi bil za pripravo sprememb in dopolnitev ustavne ureditve imenovanja ministrov najprimernejši »kanclerski model«, predlagala, da bi spremenili prvi odstavek 112. člena tako, da bi se glasil: »Ministre imenuje in razrešuje predsednik republike na predlog predsednika vlade«.¹

Preden se opredelimo do vladnega predloga, naj razvojno in problemsko predstavimo »kanclerski model« oblikovanja nemške vlade. Ustavna komisija Parlamentarnega sveta je namreč v osnutku Temeljnega zakona oziroma ustave predlagala, da naj bi po zgledu na klasični parlamentarni sistem, ki vključuje tudi glasovanje o investiturni zaupnici vladi, zvezni predsednik imenoval zveznega kanclerja, na njegov predlog pa zvezne ministre. Toda po kasnejših izčrpnih razpravah je parlamentarnemu svetu predlagala, da zvezni parlament na predlog zveznega predsednika izvoli zveznega kanclerja, s tem da zvezni predsednik na predlog zveznega kanclerja imenuje zvezne ministre (Hermes, 1998, str. 1209–1210.). Pri presoji ustavne komisije je namreč prevladalo mnenje, da mora Nemčija zaradi negativnih izkušenj z nestabilnimi vladami v obdobju weimarske ustave omejiti pristojnosti zveznega predsednika ter okrepiti vlogo zveznega parlamenta in vlade, predvsem pa pristojnosti zveznega kanclerja (von Beyme, 2004, str. 261).

Kot je razvidno že iz njenih različnih temeljnih modelov in tudi iz njenih dolgotrajnih razprav, je že ustavna komisija imela določene pomisleke glede sprejete ustavne ureditve o oblikovanju zvezne vlade. Tudi vidni ustavni pravniki, ki sicer poudarjajo zgodovinski in politični kontekst, v katerem je bila ustava sprejeta, ugotavljajo, da ustavna ureditev imenovanja zveznih ministrov ni združljiva s temeljnimi načeli parlamentarnega sistema. Tako Roman Herzog v enem izmed prestižnih komentarjev nemške ustave označuje imenovanje zveznih ministrov na predlog zveznega predsednika brez kakršnega koli sodelovanja zveznega parlamenta kot »predrtje« (*Durchbrechung*) temeljnih načel parlamentarizma (gl. Herzog, 1993, 62. člen, robna opomba 76). Fritz Münch (1954, str. 159–160) komentira tak postopek imenovanja zveznih ministrov celo kot »obvod« (*Abwendung*) od parlamentarnega sistema. Tudi v naši strokovni literaturi lahko preberemo kritično ugotovitev, po kateri »nemški kancler oblikuje vlado v bistvu sam, pri čemer parlament ne sodeluje z nikakršnim glasovanjem, le kanclerja samega izvoli, pa še brez vlade« (Krivic, 2002, str. 281).

Vlada se v obrazložitvi svojega predloga sklicuje na »kanclersko« ureditev imenovanja zveznih ministrov, ki pa je bila, kot smo ugotovili, sprejeta v družbenem in političnem kontekstu v povojni Nemčiji kot pragmatični kompromis. Pri tem podcenjuje načelo ljudske suverenosti, po katerem je

¹ Predlog za začetek postopka za spremembe ustave Republike Slovenije z osnutkom ustavnega zakona, Poročevalec Državnega zbora Republike Slovenije, št. 69/2001 z dne 6.8.2001, str. 18.

v parlamentarnem sistemu parlament izvor demokratične legitimnosti vlade, hkrati pa precenjuje pomen načela delitve oblasti v postopku oblikovanja vlade. Bistvena razlika med ustavno ureditvijo oblikovanja vlade v klasičnem parlamentarnem sistemu in v nemškem parlamentarno-vladnem sistemu, kot je dosledno poimenovan v nemški literaturi, je namreč v tem, da klasične vlade temeljijo na investiturni zaupnici, nemška zvezna vlada pa temelji le na investituri zveznemu kanclerju (Hermes, 1998, str. 1188). Z morebitno opustitvijo imenovanja ministrov v državnem zboru bi tako omejili demokratično legitimnost vlade, hkrati pa priznali predsedniku vlade »kanclerski« položaj pri njenem oblikovanju.

Ker v našem parlamentarnem sistemu ne poznamo investiturne zaupnice in ker vladni predlog ne predvideva nikakršne druge oblike glasovanja državnega zbora o podpori ministrom, bi pomenila opustitev glasovanja o imenovanju ministrov v državnem zboru odmik od parlamentarnega sistema.

2 Primerjalni prikaz istočasnega glasovanja o volitvah predsednika vlade in o kandidatni listi za ministre v parlamentu

Po predlogu skupine poslancev, ki je bil vložen v ustavnorevidijski postopek leta 2001, naj bi sicer ohranili imenovanje ministrov v državnem zboru, toda v okviru sprememb o ustavni ureditvi oblikovanja vlade kot celote. Predlog je skupina vsebinsko oblikovala, z nekaterimi manjšimi spremembami, na podlagi strokovnega osnutka, ki sta ga pripravila Peter Jambreč in Gregor Virant leta 2000 v okviru vlade Andreja Bajuka.²

Po tem predlogu naj bi spremenili 2. odstavek 111. člena tako, da bi se glasil: »Predsednika vlade skupaj s predloženo listo kandidatov za ministre voli državni zbor z večino vseh poslancev, če ni s to ustavo drugače določeno.« Glasovanje naj bi bilo javno. Državni zbor naj bi glasoval o izvolitvi predsednika vlade skupaj z listo kandidatov za ministre tudi v morebitnem drugem in tretjem krogu, s tem da bi predsednik republike po neuspešnem drugem oziroma tretjem glasovanju razpustil državni zbor in razpisal nove volitve.

Strokovna javnost je z naklonjenostjo sprejela predlog predvsem kot iskanje ustavnih možnosti za racionalnejše oblikovanje vlade, hkrati pa je bil del javnosti izrazito kritičen do osrednjega dela predloga, po katerem naj bi državni zbor glasoval o izvolitvi predsednika vlade skupaj z listo kandidatov za ministre. Po še posebej kritičnem mnenju naj bi bil predlog, po katerem naj bi državni zbor »v enem zamahu« glasoval o oblikovanju vlade, načelno in praktično nezdržljiv z oblikovanjem vlade v parlamentarnem sistemu, v katerem šef države v prvi fazi po različnih postopkih oblikuje vlado, v drugi

² Predlog za začetek postopka za spremembo ustave Republike Slovenije z osnutkom ustavnega zakona, Poročevalec Državnega zbora Republike Slovenije, št. 1/2002 z dne 9. januarja 2002, str. 16.

fazi pa praviloma parlament glasuje o investiturni zaupnici vladi (prim. Krivic, 2001, str. 85–86).

Predlog je bil v primerjavi s tradicionalnimi postopki oblikovanja parlamentarnih vlad res presenetljiv, toda nekatere novejšje ustave so že uvedle istočasno glasovanje o oblikovanju vlade kot celote. Med temi sta tudi ustava Republike Srbije in ustava Črne gore. Tako srbska ustava določa: »Ljudska skupščina istočasno glasuje o programu in izvolitvi predsednika in članov vlade« (127/3. člen). Tudi črnogorska ustava vsebuje vsebinsko identično določbo: »Skupščina istočasno odloča o programu mandatarja in o njegovem predlogu za sestavo vlade« (103/3. člen; prim. Šuković, 2009, str. 32–33). Po obeh ustavah, kajpak logično, predlaga kandidata za predsednika vlade oziroma mandatarja predsednik republike.

Medtem ko predlog skupine poslancev izrecno predvideva javno glasovanje, srbska in črnogorska ustava ne določata načina glasovanja, tako da dopuščata javno glasovanje. Tako kot po obravnavanem predlogu je za izvolitev predsednika vlade skupaj z njenimi člani tudi po obeh ustavah potrebna večina glasov vseh poslancev. Vidni posebnosti srbske in črnogorske ustave sta predstavitev programa, pri nas po ustrezni določbi poslovnika državnega zbora (226/2. člen), in istočasno glasovanje tudi o programu vlade.

Srbska in črnogorska ustava sta tako po zgledu na nemško ustavo prevzeli volitve predsednika vlade v parlamentu, hkrati pa srbski in črnogorski parlament istočasno glasujeta o izvolitvi predsednika vlade in o njeni sestavi. Aleksandar Fira (2007, str. 70–71), eden izmed eminentnih srbskih ustavnih pravnikov, je označil srbsko vlado po sedanji ustavni ureditvi kot »kanclersko vlado«. Po drugi strani državni zbor, kot vemo, v postopku oblikovanja vlade glasuje dvakrat, in sicer najprej o izvolitvi predsednika vlade, nato pa še o imenovanju ministrov.

Hkrati je treba posebej ugotoviti, da predlog skupine poslancev predvideva, da bi moral kandidat za predsednika vlade državnemu zboru v sedmih dneh posredovati predlog liste kandidatov za ministre. Srbska ustava določa, da se narodna skupščina razpusti, če se v 90 dneh od dneva njenega konstituiranja »vlada ne oblikuje« (109/3. člen), črnogorska ustava pa v postopku oblikovanja vlade ne določa rokov. Predvideni sedemdnevni rok za predložitev liste kandidatov za ministre, kot ga je predlagala skupina poslancev, je v parlamentarnem sistemu s širokimi vladnimi koalicijami, v katerem so potrebna daljša in zahtevna pogajanja o programu vlade in o njeni personalni sestavi, vsekakor prekratek.

Ustavna ureditev oblikovanja vlade, kot jo predlaga skupina poslancev in kot je določena s srbsko in črnogorsko ustavo, je za ustavnopravno stroko aktualna in izzivalna tudi v širšem sistemskem pomenu (prim. Pajvančič, 2009, str. 163–171). Slovenska ustava je namreč po nemškem zgledu poleg volitev predsednika vlade v parlamentu prevzela tudi konstruktivno nezaupnico

vladi, medtem ko sta srbska in črnogorska ustava uvedli klasično nezaupnico vladi. Vse tri ustave poznajo tudi zaupnico vladi, ki je poleg nezaupnice najpomembnejši ustavni institut za ugotavljanje politične odgovornosti vlade v parlamentarnem sistemu. Ker naj bi po predlogu skupine poslancev ohranili tudi sedanjo nezaupnico vladi, z ustreznimi redakcijskimi spremembami, se zastavlja vprašanje, ali ne bi glasovanje o izvolitvi predsednika vlade skupaj s predloženo listo kandidatov za ministre bistveno otežilo glasovanja o nezaupnici vladi. Ob tem pomisleku je treba ugotoviti, da bi bilo glasovanje o novem predsedniku vlade skupaj z listo kandidatov za ministre sicer zahtevnejše, toda hkrati bi bilo glasovanje o morebitni novi vladi kot celoti preglednejše, saj bi omogočilo tudi lažjo presojo usposobljenosti tako kandidata za predsednika vlade kot tudi kandidatov za ministre. V primerjavi s sedanjo ustavno-poslovniško, deloma tudi zakonsko ureditvijo oblikovanja vlade, po kateri državni zbor dvakrat glasuje o njenem oblikovanju, in to lahko celo s podporo različnih koalicij, bi bilo glasovanje o izvolitvi predsednika vlade skupaj z listo kandidatov za ministre v državnem zboru racionalnejše, predvsem pa bolj legitimno, kot če bi po »kanclerski« metodi ministre imenoval predsednik republike na predlog predsednika vlade.

3 Oblikovanje in delovanje vlade ter volilni sistem

Čeprav v sedanji politični situaciji ni realnih možnosti za spremembo ustavne ureditve volilnega sistema, ne moremo mimo ugotovitve, da volilni sistem bistveno vpliva na strankarsko sestavo državnega zbora, posredno pa tudi na oblikovanje in delovanje vlade. Po slovenski ustavni ureditvi so temeljni elementi volilnega sistema sorazmerno predstavništvo, štiriodstotni volilni prag za vstop v državni zbor in odločilni vpliv volivcev na dodelitev mandatov kandidatom (80/5. člen) (Grad, 2009, str. 1728–1731). Toda tudi po določitvi višjega volilnega praga je na vseh volitvah doslej vstopilo v državni zbor sedem oziroma osem političnih strank. Hkrati ima personalizacija volitev dejansko ambivalentno funkcijo: v večinskem volilnem sistemu namreč vodi v polarizacijo glasov, v proporcionalnem volilnem sistemu pa v disperzijo glasov. Uvedba personalizacije volitev v tem obsegu je bila bolj politična koncesija v procesu sprejemanja ustavnega zakona kot pa možnost za sistemsko krepitev vloge volivcev na volitvah. Večjih korekcij v smeri večinskega volilnega sistema ustavni zakon ne dopušča, tako da so še naprej sorazmerno na široko odprta vrata za vstop političnih strank v državni zbor, kar posredno otežuje tudi oblikovanje vlade in slabi njeno stabilnost.³

V primerjavi z našim proporcionalnim volilnim sistemom je Nemčija z zveznim zakonom o volitvah uvedla kombiniran volilni sistem, ki vsebuje prednosti tako večinskega kot tudi proporcionalnega volilnega sistema. Po omenjenem zakonu ima namreč vsak volivec dva glasova, s tem da s prvim glasom neposredno glasuje po sistemu relativne večine za svojega poslanca v volilnem okraju (5. člen), z drugim glasom pa glasuje po čistem

³ O posegu ustavnega zakona v zakonsko materijo gl. Kaučič (2007, str. 54–57).

proporcionalnem sistemu za deželno strankarsko listo (6. člen); pri tem se izračuna število mandatov posameznih strank po številu glasov, ki so jih prejele na zvezni ravni, zaradi česar je bolj korektna oznaka, da gre za personalizirani proporcionalni volilni sistem. Pri razdelitvi mandatov se upoštevajo le stranke, ki so prejele najmanj 5 odstotkov veljavnih glasov. Takšen volilni sistem preprečuje nerazumno strankarsko razdrobljenost parlamenta ter omogoča relativno hitro oblikovanje vlade in njeno stabilnost. Tako rekoč eksotična razlika med slovenskim in nemškim parlamentom, ki izhaja predvsem iz različnih volilnih sistemov, je figurativno razvidna predvsem v tem, da je v slovenskem 90-članskem parlamentu 7 oziroma 8 strank z dvema poslancema narodnih skupnosti, v 656-članskem nemškem parlamentu pa sta praviloma dve močnejši in dve šibkejši stranki.

V Nemčiji, kjer visoka koncentracija parlamentarnih strank praviloma izhaja iz volilnega sistema, je doslej zvezni predsednik predlagal za zveznega kanclerja vodjo tiste strankarske koalicije, ki je zmagala na parlamentarnih volitvah. Z izjemo Helmuta Kohla, ki je bil zaradi hitrega razpada vladne koalicije leta 1983 izvoljen za zveznega kanclerja pri drugem glasovanju, so bili vsi drugi zvezni kanclerji v več kot šestdesetih letih izvoljeni že pri prvem glasovanju. Po drugi strani predsednik republike v Sloveniji zaradi izrazite strankarske razcepljenosti državnega zbora včasih že težko presodi, kot je bilo po nedavnih predčasnih volitvah, katere stranke bi lahko oblikovale vladno koalicijo, ki bi podprla izvolitev njegovega kandidata za predsednika vlade.

Tudi stabilnost nemške vlade ne temelji toliko na konstruktivni nezaupnici, ampak predvsem na visoki stopnji koncentracije, ki jo zagotavlja volilni sistem in sorazmerno trdna strankarska struktura parlamenta, ki ne dopušča velikega števila koalicij (Hesse, 1995, str. 150; Hofmann & Perger, 1992, str. 240; Hermes, 1998, str. 1272; von Beyme, 2004, str. 90). Hkrati je paradoksalno, da konstruktivna nezaupnica lahko krepi tudi stabilnost neuspešnih vlad. Tako se v Sloveniji lahko zgodi, da vlada izgubi podporo v parlamentu, zaradi strankarske fragmentacije pa ni mogoče sestaviti strankarske koalicije, ki bi lahko na podlagi konstruktivne nezaupnice oblikovala novo vlado.

Torej že dvajsetletna parlamentarna praksa dokazuje, da tudi z morebitnimi spremembami ustavne ureditve vlade ne bo mogoče zagotoviti njene stabilnosti in njenega racionalnega delovanja brez spremembe volilnega sistema. Pri spremembah volilnega sistema bi bilo treba graditi na nespornih prednostih proporcionalnih in večinskih volilnih sistemov, pri čemer bi morali opustiti slabosti obeh vrst teh sistemov (Ribičič, 2001, str. 221–222). Seveda je vprašanje sprememb volilnega sistema politično vprašanje *par excellence*.

