

MEGATREND REVIJA
MEGATREND REVIEW

2/2015



Megatrend univerzitet, Beograd
Megatrend University, Belgrade

MEGATREND REVIJA • MEGATREND REVIEW

No 2/2015

Izdavački savet:
Publishing Council:

Predsednik:
President:
Professor Slobodan Pajović, PhD

Članovi iz inostranstva:
International members:

Professor Jean-Jacques CHANARON, PhD – Grenoble Ecole de Management, France
Academician Vlado KAMBOVSKI – Macedonian Academy of Sciences and Arts, Skopje, FYR Macedonia
Professor Žarko LAZAREVIĆ, PhD – Institute for Contemporary History, Ljubljana, Slovenia
Professor Norbert PAP, PhD – University of Pécs, Hungary
Professor Sung Jo PARK, PhD – Free University, Berlin, Germany
Professor Ioan TALPOS, PhD – West University of Timisoara, Romania

Članovi iz Srbije:
Members from Serbia:

Professor Milojko BAZIĆ, PhD – Megatrend University, Belgrade
Assistant Professor Ana JOVANCAI STAKIĆ, PhD – Megatrend University, Belgrade
Professor Oskar KOVAČ, PhD – Megatrend University, Belgrade
Professor Momčilo MILISAVLJEVIĆ, PhD – in retirement
Professor Milan STAMATOVIĆ, PhD – Metropolitan University, Belgrade

Izdaje i štampa:
Published and printed by:
Megatrend univerzitet, Beograd
Megatrend University, Belgrade

ISSN 1820-3159

UDK / UDC 33

Svi članci su recenzirani od strane dva recenzenta.
All papers have been reviewed by two reviewers.

Adresa redakcije:

Editorial address:

Megatrend revija / Megatrend Review
Goce Delčeva 8, 11070 Novi Beograd,
Srbija
Tel.: (381-11) 220 31 50
Fax: (381-11) 220 30 47

E-mail: mtopic@megatrend.edu.rs
www.megatrendreview.com

Redakcija
Editorial board

Članovi iz inostranstva:
International members:

Professor Dragan BOLANČA, PhD – Faculty of Law, University of Split, Croatia
Professor Vladimir DAVIDOV, PhD – Institute for Latin America, Russian Academy of Sciences, Moscow, Russia
Professor Vladimir S. KOMISSAROV, PhD – Faculty of Law, Lomonosov Moscow State University, Moscow, Russia
Professor Jana LENGHARTOVÁ, PhD – The University of Economics, Bratislava, Slovakia
Professor Maria DE MONSERRAT LLAIRÓ, PhD – Faculty of Economic Sciences, Buenos Aires University, Argentina
Professor Kevin V. OZGERCIN, PhD – Department of Politics, Economics & Law, The State University of New York, USA
Professor Valeria PERGIGLI, PhD – Faculty of Law, University of Siena, Siena, Italy
Professor Laura RUIZ JIMENEZ, PhD – Institute Hose Ortega y Gasset, Complutense University of Madrid, Spain
Professor Maria Mojca TERČELJ, PhD – Faculty of Humanities, University of Primorska, Koper, Slovenia

Članovi iz Srbije:
Members from Serbia:

Professor Tatjana CVETKOVSKI, PhD – Faculty of Business Studies, Megatrend University, Belgrade
Assistant Professor Uroš ČEMALLOVIĆ – Faculty of Law, Public Administration and Security, Megatrend University, Belgrade
Professor Nedo DANILOVIĆ, PhD – Faculty of Law, Public Administration and Security, Megatrend University, Belgrade
Professor Vladimir GRBIĆ, PhD – Faculty of International Economy, Megatrend University, Belgrade
Professor Boris KRIVOKAPIĆ, PhD – Faculty of Law, Public Administration and Security, Megatrend University, Belgrade
Professor Živko KULIĆ, PhD – Faculty of Business Studies, Megatrend University, Belgrade
Professor Sreto NOGO, PhD – Faculty of Law, Public Administration and Security, Megatrend University, Belgrade
Professor Vladan PAVLOVIĆ, PhD – Faculty of Economics, Kosovska Mitrovica, University of Priština
Professor Beba RAKIĆ, PhD – Faculty of Business Studies, Megatrend University, Belgrade
Assistant Professor Vladimir RISTANOVIĆ – Faculty of International Economy, Megatrend University, Belgrade
Associate Professor Nataša STANOJEVIĆ, PhD – Faculty of International Economy, Megatrend University, Belgrade
Professor Biljana STOJANOVIĆ, PhD – Faculty of International Economy, Megatrend University, Belgrade
Professor Milan TUBA, PhD – Faculty of Computer Sciences, Megatrend University, Belgrade
Professor Vladimir VUČKOVIĆ, PhD – Faculty of International Economy, Megatrend University, Belgrade

Direktor izdavačke delatnosti:
Publishing director:
Branimir TROŠIĆ

Tehnički urednik:
Technical editor:
Ana DOPUĐA

Sekretar redakcije:
Editorial secretary:
Mirjana TOPIĆ

U finansiranju časopisa učestvuje Ministarstvo prosvete, nauke i tehnološkog razvoja Republike Srbije. The financing of the journal is supported by the Ministry of Education, Science and Technological Development of the Republic of Serbia.
--

“Megatrend Review” is the leading scholarly journal
of national importance, according to the classification M51,
classified by the Ministry of Science, of Republic of Serbia.

* * *

“Megatrend Review” is registered
in The International Bibliography of the Social Sciences (IBSS)
produced by the London School of Economics and Political Science
– Pro Quest Michigan USA.

* * *

“Megatrend Review” is registered and published
in EBSCO's (EBSCO Publishing Inc.) Database "Business Source Complete":
<http://www.ebscohost.com/titleLists/bth-journals.xls>

* * *

“Megatrend Review” is registered
in GESIS "Knowledge Base SSEE", Leibniz Institute for the Social Science:
<http://www.cee-socialscience.net/journals/>

The Library of Congress Catalog

Megatrend review: the international review of applied economics.

LC Control No.: 2007201331

Type of Material: Serial (Periodical)

Uniform Title: Megatrend Revija. English.

Main Title: Megatrend review : the international review of applied economics.

Published/Created: Belgrade : ill. ; 24 cm.

Description: v. : Megatrend University of Applied Sciences, [2004]-
Year 1, no. 1 ('04)-

ISSN: 1820-4570

CALL NUMBER: HB1 .M44

CIP – Каталогизација у публикацији

Народна библиотека Србије, Београд

33

MEGATREND revija = Megatrend Review / glavni urednik Dragana Gnjatović.

- God. 1, br. 1 (2004)- . - Beograd : Megatrend univerzitet, 2004- (Beograd :
Megatrend univerzitet). - 24 cm

Tri puta godišnje. - Tekst na srp. i engl. jeziku

ISSN 1820-3159 = Megatrend revija

COBISS.SR-ID 116780812

Sadržaj

Contents

REČ REKTORA	3
A WORD FROM RECTOR	4
HIS EXCELLENCY ARCHBISHOP MSGR ORLANDO ANTONINI Apostolic Nuncio in Belgrade	
THE DIPLOMATIC ACTIVITY OF THE HOLY SEE	5

EKONOMIJA – ECONOMICS

PROF. DR MILJOJKO BAZIĆ Fakultet za kulturu i medije, Megatrend univerzitet, Beograd	
PROF. DR NEĐO DANILOVIĆ Fakultet za pravo, javnu upravu i bezbednost, Megatrend univerzitet, Beograd	
NACRT NAUČNE ZAMISLI PROJEKTA ISTRAŽIVANJA	17
ADJUNCT PROFESSOR ANTONELLA NANNAVECCHIA, PhD Faculty of Economics, University LUM Jean Monnet, Casamassima, Bari, Italy	
THE MEIXNER PROCESS FOR FINANCIAL DATA	33
DR MILOŠ KRSTIĆ, ISTRAŽIVAČ SARADNIK Prirodno-matematički fakultet, Univerzitet u Nišu	
TEORIJA RACIONALNOG IZBORA I BEKEROV MODEL SLUČAJNOG PONAŠANJA	45
PROFESSOR ŽARKO LAZAREVIĆ, PhD Institute for Contemporary History, Ljubljana, Slovenia	
ECONOMIC TRANSITION AS CONTINUITY (ON THE TRANSITION FROM FEUDALISM TO CAPITALISM IN SLOVENIA)	61
DOC. DR MILICA GAVRILOVIĆ Fakultet za poslovne studije, Megatrend univerzitet, Beograd	
DUGOTRAJNI PROCES REFORMISANJA EKONOMIJE REPUBLIKE SRBIJE U CILJU POSTIZANJA MAKROEKONOMSKE STABILIZACIJE – OD TRANZITORNIH PROMENA DO AKTIVISTIČKOG PRISTUPA –	89

EKONOMSKI I SOCIJALNI RAZVOJ – ECONOMIC AND SOCIAL DEVELOPMENT

REČ GOSTA UREDNIKA	109
ASSISTANT PROFESSOR ANA JOVANCAI STAKIĆ, PhD Megatrend University, Serbia	
JOVANA STOKANOVIĆ, TEACHING ASSOCIATE Megatrend University, Serbia	
THE POSSIBILITY OF REACHING THE FULFILLMENT OF MAASTRICHT CONVERGENCE CRITERIA IN SERBIA	111

DANIELA ILIEVA-KOLEVA, PhD VUZF University / University of Sheffield International Faculty, Sofia, Bulgaria	
JULIA DOBREVA, PhD VUZF University / University of Sheffield International Faculty, Sofia, Bulgaria	
SOCIAL ENTREPRENEURSHIP AS A FORM OF SOCIAL RESPONSIBILITY IN BULGARIA	123
KARMEN DEŽMAR KRAINZ, PhD CANDIDATE Croatian Institute for Health Protection and Safety at Work, Zagreb, Croatia	
ENHANCING WELLBEING OF EMPLOYEES THROUGH CORPORATE SOCIAL RESPONSIBILITY CONTEXT	137
MARGARETA CARAN, PhD STUDENT, Faculty of Economics and Business Administration, West University of Timisoara, Romania	
GRATIELA GEORGIANA NOJA, PhD LECTURER Faculty of Economics and Business Administration, West University of Timisoara, Romania	
EMPLOYEE BENEFITS IN MULTINATIONAL FIRMS: EMPIRICAL EVIDENCE FOR ROMANIA AND SERBIA	155
 PRAVO – LAW	
PROF. DR DUŠAN NOVAKOVIĆ Fakultet za pravo, javnu upravu i bezbednost, Megatrend univerzitet, Beograd	
UGOVOR O DOŽIVOTNOM IZDRŽAVANJU (NEKE SPECIFIČNE KARAKTERISTIKE)	171
SLOBODAN STOŠIĆ, DOKTORAND Fakultet za pravo, javnu upravu i bezbednost, Megatrend univerzitet, Beograd	
REALIZACIJA ZALOŽNOG PRAVA NA NEPOKRETNOSTI	185
DR MILICA KOVAČEVIĆ, ASISTENT Fakultet za specijalnu edukaciju i rehabilitaciju, Univerzitet u Beogradu	
MALOLETNIČKI KRIMINALITET U RUSIJI – KRIVIČNOPRAVNA REAKCIJA, TRENDOVI KRETANJA I KLJUČNI PROBLEMI	201
VUKAŠIN PETROVIĆ, DOKTORAND Pravni fakultet, Univerzitet u Kragujevcu	
PIRATERIJA FILMSKIH DELA U ERI DIGITALNE TEHNOLOGIJE	219

REČ REKTORA

Nema nikakve sumnje da je „Megatrend revija“ postala mesto progresivnog okupljanja i intenzivnih interakcija mišljenja i pogleda na pojave i trendove u nacionalnoj, regionalnoj i međunarodnoj ekonomiji, kao i politici ili međunarodnim odnosima, koji su u sadašnjem kriznom periodu izloženi različitim izazovima globalizacije: bezbednosnim, političkim, ideološkim, ekonomsko-finan-sijskim, kulturnim, pa čak i lingvističkim. Naš naučni časopis istrajava u orijentaciji da preraste u kvalitetno i uticajno glasilo čitave jedne mreže istaknutih naučnika, diplomata, političara i stručnjaka, koju je Univerzitet „Džon Nezbit“ uspostavio i s kojima tesno sarađuje.

Od ovog broja uvodi se i jedna novina u časopisu. Naime, „Megatrend revija“ počinje da redovno objavljuje autorizovana predavanja koja na našem univerzitetu drže istaknuti gostujući, domaći i strani, predavači. Na taj način omogućićemo da najšira naučna i stručna javnost bude upoznata sa novim saznanjima, dostignućima, analizama, veštinama. U tom kontekstu, posebna mi je čast da najavim rad Njegove ekselencije nadbiskupa Orlanda Antoninija, papskog nuncija u Republici Srbiji. Naime, monsinjor Antonini je održao, 10. decembra 2014. godine, predavanje na temu „Diplomatske aktivnosti Svete stolice“ studentima i profesorima našeg univerziteta, kao i brojnim predstavnicima Ministarstva spoljnih poslova naše zemlje i diplomatskog kora akreditovanog u Beogradu. Smatrali smo da je ovo predavanje od izuzetnog značaja, jer se radi o jednoj veoma važnoj temi iz domena međunarodnih odnosa koja kod nas nije dovoljno obrađivana. Ovom prilikom želim i lično da zahvalim monsinjoru Antoniniju što je prihvatio moj poziv da zvanično poseti naš univerzitet i održi ovo veoma zapaženo predavanje.

Prof. dr Slobodan Pajović

A WORD FROM RECTOR

There is no doubt that “Megatrend Review” journal has become a place of progressive gathering and intensive interactions of opinions and views regarding the phenomena and trends in national, regional and international economics, politics and international relations that are exposed at present crisis period to various challenges of globalization: security, political, ideological, economic-financial, cultural and even linguistic ones. Our scientific journal endures in its orientation, to grow in quality and influential reading of an overall network of distinguished scientists, diplomats, politicians and experts, established by “John Naisbitt” University, with whom it has a very close cooperation.

Starting from this edition, a new feature will appear in the journal as „Megatrend Review“ begins with regular publishing of authorized lectures held at our University by prominent guest lecturers, domestic and foreign ones. In that way, we are allowing the scientific and expert public to become acquainted with new knowledge, achievements, analyses and skills.

In that context, it is my honor to announce a paper from H.E. Archbishop Monsignor Orlando Antonini, Apostolic Nuncio in The Republic of Serbia. Monsignor Antonini held a lecture on December 14th 2014, on the subject “THE DIPLOMATIC ACTIVITY OF THE HOLY SEE” for students and professors of our University, as well as to numerous representatives of the Ministry of Foreign Affairs of our country and diplomatic corps accredited in Belgrade.

We find this lecture exceptionally significant as it deals with an important subject from the domain of international relations that has not been sufficiently analyzed in our country. I am taking this opportunity to thank Monsignor Antonini who has accepted my invitation to formally visit our University and hold this highly noticeable lecture.

Professor Slobodan Pajović, PhD

THE DIPLOMATIC ACTIVITY OF THE HOLY SEE¹

Honorable Rector, Professors and Students of Megatrend University, Civil and Religious Authorities, dear Colleagues of the Diplomatic Corps, Friends, Ladies and Gentlemen,

Following other colleagues ambassadors who have done it already, I gladly accepted the warm pressing invitation of your new Rector, Slobodan Pajović, to give today, in this academic arena, a lecture on the Diplomatic Activity of the Holy See. This is particularly important because this year marks the hundredth anniversary of the Concordat between the Holy See and the then Kingdom of Serbia.

It may seem strange to many people that the Catholic Church should engage in diplomacy, given that diplomatic activity is the prerogative of States deriving directly from their being constituted as sovereign entities with respect to other States. So, I think it is appropriate to say something about this aspect of the Church's mission, to be followed with a brief history of the Papal diplomacy in general, its aims and the tasks of the Apostolic Nuncios.

1. A Terminological Clarification

To begin with, I would like to clarify at least two issues of terminology.

First Many commentators often speak of "Vatican diplomacy", and some question the value of accrediting diplomatic representatives to the Vatican, which is the smallest independent State in the world. In reality, Vatican City State, as such, does not maintain diplomatic relations with any State, although technically it could. Vatican City State exists merely to guarantee the autonomy of the Holy See, which for centuries, because of its spiritual sovereignty, has been recognised as a subject of international law. This was true even when the Holy See did not have any territory, namely, in the years between 1870, following the loss of the Papal States, and 1929, which saw the creation of Vatican City State, as a result of the signing of the Lateran Treaty between the Holy See and Italy. Even when he had no territory of his own, the Pope continued to send and receive diplomatic representatives, and the Holy See was called to mediate or lend its good offices

* His Excellency Archbishop Msgr Orlando Antonini, Apostolic Nuncio in Belgrade

¹ The Lecture held at Megatrend University in Belgrade, on December 10th, 2014.

in no less than 13 international disputes, such as that of 1885 between Germany and Spain over the Caroline Islands.

Second What is the “Holy See”? In the narrow sense, the term “Holy See”, or “Apostolic See”, refers to the office of the Roman Pontiff. In the broad sense, which is the one more usually employed, the “Holy See” includes the offices and other institutions of the Roman Curia, which assist the Pope in the government of the universal Church. It is therefore to be distinguished from “Vatican City State”, a territorial enclave within the city of Rome which functions like other States and, as I already said, exists solely to ensure the autonomy of the Holy See from any political power and state.

2. Brief History of the Papal Diplomacy

The origins of Papal diplomacy are historical and began, one can say, as early as at the first half of IV century when, as you know, the Emperor Constantine transferred the Capital of the Empire from Rome to Byzantium-Constantinople, inaugurated during the year 330.

This event, that hastened the completion of the decline of Rome and of the western part of the Empire in those times, is commented by the historians in its geo-political, demographic and economic reasons rather than in its possible psychological repercussions on the Roman and western populations. They saw themselves downgraded and gradually abandoned to their sad fate by the byzantine administration and army, falling to the total mercy of the so-called Barbarians who, differently than in the East, for centuries desolated Europe, killing populations, destroying cities and monuments, upsetting all civil, social and ecclesiastic structure, and putting to an end the splendid classic culture. Those hard historical contingencies put the Bishop of Rome and the Latin Church in a situation which the Byzantine Church did not experience in the course of the following centuries, assured as she was by the byzantine emperors, until 1453, of her institutional and juridical status and being, in good substance, free and in peace. All that can partially explain this gradual reciprocal distancing and misunderstandings between the two worlds and the two Churches that generated conflicts and, finally, the great schism in 1054. On the other hand, the negative psychological repercussions in the West Empire after losing the Capital had to be so frustrating, that it can explain this deep resentment of the West towards the East which brought, after the reborn of the European society from the XI century on, to the well-known revenges of the West in the course of the second Millennium over the East, almost until now.

Let us leave to the historians to discuss this. What matters to our subject is that those western events determined the necessity, for the Bishop of Rome, to send to

Constantinople his representatives who would stay there, to treat the affairs of the Holy See at the imperial court. The first papal envoys, ancestors of the modern apostolic nuncios, were the *Apocrisarios*, or *Responsales*, but also *Missi*, *Missi apostolicae sedis*, *Legati*, *Legati a latere*, *Legati missi*, *Legati nati*, *Nuntii*. Those, who could have been also local bishops and were common to other patriarchs and bishops for the relations between their Churches and with the Emperors, normally were not the permanent representatives, but rather appointed case by case with a precise mission. The *Apocrisarii* sent by the Popes presided the Ecumenical Councils of the antiquity organized by the Emperors, and many provincial Synods. Sometimes they were also permanent, but in force only for the lives of the Popes who appointed them and had only ecclesiastical tasks.

With the invasion of Italy by the Lombards, in 569, the byzantine rule was progressively diminishing in the West and, in such tragic circumstances; the papacy was becoming the only close by-authority available to the people, left insecure because of the gradual disintegration of the civil authority. And when, later, Constantinople could not send any more military help to Italy to face Lombards, the Pope had to appeal the Franks, who went down in Italy and in 756, once defeated the Lombards, left to the papal rule the Lombard central Italy territory. Hence the origin of the so-called temporal power of the Pope. With Charlemagne, who in the year 800 was crowned emperor at St Peter's basilica, it seemed natural to formalize, out of his religious authority, also the civil rule of the Pope not only over Rome and the land around about – the so-called Patrimony of St. Peter (*Patrimonium Sancti Petri*) – but over the mentioned regions of central Italy too, turning it into a true state: the Papal States. In that way the Pope became at the same time spiritual head of the Church and Head of State and, as such, had a regular state structure and thus, also diplomatic. Earlier this situation was supposed transitional, provisional; unfortunately, it was prolonged over the following centuries in the belief that having a true own rule was the only way to ensure the Papacy and the Universal Church the necessary freedom in front of the frequent political interferences of the emperors or kings, who wanted to control the Universal Church not only in her organization, jurisdiction and institutions, but sometimes even in doctrinal issues.

The turning point of the papal diplomacy is dated to the pontificate of Pope Nicholas I who, between 858 and 867, due to the intricate religious and political circumstances was determined to attribute to his representatives to the court of Franks the task of treating not only ecclesiastical but also political affairs. The Pontifical diplomacy in its present stable form was developed in the XV-XVI century, that is, when in Europe in were formed nation-states and the diplomats of the Holy See were called technically 'apostolic nuncios'. The first permanent, resident and plenipotentiary of them, accredited both to the States and the local Churches, were those sent to the courts of Venice, Florence, Naples, France,

Spain, Austria, Portugal, Germany, England, Poland, etc., and also to the States of the Latin America in the nineteenth century since their independence.

In 1870, in the frame of the Italian unification, the Piedmont's army occupied Rome and the Papal States, so the Pope declared himself 'prisoner' remaining closed in the Vatican palaces for very long time – sixty years! Well, in this long period of time, as I already said, you could see the curious but very significant fact that the states that previously had had diplomatic ties with the Pope continued to have them even if he had remained without territory, and regularly sent ambassadors and received nuncios. With that, it became clear that diplomatic relations are established between States and 'Holy See', i.e. with the central Government of the Catholic Church, not with the 'Vatican City', which represents only the minimum of territory 'sovereign', symbolic, with which it is given to the Pope and the Church the freedom and independence to better carry out its spiritual mission. Finally in 1929, with the Conciliation between the Vatican and Italy and with the Lateran Treaty, the present State of the Vatican City was created, where the said central government of the Catholic Church is installed and which is named properly Apostolic See or 'Holy See'. For this, the Nuncios are ambassadors not of the State of the Vatican City but of the Holy See, a subject of international law recognized by all the states of the world.

Please note, however, that those 60 years of a kind of 'house arrest' of the Pope served very usefully the Church, to realize that the exercise of civil power by ecclesiastics, as demonstrated in the Middle Ages, in the Renaissance and in the following centuries until the nineteenth, is doing great harm to the spiritual mission itself of the Church. Therefore, the fact that in 1870 the papacy was stripped of the state was then considered a providential event, a release, a grace of God.

3. Aims of Papal Diplomacy

"Diplomacy without weapons is like music without instruments": this was said in the nineteenth century by Bismarck, who loudly used its weapons to make hear the music unity of the Second Reich. But later, the same Bismarck at one point thought to appeal to Pius IX to negotiate with France a solid peace in the aftermath of the fall of the Second Empire. Yet the papacy at that time, i.e. in 1870 as I have said, had just lost the capital of the Christianity and the Pope had just declared himself as a prisoner in the Vatican Apostolic palaces! Evidently, the German Chancellor recognized in the Holy See the capacity to perform a music of mediation where Pope would have been the point of reference and the instrument of a prestige of moral authority in the European concert. The paradox was that the Holy See played the role of arbitrator on the international scenario and intervened in the foreign policy when the exercise of its diplomacy

– enabling to create a balance between rival parties – was brought back, as was right, just in the ecclesiastical sphere. Of course, like the civil diplomacy, also the papal diplomacy in the history not always registered successes. For instance: if Pope John XXIII on 1962 could avoid the war on the affair of the missiles in Cuba, or if John Paul II in the Eighties could solve the conflict of Beagle Channel, Pope Pius X and Pope Benedict XV couldn't prevent the First World War in 1914, nor John Paul II could prevent the bombing of Belgrade in 1999. That notwithstanding, the diplomacy of the Holy See is highly esteemed in the world for the texture of its networks, the secrecy and the quality of its information due to its own agents (nuncios, apostolic delegates and the official charge d'affairs) and its unofficial intermediaries. I don't know if all this is true; what I can assure is that our foreign policy that we are obliged to follow is a Church affair, not of territories. We defend our 'countrymen' – that is, our faithful – in every culture. But also we affirm our positions on the rights of peoples, the human rights.

What are, then, the aims of Papal diplomacy? The Holy See, while exercising its diplomatic activity in accordance with international law and established practice, differs from States in that it does not have particular commercial, military or political aims to defend or pursue. Rather, its diplomatic activity serves the universal mission of the Pope, which is essentially a spiritual mission, at the service of the Gospel. In this sense, the Holy See is often said to exercise "soft power" diplomacy, namely a diplomacy which does not depend on military, political or economic strength but on the ability to persuade. The Holy See, one could say, acts as a voice of conscience, at the service of the common good, by drawing attention to the anthropological, ethical and religious aspects of the various questions affecting the lives of peoples, nations and the international community as a whole. At the heart of this mission is a certain conception of the human person, who is seen as having an innate dignity, which must always be respected, ultimately because he or she is created in the image and likeness of God, and is endowed with reason, will and freedom. This vision of the human person is fundamental to the Church's social teaching, which is a body of teaching developed over the centuries, particularly over the past two hundred years, concerning the organisation of society and the promotion of an ethical vision of various issues which affect the human person in his or her social dimension and life, such as family, culture, politics, justice, human rights, development, economics, peace and the environment and, when requested, also the mediation of disputes. In its diplomatic activity, the Holy See continually refers to this teaching, which, to a large extent, is not dependent on one's particular religious beliefs, as a basis for peaceful social coexistence and a contribution to the common good.

The Pope makes use of the diplomatic system and possibilities available to him, not because it is intrinsically linked to his Petrine ministry in the sense of not being able to function without it, but because it is a useful and valuable instrument for exercising his ministry in the world. Papal diplomacy enables

the Pope to exercise his prophetic mission in the international forum and contributes to the defence of the Church's rights and freedom, human rights and religious liberty in different countries throughout the world.

In this regard, it is interesting to note the attentiveness of the international community to what the Holy See might have to say about a particular issue. It is not that the Holy See seeks to impose a particular religious view; such an attempt would in any case be rejected by the other players on the international stage. Rather, the Holy See, using the instruments of diplomacy available to it and arguing from rational principles, brings to the table a particular contribution, based on ethical and religious considerations, which serves to enrich the debate and bring to the attention of other participants insights which might otherwise go unobserved or be ignored.

4. The Apostolic Nuncios

As you can have deduced by what I have just exposed about its aims, Papal diplomacy have a double nature, ecclesial and civil, that is as part of its spiritual mission on one hand and, on the other, as a contribution to the good of humanity as a whole; double nature, which explains the double representation that, differently from the other Embassies, the Nunciatures have. In doing so, the Holy See can count not only on the support and advice of Catholic Church personnel throughout the world – I think in particular of local bishops, like your own here in Serbia, and academic institutions – but also on the valuable assistance of many people of good will outside the Church, with whom it is in constant dialogue on a wide range of issues to help resolving the numerous problems that affect the world today.

In particular, the Holy See counts in its diplomatic personnel, the Apostolic Nuncios. They are formed in a special School in Roma, called Pontifical Ecclesiastical Academy. It is the first school of this kind in the world – first in chronological sense; if it is also first at quality level, as many say, I leave this to your judgment... The Academy in fact was founded and opened in 1701 by Pope Clement XI, and later 'copied' by all other states.

What are, then, the Apostolic Nuncios? They are churchmen covered by Episcopal dignity and sent by the Pope as Ambassadors to two Entities:

- a) on one hand, to the States and the International Organizations for the solution of the problems which touch peace, justice, development of the peoples and the realization of the great human hopes;
- b) on the other hand and simultaneously, to the local Churches living in the different nations or regions, to face the questions of the ecclesial life which demand an instance higher than the local.

The current Code of the Church, receiving the decisions of the II Vatican Council and the doctrinal reformulation of Pope Paul VI in the *Motu Proprio* of 1969 *Sollicitudo omnium Ecclesiarum*, establishes the functions of the Pontifical Representatives as follows:

- a) to promote and facilitate the relations between the Apostolic See and the Public Authorities;
- b) to treat the questions related to the relations between Church and State, in particular for what concerns the concordats or other kind of agreements to be signed and implemented;
- c) to make more firm and effective the bonds between the Apostolic See and the local Churches.

Concerning in particular the latter function, their responsibility is:

- 1) to inform the Apostolic See on the conditions in which the local Churches are living and overall on what concerns the life itself of the Church in a nation and the good of the souls;
- 2) to be of help to the Bishops both with the action and the advise, without undermining the exercise of the legitimate authority of them;
- 3) to foster close relations with the Episcopal Conferences, offering them all kind of help;
- 4) to propose to the Apostolic See, after an adequate confidential process according to a precise form of questions, the names of suitable candidates for appointment as bishops;
- 5) to work with the bishops to encourage a timely collaboration between the Catholic Church and other Churches or ecclesial communities, as well as with non-Christian religions, and to promote what concern peace, progress and consociation of peoples;
- 6) to protect in joint action with the bishops, at civilian governments, what concerns the mission of the Church and the Apostolic See, in particular in the political, cultural and religious situations difficult for the local Church communities.

It is for this great service to the local States and Churches, particularly for having as key stakeholders Heads of State and of Government on one hand and, on the other, Cardinals and local Bishops that makes convenient and opportune the praxis of investing of the Episcopal consecration the Heads of the Pontifical Missions. However, not being question here to entrust to the Nuncios a diocesan community, and yet as bishop being necessary to express his connection with her, is assigned to the Nuncio – like for the Orthodox Patriarchal Vicars – the title of an historical Episcopal diocese, disappeared or abolished. In my case, it was chosen the former Episcopal see of Formia, today included in the archdiocese of Gaeta, Italy.

In the case of accreditation to the governments, like for all other ambassadors it concerns the relations of bilateral character: they establish an official relation between two Entities, enshrined in the ensemble of customs and practices collected and codified in international law, which allows to understand each other, to collaborate for peace and progress, to ensure the accrediting State the peaceful aims pursued by the Church, to offer the support of the spiritual energies and the church organizations (like Caritas) for the achievement of the common good. There are also relations of multilateral character: those in the case of accreditation to the International Organizations. In such worldly forum, the Holy See seeks to ensure that the needs of weaker persons and peoples are not neglected and that the spiritual and moral dimension be present and considered in the international Conferences and Conventions appointed to find answers to the great problems of today: population and demography, woman, life, respect of human rights, extreme poverty, social inequalities, environmental pollution, the challenges of the globalization and the growing interdependence among the nations, threats to stability, ethnic tensions, lack of democracy.

As you can see, the Papal diplomacy, if it is true that alone it is not enough to adjust and to bring peace and consolidate it, however to this it tends, for this it works, efforts and multiplies, without getting tired, his attempts; art of patience, of being able to wait and endure, of produce peace. And, if the civil diplomacy tends to the unification of the world and fights in order that the reason prevails on the force and that the individual States progress in the harmonic concert of more and more extensive international organization, it can find in ecclesial diplomacy a point of reference to which it can look with utility, not thanks to the ability that the ecclesiastical diplomats can exert, or for the results that they can achieve – the one and the other may fail – but rather to the ideal order from which it starts and to which it aspires: the universal brotherhood of men.

The diplomacy of the Holy See holds, therefore, not ‘mundane’ but rather spiritual connotations. For this feature, representing in some sense the universal ethical and moral values, the Nunciatures present themselves, so to speak, as ‘neutral’ among other national or international diplomatic missions. This particular aspect has fostered the tradition that in Catholic countries, and not only in them, it is recognized to the Apostolic Nuncio the prerogative of permanent Dean of the Diplomatic Corps. However please note that the directives of the Holy See insist that the future Nuncios in the time of their formation in the Ecclesiastical Diplomatic Academy in Rome receive an adequate intellectual introduction to the theological, legal, sociologic and historic questions and a perfect knowledge of the principal international languages, but over all they insist that the priestly character of their diplomatic mission be deepened and lived. So, if you remove the outer appearances, the Papal diplomacy in reality is a severe ecclesial discipline and, like politics which in words of Pope Pius XI is one of the highest form of charity (when the politicians use politics for the com-

mon good and not for personal benefits), it is also a true school of higher charity, because it works as a form of love, the love of peoples. Certainly, as in all human institutions, even in this ecclesial service can enter deviations, ambiguities and errors, but this can only happen through the fault or defect of individuals, without remaining altered the religious dispositions that distinguishes the diplomacy of the Church by civil governments and states.

Today, as a result of the increased role of the Holy See on the international stage, no less than 180 States have full diplomatic relations with it. To these should be added the European Union, the Sovereign Military Order of Malta and a Mission with special character, namely that of the State of Palestine. The Holy See is also represented at various international and regional organisations, of which it is either a member or an observer, such as the United Nations, the Organisation for Security and Cooperation in Europe, the International Atomic Energy Agency, the African Union, ASEAN, UNESCO, etc. Many countries, including Serbia, maintain a resident Mission to the Holy See in Rome. Including those of the European Union and the Order of Malta, there are at present 82 such Missions. In addition, the Mission of the State of Palestine and the offices of the League of Arab States, the International Organisation for Migration and the United Nations High Commissioner for Refugees maintain regular contacts with the Holy See through their chanceries in Rome.

For what concerns Serbia, you certainly know that first, on 1914, the Holy See and the then Kingdom of Serbia just days before the beginning of the First World War had signed and ratified a concordat which regulated the juridical condition of the Catholics in the Kingdom, even if later, due to the said war, it didn't enter into force. Normal diplomatic ties were established in 1920 with the creation of the Kingdom of Yugoslavia. The first Nuncio was Mgrs. Francesco Cherubini. On 27 December 1952 the communist regime interrupted the relations, but they were resumed on 25 June 1966 with a signature of a Protocol. Since then, 9 apostolic nuncios alternated in the Papal Representation of Belgrade: Hurley, Oddi, Cagna, Cecchini, Colasuonno, Montalvo, Abril y Castelló, Sbarbaro, and lastly, who is now speaking to you, Antonini.

We can affirm that the relations between Serbia and the Holy See have always been good, only with the interruption I mentioned between 1952 and 1966 and the question of the concordat of 1935-37, which was signed but later not ratified by the Parliament. In any case today the Holy See prefers to establish not concordats but conventions or partial agreements in determined fields. For instance this year, the 27 of June, we signed a general Agreement of cooperation on higher Education and, in September 2014, another Agreement of cooperation between the Biblioteca Apostolica Vaticana and the National Library of Serbia – in the Vatican there are ancient manuscripts concerning Serbia which are not in Serbia and which can be known and studied by Serbian scientists and exposed in Belgrade.

Also in the site of the Ministry of Foreign Affairs you can read this text about our present good diplomatic relations: *“Relations between the Republic of Serbia and the Holy See are good and stable although they are, in more ways than one, specific and determined by number of circumstances which are not present in Serbia’s relations with other states. There is a closeness of views on many important issues of the modern world. There is similarity and even congruence in the approach to certain general principles on which international relations should be based on. That is a good starting point for further intensification and enrichment of the cooperation, especially in international organizations and in facing the regional challenges. Serbia is committed to further development and enrichment of the relations through continuous political dialogue, as well as through closer cooperation in international organizations. Vatican has not recognized the unilaterally declared independence of Kosovo. Position of the Holy See has remained within the framework of advocating for the preservation of peace and stability in the region, meeting all the standards set, lasting guarantees of human rights of all citizens and protection of the Christian heritage in Kosovo and Metohija. The Holy See supports the integration of all the Western Balkan countries, including Serbia, into the EU, with the aim of ensuring the lasting stabilization of the region and as a stimulus to ecumenical dialogue. Vatican’s position is that the process of European integration should not be hampered by additional conditioning, something that did not exist in the case of other countries in that process. Officials of the Republic of Serbia who visited the Holy See are: 2004 - Vuk Drašković, Minister of Foreign Affairs; 2005 and 2009 – Boris Tadić, President of the Republic of Serbia; 2009 – Vuk Jeremić, Minister of Foreign Affairs; 2012 – Ivica Dačić, President of the Government of the Republic of Serbia; 2013 - Tomislav Nikolić, President of the Republic of Serbia attended the inauguration of Pope Francisco”. Vice versa in “2003 - Minister of Foreign Affairs of the Holy See, J. L. Tauran, officially visited Belgrade. Delegation of the Holy See attended the enthronement of Patriarch Irinej in 2009 and in 2012, the inauguration of Tomislav Nikolić, the President of the Republic of Serbia”. Furthermore, “in June 2004 the Theological Faculty of the Serbian Orthodox Church and the Lateran University in Rome signed the Agreement on the exchange of professors and students between the two high education institutions”.*

Finally I would like to outline that, although the weight of history sometimes can hinder our good path, when it is able to do that, the Holy See demonstrated its closeness to Serbia being of not little helpful for her in some important moments of its history. For what the ancient times concerns, it helped in the formation itself of the Serbian state: its first independence was sponsored precisely by the Vatican, indicating that at least until the XI-XII and XIII centuries the kingdom of Serbia looked to West Europe. Two Serbian kings asked the Popes to be crowned: first was Mihailo I Vojislav, who was crowned by Pope Gregory VII in 1077 and obtained also the title of Archbishop of Antivari, so that Serbia constituted for first time an autonomous ecclesial circumscription; and in 1217 the

king Stefan II Nemanja was crowned by Pope Honorius III, allowing in that way the recognition of Serbia as a sovereign state by the 'international community' of those times. In the recent times, 1999, Pope John Paul II, as I already evoked, was the only opponent in the West to the bombing of Belgrade not without criticism from some Western governments. Evident sign and prove of that is the fact that during the bombing the Apostolic Nuncio of that period, Msgr Santos Abril y Castelló, now Cardinal, didn't leave Belgrade and became the practical point of reference, as a shadow-Dean of the Diplomatic Corps, of the ambassadors who have remained here. Moreover, the Holy See and the Catholic organizations always rush to the aid of Serbian people in the events of major natural disasters as the earthquake in Kraljevo on 2011 and, in particular, the devastating floods on June this year. On this occasion the Holy See and the Caritas of different countries came in rescue of the populations affected by the disaster, bringing a 2 million Euro in aid: a fact that has been recognized and praised by the government of Serbia itself.