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Fundamental Dilemmas Concerning the Constitutional Arrangements for the Formation of the Government in the Republic of Slovenia

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ABSTRACT

In Slovenia, even twenty years after the adoption of its Constitution, the amendments to the constitutional arrangements for the appointment of ministers represent one of the fundamental constitutional dilemmas of the political elite and experts on constitutional law. The following two variants are most topical: according to the first variant, following the example of the German constitution, ministers would be appointed by the president of the republic on the proposal of the president of the government, elected by the National Assembly; according to the second variant, the National Assembly would elect the president of the government together with the submitted candidate list of ministers. Nevertheless, the appointment of ministers according to the chancellorship model, which excludes the parliament from any voting on their appointment, i.e. also from the vote of investiture on the government, would undermine their legitimacy and disproportionately strengthen the constitutional position of the president of the government. In contrast, the election of the president of the government together with candidates for ministers would be significantly more transparent and legitimate. However, it will not be possible to form a stable government without changing the electoral system, which systemically causes party fragmentation of the National Assembly.

Keywords: parliamentary system, chancellorship model, appointment of ministers, comparative arrangements, electoral system

JEL: K0

1 Suspension of the appointment of Ministers in the National Assembly as a deviation from the parliamentary system

In Slovenia, even twenty years after the adoption of its Constitution, the dilemma of the modification of constitutional arrangements for the appointment of ministers remains highly pertinent. The current arrangements under which ministers are appointed and dismissed by the National Assembly at the proposal of the president of the government (Constitution of the Republic of Slovenia, Article 112, first paragraph) are not comparable with the constitutional arrangements for the appointment of ministers, neither in classic parliamentary systems nor in the German parliamentary government system. On the basis of the prevailing opinion that the appointment of ministers in the National Assembly is neither conceptually nor functionally fully in line with the fundamental principles of the parliamentary system, in 2001, the Slovenian government and a group of deputies lodged two proposals in the constitutional revision process on the modification of constitutional arrangements for the appointment of ministers that remain at the centre of attention of the political and professional public.

On the basis of the opinion that the most suitable model for the preparation of modifications and supplementations of constitutional arrangements for the appointment of ministers is »the chancellorship model«, the Slovenian government proposed that the first paragraph of Article 112 be amended so as to read: »Ministers are appointed and dismissed by the president of the republic on the proposal of the president of the government.«¹

Before adopting a stance on the government's proposal, we have to present the »chancellorship model« of German government formation from both developmental and problem identification perspectives. In the draft Basic Law or the German Constitution, the Constitutional Commission of the Parliamentary Council proposed that following the example of the classic parliamentary system, which also includes the vote of the investiture on the government, the federal president would appoint the federal chancellor, and on the latter's proposal federal ministers. However, after subsequent thorough discussions, it proposed to the parliamentary council that the Bundestag, at the proposal of the federal president, elect the federal chancellor while the federal president, at the proposal of the federal chancellor appoints federal ministers (Hermes, 1998, pp. 1209–1210.). In the evaluation of the Constitutional Commission, the view prevailed that Germany, due to negative experiences with unsteady governments in the period of the Weimar Constitution, had to limit the powers of the federal president and strengthen the role of the Bundestag and government, and especially the powers of the federal chancellor (von Beyme, 2004, p. 261).

¹ Proposal for the beginning of the procedure for modification of the Constitution of the Republic of Slovenia with a draft Constitutional Act, Bulletin of the National Assembly of the Republic of Slovenia No 69/2001 of 6 August 2001, p. 18.

As can be seen from its various basic models as well as from its lengthy discussions, the Constitutional Commission itself already had certain reservations on the adopted constitutional arrangements for the formation of federal government. Prominent constitutional legal experts, who otherwise emphasize the historic and political context in which the constitution was adopted, also consider that the constitutional arrangements for the appointment of federal ministers are not compatible with the fundamental principles of the parliamentary system. Roman Herzog, for instance, in one of his prominent commentaries on the German constitution, considers the appointment of federal ministers on the proposal of the federal president without any participation of the Bundestag as a »breach« (*Durchbrechung*) of fundamental principles of parliamentarism (Herzog, 1993, Article 62, MN 76). Fritz Münch (1954, pp. 159–160) even considers such a procedure of appointing Federal Ministers to be an »aversion« (*Abwendung*) of the parliamentary system. Even in the Slovenian professional literature we can read a critical observation that »the German chancellor essentially forms the government himself, while the Bundestag does not participate with any kind of voting, it only elects the chancellor himself, even without the government for that matter« (Krivic, 2002, p. 281).

In the explanation of its proposal, the Slovenian Government refers to the »chancellorship« arrangements for the appointment of federal ministers, which was, however (as already pointed out) adopted in the social and political context in the post-war Germany as a pragmatic compromise. In doing so, it underestimates the principle of sovereignty of the people, according to which the parliament in the parliamentary system is the source of the democratic legitimacy of the government, while at the same time it overestimates the importance of the principle of separation of powers in the process of government formation. A fundamental difference between the constitutional arrangements of government formation in the classic parliamentary system and the German parliamentary government system, as it is consistently designated in German literature, lies in the fact that classic governments are based on vote of investiture, while the German federal government is based only on the investiture vote on the federal chancellor (Hermes, 1998, p. 1188). The potential suspension of the appointment of ministers in the National Assembly would thus limit the democratic legitimacy of the government and at the same time recognize the »chancellor position« of the president of the government in its formation.

Given that the Slovenian parliamentary system does not use the instrument of investiture vote and that the government's proposal does not foresee any other form of vote in the National Assembly on support to the ministers, the suspension of vote on the appointment of ministers in the National Assembly would be a deviation from the parliamentary system.

2 Comparative presentation of simultaneous voting on the election of the president of the government and on the candidate list of ministers in the National Assembly

According to the proposal of a group of deputies, which was lodged in the constitutional revision process in 2001, the appointment of ministers in the National Assembly would be retained, but in the framework of modifications of the constitutional arrangements for the formation of the government as a whole. The group prepared the contents of the proposal with some minor modifications on the basis of a professional draft prepared by Peter Jambreč and Gregor Virant in 2000 within the framework of the government of Andrej Bajuk.²

According to this proposal, the second paragraph of Article 111 would be amended so as to read: »The president of the government together with the submitted candidate list of ministers is elected by the National Assembly by a majority vote of all deputies unless otherwise provided by this constitution.« Voting would be public. The National Assembly would vote on the election of the president of the government together with the candidate list of ministers, also in the potential second and third rounds, while following unsuccessful second or third vote the president of the republic would dissolve the National Assembly and call new elections.

While the professional public welcomed the proposal, considering it a search for constitutional possibilities for a more rational formation of the government, part of the public was explicitly critical towards the central part of the proposal according to which the National Assembly would vote on the election of the president of the government together with the candidate list of ministers. In a particularly critical opinion, it was stated that the proposal, in line with which the National Assembly would vote on the formation of the government »at one time«, is both in principle and in practice incompatible with the formation of the government in the parliamentary system, in which in the first phase, the head of state forms the government on the basis of different procedures, while in the second phase, the parliament as a rule votes on the government's investiture vote (cf. Krivic, 2001, pp. 85–86).

Compared to traditional procedures of the formation of parliamentary governments, the proposal was indeed surprising, but simultaneous voting on the formation of government as a whole had already been introduced in some newer constitutions, including those of the Republic of Serbia and the Republic of Montenegro. Thus, the Serbian constitution states: »The National Assembly shall simultaneously vote on the government's programme and election of the prime minister and members of the government« (Article 127, third paragraph). The constitution of Montenegro includes a substantively

² Proposal for the beginning of the procedure for modification of the Constitution of the Republic of Slovenia with a draft Constitutional Act, Bulletin of the National Assembly of the Republic of Slovenia No 1/2002 of 9 January 2002, p. 16.

identical provision: »The parliament shall decide simultaneously on the program of the *formateur* and the proposal for the composition of the government« (Article 103, third paragraph; cf. Šuković, 2009, pp. 32–33). According to both constitutions, the president of the republic, logically, proposes a candidate for the prime minister or the *formateur*.

While the proposal of the group of deputies specifically provides for public vote, the Serbian and Montenegrin constitutions do not lay down the manner of vote, thus allowing for a public vote. As is the case with the proposal at hand, a majority vote of all deputies is needed for the election of the president of the government together with its members also according to both constitutions. Two distinct particularities of the Serbian and Montenegrin constitutions are the presentation of the programme, which in Slovenia is covered in the relevant provision of the Rules of Procedure of the National Assembly (Article 226, second paragraph), and the simultaneous vote on the government's programme.

Thus, the Serbian and Montenegrin constitutions have – following the example of the German Constitution – adopted the election of the prime minister in the parliament, and at the same time the Serbian and Montenegrin parliaments vote on the election of the prime minister and the composition of the government. Aleksandar Fira (2007, pp. 70–71), a prominent Serbian constitutional jurist, has designated the Serbian government under its present constitutional arrangements a »chancellor government«. The National Assembly, in contrast, votes twice in the process of formation of the government, first on the election of the president of the government, and then on the appointment of ministers.

At the same time, it has to be specifically pointed out that the proposal of the group of deputies foresees that the candidate for the president of the government submits, within seven days, to the National Assembly a proposal for a candidate list of ministers. The Serbian constitution has established that the National Assembly is dissolved if it »fails to elect« the government within 90 days from the day of its constitution (Article 109, third paragraph), while the Montenegrin constitution does not provide for deadlines in the process of government formation. The foreseen seven-day period for the submission of the candidate list of ministers, as proposed by the group of deputies, is certainly too short in a parliamentary system with broad government coalitions, requiring long and complex negotiations on the government programme and the composition of the government itself.

The constitutional arrangements of the formation of government, as proposed by the group of deputies and as defined by the Serbian and Montenegrin constitutions, are also topical and challenging for the constitutional jurists and experts from the wider systemic perspective (cf. Pajvančić, 2009, pp. 163–171). Specifically, following the German example, in addition to the election of the president of the government in the National Assembly, a constructive

vote of no confidence has been adopted in the Slovenian constitution, while the Serbian and Montenegrin constitutions have adopted the classic vote of no confidence in the government. All three constitutions also use the vote of confidence in the government, which is (in addition to the vote of no confidence) the most important constitutional institute for the determination of political responsibility of the government in the parliamentary system. Given that, according to the proposal of the group of deputies, the current vote of no confidence in the government would be maintained with relevant editorial changes, a question arises here of whether the voting on the election of the president of the government together with the submitted candidate list of ministers would not considerably hinder the vote of no confidence in the government. With regard to this consideration, it needs to be stated that the vote on the new president of the government together with the candidate list of ministers would be more demanding, but, at the same time, the vote on the potential new government as a whole would be more transparent, as it would also enable easier assessment of the qualifications of both the candidate for the president of the government and candidates for ministers. In comparison with the current constitutional and procedural (and partly also legal) arrangements of the formation of the government, in the framework of which the National Assembly votes on its formation twice, even with the support of various coalitions, the vote in the National Assembly on the election of the president of the government together with the candidate list of ministers would be more rational, and, above all, more legitimate, than if the president of the republic on the proposal of the president of the government would appoint the ministers, as is the case with the »chancellorship method«.

3 Government formation and functioning, and the electoral system

Although in the current political situation there are no real possibilities for the modification of the constitutional arrangements of the electoral system, one cannot ignore the fact that the electoral system significantly affects the composition of the National Assembly in terms of political parties, while indirectly also the formation and functioning of the government. According to Slovenian constitutional arrangements, the main elements of the electoral system are proportional representation, a four-percent threshold required for election to the National Assembly and voters' decisive influence on the allocation of seats to the candidates (Constitution of the Republic of Slovenia, Article 80, fifth paragraph) (Grad, 2009, pp. 1728–1731). However, even after the introduction of a higher threshold for election to the National Assembly, seven or eight political parties entered the National Assembly in all elections held so far. At the same time, the personalisation of elections actually has an ambivalent function: in the majority electoral system, it leads to the polarisation of votes, while in the proportional system to the dispersion of votes. The introduction of the personalisation of elections in this extent was more of

a political concession in the process of the adoption of the Constitutional Act rather than a possibility for systemic strengthening of the role of voters in elections. The Constitutional Act does not allow major corrections towards the majority electoral system; therefore, the door through which political parties enter the National Assembly still remains relatively open, which also indirectly hinders the formation of the government and weakens its stability.³

In comparison with the Slovenian proportional electoral system, Germany (by means of a federal law on elections) introduced a combined electoral system comprising the advantages of both the majority electoral system as well as the proportional electoral system. According to the abovementioned law, each voter has two votes; with the first vote, he directly casts a vote according to the system of relative majority for a constituency representative in his electoral district (Article 5), while he casts a second vote according to the purely proportional system for the regional party list (Article 6), the number of seats allocated to individual parties being counted on the basis of votes, received on a federal basis; therefore, it would be more correct to call this system a personalised proportional electoral system. When allotting the seats in the legislature, only parties that have won at least 5% of the nationwide vote are taken into account. Such an electoral system prevents unreasonable party fragmentation of the parliament as well as enabling a relatively rapid formation of the government and its stability. A so-to-speak exotic difference between the Slovenian and German parliaments, which mainly stems from different electoral systems, is figuratively visible particularly in the fact that in the Slovenian 90-member National Assembly, there are seven or eight political parties plus two representatives of national indigenous ethnic minority communities, while in the 656-member German Bundestag, there are, as a rule, two stronger and two weaker political parties.

In Germany, where high concentration of parliamentary parties is, as a rule, the result of the electoral system, the federal president has thus far proposed the leader of the party coalition that won the parliamentary elections for the federal chancellor. With the exception of Helmut Kohl, who was elected Federal Chancellor on the second ballot in 1983 due to rapid dissolution of the government coalition, all other federal chancellors over the past 60 years were elected on the first ballot. In contrast, the president of the Republic in Slovenia, due to the distinct party fragmentation of the National Assembly, sometimes (such as after the recent early elections) has difficulties when evaluating which parties could form a government coalition that would support the election of his candidate for the president of the government.

In addition, the stability of the German government is not based as much on the constructive vote of no confidence, but rather on the high level of concentration guaranteed by the electoral system and the relatively solid party structure of the Bundestag that does not allow a large number

³ On the conflict of the Constitutional Act with legal matters see Kaučič (2007, pp. 54–57).

of coalitions (Hesse, 1995, p. 150; Hofmann & Perger, 1992, p. 240; Hermes, 1998, p. 1272; von Beyme, 2004, p. 90). At the same time, it is paradoxical that the constructive vote of no confidence can also strengthen the stability of unsuccessful governments. In Slovenia, for instance, it can happen that the government loses the support in the National Assembly, yet due to party fragmentation it is not possible to form a party coalition that could form a new government on the basis of the constructive vote of no confidence.

The twenty-year-long parliamentary practice demonstrates that even by means of potential changes in the constitutional arrangements, it will not be possible to ensure a stable government and its streamlined functioning without changing the electoral system. With regard to changes in the electoral system, emphasis should be given to unequivocal advantages of proportional and majority electoral systems while forsaking weaknesses of both kinds of electoral systems (Ribičič, 2001, pp. 221–222). Of course, the issue of changes to the electoral system is a political issue *par excellence*.

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The System of Management of Regional Development in Poland: New Legal and Administrative Proposals

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ABSTRACT

This paper describes the new proposal being advanced regarding the legal and administrative aspects of regional development in Poland, presenting a small-scale survey of part of the legal system as it pertains to regional development. It outlines the new legal proposal for implementation with regard to the preparation of solutions necessary for the next programming period (2014–2020). The results of the analysis suggest that the solutions proposed may be effective and may contribute to improving the system.

Key words: regional development, management of regional development, regional territorial forum, cohesion policy, EU regional policy

JEL: K23

1 Introduction

The most important entities charged with implementing regional development policy in Poland are the state (central government) and local government at the województwa (provincial) level; these are the entities mainly responsible for the level of development of the regions. On behalf of central government, the entity responsible for the particular shape of national regional development policy is the Ministry of Regional Development. Under the relevant act of 6 December 2006, the minister coordinates implementation of the national development strategy. Despite the fact that the act has now been in force for five years, there are numerous aspects that still need to be regulated; a number have been proposed for implementation as a step towards the preparation of solutions necessary for the next programming period, which is 2014–2020. This paper provides a preliminary analysis of the activities mentioned above. Of course, it is too early to come to firm

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conclusions regarding the effectiveness of these measures, but it is a good time for discussion and reflection.

2 Legal foundations of regional development in Poland

Research into the concept of the region has been conducted in various fields of science, including economics, political science, law, sociology and spatial development. The term »region« is used in both everyday language and by specialists (Kokocińska, 2009, p.13). Most European countries have regions whose level of economic development (and consequently standard of living) are lower than that of the leading European Union Member States. As far as regional policy is concerned, it can be noted that it is characterised by the specific directions fostered by the political and structural concepts of the EU – therefore, regional policy activities focus on a single region, area or Member State (Kukliński, 2003, pp. 5–14). Each region is free to broaden or limit the support and intervention of the Funds, and to change their character. Individual regional development instruments should complement each other (Głąbicka & Grewiński, 2004, p. 33).

The key document relating to the implementation of EU cohesion policy in Poland between 2007 and 2013 is the Act of 6 December 2006, laying down the principles of conduct of development policy. According to this act, state development policy is determined by development strategies and subsequently implemented by specific operational programmes and implementation plans. The 2007–2015 National Development Strategy (NDS) is the principal long-term strategic document defining the goals and priorities of Poland's social and economic development, and the conditions aimed at securing the development objectives. The strategy defines objectives and identifies those areas recognised as being of greatest importance in achieving these aims; the activities of the state will be concentrated on those areas. The major role of the NDS is to coordinate institutional and regulatory reforms with the activities financed by EU Funds so that, through synergy, these two areas produce the best possible pro-development effects. The main goal of the NDS is to increase the level and quality of life of Polish citizens, residents and families, which means an increase in household income and easier access to education and training, which leads to an improvement in society's level of education and citizens' skills and qualifications, as well as an increase in employment and productivity, resulting in lower rates of unemployment, a rise in the level of professional activity and improvements to health (NDS, p. 29).

The National Strategic Reference Framework 2007–2013 (NSRF) (NSRF, p. 22) is a document designed to aid implementation of EU cohesion policy in Poland. NSRFs have to be drawn up in accordance with Council Regulation (EC) No 1083/2006 of 11 July 2006. The preparation of NSRFs and their approval by the European Commission are necessary prerequisites for Commission

approval of operational programmes and, as a result, for the allocation of resources from structural funds. The NSRF specifies the priorities, areas of activity and methods of implementation of EU Funds in Poland by determining, among other things, the number of operational programmes and the level of funds allocated for their implementation. Since the Act laying down the principles of conduct of development policy has been in force without major changes for several years, it has become necessary to introduce a number of amendments. The forthcoming new programming period in the European Union has, to some extent, accelerated the process.

3 Improvements to the regional development management system – an analysis of amendments to the law

Individual solutions introduced by amendments to the law have been the result of decisions taken by the Council of Ministers and, in particular, the adoption, on 13 July 2010, of the National Regional Development Strategy 2010–2020 – Regions, Cities, Rural Areas (NRDS). The NRDS is the first of nine so-called »integrated strategies« and it outlines the directions to be taken by systemic changes and institutional transformations aimed at increasing the efficiency and effectiveness of regional policy and other public policies with an impact on development processes in territorial systems. In adopting the NRDS, the Council of Ministers brought forward numerous innovative solutions aimed at streamlining the management and conduct of regional policy and concerning its programming system, implementation and monitoring. Some of the amendments aim at improving or eliminating those acts that have not been implemented for reasons relating to procedure or content. The amendments proposed in the draft pertain to regulation of the institutional system and systematisation of the strategic activities undertaken at both the central and regional levels by entities involved in the management of national development processes, including those units involved in the implementation of structural funds and the Cohesion Fund (Project, p. 1).

A new development management system assumes the coexistence of various kinds of strategic document. The basic documents include a medium- and long-term national development strategy, as well as other strategies that implement and relate to the areas and fields indicated in the medium-term strategy. The introduction of an additional document category, that of the »long-term policy« (Article 1 item 2 of the draft) is designed to fill the gap that has appeared in the strategic document system between strategies for developing areas indicated in the medium-term national development strategy and the programmes that implement particular solutions. Chapter 2a, newly introduced into the act in Article 1 item 7 of the draft, defines long-term policies as those documents that facilitate the coordination of activities undertaken and implemented by a minister within their area of responsibility; they should refer to a specific sector or an area of social and economic life indicated in the development strategies. Therefore, long-term policies do

not introduce additional development goals but, instead, specify the way in which the goals determined in the strategies should be implemented. At the same time, they are not implementation documents in the way that programmes are: the policies are designed to act as tools for ministers to help them coordinate activities within the scope of their remit. To ensure the cohesion of strategic programming, the long-term policies will, similarly to strategies and programmes, be evaluated as far as their compatibility with the development goals indicated in the medium-term national development strategy are concerned (Project, p. 1).

The most important instrument determining the common objectives identified for a particular territory and coordinating pro-development activities undertaken by central and local government is the territorial contract referred to in the NRDS. The territorial contract has been introduced into the act in Article 1 items 3a and 10 of the draft. It changes the method used to determine national and regional development activities that has been in place so far and had been based on a »provincial contract«. The territorial contract is not an agreement that transfers financial resources – it only indicates commonly identified development goals, the methods employed to achieve them, the sources of financing (state funds, EU funds and local government funds, including funds from provinces, *powiaty* [counties/districts] and *gminy* [towns/rural communities]), and the conditions necessary for realising development activities in the region (e.g. activities at the national level). Such a territorial contract should include activities realised at the national level (by particular departments indicated in the territorial contract) and at the regional level (activities conducted by various units of local government, namely the province, county/district and town/rural community). At the national level, the Council of Ministers is represented by the minister in charge of regional development, who signs the territorial contract on behalf of the Council of Ministers and after consultation with respective ministers. Local government (i.e. the government of the province, county/district and town/rural community) is represented by an assembly, or by assemblies of provinces in cases where the territorial contract extends across the area of more than one province. This solution is aimed at facilitating a proper assessment of territorial potentials and identifying tasks for the implementation of regional policy objectives in the form of a contract, where the parties involved include different public entities (i.e. they do not include central and provincial government alone, as was in the case with the »provincial contract«).

Another solution aimed at facilitating coordination and increasing the effectiveness of implementation of development activities is the Integrated Regional Framework Programme (IRFP), introduced into the act in Article 1 items 3b and 11 of the draft. The IRFP describes the method to be employed to coordinate and integrate activities conducted by various public entities for a particular region within the framework of different instruments at the regional level. Therefore, according to the law, the IRFP is not a programme

as such (it is neither an operational programme, nor a development programme), but is designed to define areas in which intervention is needed and to describe the expected results and the tools necessary to conduct this intervention, the financial resources and the sources of financing of activities, regulations concerning the coordination of activities within the framework of particular instruments (programmes), and the entities responsible for the implementation of individual tasks (e.g. different units of local government). While the territorial contract describes activities at both the national and regional levels that have an impact on the territory defined in the contract, the IRFP refers to activities undertaken at the regional level (Project, p. 2).

As a result of the introduction of the territorial contract and the Integrated Regional Framework Programme, a number of amendments to some of the regulations of the Provincial Government Act have been proposed. Since both the territorial contract and the IRFP are designed to support implementation of the pro-development activities defined in the Provincial Development Strategy, amendments to Article 11 paragraph 3 of the Provincial Government Act (Article 2 item 1b) have been suggested in which both instruments are indicated as implementing the provincial development strategy.

At the same time, the competences of a provincial assembly defined in Article 18 of the Provincial Government Act have been broadened to include adoption of the Integrated Regional Framework Programme (Article 2 item 3 of the draft). The tasks of the provincial assembly laid down in Article 41 paragraph 2 of the Provincial Government Act have also been expanded to include preparation of the Integrated Regional Framework Programme (Article 2 item 4 of the draft).

As a result of the introduction of the territorial contract, an amendment to Article 42 paragraph 1 of the Local Government Revenues Act has been proposed (Article 3 of the draft). This amendment will allow local government units to obtain funds from the central government budget to subsidise priority enterprises included in this contract (Project, p. 3).

The results of research and analysis, as well as the conclusions drawn from the implementation of European Union Funds, indicate many weaknesses resulting from the sector-by-sector approach taken to the programming and realisation of support, a lack of cooperation between sectors and levels, and insufficient access to specific information and data for the strategic management of development. This leads to problems in defining the development goals, particularly in the regional system, a lack of cohesion in the way the policies are implemented, and insufficient coordination of the programming and implementation levels. If development policy is to be conducted efficiently and effectively, the strategic aspect of development policy must be strengthened, among other things, by the establishment of an institutionalised space for the exchange of information, knowledge and experience. This space would be the site of an ongoing strategic discussion

aimed at determining the best possible framework for public intervention within the context of EU cohesion policy, regional policy and the territorially directed sectoral policies that make up development policy, as well as the most effective ways of using their influence to change internal and external conditions. In order to do that, a new Chapter 5a has been added to Article 1 item 15 of the draft. This chapter («Institutional Service of Development Policy» in the act laying down the principles of development policy) describes how consultative and advisory bodies are established within the support system of strategic thinking, including a State Territorial Forum (STF) at the national level (Ministry of Regional Development) and its counterparts at the regional level (at provincial assemblies), called Regional Territorial Forums (RTFs). The STF is a forum that facilitates the exchange of experience and good practice between all parties involved in work on development at the national level; the main goal of the RTFs is to establish common ground for cooperation and for the coordination of processes relating to the implementation of provincial development policy, with the participation of those units of provincial government responsible for that policy and the major entities involved in its implementation. The STF will stimulate and shape strategic thinking on development at the national level, while the RTFs will achieve this at the regional level. The purpose of the STF and RTFs is to increase the effectiveness of the process of spatial planning and the implementation of public tasks. This form of intraregional cooperation serves to determine common goals and to reconcile disparate sectoral and territorial interests. A further important role of these bodies is to increase the real possibility for the coordination of development processes at both the national and regional levels in, among other things, the process of the implementation of the territorial contract (Project, p. 3).

4 Conclusion

The new solutions described above and aimed at streamlining the development management system in Poland are solutions currently undergoing both public and interdepartmental consultation. The indications are that the solutions proposed may be effective and may contribute to improving the system. Nevertheless, it is likely that the effects of these changes will not be felt for a number of years.

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POVZETEK

Sistem upravljanja regionalnega razvoja na Poljskem: novi pravni in administrativni predlogi

Ključne besede: regionalni razvoj, upravljanje regionalnega razvoja, forum regionalnega razvoja, kohezijska politika, regionalna politika EU

Glavni cilj članka je bil opisati novi predlog z ozirom na pravne in administrativne vidike regionalnega razvoja na Poljskem. Opravljene analize so podale uvodni opis novega pravnega predloga za izvajanje sistema v zvezi s pripravo rešitev, ki so potrebne za prihodnje obdobje programiranja za dobo 2014–2020. Rezultati nakazujejo, da bodo lahko predlagane rešitve učinkovite prihodnje leto, ko se bo na Poljskem pričel izvajati nov sistem upravljanja regionalnega razvoja. Če povzamemo, težko je reči, ali bodo ti predlogi kos novim izzivom kohezijske politike EU, vendar moramo počakati na rezultate.

Pravni vidiki avtonomije državnih univerz in visokih šol

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IZVLEČEK

Avtonomija državnih univerz in visokih šol je ustavno zagotovljena kategorija, temeljna svoboščina, ki zagotavlja državnim univerzam in visokim šolam »obrambo« pred (nedopustnimi) posegi države na področje njihovega delovanja. Pravilno razumevanje avtonomije je v povezavi s področjem njenega delovanja (vsebinska avtonomija), ki ga ne ogrožajo samo »zunanje« sile, temveč je avtonomija ogrožena tudi od lastnih notranjih razmerij. Financiranje iz proračuna ni edina ovira z vidika finančne avtonomije, temveč problem predstavlja tudi vse večja želja po pridobivanju sredstev na trgu, ki omejuje delovanje univerz na način, da so te primorane svoje raziskovanje podrediti željam trga s čimer trg postane njihov »gospodar«. Avtonomija je zagotovljena državnim univerzam (kot celoti in ne posamičnim članicam) in visokim šolam, kjer obstajajo možnosti vplivanja države kot ustanovitelja na njihovo organizacijo in delovanje. Država kot oblast ohrani vpliv na univerze, vendar se mora vzdržati prekomernega poseganja na področje njenega temeljnega delovanja predvsem kot ustanovitelj – odpovedati se mora določenim ustanoviteljskim pravicam. Avtonomija univerz se izraža navzven (nasproti državi kot ustanovitelju) in tudi v notranjih razmerjih, kjer je v razmerju do univerze avtonomen vsak pedagog, raziskovalec, uporabnik storitev. Popolne avtonomije državne univerze in visoke šole ne morejo uživati, saj je tovrstno sklepanje v nasprotju z namenom ustavodajalca in z logiko sistemske ureditve družbe, kjer so univerze le eden izmed medsebojno povezanih podsistemov.

Ključne besede: avtonomija, državne univerze in visoke šole, visoko šolstvo, ustavnosodna presoja, obseg in upravičenci avtonomije

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1 Uvod

Beseda avtonomija izvira iz grških korenov *autos* in *nomos* in pomeni v slovenskem prevodu »tistega, ki je sam sebi zakonodajalec« ter predstavlja situacijo, ki omogoča nekemu sprejemanje določenih odločitev oziroma

izvedbo ukrepov brez potrebe po pridobitvi predhodnega soglasja oziroma pooblastila s strani nadzornega organa.¹ Univerza je edina ustavna kategorija, ki je izrecno po ustavi avtonomna in po mnenju nekaterih avtorjev izvzeta iz zakonske regulative. Tovrstna opredelitev pojma avtonomije je zastarela in problematična, lahko bi rekli srednjeveška, saj izhaja iz časov, ko so bile univerze eksteritorialne in so imele med drugim tudi sodno pristojnost. Danes je zadeva veliko bolj kompleksna, saj so univerze vpete v mrežo družbenih in socialnih odnosov in predpisov ter so le eden izmed mnogih družbenih podsistemov, za katere že samo mesto znotraj nekega sistema nasprotuje možnosti popolne avtonomije znotraj sistema. Na področju visokega šolstva lahko avtonomne institucije vzpostavijo lastne programe študija, imajo nadzor nad svojimi financami (pri javnih sredstvih po pridobitvi le-teh in v skladu z veljavno zakonodajo, ki je podvržena ustreznim mehanizmom nadzora porabe) in podeljujejo lastne nazive (ob zaključku študija itd.).

Če povzamemo besede *Magne Charte Universitatum*²: »Univerza je avtonomna institucija v srcu družb, ki je različno organizirana zaradi geografske in zgodovinske dediščine; posreduje, preverja, ocenjuje in posreduje kulturo z raziskovanjem in poučevanjem. Da bi univerza ustrezala potrebam okolja, morata biti njeno raziskovanje in poučevanje moralno in intelektualno neodvisna od vseh političnih oblasti in gospodarskih sil.«

2 Institucionalna in vsebinska avtonomija

Avtonomijo državnih univerz in visokih šol³, ki je zagotovljena z 58. členom Ustave Republike Slovenije, ne gre razlagati samostojno temveč ob hkratni uporabi 57. (izobrazba in šolanje) in 59. člena (svoboda znanosti in umetnosti) Ustave Republike Slovenije, katerih povezava je razvidna iz same vsebine določb in mesta na katerem se nahajajo v ustavi. Vsebinska avtonomija kot akademska svoboda, svoboda raziskovanja in poučevanja ter drugih dejavnosti univerz, ni tudi institucionalna. Samouprava je omejena predvsem na vsebino raziskovanja in poučevanja ter notranjo organizacijo, ki je potrebna za njuno delovanje ter v postopkih sprejemanja (samo)upravnih aktov univerz.

Ustavno zagotovljena avtonomija je kontinuiran interes v očeh zakonodajalca, da do določene stopnje loči (državne) univerze od preostalega državnega

1 Podobno v pritrdilnem ločenem mnenju ustavnega sodnika Boštjana M. Zupančiča, ki se mu pridružuje ustavni sodnik Šinkovec Jože v zadevi U-I-22/94 z dne 17. 2. 1994. Taka opredelitev je problematična, saj znotraj medsebojno povezanih sistemov, ki predstavljajo širši družbeni sistem, ki ga vsaj v določenih vidikih ureja država, z zakonodajo taka avtonomija ne more obstajati, če seveda univerze štejem za družbeni podsistem, kar vsekakor so glede na njihovo širšo družbeno umeščenost – ustvarjanje in posredovanje znanja, financiranje iz proračuna, zaposlene uslužbenke in študente kot uporabnike storitev.

2 *Magna Charta* evropskih univerz je bila spisana januarja 1988 in so jo podpisali vsi rektorji, ki so se udeležili srečanja ob praznovanju 900 letnice njihove *Alme Mater* (Univerze v Bolonji), s katero so se zavezali k promociji vrednot univerzitetne tradicije in spodbujanju močnih povezav med evropskimi univerzami.