With that, I take of this nice opportunity to anticipate to you all a Merry Christmas and a Happy New Year. And may God accompany us always towards a more and more better future. Hvala!

NACRT NAUČNE ZAMISLI PROJEKTA ISTRAŽIVANJA

Svako naučno istraživanje je sistematsko proučavanje predmeta, pojava i procesa koji se odigravaju u prirodi i društvu i zasnovano na primeni naučnih instrumenata za prikupljanje, obradu i analizu podataka, kao i na primeni naučnih metoda za izvođenje zaključaka o svojstvima predmeta istraživanja.

Upravo zato što svako istraživanje mora da ima karakter sistematskog proučavanja, neophodno ga je unapred detaljno projektovati i planirati. Projekat istraživanja je osnovni naučni i operativno-planski dokument koji predstavlja unapred osmišljen model sticanja naučnog saznanja, strukturiran kao ciljni, racionalni svrshodni sistem međusobno saglasnih i funkcionalno povezanih saznanja, stavova, sudova i zaključaka o predmetu istraživanja.

Budući da postoji veliki broj različitih naučnih disciplina i u okviru njih još veći broj različitih vrsta istraživanja, opšta metodologija naučnoistraživačkog rada, kao univerzalna nauka, definisala je izvesne standarde i pravila po kojima se sastavlja svaki naučni projekat. Bez obzira na to o kojoj se naučnoj oblasti radi, projekat istraživanja ima standardnu globalnu strukturu koja se sastoji od: a) nacрта naučne zamisli; b) planova istraživanja, i v) instrumenata istraživanja, uključujući i plan sređivanja i obrade podataka.

S obzirom na značaj konceptualizacije projekta istraživanja, kao unapred osmišljenog modela sticanja naučnog saznanja i na brojne teškoće na koje nailaze mladi istraživači u zasnivanju nacрта naučne zamisli svojih master radova i doktorskih disertacija, autori ovog članka su odlučili da naučnoj javnosti, u dva naredna broja časopisa „Megatrend revija“, ponude celovitu strukturu nacрта naučne zamisli projekta istraživanja, prema zahtevima savremene opšte metodologije i posebnih metodologija nauka.

Zbog obimnosti materije, predmet ovog rada odnosi se samo na prva tri elementa nacрта naučne zamisli projekta istraživanja, odnosno, na formulaciju problema istraživanja, određenje predmeta i definisanje ciljeva istraživanja.

Ključne reči: projekat istraživanja, naučna zamisao, problem, predmet i ciljevi istraživanja

* Prof. dr Miljojko Bazić, redovni profesor Fakulteta za kulturu i medije i predsednik Univerzitetske komisije za kontrolu kvaliteta doktorskih disertacija na Megatrend univerzitetu u Beogradu, e-mail: miljojko.bazic@megatrend.edu.rs

** Prof. dr Neđo Danilović, redovni profesor Fakulteta za pravo, javnu upravu i bezbednost, prorektor za nastavu Megatrend univerziteta u Beogradu i predsednik Sekcije metodologa društvenih nauka Republike Srbije, e-mail: ndanilovic@megatrend.edu.rs

1. Uvod

Živimo u svetu koji je protkan velikim promenama, kako na tehnološkom planu, tako i na društvenom. Postavlja se pitanje, šta je to što je tako ubrzano teralo čoveka da se njegov život, u odnosu na život njegovog prethodnika od pre sto, dvesta ili hiljadu godina, radikalno razlikuje. Odgovor je: nauka. Mnoge naučne teorije i pogledi na svet ističu da se sa razvojem čoveka razvijalo i naučno saznanje koje je bilo u njegovoj službi. Otuda se može reći da je razvoj čovečanstva i naučnih saznanja išao uporedo.

Da bi se danas razumeo nivo na kome se čovečanstvo nalazi, kao i sve ono što je doprinelo dostizanju tog nivoa, moraju se imati objektivna saznanja o razvoju i kretanjima, kako prirode i društva, tako i čoveka. Objektivna saznanja treba da počivaju na istini kao vrhovnom kriterijumu koji razdvaja ono što je naučno od onog što je nenaučno. Putem naučne istine vrši se razgraničenje naučnog saznanja od drugih oblika ljudskog saznanja. Zato nauka u svom razvoju mora da se rukovodi kriterijumima naučne istine, jer samo takvi kriterijumi mogu da obezbede njenu objektivnost i univerzalnu ljudsku primenljivost.

Putem istraživanja čovečanstvo neprekidno vrši diferencijaciju postojećih i traga za novim saznanjima. Istraživanje se uvek pojavljuje onda kada treba nešto realno sagledati, unaprediti ili rešiti. To znači da istraživački proces mora da uvažava strogu metodološku proceduru.

Osnovna uloga koju naučno istraživanje može da ima u procesu dolaska do naučne istine jeste: proveravanje postojećih naučnih saznanja, proširivanje postojećih naučnih saznanja i otkrivanje do tada nepoznatih saznanja. Dakle, naučno istraživanje se može definisati kao veoma složen, organizovan i svrsishodan proces proveravanja, proširivanja ili otkrivanja naučnih saznanja o određenom predmetu istraživanja, uz primenu odgovarajućih naučnih metoda, tehnika i instrumenata.

Bitna karakteristika istraživanja u svim poljima i oblastima nauke jeste da se ona ne započinju i ne realizuju stihijno i nasumice, već ciljno-svrsishodno, veoma organizovano, planski i sistematski, kao i da se pritom koriste paradigmatiska polazišta, teorijske postavke, teoreme i hipoteze. Pošto je istraživanje organizovan i ciljno-svrsishodan proces, ono mora da se odvija po određenom projektu. Projekat istraživanja nije dat već zadat i on nastaje kroz strogu proceduru konceptualizacije i rekonceptualizacije tj. kroz identifikaciju istraživačkog problema, obrazovanje projektnog zadatka, izradu idejne skice i projekta istraživanja, njegovo testiranje i sprovođenje, da bi se na kraju ponudila i koristila stečena saznanja kao rezultat istraživanja¹.

Proces izrade projekta istraživanja počiva na dijalektičkoj sintezi intelektualnih, emotivno-voljnih i kreativnih osobina ličnosti istraživača. Projekat istraživanja

¹ Danilović, N., Radosavljević, I., Termiz, Dž., Gordić, M. (2015): *Statistička opštenaučna metoda u istraživanju društvenih pojava*, Zavod za izdavanje udžbenika, Beograd, 10.

predstavlja dokument koji ima više svojih delova, namena i karakteristika. Kao složeni naučni, operativno-organizacioni i tehnički dokument, projekat istraživanja sačinjavaju: nacrt naučne zamisli, planovi istraživanja i instrumenata istraživanja, uključujući i plan sređivanja i obrade podataka.

Nacrt naučne zamisli je ključni dokument projekta istraživanja. Sam pojam „naučna zamisao“ upućuje nas na to da se radi o dokumentu koji ima naučni karakter. Stoga se može reći da nacrt naučne zamisli „predstavlja sistem naučno-teorijskih i metodoloških stavova o pojavi, problemu i predmetu istraživanja kojim se projekat istraživanja bavi“.² Nacrt naučne zamisli je prvi korak u izradi projekta istraživanja kao naučnog i operativnog dokumenta.

Metodologija naučnog istraživanja i naučnoistraživačka praksa utvrdili su osnovne činioce strukture nacrta naučne zamisli projekta istraživanja i njegove bitne karakteristike. Struktura nacrta naučne zamisli projekta istraživanja u oblasti društveno-humanističkih nauka sastoji se iz:

- 1) **formulacije problema istraživanja** kojim se obavlja prelaz od stvarnog društvenog problema do problema koji se rešava konkretnim istraživanjem ili serijom istraživanja;
- 2) **određenja predmeta istraživanja** kojim se neposredno utvrđuje šta će se zaista istraživati u okviru teme (naslova, naziva) istraživanja;
- 3) **naučnih i društvenih ciljeva istraživanja** kojima se definišu zadati nivoi koje treba ostvariti sprovođenjem istraživanja, kao i društvena svrha samog istraživanja;
- 4) **hipotetičkog okvira istraživanja** unutar koga se kroz sistem hipoteza (generalnu, posebne i pojedinačne), njihovih varijabli i odnosa između njih i bitnih indikatora, saopštavaju osnovne pretpostavke o predmetu istraživanja;
- 5) **načina istraživanja** u okviru koga se saopštavaju metodološko-teorijska polazišta, metode i tehnike (postupci i instrumenti) i bitna svojstva istraživanja; akcenat ovog dela projekta istraživanja je na načinima prikupljanja podataka, njihove obrade i korišćenja;
- 6) **naučne i društvene opravdanost istraživanja** kroz koje se izražava upotrebljivost (naučna i društvena) istraživanja.

Svaki od ovih elemenata ima posebnu ulogu. Da bi istraživanje uistinu imalo naučni karakter, svaki od ovih elemenata mora da se razradi do nivoa koji će omogućiti potpuno razumevanje suštine projekta istraživanja.

Zbog obimnosti i značaja projekta istraživanja, u ovom radu će na sistematizovan i logičan način biti elaborirana tri početna elementa nacrta naučne zamisli projekta istraživanja: problem istraživanja, predmet i ciljevi istraživanja.

² Milosavljević, S., Radosavljević, I. (2013): *Osnovi metodologije političkih nauka*, Službeni glasnik, Beograd, 420.

2. Formulacija problema istraživanja

Problem istraživanja predstavlja prvi i početni element nacrtu naučne zamisli. Izbor, ili formulisanje problema istraživanja predstavlja vrlo složen metodološki zahvat. Definisanje problema istraživanja podrazumeva nekoliko faza:

„U prvoj fazi neophodno je da se jasno uoči pojava ili proces koji se želi istražiti, kao deo realne stvarnosti koja je značajna za društvo, njegove odnose i funkcionisanje (na primer, poslovna komunikacija).

U drugoj fazi, neophodno je uočenu pojavu ili proces dovesti u vezu sa širim problemima koji se javljaju u društvu, a koji su uslovljeni ili su u vezi sa tom pojavom ili procesom (na primer, kako poslovna komunikacija utiče na rad, ponašanje ili motivaciju u nekoj organizaciji i koje sve posledice zbog nje mogu da nastupe kod pojedinca ili organizacije).

U trećoj fazi, na sistematičan način prikupljaju se postojeća naučna i druga saznanja o pojavi ili procesu koji se žele istražiti (na primer, prikupljanje svih naučnih i praktičnih saznanja u vezi sa poslovnom komunikacijom i njenim uticajem na rad i ponašanje u organizaciji).“³

Formulisanje problema istraživanja podrazumeva kretanje od poznatog ka nepoznatom. Problem istraživanja će se najlakše odrediti ako vladamo rezultatima dosadašnjih istraživanja u vezi sa procesom ili pojavom koju želimo da istražimo, ako razumemo značaj istraživanja i ako dobro uočimo hipotetičke stavove (strukturne i funkcionalne) o problemu istraživanja.

Rezultati prethodnih istraživanja o problemu koji želimo da istražimo imaju ogromni uticaj na definisanje problema istraživanja. Što istraživač više vlada rezultatima prethodnih istraživanja, to će mu biti lakše u realizaciji istraživačkog procesa. Rezultati prethodnih istraživanja mogu se grupisati u dve celine. Jednu celinu čine saznanja koja su direktno u vezi sa istraživanom pojavom ili procesom. Drugu celinu čine saznanja koja su indirektno vezana za istraživanu pojavu ili proces. I jedna i druga celina sadrže, kako rezultate naučno-teorijskog, tako i rezultate empirijskih istraživanja iz različitih nauka ili naučnih disciplina.

U ovom delu formulacije problema istraživanja treba istaći nivo saznanja od kojih se polazi u istraživačkom procesu. Takođe, treba istaći i najznačajnije rezultate dosadašnjih saznanja i po mogućnosti izdvojiti one autore ili dela koji su dali najveći doprinos u dostizanju tih saznanja. Prikazivanjem rezultata dosadašnjih saznanja, pokažemo koliko je problem do sada istraživan i koji nivoi naučnog saznanja o njemu postoje, što olakšava postavljanje naučnih ciljeva istraživanja.

Drugi bitan element u formulaciji problema istraživanja jeste **značaj istraživanja**. Sama reč značaj navodi nas da postavimo pitanje: šta je to značajno, ili za koga je značajno? Postavljanje ovih i sličnih pitanja dovodi nas do razmišljanja

³ Bazić, M. (2013): *Istraživanje komunikacijskih procesa*, Naučna KMD, Beograd, 70.

o utvrđivanju značaja. Da li je određena pojava ili proces značajna za sve ljude određene zajednice ili ne? Ako je za nekoga značajna, u čemu se ogleda taj značaj? Dodatno pitanje koje traži odgovor odnosi se na vremenske i prostorne dimenzije značaja. Da li će problem koji se istražuje biti značajan u dužem periodu ili ne? Da li je problem koji se istražuje značajan za širi prostor ili ne?

Iz ovoga se vidi da je pojam „značaj“ prilično složen, a da bi se on bolje razumeo – potrebno ga je pojednostaviti. Zato ćemo značaj istraživanja posmatrati sa dva aspekta: društvenog i naučnog. To ne znači da istraživanje u istom trenutku ima podjednak društveni i naučni značaj. Moguće su različite situacije u kojima je:

- a) istovremeno veliki i društveni i naučni značaj problema istraživanja;
- b) veliki društveni, a mali naučni značaj problema istraživanja, i
- c) u retkim situacijama kada je veliki naučni, a mali društveni značaj problema istraživanja.

Društveni značaj istraživanja se ogleda u tome kako će istraživanje doprineti sagledavanju nekog procesa ili pojave, ili kako će doprineti njihovom razrešavanju. Uslovljen je dosadašnjim naučnim saznanjima o istraživanim pojavama ili procesima. Što su ta saznanja na višem nivou, za očekivati je da će biti od većeg društvenog značaja, odnosno da će više pomoći u razrešavanju neke društvene situacije i problema.

Kod utvrđivanja **naučnog značaja** treba istaći koliko je istraživanje značajno za dostizanje određenog nivoa naučnog saznanja, s jedne strane, i koliki je njegov značaj za metodologiju kao nauku, s druge.

Hipotetički stavovi su deo formulacije problema kojim se definiše „proces – pojava na koji se istraživanje odnosi; izdvajaju delovi, dimenzije i svojstva koji se mogu smatrati problemom istraživanja; izdvojeni delovi se organizuju u celine i definišu, pa se potom klasifikuju po srodnosti i rangiraju po unapred utvrđenim kriterijumima.“⁴

Hipotetički stavovi o problemu istraživanja i hipoteze istraživanja nisu isto. Oni imaju različito značenje. Za razliku od hipoteza koje počivaju na pretpostavci, hipotetički stavovi počivaju na visokom stepenu istinitosti. Za istinitost hipotetičkih stavova postoje određeni dokazi i njih nije potrebno dokazivati.

Formulacija problema istraživanja direktno se odražava i uslovljava određenje predmeta istraživanja.

⁴ Milosavljević, S., Radosavljević, I. (2013): *Osnovi metodologije političkih nauka*, Službeni glasnik, Beograd, 423.

3. Određivanje predmeta istraživanja

Nakon formulisanja problema istraživanja, sledi određivanje predmeta istraživanja. „S obzirom na važnost i ulogu koju ima u istraživačkom procesu, predmet istraživanja predstavlja osnovni segment nacrtu naučne zamisli. On neposredno proističe iz formulisanog problema istraživanja i predstavlja njegovu konkretizaciju. Najkonkretnije ga određuje sam naslov istraživačkog projekta, pa se kaže da je predmet istraživanja određen naslovom istraživačkog projekta. Na primer, ako je naslov istraživačkog projekta **„Uloga odnosa s javnošću u izgradnji imidža organizacije“**, predmet istraživanja je određen samim naslovom istraživačkog projekta“.⁵ Predmet istraživanja u ovom slučaju odnosi se na obe pojave koje se istražuju, a to su odnosi s javnošću i imidž organizacije i na njihove međusobne veze i odnose. „Stoga utvrđivanje predmeta istraživanja obuhvata dva elementa, najpre utvrđivanje pojava između kojih se utvrđuje veza, i zatim, određivanje same veze koja se utvrđuje. Pri ovome je važno prethodno znanje o predmetu istraživanja koje pomaže da se predmet tačno odredi i, ukoliko je to znanje potpunije, utoliko je, razume se, i predmet moguće tačnije odrediti.“⁶

Određivanje predmeta istraživanja sastoji se iz dva dela: a) teorijskog određivanja predmeta istraživanja i b) operacionalnog određivanja predmeta istraživanja.

3.1. Teorijsko određivanje predmeta istraživanja

Teorijskim određivanjem predmeta istraživanja vršimo razmatranje i selekciju postojećeg naučnog saznanja o predmetu istraživanja. Ta saznanja mogu se razvrstati u nekoliko celina:

- a) „provereno naučno saznanje o predmetu istraživanja u okvirima date nauke, naučnih disciplina ili srodnih nauka, odnosno naučnih disciplina u koje spada i dati predmet istraživanja;
- b) još neverifikovana naučna saznanja o predmetu istraživanja;
- c) empirijsko – iskustveno nenaučno saznanje, koje ne mora biti lišeno svake naučne osnove niti stečeno iskustvom bez korišćenja naučnih metoda, i
- d) nepostojeće naučno saznanje o predmetu istraživanja.“⁷

Provereno naučno saznanje o predmetu istraživanja u okvirima date nauke, naučnih disciplina ili srodnih nauka, odnosno naučnih disciplina, u koju spada i dati predmet istraživanja, od suštinskog je značaja. Što je nivo proverljivosti naučnog saznanja veći, to će i korišćenje dosadašnjih saznanja biti

⁵ Bazić, M. (2013): *Istraživanje komunikacijskih procesa*, Naučna KMD, Beograd, 72.

⁶ Lukić, R. (1989): *Metodologija društvenih nauka*, Savremena administracija, Beograd, 228.

⁷ Milosavljević, S., Radosavljević, I. (2013): *Osnovi metodologije političkih nauka*, Službeni glasnik, Beograd, 84-86.

veće. S druge strane, što je nivo proverljivosti naučnog saznanja veći, to će više pomoći određivanju naučnog i društvenog cilja istraživanja.

Ako je naučno saznanje o predmetu istraživanja na višem nivou, to će usloviti postavljanje višeg naučnog cilja. Posebno će doći do izražaja postavljanje višeg naučnog cilja ako je predmet istraživanja naučno saznat i to saznanje provereno u okvirima nauke ili naučne discipline kojoj predmet istraživanja pripada. Kada je predmet istraživanja objašnjen, a zakonitosti njegovog dešavanja utvrđene, kao naučni cilj se može postaviti naučno predviđanje, ili naučna prognoza.

Drugu grupu saznanja sačinjavaju **još neverifikovana naučna saznanja o predmetu istraživanja**. Ova vrsta saznanja ukazuju na svu složenost procedura i postupaka do dolaženja i proveravanja naučnih saznanja. Ona ukazuju na činjenicu da smo dostigli određena saznanja koja imaju naučni karakter, ali još nisu verifikovana. Ova vrsta saznanja može da podleže i određenom kritičkom osvrtu, što govori da je naučno saznanje, samo po sebi, neki oblik selekcije.

Empirijsko – iskustveno nenaučno saznanje je česta vrsta saznanja. Istraživanja koja počivaju na saznanjima stečenim iskustvom, mogu tokom svoje realizacije da naiđu na mnogobrojne poteškoće. One se najčešće javljaju kod istraživanja koja se odnose na procese ili pojave u vezi sa ljudskim ponašanjem. Jer, iskustvo u ponašanju jedne osobe, u određenom kulturnom, moralnom, pravnom ili ekonomskom ambijentu, nije isto iskustvu neke druge osobe koje je stečeno u nekom drugom kulturnom, moralnom, pravnom ili ekonomskom ambijentu. Kada ne postoji adekvatno naučno saznanje o predmetu istraživanja, od istraživača se očekuje veoma visok stepen kreativnosti u realizaciji istraživačkog procesa.

Postojeća saznanja o predmetu istraživanja mogu se posmatrati sa četiri aspekta:

- a) „naučno istraženih i verifikovanih činjenica;
- b) naučno saznatih, ali nedovoljno proverenih činjenica;
- c) činjenica utvrđenih iskustvom, ali nedovoljno naučno obrađenih, i
- d) činjenica koje se mogu pretpostaviti na osnovu saznatog i opaženog.”⁸

Bitan segment teorijskog određivanja predmeta istraživanja čini kategorijalni – pojmovni sistem u kojem se definišu ključni kategorijalni pojmovi u direktnoj vezi sa predmetom istraživanja. Prilikom izrade kategorijalno-pojmovnog sistema polazi se od naučno verifikovanih saznanja koja se smatraju prihvaćenim, pa se iz njih po potrebi i mogućnosti izvode operacionalni pojmovi koji nedostaju.

Da bi se pravilno razumela postojeća naučna saznanja o predmetu istraživanja, od istraživača se očekuje visok nivo poznavanja naučne oblasti kojoj pripada istraživana pojava ili proces.

⁸ Mihailović, D. (2012): *Metodologija naučnih istraživanja*, FON, Beograd, 89-90.

3.2. Operacionalno određivanje predmeta istraživanja

Za ovaj deo određivanja predmeta istraživanja se kaže da predstavlja konkretizaciju teorijskog određenja predmeta istraživanja. To znači da ovaj deo nacrtu naučne zamisli podrazumeva taksativno nabranje strukturalnih činilaca predmeta istraživanja koji će biti istraženi i njihovo vremensko, prostorno i disciplinarno dimenzioniranje.

U operacionalnom određivanju predmeta istraživanja vrši se:

- a) navođenje činilaca sadržaja predmeta istraživanja;
- b) definisanje vremenskog određivanja predmeta istraživanja;
- c) definisanje prostornog određivanja predmeta istraživanja, i
- d) definisanje disciplinarnog određivanja predmeta istraživanja.

Deo koji se odnosi na **činioce sadržaja predmeta istraživanja** podrazumeva da se tačno navedu činioци koji će biti u toku istraživanja neposredno istraženi. Uzmimo za primer istraživačku temu „**Uloga odnosa s javnošću u izgradnji imidža organizacije**“.

„U teorijskom određenju objašnjeni su osnovi kategorijalni pojmovi istraživanja a to su:

- 1) odnosi s javnošću i
- 2) imidž organizacije.

U operacionom određivanju istraživanja, osnove kategorijalne pojmove (činioce) dalje razlažemo na posebne činioce, a posebne činioce daljom operacionalizacijom dodatno raščlanjujemo na pojedinačne činioce. Prikazano brojčano, to bi značilo da **osnovne pojmove označimo sa 1 i 2**, operacionalizacijom osnovni pojam 1 raščlanjujemo na **posebne činioce koji se označavaju sa 1.1, 1.2. i tako dalje**.

Na primer, prvi osnovni pojam, **odnosi s javnošću**, razlažemo na posebne činioce, kao što su:

- 1.1. interni odnosi s javnošću i
- 1.2. eksterni odnosi s javnošću, itd.“⁹.

Daljom operacionalizacijom **osnovni pojam 2 razrađujemo na posebne činioce koji se označavaju sa 2.1, 2.2, i tako dalje**.

Na primer, drugi osnovni pojam, **imidž organizacije**, razlažemo na posebne činioce, kao što su:

- 2.1. spoljne manifestacije imidža i
- 2.2. unutrašnje manifestacije imidža.

⁹ Bazić, M. (2011): *Savremeni odnosi s javnošću*, Naučna KMD, Beograd, 87.

Kada je izvršena operacionalizacija osnovnih pojmova, odnosno njihovo raščlanjivanje na posebne činioce, onda se nastavlja dalja operacionalizacija, tako što se posebni činioци razlažu na pojedinačne činioce. Uzmimo za primer posebni činilac označen sa **1.1.** Operacionalizacijom njega razlažemo na pojedinačne činioce kao što su 1.1.1, 1.1.2, 1.1.3. i tako dalje. Po ovom principu vrši se operacionalizacija i ostalih posebnih činioца u pojedinačne činioce.

Na primer, posebni činilac **1.1. Interni odnosi s javnošću**, razlaže se na pojedinačne činioce, kao što su:

- 1.1.1. komunikacija putem oglasne table,
- 1.1.2. komunikacija putem poslovnih sastanaka, ili
- 1.1.3. komunikacija putem poslovnih razgovora, itd.

Dugi primer može da bude posebni činilac predmeta istraživanja označen brojevima **2.2. Unutrašnje manifestacije imidža**. Ovaj posebni činilac se daljom operacionalizacijom razlaže na pojedinačne činioce kao što su:

- 1.1.1. motivacija zaposlenih,
- 1.1.2. identifikacija zaposlenih sa organizacijom, ili
- 1.1.3. nivo saradnje među zaposlenima, itd.

Operacionalizacija podrazumeva da se svi navedeni posebni činioци razlože na pojedinačne činioce. Činioци koji su navedeni u ovom delu istraživanja moraju se istražiti, a to znači da je neophodno istražiti njihove strukturalne i funkcionalne veze i odnose. Na ovaj način operacionalizacijom određujemo okvir u kome mora da se odvija istraživanje.

Da bi se izvršila operacionalizacija od opštih pojmova ka pojedinačnim činioцима, od istraživača se zahteva visok nivo naučnog saznanja o problemu i predmetu koji žele da istraže. U suprotnom, bez adekvatnog nivoa naučnog saznanja o problemu i predmetu istraživanja, operacionalizacija postaje konfuzna, istraživanje komplikovano, a dobijeni rezultati istraživanja naučno neutemeljeni, i kao takvi postaju društveno nekorisni. U tom slučaju ceo istraživački proces gubi smisao, jer se nije dobio adekvatan odgovor na pitanje, koji je cilj istraživanja?

Ovo ukazuje na činjenicu koliko je bitno poznavanje problematike koja se želi istražiti za operacionalno određenje predmeta istraživanja. „Ako se nema adekvatan nivo naučnog saznanja o problemu koji se želi istražiti, onda se ne može napraviti ni adekvatna operacionalizacija predmeta istraživanja. To znači da će se loše postaviti ciljevi istraživanja, hipoteze i način istraživanja, što nas vodi do zaključka da će i rezultati istraživanja biti loši. Loši rezultati istraživanja nemaju adekvatan naučni i društveni značaj. Da bi se to izbeglo, pre nego što se krene u istraživački proces, mora da se radi na dostizanju što višeg nivoa naučnog saznanja o problemu koji se želi istražiti“.¹⁰

¹⁰ Bazić, M. (2013): *Istraživanje komunikacijskih procesa*, Naučna KMD, Beograd, 78.

Pošto su hipoteze uslovljene predmetom istraživanja, to znači da predmet predstavlja njihov organizacioni okvir. Zato činioci sadržaja predmeta istraživanja predstavljaju meru sadržaja istraživanja, kao i meru sadržaja hipoteza. Ovom delu predmeta istraživanja hipoteze moraju biti recipročne, i moraju imati isti redosled kojim je sadržaj predmeta istraživanja razložen. Zato je važno da se uspostavi jasna veza između predmeta istraživanja i hipoteza. Generalna hipoteza se odnosi na celinu predmeta istraživanja. Posebne hipoteze se odnose na posebne činioce operacionalnog određivanja predmeta istraživanja, a pojedinačne hipoteze se odnose na pojedinačne činioce operacionalnog određivanja predmeta istraživanja.

Drugi deo operacionalnog određivanja predmeta istraživanja obuhvata **vremensko određivanje** koje se odnosi na period koji obuhvata predmet istraživanja. Na primer, vremenski period može da bude: vek, decenija, godina ili mesec. Vremensko određivanje ne treba mešati sa trajanjem istraživanja. Na primer, vremensko određivanje predmeta istraživanja podrazumeva period od 1912. do 1918. godine.¹¹

Prostorno određivanje predmeta istraživanja se odnosi na prostor koji će istraživanjem biti obuhvaćen. Kao što se društvene pojave odigravaju u određenom vremenu, tako se odigravaju i na određenom prostoru, koji je i sam jedan od činilaca pojave. Na primer, prostor istraživanja može da obuhvata prostor jedne ili više kompanija, opština, regija, država, društvenih institucija, ustanova ili organizacija, i tako dalje.

Disciplinarno određivanje predmeta istraživanja može da bude intradisciplinarno ili interdisciplinarno. Ako predmet istraživanja pripada jednoj nauci ili naučnoj disciplini, onda je on intradisciplinarni, a ako pripada predmetima više nauka ili naučnih disciplina, onda je interdisciplinarni, a neretko može biti i multidisciplinarni, naročito kada su u pitanju fundamentalna istraživanja.

Ovim je izvršeno celovito određivanje predmeta istraživanja i uspostavljen okvir u kome će se kretati dalja razrada istraživanja. To znači da smo operacionalnim određivanjem predmeta istraživanja iz mnoštva mogućih činilaca izdvojili one najvažnije kojima će se istraživanje konkretno baviti i na koje će se odnositi.

4. Ciljevi istraživanja

Treća faza u postupku izrade nacrtu naučne zamisli odnosi se na određivanje ciljeva istraživanja. Za potrebe ovoga rada navešćemo nekoliko najčešćih pitanja

¹¹ U završnim master radovima i doktorskim disertacijama, vremensko određivanje predmeta istraživanja ne treba da obuhvata ni previše kratak, a ni previše dugačak period u kojem će se istraživati predmet istraživanja.

koja se postavljaju kada određujemo ciljeve istraživanja: Šta treba da se postigne istraživanjem? Koji je njegov krajnji cilj? Da li cilj istraživanja treba da ima samo društveni ili i naučni karakter? Ako ima naučni karakter, koji je to nivo naučnog saznanja koji treba dostići? Da li ima samo jedan nivo naučnog saznanja ili ih ima više koje treba dostići?

Kod određivanja ciljeva istraživanja u literaturi se često može naići na različite definicije i klasifikacije nivoa ciljeva istraživanja. U starijoj literaturi se često navodi da se ciljevi istraživanja uglavnom poistovećuju sa zadacima istraživanja. U novijoj literaturi uočljiva je saglasnost većine metodologa da se pod ciljevima istraživanja podrazumeva sticanje odgovarajućih, prvenstveno naučnih saznanja. Cilj treba da omogući odgovor na pitanje **zašto** se stiču saznanja, i **koja** su to saznanja.

Ciljevi istraživanja su uslovljeni formulacijom problema i, naročito, predmetom istraživanja. Ako je dobro formulisan problem i određen predmet istraživanja, olakšano je definisanje ciljeva istraživanja.

S obzirom na to da su ciljevi i aktuelni i praktični, oni imaju naučni i društveni karakter. Upravo zbog toga što ciljevi istraživanja treba da imaju naučni i društveni karakter, oni se razvrstavaju na:

- 1) naučne ciljeve istraživanja i
- 2) društveni cilj istraživanja.

Naučni ciljevi istraživanja izražavaju određeni nivo naučnog saznanja koga realizacijom istraživanja treba ostvariti. Naučni nivo, odnosno naučni ciljevi istraživanja mogu biti:

- 1) naučna deskripcija ili opisivanje,
- 2) naučna klasifikacija i tipologizacija,
- 3) naučno otkriće,
- 4) naučno objašnjenje i
- 5) naučna prognoza.

Najnižim nivoom naučnog saznanja smatra se **naučna deskripcija**, a najvišim naučna prognoza. Opisivanje ili deskripcija je prvi stepen naučnog saznanja. Naučno korektan opis jednog predmeta istraživanja, naročito ako je obiman, složen i značajan, težak je i odgovoran posao, a u društvenim naukama je od izuzetnog značaja. Tačan opis procesa ili pojave istraživanja, situacije u kojoj se proces ili pojava istraživanja ispoljavaju, njihov uticaj na druge društvene procese ili pojave istraživanja, često je više od pola završenog posla u dostizanju najvišeg nivoa naučnog saznanja.

Viši nivo saznanja u odnosu na deskripciju je **naučna klasifikacija i tipologizacija**. Klasifikaciji kao osnov služi deskripcija. Opisane pojave ili procesi se putem klasifikacije svrstavaju u određene kategorije, prema unapred utvrđenim kriterijumima. Razvrstavanja se najčešće vrše prema kriterijumu

sličnosti, ili prema kriterijumu različitosti. Na bazi tih kriterijuma, pojave ili procesi se razvrstavaju u što sličnije ili homogenije kategorije.

Naučno otkriće je sledeći viši nivo naučnog saznanja. Najčešće se mnoga istraživanja i realizuju sa ciljem da se otkriju uzročno-posledični odnosi ili veze određenih pojava ili procesa. Zato je put ka naučnom otkriću veliki izazov za svakog istraživača.

Naučno objašnjenje je sledeći viši nivo naučnog saznanja koje svoju potporu i osnovu ima u naučnom otkriću. Naučno objašnjenje podrazumeva da se procesi ili pojave koji su predmet istraživanja, nakon što su opisane, klasifikovane ili otkrivene, objasne putem određene teorije.

Naučno predviđanje ili naučna prognoza je najviši nivo naučnog saznanja. Od naučnog objašnjenja umnogome zavisi naučno predviđanje. „Što su određene pojave ili procesi koji su predmet istraživanja temeljnije objašnjeni u širem teorijskom okviru, to su mogućnosti predviđanja veće i realnije. Što je neka društvena situacija složenija, to je i predviđanje njenog ispoljavanja u budućnosti složenije i kompleksnije.“¹²

Društveni cilj istraživanja je onaj cilj za koji rezultati istraživanja treba da budu upotrebljeni. „Po pravilu, društveni cilj istraživanja se ogleda u obezbeđivanju naučnih saznanja na osnovu kojih se mogu preduzeti određene društvene mere u oblasti razvoja, ili u oblasti otklanjanja, ili zaštite društva od deformacija.“¹³

Nivo prethodnog naučnog saznanja o predmetu istraživanja određuje i društvene ciljeve istraživanja. Društvena upotrebljivost istraživanja je utoliko veća ukoliko je prethodno saznanje o procesu ili pojavi koja se istražuje veće, a predmet už i konkretniji.

U narednom broju časopisa „Megatrend revija“ biće tretirana naredna tri dela nacrtu naučne zamisli projekta istraživanja: hipotetički okvir istraživanja, način istraživanja i naučna i društvena opravdanost istraživanja.

5. Zaključak

Naučnoistraživačka praksa u Srbiji i zemljama u njenom okruženju pokazala je da su mnoga naučna istraživanja manjkava zbog nedostatka fundamentalnih metodološko-metodičkih znanja iz oblasti konceptualizacije naučnoistraživačkih projekata. Ta manjkavost se ogleda u nedovoljnom poznavanju tehnika opažanja, zapažanja i evidentiranja problema istraživanja i nepotpunom paradigmatomskom i teorijskom zasnivanju istraživanja; nesnalaženju mladih istraživača u identifikaciji, artikulaciji i izboru teme za istraživanje, nedostatku metodoloških

¹² Milosavljević, S., Radosavljević, I. (2013): *Osnovi metodologije političkih nauka*, Službeni glasnik, Beograd, 442.

¹³ Mihailović, D. (2012): *Metodologija naučnih istraživanja*, FON, Beograd, 92.

znanja u formulaciji istraživačkog zadatka, formulisanju idejne skice projekta istraživanja, izradi planova i instrumenata istraživanja.

Ovaj rad predstavlja pokušaj iskusnih istraživača da naučnom podmlatku u Srbiji i zemljama u okruženju ponudi naučne osnove za bolje razumevanje i shvatanje procesa projektovanja naučnih istraživanja, pre svega, osnovnih činilaca strukture nacrtu naučne zamisli projekta istraživanja, koji se u oblasti društveno-humanističkih nauka sastoji se iz:

- 1) **formulacije problema istraživanja** kojim se obavlja prelaz od stvarnog društvenog problema do problema koji se rešava konkretnim istraživanjem ili serijom istraživanja;
- 2) **određivanja predmeta istraživanja** kojim se neposredno utvrđuje šta će se zaista istraživati u okviru teme (naslova, naziva) istraživanja;
- 3) **naučnih i društvenih ciljeva istraživanja** kojima se definišu zadati nivoi koje treba ostvariti sprovođenjem istraživanja, kao i društvena svrha samog istraživanja;
- 4) **hipotetičkog okvira istraživanja** unutar koga se kroz sistem hipoteza (generalnu, posebne i pojedinačne), njihovih varijabli i odnosa između njih i bitnih indikatora, saopštavaju osnovne pretpostavke o predmetu istraživanja;
- 5) **načina istraživanja** u okviru koga se saopštavaju metodološko-teorijska polazišta, metode i tehnike (postupci i instrumenti) i bitna svojstva istraživanja, kao i načini prikupljanja podataka, njihove obrade i korišćenja;
- 6) **naučna i društvena opravdanost istraživanja** kroz koje se izražava upotrebljivost (naučna i društvena) istraživanja.

Svaki od ovih elemenata ima posebnu ulogu u naučnom istraživanju koje autori rada, u ovom i narednom broju časopisa „Megatrend revija“, razrađuju do nivoa koji će omogućiti potpuno razumevanje suštine projekta istraživanja.