3 Avtonomijo univerze bi bilo smiselno razumeti kot vsebinsko avtonomijo na področju delovanja univerz, določanja pravil delovanja, lastne strategije razvoja, habilitiranja in zaposlovanja svojih uslužbencev ter določanja lastnih študijskih programov.

aparata, ki sodi neposredno pod okrilje predvsem zakonodajne in izvršilne oblasti, in jim tako dodeli poseben pravni status. S tovrstnim varstvom oziroma nevmešavanjem se univerzam zagotovi trajnejši obstoj. Čeprav država v odnosu do univerz še vedno nastopa kot oblast, je njen vpliv na področjih, ki sodijo v področje načel avtonomije univerz omejen, ukrepi države pa so podvrženi ustavnosodni kontroli. Določbe o (institucionalni) avtonomiji so prisotne v mnogih ustavah, vendar so stopnje varstva različne in se ponekod nanašajo na določene pravice, ki same ne nakazujejo izrecno na avtonomijo univerz a so z njo povezane, kot so svoboda govora, svobodo raziskovanja itd.⁴

Pomen avtonomije univerz je poudarjen v različnih mednarodnih dokumentih, ki razumejo avtonomijo univerz kot ključen pogoj za ustvarjanje okolja, v katerem se lahko uresničujejo različne pravice kot so pravica do izobrazbe, pravica do izobraževanja in raziskovanja ter napredek znanosti. Institucionalna avtonomija je pogoj za nastanek in uživanje prave akademske svobode in pomeni stopnjo samouprave potrebne za sprejemanje učinkovitih odločitev o akademskem delu, merilih, upravljanju in povezanih aktivnostih upoštevajoč odgovornost, ki jo imajo institucije do javnosti predvsem v odnosu do javnega financiranja, spoštovanja akademske svobode in človekovih pravic.⁵ Odgovornost do javnosti se izraža predvsem s kakovostjo storitev (skupaj z različnimi oblikami nadzora kakovosti), ki jih zagotavljajo visokošolske institucije.⁶ Univerza predstavlja enega izmed mnogih družbenih podsistemov in je z drugimi podsistemi neločljivo povezana, zato popolna oziroma absolutna avtonomija ni mogoča, s čimer se strinja tudi Ustavno sodišče RS. Avtonomija državnih univerz in visokih šol je zaradi vpetosti v širše družbeno okolje relativna in pridržana le določenim področjem delovanja univerz⁷ saj ne more obstajati enotni sistem avtonomije univerz, po katerem bi vsaka

4 Tako imajo Češka, Irska, Latvija, Poljska, Slovaška, Španija in Slovenija opredeljeno svobodo izobraževanja in raziskovanja in institucionalno avtonomijo (državnih univerz) – čeprav različno glede na podrobnost urejanja – Avstrija, Francija, Nemčija, Madžarska in Luksemburg pa imajo zagotovljeno svobodo izobraževanja in raziskovanja, nimajo pa določb o institucionalni avtonomiji univerz. V Združenih državah Amerike najmanj 20 ustav zveznih držav vsebuje določbe o avtonomiji univerz. Terrence Karran (2007) je v članku *Academic Freedom in Europe: A Preliminary Comparative Analysis*, obravnavala vprašanje akademske svobode v pravni ureditvi sedanjih 23 držav članic Evropske unije (z izjemo Belgije, Cipra, Romunije in Bolgarije), kjer je posebno pozornost namenila vprašanju ustavne ureditve oziroma ustavnega varstva, zaščiti v okviru specialne zakonodaje, samoupravljanju, načinu imenovanja rektorja univerz in stalni (redni) profesuri, in ugotovila, da je primerjalno gledano varstvo vseh omenjenih vprašanj v Sloveniji na zelo visoki ravni (uvrščena je bila na drugo mesto za Finsko). Akademska svoboda naj bi uživala visoko varstvo v 13 obravnavanih državah, v dveh naj bi bila stopnja varstva nizka, v preostalih državah pa na srednji ravni.

5 UNESCO, Recommendation concerning the Status of Higher-Education Teaching Personnel, 11. 11. 1997.

6 Podobno stališče je zavzela tudi Komisija EU, ki priznava pomembnost avtonomije univerz in je v svojem komuniqueju *Delivering on the Modernisation Agenda for Universities: Education, Research and Innovation* (2006) podprla prizadevanja za vzpostavitev novega okvira za delovanje univerz temelječega na »izboljšani avtonomiji in odgovornosti«, ta pristop pa je potrdil tudi Svet Evropske unije (2007), ki prepoznava neposredno povezavo med avtonomijo univerz in njihovo sposobnostjo, da odgovarjajo na družbene izzive in pričakovanja.

7 U-I-34/94 z dne 22. 1. 1998, »Pravica vsake visokošolske institucije, da sama, zakonsko popolnoma nevezano, odloča o vseh navedenih vprašanjih (za kar se smiselno zavzemajo pobudniki), takšnega enotnega sistema ne more zagotoviti.«

visokošolska institucija lahko sama, zakonsko popolnoma nevezano odločala o vseh vprašanjih.

3 Elementi avtonomije univerz

Upoštevaloč raziskave izvedene v okviru *European University Association*⁸ in nekaterih mednarodnih dokumentov lahko sklepamo, da so poglobitni vidiki avtonomije univerz štirje: akademska, finančna, organizacijska in uslužbenska avtonomija. Raziskave so empirično potrdile, da avtonomija univerz pripomore k izboljšanju kakovosti delovnega področja univerz.⁹ Podobne dokaze o tem, da je uspeh in izboljšanje kakovosti neposredno povezano z stopnjo institucionalne avtonomije¹⁰, ugotavljajo tudi nekateri drugi avtorji¹¹, kar je bilo potrjeno tudi v zadnjem času¹².

Finančni vidik avtonomije je neločljivo povezan z možnostjo univerz pridobivati dodatna sredstva financiranja (na trgu), kar je povezano tudi z uslužbenko avtonomijo, predvsem svobodo pri zaposlovanju in določanju plač za akademsko in strokovno osebje.¹³ V času finančne in gospodarske krize se sicer kažejo težnje, da bi oblast prevzela večji nadzor nad finančno avtonomijo univerz, kar bi onemogočalo univerzam svobodno razpolaganje s finančnimi sredstvi in jim oteževalo uspešno premagovanje krize. Odzivnost univerz na tegobe krize je neločljivo povezana s sposobnostjo univerz učinkovito ukrepati na ekonomsko situacijo, kar je odvisno predvsem od finančne in institucionalne avtonomije univerz.¹⁴ Novejše raziskave ugotavljajo, da čeprav se v evropskem prostoru krepi institucionalna avtonomija univerz, obstajajo občutne razlike med oblikami avtonomije. Tako je organizacijska avtonomija še vedno relativno omejena, medtem ko naj bi bila finančna avtonomija zagotovljena na visoki oziroma srednji stopnji.¹⁵

⁸ Tako npr. *Financially sustainable universities II: European universities diversifying income streams; Institutional Diversity in European Higher Education*.

⁹ Sybille Reichert, *Institutional Diversity in European Higher Education: Tensions and challenges for policy makers and institutional leaders*, EUA, 2009.

¹⁰ Svet EU sprejel v maju 2006 dokument št. 9166/06, v katerem med drugim poziva k zagotavljanju avtonomije evropskih univerz (Svet EU, dokument št. 9166/06, točka 2: Zagotavljanje dejanske avtonomnosti in odgovornosti univerz).

¹¹ Sybille Reichert in Christian Tauch, *Trends IV European Universities Implementing Bologna*, 2005.

¹² Andree Sursock in Anne Smidt: *Trends 2010: A decade of change in European Higher Education*, 2010.

¹³ Raziskave izvedene v okviru EUA so potrdile velike stopnje raznolikosti pri urejanju predstavljenih vidikov avtonomije, ki so posledica različnih načinov iskanja ravnotežja med avtonomijo, odgovornostjo in sposobnostjo univerz za iskanje odgovorov na družbena vprašanja. Čeprav omenjene raziskave potrjujejo, da se v Evropskem prostoru širi trend zagotavljanja univerzam več avtonomije, obstaja kar nekaj držav, ki po mnenju EUA univerzam ne zagotavljajo zadostne stopnje avtonomije. Vendar obstajajo razlike tudi v okviru formalno zagotovljene in dejanske avtonomije, ki jo uživajo univerze v nekaterih državah.

¹⁴ *Impact of the economic crisis on European universities*, EUA, 2011.

¹⁵ De Boer H., Jongbloed B., Enders J., in File J., *Progress in higher education reforms across Europe: Governance reform*, European commission, 2010.

Pri preučevanju različnih vidikov avtonomije so bili uporabljeni različni kriteriji in merila.¹⁶ Republika Slovenija ni bila vključena v raziskavo, vendar nam kriteriji, ki so bili uporabljeni, lahko služijo kot smernice pri presojanju stopnje zagotovljene avtonomije univerz tudi v našem prostoru. Kolikor lahko kriterije prenesemo v slovensko ureditev, lahko sklepamo, da je v slednji univerzam zagotovljena visoka stopnja avtonomije. Spmembe, ki bi zagotavljale univerzam več avtonomije, bi bile izvedljive predvsem v okviru finančne in uslužbenske avtonomije (npr. status zaposlenih, sposobnost odločanja o višini plač, trajanje in način financiranja). Finančna avtonomija je pomembna zaradi omogočanja, da univerze sprejemajo strateške odločitve, uslužbenska oziroma kadrovska avtonomija pa je pomembna pri zagotavljanju kakovosti storitev, ki jih nudijo univerze.¹⁷ Predstavljene problematike in njenega nadaljnega obravnavanja v bližnji prihodnosti torej ne gre zlahka zavreči.

4 Pravna podlaga za avtonomijo državnih univerz in visokih šol

Avtonomija (državnih) univerz in drugih visokih šol je ustavno načelo oziroma z ustavo zagotovljena temeljna svoboščina, ki pripada državnim univerzam in državnim visokim šolam (ustanovitelj je država) saj so skladno z 58. členom Ustave Republike Slovenije »Državne univerze in državne visoke šole (so) avtonomne. Način njihovega financiranja ureja zakon.«. Težko govorimo o »pravici do avtonomije« saj je avtonomija cilj, proces, ki ga želimo doseči s pomočjo različnih aktivnosti in tako za univerze ne predstavlja samo pravic temveč tudi obveznosti. Osnutek slovenske ustave¹⁸ je določal, da »Univerze in druge visoke šole v mejah zakona samostojno določajo svojo notranjo ureditev«, vendar je bil zadnji stavek črtan saj naj bi »omejeval imperativ avtonomnosti«. Kasneje je bil dodan nov odstavek »Način njihovega

¹⁶ Pri organizacijski avtonomiji so uporabili predvsem naslednje kriterije: postopek, kriteriji izbire, mandat in razrešitev vodilnih predstavnikov univerz (rektorjev), delež in način izbire zunanjih članov upravljalnih teles, sposobnost odločanja o akademski sestavi in ustanavljanju samostojnih pravnih oseb, pri finančni avtonomiji: trajanje in način javnega financiranja, sposobnosti samostojnega razpolaganja presežkov prihodkov nad odhodki, izposojanja denarja, lastništva nepremičnin, določanja višine šolnin, pri uslužbenki avtonomiji: sposobnosti odločanja o postopkih izbire zaposlenih, odločanja o plačah, odločanja pri odpuščanju in pri napredovanju ter pri akademski avtonomiji: sposobnosti odločanja o skupnem številu vpisanih študentov, izbiri študentov, vzpostavljanju in ukinjanju programov, izbiri jezika in mehanizmov zagotavljanja kvalitete ter oblikovanja oziroma določanja vsebine programov.

¹⁷ Podoben poskus zagotavljanja višje stopnje avtonomije univerz je vseboval že v delovni osnutek Zakona o univerzi npr. poseben (sui generis) pravni status, po katerem univerza ne bi bila javni zavod, temveč avtonomna ustanova, ki se ravna po zasebnem pravu, izključitev zaposlenih na univerzi iz sistema javnih uslužbencev (posledično za njih ne bi veljal Zakon o sistemu plač v javnem sektorju, kar bi omogočalo večjo fleksibilnost pri plačah, zaposlovanju in delu), financiranje iz državnega proračuna na podlagi večletnih pogodb (ob upoštevanju študijskega področja ter števila vpisanih študentov in diplomantov rednega študija prve, druge stopnje in tretje stopnje in na podlagi kvalitete za kar bi se sprejeli posebni standardi količine in kakovosti – pogodbe bi se usklajevale s pogajanjem, pogodba o financiranju bi bila pogodba obligacijskega prava, nadzor nad izvajanjem pogodbe pa bi vršil poseben organ v katerem bi bile univerze in oblast enakomerno zastopane). Odgovornost univerze bi se tu izražala predvsem v poročanju pristojnemu ministrstvu, vladi in državnemu zboru.

¹⁸ Poročevalec Skupščine Republike Slovenije, št. 17/90.

financiranja ureja zakon«, ki naj ne bi ožil avtonomnosti v njenem bistvu, to je v njeni znanstveno-pedagoški komponenti.

Iz teleološke razlage in namena zakonodajalca v zgodovinskem trenutku sprejema ustave izhaja, da je drugi odstavek 58. člena, ki določa, da način financiranja ureja zakon, treba razlagati skladno z njegovim namenom, »zaščite avtonomije državnih univerz in državnih visokih šol«. ¹⁹ Namen zakonodajalca je bil očitno predvsem zagotavljanje »stalnega, trajnega financiranja«, ki bi bil neodvisen od vsakokratnih nosilcev izvršilne veje oblasti, čeprav je dejansko avtonomija univerz na finančnem področju omejena, saj je odvisna od zakonodajalca in države – oblasti, ki zagotovi vsakoletna sredstva. ²⁰ Podrobnejše financiranje javnih visokošolskih zavodov in dejavnosti zasebnih visokošolskih zavodov je prepuščeno vladi, ki ga uredi z uredbo (vlada lahko podrobneje ureja in razčlenjuje v zakonu ali v drugem aktu državnega zbora določena razmerja v skladu z namenom in s kriteriji zakona oziroma drugega predpisa). ²¹ Ustavno pooblastilo zakonodajalcu, da z zakonom uredi financiranje, je zakonodajalec izkoristil za prenos vsakokratnega določanja višine sredstev na vsakokratno vlado kot nosilko izvršilne oblasti. ²² Iz ustavodajnega gradiva je razvidno, da je zakonodajalec imel v mislih predvsem znanstvenopedagoški element avtonomije univerz, kar je konkretiziral tudi v zakonskih določbah, s katerimi je kasneje podrobneje opredelil področje ustavno zagotovljene avtonomije državnih univerz in visokih šol.

Vsebinsko razumevanje ustavno zagotovljene avtonomije terjaja upoštevanje sorodnih ustavnih določb o izobrazbi in šolanju ter svobodi znanosti in umetnosti, kar konkretizira Zakon o visokem šolstvu, ki določa univerzo kot avtonomni, znanstvenoraziskovalni, umetniški in izobraževalni visokošolski zavod s posebnim položajem. Kaj si zakonodajalec predstavlja pod pojmom avtonomija državnih univerz in visokih šol, je najbolje razvidno iz njegove opredelitve, kaj državnim univerzam in visokim šolam (predvsem) zagotavlja

¹⁹ Podobno je določbo o financiranju obrazložilo tudi Ustavno sodišče Republike Slovenije v zadevi U-I-156/08, točka 39.

²⁰ Zakon o visokem šolstvu, Uradni list RS, št. 100/2004 z dne 13. 9. 2004, predvideva vire financiranja, ki so 72. člen (viri financiranja): »Visokošolski zavodi pridobivajo sredstva iz proračuna Republike Slovenije, šolnin in drugih prispevkov za študij, plačil za storitve, dotacij, dediščin in daril ter iz drugih virov. Sredstva iz prejšnjega odstavka se uporabljajo v skladu z namenom, za katerega so bila pridobljena.«

²¹ Tako npr. uredba vlade o javnem financiranju visokošolskih in drugih zavodov, članic univerz, od leta 2004 do leta 2008, Uradni list RS, št. 134/2003 z dne 30. 12. 2003.