Literatura

- Bazić, M. (2013): *Istraživanje komunikacijskih procesa*, Naučna KMD, Beograd
- Bazić, M. (2011): *Savremeni odnosi s javnošću*, Naučna KMD, Beograd
- Danilović, N., Radosavljević, I., Termiz, Dž., Gordić, M. (2015): *Statistička opštenaučna metoda u istraživanju društvenih pojava*, Zavod za izdavanje udžbenika, Beograd
- Danilović, N., Gostović, D., Blagojević, S. (2015): *Metodologija istraživanja sporta*, Univerzitet Union, Beograd
- Zelenika, R. (2014): *Metodologija i tehnologija izrade znanstvenog i stručnog djela*, IQ PLUS d.o.o. Rijeka
- Lukić, R. (1989): *Metodologija društvenih nauka*, Savremena administracija, Beograd
- Milosavljević, S., Radosavljević, I. (2013): *Osnovi metodologije političkih nauka*, Službeni glasnik, Beograd
- Milosavljević, S. (1980): *Istraživanje političkih pojava*, Institut za političke studije Fakulteta političkih nauka, Beograd
- Mihailović, D. (2012): *Metodologija naučnih istraživanja*, FON, Beograd
- Termiz, Dž. (2009): *Metodologija društvenih nauka*, NIK „Grafit“, Lukavac
- Termiz, Dž., Arežina, V. (2015): *Problemi istraživanja i naučnog proučavanja komunikologije*, Fakultet političkih nauka, Sarajevo

Rad primljen: 19. jun 2015.

Odobren za štampu: 3. jul 2015.

Paper received: June 19th, 2015

Approved for publication: July 3rd, 2015

Professor Milojko Bazić, PhD

Faculty of Culture and Media, Megatrend University, Belgrade

Professor Neđo Danilović, PhD

Faculty of Law, Public Administration and Security

Megatrend University, Belgrade

DRAFT SCIENTIFIC CONCEPT OF THE RESEARCH PROJECT

S u m m a r y

Every scientific research is the systematic study of subjects, phenomena and processes that occur in nature and society, based on the use of scientific instruments for collecting, processing and analyzing data as well as the application of scientific methods for drawing conclusions about the properties of researching objects.

Precisely because each study needs to have systematic research character, it is necessary to design and plan in advance. The research project is a fundamental scientific and operational-planning document that represents a pre-designed model of acquiring scientific knowledge, structured as a target, rational purposeful system of mutually compatible and functionally related knowledge, attitudes, judgments and conclusions about the research subject.

Because there are a number of different scientific disciplines and within them an even greater number of different types of research, general methodology of scientific research, as well as universal science, has defined certain standards and rules under which compiles every scientific project. Regardless of the scientific field, research project has a standard global structure consisting of: a) draft scientific ideas; b) research plans; c) research instruments, including plans for processing data.

Given the importance of the conceptualization of the research project, as a pre-designed model of acquisition of scientific knowledge and the numerous difficulties encountered by young researchers in establishing a draft of the scientific concept of their master and doctoral theses, the authors of this article have decided to offer an overall structure of the scientific draft of the research project, according to the requirements of modern general methodology and special sciences methodologies to the wider scientific community, in the next two editions of the Megatrend University journal. Due to the volume of subject matter, this paper refers only to the first three elements of the scientific concept draft of the research project: formulation of research problems, definition of the subject and defining the research objectives.

Key words: research project, a scientific idea, issue, research topic and aims.

THE MEIXNER PROCESS FOR FINANCIAL DATA

The most famous Black-Scholes model is based on the assumption that the log-returns of financial data follow a normal distribution. Several studies performed show empirical evidence against such normality since the log-returns of most financial data show a significant leptokurtosis. The Meixner distribution is an infinitely divisible distribution and therefore a Lévy process can be associated with it, which is called the Meixner process. The Meixner process because of its simple and extreme flexible structure was proposed as a model for representing efficiently the empirical distributions of the log-returns of financial data. In this paper we studied the dynamics of the USD/EUR exchange rates. After testing that the normal distribution provides a poor fit to the log-returns of the exchange rates, we applied the Meixner model fitting its underlying distribution to the data. Performing a number of statistical tests we showed that the Meixner distribution provides an almost perfect fit to the data.

Key words: Lévy stochastic process, Meixner distribution, USD/EUR rates

1. Introduction

The Meixner process, introduced by Schoutens and Teugels¹, assumes great importance in the study of financial data dynamics (Grigelionis, 1999²; Grigelionis, 2001³; Mazzola and Muliere, 2011⁴) because of its intrinsic properties which allow a strictly stochastic interpretation to the results, and of its extreme flexibility as well, which enables to represent efficiently the empirical distributions of many financial data.

Recently the analysis of financial data showed interest on the dynamics of exchange rates. In this paper we analyze the USD/EUR exchange rates and determine if changes in such rates can be represented by a Meixner distribution.

* Adjunct Professor Antonella Nannavecchia, PhD, Faculty of Economics, University LUM Jean Monnet, Casamassima, Bari, Italy, e-mail: nannavecchia@lum.it

¹ Schoutens, W., Teugels, J. L. (1998): "Lévy processes, polynomials and martingales", *Stochastic Models*, 14(1-2), 335-349.

² Grigelionis, B. (1999): "Processes of Meixner Type", *Lithuanian Mathematical Journal*, 39(1), 33-41.

³ Grigelionis, B. (2001): "Generalized Z-distributions and related stochastic processes", *Lithuanian Mathematical Journal*, 41(3), 239-251.

⁴ Mazzola, E., Muliere, P. (2011): "Reviewing alternative characterizations of Meixner process", *Probability Surveys*, 8, 127-154.

In Section 2 we present the analytical expression of the main properties of the Meixner process. In Section 3 we show the empirical features of the log-returns of USD/EUR exchange rates and fit the Meixner distribution. Moreover, we prove the fitting accuracy through some statistical tests. Section 4 presents discussions and conclusions.

2. The Meixner distribution

The probability density function (pdf) of the Meixner distribution is given by

$$f(x) = \frac{\left[2 \cos\left(\frac{b}{2}\right)\right]^{2d}}{2a\pi\Gamma(2d)} \exp\left[\frac{b(x-m)}{a}\right] \left| \Gamma\left[d + \frac{i(x-m)}{a}\right] \right|^2, \quad -\infty < x < +\infty,$$

$-\infty < m < +\infty, a > 0, -\pi < x < +\pi, d > 0$. The analytic expression of the cumulative distribution function (cdf) of the Meixner distribution is unknown but it can be computed numerically. The four parameters characterizing the Meixner distribution make it very flexible, allowing a good fitting of the empirical distributions of the log-returns of financial data (Schoutens, 2001⁵; Schoutens, 2002⁶; Schoutens, 2003⁷; Grigoletto and Provasi, 2009⁸).

The cumulant-generating function of the Meixner distribution is

$$K(u) = 2d \log\left[\cos\left(\frac{b}{2}\right)\right] - 2d \log\left[\cosh\left(\frac{au - ib}{2}\right)\right] + im.$$

The previous function allows to obtain the expressions of the moments and, therefore, the expressions of the following statistical indicators:

$$\text{mean} \quad \mu = E(X) = m + a d \tan\left(\frac{b}{2}\right),$$

$$\text{variance} \quad \sigma^2 = \text{Var}(X) = \frac{a^2 d}{2\left[\cos\left(\frac{b}{2}\right)\right]^2},$$

⁵ Schoutens, W. (2001): “Meixner process in Finance”, *Eurandom Report 2001-002*, Eindhoven, 1-21.

⁶ Schoutens, W. (2002): “The Meixner process: Theory and applications in Finance”, *Eurandom Report 2001-004*, Eindhoven, 1-24.

⁷ Schoutens, W. (2003): *Lévy Processes in Finance*, New York: John Wiley & Sons.

⁸ Grigoletto, M., Provasi, C. (2009): “Simulation and estimation of the Meixner distribution”, *Communication in Statistics – Simulation and Computation*, 38, 58-77.

skewness $\gamma_1 = Sk[X] = \frac{\sin b}{\sqrt{d(\cos b + 1)}}$,

kurtosis $\gamma_2 = Kur[X] = 3 + \frac{3-2\left[\cos\left(\frac{b}{2}\right)\right]^2}{d}$.

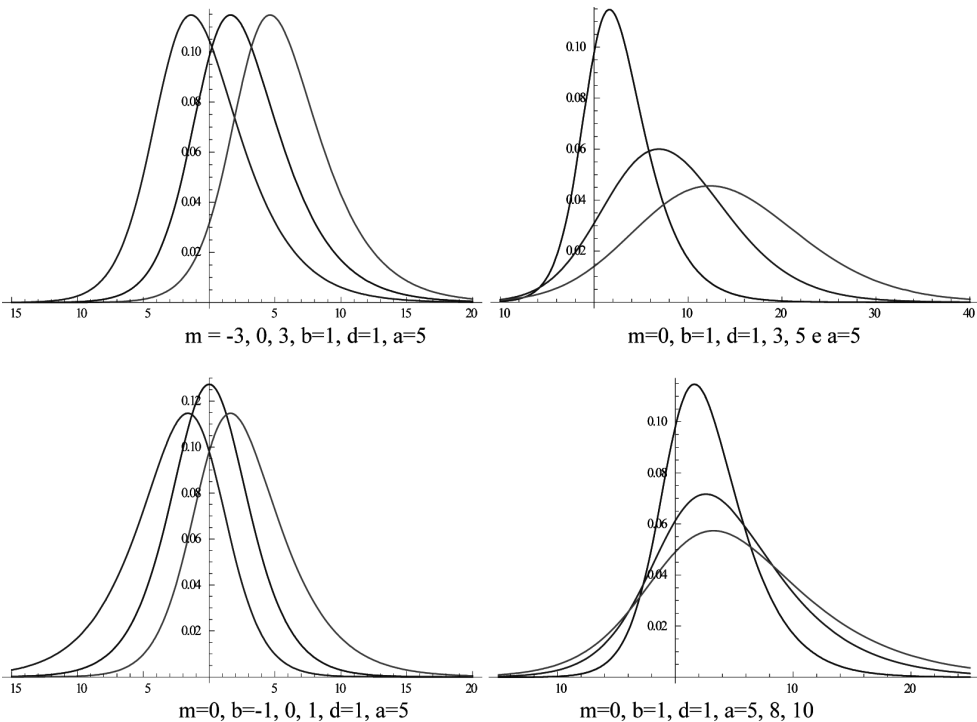
The previous expressions show that m is a location parameter, a is a scale parameter, b is a skewness parameter and d is a kurtosis parameter. Indeed for $b=0$ the Meixner distribution is symmetrical

$$f(x) = \frac{4^d \left| \Gamma \left[d + \frac{i(x-m)}{a} \right] \right|^2}{a\pi\Gamma(1+2d)}.$$

The coefficient of kurtosis is greater than 3 for any finite d and therefore the Meixner distribution, keeping constant mean and variance, has a higher peak, fatter tails and lower sides than the normal distribution; the positive excess of kurtosis decreases with increasing values of the parameter d .

Figure 1 shows the density functions of the Meixner distributions differing in one parameter only.

Figure 1: Probability density functions of the Meixner distribution with different parameters



To estimate the parameters of the Meixner distribution we set the expressions of the theoretical moments equal to the values of the empirical moments. In particular we set the expressions of mean μ , variance σ^2 , skewness γ_1 and kurtosis γ_2 equal to their empirical values, respectively, $\bar{x}$, s^2 , b_1 and b_2 ; solving the system of four equations one obtains the parameters estimators:

$$\begin{aligned}\hat{a} &= \sqrt{s^2(2b_2 - 3b_1^2 - 6)}, \\ \hat{b} &= \text{sgn}(b_1) \arccos \left[\frac{b_2 - 2b_1^2 - 3}{b_2 - b_1^2 - 3} \right], \\ \hat{d} &= \frac{1}{b_2 - b_1^2 - 3}, \\ \hat{a} &= \bar{x} - \hat{a}d \, g\left(\frac{\hat{b}}{2}\right).\end{aligned}$$

The presence of outliers enhances the leptokurtosis of the Meixner distribution fitted to the data and, therefore, the use of suitable devices is necessary to get a good fit⁹.

The pdf of the Meixner distribution has significant semi heavy tails given by:

$$\text{for } x \rightarrow -\infty, \quad f(x) \sim C_- |x|^\rho \exp(-\sigma_- |x|),$$

$$\text{for } x \rightarrow +\infty, \quad f(x) \sim C_+ |x|^\rho \exp(-\sigma_+ |x|),$$

where $\rho = 2d - 1$, $\sigma_- = \frac{\pi-b}{a}$, $\sigma_+ = \frac{\pi+b}{a}$, $\rho \in \mathbb{R}$, and $C_-, C_+, \sigma_-, \sigma_+ > 0$.

The semiheaviness of the tails of the Meixner distribution allows a good representation of financial data generally characterized by leptokurtosis.

The characteristic function of the Meixner distribution is:

$$(u) = e^{imu} \left[\frac{\cos \frac{b}{2}}{\cosh \left(\frac{au - ib}{2} \right)} \right]^{2d}$$

⁹ Kozłowski, A. (2012): Fitting the Meixner Distribution to S&P 500 Returns, Wolfram Demonstrations Project, <http://demonstrations.wolfram.com/FittingTheMeixnerDistributionToSP500Returns/>.

which shows that the Meixner distribution is infinitely divisible, in other words the convolution of Meixner identically distributed variables still follows a Meixner distribution.

The exact expressions of other properties of the Meixner distribution such as the mode, the two inflection points, the median, the mean deviation, the mean difference and others are unknown. These values can be computed numerically.

3. Fitting the Meixner distribution to the USD/EUR exchange rates

The Black-Scholes model¹⁰ is a particular Lévy process which assumes that the log-returns

$$\log \left(\frac{L_{s+t}}{L_s} \right)$$

are normally distributed. The empirical evidence shows that the log-returns distribution of financial data is not normal but it presents a significant leptokurtosis. For this reason Schoutens and Teugels¹¹ suggested a more complex Lévy process in which the log-returns follow a Meixner distribution.

Several authors proposed to study the dynamics in exchange rates with the methods used for the dynamics of financial data. Sazuka¹² and Önalın¹³ studied the changes, respectively, of the USD/JPY rates and of the USD/TRY rates. In this paper we analyzed the dynamics of the changes of the USD/EUR rates referred to recent data. We analyzed a dataset from foreign Exchange market (FOREX), that is a global decentralized market for the trading of currencies. The dataset consisted of the last USD/EUR exchange rates related to time intervals of 5 minutes. Rates were referred to the period of time going from midnight of June 3, 2013 to 11.55 pm of January 5, 2015. The total number of the rates was 117,523. We performed a preliminary detrendization process first by subtracting from the original series the series obtained through a 289-period (24 hours) simple moving average and then adding the mean. We derived the log-returns on 24 periods of 5 minutes (2 hours) given by:

$$y_t = \log \frac{c_t}{c_{t-24}}, \quad \text{for } t = 25, 49, \dots, 117,217,$$

¹⁰ Black, F., Scholes, M. (1973): "The pricing of options and corporate liabilities", *The Journal of Political economy*, 637-654.

¹¹ Schoutens, W., Teugels, J. L. (1998), 1.

¹² Sazuka, N. (2007): "On the gap between empirical distribution and exponential distribution of waiting times for price changes in a financial market", *Physica A: Statistical Mechanics and its Applications*, 376, 500-506.

¹³ Önalın, Ö. (2011): "Meixner Sureic ile reel efektif doviz kuru'nun modellenmesi", *Marmara University I.I.B.F. Dergisi*, 30(11), 263-281.

where c_t is the exchange rate at time t . The total number of the log-returns was 4,884. Then we removed ten of the first and the last values of the ordered log-returns series as likely outliers and computed the values of empirical mean, variance, skewness and kurtosis:

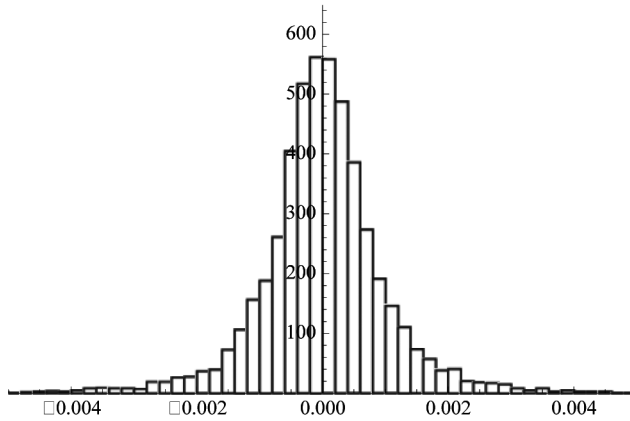
$$\bar{x} = -0.000000501789,$$

$$s^2 = 0.0000011195,$$

$$b_1 = -0.151738,$$

$$b_2 = 7.95926.$$

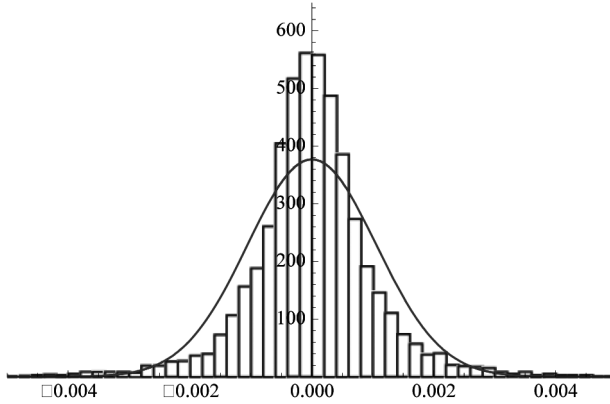
Figure 2: Histogram of the log-returns of the USD/EUR exchange rates



The histogram in Figure 2 represents the series of the log-returns showing its unimodal and bell-shaped distribution and its slight negative skewness. Following the Black-Scholes model we fitted our data with a normal distribution with parameters set equal to the estimates $\bar{x}$ and s^2 :

$$f(x) = \frac{1}{\sqrt{0.0000011195 \cdot 2\pi}} e^{-\frac{(x-0.000000501789)^2}{2 \cdot 0.0000011195}}.$$

Figure 3: Histogram and normal density of the log-returns of the USD/EUR exchange rates



It is evident (Fig. 3) that the normal distribution is not suitable to describe the log-returns of the USD/EUR rates. The histogram shows indeed a slight negative skewness and a significant leptokurtosis with higher peak and tails, as well as sides lower than the normal distribution, typical features of financial data.

Hence, we tried to fit the Meixner distribution to our data set. The point estimators of the mean, variance, skewness and kurtosis of the Meixner distribution, obtained by the method of moments (Sec. 2), had the following values:

$$\begin{aligned}\hat{m} &= 0.0000330262, \\ \hat{a} &= 0.00332061, \\ \hat{b} &= -0.0966228, \\ \hat{d} &= 0.202584.\end{aligned}$$

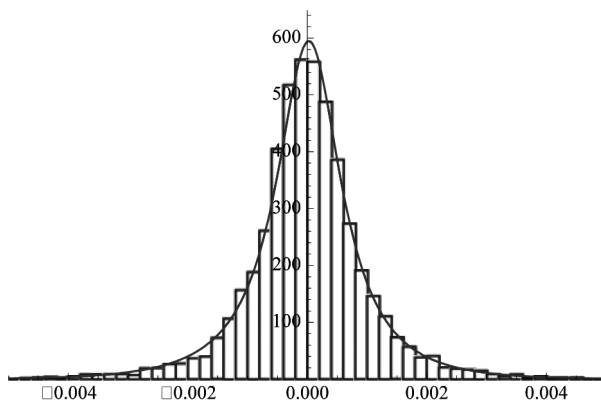
Therefore, the Meixner distribution fitted to the log-returns of the USD/EUR exchange rates was given by

$$\begin{aligned}f(x) &= \frac{\left[2 \cos \frac{-0.0966228}{2}\right]^{2 \cdot 0.202584}}{2 \cdot 0.00332061 \pi \Gamma(2 \cdot 0.202584)} \cdot \\ &\cdot e^{\left[\frac{-0.0966228(x-0.0000330262)}{0.00332061}\right]} \left| \Gamma \left[0.202584 + \frac{i(x-0.0000330262)}{0.00332061}\right] \right|.\end{aligned}$$

The parameter b is negative because of the slight negative skewness of the distribution. The parameter d , that is inversely proportional to the kurtosis, is small and represents, therefore, a high kurtosis.

Figure 4 shows the empirical histogram and the Meixner distribution fitted to the log-returns of the USD/EUR exchange rates in the observed period. It is clear that the Meixner distribution provides a good fit to our data. To prove the accuracy of the fit we applied first to a quantile-quantile plot (Q-Q plot) and then to the χ^2 test.

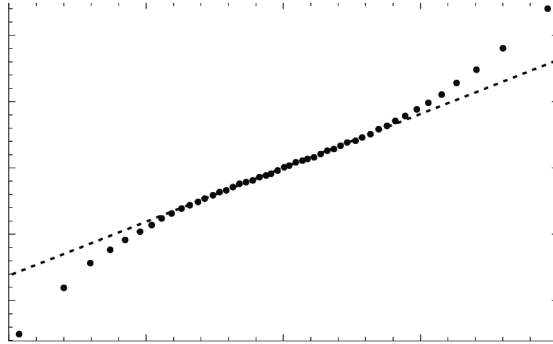
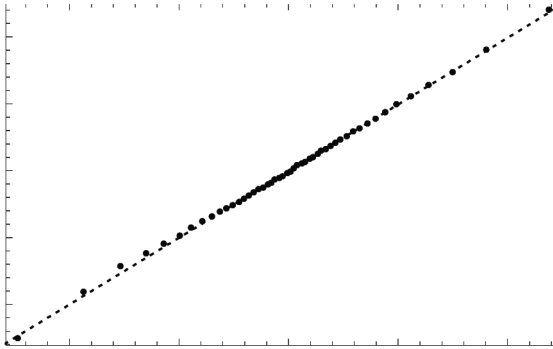
Figure 4: Histogram and Meixner density of the log-returns of the USD/EUR exchange rates



The Q-Q plot is a graphical method that plots the empirical quantiles and the theoretical quantiles of the fitted distribution. If empirical and theoretical quantiles for each frequency are almost equal and therefore the plotted points lie on a straight increasing line, the theoretical distribution provides a good fit to the data.

We considered the 50-quantiles with levels 0.02, 0.04, ..., 0.98. Plotting the Q-Q plot of the empirical 50-quantiles and the 50-quantiles of the normal distribution fitted to the data (Fig. 5) it is clear that the points diverge from a straight line in the first and the last ten of the 50-quantiles and therefore it highlights that the normal distribution provides a poor fit of the kurtosis of the log-returns distribution.

The Q-Q plot of the empirical 50-quantiles and the 50-quantiles of the Meixner distribution fitted to the data (Fig. 6) shows that all the points lie on or very near to the straight line and it confirms the better fit of this model to the data.

Figure 5: Q-Q plot of the empirical and normal quantiles**Figure 6:** Q-Q plot of the empirical and Meixner quantiles

Another tool to test the accuracy of the fit of the Meixner distribution to the empirical data is the χ^2 test. We considered 50 classes of equal probability and so we had 50 pairs of empirical (n_i) and theoretical (n_i^*) frequencies. The estimated parameters for the Meixner distribution are 4 and therefore we took $50-4-1=45$ degrees of freedom. The value of the χ^2 test statistic was

$$\chi_{45}^2 = \sum_{i=1}^{50} \frac{(n_i - n_i^*)^2}{n_i^*} = 22.5 ,$$

which is lower than the critical value (61.65) at significance level of 0.05 and it leads to the conclusion that there are no significant differences between empirical and theoretical distribution.

4. Concluding Remarks

In this paper we studied the dynamic of the USD/EUR exchange rates. After removing trend to make the series stationary, we obtained the log-returns whose distribution presented a significant leptokurtosis, in contrast with the Black-Scholes model which assumes log-returns to be normally distributed. Actually the distribution of the log-returns of the exchange rates differs from the normal distribution because it has a significant leptokurtosis, as it is pointed out in several studies on the dynamic of financial data. We tested the accuracy of the Meixner process which implies that the log-returns follow a Meixner distribution. The fit of the Meixner distribution to the series of the log-returns of each exchange rate and that of two hours before was very satisfactory from the standpoint of the comparison between empirical and theoretical distribution and from the standpoint both of the plotting the empirical quantiles against the theoretical quantiles of the fitted distribution and of the χ^2 test evidences.

Acknowledgements

The author is grateful to Doctor Gaetano Arnaldo Evangelista for cooperation in data acquisition and wishes to express sincere thanks to Professor Giovanni Girone for suggestions on parameter estimation of the Meixner distribution.

Literature

- Black, F., Scholes, M. (1973): "The pricing of options and corporate liabilities", *The Journal of Political economy*, 637-654.
- Grigelionis, B. (1999): "Processes of Meixner Type", *Lithuanian Mathematical Journal*, 39(1), 33-41.
- Grigelionis, B. (2001): "Generalized Z-distributions and related stochastic processes", *Lithuanian Mathematical Journal*, 41(3), 239-251.
- Grigoletto, M., Provasi, C. (2009): "Simulation and estimation of the Meixner distribution", *Communication in Statistics – Simulation and Computation*, 38, 58-77.
- Kozłowski, A. (2012): Fitting the Meixner Distribution to S&P 500 Returns, Wolfram Demonstrations Project,
- <http://demonstrations.wolfram.com/FittingTheMeixnerDistributionToSP500Returns/>.
- Mazzola, E., Muliere, P. (2011): "Reviewing alternative characterizations of Meixner process", *Probability Surveys*, 8, 127-154.
- Önalın, Ö. (2011): "Meixner Sureic ile reel efektif doviz kuru'nun modellenmesi", *Marmara University I.I.B.F. Dergisi*, 30(11), 263-281.
- Sazuka, N. (2007): "On the gap between empirical distribution and exponential distribution of waiting times for price changes in a financial market", *Physica A: Statistical Mechanics and its Applications*, 376, 500-506.
- Schoutens, W., Teugels, J. L. (1998): "Lévy processes, polynomials and martingales", *Stochastic Models*, 14(1-2), 335-349.
- Schoutens, W. (2001): "Meixner process in Finance", *Eurandom Report 2001-002*, Eindhoven, 1-21.
- Schoutens, W. (2002): "The Meixner process: Theory and applications in Finance", *Eurandom Report 2001-004*, Eindhoven, 1-24.
- Schoutens, W. (2003): *Lévy Processes in Finance*, New York: John Wiley & Sons.

Dr Antonela Nanavekija, vanredni professor

Ekonomski fakultet, Univerzitet LUM „Žan Mone“,
Kasamasima, Bari, Italija

OBRADA FINANSIJSKIH PODATAKA MEISNER PROCESOM

S a ž e t a k

Najpoznatiji Blek-Šolov model (Black-Scholes model) zasnovan je na pretpostavci da logaritamski izrazi finansijskih podataka imaju normalan raspored. Međutim, u nekoliko studija u kojima se obrađuju finansijski podaci nije potvrđeno postojanje normalnog rasporeda, jer logaritmi većine finansijskih varijabli pokazuju spljoštenost manju od normalne. Raspored Meisnerovog tipa (Meixner distribution) je beskonačno deljiv i zbog toga, povezan sa Levi procesom (Lévy process), naziva se Meisner procesom (Meixner process). Zahvaljujući njegovoj jednostavnoj i ekstremno fleksibilnoj strukturi, Meisnerovim procesom moguće je na efikasan način predstaviti logaritamski raspored empirijskih podataka finansijskih varijabli. U ovom radu analizirana je dinamika deviznih kurseva SAD dolara i evra. Nakon što je testiranje pokazalo da primenom normalnog rasporeda nije moguće objasniti ovu dinamiku, primenjen je Meisnerov model. Izradom nekoliko statističkih testova, u radu je pokazano da je Meisnerovim rasporedom moguće gotovo perfektno analizirati podatke finansijskih varijabli.

Ključne reči: Levi stohastični proces, Meisnerov raspored, SAD/evro devizni kursevi

TEORIJA RACIONALNOG IZBORA I BEKEROV MODEL SLUČAJNOG PONAŠANJA**

U skladu sa teorijom racionalnog izbora, racionalni potrošači teže da maksimiziraju korisnost na osnovu datog budžetskog ograničenja. To će postići ako izaberu onu kombinaciju dobara koja može da podmiri njihove potrebe i da obezbedi maksimalan nivo korisnosti. Gari Beker, s druge strane, zamišlja iracionalne potrošače kako biraju paket na budžetskoj liniji. Pošto iracionalni potrošači svim paketima na budžetskoj liniji pripisuju podjednaku verovatnoću izbora, u proseku, očekuje se da odaberu paket koji leži na sredini linije. Rezultati istraživanja koje je sprovedeno u ovom radu, u kojima veštački Bekerovi akteri biraju između više od dve robe i u više od dve budžet/cena situacije, pokazuju da je procenat aktera čije ponašanje ne potvrđuje teoriju racionalnog izbora – mali. Rezultati našeg istraživanja su potvrdili da se teorija racionalnog izbora ne može opovrgnuti. Pored toga, u radu je diskutovano o njenoj eksplanatornoj vrednosti u specifičnim okolnostima (pozitivan efekat supstitucije) i došlo se do zaključka da je eksplanatorna vrednost teorije racionalnog izbora u specifičnim slučajevima značajno smanjena.

Ključne reči: teorija racionalnog izbora, Bekerov model slučajnog ponašanja, jak aksiom otkrivenih preferencija, opovrgljivost, maksimizacija korisnosti, pretpostavka racionalnosti

1. Uvod

Pojmovi racionalnog izbora i racionalnog ponašanja imaju važnu ulogu u metodologiji ekonomske nauke. Sadržaj ekonomske nauke sastoji se iz opisa čovekovog ponašanja, pri čemu se pod pojmom „čovekovo ponašanje“ podrazumeva ne samo individualno ponašanje, već i slučajne posledice iz uzajamnog kontakta individua, kao i efekti različitih institucionalnih

* Dr Miloš Krstić, istraživač saradnik, Prirodno-matematički fakultet, Univerzitet u Nišu, e-mail: krsticmilo3@gmail.com

** Rad je rezultat istraživanja nastalog u okviru projekta „Unapređenje konkurentnosti javnog i privatnog sektora umrežavanjem kompetencija u procesu evropskih integracija Srbije“, br. 179066, koji finansira Ministarstvo prosvete, nauke i tehnološkog razvoja RS.

aranžmana. Gari Beker, jedan od mnogih koji su obrađivali ovu temu, u svom radu pod nazivom „Ekonomske pristupe čovekovom ponašanju“ ističe da se ekonomska teorija kao naučna disciplina razlikuje od ostalih oblasti društvenih saznanja, ne po predmetu koji izučava, već po pristupu. Suštinu ekonomskog pristupa čine, u celini, spojene pretpostavke o racionalnom ponašanju, tržišnoj ravnoteži i stabilnosti preferencija.¹

Autor savremene definicije predmeta ekonomske nauke Lajonel Robins ističe da je: „ekonomija nauka koja proučava čovekovo ponašanje kao odnos između ciljeva i ograničenih sredstava podobnih za alternativne upotrebe“.² Odatle sledi da se ekonomija kao nauka ne bavi izučavanjem prirode pojedinih oblika čovekovog ponašanja proizvoljno izdvojenih, već ih posmatra i analizira s aspekta sveobuhvatnosti svih socijalnih veza i uključenosti u socijalnim strukturama.³

Kako bi objasnila individualno ponašanje, ekonomska nauka koristi model racionalnog izbora. Glavna pretpostavka u modelu racionalnog izbora je da je ponašanje svih aktera savršeno racionalno. Savršena forma racionalnosti zasniva se na principu maksimizacije koji kaže: potrošač uvek teži da maksimizira korisnost, dok proizvođač teži maksimalnoj zaradi. Pored toga, model racionalnog izbora obuhvata i pod sobom objedinjuje i sledeće propozicije:

- 1) Pojedinaac se nalazi u situaciji u kojoj je količina njemu dostupnih sredstava ograničena. On zato ne može da zadovolji sve svoje potrebe i mora da napravi izbor.
- 2) U svom izboru pojedinac se rukovodi sopstvenim sklonostima, a ne sklonostima svog poslovnog partnera i ne usvojenim društvenim normama, tradicijom i slično.
- 3) Izbor pojedinca je racionalan ako od poznatih opcija odabere onu koja će mu pružiti najveću korisnost.⁴

Cilj rada je da se na osnovu analize prikupljenih podataka o izborima koje su napravile posmatrane organizacije proveriti pretpostavka o racionalnosti. U radu su razmatrani i rezultati istraživanja koji pokazuju da pojedinci ispoljavaju ponašanje u suprotnosti sa teorijom racionalnog izbora. Konstatovali smo da se putem *ad hoc* uvođenja dodatnih hipoteza, rezultati ovih istraživanja mogu uskladiti sa implikacijama racionalnih modela.

¹ Беккер Гэри (2003): *Человеческое поведение: экономический подход*, ГУ ВШЭ, Москва, 28.

² Роббинс Лайонел (1993): „Предмет экономической науки“, *THESIS* 1/1993, 19.

³ Радаев Валерьевич В. (1997): „Экономическая социология (к определению предмета)“, *Общественные науки и современность* 3/1997, 113.

⁴ Александровна Михеева С.: „Рациональность и экономическое поведение: междисциплинарный подход“, <https://sites.google.com/site/konfep/kontakty-1> (3.6.2014).

2. Teorija racionalnog izbora

Racionalnost ponašanja pojedinaca povezana je sa principom metodološkog individualizma, prema kojem se sve društvene pojave mogu iskazati u terminima individualne akcije. „Nadindividualna stvarnost, predstavljena kulturnim vrednostima i normama, smatra se posledicom prethodnih akcija“.⁵ Društveno ponašanje je primarno racionalno (emocije su rezidualni faktor), a akteri svesno nastoje da ostvare maksimum svoje korisnosti u okolini koju obeležava ograničenost resursa. Za koje će se ciljeve akteri opredeliti zavisi od njihovih preferencija.

Teoretičari racionalnog izbora vide ekonomske aktore kao pojedince koji su sposobni da „identifikuju sve moguće alternative, puteve za njihovu realizaciju, moguća ograničenja i da odaberu optimalnu alternativu“.⁶ Izbor alternative određen je količinom prikupljenih informacija. Za model racionalnog izbora vredi da akteri raspolažu zavidnom količinom i kvalitetom informacija. Međutim, stvarni ljudi nemaju sve potrebne informacije ili su one nedovoljno precizne i/ili nepouzdanе.

Ograničenja modela racionalnog izbora dovela su do pojave pristupa u kojima se model racionalnog izbora proširuje i objašnjava. U jednom od pristupa, model racionalnog izbora upoređuje sa modelom slučajnog ponašanja. U skladu sa ovim pristupom, ponašanje pojedinca je slučajno, ukoliko pojedinac izabere alternativu unutar seta, prema rasporedu verovatnoće u tom setu, tj. prema tipično uniformnom rasporedu, gde se svakoj alternativu pripisuje podjednaka verovatnoća izbora.⁷ Smisao upoređivanja racionalnog izbora sa slučajnim ponašanjem je u tome što ovom poslednjem nedostaju osobine racionalnosti, pa divergira od racionalnog izbora značajnije u odnosu na druge modele ponašanja.

3. Slučajno ponašanje: od Garija Bekera do eksperimenata o tražnji

U ovom delu rada bavimo se evolucijom interpretacije Bekerovog modela od objavljivanja članka „Irrational behavior and economic theory“ 1962. godine, pa sve do moderne eksperimentalne literature o individualnoj tražnji. Posebna pažnja je posvećena analizi odnosa teorije racionalnog izbora i Bekerovog modela slučajnog ponašanja.

⁵ Štulhofer Aleksandar (1995): „Etnicitet i racionalni izbor: od identifikacije do kolektivne akcije“, *Studia ethnologica Croatica* 1/1995, 174.

⁶ Golubović Nataša (2011): *Društvena ekonomika*, Ekonomski fakultet, Niš, 166.

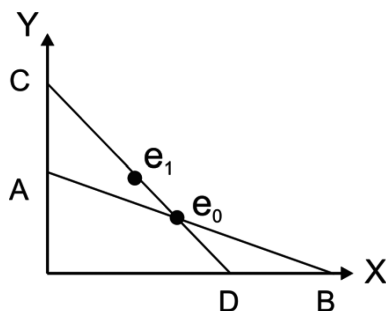
⁷ Moscati Ivan, Tubaro Paola (2011): „Becker random behavior and the as-if defense of rational choice theory in demand analysis“, *Journal of Economic Methodology* 2/2011, 108.

3.1. Bekerov očekivani slučajni izbor

U modelu slučajnog ponašanja Gari Beker daje opis slučajnog potrošača kao nekog koji bira paket na budžetskoj liniji prema uniformnoj distribuciji verovatnoće.⁸ Iracionalni potrošači svim paketima na budžetskoj liniji pripisuju podjednaku verovatnoću izbora. U proseku, očekuje se da odaberu tačku koja leži na sredini budžetske linije i potroše podjednaku sumu novca na oba proizvoda (slika 1).

Pretpostavimo da iracionalni potrošač čije ponašanje posmatramo ima na raspolaganju dve vrste roba: x i y . Smanjenje cene robe y , pomeriće budžetsko ograničenje udesno. Sa pomeranjem budžetskog ograničenja udesno, menja se i njegov nagib. Pošto je cena robe y pala, a cena robe x ostala ista, potrošač može da zameni jednu jedinicu robe x za više jedinica robe y . Shodno tome, kriva novog budžetskog ograničenja (CD) ima strmiji nagib. Uz dato pomeranje budžetskog ograničenja i preferencije potrošača, potrošačev očekivani optimum menja se iz tačke e_0 u tačku e_1 .

Slika 1: Slučajni izbor i efekat substitucije



Izvor: Ivan Moscati, Paola Tubaro (2011): „Becker random behavior and the as-if defense of rational choice theory in demand analysis“, *Journal of Economic Methodology* 2/2011, 110.

Prema teoriji racionalnog izbora, tržište racionalnih potrošača formiraće negativno opadajuću krivu tražnje. Isto važi i za Bekerov model slučajnog ponašanja. Što je broj iracionalnih potrošača na tržištu veći, to je veća verovatnoća da neočekivano ponašanje potrošača neće determinirati prosečnu tražnju, te da će, shodno tome, prosečna tražnja na tržištu biti približno jednaka očekivanoj individualnoj tražnji. Dakle, tržište sa velikim brojem iracionalnih potrošača imaće za rezultat, u proseku, negativno opadajuću krivu tražnje.

3.2. Ograničenja Bekerovih rezultata

Bekerov stav po kojem racionalni i slučajni potrošači formiraju opadajuće krive tražnje temelji se na pretpostavci da se racionalni izbor može poistovetiti (personifikovati) sa rezultatom slučajnog ponašanja. Pored toga, činjenica je da iracio-

⁸ Becker Gary (1992): „Irrational Behavior and Economic Theory“, *Journal of Political Economy* 1/1992, 6.

nalni potrošač sa slučajnim ponašanjem ne bira uvek onu kombinaciju potrošnje koja se nalazi na sredini budžetske linije. U suštini, kada slučajni izbor svedemo na očekivani ishod, iracionalni potrošač sa slučajnim ponašanjem se ne razlikuje od racionalnog potrošača sa Kob–Daglasovom (*Cobb-Douglas*) funkcijom korisnosti (jer bira kombinaciju potrošnje na sredini budžetske linije). Kada razmatramo sve slučajne izbore pojedinačno i izbacimo iracionalne potrošače koji su potpuno indiferentni prema različitim alternativama i zbog toga racionalni u svom slučajnom izboru, iščezava konvergencija između racionalnog i slučajnog ponašanja.⁹

U modelu Garija Bekera slučajno ponašanje ne podrazumeva negativan efekat supstitucije. Naime, kompenzovana linija budžetskog ograničenja na slici 1 pokazuje da postoji verovatnoća, jednaka odnosu između dužina segmenata e_0D i CD , sa kojom će aktivnost iracionalnog potrošača dovesti do izbora desno od tačke e_0 . Dakle, Bekerov model slučajnog ponašanja iracionalnog potrošača opisuje verovatnoću da iracionalni potrošač iskazuje pozitivan efekat supstitucije (*positive substitution effect*), koji teorija racionalnog izbora ne može da objasni.

3.3. Slučajno ponašanje u eksperimentima o individualnoj tražnji

U eksperimentima o individualnoj tražnji, cene roba su date veličine. Akteri poznaju svoje sklonosti ka potrošnji i u stanju su da rangiraju svoje potrebe. Imajući u vidu budžetsko ograničenje i nameru da postignu maksimalnu korisnost, potrošači vrše izbor i formiraju svoju potražnju za robama. Izvođač eksperimenta beleži izbore aktera i proverava da li oni zadovoljavaju jak aksiom otkrivene preferencije – GARP (engl. *Generalized Axiom of Revealed Preference*). Prema ovom aksiomu otkrivene preferencije, ako je akter otkrio da preferira e_0 umesto e_1 , tj. ako akter bira e_0 kada je e_1 dostupno i košta ne više od e_0 i ako je, nakon toga, otkrio da e_1 preferira umesto e_2 , e_2 umesto e_3 , ..., e_{n-1} umesto e_n , onda akter neće odabrati e_n kada je e_0 u isto vreme dostupno i košta striktno jeftinije od e_n . Jak aksiom otkrivene preferencije je logička implikacija teorije racionalnog izbora u smislu da se izbori aktera mogu posmatrati kao nešto što generiše maksimizacija lokalno nezasićene funkcije korisnosti ako, i samo ako, oni zadovoljavaju jak aksiom otkrivene preferencije.¹⁰

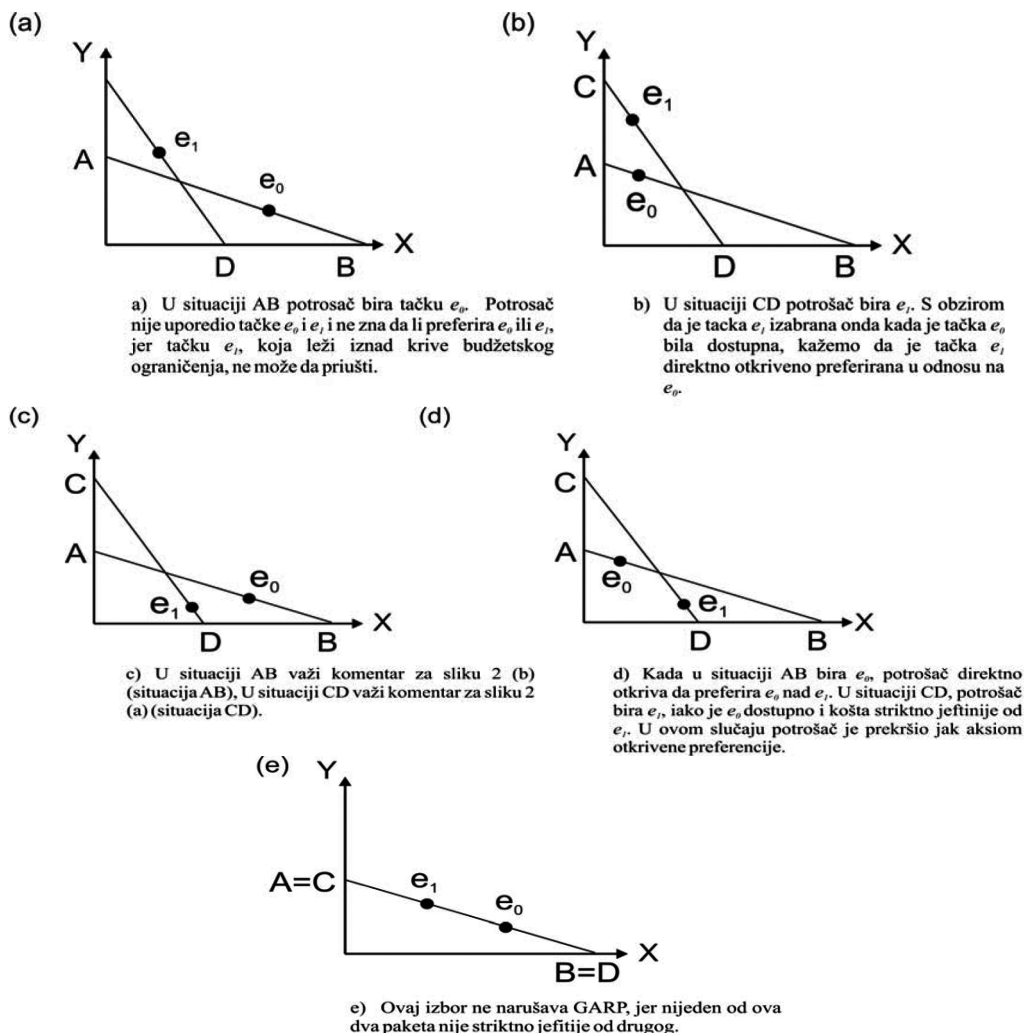
Slika (2a–e) prikazuje kada izbori aktera zadovoljavaju jak aksiom otkrivene preferencije, a kada ne. Na slici 2 su, uz pomoć kriva budžetskog ograničenja, predstavljene dve budžet/cena situacije (*budget/price situations*). Prva situacija je prikazana krivom budžetskog ograničenja AB . Druga situacija je prikazana krivom budžetskog ograničenja CD . Izbori na slici (2a–c,e) ne narušavaju jak aksiom otkrivene preferencije, dok ga izbori na slici 2 (d) narušavaju. U prvoj situaciji, akter otkriva da preferira e_0 nad e_1 , ali u situaciji CD bira e_1 , iako je

⁹ Moscati Ivan, Tubaro Paola (2011): „Becker random behavior and the as-if defense of rational choice theory in demand analysis“, *Journal of Economic Methodology* 2/2011, 111.

¹⁰ Više o tome videti: Lipton Peter (2004): *Inference to the Best Explanation*, London.

e_0 striktno jeftinije od e_1 (slika 2 (d)). Na slici 2 (e) dve budžet/cena situacije koincidiraju, ali akter bira e_0 u situaciji AB i e_1 u situaciji CD. Ovaj izbor ne narušava jak aksiom otkrivene preferencije, jer nijedan od ova dva paketa potrošnih dobara nije striktno jeftiniji od drugog.

Slika 2: Kada izbori aktera zadovoljavaju jak aksiom otkrivene preferencije, a kada ne.



Izvor: Ivan Moscati, Paola Tubaro (2011): „Becker random behavior and the as-if defense of rational choice theory in demand analysis“, *Journal of Economic Methodology* 2/2011, 112.

Postoje, međutim, dva problema u vezi sa jakim aksiom otkrivene preferencije kao testom koji *ex post* proverava rezultate teorije racionalnog izbora, i

potvrđuje ili osporava njihovu opravdanost. Prvo, da bismo odredili broj narušavanja jakog aksioma otkrivene preferencije tokom eksperimenta (koja osporavaju teoriju racionalnog izbora), potrebno je definisati kriterijum razgraničenja izbora u eksperimentu i izvan njega. Eksperimentalne studije obično zaobilaze ovaj problem tako što pretpostavljaju da je kriterijum razgraničenja manje ili više poznat. Drugo, čak i ako su svi izbori ostvareni u eksperimentu u skladu sa jakim aksiomom otkrivene preferencije, ovaj rezultat se tumači kao slab dokaz teorije racionalnog izbora. Mnogi realni akteri zadovoljavaju jak aksiom otkrivene preferencije. Narušavanje jakog aksioma otkrivene preferencije postaje manje verovatno kada se linije budžetskog ograničenja seku blizu ose, i nemoguće, kada se seku na osama ili se, uopšte, ne seku.

Statističkim rečnikom govoreći, jedno od suštinskih pitanja je procenjivanje pouzdanosti testa, tj. verovatnoće da test odbaci nultu hipotezu (u našem slučaju teoriju racionalnog izbora). Da bi procenili pouzdanost jakog aksioma otkrivene preferencije kao testa, potrebno je formulisati hipotezu o pravilu odlučivanja koje bi moglo da dovede do izbora. Važno je ukazati da se u savremenoj ekonomskoj literaturi Bekerov model slučajnog ponašanja koristi kao hipoteza za testiranje pouzdanosti jakog aksioma otkrivene preferencije. Cilj je da se uvođenjem Bekerovog modela poveća verovatnoća narušavanja GARP-a. U ovom slučaju čak i kada je teorija racionalnog izbora „opovrgnuta“ i ljudi se ponašaju slučajno, ne može se prenebregnuti činjenica da mnogi ljudi zadovoljavaju GARP.

Da bi izračunali verovatnoću narušavanja jakog aksioma otkrivene preferencije, neophodno je savladati još jednu prepreku. Izračunavanje *a priori* verovatnoće narušavanja jakog aksioma otkrivene preferencije kada potrošači sa slučajnim ponašanjem biraju između više od dve robe i u više od dve budžet/cena situacije, postaje veoma teško. Kako bi zaobišli ovaj problem, izvođači eksperimenta primenjuju metode *Monte Karlo* za stvaranje populacije veštačkih *Bekerovih* aktera koji se suočavaju sa istim budžet/cena situacijama sa kojima su suočeni i (stvarni) akteri u eksperimentu. U svakoj situaciji, akter (*Bekerov* akter) bira paket na budžetskoj liniji prema uniformnoj raspodeli verovatnoće. Njegovi izbori unutar celog skupa budžet/cena situacija mogu ili ne moraju narušiti jak aksiom otkrivene preferencije. Ako je procenat slučajnih aktera koji narušavaju jak aksiom otkrivene preferencije mali, činjenica da ljudi retko narušavaju GARP, predstavlja slab dokaz teorije racionalnog izbora, jer je retko narušavanje posledica objektivne nemogućnosti da se GARP prekrši u budžet/cena eksperimentalnim situacijama, a ne rezultat racionalnog ponašanja učesnika eksperimenata.

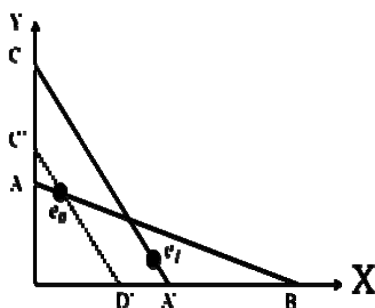
Narušavanje jakog aksioma otkrivene preferencije manjeg obima prezentuje sledeći problem. U svim eksperimentima, izbori određenih aktera narušavaju GARP. To samo govori da postoje eksperimentalni podaci koji opovrgavaju teoriju. Međutim, u mnogim slučajevima GARP violacije su retke, u smislu da skoro svi subjekti zadovoljavaju GARP, ili su vrlo blage, u smislu da subjekti skoro mogu da zadovolje GARP. Može se, naime, diskutovati o

tome da li je zaista prikladno u potpunosti odbaciti teoriju racionalnog izbora? Uključivanjem egzogenih faktora u model, kao u slučaju stohastičke ekstenzije teorije racionalnog izbora, a la Fehner (*a' la Fechner*) bi mogao da racionalizuje ove minorne GARP violacije.¹¹

Oslanjajući se na rad Sidnija Afrijata (Sydney Afriat), profesora na Departmanu za ekonomsku politiku Univerziteta u Sijeni, Hal Varijan (*Hal Varian*) je ustanovio slab aksiom otkrivene preferencije koga je nazvao GARP (*e*).¹² Slab aksiom otkrivene preferencije reflektuje stepen violacije preko parametara e i naziva se Afrijatov indeks efikasnosti (engl. *Afriat efficiency index*). Indeks meri stepen u kome bi budžetska ograničenja trebalo modifikovati kako bi se prilagodila GARP violacijama.

Sa namerom da se utvrdi kako smanjenje budžeta potrošača utiče na izbore, posmatraju se situacije AB i CD u kojima izbori narušavaju GARP (slika 3). Kada se smanji budžet, tako da kompenzovana linija budžetskog ograničenja C'D' prolazi kroz tačku e_0 , e_0 i e_1 više ne narušavaju GARP. Odnos između dohotka C'D' i dohotka CD izražava redukciju budžeta potrebnu da GARP violacije nestanu i može da se tumači kao suma novca koju potrošač troši kada bira neracionalno.

Slika 3: GARP (e)



Izvor: Ivan Moscati, Paola Tubaro (2011): „Becker random behavior and the as-if defense of rational choice theory in demand analysis“, *Journal of Economic Methodology* 2/2011, 114.

4. Empirijska analiza izbora izabranih organizacija

Teorija racionalnog izbora temeljena je na metodološkom individualizmu koji ne poriče postojanje složenih društvenih fenomena, kao što su organizacije. Ovakvi fenomeni jesu društvena stvarnost, ali, kako smatraju pristalice ovog filozofskog pravca, društva postoje samo kao epifenomeni nastali u ljudskim umovima.

¹¹ Moscati Ivan, Tubaro Paola (2011): „Becker random behavior and the as-if defense of rational choice theory in demand analysis“, *Journal of Economic Methodology* 2/2011, 113.

¹² Varian Hall (1988): „Revealed Preference with a Subset of Goods“, *Journal of Economic Theory* 46/1988, 179-185.

Predstavnici ovog filozofskog pravca vide organizacije kao teorijski postulirane subjekte koji pokušavaju da postignu optimalnu vrednost funkcije cilja. U zavisnosti od karaktera problema, optimalnom će se smatrati bilo maksimalna bilo minimalna vrednost (funkcije cilja). U sferi potrošnje, funkcija cilja aktera (pojedince, organizacije itd.) vezana je za maksimiziranje korisnosti. Važno je ukazati da, ako imamo spisak dobara koje organizacija kupuje kada se susreće sa različitim cenama, možemo primeniti jak aksiom otkrivene preferencije da bismo utvrdili da li izabrane organizacije biraju onu kombinaciju dobara kojom se postiže maksimalna korisnost.

Izabrali smo tri organizacije (Dom zdravlja u Nišu, Ekonomski fakultet i Prirodno-matematički fakultet u Nišu) i definisali hipotezu po kojoj posmatrane organizacije postižu optimalnu (maksimalnu) vrednost funkcije cilja. Predmet analize su korpe dobara koje (one) kupuju po različitim cenama. Za analizu izbora korpi, korišćeni su sledeći artikli:

- 1) Dom zdravlja: rukavice, hiruške kaljače, sistemi za infuziju i igle (tabela 1),
- 2) Ekonomski fakultet: papir za fotokopir aparat, visoki karo, koverta i marker (tabela 2),
- 3) Prirodno-matematički fakultet: papir za štampanje, marker, koverta i fascikla (tabela 3).

Tabela 1: Podaci o potrošnji Doma zdravlja u Nišu

Posmatranja	p_1	p_2	p_3	p_4	x_1	x_2	x_3	x_4
1	2.06	9.5	3.7	2.5	500000	42000	1500	250000
2	3.07	12.59	3.38	2.5	500000	40000	1008	500000
3	5.2	16.4	3.5	1.55	456000	42200	1200	300000
4	5.2	16.4	3.5	1.55	456000	42200	1200	300000

Izvor: Nabavna služba Doma zdravlja

Tabela 2: Podaci o potrošnji Ekonomskog fakulteta u Nišu

Posmatranja	p_1	p_2	p_3	p_4	x_1	x_2	x_3	x_4
1	268.93	417.60	2.58	6.13	200	1	200	100
2	326.40	394.50	3.00	18.00	50	3	150	200
3	326.40	405.7	4.65	17.82	50	2	200	100
4	326.40	298.6	4.65	18.82	100	5	250	150

Izvor: Računovodstvo Ekonomskog fakulteta

Tabela 3: Podaci o potrošnji Prirodno-matematičkog fakulteta u Nišu

Posmatranja	p_1	p_2	p_3	p_4	x_1	x_2	x_3	x_4
1	282.55	20	10	2.15	200	50	1000	2000
2	262.47	18	8	3.15	400	30	1500	1500
3	247.86	15	8	1.85	420	40	2000	1800
4	312.26	25	7	2	180	20	3000	2000

Izvor: Računovodstvo PMF-a

Na osnovu podataka iz tabele 1, može se izračunati koliko bi zdravstvena organizacija (Dom zdravlja) potrošila sredstava kada bi kupila svaku korpu dobara pri svakom različitom skupu cena. Na primer, podatak u tabeli 5 (treći red, prva kolona), pokazuje koliko novca bi ova zdravstvena organizacija morala da potroši pri trećem skupu cena da bi kupila prvu korpu dobara.

Tabela 4: Cena svake korpe pri svakom skupu cena – slučaj Doma zdravlja

Korpe					
Cene		1	2	3	4
	1	2059550	2663730	2094700	2094700
	2	2693850*	3292007	2685274*	2685274*
	3	3681550	4034528	3532480	3532480
	4	3681550	4034528	3532480	3532480

Dijagonalni članovi u tabeli 5 pokazuju koliko novca organizacija troši pri svakom izboru. Podaci u redu služe da se utvrdi koliko bi zdravstvena organizacija potrošila da je kupila drugačiju korpu dobara. Upoređivanjem podataka u tabeli 5 može se videti da li, recimo, korpa 2 ima prednost nad korpom 1, tako što će se utvrditi da li je podatak u redu 2, kolona 1 (koliko bi organizacija morala da potroši pri drugom skupu cena da bi kupila prvu korpu dobara) manji od podatka u redu 2, kolona 2 (koliko je organizacija potrošila pri drugom skupu cena da bi kupila drugu korpu dobara). U ovom slučaju, korpa 1 bila je dostupna kada se kupovala korpa 2, što znači da je korpa 2 otkriveno preferirana u odnosu na korpu 1. Stoga se, u tabeli 5, stavlja zvezdica u redu 2, kolona 1.

Ova tabela može se koristiti za proveru narušavanja aksioma otkrivene preference do kojeg, u opštem slučaju, dolazi ako se zvezdice nalaze u redu t , kolona s , i u redu s , kolona t .¹³ Kako u tabeli 5 ne postoji situacija u kojoj se zvezdice nalaze u redu t , kolona s i u redu s , kolona t , onda znamo da su posmatranja (koja se predstavljaju) u skladu sa teorijom racionalnog izbora.

¹³ Varijan Hal (2014): *Mikroekonomija*, Centar za izdavačku delatnost, Beograd, 128.

5. Ograničenja teorije racionalnog izbora

Rezultati analize ponašanja odabranih organizacija pokazuju da je teorija racionalnog izbora tačna. Braneći svoju akademsku poziciju od „ekonomskog imperijalizma“ teorije racionalnog izbora, mnogi naučnici su pokušali da je opovrgnu, tvrdeći da pretpostavke o maksimizaciji korisnosti i racionalnom izboru (racionalnosti) nemaju „utemeljenje“ u stvarnosti. Takvi pokušaji odbrane od „invazije“ teorije racionalnog izbora su metodološki pogrešni iz sledećih razloga.

Prvo, pretpostavka o maksimizaciji korisnosti je neopovrgljiva. Kako Pol Samuelson ukazuje: „svi tipovi posmatranog ponašanja proizlaze iz ove pretpostavke“¹⁴. Pošto se korisnost ne može objektivno posmatrati, sve vrste ponašanja mogu biti „objašnjene“, pomoću ove ideje, bez straha od opovrgavanja. Sidni Vinter i Lorens Boland, takođe, ističu da nema dokaza koji mogu da opovrgnu teoriju prema kojoj racionalni agenti maksimiziraju neku skrivenu ili nepoznatu varijablu kao što je korisnost.¹⁵

Drugi razlog nemogućnosti empirijske kritike teorije racionalnog izbora ogleda se u činjenici da se rezultati izbora aktera uvek mogu uskladiti sa teorijom racionalnog izbora. U svim istraživanjima¹⁶, izbori određenih aktera narušavaju jak aksiom otkrivene preferencije. To samo govori da postoje eksperimentalni podaci koji falsifikuju teoriju. Uključivanjem dodatnih faktora, izvođači istraživanja rezulate mogu da usklade sa teorijom racionalnog izbora. Uzmimo, na primer, eksperiment u kojem se ispitanici suočavaju sa izborom između sigurnog dobitka od 10 dolara i dobitka od 1.000 dolara sa verovatnoćom od 2 posto. Rezultati eksperimenta pokazuju da postoje ispitanici koji biraju opciju od 10 dolara, bez obzira na to što je očekivana vrednost druge opcija veća.¹⁷ Ovi rezultati ne falsifikuju teoriju racionalnog izbora, kada jednom prihvatimo da se očekivana korisnost u eksperimentu, nužno ne mora meriti novčanim isplatama. Ako pretpostavimo i dodatnu štetu vezanu za rizik i nisku verovatnoću izbora, onda teorija racionalnog izbora prema kojoj ljudi maksimiziraju svoju korisnost, nije opovrgnuta ovim eksperimentom. Subjekti koji nisu skloni riziku ne maksimiziraju očekivanu novčanu vrednost, ali će maksimizirati očekivanu korisnost. Uz prikladnu manipulaciju, izbor od 10 dolara može biti potpuno u skladu sa maksimizacijom očekivane korisnosti, pre nego sa maksimizacijom očekivane novčane vrednosti (isplata).

¹⁴ Samuelson Paul (1937): „A Note on the Measurement of Utility“, *Review of Economic Studies* 2/1937, 156.

¹⁵ Winter Sidney (1964): „Economic Natural Selection and the Theory of the Firm“, *Yale Economic Essays* 1/1964, 227.

¹⁶ Hodgson Geoffrey (2013): „On the Limits of Rational Choice Theory“, *Economic Thought* 1/2013, 98.

¹⁷ Slovic Paul, Lichtenstein Sarah (1983): „Preference Reversals: A Broader Perspective“, *American Economic Review* 4/1983, 596-605.

Shvatanje da se korisnost koju akter maksimizira, u stvarnom životu ne otkriva posmatranjem, potvrđuju i rezultati sledećeg istraživanja.¹⁸ Rezultati jasno ukazuju da većina ispitanika preferira opciju A sa očekivanom vrednošću od četiri dolara u odnosu na opciju B sa očekivanom vrednošću od pet dolara. Pošto većina ispitanika preferira opciju sa nižom očekivanom vrednošću, može se pretpostaviti da postoje dodatni atributi opcije A (na primer, možemo uživati ili ne, gledajući druge kako pobeđuju) koji su konzistentni sa stavom da će ona doneti višu ukupnu očekivanu korisnost. „Budući da nikada ne možemo pokazati da ponašanje pojedinaca nije vođeno principom maksimizacije, teorija racionalnog izbora je neranjiva na empirijske napade“.¹⁹

Ključni problem sa hipotezom racionalnosti je da je ona toliko opšta da može da objasni sve. Konsekventno tome, eksplanatorna vrednost teorije racionalnog izbora u specifičnim slučajevima je značajno smanjena. Teorija racionalnog izbora, recimo, ne može da objasni pozitivan efekat supstitucije odnosno verovatnoću da potrošač izabere tačku ispod budžetske linije CD koja se nalazi desno od tačke e_0 (slika 1). Svaka tačka ispod budžetske linije je suboptimalna. Ako potrošač bira ove tačke, onda je njegovo ponašanje neoptimalno (neracionalno). Međutim, u svom članku pod nazivom „Irrational behavior and economic theory“ Beker pokazuje kako će izbor pojedinaca koji se ne ponašaju racionalno dovesti do ekonomskih ishoda „kao da“ se ponašaju racionalno.²⁰ Pušač manje konzumira cigarete pri povećanju cena cigareta, ne zbog sopstvenog racionalnog ponašanja ili supstitucije cigareta nečim drugim, nego zbog dejstva efekta dohotka, odnosno budžetskog ograničenja, koje postoji, nezavisno od toga da li neko konzumira cigarete ili ne.²¹

6. Zaključak

Teorija racionalnog izbora zasniva se na pretpostavci da potrošač uvek bira najbolju kombinaciju dobara koju sebi može da priušti. Kako možemo utvrditi da li se potrošač ponaša u skladu sa teorijom racionalnog izbora ili ne? Ekonomisti su formulisali jak aksiom otkrivene preferencije. Jak aksiom otkrivene preferencije je jedna logička implikacija teorije racionalnog izbora i zbog toga se može koristiti kao test koji, *ex post*, proverava da li se

¹⁸ Više o tome videti: Herbert Gintis (2009): *The Bounds of Reason: Game Theory and the Unification of the Behavioral Sciences*, Princeton University Press, Princeton.

¹⁹ Radovanović Bojana (2014): „Radnja iz obaveze: teorija racionalnog izbora i Senov koncept kontrapreferencijalnog izbora“, *Filozofija i društvo* 3/2014, 318.

²⁰ Becker Gary (1962): „Irrational Behavior and Economic Theory“, *Journal of Political Economy* 1/1962, 1-13.

²¹ Više o tome videti: Begović Boris (2014): „Gary S. Becker-ekonomski imperijalista“, *Ekonomik Annals* 162/2004, 275-300.

određeni potrošač, ili neki ekonomski subjekat, ponaša u skladu sa teorijom racionalnog izbora.

U empirijskom istraživanju čiji su rezultati prikazani u radu, razmatrali smo izbore ekonomskih subjekata (Dom zdravlja, Ekonomski fakultet, Prirodno-matematički fakultet) za koje smatramo da se ponašaju kao racionalni potrošači. Definisali smo hipotezu po kojoj se oni ponašaju u skladu sa teorijom racionalnog izbora tj. pretpostavili smo da uvek biraju najbolje, dostupne stvari (maksimiziraju korisnost ili postižu optimalnu vrednost funkcije cilja). U istraživanju smo koristili jak aksiom otkrivene preferencije da bismo to utvrdili. Dobijeni rezultati pokazuju da posmatrani subjekti ne narušavaju jak aksiom otkrivene preferencije, čime se potvrđuje teorija racionalnog izbora.

Činjenica da ekonomski subjekti retko narušavaju jak aksiom otkrivene preferencije u eksperimentalnim uslovima posledica je nemogućnosti da se jak aksiom otkrivene preferencije prekrši u eksperimentalnim uslovima. S druge strane, narušavanje jakog aksioma otkrivene preferencije manjeg obima znači da ipak mogu da postoje situacije u kojima se opovrgava teorija racionalnog izbora. Međutim, odstupanja od jakog aksioma otkrivene preferencije su retka, u smislu da skoro svi subjekti zadovoljavaju jak aksiom otkrivene preferencije, ili su vrlo blaga, u smislu da subjekti u veoma maloj meri odstupaju od jakog aksioma otkrivene preferencije. Može se zbog ovih manjih odstupanja diskutovati: da li je prikladno odbaciti teoriju racionalnog izbora? Svakako ne, a uključivanjem dodatnih faktora u model, istraživači bi mogli na prikladan način da racionalizuju ova odstupanja.

Literatura

- Begović Boris (2005): „Gary S. Becker-ekonomski imperijalista“, *Economic Annals* 162/2005, 275-300.
- Becker Gary (1962): „Irrational Behavior and Economic Theory“, *Journal of Political Economy* 1/1962, 1-13.
- Gintis Herbert (2009): *The Bounds of Reason: Game Theory and the Unification of the Behavioral Sciences*, Princeton University Press, Princeton.
- Golubović Nataša (2011): *Društvena ekonomika*, Ekonomski fakultet, Niš.
- Hodgson Geoffrey (2013): „On the Limits of Rational Choice Theory“, *Economic Thought* 1/2013, 94-108.
- Ivan Moscati, Paola Tubaro (2011): „Becker random behavior and the as-if defense of rational choice theory in demand analysis“, *Journal of Economic Methodology* 2/2011, 107-128.
- Лайонел Роббинс (1993): „Предмет экономической науки“, *THESIS* 1/1993, 10-23.
- Peter Lipton (2004): *Inference to the Best Explanation*, London.

- Samuelson Paul (1937): „A Note on the Measurement of Utility“, *Review of Economic Studies* 27/1937, 155-161.
- Radovanović Bojana (2014): „Radnja iz obaveze: teorija racionalnog izbora i Senov koncept kontrapreferencijalnog izbora“, *Filozofija i društvo* 25 (3), 313-322.
- Slovic Paul, Lichtenstein Sarah (1983): „Preference Reversals: A Broader Perspective“, *American Economic Review* 47/1983, 596-605.
- Štulhofer Aleksandar (1995): „Etnicitet i racionalni izbora: od identifikacije do kolektivne akcije“, *Studia ethnologica Croatica* 1/1995, 173-182.
- Varijan Hal (2014): *Mikroekonomija*, Centar za izdavačku delatnost, Beograd.
- Varian Hall (1988): „Revealed Preference with a Subset of Goods“, *Journal of Economic Theory* 4/1998, 179-185.
- Winter Sidney (1964): „Economic ‘Natural Selection’ and the Theory of the Firm“, *Yale Economic Essays* 17/1964, 225-272.
- Александровна С. Михеева (2014): <https://sites.google.com/site/konfep/kontakty-1> (3.6.2014).
- Беккер Гэри (2003): *Человеческое поведение: экономический подход*, ГУ ВШЭ, Москва.
- Валерьевич В. Радаев (1997): „Экономическая социология (к определению предмета)“, *Общественные науки и современность* 3/1997, 106-113.

Research Asistant Miloš Krstić, PhD

Faculty of Sciences and Mathematics, University of Niš

RATIONAL CHOICE THEORY AND BECKER'S MODEL OF RANDOM BEHAVIOR

S u m m a r y

According to rational choice theory, rational consumers tend to maximize utility under a given budget constraints. This will be achieved if they choose a combination of goods that can satisfy their needs and provide the maximum level of utility. Gary Becker, on the other hand, imagines irrational consumers who choose bundle on the budget line. As irrational consumers have an equal probability of choosing any bundle on the budget line, on average, we expect that they will pick the bundle lying at the midpoint of the line. The results of research in which artificial Becker's agents choose among more than two commodities, rational choice theory is small and more than two budget/price situations show that the percentage of agents whose behavior violate. Adding some factors to Becker's model of random behavior, experimenters can minimize these minor violations. Therefore, rational choice theory is unfalsifiable. The results of our research have confirmed this theory. In addition, in the paper we discussed about explanatory value of rational choice theory in specific circumstances (positive substitution effect) and we concluded that the explanatory value of rational choice theory was significantly reduced in specific cases.

Key words: rational choice theory, Beker's model of random behavior, generalized axiom of revealed preference, falsifiability, utility maximization, rationality assumption.

ECONOMIC TRANSITION AS CONTINUITY (ON THE TRANSITION FROM FEUDALISM TO CAPITALISM IN SLOVENIA)

The aim of this paper is to establish the common features of the transition process from feudalism to the capitalist economic system in Slovenia. In the processes of the transition to the capitalist economy, Slovenia was on the European periphery. The export demand was the driving force of structural changes in the regional economy, as the weak internal demand was not in the position to foster economic development. Slovenian economy and society entered these processes with a delay of decades as well as with some discontinuity in the form of re-agrarization and de-industrialization, as it is outlined in the concept of proto-industrialization. During the periods of re-agrarization the model of distribution of the existing resources was predominant. It manifested itself in the form of the fragmentation of agricultural ownership structure, which was the most significant factor of the relative economic backwardness of the Slovenian territory. The Slovenian economic subjects were small, under-capitalized, and with outdated technology, and therefore uncompetitive on the interregional markets. So the prime instigators of the economic changes were foreign entrepreneurs with their know-how, capital, technology, and international markets. In the period before World War II the role of foreign investments was crucial for the process of the transformation into the capitalist economy. The most significant historical feature of the Slovenian economic development is the fact that the existing »islands of modernization«, which were more or less in line with European trends, remained »islands« until their power to stimulate structural changes and new institutional forms in economy vanished completely in the predominantly agrarian economic and social environment.

Key words: economic transition, economic development, social transformation, Slovenia

* Professor Žarko Lazarević, PhD, Institute for Contemporary History, Ljubljana, Slovenia, e-mail: zarko.lazarevic@inz.si

In the modern discourse the concept of economic transition relates to the economic and social transformation of the former communist countries in the 1990s. Transition has been defined as a concept, denoting the economy undergoing a process of transformation from the centrally-planned structure to the market economy.¹ In its essence transition denotes an all-encompassing transformation of the economic system. It presupposes a complete takeover of the formal and informal market institutions and the abolishment of the communist economic system. In view of the substantive level of changes the term »transformation« would be more suitable, which is also proposed and used by some authors in the social sciences.² If we disregard the exceedingly modern connotation of the concept of transition and apply it in the sense of the transformation from one economic system to another, different economic system, then other possibilities open up for us as well. Namely, the concept of economic transition in the sense of the transition to another economic system may also be used in order to denote the processes that dissolved the feudal economic structure and led to the transition to the capitalist economic system. These were two transitions during which the social and economic institutions had to be transformed.³ In the case of the transition in the 1990s this involved a centralised and super-

¹ For the methodological definition of the concept of transition and its first interpretative use in the Slovenian historiography see Lorenčič, Aleksander (2012), *Prelom s starim in začetek novega. Tranzicija slovenskega gospodarstva iz socializma v kapitalizem. (1990–2004)* [A Break with the Old and the Beginning of Something New: Slovenian Economic Transition from Socialism to Capitalism (1990–2004)]. Ljubljana: INZ.

² For terminological and substantive dimensions of these differences see scientific review articles Rakita, Milan (2011): Prilog kritici teorija modernizacije i tranzitologije u društvenim naukama [Contribution to the Criticism of the Theories of Modernisation and Transitology in Social Sciences]. In: Veselinović, Ana, Atanacković, Petar, Klarić, Željko, *Izgubljeno u tranziciji. Kritička analiza procesa društvene transformacije* [Lost in Transition. Critical Analysis of the Social Transformation Process]. Belgrade: Rosa Luxemburg Stiftung, pp. 7–32 and Tomić, Đorđe (2011): Od transformacije do tranzicije i nazad. Nauka o transformaciji? Pojmovi, pitanja, teorije [From Transformation to Transition and Back. Science of Transformation? Concepts, Questions, Theories]. In: Veselinović, Ana, Atanacković, Petar, Klarić, Željko, *Izgubljeno u tranziciji. Kritička analiza procesa društvene transformacije* [Lost in Transition. Critical Analysis of the Social Transformation Process]. Belgrade: Rosa Luxemburg Stiftung, pp. 33–56.

³ Social institutions are defined as the manifestations of formal and informal nature, regardless of the level of institutionalisation, in the field of mental structures, schemes, rules, norms and traditions, defining, as social standards, the behaviour in the society and economy in an authoritarian manner. A clear identification of these institutions and their forms in view of the temporal dynamics enables us to gain insight into the process characteristics of the development of individual societies, while the comparative aspect allows for the consideration of the relevance of their general validity. For more information about the institutional theory see NORTH, Douglas C. (1998): *Institucije, institucionalne spremembe in gospodarska uspešnost* [Institutions, Institutional Change and Economic Performance]. Ljubljana: Krtina; NORTH, Douglas C. (2005): *Understanding the Process of Economic Change*. Princeton: Princeton University Press.

vised process of the formation of new institutions, which was supposed to take approximately two decades. On the other hand the transition from feudalism to capitalism was decentralised, slow and gradual. Unlike the modern understanding of economic transition, where the processes can be measured in mere decades, the latter involved processes which took centuries.