²² Zakon o visokem šolstvu, 75. člen: »(posebni predpis) Financiranje po 73. in 73.a členu tega zakona se podrobneje uredi s posebnim predpisom, ki ga sprejme Vlada Republike Slovenije.«

delovanje po načelih avtonomije.²³ Ob uporabi raziskave²⁴, izvedene v okviru EUA, lahko ugotovimo, da so v zakonu prisotni vidiki organizacijske, uslužbenske in akademske avtonomije, ni pa določb o finančni avtonomiji, kar je najverjetneje posledica ustavne določbe o avtonomiji, ki to področje prepušča v urejanje zakonodajalcu, kjer mu pripada široko polje proste presoje.²⁵ Avtonomijo univerze podpirajo tudi različni mednarodni (predvsem nezavezujoči) načelni dokumenti, ki so jih sprejeli večinoma različna združenja univerz.²⁶

Univerze same razčlenjujejo (skladno z zakonodajo) svoje videnje lastne avtonomije v svojih (podzakonskih) predpisih.²⁷ V primerjavi z Zakonom o visokem šolstvu univerza statut ožje (a terminološko bolj odprto) določa področje svoje avtonomije. Zanimive so tudi določbe statuta, ki sledijo in predstavljajo samostojno opredeljevanje avtonomije univerz, ki izvirajo predvsem iz njene tradicije in zgodovine in nimajo neposredne podlage v zakonodaji. Statut prepoveduje delovanje političnih strank na univerzi in

23 Zakon o visokem šolstvu, 6. člen (avtonomija visokošolskih zavodov), predvideva, da so ta področja zlasti »svoboda raziskovanja, umetniškega ustvarjanja in posredovanja znanja, samostojno urejanje notranje organizacije in delovanja s statutom v skladu z zakonom, sprejemanje meril za izvolitev v naziv visokošolskih učiteljev, znanstvenih delavcev in visokošolskih sodelavcev, volitve v nazive visokošolskih učiteljev, znanstvenih delavcev in visokošolskih sodelavcev, izbiro visokošolskih učiteljev, znanstvenih delavcev in visokošolskih sodelavcev za zasedbo delovnih mest, izdelavo in sprejem študijskih in znanstveno-raziskovalnih programov, določanje študijskega režima ter določanje oblik in obdobjev preverjanja znanj študentov, podeljevanje strokovnih in znanstvenih naslovov v skladu z zakonom ter podeljevanje častnega doktorata in naziva zaslužni profesor, volitve, imenovanja in odpoklic organov v skladu s statuti in drugimi akti, odločanje o oblikah sodelovanja z drugimi organizacijami, upravljanje s premoženjem v skladu z namenom, za katerega je bilo pridobljeno.«

24 Thomas Estermann in Terhi Nokkala, *University autonomy in Europe – exploratory study*, EUA, 2009.

25 Podobno se tudi osnutek predloga Zakona o univerzi, ko govori o avtonomiji univerze, sklicuje na »avtonomijo na področju izvajanja akademske dejavnosti, notranje organizacije in postopkov odločanja, oz. korporacijskega upravljanja (*corporate governance*)«, glede financiranja pa se zavzema predvsem za način financiranja »financiranje univerze iz državnega in drugih proračunov, ki poteka na temelju večletnih pogodb, v dogovorjenem obsegu za pogodbeno dogovorjeni program, kar kot svojo obveznost prevzame univerza in o tem tudi letno poroča pristojnemu ministrstvu, državnemu zboru in neodvisni agenciji za evalvacijo«. Tovrsten način bi univerzam nudil neko varno, stabilno in trajnejše financiranje, kar so vse izrazi finančne avtonomije.

26 Tako npr. Londonski komuniké (2007), *Magna Charta Universitatum* (podpisali rektorji evropskih univerz 1988 v Bologni in opisuje univerze kot avtonomne institucije in poudarja nedeljivost poučevanja in raziskovanja), Erfurtska deklaracija (predstavljena leta 1996, s strani akademikov in ministrov, govori pa o avtonomiji univerz, o odgovornosti držav in univerz, poudarek pa daje kakovostnemu delu univerz), Lizbonska konvencija o priznavanju visokošolskih kvalifikacij v evropskem prostoru (1997, Državni zbor jo je ratificiral 1999), Bergenski komuniké – Doseganje ciljev na področju evropskega visokošolskega prostora (Komuniké konference evropskih ministrov za visoko šolstvo, 2005), Deklaracija iz Salamance (2001), Graška deklaracija (2003), Lizbonska deklaracija (2007), Praška deklaracija (2009) in drugi.

27 Če kot primer vzamemo Statut Univerze v Ljubljani – čistopis, neuradno prečiščeno besedilo z dne 12. 4. 2012, ta v njem opredeljuje »da je pri izvajanju svoje dejavnosti avtonomna«, nadalje statut opredeli, da »Univerza uresničuje svojo avtonomijo s tem, da v skladu s svojim poslanstvom izvaja izobraževalno, znanstvenoraziskovalno in umetniško delo, zlasti da samostojno: oblikuje strategijo svojega razvoja, določa pravila svoje organizacije in delovanja, oblikuje študijske in raziskovalne programe ter določa način njihovega izvajanja, odloča o habilitaciji visokošolskih učiteljev (učitelji), znanstvenih delavcev in visokošolskih sodelavcev (sodelavci) in o merilih zanjo, odloča o zaposlovanju učiteljev, znanstvenih delavcev in sodelavcev.«

prepoveduje uniformiranim pripadnikom policije in oboroženih sil nepovabljen vstop na območje univerze (s tem tudi članic) razen v izjemnih primerih.²⁸ Pravna podlaga avtonomije univerz in visokih šol se tako nahaja v sami Ustavi Republike Slovenije, v Zakonu o visokem šolstvu v različnih podzakonskih (samoupravnih) aktih univerz in različnih mednarodnih deklaracijah in resolucijah.

5 Posegi zakonodajalca v avtonomijo

Zakonodajalcu, ki ureja širša družbena razmerja, pripada relativno široko polje proste presoje pri izbiri načinov, s katerimi ureja področje visokega šolstva, upoštevajoč omejitve izvirajoče iz vsebine načela avtonomije univerz, ki je v slovenskem prostoru zagotovljena na ustavni ravni.²⁹ Področje proste presoje zakonodajalca se konča tam, kjer se začne področje ustavno zajamčene avtonomije univerz. Avtonomija univerz in drugih visokih šol je urejena v II. poglavju Ustave Republike Slovenije – Človekove pravice in temeljne svoboščine, presoja kršitev te pravice pa je pridržana ustavnemu sodišču kot varuhu ustavnosti in zakonitosti ter človekovih pravic in temeljnih svoboščin. Prekomerni posegi (posegi, ki bi posegli v samo ustavno zagotovljeno jedro pravice in svoboščine) zakonodajalca v načelo avtonomije in pravice, ki ga konkretizirajo, so nedopustni.³⁰ Stališče nekaterih strokovnjakov je, da »Gre enostavno za to, da Ustava od zakonodajalca zahteva, da univerzo finančno oskrbi —, v ostalem pa jo pusti pri miru.«³¹

Zakonodajalec, ki z ustanovitvenim aktom ustanovi neko univerzo in ji z njim predpiše temeljne lastnosti (status, način vodenja in organiziranja, naloge in dejavnosti itd.) za njeno delovanje, mora upoštevati, da avtonomnost univerze predstavlja temeljno svoboščino, in ravnati zadržano in samoomejujoče.

Zakonodajalec oziroma državni zbor ima po ustavi pooblastilo, da z zakonom uredi področje financiranja – tako je finančna avtonomija univerze že iz tega stališča omejena.³² Nadalje jo je omejil zakonodajalec, ki je na tem področju

²⁸ Statut Univerze v Ljubljani – čistopis, neuradno prečiščeno besedilo z dne 12. 4. 2012, 8. člen: »Na univerzi ni dopustno delovanje političnih strank.« in 9. člen »Uniformirani pripadniki policije ali oboroženih sil ne smejo nepovabljeni vstopiti v prostore univerze, razen v nujnih primerih posredovanja, ko je v nevarnosti življenje in telo ali premoženje.«

²⁹ Ustava Republike Slovenije: 58. člen (avtonomnost univerze in drugih visokih šol): »Državne univerze in državne visoke šole so avtonomne. Način njihovega financiranja ureja zakon.«

³⁰ U-I-34/94 z dne 22. 1. 1998, »Vanjo (op.a.) »avtonomijo univerz«) sodi tudi tehnologija izvajanja pedagoškega procesa, katerega sestavni del so tudi preizkusi znanja, zato je lahko to področje urejeno le z aktom, sprejetim v okviru univerzitetne avtonomije. Zakonodajalec nima pravice posegati na to področje.«

³¹ Iz odklonilnega ločenega mnenja k odločbi U-I-34/94 sodnikov dr. B. M. Zupančiča in dr. T. Jerovška.

³² U-I-156/08 z dne 14. 4. 2011 »Drugi odstavek 58. člena Ustave od države zahteva, da se način financiranja državnih univerz in državnih visokih šol uredi z zakonom. Ustava določa pristojnost Državnega zbora, da sprejme določeno vsebino (način financiranja) z zakonom in ne morebiti s kakšnim drugim aktom. To pomeni, da je drugi odstavek 58. člena Ustave glede razmerja med zakonodajno in izvršilno oblastjo ter s tem v razmerju do drugega odstavka 120. člena Ustave specialna določba. Ta določba pomeni izpeljavo sicer splošne zahteve po spoštovanju načela zakonitosti iz drugega odstavka 120. člena Ustave glede specifične vsebine, to je načina financiranja državnih univerz in državnih visokih šol. Iz te določbe zato izhajajo enaka

z zakonom celo podelil pooblastilo vladi kot nosilcu izvršilne oblasti, da ureja vsakokratno financiranje z uredbo kot podzakonskim predpisom.

Jezikovna razlaga pojmov drugega odstavka 58. člena ZViS »financirati« pomeni »denarno omogočati kako delo, dejavnost«, »način« pa »kar opredeljuje, označuje delanje, ravnanje, mišljenje glede na potek, uresničevanje«. Zakonodajalec lahko uredi tudi načine financiranja iz drugih virov in ni omejen pri določanju višine sredstev za financiranje – zakonodajalcu pripada široko polje proste presoje (a ne neomejeno) saj mora biti način financiranja urejen na način, ki zagotavlja neko finančno stabilnost, varnost in predvidljivost pridobivanja sredstev iz proračuna, neodvisno od vsakokratnega nosilca izvršilne oblasti in različnih drugih interesov.

Zakonodajalec je omejen pri posegih v samo jedro načela oziroma svobode avtonomije (državnih) univerz in visokih šol, ki izvira iz njihove tradicionalne in zgodovinske vloge ter različnih mednarodnih dokumentov. Ustavno zagotovljena avtonomija državnih univerz in visokih šol slednjih ne odvezuje od zvestobe oziroma spoštovanja samih ustavnih določb – univerze morajo namreč delovati skladno z ustavo.³³ Slednja ob omogočanju in zagotavljanju avtonomije državnih univerz in visokih šol istočasno nudi zakonodajalcu podlago za možne posege na to področje, predvsem v primeru določb, kjer lahko pride do kolizije z ustavno zagotovljeno avtonomijo.³⁴

6 Ustavnosodna presoja obsega avtonomije in vprašanje njenih naslovnikov

Avtonomija državnih univerz in visokih šol je ob uporabi teleološke in jezikovne razlage pridržana le državnim visokošolskim zavodom, katerih ustanovitelj je država. To je logičen sklep zaradi pravic, ki jih ima ustanovitelj (visokošolskega) zavoda pri njegovem upravljanju, ki terjajo omejitve države pri pretiranem poseganju v avtonomijo univerz predvsem tam, kjer lahko država kot ustanovitelj vpliva na delovanje zavoda. Ustanovitelj lahko sodeluje pri (so)upravljanju državnih univerz, vendar na način, ki mu ne omogoča prevladujočega vpliva, saj mora biti univerzam pridržana določena stopnja samouprave.³⁵

načela, po katerih mora biti zakon vsebinska podlaga za izdajanje podzakonskih predpisov in posamičnih aktov izvršilne oblasti, tako vlade kot upravnih organov, ne da bi bilo potrebno izrecno pooblastilo v zakonu.[14] Zato je Ustavno sodišče pobudnične očitke o neskladnosti izpodbijane ureditve z drugim odstavkom 120. člena presoјalo z vidika drugega odstavka 58. člena Ustave.«.

³³ Podobno Franc Testen v Komentar Ustave Republike Slovenije, ur. L. Šturm, Fakulteta za podiplomske evropske in državne študije, 2002, str. 589.

³⁴ Npr. 57., 59., 75. člen Ustave RS.

³⁵ Če upoštevamo sestavo upravnega odbora (organ upravljanja, ki odloča zlasti o zadevah gospodarske narave in skrbi za nemoteno materialno poslovanje Univerze) največje slovenske univerze, Univerze v Ljubljani, ima ustanovitelj 1/3 predstavnikov (3 od 9 članov), kar mu omogoča določen, a ne prevladujoč vpliv. Poleg tega ima ustanovitelj svoje predstavnike samo v okviru upravnega odbora, kot organa, ki se ukvarja predvsem z materialnim in gospodarskim delovanjem univerze, medtem, ko v senatu kot najvišjem strokovnem organu univerze ustanovitelj nima svojih predstavnikov. Poleg tega je sestava upravnega odbora skladno z 22. členom ZViS pridržana univerzi (vsaj glede vprašanja deleža predstavnikov ustanovitelja in

Avtonomnost ne vključuje pravice do samoorganiziranja, saj je za samo vzpostavitev delovanja državne univerze ali državne visoke šole potrebna aktivnost oziroma delovanje države, ki ustanovi samo institucijo – (avtonomno) univerzo, na način s katerim med drugim uredi oziroma predpiše vsaj temeljne določbe o njenem statusu, načinu vodenja in upravljanja, nalogah oziroma dejavnostih, določbe, ki urejajo temeljna razmerja med njenimi konstitutivnimi deli (članicami) in glede na specifične naloge, ki jih imajo državne univerze kot izvajalke javne službe, določbe o vplivu države in državljanov pri njihovem delovanju.³⁶ Ustanovitev državne univerze oziroma državne visoke šole je tisti konstitutivni element oziroma pogoj, po uresničitvi katerega lahko razpravljamo o vprašanju avtonomije (državnih) univerz.

Poleg razmerja ustanovitelja (države) do visokošolskega zavoda, ki predstavlja avtonomijo državnih univerz »navzven«, torej do zunanjih dejavnikov (če sploh lahko štejemo državo, ki je ustanovitelj, za zunanji dejavnik), je pomembno tudi vprašanje avtonomije univerz do različnih notranjih enot oziroma »sestavnih« delov univerze, kot so članice in pridružene članice univerze ter različne pravne osebe (npr. inštituti), katerih ustanoviteljica je sama univerza. Slednjim lahko zavrremo pravico do samostojne avtonomije že iz razloga, da le-ta skladno z ustavo pripada državnim univerzam in državnim visokošolskim zavodom in ne drugim zavodom, ki uživajo avtonomijo samo v okviru avtonomije univerze kot celote. Običajno je univerza samostojna pravna oseba, medtem ko so članice njene organizacijske enote, ki pokrivajo različna znanstvena področja znotraj univerze kot celote. Obstajajo tudi določene *sui generis* situacije, ki jih bomo predstavili na primeru Univerze v Ljubljani. Članice univerze v Ljubljani so na neki način »dvoživke« saj v nekih situacijah nimajo samostojne pravne subjektivitete³⁷, v izrecno predvidenih situacijah pa je članica univerze hkrati zavod z lastnostjo pravne osebe in nastopa pri izvajanju (nekaterih) dejavnosti v pravnem prometu v svojem imenu in za svoj račun. Članice Univerze so v specifičnem položaju, ko je njihova pravna subjektiviteta odvisna od dejavnosti, ki jih v nekem trenutku izvajajo.³⁸

njihovega mandata), zakon določa le obveznost zastopnosti ustanovitelja in določenih skupin, saj skladno z zakonom upravni odbor »sestavljajo predstavniki ustanovitelja, predstavniki delavcev, ki opravljajo visokošolsko dejavnost, predstavniki študentov, predstavnik drugih delavcev in predstavniki delodajalcev«. Tako sestava upravnega odbora ni problematična z vidika avtonomije univerze upoštevajoč dvotirni sistem njenega vodenja (senat in upravni odbor), saj država kot ustanovitelj sodeluje le na enem področju odločanja oziroma vodenja (predvsem gospodarske narave), poleg tega so primerjalnopravno gledano sistemi dvotirnega upravljanja v porastu.