The purpose of this discussion is to find the common elements of the transition from feudalism to capitalism in the last few centuries. For this purpose, in view of the state of historiographical research, we chose to focus on three periods: the time of the 16th and 18th century and the so-called “century of capitalism”, arbitrarily defined as taking place from the middle of the 19th to the middle of the 20th century. The concept of economic lag is emphasised as the starting point of the discussion. As this is an extremely complex research issue, the discussion will limit itself to the level of the most general points, that is, the comparison of the basic denominators of the economic dynamics, fulfilling the criterion of the long-term nature, which can be generalised as a historical constant. Our goal is to confront the realisations of the individual research analyses from the viewpoint of the long-term perspective and unify them in terms of the problem/interpretative common denominators. With such a concept this discussion will unavoidably be exposed for the possible (justified!) criticism due to the generalisation and simplification of the historical processes at the Slovenian level, let alone the narrower regional or even local levels. However, there is a reason for such a concept of the discussion. As it is, we aim to encourage further debate, reconsiderations, and ultimately perhaps also the emergence of new concepts of the research thematisation of the long-term tendencies and circumstances of the economic development in the Slovenian territory in the modern age.

Like other historiographies, Slovenian economic historiography is based on the supposition of a constant, almost linear and gradual progress.⁴ That means that it is based on the principle of continuity. At the same time the principle of dissimilarity in the process dynamics is integrated into this model. That means that the supposition of constant progress is also accompanied with the qualitative definition: that in case of the Slovenian economic development we are dealing with lag. The term of lag itself, or, more precisely, the concept of the relative economic backwardness⁵, denotes the diverging dynamics of the

⁴ For more information about this see Lazarevič, Žarko (2012): *Identitete in imena gospodarskega zgodovinskega v Sloveniji* [Identities and Names of Economic Historiography in Slovenia]. In: *Ekonomika i ekohistorija*, VIII/8, pp. 116–136.

⁵ The concept has otherwise been used by the economic historian Alexander Gerschenkron for the time of the 19th century in order to explain the various starting points before the entry of certain regions/states into the industrialisation process. In light of the supposition that the regional differences in the levels of economic development in Europe are older and thus reveal themselves as something permanent, the use of Gerschenkron's concept is completely appropriate. For more detailed information see Gerschenkron, Alexander

economic development, which become apparent from a comparative analysis with the immediate or more remote surroundings. In this way we are opening the issue of the relative regional differences in the European space in the historical perspective, as it is certain that the concept of the economic lag addresses the relationship between the levels of the economic development in Slovenia and Western Europe. The dynamics and forms of the Western European economic development represent a model to which the economic development elsewhere is compared. By introducing the concept of lag we also introduce a few teleological elements into the interpretation of economic history, as in this way we supposedly know the goal towards which history is headed. Societies which are identical or similar to the Western European model with regard to the economic structure, developmental dynamics and institutional economic forms are seen as modern, while all others are considered as backwards. Such a division becomes even deeper in the most recent industrial age and acquires additional manifestations in comparison with the preceding periods.

The thesis about the lag involved in the Slovenian economic development is generally accepted. Moreover, it has often been completely clearly substantiated in the theoretical and empirical sense – also in different periods, but most notably for the 16th century, 18th century, and for the period of the 19th or 20th-century industrialisation or the century of capitalism. As far as the 16th century is concerned, we cannot overlook the in-depth analyses carried out by Ferdo Gestrin⁶, who presented this time as a period of confrontation and intertwining of the old and vanishing forms of medieval institutions and the emerging modern times, with the first outlines of the new views and forms of the economic and social life. Gestrin completely unequivocally defines the end of this period as an open manifestation of the economic lag process. In these definitions Gestrin is also joined by Jože Šorn, who placed his book on the beginnings of industry in the time of the 18th century and the pre-March period. The message of Šorn's monograph is clear, and already Jasna Fischer and Peter Vodopivec brought

(1979), *Economic Backwardness in Historical Perspective*. Belknap Press of Harvard University Press, pp. 5–30.

⁶ Gestrin, Ferdo (1991):, *Slovenske dežele in zgodnji kapitalizem [Slovenian Lands and Early Capitalism]*. Ljubljana: Slovenska matica. Apart from this fundamental work we also have to mention a series of three articles, published by Ferdo Gestrin in 1968, in which he provided a synthetic overview of the basic economic processes in the Slovenian territory from the 16th and until the end of the 19th century, later also published in various other forms. See Gestrin, Ferdo (1969): Oris gospodarstva na Slovenskem v obdobju zgodnjega kapitalizma [Outline of Economy in Slovenia in the Period of Early Capitalism]. In: *Kronika*, 17, No. 1, pp. 1–7; Gestrin, Ferdo, Oris gospodarstva na Slovenskem v obdobju agrarne revolucije in prevlade manufakturne proizvodnje [Outline of Economy in Slovenia in the Period of the Agrarian Revolution and Domination of Manufacture Production]. In: *Kronika*, 17 (1969):, No. 2, pp. 65–71; Gestrin, Ferdo (1969): Oris gospodarstva na Slovenskem v prvem obdobju kapitalizma [Outline of Economy in Slovenia in the First Period of Capitalism]. In: *Kronika*, 17, No. 3, pp. 129–137.

the attention to it in their foreword written on the occasion of the posthumous publication of Šorn's book in 1984. The presented empirical materials attest to the slowness of the economic structural changes (as the relationship between the agrarian and non-agrarian part of the economy) in the Slovenian territory, leading to the increasing gap between the development dynamics of Slovenia and other provinces of the Habsburg Monarchy, especially in comparison with the Czech lands. Furthermore, Šorn's thesis is that in the first half of the 19th century the developmental differences even deepened.⁷ The discourse of lag also remains an important interpretative aspect in the evaluation of the economic development of the Slovenian territory in the 19th and 20th century. Thus we can underline the complex study carried out by Mojca Novak, who successfully integrated the exploration of Slovenian industrialisation into a wider theoretical comparative context from the viewpoint of the sociological definition of the problem.⁸ The regional economic differences in the Habsburg Monarchy in the second half of the 19th century at the level of individual provinces were presented convincingly by Andrej Pančur. His study also confirms the thesis of the below-average development of the Slovenian provinces, lagging behind with regard to the implementation of the industrialisation processes.⁹ Žarko Lazarević has underlined the disproportionate dynamics of the economic development by referring to gross domestic products. In a special study he focused on the long-term economic development of Slovenia from the middle of the 19th to the end of the 20th century in the European perspective, i.e., through the relations between the gross domestic product levels of Slovenia and other European countries. On the basis of the results it can be summed up that Slovenia, in the historical perspective of the last two centuries, lags behind the countries of the North-Western Europe, that is, behind the countries where the unstoppable progress of the industrial revolution first started. However, Slovenia has kept its development at approximately the same level as the Southern European or Mediterranean countries. However, if we look towards the East, it becomes apparent that especially in the 20th century Slovenia has increased its economic

⁷ FischeR, Jasna, Vodopivec, Peter (1984): O avtorju in njegovem delu [About the Author and His Work]. In: ŠORN, Jože, *Začetki industrije na Slovenskem [Beginnings of Industry in Slovenia]*. Maribor: Založba Obzorja, p. 6.

⁸ Novak, Mojca (1991): *Zamudniški vzorci industrializacije. Slovenija na robu Evrope [Patterns of Industrialisation Lag. Slovenia at the Edge of Europe]*. Ljubljana: Znanstveno in publicistično središče.

⁹ Pančur, Andrej (2002): Ekonomska vloga Avstro-Ogrske v evropskem prostoru s stališča modernizacijskih procesov in položaj posameznih dežel v njej [Economic Role of Austro-Hungary in the European Space from the Viewpoint of the Modernisation Processes and the Position of Individual Provinces in It]. In: *Prispevki za novejšo zgodovino*, 42, No. 2, pp. 17–31.

advantage in comparison with the other former communist countries of the Eastern Europe and the Balkans.¹⁰

Thus the aforementioned studies (and not only these) unequivocally register the dichotomy between the economic-developmental dynamics between Slovenia and its immediate north-western surroundings. It is also obvious that long-term developmental characteristics are involved. Thus the words of the American economist John Galbraith – that in order to understand the economic position of individual countries it is very important to know where they were in the distant past – are also very true in case of the Slovenian economic development.¹¹ The awareness of the historical bases for the various economic stages in the European space has been present for a long time. This realisation was especially relevant for the thematisation of the process of industrialisation and its territorial expansion. Researchers promptly established that at the outset, on the same timeline, individual countries were in different positions, stemming from the centuries of differences in their developmental paths in the context of the feudal social and economic system.¹² The researchers especially emphasise the various levels of productivity in agriculture due to the different technologies of production, consequently resulting in just as diverse potentials for economic growth.¹³ An important emphasis has also been placed on other dissimilarities, for example the question of ownership rights (that is, the capacity to transform the pre-capitalist forms of ownership rights

¹⁰ Lazarević, Žarko (2007): Sočasnosti slovenskega gospodarskega razvoja [Contemporaneity of Slovenian Economic Development]. In: *Zgodovinski časopis*, 61, No. 3–4, pp. 393–410.

¹¹ Galbraith, John K (1980): *The Nature of Mass Poverty*. London: The Penguin Books, pp. 17–18.

¹² Chirot, Daniel (1989): Causes and Consequences of Backwardness. In: Chirot, Daniel (ed.), *The Origins of Backwardness in Eastern Europe*. University of California Press, pp. 1–13. See also Hoffmann, Philip, Jacks, David, Levin, Patricia, Lindert, Peter (2002): Real Inequality in Europe since 1500. In: *The Journal of Economic History*, 62, No. 2, pp. 322–355. The regional disparities from the viewpoint of salaries and prices were presented by Allen, Robert (2001): The Great Divergence in European Wages and Prices from Middle Ages to the First World War. In: *Explorations in Economic History*, 38, pp. 411–447.

¹³ Clark, Gregory (1987): Productivity Growth without Technical Change in European Agriculture before 1850. In: *The Journal of Economic History*, 47, No. 2, pp. 419–432. Although his article provoked a resolute objection from John Komlos, who criticised its insufficient empirical comparative foundations as well as clumsily extrapolated conclusions, the fact of the apparent differences in the productivity of agriculture in the European dimensions nevertheless exists. For more details see Komlos, John (1988): Agricultural Productivity in America and Eastern Europe. A Comment. In: *The Journal of Economic History*, 48, No. 3, pp. 655–664, and the response by Clark, Gregory (1989): Productivity Growth Without Technical Change in European Agriculture. Reply to Komlos. In: *The Journal of Economic History*, 49, No. 4, pp. 979–991.

into capitalist rights), personal freedoms, or role and structure of the cities, to mention but a few categories.¹⁴

Regardless of the fact that when emphasising the three comparative overviews from the Slovenian economic history we are dealing with three different historical contexts, the continuity of the economic lag is the very phenomenon that brings together the interpretations of the Slovenian economic history from the 16th and until the end of the 20th century. The interpretative approaches of the economic history in the second half of the previous millennium are also brought together by the fact that with the exception of the second half of the 20th century Slovenia was a traditional society, in which agriculture was an irreplaceable economic sector. Precisely the changing percentage of the peasant population is one of the key indicators of the developmental economic dynamics, average productivity and economic structure.

The classic economic theory states that four demands have to be met in order to ensure economic development: a society must have suitable human and natural resources as well as the accumulation of capital and technology at its disposal. These four pillars of development function in a reciprocal manner. A registered lag in combination with slow economic restructuring based on the model of economically superiorly developed environments places a certain (also Slovenian) environment in the framework of the economically and theoretically defined model of poverty in the long-term.¹⁵ If we enter this circle in the field of the slow accumulation of capital, then we can detect the lack of considerable investments in technology, resulting in low labour productivity. On the basis of the low average labour productivity or low efficiency of the economy as a whole, high population income cannot be ensured. The low average level of the population income is barely enough for survival, therefore hindering the demand, considerable savings and investments, which, in turn, leads to slow accumulation of capital. Thus the circle is complete. From all of the above the reciprocity of the individual developmental categories is completely obvious. On this basis we can conclude that technology or the achieved technological level determines the production structure of a certain society/economy, structure of

¹⁴ In this sense the following in-depth study of European agrarian systems is very illustrative: Brenner Robert, *Economic Backwardness in Eastern Europe in Light of the Developments in the West*. In: Chirot (ed.), *The Origins of Backwardness in Eastern Europe*, pp. 15–52. For the purposes of this discussion the following work should also be consulted: Brenner Robert (1976): *Agrarian Class Structure and Economic Development in Pre-Industrial Europe*. In: *Past & Present*, 70, pp. 30–75. From the viewpoint of the Central and Eastern Europe and agrarian relations, a clear analysis of European regional differences in the pre-industrial age was given by Gunst, Peter, *Agrarian System of Central and Eastern Europe*. In: Chirot (ed.), *The Origins of Backwardness in Eastern Europe*, pp. 53–91.

¹⁵ Samuelson, Paul, Nordhaus, Paul –William (2002): *Ekonomija [Economy]*. Ljubljana: GV Založba, pp. 542, 544.

the regional/international commercial exchange, and thus also the position in the regional/international division of labour.¹⁶

Apart from the lag, as defined by the aforementioned authors, the time periods under consideration also share their process characteristics. In accordance with the modern distinctions between the models of economic development we can introduce into our discussion the moments of the proto-industrial and industrial society or the processes of proto-industrialisation and industrialisation, coinciding with the transition from the feudal economic system to the capitalist system. If there are no dichotomies as far as the definition of industrialisation or industrial society is concerned, this is not so in case of the concept and interpretative scheme of proto-industrialisation. The concept of proto-industrialisation, which has taken firm root in the economic-historical science, was outlined by Franklin Mendels on the basis of his own research.¹⁷ To sum it up very briefly, Mendels saw proto-industrialisation as a stage in the development of the modern economy based on industry, taking place in the context of the completely dissolved or dissolving feudal connections. With the concept of proto-industrialisation Mendels denoted the processes when in the rural areas the peasant craft production (as a supplementary or exclusive activity) strengthened either individually or in the context of the putting-out system. This was a widespread phenomenon in the various regions of Europe. Through trade relations this kind of production integrated the peasants into the market, market relations and division of labour at the regional, national, and also international level apart from the mere agricultural production and breeding. The process of proto-industrialisation involved the commercialisation of the agricultural craft knowledge and technology, which was supposedly present in the rural areas due to the dominant principle of the self-supply of these areas or the principle of the previous self-sufficiency of agricultural economies. The labour force price, significantly lower due to the agriculture as the primary activity, supposedly represented a competitive advantage in comparison with the craft-guild production. The processes of proto-industrialisation also triggered the processes of economic growth, accumulation of capital, business skills, and agricultural progress. Furthermore, Mendels also ascribed the process of proto-industrialisation with having far-reaching social implications from the reciprocal connections between the intensity of the proto-industrialisation processes and the changes of the population number, family structure, fragmentation of land, and increase in dependent labour (not to say proletarianisation) in the rural areas. Proto-industry allegedly also started

¹⁶ Sočan, Lojze (1978): *Pot v gospodarsko razvitost [Path Towards Economic Development]*. Ljubljana: Delavska enotnost, p. 37.

¹⁷ Mendels, Franklin F. (1972): Proto-Industrialization. The First Phase of the Industrialization Process. In: *The Journal of Economic History*, 32, No. 1, pp. 241–261.

solving the Malthusian trap, which was ultimately broken by industrialisation. With economic growth and the increasing income of the peasant population the processes of proto-industrialisation contributed to the long-term strengthening of demand or consumption, which became the driving force of industrialisation in the modern sense of the word.

Just like any other model, the Mendels's concept of proto-industrialisation has faced many objections and corrections due to its aspirations for general validity.¹⁸ Doubts have stemmed from new research, questioning or further developing many suppositions of Mendels's, especially in the social field. At the level of the foundations the critics of the proto-industrialisation concept were compatible with Alexander Geschenkron, who emphasised the divergence of the paths taken by the individual regions/provinces towards industrialisation and the lack of a certain general model of industrialisation in Europe.¹⁹ The criticism of the proto-industrialisation model stemmed from the extensive empirical materials from various parts of Europe. These detailed studies showed that just like we cannot speak about a uniform pattern during the process of industrialisation, proto-industrialisation is hardly any different. Significant differences in the manifestations of proto-industrialisation were registered. The theorem of proto-industrialisation turned out to be a flexible process, resulting from the adaptation to the local social and economic contexts.²⁰ The principle of discontinuity was built into the concept of proto-industrialisation as well. The term »de-industrialisation« was introduced to denote the process when the proto-industrialisation phenomena stopped (due to various economic, political or social reasons) and the supplemental production was abandoned in certain areas. Thus these areas became more dependent or were once again completely dependent on agricultural production. The automatic transition of the proto-industrial production to the modern industrial organisation of acquiring goods was therefore questioned. The arguments were clear. The empirical materials did not provide enough arguments to give the

¹⁸ This is also because we historians, in our focus on the details, are (un)righteously critical of the generalised models of interpreting the historical economic processes.

¹⁹ Gerschenkron, referenced work. See also the synthetic summary of the topical debates about the industrial revolution in Beaudoin, Steven M. (2000): Current Debates in the Study of the Industrial Revolution. In: *OAH Magazine of History*, 15, No. 1, pp. 7–13.

²⁰ Mendels's concept of proto-industrialisation encouraged a lively discussion among economic historians. For more detailed viewpoints see, for example, Coleman, Donald C. (1983):, A Proto-Industrialization. A Concept Too Many. In: *The Economic History Review*, New Series, 36, No. 3, pp. 435–448; OGILVIE, Sheilagh C. (1995), Institutions and Economic Development in Early Modern Central Europe. In: *Transactions of the Royal Historical Society*, Sixth Series, 5, pp. 221–250. It is also recommended to take a look at the very informative collection of scientific texts, summing up the basic realisations about the theorem and manifestations of proto-industrialisation in Europe: Ogilvie, Sheilagh C. (ed.), Cerman, Mark (ed.) (2007): *European Proto-Industrialization*. Cambridge: Cambridge University Press.

supposition of the automatic development of proto-industry into modern industry the character of general validity.²¹ Despite all of the scepticism the concept of proto-industrialisation still counts as a very useful analytical tool for the interpretation of the gradual restructuring of the economy in the three centuries from the 16th to the end of the 18th century, which the concept of proto-industrialisation encompasses in its temporal dimension. The essential contribution of the proto-industrialisation concept to the economic-historical science is that this concept transcended the interpretative simplifications of the economic development in view of the discontinuity of industrialisation in the 19th century.²² With the presumption of proto-industrialisation processes industrialisation finally lost its revolutionary character and became a part of the gradualist interpretative pattern in the historical studies.

Thus Sidney Pollard (like many others before and after him) defined industrialisation as a long-term set of various social, economic, technological and organisational-administrative changes, and by no means as a sharp and swift transition from one economic paradigm to another. At this point we have to emphasise that despite industrialisation traditional social sectors were preserved as well (craft industry, peasant craft production as well as small agricultural lands) simultaneously with the modern industrial factory compounds, mines, means of transport, capitalist agricultural facilities, etc.²³ Traditional sectors may have operated in the context of market rules, but they did not fit into the capitalist economy completely.²⁴ They remained at the

²¹ See, for example, a very illustrative discussion Hudson, Pat, Proto-Industrialization in England, In: Ogilvie (ed.), Cerman (ed.), *European Proto-Industrialization*, pp. 49–66, referring to the work Coleman, A Proto-Industrialization, pp. 435–448, who, in his criticism of the proto-industrialisation concept, emphasised the insufficient empirical validity of the supposition with regard to the progression from proto-industrialisation to industrialisation.

²² Walton, John (1987): Theory and Research on Industrialization. In: *Annual Review of Sociology*, 13, pp. 89–108 (100).

²³ Pollard, Sidney, The Industrial Revolution – an overview. In: Teich, Mikulaš, Porter, Roy (1996): *The Industrial Revolution in National Context*. Cambridge: Cambridge University Press, 1996, pp. 371–387.

²⁴ Economic historians tried to explain this kind of structural characteristics – when two sectors co-exist (a relatively small, modern sector, depending on foreign demand; and the dominant sector, based on domestic, local demand as well as on the self-sufficiency of economy) – with the so-called »dualist theory«, which was not especially far-reaching. They wanted to illustrate the conflicts in the economic environment, intensifying the opposition between the capitalist part of the economy and the dominant forms of pre-capitalist economy, and establish the general patterns of development. As we will find out later, the Slovenian experience in the 19th century was not radically different from this. For more information about the beginnings of such approaches see Higgins, Benjamin (1956): The »Dualistic Theory« of Underdeveloped Areas. In: *Economic Development and Cultural Change*, 4, No. 2, pp. 99–115. The application of dualist development, spreading from the economic sphere to the whole of society, has been used more than once, for

brink of capitalist economy, if we refer to Braudel's differentiation typology.²⁵ Another contribution by Pollard is also noticeable in the conceptualisation of industrialisation: because of the realisation that the process of industrialisation differed in its structure and speed in the various regions of the national economic spaces, he emphasised that the research activities should focus on the regional aspects rather than on the national aspects when studying the origin and development of industrialisation.²⁶

The long-term changes in the structure and ways of the production of goods outside of the agricultural branches can also be shown schematically. The following table analyses the changes taking place in the non-agrarian production in the time of the profound transition from the feudal economic structures to the modern capitalist economy. The variables of the transformation are defined from the viewpoint of the spatial and locational placement of non-agrarian production, status of the participants in the production process (employees), characteristics of the working cycle rhythm, supervisory and administrative functions, ownership of the production factors, and, finally, the branch aspects.

On the basis of the foundations presented in Table 1. we can attempt to define the basic developmental characteristics of the economic development in the Slovenian territory in the time of the transition from feudalism to the capitalist economic system. In this regard we will sum up the thesis of Lojze Sočan as an interpretative framework: that the achieved technological level determined the structure of production, commercial exchange, and thus also the position in the regional division of labour. We will carry out an overview on the basis of certain variables with the potential to illustrate the characteristics of the development during the transition from feudalism to capitalism and towards the industrialisation in the modern times. While we undertake this we will not pay any attention to the issues of the general environment (political situations, economic policies, international circumstances, etc.), because we are limited in terms of space. However, this environment is constantly present in the background of the ongoing changes that we present as characteristic features.

example by Ivan Berend (Berend, Ivan, (2005): *History Derailed. Central and Eastern Europe in the Long Nineteenth Century*. Berkeley – Los Angeles: University of California Press), who emphasises the dualist polarisation of the social and economic development of the Eastern European parts in the 19th century.

²⁵ See the summary of his concepts: Braudel, Fernand (2010): *Dinamika kapitalizma [The Dynamics of Capitalism]*. Ljubljana: Sophia.

²⁶ Pollard, Sidney (1973): Industrialization and the European Economy. In: *The Economic History Review*, New Series, 26, 1973, No. 4., pp. 636–648 (p. 646). The quoted article sums up the basic conceptual outlines of the regional research approach, presented by Pollard in much detail at the level of the concept and empirical substantiations in the book which has acquired the status of the fundamental work addressing the issue of the European industrialisation. See Pollard, Sidney (2002): *Peaceful Conquest. The Industrialization of Europe. 1760–1970*. Oxford: Oxford University Press.

Table 1: *Structure of production in the pre-industrial and industrial time*²⁷

	Craft production in the Middle Ages	Proto-industrial production	Modern capitalist industrial production
Place of production	City	Rural areas	Locations near accessible sources of energy or raw materials
Workplace	Craft industry master's workshop	Peasant house	Factory
Employees	Master and apprentices	Peasant family	Workers
Work cycle	Continuous	Alternating with agricultural chores	Continuous and coordinated
Administrative functions	Master	Merchant/central agent (entrepreneur)	Capitalist businessman
Owner of raw materials	Master	Peasant or central agent	Capitalist businessman
Owner of production means	Master	Peasants (not always)	Capitalist businessman
Owner of products	Master	Merchant/central agent (entrepreneur)	Capitalist businessman
Most prominent branches	Textiles and clothing Leather industry Wood and metal processing Building industry Food	Textiles and clothing	No restrictions

With regard to the dynamics of changes in the Slovenian space the percentage of the peasant population is one of the most obvious indicators. Thus Gestrin, for example, states that in the end of the 16th century almost 94 % of all population of the Slovenian provinces lived in the rural areas.²⁸ In view of this information we can state that for the same percentage of the population agriculture was the exclusive or primary economic activity. If Gestrin's statement is an estimate, the information dating back to 1910 is already far more reliable due to the well-developed statistical service. At that time around 67 % of the population worked in agriculture.²⁹ Realistic estimates for the time before

²⁷ Table summed up according to Felloni, Giuseppe (1997): *Profilo di storia economica dell'Europa. Dal medioevo all' eta contemporanea*. Turin: Giappichelli, p. 157. Quoted in accordance with Massa, Paola, *The Economy in Fifteen Century – Preconditions for European Expansion*. In: Di Vittorio, Antonio (2006): *An Economic History of Europe. From Expansion to Development*. London – New York: Routledge, pp. 1–25 (16).

²⁸ Gestrin, *Slovenske dežele in zgodnji kapitalizem*, p. 20.

²⁹ FISCHER, Jasna (2005): *Družba, gospodarstvo, prebivalstvo. Družbena in poklicna struktura prebivalstva na slovenskem ozemlju od druge polovice 19. stoletja do razpada*

World War II (because the census was not carried out in 1941) place this share at around 60 %.³⁰

The information about the percentage of the peasant population is seen as important by economic historians, without further substantiating this fact. It attests to the levels of economic growth and gross domestic product, specifying the relative position of an individual environment in the international/inter-regional comparisons. Furthermore, this information also indicates very slow endogenous economic dynamics in the Slovenian space throughout the modern period. In three centuries the percentage of the peasant population in the Slovenian territory decreased by merely one third. As a comparison let us underline that in the countries representing the core of the Western Europe the percentage of the peasant population dropped below one half of the total population as early as in the first half of the 19th century. For example, in the more developed parts of the Habsburg Monarchy the share of the peasant population at the turn of the 19th century amounted to 30 %, ³¹ which is even lower than the percentage in Slovenia before World War II. In Europe in 1870 – forty years before the Slovenian 67 % in 1910 – the following countries had the following percentages of the population working in agriculture: Great Britain 14 %, Belgium 17 %, the Netherlands 35 %, France 59 %, and Austria 64 %, to mention but a few.³² The differences are obvious and speak for themselves.

The comparatively low efficiency was another characteristic of agriculture. Already in the 16th century agriculture had to face a challenge. It came across the limitations of the production factors in view of the contemporaneous technology (three-year rotation of crops, extensive grazing livestock production). The pre-modern age, when the agricultural yield could be improved by extending the arable areas, thus satisfying the increasing demand for food as a consequence of the population growth, was coming to an end. With the end of the internal colonisation the possibility for extensive production increase was exhausted. Since the 18th century a gradual progress of agriculture began in accordance with the technical agrarian measures, aimed to increase the labour productivity.

The problem of agrarian overpopulation is closely connected with the low yield of the agricultural branches or the slowly increasing labour productivity. This was characteristic for the Slovenian space until as late as World War II. To put it simply, an imbalance existed between labour productivity in agriculture and the number of population. This imbalance resulted in the fragmentation of

Habsburške monarhije [Society, Economy, Population. Social and Vocational Structure of the Population in the Slovenian Territory between the Second Half of the 19th Century to the Dissolution of the Habsburg Monarchy]. Ljubljana: INZ, 2005, p. 112.

³⁰ Lazarević, Žarko (2009): *Plasti prostora in časa*. Ljubljana: INZ, p. 115.

³¹ Fischer, *Družba, gospodarstvo, prebivalstvo*, p. 112.

³² Broadberry, Stephan (ed.), O'Rourke, Kevin H. (ed.) (2010): *The Cambridge Economic History of Modern Europe*. 1. 1700–1870. Cambridge: Cambridge University Press, 2010, p. 149.

the land structure in agriculture. Fragmented agricultural lands are the most characteristic example of economic lag. Because the economic growth was slow, land was an indispensable production factor (survival factor!) under the conditions where the population was increasing. Hence the constant pressure to divide the land, in so far as the authorities did not intervene. Therefore this involves an emphasis on the reallocation of the existing property and thus also the long-term weakening of the economic potentials of agriculture as a whole. The phenomenon started as early as in the 16th century, continued in the 18th century,³³ and was no less topical even as late as in the 19th century.³⁴

Apart from the simultaneous principle of constancy or persistence of phenomena, the long-term perspective of the modern age until World War II also reveals two periods of notable discontinuity, when the re-agrarisation of the Slovenian space took place. The diminishing importance of non-agrarian activities in the economic structure is defined as re-agrarisation. Within the concept of proto-industrialisation this phenomenon is defined as de-industrialisation. At this point we can state that the development of the non-agrarian sector in the Slovenian space was in close correlation with the scope of external demand and other exogenous factors. Thus we claim that the significant fluctuations in the direction of the developmental tendencies were a consequence of the changing structure of external demand. As it is, through this relationship the basic economic dilemma of the Slovenian space in its relation to the international environment expresses itself. It has to do with the smallness of the economic national space and the consequently low domestic demand (a consequence of agrarian overpopulation!), which cannot fulfil the role of an exclusive driving force of the economic development in the long term. When the domestic demand was the dominant motive for economic development, the level of growth receded (re-agrarisation/de-industrialisation). The slackening economic development failed to accelerate the processes of economic de-feudalisation and transition into the capitalist economy, and later also industrialisation. Therefore it is not surprising that the fragmentation of economic subjects and lack of capital available for economic activities, which hindered the economic initiative, scope of business, defined the structure and lowered the international competitiveness of the Slovenian economic subjects, were permanent characteristics. Only companies able to develop a suitable economy of scope, especially thanks to the foreign demand as well as the capital and professional reliance on the foreign investors, could be competitive internationally.

Gestrin's research on the economic circumstances of the 16th century reveals that the first point of discontinuity in the economic development (re-agrarisation, de-industrialisation) can be identified already at the end of that century.

³³ Gestrin, *Oris gospodarstva na Slovenskem v obdobju agrarne revolucije in prevlade manufakturne proizvodnje*, pp. 65–71.

³⁴ Lazarević, *Plasti prostora in časa*, pp. 106–113.

Non-agricultural activities in the Slovenian space diminished as the European economic centre moved towards the Atlantic shores and the importance of the Italian space (Republic of Venice, which the trade flows were mostly oriented towards), receded. This also happened because of the general crisis resulting from the economic situation as well as due to the political and military changes. As it was, the Italian economic space or the demand there was the driving force of the service and proto-industrial activities in Slovenia. The scope of agricultural craft production as well as trade flows from and towards the Slovenian territory receded, and gradually the few operational manufactures stopped functioning as well. This was also related to the diminishing value of the bourgeois assets, which by no means contributed to the strengthening of the capital basis of the economy. Moreover, Gestrin reports that due to their strong capital foundations the Venetian merchants gradually pushed out the merchants in the Slovenian territory from the intermediation in the profitable trade in livestock from the Hungarian plains. Not only that: the Italian entrepreneurs gradually took over the initiative in other production activities as well, for example in the ironwork industry.

The stagnation and recession had direct consequences for further development. The economic pressure incentives to ensure a swifter transition into the capitalist economy were thus missing. The traditional feudal understanding of the social division of labour remained untouchable. With the growth of the non-agrarian sector the Slovenian space had to face a test of its capacity to transform the feudal economic and social structures. This process was slow as it was, especially in comparison with the European core and particularly in the field of property rights and personal dependence of peasants. The external manifestation of the changed circumstances was a significantly reduced number of guild complaints against the peasant craft production and peasant trade, which was also tolerated by the big landowners due to economic benefits.³⁵ The role of craft guilds – the defenders of the feudal division of labour – in the monopolisation of the existing domestic market and regulation of the otherwise modest domestic demand (scarcity of urban population, self-sufficiency of agricultural economy) was not yet seriously threatened.

The 18th century is deemed to be a period of intense changes with regard to the feudal structures in the context of the mercantilist and physiocratic doctrine and the state policies based on it. The centralised state undertook an active state intervention in the economy. The new economic doctrines prioritised the efficiency of economy due to the increasing level of knowledge and new technologies. Precisely for this reason the measures to ensure the liberalisation of economic activities (together with the simultaneously planned regulation) were adopted at this time. Important measures included those in the field of the regulation of economic activities of peasants (property rights, personal dependence, regulation of duties), who expanded their operations to the field

³⁵ Gestrin, *Slovenske dežele in zgodnji kapitalizem*, pp. 35–80.

of services (commerce, transport) and proto-industrial activities. The altered approach and general economic boom resulted in the growth of production in the Slovenian territory. This growth mostly stemmed from the rural areas, from the ranks of peasants. The growth was notable because of the planned acceleration of agricultural development and the renewed strengthening of agricultural craft production. These relations are clearly evident from the evaluation of Jože Šorn, who wrote, in his book on the beginnings of industry in the Slovenian territory, that in the second half of the 18th century 29 % of the production was allegedly contributed by the peasant craft production (otherwise unequally distributed throughout the Slovenian space), 25 % by craft industry, 25 % by manufactures and 21 % by mining and ironworks.³⁶

Therefore economic emancipation of the peasants (indication of the final de-feudalisation) already took place in the 18th-century proto-industrial period and was strengthened by the expansion of the scope of the economic activities in the rural regions in the context of agricultural and non-agricultural activities. According to Šorn we can illustrate the importance of the peasant production with the example of the production of canvas in Upper Carniola, which was significant even in the Austrian context.³⁷ Furthermore, Šorn's conclusions suggest that the production growth in Slovenia was a direct consequence of the export demand. Šorn reconstructed the transportation routes through Trieste and Rijeka or towards the northern parts of the Habsburg Monarchy precisely.³⁸ In Slovenia in the 18th century we are thus dealing with the classic Pollard's regionally diverse economic structure, where an exportation type of proto-industrialisation was formed due to the production competitiveness.

Afterwards, in the 19th century, the second discontinuity in the economic development – or the second “de-industrialisation” – of the modern times took place. Due to the set of international circumstances (the Napoleonic Wars) and the development of industrialisation in the North-Western Europe the external demand changed once again, as the Slovenian economy became uncompetitive in the international sense. Proto-industrial activities gradually lost their footing. The competition of foreign industry was simply too stiff, at first in the foreign markets and then in the domestic market as well. The process became even swifter as the railway network was built. At that time the fundamental lag in the economic development dynamics became evident. The railroad is an appropriate example to illustrate the extent of the relative lag or the differences in the starting positions on the threshold of industrialisation. In Great Britain the railroad was a consequence of industrialisation, while in France and Germany it

³⁶ Šorn, *Začetki industrije na Slovenskem*, pp. 62–63.

³⁷ It is interesting that this activity was even mentioned in the overviews of the European history as an example of a significant scale and economic importance for the local area as well as for the wider region. See Di Vittorio, *An Economic History of Europe*, p. 119.

³⁸ Šorn, *Začetki industrije na Slovenskem*, pp. 62–69.

was, for example, an integral part or the driving force of industrialisation. The situation in the Eastern Europe, including Slovenia, was completely different. There the railroad was barely a harbinger of industrialisation,³⁹ connecting these areas with the wider transportation and economic flows. Industrialisation itself, however, did not begin until a few decades after the railways had been built. The railroad was constructed with foreign capital and foreign knowledge (as well as because of foreign strategic needs), and its influences on the existing economic structure were by no means singularly positive. The railways exhibit the same lag of approximately half a century between the construction of the first lines, built to satisfy the strategic requirements of the Habsburg Monarchy, and the network intended to address the local needs.⁴⁰

With the loss of regional competitiveness the development model in the Slovenian territory changed once again. With stagnation and gradual disappearance of the proto-industrial production and service activities (transportation) the process of re-agrarisation reoccurred. The process of the second »de-industrialisation«, as the decline of the peasant craft production is defined, was thus triggered. At least Carniola, as the central Slovenian province, had a more evidently agrarian character in the second half of the 19th century in comparison with the preceding period.⁴¹ With re-agrarisation the domestic economic incentives for a swifter transition to the capitalist economic system were missing once again, and the life span of what were otherwise already dissolving feudal structures was extended even further. When the process of de-feudalisation occurred also formally after 1848, this was a consequence of an arbitrary political decision, dictated by the internal-political situation as well as by the wish to ensure the economic modernisation of the Monarchy. At this time industrialisation had already become imperative – quite the opposite from the countries of the North-Western Europe, where de-feudalisation had

³⁹ Pollard, *Industrialization and the European Economy*, pp. 646. O, *An Economic History of Europe*, p. 119. Šorn, *Začetki industrije na Slovenskem*, pp. 62–69. Pollard, *Industrialization and the European Eco*

⁴⁰ See Mohorič, Ivan (1968), *Zgodovina železnic na Slovenskem [History of Railways in Slovenia]*. Ljubljana: Slovenska matica.

⁴¹ Gestrin, *Oris gospodarstva na Slovenskem v prvem obdobju kapitalizma (do 1918)*, p. 131. The process of »re-agrarisation« was not only a Slovenian peculiarity, nor is it unusual. Researchers have also detected similar processes, taking place elsewhere in Europe. As individual areas started entering the European economic space more intensively and the industrialisation began, the importance of agrarian activities in the economic structure often became stronger once again. In a way this was an adaptation to the new circumstances, as the non-agrarian sector was inefficient and thus uncompetitive in comparison with the industrial production, while the international agricultural product market was open. For more information about these processes see Turnnock, David, *The Economy of East Central Europe*. London: Reutledge, 2006; BEREND, *History Derailed. Central and Eastern Europe in the Long Nineteenth Century*.

concluded organically as long as several decades earlier.⁴² For the Slovenian territory the process of de-feudalisation implied that the capitalist economic and social institutions would be imported. It was a transition which involved a political process from the top, from outside, and did not encompass many changes resulting from the endogenous economic dynamics. The new imported institutional framework had to be filled with domestic contents. The Slovenian manifestation of capitalism had to be defined. Thus a process of the adoption and adaptation of institutions and innovations of the capitalist economy to the Slovenian environment, lasting for several decades, was initiated.

With re-agrarisation domestic demand became the driving force of the economic growth. Due to the structural crisis of agriculture the Slovenian space was caught in the vicious circle of poverty, low income, meagre savings, modest investments and deficient technological level. Agrarian overpopulation and redistribution of the existing social wealth in the form of the fragmentation of agricultural property once again became topical. The re-agrarisation of the Slovenian space corresponds to the thesis that no direct connection necessarily exists between the developed proto-industrial activities and industrialisation. In such cases industrialisation had to begin completely anew. Re-agrarisation also attests to the level of entrepreneurship, which failed to perform its much-needed role as an agent of economic changes at this time.⁴³ For the second half of the 19th century a dualist economic structure was characteristic for the Slovenian space and two economic sectors co-existed: the majority traditional (peasant and craft) sector and the capitalist sector. The former, traditional sector depended on domestic demand. As this demand was modest due to the vicious circle of poverty, the economic growth was modest as well. Until the 1880s or 1890s the traditional sector operated mostly on the verge of the capitalist system.⁴⁴ Due to the expansion of the capitalist economy in the wider environment, the traditional sectors were constantly threatened. Thus the protective rhetoric strengthened again, just like at the end of the 16th century. Both periods share the efforts for the »protection of domestic labour« (Valentin Suppan) and for the interventionist delimitation between the traditional sectors and capitalist

⁴² For more information about the process of the transition to the capitalist economy and industrialisation as well as its territorial dynamics in the Western Europe see Damsgaard, Hansen (2001): *European Economic History. From Mercantilism to Maastricht and Beyond*. Copenhagen: Copenhagen Business School Press.

⁴³ In the economic history much attention has been paid to entrepreneurship as the driving force of the accelerated economic growth and economic innovation, also when explaining the dynamics of industrialisation. Entrepreneurship and its importance was introduced into the science of economy by Joseph Schumpeter, and later this aspect has also asserted itself in the economic historiography. See More, Charles (2000): *Understanding the Industrial Revolution*. London: Routledge, 2000, pp. 19–23.

⁴⁴ Of the newer overviews of the economic history in the second half of the 19th century in Slovenia see *Slovenska novejša zgodovina* (2005): Ljubljana: Inštitut za novejšo zgodovino, Mladinska knjiga, pp. 72–92.

economy.⁴⁵ In the 19th century the environment structured in this manner was also unable to defend itself from the anti-capitalist rhetoric or ideology.

The domestic capitalist sector represented little threat to domestic agriculture or craft industry – after all, it was modest and completely dependent on the export demand. Ever since the beginning it had been established with the foreign markets in mind and was thus internationally competitive and based on modern technology. Three sectors were most prominent: textile industry⁴⁶, ironwork industry⁴⁷, and coal industry.⁴⁸ The capitalist sector was encouraged by foreigners, and it was based on foreign initiative, capital and knowledge. Due to its meagre scope (around ten companies) the capitalist sector was unable to change the general development model and influence the type of the Slovenian industrialisation in the 19th century. It was incapable of encouraging the export type of industrialisation. None of the economic sectors in the Slovenian space asserted themselves as the leading industry, if we use Rostow's term from his stages of economic growth.⁴⁹ Simply put, in the Slovenian space no branch of industry had a strong enough development dynamic to encourage the growth of the wider economic and regional environment. Therefore no economic sectors or branches of industry existed capable of securing the path which the exportation capitalist sector (industrial or agricultural) ensured in Scandinavia, for example.⁵⁰

⁴⁵ See Lazarevič, Žarko (1996), Friedrich List. Spurensuche in Slowenien. In: Wendler, Eugen (ed.). *„Die Vereinigung des europäischen Kontinents“*. Friedrich List – Gesamteuropäische Wirkungsgeschichte seines ökonomischen Denkens. Stuttgart: Schäffer-Poeschel, pp. 529–539. One of the most concise substantiations from the viewpoint of the national-economic space was given by Valentin Supan (see SUPAN Valentin C., (1869): *Schutz der heimischen Arbeit*. Laibach; Supan, Valentin C (1876): *Reflexionen ueber die oesterreichische Handelspolitik und Ideen, wie es bald besser werden kann*. Laibach, 1876; Supan Valentin C. (1877): *Oesterreichs Volkswirtschaft – Handelspolitische Schriften mit Bezug auf die Zollverhandlungen mit Deutschland und Wendung der Handelspolitik am ganzen Kontinent England gegenueber*. Laibach; Supan Valentin C. (1876): *Politična ekonomija in politika* [Political Economy and Politics]. In: *Slovenski narod*, 49, 1 March 1876.; and for the area of agriculture Krek, Janez Evangelist (1895): *Črne bukve kmečkega stanu. Jedro kmečkega vprašanja* [Black Books of the Peasant Class. The Core of the Peasant Question]. Ljubljana.

⁴⁶ Kresal, France (1969): *Vloga in pomen tekstilne industrije v industrializaciji 19. stoletja na Slovenskem* [The Role and Importance of Textile Industry in the 19th Century Industrialisation in Slovenia]. In: *Kronika*, 17, No. 2, pp. 85–91.

⁴⁷ Mohorič, Ivan (1969): *Dva tisoč let železarstva na Gorenjskem* [Two Thousand Years of Ironwork Industry in Gorenjska]. Ljubljana: Mladinska knjiga.

⁴⁸ Mohorič, Ivan (1978): *Problemi in dosežki rudarjenja na Slovenskem* [Problems and Achievements of Mining in Slovenia]. Ljubljana: Založba Obzorja.

⁴⁹ Rostow, W. W. (1959): The Stages of Economic Growth. In: *The Economic History Review*, New Series, 12, 1959, No. 1, pp. 1–16.

⁵⁰ Gustafsson, Bo (1996): The Industrial Revolution in Sweden. In: Teich, Porter, *The Industrial Revolution in National Context*, pp. 201–225.

The Slovenian economic development in the 19th century was therefore based on domestic demand and consequently very slow due to the structural characteristics of the dominant part of the economy (percentage of peasant population, purchase power). Without the modernisation of agriculture – that is, increased productivity and income growth of the peasant population – swifter industrialisation could not take place.⁵¹ Faster economic growth cannot occur until the population keeps investing the majority of its labour into securing its basic existence. The situation in agriculture stabilised in the 1880s and 1890s.⁵² With the strengthening of the purchase power the domestic demand started more actively encouraging the transition of the traditional economic sectors into the capitalist forms of production, especially in the fields with low technological complexity.⁵³ The domination of the capitalist economy in the Slovenian space occurred in the Yugoslav context after 1918. Just like before, in the 16th and 18th century the driving force of the economic growth and scope of the capitalist sector was foreign demand, this time in the form of the Yugoslav market and protectionist economic policy.⁵⁴ Textile industry expanded most evidently. In the comparative sense this means that the type of industrialisation in the interwar period was still based on the technologically less demanding level. Thus Slovenia took the final step towards the industrial character of economy when the lands in the core of Europe had already been in the process of technological transformation involving the introduction of modern scientific achievements into industrial production processes for almost five decades.⁵⁵ In the period between the two world wars Slovenian industrialisation can thus be defined with the parameters of the 19th century, when the investments in the physical capital were essential for the encouragement of economic growth and technological transformation.

⁵¹ See Novak, *Zamudniški vzorci industrializacije*.

⁵² The results of the cumulative slowness with regard to the growth of the productivity in agriculture, reduction of the level of agrarian overpopulation (emigration!), growth of savings (credit cooperatives) and growth of purchase power despite the same level of income due to the system of cooperatives became apparent. For more information see Lazarević, Žarko (1998): *Slovensko kmetijstvo od zemljiške odveze do druge svetovne vojne* [Slovenian Agriculture from the Abolishment of Serfdom to World War II]. In: Gliha, Slavko (ed.), Kmetič, Ivanka (ed.), Koruza, Boris (ed.), Marinček, Lili (ed.), *Zbornik ob 100-letnici Kmetijskega inštituta Slovenije*. Ljubljana: Kmetijski inštitut Slovenije, pp. 13–30.

⁵³ For the outline of the situation at the turn of the 19th century see Brezigar, Milko (1918): *Osnutek slovenskega narodnega gospodarstva* [Outline of the Slovenian National Economy]. Celje: Omladina/Zvezna tiskarna, 1918.

⁵⁴ For more information about the changes in the society and economy in the interwar period see Lazarević, Žarko (2013): *Družba in gospodarstvo med obema vojnama*. (Vprašanja ravni modernizacij) [Society and Economy in the Interwar Period. (Questions regarding the Modernisation Level)]. In: *Zgodovinski časopis*, 67, No. 1–2, pp. 110–134.

⁵⁵ Gl. Damsgaard (2008), *European economic history*, pp. 155–188; Goldin, Claudia, Katz, Lawrence F., *The Race between the Education and Technology*. Harvard University Press, pp. 1–8.

In conclusion of this discussion we can state a few final inferences or theses, summing up the characteristics of the economic transition from feudalism to capitalism in Slovenia in the modern period:

- 1) Slovenian space was permanently on the verge of the European processes of transformation of the feudal economic system into a capitalist economy.
- 2) External demand was the driving force of structural economic changes, as domestic demand could not carry out its role as the agent of the economic restructuring due to the low level of income. The dependence on domestic demand lengthened the process of changes in economy considerably and preserved or expanded the dimensions of the lag.
- 3) Slovenian economy and society entered these processes with a lag of several decades and with significant discontinuities manifesting themselves as re-agrarisation or de-industrialisation in the proto-industrial interpretative concept.
- 4) In the time of the discontinuity re-agrarisation the reallocation of the existing property took place, manifesting itself as the fragmentation of agricultural property. The fragmented agricultural property expressed itself as the most characteristic example of the relative economic backwardness.
- 5) Foreign entrepreneurs were the decisive proponents of change, introducing capital, market, business and administrative knowledge as well as technologies in the Slovenian space.
- 6) The smallness of the economic national space was a restrictive factor. It resulted in the fragmented structure and lack of capital available for economic activities. This, in turn, stifled the economic initiative, hindering the capital adequacy and international competitiveness of Slovenian economic subjects.
- 7) Only companies able to develop a suitable scope of economy due to foreign (export) demand were able to adopt the capitalist operating principles. For this purpose they required capital and knowledge, which was provided by foreign entrepreneurs. Until as late as World War II the role of foreign capital and foreign entrepreneurs remained of key importance for the development of capitalist economy.
- 8) The fundamental dilemma of the Slovenian space and economic development reveals itself in the field of technological progress or more sophisticated business-operational structures. The relatively early or simultaneous modernisation beginnings of the transition to the new production technologies and business process organisations (or »islands of modernisation«, as Sidney Pollard defines them) were not followed by a mass process. For a long time the first efforts remained isolated attempts, foreign elements in what was traditionally a dominantly agrarian economic environment at the level of technology as well as economic

and social institutions. These first modernist phenomena remained exotic for so long that in the meantime their stimulating power to encourage structural changes and new institutional forms of economic life was completely exhausted.

Literature

- Allen, Robert (2001): "The Great Divergence in European Wages and Prices from Middle Ages to the First World War". In: *Explorations in Economic History*, 38, No. 4, pp. 411–447.
- Beaudoin, Steven M. (2000): "Current Debates in the Study of the Industrial Revolution". In: *OAH Magazine of History*, 15, No. 1, pp. 7–13.
- Berend, Ivan (2005), *History Derailed. Central and Eastern Europe in the Long Nineteenth Century*. Berkeley – Los Angeles: University of California Press.
- Braudel, Fernand (2010): *Dinamika kapitalizma*. Ljubljana: Sophia.
- Brenner Robert (1976): "Agrarian Class Structure and Economic Development in Pre-Industrial Europe". In: *Past & Present*, 70, pp. 30–75.
- Brenner Robert (1989): "Economic Backwardness in Eastern Europe in Light of the Developments in the West". In: Chirot, Daniel (ed.), *The Origins of Backwardness in Eastern Europe*, pp. 15–52.
- Brezigar, Milko (1918): *Osnutek slovenskega narodnega gospodarstva*. Celje: Omladina/Zvezna tiskarna.
- Broadberry, Stephan (ed.), O'Rourke, Kevin H. (ed.) (2010): *The Cambridge Economic history of Modern Europe*. 1. 1700–1870. Cambridge: Cambridge University Press.
- Chirot, Daniel, (1989): Causes and Consequences of Backwardness. In: Chirot, Daniel (ed.), *The Origins of Backwardness in Eastern Europe*. University of California Press, pp. 1–13.
- Chirot, Daniel (ed.) (1989): *The Origins of Backwardness in Eastern Europe*. University of California Press
- Clark, Gregory (1987): "Productivity Growth without Technical Change in European Agriculture before 1850". In: *The Journal of Economic History*, 47, No. 2, pp. 419–432.
- Clark, Gregory (1983): "Productivity Growth Without Technical Change in European Agriculture. Reply to Komlos". In: *The Journal of Economic History*, 49, No. 4, pp. 979–991.
- Coleman, Donald C. (1983): "A Proto-Industrialization. A Concept Too Many". In: *The Economic History Review*, New Series, 36, No. 3, pp. 435–448.
- Damsgaard, Hansen (2001): *European Economic History. From Mercantilism to Maastricht and Beyond*. Copenhagen: Copenhagen Business School Press.

-
- Di Vittorio, Antonio (2006): *An Economic History of Europe. From Expansion to Development*. London – New York: Routledge.
 - Felloni, Giuseppe (1997): *Profilo di storia economica dell'Europa. Dal medioevo all'età contemporanea*. Giappichelli: Turin.
 - Fischer, Jasna, Vodopivec, Peter (1984), "O avtorju in njegovem delu". In: ŠORN, Jože, *Začetki industrije na Slovenskem*. Maribor: Založba Obzorja, pp. 5-8.
 - Fischer, Jasna (2005): *Družba, gospodarstvo, prebivalstvo. Družbena in poklicna struktura prebivalstva na slovenskem ozemlju od druge polovice 19. stoletja do razpada Habsburške monarhije*. Ljubljana: INZ.
 - Galbraith, John K. (1980), *The Nature of Mass Poverty*. London: The Penguin Books.
 - Gerschenkron, Alexander (1979): *Economic Backwardness in Historical Perspective*. Belknap Press of Harvard University Press, pp. 5–30.
 - Gestrin, Ferdo (1969): "Oris gospodarstva na Slovenskem v obdobju zgodnjega kapitalizma". In: *Kronika*, 17, No. 1, pp. 1–7.
 - Gestrin, Ferdo (1969): "Oris gospodarstva na Slovenskem v obdobju agrarne revolucije in prevlade manufakturne proizvodnje". In: *Kronika*, 17, No. 2, pp. 65–71.
 - Gestrin, Ferdo (1969): "Oris gospodarstva na Slovenskem v prvem obdobju kapitalizma". In: *Kronika*, 17, No. 3, pp. 129–137.
 - Gestrin, Ferdo (1991): *Slovenske dežele in zgodnji kapitalizem*. Ljubljana: Slovenska matica.
 - Gliha, Slavko (ed.), Kmetič, Ivanka (ed.), Koruza, Boris (ed.), Marinček, Lili (ed.) (1998): *Zbornik ob 100-letnici Kmetijskega inštituta Slovenije*. Ljubljana: Kmetijski inštitut Slovenije.
 - Goldin, Claudia, Katz, Lawrence F. (2008), *The Race between the Education and Technology*. Harvard University Press.
 - Gunst, Peter (1989): Agrarian System of Central and Eastern Europe. In: Chiot (ed.), *The Origins of Backwardness in Eastern Europe*, pp. 53–91.
 - Gustafsson, Bo (1996): "The Industrial revolution in Sweden". In: Teich, Mikulaš, Porter, Roy, *The Industrial Revolution in National Context*. Cambridge: Cambridge University Press, pp. 201–225.
 - Higgins, Benjamin (1956): The "Dualistic Theory" of Underdeveloped Areas. In: *Economic Development and Cultural Change*, 4, No. 2, pp. 99–115.
 - Hoffmann, Philip, Jacks, David, Levin, Patricia, Lindert, Peter (2002): Real Inequality in Europe since 1500. In: *The Journal of Economic History*, 62, No. 2, pp. 322–355.
 - Komlos, John (1988): "Agricultural productivity in America and Eastern Europe. A Comment". In: *The Journal of Economic History*, 48, No. 3, pp. 655–664.
-

- Krek, Janez Evangelist (1895): Črne bukve kmečkega stanu. Jedro kmečkega vprašanja. Ljubljana.
- Kresal, France (1969): "Vloga in pomen tekstilne industrije v industrializaciji 19. stoletja na Slovenskem". In: *Kronika* 17, No. 2, pp. 85–91.
- Lazarević, Žarko (1996): Friedrich List. Spurensuche in Slowenien. In: Wendler, Eugen (ed.). *"Die Vereinigung des europäischen Kontinents". Friedrich List – Gesamteuropäische Wirkungsgeschichte seines ökonomischen Denkens*. Stuttgart: Schäffer–Poeschel, pp. 529–539.
- Lazarević, Žarko (1998): "Slovensko kmetijstvo od zemljiške odveze do druge svetovne vojne". In: Gliha, Slavko (ed.), Kmetič, Ivanka (ed.), Koruza, Boris (ed.), Marincek, Lili (ed.), *Zbornik ob 100-letnici Kmetijskega inštituta Slovenije*. Ljubljana: Kmetijski inštitut Slovenije, pp. 13–30.
- Lazarević, Žarko (2007): "Sočasnosti slovenskega gospodarskega razvoja". In: *Zgodovinski časopis*, 61, No. 3–4, pp. 393–410.
- Lazarević, Žarko (2009): *Plasti prostora in časa*. Ljubljana: INZ, 2009.
- Lazarević, Žarko (2012): "Identitete in imena gospodarskega zgodovinopisja v Sloveniji". In: *Ekonomika i ekohistorija*, VIII/8, pp. 116–136.
- Lazarević, Žarko (2013): "Družba in gospodarstvo med obema vojnama. (Vprašanja ravni modernizaciji)". In: *Zgodovinski časopis*, 67, No. 1–2, 110–134.
- Lorenčič, Aleksander (2012), *Prelom s starim in začetek novega. Tranzicija slovenskega gospodarstva iz socializma v kapitalizem. (1990–2004)*. Ljubljana: INZ.
- Massa, Paola (2006): "The Economy in Fifteen Century – Preconditions for European Expansion". In: Di Vittorio, Antonio, *An Economic History of Europe. From Expansion to Development*. London – New York: Routledge, pp. 1–25.
- Mendels, Franklin F. (1972): "Proto-Industrialization. The First Phase of the Industrialization Process". In: *The Journal of Economic History*, 32, 1972, No. 1, pp. 241–261.
- Mohorič, Ivan (1969): *Dva tisoč let železarstva na Gorenjskem*. Ljubljana: Mladinska knjiga, 1969.
- Mohorič, Ivan (1978): *Problemi in dosežki rudarjenja na Slovenskem*. Ljubljana: Založba Obzorja.
- Mohorič, Ivan (1968): *Zgodovina železnice na Slovenskem*. Ljubljana: Slovenska matica.
- More, Charles (2000), *Understanding the industrial Revolution*. London: Routledge, pp. 19–23.
- North, Douglas C. (1998), *Inštitucije, inštitucionalne spremembe in gospodarska uspešnost*. Ljubljana: Krtina.
- North, Douglas C. (2005): *Understanding the process of economic change*. Princeton: Princeton University Press.

- Novak, Mojca (1991): *Zamudniški vzorci industrializacije. Slovenija na robu Evrope*. Ljubljana: znanstveno in publicistično središče.
- Ogilvie, Sheilagh C., Cerman, Mark (ed.) (2007): *European Proto-Industrialization*. Cambridge: Cambridge University Press.
- Ogilvie, Sheilagh C. (1995): "Institutions and Economic Development in Early Modern Central Europe". In: *Transactions of the Royal Historical Society*, Sixth Series, 5, pp. 221–250.
- Pančur, Andrej (2002): "Ekonomska vloga Avstro-Ogrske v evropskem prostoru s stališča modernizacijskih procesov in položaj posameznih dežel v njej". In: *Prispevki za novejšo zgodovino*, 42, No. 2, pp. 17–31.
- Pollard, Sidney (1973): "Industrialization and the European Economy". In: *The Economic History Review*, New Series, 26, No. 4, pp. 636–648.
- Pollard, Sidney (1996): "The industrial revolution – an overview". In: TEICH, Mikulaš, Porter, Roy, *The Industrial Revolution in National Context*. Cambridge: Cambridge University Press, pp. 371–387.
- Pollard, Sidney (2002): *Peaceful Conquest. The Industrialization of Europe. 1760–1970*. Oxford: Oxford University Press.
- Rakita, Milan (2011): "Prilog kritici teorija modernizacije i tranzitologije u društvenim naukama". In: Veselinović, Ana, Atanacković, Petar, Klarić, Željko, *Izgubljeno u tranziciji. Kritička analiza procesa društvene transformacije*. Beograd: Rosa Luxemburg Stiftung, pp. 7–32.
- Rostow, W. W. (1959): "The Stages of Economic Growth". In: *The Economic History Review*, New Series, 12, 1959, No. 1, pp. 1–16.
- Samuelson, Paul, Nordhaus, Paul –William (2002): *Ekonomija*. Ljubljana: GV Založba.
- *Slovenska novejša zgodovina* (2005): Inštitut za novejšo zgodovino, Mladinska knjiga, Ljubljana.
- Sočan, Lojze (1978): *Pot v gospodarsko razvitost*. Ljubljana: Delavska enotnost.
- Supan, Valentin C. (1869): *Schutz der heimischen Arbeit*. Laibach.
- Supan, Valentin C. (1876). *Reflexionen ueber die oesterreichische Handelspolitik und Ideen, wie es bald besser werden kann*. Laibach.
- Supan, Valentin C. (1876), "Politična ekonomija in politika". In: *Slovenski narod*, 49, 1 March 1876.
- Supan, Valentin C. (1877), *Oesterreichs Volkswirtschaft – Handelspolitische Schriften mit Bezug auf die Zollverhandlungen mit Deutschland und Wendung der Handelspolitik am ganzen Kontinent England gegenueber*. Laibach.
- Šorn, Jože (1984): *Začetki industrije na Slovenskem*. Maribor. Založba Obzorja.
- Teich, Mikulaš, Porter, Roy (1996): *The Industrial Revolution in National Context*. Cambridge: Cambridge University Press.

- Tomić, Đorđe (2011): "Od transformacije do tranzicije i nazad. Nauka o transformaciji? Pojmovi, pitanja, teorije". In: Veselinović, Ana, Atanacković, Petar, Klarić, Željko, *Izgubljeno u tranziciji. Kritička analiza procesa društvene transformacije*. Beograd: Rosa Luxemburg Stiftung, pp. 33–56.
- Turnnock, David (2011): *The Economy of East Central Europe*. London: Reutledge, 2006.
- Veselinović, Ana, Atanacković, Petar, Klarić, Željko (2011): *Izgubljeno u tranziciji. Kritička analiza procesa društvene transformacije*. Beograd: Rosa Luxemburg Stiftung, pp. 7–58.
- Walton, John (1987): "Theory and Research on Industrialization". In: *Annual Review of Sociology*, 13, pp. 89–108.
- Wendler, Eugen (ed.) (1996). *"Die Vereinigung des europäischen Kontinents". Friedrich List – Gesamteuropäische Wirkungsgeschichte seines ökonomischen Denkens*. Stuttgart: Schäffer–Poeschel.

Prof. dr Žarko Lazarević

Institut za savremenu istoriju, Ljubljana, Slovenija

EKONOMSKA TRANZICIJA KAO KONTINUITET (O TRANZICIJI OD FEUDALIZMA DO KAPITALIZMA U SLOVENIJI)

S a ž e t a k

Cilj ovog rada je bio da se utvrde zajedničke karakteristike procesa tranzicije, od feudalizma do kapitalizma, u Sloveniji. U procesima tranzicije do kapitalističke privrede, Slovenija je stalno bila na evropskoj periferiji. Izvozna tražnja je bila pokretačka snaga strukturnih promena u regionalnim okvirima, dok slaba unutrašnja tražnja nije mogla da deluje kao zamajac privrednog razvoja. Slovenačka privreda i društvo ušli su u ove procese sa višedecenijskim zakašnjenjem kao i sa izvesnim diskontinuitetom u formi deagrarizacije i deindustrijalizacije, kako je to objašnjeno konceptom proto-industrijalizacije. Tokom perioda deagrarizacije, prevladavao je model raspodele postojećih resursa. On se manifestovao u obliku usitnjavanja svojinske strukture u poljoprivredi, što je bio najznačajniji faktor relativne zaostalosti slovenačke teritorije. Slovenački ekonomski subjekti bili su mali, siromašni kapitalom, sa zastarelom tehnologijom, pa zbog toga nekonkurentni na međuregionalnom tržištu. Zbog toga su glavni nosioci ekonomskih promena bili strani preduzetnici sa njihovim know-how, kapitalom, tehnologijom i pristupom međunarodnom tržištu. U vremenu pre Drugog svetskog rata, uloga stranih investicija bila je od krucijalnog značaja za proces transformacije u kapitalističku privredu. Najznačajnije istorijsko obeležje privrednog razvoja Slovenije je činjenica da su „ostrva modernizacije“, koja su više ili manje bila u skladu sa evropskim trendovima, ostala „ostrva“ i to samo dotle dok njihova snaga da stimulišu strukturne promene i nove institucionalne oblike privređivanja nije potpuno nestajala u pretežno agrarnoj ekonomskoj i društvenoj sredini.

Ključne reči: ekonomska tranzicija, privredni razvoj, socijalna transformacija, Slovenija

DUGOTRAJNI PROCES REFORMISANJA EKONOMIJE REPUBLIKE SRBIJE U CILJU POSTIZANJA MAKROEKONOMSKE STABILIZACIJE – od tranzitornih promena do aktivističkog pristupa –

U savremenoj ekonomiji koja je opterećena problemima poput neproduktivnih privreda, visokih stopa nezaposlenosti, konstantnih inflacionih pritisaka, velika pažnja se poklanja interakciji mera monetarne i fiskalne politike, u cilju postizanja makroekonomske stabilnosti. Nema univerzalnog modela vođenja ekonomske politike, niti u državama širom sveta, niti u srpskoj privredi, pa su kreatori ekonomske politike, tragajući za optimalnim modelom monetarne i fiskalne strategije i njihove sinhronizacije sa ostalim nezanemarivim specifičnim ciljevima ekonomske politike (u pogledu platnog bilansa, ciljevima vezanim za devizni kurs, raspodelu dohotka), sprovodili etapu tržišnih reformi devedesetih godina prošlog, a zatim i etapu reformi u prvoj deceniji 21. veka. Kako kvalitetna koordinacija monetarnih i fiskalnih mera ne može biti bez kvalitetne podloge, odnosno kako se ne može rekonstruisati i razgraditi prethodna privredna struktura, a da ne postoji strategija definisanja nove, tako se nastavio proces reformisanja i u periodu od momenta produbljivanja svetske finansijske krize 2008. godine.

Republika Srbija, kao zemlja čija je ekonomija u dugotrajnom procesu reformisanja, teži boljem korišćenju komparativnih prednosti, podsticanju proizvodnje i zaposlenosti, adekvatnoj i planskoj alokaciji raspoloživih sopstvenih i zaduženih resursa, apsorbovanju nove tehnologije, intenziviranju izvoza, podsticanja investicija, i to uz konstantne potencijalne opasnosti koje povećavaju ranjivost ove male privrede. Čvrsti temelji jedne makroekonomske stabilnosti i discipline moraju biti u proizvodnji, pravilnoj alokaciji raspoloživih resursa, koja će pokrenuti privredu, a zatim i povećati stopu zaposlenosti, samim tim i nacionalni dohodak. Od presudnog su značaja dobre projekcije makroekonomskih agregata, jer od njih zavise i javni prihodi i javni rashodi.

Ključne reči: makroekonomska stabilnost, fiskalna politika, reforme, alokacija resursa, monetarna politika, privreda, monetarno-fiskalni optimum

* Doc. dr Milica Gavrilović, Fakultet za poslovne studije, Megatrend univerzitet, Beograd, e-mail: mgavrilovic@megatrend.edu.rs

1. Uvod

Adekvatna sinhronizacija mera monetarne i fiskalne politike i njihova implementacija u celokupni sistem vođenja ekonomske politike, od velikog je značaja za održavanje makroekonomske stabilnosti i discipline. Dok jedni ekonomisti, poput monetarista, osporavaju značaj fiskalne politike i ranih šezdesetih vrše zamenu dileme značaja novca sa dilemom važnosti fiskalne politike, drugi ekonomisti, neoklasičari, ukazuju na značaj novca, ali ne i na njegovu potpunu dominantnost¹.

U savremenoj ekonomiji užarenoj mnogim problemima, poput neproductivnih privreda, nezaposlenosti, inflacionih pritisaka, velika pažnja se poklanja interakciji mera monetarne i fiskalne politike. Kako u državama širom sveta, tako i u srpskoj privredi nema univerzalnog modela vođenja ekonomske politike. Dobre koordinacije monetarnih i fiskalnih mera ne može biti bez kvalitetne podloge, koju može činiti određeno stanje agregatne tražnje. Prosto, ukupna agregatna tražnja je dokaz svih dešavanja u jednoj nacionalnoj ekonomiji, da li postoje stimulansi za rast i razvoj ekonomije ili se privreda nalazi u stanju restrikcija. Fiskalna i monetarna politika upotrebljavaju se ne samo zbog uticaja na nivo privrednih aktivnosti u jednoj nacionalnoj ekonomiji, odnosno na bruto nacionalni dohodak, već i na njegovu kompoziciju, tj. varijacijama poreza, državnih izdataka i monetarne politike, država može menjati delove nacionalnog dohotka namenjene privrednim investicijama, privatnoj potrošnji, izvozu, javnoj potrošnji. Ukoliko se želi podstaći agregatna tražnja, može se pribeći porastu novčane mase koja je na raspolaganju stanovništvu i privrednim subjektima, putem snižavanja kamatne stope ili putem rasta javnih radova, odnosno mogućnosti rasta budžetskog deficita.

Da li je normalno u savremenom dobu da država ima budžetski deficit? Neke od razvijenih ekonomija opstaju i razvijaju svoju privredu uprkos njegovom postojanju, neke – kao što je, na primer, američka ekonomija. Nije realno porediti srpsku s američkom privredom, ali se samo može izvesti zapažanje: da bi zemlja mogla dobro funkcionisati i opstajati sa budžetskim deficitom, mora imati dobru osnovu, a američka privreda je ima u obliku ekonomske, vojne, političke osnove. U srpskoj privredi postojanje velikog budžetskog deficita, na koji se dodaje postojanje velikog zaduženja države, veliki je ožiljak za koji se traži adekvatno rešenje.

Period koji se odrazio na osnovne makroekonomske agregate, kako u razvijenim zemljama, tako i u zemljama u tranziciji, jeste period od momenta produbljivanja svetske finansijske krize 2008. godine. Ovaj period je obeležen kao poseban period, u kome su ekonomije širom sveta „domino efektom“ osetile posledice novonastale krize. Srbija, kao zemlja u procesu tranzicije, imala je etapu tržišnih reformi devedesetih godina i različite promene u ekonomskoj

¹ Josifidis Kosta, Đukić Dorđe (1994): *Makroekonomija*, Futura publikacija, Novi Sad, 305.

politici i privrednom sistemu, a zatim etapu reformi u prvoj deceniji 21. veka. Kako rezultati u privredi nakon dve etape reformi nisu bili mnogo bolji, srpska ekonomija ponovno stoji usred reformskih procesa i traganja za optimalnim monetarnim i fiskalnim merama i njihovom harmonizacijom sa nezanemarivim specifičnim ciljevima ekonomske politike u pogledu platnog bilansa, ciljevima vezanim za devizni kurs, raspodelu dohotka, i tako dalje. Kroz sve etape rekonstrukcije nacionalne privrede Republike Srbije prisutna je težnja ispunjavanja uslova za prijem u članstvo Evropske unije, pa stoga i činjenje velikog napora radi postizanja optimalnog makroekonomskog ambijenta u državi, odnosno traganja za optimalnim monetarnim i fiskalnim merama i njihovom primenom.

Zemlje koje teže usaglašavanju svoje privrede sa tokovima u nekim velikim razvijenim sistemima, moraju načiniti velike nepore po pitanju liberalno orijentisanih zahteva, reformi fiskalnog sistema, reformi bankarskih standarda i mera i drugih zahteva. Za neke zemlje to je značajan stepen otvaranja privrede i to sa visokim troškovima prilagođavanja ekonomije. Budući da je srpska privreda okrenuta profilu regionalne ekonomije, Evropske unije, to zahteva ispunjavanje strogih zahteva koji su strukturirani kao kopenhagenski (stabilnost institucija, tržišno orijentisana država i sposobnost preuzimanja odgovarajućih obaveza po osnovu članstva u EU) i mastrihtski kriterijumi (makroekonomska stabilnost).

U sporazumu iz Mastrihta, koji je potpisan 1991. godine, postavljeni su uslovi pristupanja u evrozonu i uslovi vezani za period nakon dobijanja članstva u ovog regionalnoj integraciji. Prvi zahtev odnosio se na izbegavanje labave fiskalne politike, odnosno poštovanje limita od 3 % kada je u pitanju učešće budžetskog deficita u BDP. Drugi zahtev se odnosio na neprelaženje 60 % učešća državnog duga u BDP. Naime, od kreatora ekonomske politike, zemalja sa velikim dugom, očekivalo se da preduzemu mere radi smanjenja nivoa duga prema BDP ispod 60 %.

Štaviše, zemlje koje ulaze u evrozonu najpre su morale da ostvare uspeh u smanjenju stope inflacije (direktno mereno na osnovu promena u indeksima cena i indirektno na osnovu nominalnih kamatnih stopa). Ne samo da su vlade zemalja EU morale da potpišu da će primenjivati strogu politiku tokom devedestih godina, kao i ubuduće, već su i potencijalne nove članice morale da pristupe institucionalnoj reformi i da svoje nacionalne centralne banke učine formalno nezavisnim².

Cilj još uvek nije postignut, a naponi u vidu težnje boljeg korišćenja komparativnih prednosti, podsticanja proizvodnje i zaposlenosti, apsorbovanja nove tehnologije, intenziviranja izvoza, podsticanja investicija i sličnog, još uvek postoje. Međutim, za jednu malu privredu, poput srpske, postoje mnoge potencijalne opasnosti koje povećavaju njenu ranjivost.

² Begg David., Fischer Stanley, Dornbusch Rudiger (2010): *Ekonomija*, Data status, 461-462.

2. Od tranzitornih promena do aktivističkog pristupa rekonstrukciji privrednog sistema Srbije devedestih godina prošlog veka

Restrukturiranje jedne nacionalne ekonomije podrazumeva uključivanje u međunarodnu podelu rada, ne bi li se koristila sva pozitivna dejstva koja se ogledaju u boljem korišćenju nacionalnih komparativnih prednosti, mogućnosti povećanja investicija, apsorbovanja novih tehnologija, kao i povećanja izvozne orijentisanosti. Međutim, potencijalne opasnosti od uključivanja u globalno tržište ne zaobilaze ranjivosti nacionalnih privreda na globalne fluktuacije proizvodnje i zaposlenosti, negativan uticaj na distribuciju dohotka, pogoršavanje ekoloških problema, i drugo.³

Kako bi se negativna spoljna dejstva svela na minimum, neophodno je učiniti velike napore definisanja adekvatnog fiskalno-monetarnog modela, uz nezanemari vanje ostalih specifičnih ciljeva ekonomske politike.

U temeljima reformi srpske privrede devedesetih godina 20. veka nalazila se neoklasična paradigma, odnosno težnja da se izgradi privredni sistem u čijoj osnovi je „slobodno tržište“. Neoklasična paradigma polazi od stava da je razvoj civilizacije potvrdio da jedino privredni sistem u čijoj je osnovi „slobodno tržište“ omogućava uspešan ekonomski rast. Takođe, neoklasičari ističu da je sa „slobodnim tržištem“ spojivo jedino privatno preduzeće.⁴

Reforme srpske privrede su operacionalizovane kroz makroekonomsku stabilizaciju, privatizaciju, spoljnu i unutrašnju liberalizaciju cena, radikalnu transformaciju bankarskog sistema. Usled tadašnje privredne i političke realnosti u SR Jugoslaviji koja je obeležena secesijom bivših jugolsovenskih republika, ratnim stanjem u uvedenim ekonomskim blokadama⁵, bilo je neminovno preispitati metode i dinamiku tržišta, vlasničku transformaciju, funkcije države, način vođenja monetarne i fiskalne politike, kao i ekonomske politike u celini. Uprkos takvoj nezavidnoj situaciji, ekonomisti su znali da – iako sankcije značajno otežavaju tranziciju – ona se ne može posmatrati kao neprolazna prepreka na putu.⁶

Pri vođenju ekonomske politike tokom devedesetih godina, i traganju za optimalnim nivoom delovanja, kako fiskalnih, tako i monetarnih mera, postojala je kombinacija primene ovih mera u različitim periodima. Naime, do početka 1994. godine postojao je cilj da se ekspanzivnom monetarnom politikom uspori pad proizvodnje i izvrši njeno obnavljanje. Smanjenjem kamatne stope prošireni su i

³ Nuti Mario (2002): *Governing Incomplete Globalization : Economic Science Before the Challenges of the XXI Century*, Faculty of Economics, Sarajevo, 24.

⁴ Lipton Douglas, Sachs Jeffrey (1990): „Creating a market economy n Eastern Europe, The case of Poland“, in: W.C. Brainard and J.L. Perry (Editors): *Brookings Papers on Economic Activity I*, Brookings Institution, Washington.

⁵ Babić Blagoje (1994): „Uticaj blokade na privrednu reformu SR Jugoslavije“, *Sankcije – uzroci, legitimitet, legalitet i posledice*, SANU, Beograd, 81.