36 Tako npr. Odlok o ustanovitvi Univerze na Primorskem (Ur.l. RS, št. 13/03, 79/04, 36/06, 137/06, 67/08 in 85/11).

37 Splošno pravilo je, da je članica univerze zavod brez pravne subjektivitete.

38 Dvojnost pravne subjektivitete članic je razvidna iz statuta UL, po katerem, »30. člen: Članica univerze je zavod brez pravne subjektivitete, ko v imenu in za račun univerze izvaja dejavnost v okviru nacionalnega programa visokega šolstva in nacionalnega razvojnega in raziskovalnega programa, za katera zagotavlja sredstva Republika Slovenija. Pri izvajanju nacionalnega programa visokega šolstva in nacionalnega raziskovalnega in razvojnega programa nastopa članica v imenu in za račun univerze. Članica univerze je hkrati zavod z lastnostjo pravne osebe in nastopa pri izvajanju dejavnosti iz 16. člena tega statuta v pravnem prometu v svojem imenu in za svoj račun.« upoštevajoč 16. člen statuta tako članica praviloma nima samostojne pravne subjektivitete »16. člen: V skladu s četrtem odstavkom 10. člena Zakona o visokem šolstvu in prvem odstavkom 7. člena Odloka o preoblikovanju Univerze v Ljubljani lahko članica univerze s

Tovrstno dualnost pravnega statusa predvideva že ZViS.³⁹ To ne reši vprašanja ali članica univerze v kakem trenutku uživa ustavno zagotovljeno avtonomijo, saj tudi, ko deluje »samostojno na trgu, kjer sama in za svoj račun pridobiva sredstva«, še vedno sodi v okvir univerze kot njena članica in s samostojnim pridobivanjem sredstev na trgu ne izstopa iz institucionalnega okvira.⁴⁰

Poleg notranje avtonomije v razmerju med univerzo in njenimi članicami ne smemo spregledati tudi avtonomije v razmerju med univerzo in njenimi zaposlenimi ter uporabniki storitev. Razmerje avtonomije je vidno tudi v razmerju posameznika do institucije (univerze). Posamezniki morajo biti znotraj univerze svobodni, znanstveniki morajo biti tako znanstveno avtonomni in sami brez prisile določati področja, ki jih bodo raziskovali, uporabniki storitev oziroma študenti po drugi strani pa morajo biti avtonomni pri svojem organiziranju in delovanju (v skladu z zakonom) in imajo tako avtonomno pravico do (samo)organiziranja v skladu z zakonodajo.⁴¹ Ta notranja avtonomija med različnimi akterji je posledica dejstva, da vsi skupaj izvajajo nacionalni program visokega šolstva in predstavljajo univerzo kot skupnost učiteljev,

soglasjem ustanovitelja opravlja tudi drugo izobraževalno, raziskovalno, umetniško, razvojno, strokovno in svetovalno dejavnost oziroma druge s tem povezane dejavnosti, ki so opredeljene v prilogi tega statuta. Članica ima svoj račun pri UJP. Članica neposredno na svoj račun dobiva finančna sredstva, pridobljena z dejavnostjo iz prvega odstavka tega člena in z izvajanjem nacionalnega programa visokega šolstva, za katero se ne zagotavljajo sredstva iz proračuna RS. Za izvajanje dejavnosti iz prvega in tretjega odstavka tega člena zaposluje članica osebe v skladu s pravili, ki jih sprejme senat članice, in po predhodnem soglasju rektorja oziroma glavnega tajnika UL.« Upoštevajoč 16. in 30. člen statuta UL, tako članica samostojno nastopa v pravnem prometu v svojem imenu in na svoj račun v primerih, ko ne gre za pridobivanje sredstev iz proračuna Republike Slovenije.

39 Zakon o visokem šolstvu, uradno prečiščeno besedilo, Uradni list RS, št. 119/2006 z dne 20. 11. 2006, 10. člen (pravna subjektiviteta univerze in članic) »Univerza je pravna oseba. V okviru univerze se ustanovijo fakultete in umetniške akademije, lahko pa tudi visoke strokovne šole in drugi zavodi – članice univerze (v nadaljnjem besedilu: članice univerze). Članice univerze imajo pravice in obveznosti, določene s tem zakonom, aktom o ustanovitvi univerze in statutom univerze. Članice univerze pri izvajanju nacionalnega programa visokega šolstva, za katerega zagotavlja sredstva Republika Slovenija, nastopajo v pravnem prometu s pooblastili, ki jih določa akt o ustanovitvi univerze in statut, v imenu in za račun univerze. V drugih primerih članice univerze nastopajo v pravnem prometu v svojem imenu in za svoj račun v skladu z aktom o ustanovitvi in statutom univerze. Članica univerze ima lahko žiro račun.«

40 Po mnenju ustavnega sodišča je ustavno varstvo avtonomije univerz pridržano le univerzi in ne njenim članicam. Tako v notranjem razmerju avtonomija ni pridržana samim članicam temveč le univerzi kot celoti in to tudi v situacijah, kjer članica uživa samostojno pravno subjektiviteto. Posledično moramo članico šteti in razumeti kot del univerze kot celote, ki v določenih situacijah uživa samostojno pravno subjektiviteto.

41 Zakon o visokem šolstvu, 68.člen: »Študenti imajo avtonomno pravico do oblikovanja skupnosti študentov. Način uresničevanja te pravice se določi z zakonom.« Zakon, ki to pravico konkretizira je Zakon o skupnosti študentov (Ur.l. RS, št. 38/1994), ki je sicer v določenih točkah v nasprotju z ZViS, vendar to upoštevajoč načelo *lex posterior derogat legi priori* ne pomeni posebne ovire, saj se v situacijah, kjer nasprotuje ZViS, uporabijo določbe ZViS. Kot primer lahko navedemo zadnji odstavek 5. člena Zakona o skupnosti študentov, ki določa, da »Študentska organizacija visokošolskega zavoda v skladu z zakonom in statutom izvoli predstavnike študentov, ki sodelujejo pri delu in upravljanju visokošolskega zavoda.«. ZViS pripisuje to pristojnost študentskim svetom univerze in članic, saj so oni legitimni predstavniki študentov v okviru univerz in visokošolskih zavodov. Ta neskladnost je posledica vzpostavitve »dvostranskega« sistema študentskega predstavnštva, ko imajo po zakonu pravico do soupravljanja univerz in visokošolskih zavodov, hkrati pa na podlagi Zakona o skupnosti študentov in 145. člena Ustave Republike Slovenije (samouprava na področju družbenih dejavnosti) »Državljanom se lahko za uveljavljanje svojih interesov samoupravno združujejo. Državljanom se lahko z zakonom prepusti samoupravno urejanje posameznih zadev iz državne pristojnosti.« lahko samostojno ustanovijo interesna združenja za varstvo svojih interesov npr. Študentska organizacija Slovenije.

raziskovalcev in študentov.⁴² V teh razmerjih niso dopustni hierarhični odnosi, odnosi prisile - univerza mora biti organizirana na način, ki omogoča vsebinski diskurz med različnimi akterji, ki delujejo v okviru univerze, izogibati se je treba situacijam preglasovanja (kadar je to mogoče) in si prizadevati za sprejemanje odločitev, podprtih s čim širšim konsenzom vpletenih strani, ki predstavljajo skupnost – avtonomno univerzo.⁴³

Razprava se je do sedaj osredotočala na vprašanje avtonomije državnih univerz in državnih visokih šol, na situacije, kjer je ustanovitelj država, vendar nam ne nudi odgovora na vprašanje ali se ustavno jamstvo avtonomije državnih univerz in državnih visokih šol nanaša tudi na zasebne visokošolske zavode.⁴⁴ S pomočjo jezikovne, teleološke in logične razlage je možen samo en sklep. Ustavno besedilo namreč zagotavlja avtonomijo »državnim univerzam in državnim visokim šolam«, predvsem z namenom omejiti vpliv ustanovitelja na (avtonomno) delovanje univerz. Poseganje zasebnih ustanoviteljev v delovanje univerz je sicer omejeno s področno zakonodajo. Ustanovitelj je tu svoboden pri poseganju v delovanje »zasebnih« univerz skladno z veljavno zakonodajo, ustanovitvenim aktom in notranjimi pravili zavoda, o katerih so se dogovorile vpletene strani. Država lahko v njihovo delovanje sicer posega kot »oblast«, predvsem prek zakonodaje, ki ureja področje delovanja univerz in visokošolskih zavodov in tako vzpostavlja enovit sistem visokega šolstva. Omejevanje ustanoviteljskih pravic zasebnemu ustanovitelju ni utemeljeno in celo ne bi bilo smiselno, saj bi lahko zasebne ustanovitelje odvrnilo od ustanavljanja visokošolskih zavodov. Država se ni odpovedala svojim pravicam kot oblast, se pa mora izogibati pretiranim posegom v avtonomna področja delovanja univerz in visokih šol, ki bi jih kot ustanovitelj lahko izvrševala.⁴⁵ Kot oblast se država odpove poseganju na določena področja, ki so izrecno opredeljena z zakonodajo, kar velja tudi za zasebne visokošolske zavode.

⁴² Zakon o visokem šolstvu, 46. člen (izvajanje nacionalnega programa): »Nacionalni program visokega šolstva izvajajo javni visokošolski zavodi, drugi zavodi – članice univerz, skupnost študentov in študentski domovi. Nacionalni program visokega šolstva izvajajo tudi visokošolski zavodi, drugi zavodi – članice univerz in študentski domovi na podlagi koncesije.«

⁴³ U-I-34/94 z dne 22. 1. 1998, »Nosilka pravice do avtonomnosti je po jasni ustavni določbi državna univerza oziroma visoka šola. Vendar že iz narave stvari (ker gre za pravno, ne pa za fizično osebo, ki nastane po naravnih zakonih), pa tudi iz ustavne določbe (državna univerza) izhaja, da avtonomnost ne vključuje tudi pravice do samoorganiziranja. Da univerza sploh lahko začne avtonomno delovati, mora država sprejeti pravila in akt o njeni ustanovitvi, to pa nujno vključuje vsaj temeljne določbe o njenem statusu, načinu vodenja in upravljanja, nalogah oziroma dejavnosti, nadalje določbe, ki urejajo temeljna razmerja med njenimi konstitutivnimi deli (fakultete – znanstveni delavci – pedagoški delavci – drugi delavci – študentje) in glede na specifične naloge, ki jih imajo državne univerze kot javna služba, tudi določbe o vplivu države in državljanov pri njihovem delovanju. Šele po sprejetju teh določb je sploh mogoče govoriti o tem, kdo (kaj) je univerza, ki naj bo avtonomna. Pri tem pa mora zakonska ureditev upoštevati, da avtonomnost univerze predstavlja temeljno svoboščino. V razmerju do univerze je avtonomen vsekakor posameznik, znanstvenik – ta mora biti znotraj univerze svoboden, znanstveno avtonomen, neodvisen, univerza pa organizirana tako, da izključuje odnose monokracičnosti, hierarhije, oblastne prisile in odvisnosti v smislu vezanosti na navodila na eni strani v razmerju med univerzo in državo, na drugi strani pa tudi v razmerju med univerzo in znanstveniki.«

⁴⁴ Število zasebnih visokošolskih zavodov v zadnjih letih v Sloveniji (in drugod) narašča.

⁴⁵ U-I-34/94 z dne 22. 1. 1998.

Notranja razmerja silahko državna univerza uredi v okviru svojih »samoupravnih« aktov, s čimer si lahko članice z notranjimi akti zagotovijo določeno mero dejanske avtonomije – »avtonomni dogovor v okviru organizacije o notranji organizaciji in razmerjih med fakultetami, umetniškimi akademijami in visokimi strokovnimi šolami«⁴⁶ (npr. samostojno razpolaganje s sredstvi pridobljenimi na trgu), ustavno varstvo avtonomije pa je kljub temu pridržano le »državni« univerzi kot celoti.⁴⁷ Vprašanja notranje avtonomije v razmerju do različnih elementov, ki predstavljajo univerzo kot skupnost učiteljev, raziskovalcev in študentov, se lahko uredijo z notranjimi akti univerze, saj obstaja razumevanje, da navedeni elementi skupnosti v razmerju do univerze uživajo določeno mero avtonomije skladno z ustavno določbo o avtonomiji državnih univerz in visokih šol.⁴⁸ Razumevanje ustavno zagotovljene avtonomije univerz je tako dopustno na področjih, ki jih konkretizira zakonodaja, ki ureja obravnavano področje (avtonomija univerze v skladu z ustavo in zakonom).

7 Ustavnosodna presoja in opredelitev načela avtonomije državnih univerz in visokih šol

Ustavno sodišče Republike Slovenije je večkrat presojalo vprašanja povezana z avtonomijo državnih univerz in visokih šol in je v primerih, ko je do presoje prišlo, opredelilo tudi svoje razumevanje ustavno zagotovljene avtonomije univerze. Prvo resno vsebinsko srečanje z obravnavnim vprašanjem se je pojavilo v okviru zadeve U-I-34/94, z dne 22. 1. 1998, kjer je sodišče ugotovilo, da »Določanje meril in postopka za izvolitev v nazive sodi med vprašanja, glede katerih je Univerza avtonomna, in zato izpodbijani drugi stavek drugega odstavka 56. člena ZViS – o možni izostritvi teh meril in o možnih posledicah – krši ustavno določbo o avtonomnosti Univerze.«. Habilitacije oziroma določanje meril (kriterijev) za volitve v nazive visokošolskih učiteljev, znanstvenih delavcev in sodelavcev je področje, ki sodi v avtonomijo univerze. Sodišče je stalo tudi na stališču, da »Določanje morebitne prednosti za nekatere kategorije oziroma nazive pri zasedanju funkcij v organih Univerze sodi prav tako med tista vprašanja, ki so vsebina avtonomije Univerze.«. V slovenskem prostoru kadrovske avtonomije univerz omejujejo kogentni državni predpisi (tako glede zaposlovanja, pogojev dela kot višine plač)⁴⁹. V avtonomijo univerze

⁴⁶ U-I-243/95 z dne 16. 4. 1998.

⁴⁷ Ibid. »Seveda pa je pri tem treba upoštevati, da bo pri izvrševanju 3. točke izreka odločbe št. U-I-34/94 zakonodajalec moral še odpraviti ugotovljeno neustavnost (avtonomen status članic). Sele potem, ko bo status ‚članic‘ usklajen z Ustavo, upoštevajoč tudi opozorila iz zgoraj citirane 72. točke obrazložitve prejšnje odločbe, bo mogoče presoditi, ali sestava senata ustreza zahtevi iz 21. člena ZViS.«

⁴⁸ Vendar te avtonomije ne gre razumevati za pravo avtonomijo temveč bolj za delegiranje določenih pristojnosti na članico.

⁴⁹ Slednje izraža vidik kadrovske avtonomije univerz, da sama izbira svoje zaposlene ter se z njimi pogaja o pogojih dela. Na tem področju obstaja več različnih sistemov, ki se razlikujejo po državah in so povezana z vprašanji pridobivanja novih zaposlenih, statusom zaposlenih na univerzi in višino plač. To je v slovenskem prostoru ob upoštevanju dejstva, da imajo zaposleni na univerzi status javnih uslužbencev, zelo omejeno, saj je podvrženo zakonodaji, ki velja za zaposlitve v celotnem javnem sektorju, kot so Zakon o javnih uslužbencih, Zakon o sistemu plač in kolektivne pogodbe za javni sektor.

po mnenju sodišča sodi tudi »Določanje študijskega režima ter določanje oblik in obdobja preverjanja znanja študentov sta sestavini načela avtonomije. Vanjo sodi tudi tehnologija izvajanja pedagoškega procesa, katerega sestavni del so tudi preizkusi znanja, zato je lahko to področje urejeno le z aktom, sprejetim v okviru univerzitetne avtonomije. Zakonodajalec nima pravice posegati na to področje.« Področje študijskega reda (preverjanje znanja, izvajanje pedagoškega procesa) in načini prenosa ter preverjanja znanja, ki potekajo v okviru dejavnosti, ki jo izvajajo univerze, so področja, kjer je urejanje pridržano univerzam. Univerze to področje urejajo s svojimi (samoupravnimi) akti, ki so sprejeti v okviru za to pristojnih organov univerz.⁵⁰

Univerzo se večkrat opredeljuje kot skupnost pedagogov, raziskovalcev in študentov, ki so vsi deležni in sodelujejo pri sooblikovanju vsebine avtonomnih področij, na kar se je sklicevalo ustavno sodišče, ko je opredelilo, da je »Določanje pogojev in meril za sprejem v študentske domove (je) mogoče šteti tudi kot določanje pogojev za opravljanje visokošolske dejavnosti in torej tudi za urejanje razmerij med univerzo in študenti, kar je predmet univerzitetne avtonomije. Zato bi univerza morala imeti vsaj možnost soodločanja pri določanju pogojev in meril za sprejem v študentski dom.«

Določanje pogojev za opravljanje visokošolske dejavnosti in urejanje razmerij med univerzo in študenti je po mnenju sodišča predmet univerzitetne avtonomije. Slednje je sicer večinoma opredeljeno z zakonodajo.⁵¹

Ustavno sodišče se je podrobneje opredelilo tudi do vprašanja avtonomije članic univerz, kjer se je poleg že predstavljenih stališč zavzelo, da »Poleg tega, da je avtonomnost ‚članic‘ univerze v nasprotju z navedeno izrecno ustavno določbo, je ureditev, ki daje avtonomnost hkrati univerzi in njenim sestavnim delom (‚članicam‘) tudi notranje protislovna: avtonomnost dveh ali več subjektov na istem področju odločanja in delovanja je nelogična in lahko povzroča le nerazrešljive spore.«⁵² Na istem področju tako dva subjekta ne moreta uživati enake avtonomije, avtonomija članic se udejanja prek zagotavljanja avtonomije državnih univerz.⁵³ Spodbijani zakon je priznaval avtonomijo vsem visokošolskim zavodom, iz česar bi sledil logičen sklep,

⁵⁰ Tako je npr. vprašanje in presoja števila mogočih opravljanj izpitov, ki sodi v področje študijskega reda, pridržano univerzam »S sklicevanjem na načelo enakosti se posega zakonodajalca ne da opravičiti. Zato je zakonodajalec nedopustno posegel v avtonomijo Univerze tudi v peti alineji prvega odstavka 66. člena, ki govori o pravici do najmanj trikratnega opravljanja izpita iz istega predmeta.«

⁵¹ Zakon o visokem šolstvu tako daje podlago za delovanje študentskim svetom (26. člen ZViS), izvajanje dejavnosti študentskih domov (31. člen ZViS), soupravljanje študentov (67. člen ZViS), organiziranost študentov (68. člen ZViS), vendar podrobnejše urejanje prepusti univerzam, saj se naloge, pristojnosti, število članov, način izvolitve, trajanje mandata in način odločanja organov visokošolskih zavodov in drugih zavodov – članic univerz, podrobneje uredijo s statutom v skladu z zakonom in ustanovitvenim aktom (28. člen ZViS).