⁶ Kovač Oskar (1994): „Uticaj sankcija na funkcionisanje i reformu privrede SR Jugoslavije“, *Sankcije – uzroci, legitimitet, legalitet i posledice*, SANU, Beograd, 66.

selektivni krediti iz primarne emisije radi finansiranja obnavljanja proizvodnje. Međutim, u situaciji u kojoj se našla privreda SR Jugoslavije, zaista je bilo teško očekivati da će se u uslovima mekog budžetskog ograničenja, ogromnog deficita platnog bilansa, neadekvatnih mera loše odmerene liberalizacije uvoza, ekspanzivnom monetarnom politikom, odnosno upumpavanjem novca iz primarne emisije u preduzeća, putem kreditiranja, podstaći proizvodnja. Umesto da raste, proizvodnja je drastično padala, a inflacija je porasla do neslučenih razmera. Takva situacija je prinudila nosioce ekonomske vlasti, da odstupe od dotadašnjih reformskih promena i pristupe reformisanju monetarnih i fiskalnih mera.

Formirani program monetarne rekonstrukcije i strategije ekonomskog oporavka⁷ zemlje podrazumevao je da mere monetarne i fiskalne politike, stopa rasta novčane mase, visina eskontne stope, poreske stope i nivo javnih rashoda, budu utvrđeni kao stalne veličine za duže period. Bilo je potrebno obnoviti iscrpljene devizne rezerve. Mere rekonstrukcije su bile poznate svim ekonomskim učesnicima. Vođena je restriktivna monetarna i antidepresiona, ekspanzivna fiskalna politika. Za date privredne prilike u SR Jugoslaviji, bila je to dobra i originalna kombinacija elemenata monetarističkog i postkejnzijanskog načina vođenja ekonomske politike. Nisu izostali ni rezultati. Istovremeno se izašlo iz inflacije i iz deflacije. Međutim, budući da se nije moglo na duži period osloniti na ovaj neaktivistički pristup, odnosno samokorigujuće mehanizme, vratilo se pristupu kejnzijanske ekonomske misli. Diskrecionim merama fiskalne i monetarne politike nastojalo se da se neutrališu privredni i tržišni poremećajaji i nestabilnosti.

3. Radikalno reformisanje ekonomske politike početkom prve decenije 21. veka

Nakon programa monetarne rekonstrukcije i strategije ekonomskog oporavka devedesetih godina, usledila je još jedna etapa reformi srpske privrede na početku prve decenije 21. veka. Ponovno sledi težnja ka izgradnji privrednog sistema zasnovanog na ideji o „slobodnom tržištu“, a odustalo se od privredno-sistemskih promena izgradnje „vođenog tržišta“ (governed market). Dakle, ponovno se rekonstrukcija privrednog sistema kreće putevima tranzitornih promena.

U težnji ka makroekonomskoj stabilnosti, kreatori ekonomske politike su se opredelili za čvrstu monetarnu i fiskalnu politiku, kao i za slabljenje vrednosti nacionalne valute, odnosno za sprovođenje restriktivne ekonomske politike, koja je odgovarala savetima Međunarodnog monetarnog fonda. Upravo, ove mere i

⁷ Radosavljević Dragutin (2011): „Opštinske finansije“, Godišnjak FPN, I deo: *Politička teorija, politička sociologija, politički sistem*, br. 6, decembar 2011, <http://www.fpn.bg.ac.rs/wp-content/uploads/Dragutin-Radosavljevi%C4%87-Op%C5%A1tinske-finansije.pdf> (11. 3. 2015)

jesu definisane na osnovu mišljenja ekonomista da je potrebno eliminisati višak tražnje⁸ i realocirati resurse.

Privredni ambijent Srbije u periodu nakon 2000. godine, bio je okarakterisan višom stopom priliva sredstava iz inostranstva i zaduženosti u odnosu na stopu privrednog rasta. Razlog ovakve situaciji je taj što sopstvena sredstva i resursi, kao i inostrana sredstva, nisu alocirana u dovoljnoj meri u proizvodnju, novu tehnologiju, koja može da obezbedi privredni rast, već većim delom u uslužni sektor. Adekvatna alokacija resursa i maksimizacija profita, koji bi bili dovoljni za odgovorno vraćanje glavnice i kamate, nažalost nisu bili realnost srpske privrede. Jednostavno, niti sa sopstvenim, niti sa zaduženim sredstvima se nije postupalo na planski i kvalitetan način. Nažalost, takva privreda se nije mogla reanimirati i razviti bez kapitala iz inostranstva, nije bila sposobna da produktivno povećava zaposlenost, da se razdužuje, a zatim da obezbedi i održava makroekonomsku stabilnost.

Primenjenim modelom reformi, od strane nosilaca ekonomske vlasti, načinjen je jedan „veliki raskid“ sa prethodnim sistemom privrede („šok terapija“)⁹, kojim su se na radikalna načina, bez neke prethodne pripreme, sprovele promene zarad makroekonomske stabilnosti, privatizacije, reforme poreskog sistema, računovodstvenog sistema, transformacije bankarskog sistema, liberalizacije spoljne trgovine, prestrukturiranja privrede.

Kreatori ekonomske politike su sprovođenjem oštre restriktivne monetarne politike, porastom kamatne stope (smanjenjem novčane mase u opticaju), tražili za njenim optimalnim nivoom, kao i za optimalnim poreskim opterećenjem. Takođe, uvedene su i restrikcije javne potrošnje i investiranja. Smatrali su da će nakon smanjenja tražnje uslediti i uspostavljanje ravnoteže u budžetu i u bankarskom sistemu. Međutim, povećana kamatna stopa i povećano poresko opterećenje, jesu delovali na smanjenje agregatne tražnje, ali kako su povećani porezi, tako su povećani i javni rashodi. Iz budžeta je usledilo pokrivanje gubitaka neproaktivnih preduzeća, čime su novčana sredstva pogrešno alocirana. Ovaj problem postoji i danas (2015. godina).

Takođe, došlo je do naglog skoka kamatne stope, slabljenja vrednosti dinara, što je pogodilo i poslovanje domaćih proizvođača. Konkurentnost domaćih proizvođača je ugrožena i domaća ponuda je ostala bez tražnje. Celokupna situacija začinjena je zatvaranjem velikog broja fabrika, naglim skokom nezaposlenosti, smanjenjem kupovne moći stanovništva i procesom privatizacije kojom su širom otvorena vrata stranim finansijskim i poslovnim krugovima.

Da li su reformama postignuti povoljni uslovi razvoja privrede i socijalne sigurnosti, obezbeđivanje javnosti, i da li je u toj nepovoljnoj privrednoj situaciji

⁸ Lipton Douglas, Sachs Jeffrey (1990): „Creating a Market Economy in Eastern Europe: the Case of Poland“, *Brookings Paper on Economic Activity*, No. 1/90, 98-102.

⁹ Gavrilović Milica, Ivanović Ivan (2011): „(Ne)postojanje društvene odgovornosti u privреди Srbije u procesu privatizacije“, *Megatrend revija*, vol. 8, br. 1, Beograd, 337-349.

pronađeno optimalno rešenje sprovođenja mera monetarne i fiskalne politike od strane kreatora ekonomske politike? Reklo bi se da nisu.

Kratkim uvidom u reforme devedestih godina, videli smo da je potrebno vršiti kontinuirano kombinovanje mera ekonomske politike, zarad postizanja makroekonomske stabilnosti. Potrebno je kontinuirano kombinovati mera koje se odnose na fiskalnu, monetarnu sferu, sferu deviznog kursa, platnog bilansa i ostale mere, ali bez opterećenja nekim doktrinarnim predubedenjima. Kasnije reforme u periodu nakon 2000. godine, pokazale su da se promene ne mogu sprovoditi momentalno, radikalno i sve zajedno, u vidu naglog raskida sa prethodnim načinom vođenja ekonomske politike i privrednim sistemom u celini. Pokazale su i da je neodgovorno rekonstruisati i razgraditi prethodnu privrednu strukturu, a da ne postoji strategija definisanja nove, odnosno da je potrebno imati adekvatnu kvalitetnu pripremljenu podlogu za sprovođenje nekih mera monetarne i fiskalne politike, pa i svih ostalih mera uopšte.

Za kreatore ekonomske politike, definisanje adekvatne kombinacije mera treba da bude rezultat nastojanja da se u svakoj prilici nalaze rešenja koja odgovaraju konkretnoj realnosti i potrebi unapređivanja privredne efikasnosti i obezbeđivanja makroekonomske stabilnosti. I pored toga što su kreatori ekonomske politike u Srbiji mogli da se osvrnu i vrlo studiozno upoznaju sa dobrim i lošim i praktičnim i teorijskim iskustvima drugih zemalja,¹⁰ oni su se opredelili za realizaciju radikalnih mera. Neplanska i nekvalitetna alokacija raspoloživih sopstvenih i zaduženih resursa dovela je do privrede koja nije sposobna da se samoreprodukuje, bez nekih eksternih pomoći.

4. Težnja ka modelu monetarnog i fiskalnog optimuma u postkriznom periodu (nakon 2008. godine)

Nakon izbijanja svetske finansijske krize u američkoj ekonomiji i njenog produbljivanja i prelivanja u ostatak sveta, pa i u srpsku ekonomiju 2008. godine, od 89.500 privrednih društava u Republici Srbiji, 85.500 su bila mala preduzeća, dok je velikih preduzeća bilo 924. Od ukupnog kumulativnog gubitka približno 1.360 milijardi dinara, 62,5 % se odnosilo na velika preduzeća u kojima je zaposleno 450.000 ili 45 % ukupnog broja zaposlenih. Takođe, nepovoljna situacija sa velikim preduzećima bila je ta što su samo 124 privredna subjekta poslovala normalno, bez ispunjavanja uslova za stečaj. Polovina pod stečajem je izgubila i celokupni kapital.¹¹ To se i odrazilo na privrednu aktivnost, padom BDP za

¹⁰ Bivših socijalističkih zemalja koje su takve promene sprovodile već oko deset godina.

¹¹ Ranković, J. (2009): *Preti nam kolektivni bankrot*, kWh Elektroprivreda Srbije, broj 428.

-29,04%¹², povećanom nezaposlenošću u narednom periodu, ali i povećanom inflacijom.

Veće učešće u ukupnom broju preduzeća 89.500, činila su mala preduzeća, što je bilo i pogodnije za adaptaciju, nasuprot velikim sistemima. Jeste da je njihov profit manji, ali svakako su efikasniji u toj situaciji za povećavanje javnih prihoda, smanjenje budžetskog izdržavanja, i slično. Istovremeno, zbog ogromnih gubitaka velika preduzeća nisu bila sposobna da izmiruju elementarne obaveze prema dobavljačima i državi. Uz sve to, kao posledica izuzetno restriktivnih mera ekonomske politike u privredi, a posebno monetarne politike, odnosno povećanja kamatne stope, vladao je hroničan nedostatak obrtnog kapitala.

Nakon pola decenije od izbijanja krize, 2012. godine, srpska ekonomija beleži povećani broj preduzeća, na 91.536 privrednih društava (najveće učešće beleže prerađivačka preduzeća) od kojih su:¹³

506	velika preduzeća		420.019	zaposlenih
2.142	srednja preduzeća		224.223	zaposlenih
9.699	mala preduzeća		196.492	zaposlenih
79.189	mikropreduzeća		153.745	zaposlenih

Gotovo svi sektori beleže rast kumuliranog gubitka, pri čemu je sve prisutnije razaranje sopstvenog kapitala i rastuća stopa izgubljenog kapitala. U privredi postoji finansijska napregnutost, pa se privredna društva oslanjaju na pozajmljene izvore i povećava se zainteresovanost za kredite. Ako uzmemo samo njihove stope prinosa na ukupna sredstva i na sopstveni kapital posle oporezivanja, koja je smanjena kod svih privrednih društava (ukupna sredstva su smanjena sa 1,9 u 2011, na 0,6 % u 2012, dok je sopstveni kapital smanjen sa 1,6 na -1,4 % u 2012. godini¹⁴), može se videti da postoji odsustvo finasijske ravnoteže.

Kreatori ekonomske politike u srpskoj privredi, kao osnovni makroekonomski cilj koji bi trebalo da ostvare, jeste pokretanje i osposobljavanje postojećih industrijskih kapaciteta, odnosno oživaljavanje industrijske proizvodnje. Ako sagledamo strukturu BDP Republike Srbije, videćemo da veće učešće ima

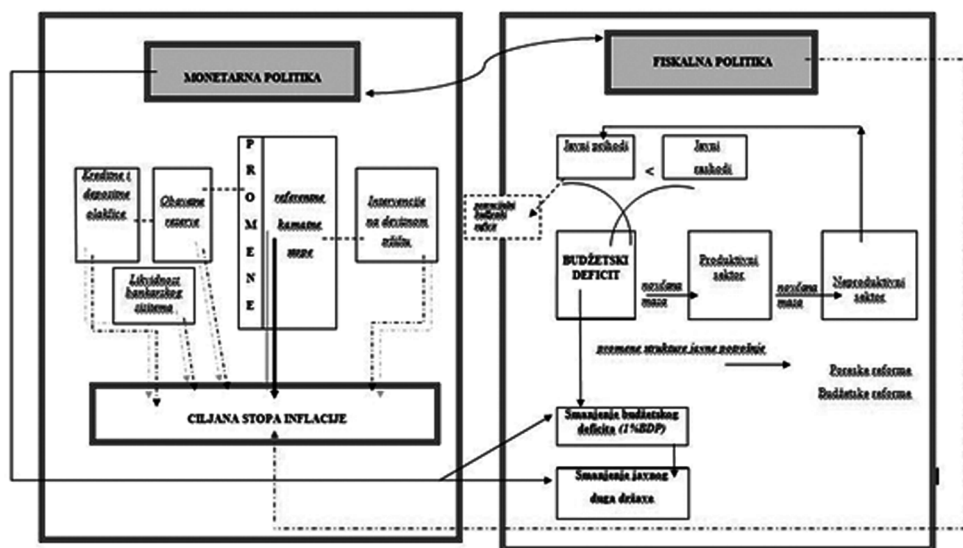
¹² Gavrilović Milica (2014): „The necessity of redefining the strategy of the monetary and fiscal policy in the Republic of Serbia“, The 6th International Scientific Conference *Economy and politics*, Higher Educational Institution for Applied studies of Entrepreneurship Belgrade, Centre for industrial relations Belgrade, Institute for economical agriculture Belgrade, June 2014, 339.

¹³ Republički zavod za statistiku Republike Srbije: *Preduzeća u Republici Srbiji prema radni dokument veličini*, 2013, br. 82, http://webzrzs.stat.gov.rs/WebSite/repository/documents/00/01/10/91/RD_82_Preduzeca-2012.pdf (5. 3. 2015)

¹⁴ Agencija za privredne registre: *Saopštenje o poslovanju u privredi Republike Srbije 2012 – uporedni podaci iz finansijskih izveštaja za 2011 i 2012. godinu*, <http://www.apr.gov.rs/Portals/0/GFI/Makrosaoštenja/2012/Saopštenje%20privreda%20FI2012%20-%20komplet.pdf> (11. 4. 2014)

uslužna delatnost¹⁵, ali čvrsti temelji jedne makroekonomske stabilnosti moraju biti u proizvodnji, koja će pokrenuti privredu, a zatim i povećati stopu zaposlenosti, samim tim i nacionalni dohodak. Dakle, od presudnog su značaja dobre projekcije makroekonomskih agregata, jer od njih zavise javni prihodi i javni rashodi.

Slika 1: Model monetarne i fiskalne strategije



Izvor: skica autora

Kratak prikaz stanja privrednih društava u Srbiji 2008. i 2012. godine, **kvan-titativno** ukazuje na povećani broj preduzeća, ali **kvalitativno**, i na pogoršanje profitabilnosti u oba perioda. Preduzeća su okarakterisana smanjenim učešćem sopstvenog, a povećanim učešćem pozajmljenog kapitala u ukupnim izvorima finansiranja sa veoma niskom likvidnošću. Ovakvo stanje povećava nemogućnost plaćanja dugova koji su dospeli za naplatu, što svakako ugrožava fiskalnu sferu ekonomske politike u državi.

Trend napuštanja profitabilnog poslovanja karakteriše srpsku privredu u periodu nakon prelivanja i produbljivanja krize. Više od polovine ukupnih kumuliranih gubitaka se pripisuje velikim preduzećima, što svakako ugrožava i odnos zaposlenih/nezaposlenih. U 506 velikih preduzeća ima 420.019 zaposle-

¹⁵ Prema podacima Ministarstva regionalnog razvoja i lokalne samouprave, u periodu 2001–2011. godine, BDP Republike Srbije je rastao po prosečnoj stopi od 3,5 %, za šta je bio najzaslužniji uslužni sektor sa stopom rasta BDP od 4,2 %. U okviru sektora usluga, najviši rast je ostvaren u sektoru informisanja i komunikacija od 14,7 % i u sektoru trgovine od 8,2 %, dok je, veoma bitan za privredu, sektor industrije imao nulti rast u ovom periodu. Za osnovni uzrok smanjenja industrijske proizvodnje, uzima se smanjenje domaće i inostrane tražnje. - <http://www.mrrls.gov.rs/> (25. 12. 2013)

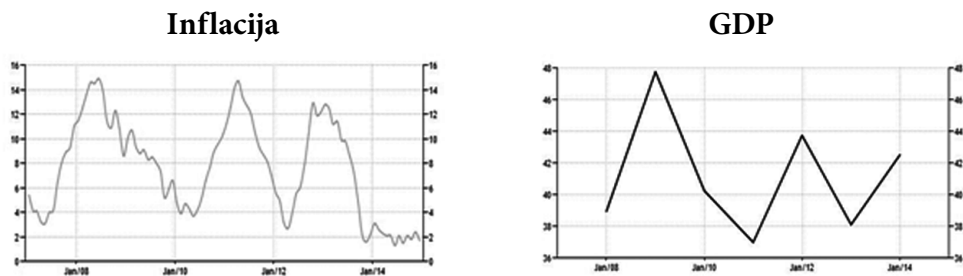
nih, čija radna mesta su ugrožena ovakvim stanjem u privredi. To, takođe, može dodatno opteretiti budžet države.

Dakle, s jedne strane, srpsku privredu karakterišu preduzeća koja su u nemogućnosti da izmiruju svoje obaveze prema dobavljačima i poslovnim partnerima, pa pribegavaju zaduživanju, a potom zbog smanjene likvidnosti i solventnosti ostaju u nemogućnosti da plaćaju i dospele obaveze kod banaka, a s druge strane, tako ugrožen bankarski sistem teži targetiranju određene stope inflacije, kao osnovnom monetarnom cilju. Stoga, srpsku privredu karakteriše i promena stopa inflacije koja 2012. godine iznosi 11,15 %.

Ovaj segment monetarne politike je postepeno reformisan, počev od Memoranduma o novom okviru monetarne politike iz 2006. godine, pa do Memoranduma o ciljanju (targetiranju) inflacije kao monetarne strategije iz 2009. godine. Promenama referentne kamatne stope i traženjem optimalnog nivoa kamatne stope, monetarne vlasti targetiraju inflaciju. Naravno, usled odsustva dejstva promena referentne kamatne stope, monetarne vlasti pribegavaju intervencijama na deviznom tržištu.

Interesantno u srpskoj privredi (slika 2), odnosno makroekonomskoj slici, jeste da u periodima kada je inflacija kontrolisana restriktivnom monetarnom politikom (antiinflationom), privredni rast stagnira ili čak i opada. Na primer, 2009. godine, kada je procentualna promena inflacije bila 8,10 %, privredna aktivnost, odnosno BDP je beležio osetniji pad od -3,51 % (što je uticalo i na stopu nezaposlenosti, sa 14,7 % rast na 17,4 %).¹⁶ Takođe, i u suprotnom slučaju, evidentan je debalans. Naime, kada je BDP u porastu, inflacija popušta pred merama antiinflatione politike, povećava se.

Slika 2: Prikaz kretanja stope inflacija i BDP u Republici Srbiji u periodu 2007–2014.



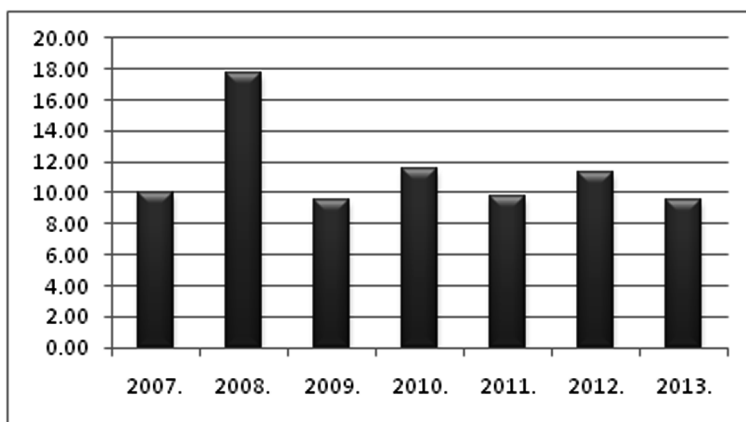
Izvor: Trading economics,¹⁷ 2015.

¹⁶ Gavrilović Milica (2014): „The necessity of redefining the strategy of the monetary and fiscal policy in the Republic of Serbia“, The 6th International Scientific Conference *Economy and politics*, Higher Educational Institution for Applied studies of Entrepreneurship Belgrade, Centre for industrial relations Belgrade, Institute for economical agriculture Belgrade, June 2014, 339.

¹⁷ Trading economics, <http://www.tradingeconomics.com/serbia/indicators> (17. 2. 2015)

Osnovni monetarni instrument u toj situaciji jeste referentna kamatna stopa. Na primer, reagovanje monetarnih vlasti na povećanu inflaciju 2011. godine (11,15 %), odnosila se na povećanje referentne kamatne stope. Od početka 2012. godine kada je iznosila 9,75 %¹⁸, referentna kamatna stopa je do kraja godine povećana na 11,25 %¹⁹. Ovakva monetarna mera je išla u prilog smanjenja inflacionih pritisaka na privredu i smanjenja prekomernog zaduživanja i produbljivanja neprofitabilnosti preduzeća, pa i samih pojedinaca (stanovnika).

Slika 3: Kretanje referentne kamatne stope Narodne banke Srbije²⁰
(u % na godišnjem nivou)



Izvor: NBS²¹, 2015.

Kasnije, u toku 2013. godine, kontrakciona monetarna politika je zamenjena blagom monetarnom ekspanzijom, kroz trend snižavanja kamatne stope do 9,50 %. Da ekspanzija nije zabeležena i u fiskalnoj sferi, govori činjenica da su povećane poreske stope, oba oblika PDV-a, jedna sa 18 % na 20 %, a druga posebna stopa sa 8 % na 10 %. I ovo povećanje je izvedeno postepeno. Takođe, nastala je i promena akcizne politike. Jeste da povećanje poreza nije omiljeno i prihvaćeno od strane stanovništva, niti privrednih subjekata, ali državi ovakva fiskalna

¹⁸ Narodna banka Srbije (NBS): Izveštaj o inflaciji, februar 2012, http://www.nbs.rs/export/download/pdf_ioi/ioi_02_2012.pdf (12. 3. 2015)

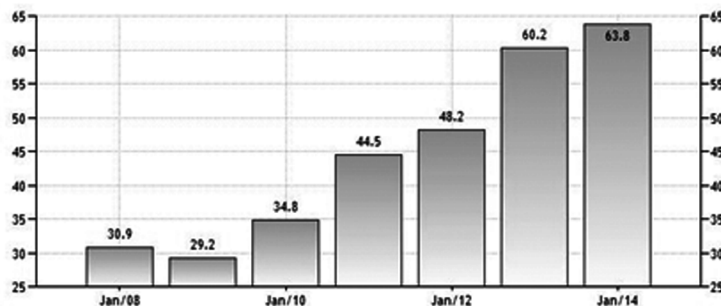
¹⁹ Narodna banka Srbije (NBS): Istorijски pregled kamatnih stopa NBS na novčanom tržištu, http://www.nbs.rs/internet/latinica/30/30_4/30_4_5/ (15. 3. 2015)

²⁰ Od 1. septembra 2006. godine, aktivne i pasivne kamatne stope Narodne banke Srbije utvrđuju se u visini referentne kamatne stope uvećane, odnosno umanjene za određeni broj procentnih poena, u skladu s Odlukom o kamatnim stopama koje Narodna banka primenjuje u postupku sprovođenja monetarne politike („Službeni glasnik RS“, br. 45/2011, 98/2012 i 125/2014).

²¹ Narodna banka Srbije (NBS): Kamatne stope Narodne banke Srbije, <http://www.nbs.rs/internet/latinica/80/index.html#arhiva> (16. 2. 2015)

mera odgovara. S jedne strane, stanovništvu i privrednim subjektima se smanjuje raspoloživi dohodak i tražnja, dok s druge strane, država povećava javne prihode na ovaj način. Neophodna je fiskalna (budžetska) disciplina.

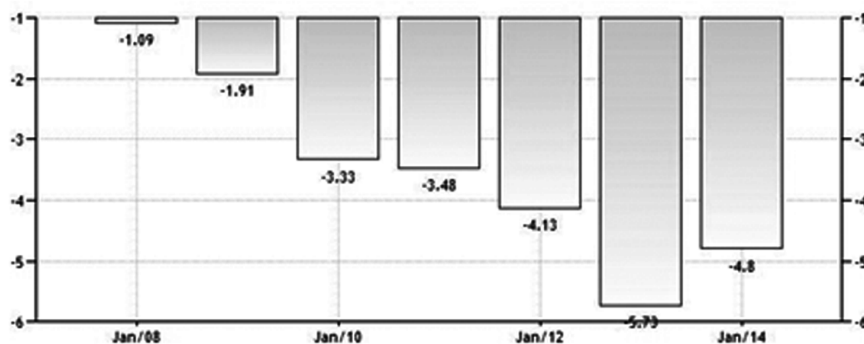
Slika 4: Učešće državnog duga u BDP u Republici Srbiji (u %)



Izvor: Trading economics²², 2015.

U srpskoj privredi budžetski deficit i javni dug imaju veliko opterećenje (učesće) BDP-a. Srbija ide ka krizi javnog duga, što se može videti u periodu nakon 2008. godine. Posttraumatski efekat se ispoljava u fiskalnoj sferi kroz povećanje javnog duga. Krajem 2010. godine, a posebno krajem 2011, javni dug je prekoračio zakonsku granicu od 45 % BDP. To je jedno od fiskalnih pravila, za čije narušavanje je odgovoran fiskalni deficit koji od produbljivanja i prelivanja krize poprima sve veći i veći obim. Prema fiskalnom pravilu fiskalnih vlasti Republike Srbije, ciljanje godišnjeg deficita u srednjem roku treba da iznosi 1 % BDP.

Slika 5: Učešće državnog budžeta u BDP u Republici Srbiji (u %)



Izvor: Trading economics²³, 2015.

²² Trading economics, <http://www.tradingeconomics.com/serbia/indicators> (17. 2. 2015)

²³ Trading economics, <http://www.tradingeconomics.com/serbia/indicators> (17. 2. 2015)

Nasuprot ovom pravilu fiskalni deficit se znatno povećava od -1,09 % početkom 2008, do -4,13 % početkom 2012. godine. Drugačije iskazano, kraj svake godine obeležen je sa sve većim fiskalnim deficitom. U prve dve godine krize, fiskalni deficit u Srbiji bio je čak nešto niži nego u EU. Međutim, od 2010. ili 2011. većina zemalja članica EU naglo je oborila svoj deficit, uglavnom povećanjem poreza, dok je deficit u Srbiji beležio rast, i to se uglavnom kretalo između 3,00 i 5,00 % BDP-a. Definitivno, trendovi se pogoršavaju.²⁴

Prema podacima sa slike 4, početak 2013. godine beleži izuzetno veliko prekoračenje zakonskih 45 % učešća javnog duga u BDP, što je i rezultat veće javne potrošnje i fiskalnog deficita od -5,73 (slika 5). Čini se da, nalik dvehiljaditim godinama prve decenije 21. veka, brže raste fiskalni deficit i zaduženost, nego što raste privredna aktivnost.

Šta učiniti i koje su to mere fiskalne politike neophodne za uspostavljanje fiskalne discipline, a time i makroekonomske stabilnosti? Kako bi izgledala optimalna fiskalna strategija? – pitaju se kreatori ekonomske politike. Kako bi se odgovorilo na postavljene dileme, potrebna je reforma fiskalnog sistema.

- I fiskalno pravilo – ciljanje određene vrednosti godišnjeg deficita u srednjem roku, koja bi trebalo da iznosi 1% BDP-a.
- II fiskalno pravilo – državni dug ne treba da prelazi zakonski utvrđenu granicu od 45 % BDP.
- III fiskalno pravilo – promena strukture javne potrošnje u pravcu smanjenja tekućih rashoda i povećanja javnih investicija.²⁵

Teorijski posmatrano, fiskalna politika se deli na poresku i budžetsku politiku. Iz jednostavne postavke, sledi i jednostavna postavka potrebnih reformi u ovoj sferi ekonomske politike: reforma poreskog sistema i budžetske reforme.

Slika 6: *Uslovljenost monetarnih i fiskalnih reformi*



Izvor: skica autora

Reforme poreskog sistema se konkretno odnose na korekciju poreza. S obzirom na postojanje većih javnih rashoda od javnih prihoda, postavljena je dilema, na koji način povećati javne prihode. Nema drugog rešenja, nego povećati poreske stope. Naravno ova mera kreatora ekonomske politike najmanje se dopada

²⁴ Fiskalni savet: Predlog mera fiskalne konsolidacije 2012–2016.godine, http://fiskalnisavet.rs/images/fiskalna_konsolidacija.pdf (25. 3. 2014)

²⁵ Fiskalni savet: Fiskalna pravila, <http://www.fiskalnisavet.rs/cyr/fp> (20. 2. 2014)

poreskim obveznicima, stanovništvu i privrednim društvima, ali definitivno, takve mere su neophodne na srednji rok.

Neke od takvih mera jesu povećanje obe poreske stope PDV sa 18 % na 20 % (sa planom da se poveća i preko 20 %, zbog blažeg prelaska na novu poresku stopu), i sa 8 % na 10 %, ili promena akcizne politike, povećane akcize na duvan-ske proizvode i alkoholna pića. Dakle, reforme poreskog sistema su već otpočele, s tim da je bolja smernica fiskalnog reformisanja, da se ide na smanjenje javnih rashoda, a ne prvenstveno na povećanje javnih prihoda.

Budžetska reforma se odnosi na smanjenje javnih rashoda, a samim tim i smanjenje zaduženosti države. Smanjenje javnih rashoda je alarmantno pitanje zbog velikog fiskalnog deficita i javnog duga. Budući da deficit budžeta Republike Srbije dostiže skoro 6 % učešća u BDP-u periodu s kraja 2012. i početka 2013. godine, a trebalo bi po fiskalnom pravilu biti 1 % BDP-a, postepenom fiskalnom konsolidacijom, prilagođavanjem, na srednji rok, deficit treba smanjiti na polovinu vrednosti, a zatim planom fiskalne vlasti na deficit od 0 % BDP (do 2016). Koliko je realno ostvarivo, videće se.

Ne bi li se smanjili javni rashodi, mogu se smanjiti plate u javnom sektoru bez obzira na stopu inflacije, i izvršiti restrukturiranje i racionalizacija javnog sektora. Uz plate, akcenat se stavlja i na zamrzavanje penzije, što ne bi bilo dobro prihvaćeno od strane javnosti.

Ukoliko se obezbedi smanjenje javnih rashoda, to će pozitivno uticati i na javni dug i potpomoći monetarnim vlastima da efikasnije targetiraju inflaciju. Postoje preduzeća u srpskoj privredi koja posluju sa gubitkom (640 preduzeća sa 400 miliona evra godišnjeg gubitka²⁶) i shodno tome, postoje i neizmirene dospelje obaveze prema državi i javnim preduzećima. Država svake godine izdvaja određenu novčanu masu u obliku pomoći povraćaja njihove likvidnosti, ali svake godine ta neproduktivna preduzeća crpu sve više novca.

Kako u srpskoj privredi postoji trend povećanja broja privrednih društava sa kvantitativnog aspekta, i trend napuštanja profitabilnog poslovanja sa kvalitativnog aspekta, sve je više preduzeća čija je likvidnost i solventnost dovedena u pitanje. Veoma je prisutna nemogućnost plaćanja dospelih obaveza dobavljačima i bankama. Lančanom reakcijom insolventnost se prenosi, pa je država pored spašavanja i održavanja likvidnosti preduzeća, došla u situaciju da spasava i banke.

Neophodno je da se iz budžeta izdvoje sredstva za spasavanje likvidnosti i opstanka banaka, ukoliko se želi spasiti kredibilitet i poverenje u bankarski sistem, a samim tim i smanji ugroženost ostvarenja ciljane stope inflacije. Reč je o ubrizgavanju par stotina miliona evra u bankarski sektor Republike Srbije. Na primer, Narodna banka Srbije, pored osnovnih instrumenata monetarne poli-

²⁶ Fiskalni savet: Predlog mera fiskalne konsolidacije 2012–2016. godine, http://www.google.rs/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CC8QFjAD&url=http%3A%2F%2Fwww.sam.org.rs%2Fdownload%2Ffiles%2Fcms%2Fattach%3Fid%3D355&ei=escTVaKlJoP5ywOes4CYDg&usg=AFQjCNFwCP6Ro0kHmYdYPWuAKAOXyytywA&sig2=6fARmhxTKqv-ex_UTgWcYA&bvm=bv.89217033,d.bGQ (3. 3. 2015)

tike, bankama odobrava i kratkoročne kredite za likvidnost na osnovu zaloge hartija od vrednosti. Tokom 2009. i 2010. godine, ti krediti odobravani su kao mera podrške finansijskoj stabilnosti. Od početka 2011. godine, meru za održavanje likvidnosti banaka, bankama omogućava da učestvuju na aukcijama koje ona organizuje u cilju dobijanja kredita u nacionalnoj valuti sa kratkoročnim rokom dospeća na osnovu zaloge hartija od vrednosti.²⁷

5. Zaključak: potencijalni model koordinacije monetarne i fiskalne strategije

Dakle, u savremenoj ekonomiji koja je užarena mnogim problemima, da bi se postigla i održavala makroekonomska stabilnost i disciplina, neophodna je adekvatna sinhronizacija mera monetarne i fiskalne politike i njihova implementacija u celokupni sistem vođenja ekonomske politike. Zbog postojanja neproduktivnih privreda, visokih stopa nezaposlenosti, velikih i konstantnih inflacionih pritisaka, velika pažnja se poklanja interakciji mera monetarne i fiskalne politike. Kako u državama širom sveta, tako i u srpskoj privredi nema univerzalnog modela vođenja ekonomske politike.

Na raspolaganju kreatorima ekonomske politike su svakako primeri pojedinih centralnih banaka (Centralna banka Japana, FED...) koje su pribegle nestandardnim merama monetarne politike, kvantitativnim popuštanjima, kreditnim i kvalitativnim olakšicama, ali za srpsku fiskalnu i monetarnu sferu to će ostati samo primeri nečije prakse, jer primena takvih mera zahteva svođenje referentne kamatne stope na nulu.

Dakle, srpska privreda se može osloniti samo na standardne mere i adekvatnu kombinaciju standardnih monetarnih i fiskalnih mera, uz harmonizaciju sa ostalim merama ekonomske politike, koja do sada nije na zavidnom nivou. Jeste da je prisutna težnja kreatora ekonomske politike, za većim stepenom usklađenosti mera i instrumenata monetarne i fiskalne politike, zarad njihovog većeg efekta u ukupnoj ekonomskoj politici, ali ne može se reći da postoje konkretni pozitivni rezultati. Nagoveštaji pozitivnih efekata u realnom i finansijskom sektoru postoje.

To je dovoljan razlog preduzimanja reformi kojima će glavni cilj biti postizanje fiskalnog i monetarnog optimuma. Reforme otvaraju dileme u srpskoj nacionalnoj ekonomiji:

- Da li primeniti mere povećanja poreza ili mere smanjenja plata i penzija?
- Da li vršiti racionalizaciju u javnom sektoru ili pustiti da se sprovede mera povećanja PDV na više od 20 %?

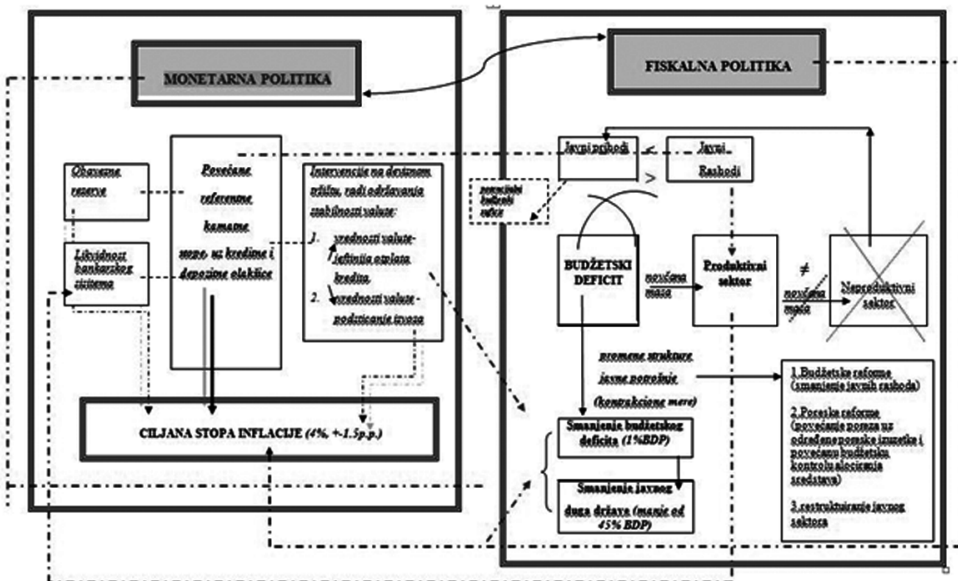
²⁷ Narodna banka Srbije (NBS): Instrumenti monetarne politike, http://www.nbs.rs/internet/latinica/30/30_4/ (10. 2. 2015)

- Da li smanjiti plate javnom sektoru i zamrznuti penzije, a ostati pri finansiranju i ubrizgavanju pomoći održavanja likvidnosti neproduktivnih preduzeća u privredi?
- Da li finansirati neproduktivna preduzeća, čime postoji društvena odgovornost prema zaposlenima i privredi u celini ili spasavati bankarski sektor, čime se smanjuje odstupanje ciljane stope inflacije?