⁵² U-I-34/94 z dne 22. 1. 1998.

⁵³ O vprašanju »avtonomnega« statusa članic univerze je sodišče odločalo še v zadevi U-I-285/97, kjer je potrdilo, da je v neskladju z ustavo zakonodajca, ki bi avtonomnost pripisovala tudi članicam univerz. Zakonodajalcu je naložilo, da mora protiustavnost odpraviti in dalo jasno razlago razumevanja avtonomije univerz, ki se kar zadeva odnose med univerzo in okoljem nanaša le na univerzo kot celoto, ne pa tudi na njene članice.

da priznava avtonomijo posameznim članicam neke univerze, vendar je bila tovrstna ureditev v nasprotju z razumevanjem ustavno zajamčene avtonomije državnih univerz in državnih visokih šol.⁵⁴

Z vprašanjem organizacijske avtonomije univerz se je sodišče srečalo v zadevi U-I-243/95⁵⁵, kjer je bila sporna določba statuta o sestavi senata Univerze, ki je določala privilegiranje umetnih ustanov bivšega sistema (vsi bivši VTOZD-i na Biotehniški fakulteti) s čimer naj senat univerze ne bi izpolnjeval zakonske zahteve po enakopravni zastopanosti vseh znanstvenih in umetniških disciplin ter strokovnih področij. Sodišče je moralo odločiti tudi o vprašanju možnih predstavnikov v senatu univerze, ki jih imenujejo članice, saj je zakon omejeval članstvo v senatu univerze na redne profesorje, statut univerze pa je zakonsko določbo dodatno zožil, saj je dovoljeval članstvo le rednim profesorjem, ki so na univerzi zaposleni s polnim delovnim časom. To članicam, ki nimajo med zaposlenimi rednih profesorjev, zaposlenih s polnim delovnim časom, odreja pravico do zastopanosti v senatu UL kot najvišjem strokovnem organu univerze, s tem pa je posledično okrnjeno načelo enakopravne zastopanosti znanstvenih disciplin v senatu.⁵⁶ Pri sestavi senata so bile sporne določbe statuta, ki so postavile strožje, restriktivnejše pogoje za članstvo. Po mnenju sodišča zakonski kriterij enakopravne zastopanosti znanstvenih in umetniških disciplin ter strokovnih področij ne pomeni nujno tudi enake zastopanosti članic univerze, saj je enakopravna zastopanost članic stvar avtonomne statutarne odločitve, ki pripada univerzi in izhaja iz avtonomnega dogovora v okviru univerze o notranji organizaciji in razmerjih med fakultetami, umetniškimi akademijami in visokimi strokovnimi šolami.⁵⁷

Sodišče je ugotovilo tudi neskladnost drugega odstavka 21. člena ZViS z 58. členom ustave, saj zakon pri določitvi pogoja »rednega profesorja« za možnost članstva v senatu omejuje univerzo, saj tovrstnih pogojev ne predvideva za senate članic (fakultet in visokih šol), kjer so lahko v senat izvoljeni tudi drugi visokošolski učitelji. Upoštevajoč 14. člen Ustave »mora biti zato vsem nosilcem izobraževalnega, umetniškega in znanstvenoraziskovalnega dela zagotovljena enaka (enakopravna) možnost sodelovanja v najvišjem strokovnem organu

⁵⁴ V zadevi U-I-34/94 z dne 22. 1. 1998. je Ustavno sodišče neustavnost 6. člena zakona obrazložilo tudi tako, da »Najprej zato, ker daje avtonomnost vsem visokošolskim zavodom (6. člen Zakona), to pa so po določbah 2. člena Zakona univerze, fakultete, umetniške akademije in visoke strokovne šole. Takšna določba je v nasprotju z določbo 58. člena Ustave, ki določa, da so avtonomne (samo) državne univerze in državne visoke šole.« in »Nadalje pa je – kolikor že sam pojem ‚članic univerze‘ ni nezdržljiv z avtonomijo univerze – Zakon protiuustaven tudi zato, ker v nasprotju z načeli pravne države (2. člen Ustave) v bistvu sploh ne določa statusa članic univerze. S tem, da ni uredil, ali pa je premalo natančno uredil ta vprašanja, pa je zakonodajalec poleg 2. člena Ustave kršil tudi 57. in 59. člen Ustave, saj ni izpolnil nalog, ki jih ima na področju visokega šolstva na podlagi tkim. organizacijsko pravnega institucionalnega jamstva države.«

⁵⁵ Tu je presojalo ustavnost in zakonitost Zakona o visokem šolstvu in Statuta UL.

⁵⁶ V obravnavani zadevi se je postavilo tudi vprašanje zakonitosti določb statuta o volitvah rektorja, ki naj ne bi bile v skladu z ZViS (vendar je tu sodišče zavrglo pobudo, saj posamični akti in dejanja v volilnih postopkih niso predmet abstraktne ustavnosodne presoje, sodišče pa nima pristojnosti za razveljavitev posamičnih aktov in dejanj, izdanih oziroma opravljenih v volilnih postopkih, ker so temu namenjene druge oblike sodnega varstva npr. upravni spor, postopek z ustavno pritožbo).

⁵⁷ U-I-243/95 z dne 16. 4. 1998, točka 12.

univerze, ne samo rednim profesorjem⁵⁸ in to na način, ki jim omogoča soodločanje oziroma jim daje možnost aktivnega sodelovanja pri sprejemanju odločitev. Sestava senata sodi v okvir (organizacijske) avtonomije univerze.⁵⁹

Novejša zadeva, v kateri se je ustavno sodišče srečalo z vprašanji avtonomije državnih univerz in visokih šol, je bil postopek za oceno ustavnosti in zakonitosti Zakona o visokem šolstvu, začel na pobudo Univerze v Ljubljani⁶⁰, ki je navajala, da je avtonomni javni visokošolski zavod, katerega ustanoviteljica je Republika Slovenija. Ker je izvajanje študijskih programov osnovna naloga visokošolskih zavodov, ima univerza dejanski in pravni interes, da potekajo postopki razpisa za vpis tako, da država posega in določa njihovo vsebino v skladu z zakonom in jasnimi kriteriji.⁶¹ Pobudnica je med drugim zatrjevala, da omejevanje izrednega vpisa študentov posega v avtonomijo univerze, saj izvajanje izrednega študija ni del javne službe in tako lahko država omejuje le mesta za vpis na redni študij ne pa tudi za izredni, saj tega plačajo študenti sami, ter da je legitimen interes države pri urejanju in financiranju študija izrednih študentov skrčen le na zagotavljanje minimalnih standardov kakovosti izrednega študija in na zagotavljanje enakopravnega obravnavanja rednih in izrednih študentov ter da država s posegom na to področje krši ustavno zagotovljeno pravico do izobraževanja iz prvega odstavka 57. člena ustave, ki pripada posamezniku. Zakon se je skliceval na Resolucijo o Nacionalnem programu visokega šolstva⁶², ki naj bi po mnenju pobudnice vsebovala priporočene norme, ki naj ne bi imele jasnih kriterijev, po katerih naj bi se ravnala izvršilna veja. Standardi iz ReNPVS, na katere se sklicuje ZViS, naj bi bili že na prvi pogled nedodelani, nejasni in presplošni, zato naj bi zakonodajalec dopustil vladi, da arbitrarno ureja vprašanje razmestitve študijskih programov in predpisuje šolnine. Pobudnica je izpodbijala četrti odstavek 73. člena ZViS, ki podrobnejše urejanje financiranja univerze prepušča vladi, iz razloga, da naj bi izničil namen ustavodajalca iz drugega odstavka 58. člena ustave, da je pregledno in vnaprej jasno določeno financiranje državnih univerz tako pomembno za njihovo avtonomijo, da je lahko urejeno le z zakonom in so zato s podzakonskimi predpisi lahko urejene le tehnične podrobnosti v zvezi s financiranjem državnih univerz, ne pa na originaren način urejeni obseg in pogoji financiranja državnih univerz. To naj bi

58 U-I-243/95 z dne 16. 4. 1998 »Seveda pa je pri tem treba upoštevati, da bo pri izvrševanju 3. točke izreka odločbe št. U-I-34/94 zakonodajalec moral še odpraviti ugotovljeno neustavnost (avtonomen status članic). Šele potem, ko bo status, članic' usklajen z Ustavo, upoštevajoč tudi opozorila iz goraj citirane 72. točke obrazložitve prejšnje odločbe, bo mogoče presoditi, ali sestava senata ustreza zahtevi iz 21. člena ZViS.«

59 V isti zadevi so bile izpodbijane tudi določbe statuta, ki so določale, da so člani senata po funkciji rektor in prorektorji, vendar ustavno sodišče tu ni ugotovilo neskladnosti z zakonodajo, saj ZViS izrecno ne predpisuje sestave senata (določa le, da je po funkciji član senata rektor) in to prepušča avtonomnemu urejanju univerze (statutu kot neposredni podlagi za sestavo senata). Ker zakon univerzi ne prepoveduje, da bi sama določila sestavo svojega senata, je tako stvar njene avtonomne odločitve, ali bodo člani senata po funkciji tudi prorektorji.

60 Pobudnica je izpodbijala četrti odstavek 46. člena, drugo alinejo prvega odstavka 66. člena, četrti odstavek 73. člena in tretji odstavek 77. člena Zakona o visokem šolstvu (v nadaljevanju ZViS).

61 U-I-156/08 z dne 14. 4. 2011.

62 Resolucija o Nacionalnem programu visokega šolstva 2008-2011, Uradni list RS, št. 94/2007 z dne 16. 10. 2007.

po mnenju pobudnice vladi omogočilo samovoljno določanje višine sredstev za visokošolsko izobraževanje, mimo vseh zakonskih okvirov, ki jih pravzaprav ni.⁶³ Izpodbijana določba ne omejuje izvršilne veje z neko mejo, ki omogoča tako financiranje, da avtonomija univerze ni okrnjena. Ustavno sodišče je glede na navedbe pobudnice moralo najprej ugotoviti, ali je izredni študij javna služba ali ne, na kar pa ni našlo ustreznega odgovora.⁶⁴ Posledično je naložilo zakonodajalcu, da uredi nejasnosti.

Ustavno sodišče je ugotovilo, da ima pravico do avtonomije državna univerza oziroma državna visoka šola, iz pravice do avtonomije pa izhaja predvsem pravico do odločanja v lastnih zadevah, to je v tistih, ki sodijo v univerzitetno področje in zadevajo univerzo oziroma visoko šolo. Zakonodajalec mora z zakonom predpisati način uresničevanja te ustavne pravice, ki se ne morejo izvrševati neposredno na podlagi Ustave, saj je država zavezana, da »razmeji popolnoma avtonomno področje od področja javnega ter visoko šolstvo uredi tako, da določi temeljne statusnopravne, kadrovske, upravljavske in finančne okvire delovanja državnih univerz oziroma visokih šol ter uredi temeljna razmerja med subjekti znotraj univerze ter položaj javnosti v upravljanju univerze in nadzoru nad njenim delovanjem. Pri tem pa država ne sme omejiti avtonomnosti državne univerze oziroma visoke šole v njeni znanstveno-pedagoški komponenti.«⁶⁵ Tako je že iz ustave razvidno, da je avtonomija na področju financiranja omejena, saj ustava daje zakonodajalcu pooblastilo, da z zakonom uredi področje financiranja. Vendar je zakonodajalec po mnenju

63 Pobudnica je menila tudi, da se pri stabilnosti financiranja začne in konča avtonomija univerze.

64 U-I-156/08 z dne 14. 4. 2011 »Ustavno sodišče je glede na navedeno ocenilo, da na podlagi razlage veljavnih predpisov ni mogoče odgovoriti na vprašanje, ali je izredni študij del javne službe ali ne. Na to ni mogoče odgovoriti niti ob upoštevanju dejanskih okoliščin. Javna služba je namreč normativni pojav in ne dejanski.« poleg tega »Ustavno sodišče brez podlage v Ustavi ali zakonu (glej 22. člen ZZ) ne more samo odgovoriti na vprašanje, ali pomeni izvajanje izrednega študija del javne službe ali pa opravljanje storitev na trgu, saj je odgovor na to vprašanje, skladno z načelom delitve oblasti na zakonodajno, izvršilno in sodno (drugi stavek drugega odstavka 3. člena Ustave), v pristojnosti zakonodajne oblasti.« saj se »Z opredelitvijo javne službe pa se določajo tudi pravice in obveznosti izvajalcev, to je državnih univerz in državnih visokih šol ter visokošolskih zavodov s koncesijo, v razmerju do uporabnikov na eni strani in do države na drugi strani. Z vidika državnih univerz in visokih šol (in tudi pobudnice) je tako zlasti pomembno, da je obseg javne službe, ki jo morajo izvajati (torej njihova obveznost), jasno določen in da je s tem določena tudi obveznost države oziroma pravica državne univerze oziroma visoke šole do ureditve financiranja te javne službe z zakonom in predvsem do finančnih sredstev, ki naj bi ji na tej podlagi pripadala. Opredelitev javne službe v visokem šolstvu zato pomeni tudi ureditev pravic in obveznosti pravnih subjektov.« Resolucija pa je politični akt in ne more urejati pravic posameznikov »...da resolucija ni splošni (pravni) akt (primerjaj še 56. točko obrazložitve), temveč politični, deloma tudi strokovni akt, s katerim ni mogoče urejati pravic in obveznosti fizičnih in pravnih oseb. Te se morajo urejati s splošnoveljavnimi zakoni.«

65 Ibid. »Iz ustavnosodne presoje izhaja, da ima pravico do avtonomije državna univerza oziroma državna visoka šola.[12] Pravica do avtonomije pomeni pravico do odločanja v lastnih zadevah, to je v tistih, ki sodijo v univerzitetno področje in zadevajo univerzo oziroma visoko šolo. Ne glede na to, da prvi odstavek 58. člena Ustave ne določa, da mora zakonodajalec z zakonom predpisati način uresničevanja te ustavne pravice, pa iz ustavnosodne presoje izhaja, da državne univerze in državne visoke šole pravice do avtonomije ne morejo izvrševati neposredno na podlagi Ustave. Ta ustavna določba državo namreč zavezuje, da razmeji področje popolnoma avtonomnega od področja javnega ter visoko šolstvo uredi tako, da določi temeljne statusnopravne, kadrovske, upravljavske in finančne okvire delovanja državnih univerz oziroma visokih šol ter uredi temeljna razmerja med subjekti znotraj univerze ter položaj javnosti v upravljanju univerze in nadzoru nad njenim delovanjem. Pri tem pa država ne sme omejiti avtonomnosti državne univerze oziroma visoke šole v njeni znanstveno-pedagoški komponenti.«

ustavnega sodišča omejen, saj se mora kljub širokemu polju proste presoje, ki mu pripada pri urejanju tega področja, držati mej, po katerih zagotovi določeno finančno stabilnost, varnost in predvidljivost sredstev, ki jih pridobivajo univerze in visoke šole iz proračuna Republike Slovenije za svoje delovanje.⁶⁶ Ustavno sodišče je ocenilo, da izpodbijani členi ZViS ne urejajo načina financiranja javnih visokošolskih zavodov na način, da bi bilo zadoščeno zahtevi iz drugega odstavka 58. člena ustave, saj univerza ali visoka šola ne more niti okvirno predvidevati, kakšen znesek sredstev iz proračuna bo prejela za opravljanje svoje osnovne dejavnosti oziroma za izvajanje javne službe v visokem šolstvu s čimer je kršena potreba po predvidljivosti vsakokratnih sredstev. Predvidljivost mora biti po mnenju ustavnega sodišča razvidna že iz samega zakona, te zahteve pa izpodbijane določbe ne dosegajo.⁶⁷ Izpodbijana uredba je bila po mnenju ustavnega sodišča izdana brez vsebinske podlage v ZViS.⁶⁸

V eni izmed zgodnejših odločitev⁶⁹ se je ustavno sodišče ukvarjalo s prisilno upokojitvijo rednih profesorjev ob doseženi določeni starosti, saj je po zakonu lahko redni profesor zasedal delovno mesto le do doseženega 65. leta starosti.⁷⁰ Pobudnik (državni svet) je zatrjeval, da je zakonska določba v nasprotju s 14. členom ustave, ker postavlja redne profesorje v neenakopraven položaj z delavci na delovnih mestih drugih visokošolskih učiteljev, znanstvenih delavcev in visokošolskih sodelavcev, na katere se te omejitve ne nanašajo,

⁶⁶ U-I-156/08 z dne 14. 4. 2011 »Način financiranja državnih univerz in državnih visokih šol iz drugega odstavka 58. člena Ustave od zakonodajalca tako zahteva, da z zakonom uredi način financiranja njihove dejavnosti (t. i. okvir financiranja) in način oziroma pravila upravljanja tako pridobljenih finančnih sredstev. Ustava pri tem ne omejuje zakonodajalca le na ureditev načina financiranja iz proračuna ter v tem okviru načina financiranja javne službe in drugih dejavnosti, temveč omogoča tudi ureditev načina financiranja iz drugih virov. Prav tako Ustava ne omejuje zakonodajalca glede financiranja po višini sredstev, ki naj bi bila zagotovljena iz posameznih virov financiranja (proračuna in drugih). Ureditev virov financiranja ter višine financiranja iz proračuna in drugih virov je tako v pristojnosti zakonodajalca, ki ima na tem področju široko polje proste presoje. Vendar pa zakonodajalec le ni povsem prost. Način financiranja mora v zakonu urediti tako, da državne univerze in državne visoke šole že na podlagi zakona lahko predvidijo obseg finančnih sredstev, ki jih lahko pridobijo. Le na tak način sta jim lahko zagotovljeni finančna stabilnost in varnost. Poleg tega pa mora ureditev tudi zagotavljati neodvisnost od vsakokratne izvršilne veje oblasti kakor tudi neodvisnost prek finančnega vzvoda od morebitnih zunanjih političnih, gospodarskih in drugih zasebnih interesov. Le z upoštevanjem navedenih mej je državnim univerzam in državnim visokim šolam omogočeno izvrševanje pravice do avtonomije iz prvega odstavka 58. člena Ustave, zlasti v njeni znanstveno-pedagoški komponenti (glej 40. točko obrazložitve).«

⁶⁷ Ibid. »Ustavno sodišče je na podlagi navedenega ocenilo, da zakon (ZViS) ni uredil vsebine načina financiranja državnih univerz in državnih visokih šol, zlasti pa ne načina financiranja iz proračuna, kot to zahteva drugi odstavek 58. člena Ustave. Prav tako je ocenilo, da zakon ni določil okvirov in usmeritev za podrobnejše urejanje te vsebine v podzakonskem predpisu. Državnim univerzam in državnim visokim šolam tako njihov položaj glede financiranja njihove dejavnosti ni znan oziroma predvidljiv že na podlagi zakona. Ustavno sodišče je zato odločilo, da so prvi do tretji odstavek in peti odstavek 73. člena ZViS v neskladju z drugim odstavkom 58. člena Ustave.«

⁶⁸ Vendar je ustavno sodišče ni razveljavilo saj bi s tem povzročilo pravno praznino s katero bi lahko povzročilo, da se ustavi financiranje državnih univerz in državnih visokih šol. Ustavno sodišče tudi ni presojalo navedb pobudnice glede ReNPVŠ saj to ni predpis ali splošni pravni akt temveč politični akt (deloma tudi strokovni akt, s katerim se ne morejo urejati pravice in obveznosti fizičnih in pravnih oseb).

⁶⁹ U-I-22/94 z dne 17. 2. 1994.

⁷⁰ Zakon o visokem šolstvu (Uradni list RS, št. 67/93), 60. člen.

če niso dosegli pogojev za upokojitev s polno pokojninsko dobo.⁷¹ Omenjena določba je nekatere redne profesorje privilegirala, druge pa diskriminirala (tiste, ki ne izpolnjujejo pogojev za upokojitev s polno pokojninsko dobo). Redni profesorji, ki do doseženega 65. leta starosti ne bodo dopolnili pokojninske dobe, ki je potrebna za pridobitev pravice do polne starostne pokojnine, zaradi izpodbijane določbe ne bodo mogli več zasedati delovnih mest, kljub morebitnemu strinjanju oziroma odločitvi delodajalca, da redni profesor lahko nadaljuje z delom do izpolnitve pogojev za dopolnitev pokojninske dobe za pridobitev pravice do polne starostne pokojnine. Tako bi redni profesorji, ki bi pred dopolnjenim 65. letom starosti izpolnjevali pogoje za polno starostno pokojnino, lahko ostali v delovnem razmerju do 65. leta, medtem ko drugim ne bi bila dana možnost za nadaljevanje delovnega razmerja do izpolnitve pogojev za pridobitev pravice do polne starostne pokojnine. Situacija, v kateri redni profesorji kljub doseganju pogojev za polno starostno pokojnino lahko ostanejo v delovnem razmerju ob soglasju delodajalca, sodi v okvir avtonomije univerz in visokih šol. Če konkretiziramo, sodi to vprašanje v sfero kadrovske avtonomije univerz in visokih šol.⁷²

Urejanje področja avtonomije univerz in visokih šol je področje, kjer je zakonodajalcu pridržano široko polje proste presoje, čemur pritrjuje tudi ustavno sodišče v svojih odločbah, vendar to polje ni neomejeno.

8 Sklepne ugotovitve

Čeprav bi upoštevajoč obsežno in na visokem nivoju zagotovljeno avtonomijo (državnih) univerz in visokih šol lahko predvidevali, da je urejanje tega področja relativno neproblematično, je iz sporov in različnih predlogov nove zakonodaje razvidno, da vprašanje le ni tako enostavno. Gotovo je le, da je poseganje zakonodajalca na to področje omejeno, avtonomija sama pa univerze ne odvezuje od spoštovanja ustavnih in zakonskih določb.

Komisija EU in veliko število evropskih vlad je spoznalo potrebo po avtonomiji univerz.⁷³ Podobno je Svet Evropske unije potrdil ta pristop, saj obstaja nedvomna povezava med avtonomijo univerz in njihovo sposobnostjo

⁷¹ To je bilo 29 od 56 rednih profesorjev, ki bi se morali upokojiti.

⁷² S primerjalnopravnega stališča so se tovrstna vprašanja pojavila pred marsikaterim ustavnim sodiščem, vendar je bil razlog za izpodbijanje določb o prisilni upokojitvi (rednih) profesorjev ob doseženem 65. letu starosti drugje. Sklicevali so se namreč na diskriminacijo glede na starost. Tako je npr. Vrhovno sodišče Kanade v zadevi *McKinney v. University of Guelph* odločilo, da »prisilna upokojitev pri 65. letih tistih, ki so sposobni delati pomeni diskriminacijo glede na starost, vendar je to dopustno in objektivno utemeljeno iz razlogov zagotavljanja akademske odličnosti in javnega interesa po pridobivanju novih učiteljev. Čeprav je tovrstna upokojitev temeljila le na doseganju določene starosti posameznika, naj bi bila ta utemeljena (v ločenih mnenjih se pojavijo tudi stališča, da bi bilo potrebno uvesti »teste«, ki bi ugotovili sposobnost posameznikov za nadaljevanje z delom). V odločbi je sodišče priznalo univerzam tudi avtonomijo na kadrovske področju ter omenilo, da bi sicer šlo za prepovedano diskriminacijo glede na starost (prepovedana z ustavo Kanade), vendar so univerze avtonomne, do diskriminacije pa bi prišlo, kadar bi se situacija odvijala na ravni državnih ali drugih javnih institucij.

⁷³ Komisija EU je v svojem komuniqueju *Delivering on the Modernisation Agenda for Universities: Education, Research and Innovation* (2006) kot prioriteto izpostavilo vzpostavitev novega okvira za delovanje univerz s poudarkom na izboljšanju avtonomije in odgovornosti.

reagiranja na družbene spremembe. Treba je na novo vzpostaviti razmerje med avtonomijo in odgovornostjo univerz, čeprav je sam koncept avtonomije univerz v Evropi različno razumljen. Največ sprememb se obeta na področju finančne avtonomije, ki je pomembna predvsem za doseganje strateških ciljev univerz, skladno z avtonomijo univerz pa je, da same sebi določajo strategijo razvoja. Tako je financiranje neločljivo povezano s strateškim razvojem univerz, do neke mere (od države) neodvisno financiranje univerz pa je ključen pogoj za druge vidike avtonomije univerz, saj slednji postanejo le črka na papirju in obstajajo le v teoriji če univerze nimajo zagotovljene vsaj določene avtonomije pri financiranju. Upoštevajoč pregled slovenskega sistema finančne avtonomije univerz lahko zaključimo, da je tudi v slovenskem prostoru poglobljena pomanjkljivost ravno na področju finančne (in uslužbenske) avtonomije. V večini držav v Evropi imajo zaposleni na univerzi status javnih uslužbencev – tu bi bilo primerno razmisliti o bolj fleksibilnih oblikah zaposlitve in sistemu bolj fleksibilnega določanja plačil zaposlenih v okviru univerz. V povezavi s trenutno gospodarsko in finančno krizo raziskava EUA ni prinesla konkretnjših rezultatov saj so bili rezi v javna sredstva, namenjena visokemu šolstvu, večinoma kratkotrajni in so pomenili pritisk na univerze, vendar njihove dolgoročne posledice za področje avtonomije univerz še niso jasno razvidne, prišlo pa je do spoznanja, da je kontinuirano (tudi po obsegu) financiranje univerz ključnega pomena za institucionalno avtonomijo univerz (slednje zahteva javno financiranje). Končni sklep na vprašanje ali naj se v prihodnosti zavzemamo za večjo ali manjšo avtonomijo univerz, je vsekakor lahko samo en. Univerze potrebujejo več avtonomije na opisanih področjih, ki jim bo omogočalo lažje odzivanje na trenutne družbene izzive, kar mora biti *de lege ferenda* cilj zakonodajalca in univerz samih.

Mag. Nejc Brezovar je zaposlen na Univerzi v Ljubljani – Fakulteti za upravo, kjer kot asistent sodeluje pri izvajanju predmetov Ustavno pravo, Delovno in socialno pravo in Upravno pravo. Diplomiral je na temo Učinkovito pravno sredstvo pred Evropskim sodiščem za človekove pravice - s poudarkom na Sloveniji, magistriral pa na temo Ustavnosodne interpretacije načela socialne države oboje na Univerzi v Ljubljani – Pravna fakulteta. Kot študent je bil aktiven v organih Univerze v Ljubljani (član senata in komisij senata UL, član upravnega odbora UL itd.). Ukvarja se tudi s področjem človekovih pravic in temeljnih svoboščin in trenutno raziskuje področje diskriminacije glede na starost predvsem pri zaposlovanju in delu.

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SUMMARY

LEGAL ASPECTS OF AUTONOMY OF UNIVERSITIES AND OTHER INSTITUTIONS OF HIGHER EDUCATION

Keywords: autonomy, state universities and institutions for higher education, higher education, decision of Constitutional Court, scope and beneficiaries of autonomy

Author discusses the legal aspects of autonomy of universities and other institutions of higher education, which is a right usually reserved to universities in national constitutions either directly or indirectly (through other human rights such as »the right to education« etc.).

The emphasis of the article is on the Slovenian regulation of the university autonomy. The term »autonomy« originates from Latin lexical roots *autos* and *nomos*, meaning »the one who is its own legislator«. Its place in national constitutions is usually among human rights - it is a human right of a negative status with the purpose to provide universities a certain level of »defence« from unacceptable state interventions in the area that is primarily reserved to university autonomy, aiming to prevent the state authority (government in power) from unacceptable action that would threaten the forementioned autonomy.

Universities and other institutions of higher education are the only category in the Constitution of the Republic of Slovenia whose autonomous status is explicitly assured with the Constitution. According to Article 58 of the Constitution »State universities and state institutions for higher education shall be autonomous. The manner of their financing shall be regulated by law.«.

Autonomy is therefore reserved only to state universities and state institutions for higher education – the *ratio* of such regulation is that state founded universities have a weaker position towards the state since the state plays two different roles in this regard – firstly as »state power« that regulates different social relations (among others the area of higher education) and secondly as the founder of universities and different institutions of higher education. The state influence is therefore much greater in the area of state founded universities as the state here executes different rights that are reserved to her – as state power and as the founder. Universities must be protected from the state influence regardless of the universities traditional and historical autonomous role in society.

In a modern society there is no place for absolute autonomy since it is a complex intertwined system – therefore the autonomy enjoyed by the state universities can only be understood as relative autonomy. Autonomy is

reserved only to certain aspects that are connected with universities, such as academic freedom, freedom of research and teaching and other university activities.

The importance of university autonomy is also emphasised in different international agreements and documents such as the *Magna Charta*: »The university is an autonomous institution at the heart of societies differently organized because of geography and historical heritage; it produces, examines, appraises and hands down culture by research and teaching. To meet the needs of the world around it, its research and teaching must be morally and intellectually independent of all political authority and intellectually independent of all political authority and economic power.«.

Considering the research carried out by the European University Association, the university autonomy has four broad dimensions: organisational, financial, staffing and academic autonomy. The study focused on 26 European countries (Slovenia was not one of them). It also evaluated different levels of institutional autonomy and evaluated the legislative frameworks in national higher education systems and empirically confirmed that university autonomy helps improve the quality of the working area of universities and of the higher education system. Similar proof of the fact that success and improvement of quality are directly linked to the level of institutional autonomy, was also confirmed by some later carried out research.¹ Applying the criteria used in the EUA research we can confirm that the provided level of university autonomy in Slovenia is on a considerably high level. The legal standing for the university autonomy in the Slovenian legal order is the beforementioned Article 58 of the Constitution. From the draft of the Constitution we can learn that the intent of the historical legislator was to protect the university autonomy, especially in regard to permanent and lasting financing deriving from public funding (independent of the changing holders of state power). Despite this fact the Constitution gives authorisation to the legislator to regulate the financing of universities. The Higher Education Act gave this authorisation to the executive power (this is problematic if the holder of executive power would all of a sudden change the lump sum funding of the universities) – the Higher Education Act contains norms regarding organisational, staffing and academic autonomy, but not financial, which is probably the consequence of the fact that the legislature gave this authority to the executive power – proportionate to the fact that the legislature enjoys a broad margin of appreciation when regulating this area. This area of broad margin of appreciation is not without borders, it ends when a certain measure introduced by the legislature (or executive power) would interfere with the core of the constitutionally guaranteed autonomy.

¹ Sybille Reichert, Institutional Diversity in European Higher Education: Tensions and challenges for policy makers and institutional leaders, EUA, 2009, Sybille Reichert in Christian Tauch, Trends IV European Universities Implementing Bologna, 2005 and Andree Surssock in Anne Smidt: Trends 2010: A decade of change in European Higher Education, 2010.

Since university autonomy is a human right and fundamental freedom, the Constitutional Court of Slovenia is the institution that determines whether a certain measure is a violation of the constitutionally guaranteed university autonomy. There are many cases in which the Constitutional Court (judicial review) reviewed different aspect of passed legislature in its connection to the university autonomy principle. In the opinion of the Court only state universities and other institutions of higher education are entitled to the protection of their constitutionally guaranteed university autonomy – in order to prevent the state (as the founder) from (over)influencing the activities of universities. Only universities as a whole are entitled to autonomy and not different member institutions, faculties or academies – they are entitled to the protection of the university autonomy only as »parts« of university – the possibility of two or more subject being autonomous in the same area or field of decision making and activity is illogical and can cause only unsolvable conflicts. A certain degree of actual autonomy can also be seen in internal relations (internal autonomy) between the university as a whole and its members, academic staff and students – the levels of this autonomy are a matter of agreement between beforementioned elements and the university.

In the opinion of the Court one aspect of the universities autonomy is also that they are entitled to define their own standards and procedures for the election of their academic staff and to define potential preferences for some categories or titles to occupy certain positions – these are areas in which universities are autonomous. Determining the study regime, forms, periods and ways of testing students knowledge are also elements of the university autonomy principle – the state should not interfere. The state or the legislator is pledged or bound to delimit absolutely autonomous area from the public area and organize the area of higher education in a way that defines basic legal status matters, staffing, managerial and financial frames of state university activity and determine the relations between the university and subjects within (faculties, students etc.) and the public position in regard to university governance and control over universities activities, without limitations to its scientific-educational component. In one of its judgements the Court discussed mandatory retirement of tenure professors at the age of 65. This was discriminatory for tenure professor who have not yet achieved the right to full retirement (have not reached the required working or pension insurance age). If they reach an agreement with the university to continue working after they reach the forementioned age, they have in the opinion of the Court the right to continue work – staffing autonomy. University autonomy should be understood as autonomy within the constitutional and legal framework.

We can conclude that the question of university autonomy is not as simple as it might seem at first glance. The legislature intervention in the field of university autonomy is limited (taking in account its broad margin of appreciation), but the universities are also bound to obey the rules set by the legislature and are

therefore not absolutely autonomous. In the future the emphasis should be in trying to ensure more university autonomy especially in the area of financial autonomy (with more permanent and independent ways of financing) to allow universities to achieve their long time strategic goals – universities are autonomous in setting their own strategies of development and progress. The Slovenian system lacks a higher level of financial and staffing autonomy. Universities therefore need more autonomy in the before discussed areas, in order to enable them to more easily respond to current social changes, which should also be the *de lege ferenda* aim of the legislator and the universities.

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