I na kraju, pitanje od naročitog značaja:

- Budući da se fiskalnim i monetarnim merama teže smanjiti troškovi rada i spasiti određeni broj banaka, a povećati poresko opterećenje na potrošnju (stanovništvo), postavlja se pitanje: da li će interakcija mera monetarne i fiskalne politike i njihova realizacija doprineti kvantitetu ili kvalitetu?

Slika 7: Model adekvatne koordinacije monetarne i fiskalne strategije



Izvor: skica autora

Opterećenje potrošnje putem postepenog povećavanja oba poreza PDV, jednog na 20 %, a drugog na 10 %, već je prihvaćeno u javnosti, što od stanovništva, što i od privrednih subjekata. Svako naredno kontinuirano povećanje PDV-a na više od 20 %, bilo bi neprihvatljivo i povećalo bi nesigurnost i nepoverenje u fiskalni sistem. Podsećanja radi, obezbeđivanje sigurnosti, poverenja u fiskalni sistem, jeste jedno od fiskalnih pravila.

Takođe, adekvatna smernica fiskalnog reformisanja jeste da se prvenstveno pristupi smanjenju javnih rashoda, a potom mere ekonomske politike usmere na povećanje javnih prihoda. Veći deo javnih rashoda odliva se upravo na plate javnog sektora, zbog čega je neophodna racionalizacija i restrukturiranje u javnom sektoru. Ovom reformisanju, pak, treba pristupiti sa kvalitativnog aspekta, a ne isključivo kvantitativnog. Sprovedenim solidarnim oporezivanjem u Republici Srbiji, opterećeni su svi zaposleni u javnom sektoru koji imaju platu veću od 60.000 dinara. Međutim, kada se kaže da treba reformisati javni sektor, nikome se na tom spisku ne nalaze medicinski, akademski, prosvetni radnici, naučnici, umetnici. Potrebno je pristupiti ovom delikatnom pitanju sa kvalitativnog aspekta i određene podsektore javnog sektora izuzeti ovakvog poreskog opterećenja.

Opterećujuće za budžet jesu razna neproduktivna preduzeća u srpskoj privredi, koja su pod stečajem i jednom nogom u bespovratnoj situaciji. Veoma je važno da se okonča restrukturiranje tih preduzeća ukoliko je moguće u što kraćem roku, ali i obezbede sredstva za socijalno zbrinjavanje zaposlenih koji će izgubiti posao u procesu privatizacije ili stečaja. Veći deo ovih sredstava mogao bi biti obezbeđen upravo kroz uštede na subvencijama. U suprotnom, radi održavanja njihove likvidnosti odlaze milioni iz budžeta i formiranjem još većeg fiskalnog deficita, otvara opasnost još većeg javnog zaduživanja.

Dakle, traganje za optimalnim merama fiskalne i monetarne politike nije jednostavno, ali nije ni neizvodljivo. Pošto se fiskalne vlasti nadaju uštedi u budžetu od nekoliko stotina miliona evra, a monetarne vlasti još efikasnijem targetiranju inflacije i održavanju stabilnosti nacionalne valute, neophodno je ipak osvrnuti se na mere za poboljšanje kvalitativne slike srpske nacionalne ekonomije, kreirajući adekvatnu osnovu za ostvarenje što većih efekata mera ekonomske politike na privredni rast i razvoj. Jer, kako kaže Elbert Hjubard (Elbert Hubbard): *Molite se da uspeh ne stigne brže nego što ste spremni da ga podnesete.*

Literatura

- Agencija za privredne registre (2012): Saopštenje o poslovanju u privredi Republike Srbije 2012 – uporedni podaci iz finansijskih izveštaja za 2011 i 2012. godinu, <http://www.apr.gov.rs/>
- Babić Blagoje (1994): „Uticaj blokade na privrednu reformu SR Jugoslavije“, *Sankcije – uzroci, legitimitet, legalitet i posledice*, SANU, Beograd 1994, 81.
- Begg David, Fischer Stanley, Dornbusch Rudiger (2010): *Ekonomija*, Data status, Beograd
- Fiskalni savet: Predlog mera fiskalne konsolidacije 2012–2016. godine, <http://fiskalnisavet.rs/>
- Fiskalni savet: Fiskalna pravila, <http://www.fiskalnisavet.rs/>

- Fiskalni savet: Predlog mera fiskalne konsolidacije 2012–2016. godine, <http://fiskalnisavet.rs/>
- Gavrilović Milica, Ivanović Ivan (2011): „(Ne)postojanje društvene odgovornosti u privredi Srbije u procesu privatizacije“, *Megatrend revija*, vol. 8, br. 1, Megatrend univerzitet, Beograd
- Gavrilović Milica (2014): „The necessity of redefining the strategy of the monetary and fiscal policy in the Republic of Serbia“, The 6th International Scientific Conference *Economy and politics*, Higher Educational Institution for Applied studies of Entrepreneurship Belgrade, Centre for industrial relations Belgrade, Institute for economical agriculture Belgrade, June 2014
- Josifidis Kosta, Đukić Đorđe (1994): *Makroekonomija*, Futura publikacija, Novi Sad
- Lipton Douglas, Sachs Jeffrey (1990): *Creating a market economy in Eastern Europe*, The case of Poland, in: W.C. Brainard and J.L. Perry (Eds): *Brookings Papers on Economic Activity I*, Brookings Institution, Washington
- Kovač Oskar (1994): „Uticaj sankcija na funkcionisanje i reformu privrede SR Jugoslavije“, *Sankcije – uzroci, legitimitet, legalitet i posledice*, SANU, Beograd
- Narodna banka Srbije (NBS): Izveštaj o inflaciji 2012, <http://www.nbs.rs/>
- Narodna banka Srbije (NBS): Istorijski pregled kamatnih stopa NBS na novčanom tržištu, <http://www.nbs.rs/>
- Narodna banka Srbije (NBS): Instrumenti monetarne politike, <http://www.nbs.rs/>
- Narodna banka Srbije (NBS): Kamatne stope Narodne banke Srbije, <http://www.nbs.rs/>
- Nuti Mario (2002): *Governing Incomplete Globalization: Economic Science Before the Challenges of the XXI Century*, Faculty of Economics, Sarajevo
- Radosavljević Dragutin (2011): „Opštinske finansije“, *Godišnjak FPN*, I deo: *Politička teorija, politička sociologija, politički sistem*, br. 6, <http://www.fpn.bg.ac.rs/>
- Ranković, J. (2009): „Preći nam kolektivni bankrot“, *kWh Elektroprivreda Srbije*, br. 428/09.
- Republički zavod za statistiku Republike Srbije: Preduzeća u Republici Srbiji prema veličini, radni dokument, 2013, br. 82, <http://webrzs.stat.gov.rs/>
- Trading economics, <http://www.tradingeconomics.com/>

Assistant Professor Milica Gavrilović, PhD

Faculty for Business Studies,
Megatrend University, Belgrade

LONG-TERM PROCESS OF REFORMING THE ECONOMY OF REPUBLIC OF SERBIA IN ORDER TO ACHIEVE MACROECONOMIC STABILIZATION - From transient changes to the activist approach -

S u m m a r y

In today's economy, which is burdened by problems such as non-productive economy, high unemployment rates, constant inflationary pressures, great attention is paid to the interaction of monetary and fiscal policies in order to achieve macroeconomic stability. There is no universal model of economic policy even in countries around the world, nor in the Serbian economy, and policy makers are looking for the optimal design of monetary and fiscal strategies and their synchronization with other non-negligible specific economic policy objectives (in terms of balance of payments, objectives related to foreign currency course, the distribution of income), implemented stage of market reforms of the nineties, and then phase of reforms in the first decade of the 21st century. How good coordination of monetary and fiscal measures can be on a qualitative basis, or as it is not possible to reconstruct and degrade previous economic structure, and that there is no definition of the new strategy, and continued the process of reforming and in the period from the time of deepening global financial crisis in 2008 .

The Republic of Serbia, a country whose economy in the long process of reforming, seeks better use of comparative advantages, encouraging production and employment, adequate planning and allocation of available resources of its own and charge, absorption of new technologies, intensifying exports, encouraging investment, and with a constant potential danger which increase the vulnerability of small economies. The solid foundations of macroeconomic stability and discipline must be in production, proper allocation of resources, which will run the economy, and then increase the employment rate, and therefore national income. Of crucial importance of good projections of macroeconomic aggregates, because of them depend on public revenue and public expenditure.

Key words: macroeconomic stability, fiscal policy, reform, resource allocation, monetary policy, the economy, the monetary-fiscal optimum

REČ GOSTA UREDNIKA

Na Univerzitetu „Džon Nezbit“ (Megatrend univerzitet), 21. i 22. maja 2015. godine, održana je, druga po redu, međunarodna naučna konferencija pod nazivom *Economic and Social Development*. Konferencija je plod uspješne saradnje Univerziteta „Džon Nezbit“, Agencije za razvoj i preduzetništvo u Varaždinu i Sveučilišta „Sjever“ u Koprivnici, Hrvatska, čija je saradnja uspjela da okupi značajne naučnike iz regiona. Na konferenciji je prezentovano 36 radova, koje su u 4 paralelne sesije predstavili naučnici i istraživači iz: Mađarske, Slovenije, Hrvatske, Bosne i Hercegovine, Litvanije, Bugarske, Turske, Rumunije, Poljske, Rusije i Srbije.

Obrađene su brojne aktuelne teme iz oblasti ekonomije i privrednog razvoja, ali i održivosti prirodnih resursa, finansijskog menadžmenta, IT tehnologija, i mnogih drugih, a koje su izuzetno značajne u predviđanju ekonomskih kretanja i vođenju ekonomske politike. Sveučilište „Sjever“ objavilo je knjigu apstrakata radova sa Konferencije.

Redakcioni odbor časopisa „Megatrend revija“ odlučio je da objavi, u broju 2. i broju 3. 2015. godine, izbor radova sa ove uspješne konferencije.

Doc. dr Ana Jovancai Stakić

THE POSSIBILITY OF REACHING THE FULFILLMENT OF MAASTRICHT CONVERGENCE CRITERIA IN SERBIA

This paper analyzes the fiscal position of the Republic of Serbia as well as the ratio between its indicators and reference values anticipated by the Maastricht convergence criteria. According to the mentioned criteria, the public debt must not exceed 60% of the GDP, whereas the budgetary deficit must not exceed 3% of the GDP, even though the majority of countries have set up stricter criteria in order to provide greater economic stability. The Republic of Serbia strives not to only fulfill the criteria set for the public debt be kept under 60% of GDP, but to decrease it to 45% of GDP. Taking into consideration the fiscal aggregates before and after the application of the fiscal measures in the following three year period it is shown that the measures should be applied further than this timeframe in order to fulfill the criteria needed to join the European Union. Based on the predictions shown in this paper it is clear that the Republic of Serbia will not be able to fulfill these criteria if it does not conduct a restrictive fiscal policy, which is inclusive in responding to the question of a structural deficit, a tax reform and an overall reform of the public sector, which is a good way to achieve the results predicted by the Maastricht convergence criteria, although not in the timeframe set by the Government of the Republic of Serbia.

Key words: budgetary deficit, fiscal strategy, Maastricht fiscal criteria, public debt

1. Introduction

The crisis of the public debt, as a typical manifest of the current global financial crisis, has struck numerous countries of the European Union which macroeconomic indicators are far above the prescribed borders of the Maastricht criteria. With an aim to control fiscal movements and overcome the recession

* Assistant Professor Ana Jovancai Stakić, PhD, Megatrend University, Belgrade, e-mail: ajovancai@megatrend.edu.rs

** Jovana Stokanović, Teaching Associate, Megatrend University, Belgrade, e-mail: jstokanovic@megatrend.edu.rs

period, numerous countries have introduced additional, even stricter rules. Extraordinary savings measures are in force and they should ensure sustainability in the management of the European economies. The level of the public debt prescribed by the Maastricht convergence criteria is 60% of the GDP; once the debt has exceeded the limit, legally binding rules for the reduction of the public debt come in effect, and there are sanctions for those countries that do not obey them. Certain countries have even determined the successive borders for their respective public debts, at a level lower than the Maastricht one is, due to the expected growth of the public debt in the time of the economic crisis.

As a state in which economy depends on the economic flows in the European Union to a great extent, Serbia is undergoing the identical pattern of the deterioration of the fiscal parameters. In times when the European Union is recording the further downfall of GDP and in comparison to other leading markets flows deeper into recession, the Republic of Serbia still has the aim to join the European Union and fulfill its economic requirements in order to obtain its membership. Even though the European economy remains in the unfavorable economic state, and its economic indicators have never been poorer, the Republic of Serbia still has a hard time reaching the economic standards proposed by the EU. In addition, if the Republic of Serbia manages to obtain the membership, there is a high possibility that since it is not economically ready for such a step, the further crises could occur, which was the case with the neighboring country, the Republic of Croatia.

2. Maastricht convergence criteria

The establishment and functioning of the European Monetary Union has been one of the most complicated segments in the process of the deepening of European integrations. What has made this process so much a complex one has been the readiness on the part of the European Union's countries to establish an economic and monetary union as well as a big difference in the then economic and social development of the member-countries. At that moment, after the successful forming of the internal market, the next step – in the form of the establishment of the European Monetary Union – was expected. In order to conduct a successful monetary integration, it was necessary to reduce the differences into tolerable frameworks through the measures of the economic policy, and, at the same time, to ensure approximately the same starting position towards a higher phase of integration. According to the Maastricht agreement, the European economic and monetary union member countries were supposed to satisfy the following criteria according to the monetary and fiscal policies until the year 1997 or 1998:

Price stability, i.e. a sustainably low growth of prices and an average inflation rate not exceeding 1.5 percentage points above the average inflation of the three most successful member countries. Actually, inflation is measured on the basis of the comparative consumer price index – CPI.

- 1) Long-term interest rate – the average nominal long-term interest rate must not exceed 2% above the average of the three most successful member countries. The guideline for the determination of the interest rate is interest rates on long-term government bonds or comparative securities;
- 2) The amount of the budgetary deficit is determined in such a manner that the rate of the planned or achieved budgetary deficit does not exceed 3% of the gross social product;
- 3) The public debt criterion anticipates that the amount of the public debt does not exceed an amount of 60% of the gross social product;
- 4) The stability of the foreign-exchange rate and the participation in the Exchange Rate Mechanisms II (ERM II). This criterion relates to respecting the stipulated margins of the foreign-exchange rate fluctuation, which were $\pm 2.25\%$, without any more significant deviations in the time period of at least two years prior to the introduction of the common European currency. It is important that we point out at this point that – in the stated time period, when its currency is included in the Exchange Rate Mechanism – a potential member country has no possibility of self-initiatively devaluating its own currency against a currency of another EU member country with an aim of improving the competitiveness of its economy. The obligation of fulfilling the convergence criteria related to all the potential member countries of the Euro zone. These countries were expected to comply with the standards of budget-conscious living so as to create stable economic conditions for the introduction of the European currency. Amongst these conditions, the budgetary deficit was determined to have a share in the Gross Domestic Product not exceeding 3%. If we take into consideration the fact that not one country fulfilled this concrete criterion in the year 1993, and that some countries had a deficit three and even four times as high (Greece, 15.4%; Sweden, 14.5%; Italy, 10.1%), as well as the fact that each of these countries successfully satisfied the criterion until the year 1997, then a big success of the restrictive budgetary policy and the maintenance of budgetary discipline is evident.¹ After “soft budgeting” which lasted for a number of years, it was necessary that modifications in the manner of conducting the fiscal and budgetary policy should be made if we wanted to create conditions for the introduction of a uniform currency. This is what the mem-

¹ Jovanović, Gavrilović, (2001): *Međunarodno poslovno finansiranje*, Ekonomski fakultet, Beograd

ber countries noticed, too, and the Maastricht agreement established the fiscal convergence criteria with a clear goal to, inter alia, use tight budgetary discipline to enable the original introduction and, after that, keeping the common Euro currency stable, too.

The European Union decided to opt for the application of a stabilization budget which was greeted with approval after the many years of the deficient financing of the budget within the European Union. Although, according to the opinions expressed by many people, the fiscal convergence criteria were set at a demanding level, they did represent a strong foundation of a uniform restrictive budgetary policy. The European Union understood that it was necessary that the budgetary consumption should be reduced to reasonable frameworks if they wanted price stability and the national currency stability, and they adapted their macroeconomic policy to achieving the goal. Although the fulfillment of the Maastricht criteria does not represent a condition for full membership in the European Union, for many new member countries, it represents the next strategic goal.

3. Fiscal movements in Serbia in the period between 2000 and 2014

After the political changes in Serbia in late 2000, there was an increase in the GDP which lasted until the second half of the year 2008, when, due to the financial and economic crisis, it recorded a fall. The current financial and economic crisis will undoubtedly change the manner of economic behavior at the both, micro- and macro levels. The up to date effects of the crisis and the forthcoming long-term challenges on the global level confirm the fact that it is not just an ephemeral phenomenon.² Due to the degradation of the situation on the world financial markets, there has been a significant decrease in the flow of foreign capital, the domestic currency has depreciated and there have been inflationary blows, only to have been followed by a decline in aggregate demand, and, simultaneously, consumption as well, which has first led to slowing down, then to a fall in economic activities.

At the end of 2000 total public debt of the Republic of Serbia was 201.2% of its GDP. In the period from 2000 to 2008, there was a significant fall in the absolute level of the public debt as well as its share in the budgetary deficit. Thanks to the writing-off of a portion of the debt to the Paris and London Creditors Clubs, the external debt of the public sector of Serbia was reduced to the level of 28.3% in 2008. However, starting in 2008, the Republic of Serbia began to intensively increase its debt abroad, primarily to finance its

² Stakić Nikola (2010): *Proces sekjuritizacije kao faktor kreiranja globalne finansijske krize*, Megatrend revija, vol 7.

state budget's growing deficit, which no longer could have been financed by the privatization-generated incomes.

In the period between 2008 and 2011, the state became indebted by 6 billion Euros in total. At the end of the year 2011, the public debt was 12.3 billion Euros, in which amount – due to the different methodology between the Ministry of Finance and the IMF– only direct liabilities of the state at the central level of authorities were included (Table 1). Taking into consideration the indirect liabilities as well, both those related to the internal and the external debts, the total amount of the public debt was 14.46 billion Euros. Only in the year 2011 did the public debt increase by almost 2.5 billion Euros. The last indebtedness in the year of 2011 was in the month of September, when the state sold bonds worth one billion dollars on the international market. The very dynamics of the increased indebtedness has been increasingly more alarming as the fact came out that the larger portion of the amount has not been directed towards investments, capital projects and new employments, but rather primarily towards consumption and for covering the budgetary deficit.

Table 1: Public debt (in million Euros)³

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Public debt - total	4,255.5	3,837.0	3,413.3	3,161.6	4,050.2	4,571.8	5,440.6	6,495.6	7,054.6	8,225.2
External	5,364.1	4,745.5	4,615.8	4,691.2	4,408.6	5,872.7	7,238.6	8,621.0	10,244.9	11,991.5
Internal	9,619.6	8,582.6	8,029.1	7,852.7	8,458.8	10,444.5	12,679.2	15,116.7	17,299.5	20,216.7

In the first two years of the crisis, the Serbian fiscal deficit was even slightly lower than the one in the EU. However, starting in 2010-2011, the majority of the EU member countries abruptly declined their respective deficits, mainly through increasing taxes, whereas the Serbian deficit remained at an almost unchanged level of the year 2009, ranging between 4.5% and 5% of the GDP. The problem of the fiscal deficit in the year 2012 and the forthcoming years is in the range of alarming proportions which, due to bad macroeconomic indicators, can make it impossible for the country to service its own obligations and the public debt crisis.

Fiscal consolidation started in 2012 mostly by measures affecting incomes, by the increase and alteration of tax rates, and in lesser extent by the limiting growth of wages in public sector and pensions. In 2013 the goods export was increased by 25.8% and the import by 5.1%. The current account deficit was reduced by the two-fifths, which, in addition to the increase in exports, contributed to fiscal consolidation. Increased taxes on corporate income (from 10% to 15%) have positive effects. In the first 10 months of 2014, the nominal

³ Ministry of Finance of the Republic of Serbia (2015): *Public Finance Bulletin*, Belgrade

and real growth of 33% and 30.3% respectively were recorded, compared to the same period in 2013.

In 2014, the economy fell into recession for the third time in six years, partially due to the devastating floods in May, 2014. Combining falling domestic demand, good agricultural outcome in 2013 and 2014, and low growth of regulated prices in 2014 caused the inflation to be pushed below target. Public debt has risen promptly and is estimated to have reached about 70% of GDP in 2014, while the fiscal deficit in 2014 was close to 7.5% of GDP.

4. Current fiscal movements

Public debt in February 2015 reached 23.7 billion Euros, or 71.9% of GDP. The exports of goods in January 2015 were 777.3 million Euros, while the imports were 1,046.2 million Euros, which was an increase of 6.1% and 3.9%, respectively. Overall the deficit was 268.9 million Euros, 5.9 million Euros less (-2.1%) than in January 2014. Export-import ratio stood at 74.3% (1.6% higher than in January 2014). The current account of the deficit was reduced by 119 million Euros compared to December 2013, primarily due to a decrease in the foreign trade deficit of goods and services. Despite the negative effects of flooding during 2014, the current balance of payments (6.0% of GDP) decreased slightly compared to 2013. It is expected to continue to improve in 2015, primarily due to the effects of fiscal consolidation. Total external debt in end-December 2014 reached 26029.9 million Euros, and compared with the end of the previous year it has increased by 284 million Euros.

Consolidated deficit in February 2015 is 11.3 billion dinars. In the structure of consolidated revenue the indirect taxes make up to 41.8%, while the expenses for the salaries and pensions have the largest share in the expenditure side, 56.7%. In the structure of consolidated revenue, the budget of the Republic of Serbia takes 58.2%, while the expenditure side takes 39.8%. There has been a downward trend in the primary deficit since the second quarter of 2012, as well as the increasing impact of the interest expense in the fiscal balance over the entire period.

The traditional measures of the sustainability of the public debt encompass the share of the balance and repayment of the public debt in the GDP, exports and budgetary incomes. Because of the balance of the public debt for the duration of the second quarter, all the measures of its sustainability have deteriorated. (Table2). In addition to the high-levels of the public debt, the rapid growth of the public debt in the last five years is even more worrying. The public debt is not sustainable if it grows faster than the capacity of the state to pay it off, to consider debt sustainable, it is necessary that its share in GDP is stable or declining, at a sufficiently low level.

Table 2: *The overview of the measures of the sustainability of the public debt⁴*
(in percentage)

	2011	2012	2013	2014
Public debt/GDP	48.2	60.2	63.8	65,1
Public debt/Goods & services export	128.9	149.8	140.1	138.0
Public debt/Export of goods and services, and remittances	103.6	121.7	115.9	115.3
Public debt/ Budgetary incomes	115.7	142.4	155.2	158.7
Public debt repayment/ GDP	10.9	11.6	14.3	15.7
Public debt repayment/Export of goods and services, and remittances	23.9	23.6	26.4	28.4
Public debt repayment/Revenue	26.7	27.6	35.3	39.1

5. Fiscal consolidation and 2015-2017 fiscal strategy

The first significant package of the fiscal consolidation measures were adopted at the end of 2012. Measures were related mainly to the revenue side, considering the increase of the large number of tax rates. The budget of the Republic of Serbia in 2014 continued the restrictive fiscal policy. The increase in the value added tax from 8% to 10% was expected to affect the revenue side, and there were positive expectations regarding the fight against the gray economy. The target deficit is very high because the increase of expenses is caused by the growth in interest rates, and the problem solving of the public and financial sector requires additional expenses.

During 2014, due to the implementation of the parliamentary elections and the consequences of the catastrophic flooding in May, the expenditures were further increased, and were additional funds to finance the troubled parts of the public sector were allocated. The fiscal consolidation measures have not yielded the expected result from certain tax categories. This is primarily related to VAT and excise tax on tobacco products as long as VAT revenues are lower than expected on several grounds. On the one hand there is still a low purchasing power of the population, inherited from the past, which is reflected in household consumption, while on the other hand, due to the flooding that occurred in May, there was a reduction in domestic production, which also affects the decrease in demand. Also, there was a change in consumption patterns since the demand for domestic products was substituted with demand for the imported goods, which further reflected on the collection of VAT on the imported goods, which in the first ten months of the current year

⁴ Ministry of Finance of the Republic of Serbia and the National Bank of Serbia

compared to last year achieved the nominal and real growth of 10.4% and 8.1%, respectively, while the reduced domestic production affected the lower recoveries of gross and net domestic VAT.

The medium-term fiscal frameworks with the proposed measures of fiscal consolidation provide a significant reduction in the general government deficit up to 3.8% of GDP by 2017, and stabilize the public debt levels and reversing its trend (78.7% of GDP in 2017). This implies a cumulative adjustment in the deficit of 4% of GDP. The targeted deficit in 2017 is 3.8% of GDP. After a strong reduction of the deficit in 2015 of around 2% of GDP, in the following two years the adjustments will be somewhat lower. It should be noted that the application of specific measures leads to an increase in certain expenses, which reduces the effects of the adjustment. The projections of the fiscal aggregates in the period of 2015 - 2017 are based on the projections of macroeconomic indicators for the specified period, planned tax policy that implies further harmonization of the laws and the directives of the EU and the appropriate measures on the revenue and expenditure side, including the reform of large public companies.

Table 3: *The fiscal aggregates in the period of 2014-2017, in% of GDP, the scenario without the use of fiscal consolidation⁵*

	Estimation	Projection		
Year	2014	2015	2016	2017
Public revenues	40.9	40.3	39.5	39.1
Public expenditures	49.0	47.6	46.3	45.9
The consolidated fiscal result	-8.1	-7.3	-6.8	-6.8
The debt of the government sector	69.9	78.7	83.1	86.1
Real GDP growth	-2.0%	1.0%	1.3%	1.8%

Fiscal consolidation measures in the period from 2015 to 2017:

- 1) The reduction of salaries of the public sector employees- the saving on this basis at the level of the general government should be about 0.5% of GDP annually;
- 2) Reducing pensions- it is estimated that the impact of these measures on the deficit reduction is to be around 0.5% of GDP;
- 3) New rule for the indexation of wages and pensions- the effects of these measures are not significant in the first two years (0.1 - 0.2% of GDP), but the effect in 2017 will be around 0.5% of GDP as significantly higher indexation predicts.
- 4) The rationalization of the public sector- reducing the number of employees by 5% annually in the next three years should bring savings

⁵ Ministry of Finance of the Republic of Serbia

of around 0.3% of GDP annually. It is calculated that the largest part of this reduction will be achieved by natural turnover of staff, by retiring, with limited filling of the vacancies.

- 5) Reducing subventions- in 2015, the effects on the reduction of the deficit should be around 0.2% of GDP, while in 2016 this effect should increase to around 0.5% of GDP.
- 6) The savings on goods and services- savings of at least 0.1% of GDP;
- 7) The reform of the public enterprises- the fiscal effects of the restructuring of the public enterprises will be reflected in the profit payment or the budget financing via dividends. On this basis an increase is expected to go between 0.3% and 0.5% of GDP annually.
- 8) The fee for gas transport- 0.2% or 0.3% of GDP annually;
- 9) The financing of local self-government- should reduce the general government deficit to around 0.2% of GDP.

Table 4: *Basic fiscal aggregates in the period 2014-2017 in% of GDP, scenario with the implementation of fiscal consolidation measures⁶*

Year	2014	2015	2016	2017
Public revenues	40.9	40.3	39.1	38.2
Public expenditures	48.9	46.1	43.8	41.9
The consolidated fiscal result	-7.9	-5.9	-4.7	-3.8
The debt of the government sector	69.9	77.7	79.2	78.7
Real GDP growth	-2.0%	-0.5%	1.5%	2.0%

Fiscal Policy after 2017 must be focused on further deceleration by decreasing the relative share of the deficit in GDP and the fiscal adjustment on the expenditure side.

The public debt of the Republic of Serbia is divided into direct and indirect obligations or commitments on behalf of the Republic and liabilities arising from guarantees, which are issued by the Republic, and in favor of other entities. Direct and indirect liabilities are further divided into domestic debt and external debt, depending on whether the obligations incurred by borrowing on domestic or foreign markets. One of the major economic and political goals of the Republic of Serbia is joining the EU therefore the most important thing is to adjust domestic methodology in accordance with the European standards. The public debt is analyzed regularly and on the basis of the criteria laid down in the Maastricht Treaty, which represents systematized guidelines to ensure the sustainability of the public debt, the fiscal system and the macroeconomic stability. According to these criteria, in the public debt it should be included, in addition to the direct obligation of the central

⁶ Ministry of Finance of the Republic of Serbia

government, and non- guaranteed debt of local authorities, but the debt based on direct and indirect liabilities on which the Republic does not make payments, should be excluded.

Table 5: *The structure and the projection of the state of the public debt according to Maastricht criteria by 2017 (in billion dinars)⁷*

	2013	2014 projection	2015 projection	2016 projection	2017 projection
Total direct obligations	1912.4	2307.6	2511.0	2712.0	2893.5
guaranteed debt	209.0	198.6	233.8	226.5	192.4
Other government sector debt	5.6	2.2	1.3	0.7	0.4
Debt of local authorities	81.3	84.3	95.3	102.4	109.7
Debt of social security institutions	0	0	0	0	0
Public debt of the Republic of Serbia	2208.3	2592.7	2841.4	3041.6	3196.0
Public debt of the Republic of Serbia/GDP	57.0%	66.8%	71.6%	72.5%	71.7%

6. Conclusion

Given the most important strategic goal set by the Republic of Serbia – its membership in the European Union – and apart from the numerous structural and administrative adaptations, it is important that the ratio between the basic economic indicators and the values anticipated by the Maastricht criteria should be kept in check. Although the fulfillment of the convergence criteria is not a condition for being granted a membership in the Union, it certainly represents a goal towards the accomplishment based on which we should direct the conducting of the economic policy. The analysis of the so-far fiscal movements in Serbia as well as the projections of those movements present a clear picture of which extent we are far away from the fulfillment of the Maastricht criteria. However, the improvement of all the aforementioned fiscal elements must primarily have as a goal the improvement of the efficiency of the domestic economy, the reduction in unemployment as well as the stability of the domestic currency. What is important is to change the course of the overall economic policy and especially the fiscal policy. To avoid the crisis of the public debt, which realistically threatens, it is necessary that the public finance should be consolidated. The additional problem is the one represented by the weak efficiency of the economy which should be improved in terms of generating a wider scope of the GDP and exports. Just as it is the case with

⁷ Fiscal Council of the Republic of Serbia

a number of countries within the European Union when the creation of a monetary policy is concerned, Serbia must obey a thrifty life style and use a restrictive fiscal policy to try to restore the weary economy. Big public consumption and its unfavorable structure are the consequences of conducting an inadequate economic policy based on the inflow of foreign capital according to the privatization activities and speculative possibilities. When, due to the effectualization of the economic crisis, such a policy has proved to be impossible to sustain, it has become clear that Serbia's approach in conducting a fiscal policy, which is inclusive in responding to the question of a structural deficit, a tax reform and an overall reform of the public sector is a good way to achieve the results predicted by the Maastricht convergence criteria.

Literature

- Fiscal Council of the Republic of Serbia [http://www.google.rs/url?q=http://www.mfin.gov.rs/UserFiles/File/dokumenti/2015/Fiskalna%2520strategija%25202015-2017\(1\).pdf&sa=U&ei=8plAVYjdINHiaKGfgdgG&ved=0CBMQFjAA&sig2=QqJZS_MRsFITtg6A6qwWAg&usg=AFQjCNHKMpi7Fkmklrt0caNgAnpvHwZpEw](http://www.google.rs/url?q=http://www.mfin.gov.rs/UserFiles/File/dokumenti/2015/Fiskalna%2520strategija%25202015-2017(1).pdf&sa=U&ei=8plAVYjdINHiaKGfgdgG&ved=0CBMQFjAA&sig2=QqJZS_MRsFITtg6A6qwWAg&usg=AFQjCNHKMpi7Fkmklrt0caNgAnpvHwZpEw)
- Fiscal Council of the Republic of Serbia http://fiskalnisanet.rs/images/fiskalna_konsolidacija.pdf (04.2015.)
- Gnjatović, D., Jovancai, A., (2009): *Stepen spoljne zaduženosti Srbije*, Ekonomski fakultet, Kragujevac.
- Jovancai, A., (2011): „Realizacija Nacionalnog investicionog plana Republike Srbije u periodu 2006-2010“, *Megatrend revija*, vol 8 (1).
- Jovanović Gavrilović, P., (2001): *Međunarodno poslovno finansiranje*, Ekonomski fakultet, Beograd.
- Leeper, Eric, Todd B. Walker, and Shu-Chun S. Yang, (2009): *Government Investment and Fiscal Stimulus in the Short and Long Run*, National Bureau of Economic Research Working Paper No. 15153
- Ministry of Finance and Economy of the Republic of Serbia
- Nikolić, G., (2011): „Analiza stepena ispunjenosti maastrichtskih kriterijuma konvergencije:Srbija i zemlje regiona“, *Finansije*, Ministarstvo finansija Republike Srbije.
- Orbán, G. and G. Szapáry (2004): *The Stability and Growth Pact from the Perspective of the New Member States*, MNB Working Paper 4/2004
- Stakić, N., (2010): „Proces sekjuritizacije kao faktor kreiranja globalne finansijske krize“, *Megatrend revija*, vol 7 (1).
- Woodford, Michael, (2011): „Simple Analytics of the Government Expenditure Multiplier“, *American Economic Journal: Macroeconomics*, 3, 1–35.

Paper received: May 22nd, 2015

Rad primljen: 22. maj 2015.

Approved for publication: June 26th, 2015

Odobren za štampu: 26. jun 2015.

Doc. dr Ana Jovancai Stakić

Megatrend univerzitet, Beograd

Jovana Stokanović, asistent

Megatrend univerzitet, Beograd

MOGUĆNOST OSTVARENJA MASTRIHTSKIH KRITERIJUMA KONVERGENCIJE U SRBIJI

S a ž e t a k

U radu se analizira fiskalna pozicija Republike Srbije, kao i odnos između indikatora te pozicije i referentnih vrednosti utvrđenih mastrihtskim kriterijumima konvergencije. Prema ovim kriterijumima, javni dug ne sme da bude veći od 60 % BDP, dok budžetski deficit ne sme da pređe 3 % BDP, mada je većina zemalja uvela još striktnije kriterijume da bi obezbedila veću ekonomsku stabilnost. Republika Srbija nastoji, ne samo da zadovolji kriterijum održavanja javnog duga na nivou 60 % BDP, već da ga smanji na 45 % BDP. Ako se posmatraju fiskalni agregati pre i posle primene mera fiskalne politike za naredni trogodišnji period, uočava se da bi ove mere trebalo primenjivati i kasnije, u periodu dužem od tri godine, da bi bili ispunjeni kriterijumi uključivanja zemlje u Evropsku uniju. Polazeći od predviđanja prikazanih u ovom radu, jasno je da Republika Srbija neće biti u mogućnosti da ispuni ove kriterijume ako ne bude u dužem periodu vodila restriktivnu fiskalnu politiku. Ova politika obuhvata pitanja strukturnog deficita, poreske reforme i ukupne reforme javnog sektora, što je sve dobar put ka ostvarenju mastrihtskih kriterijuma konvergencije, iako ne u vremenskom roku postavljenom od strane Vlade Republike Srbije.

Ključne reči: budžetski deficit, fiskalna strategija, mastrihtski fiskalni kriterijumi, javni dug

SOCIAL ENTREPRENEURSHIP AS A FORM OF SOCIAL RESPONSIBILITY IN BULGARIA

Social entrepreneurship is becoming a popular form of social responsibility and a way to solve a variety of urgent social problems. In order for a society to boost social entrepreneurship it needs a specific environment where such ideas can emerge and develop into an active business activity. This paper aims to provide a comprehensive literature review of the terms social responsibility and social entrepreneurship and to examine the current social entrepreneurship activities in Bulgaria. The analysis highlights the importance of social entrepreneurial ideas for improving the business climate in the country. A number of case studies are discussed to provide evidence of particular entrepreneurial activities which have successfully solved a number of social problems.

Key words: corporate social responsibility, social entrepreneurship, social responsibility

1. Introduction

There are a number of people and organizations contributing to the rise of social entrepreneurship. Today, the field has expanded to include the entire ecosystem involved with the promotion, support, and network of those involved with an endeavor designed to make the world a cleaner, more-equitable, healthier, and better-educated place. Another aspect of the social entrepreneurial movement is to approach social change with business rigor and analytical tools. Social entrepreneurship is an innovative form of business, which successfully combines social aims and commercial practice. Social entrepreneurship has emerged as a response to chronic social problems: unemployment, poverty, community fragmentation etc. Social entrepreneurship works where the government cannot work (due to the lack of funding), and the business does

* Daniela Ilieva-Koleva, PhD, VUZF University / University of Sheffield International Faculty, Sofia, Bulgaria, e-mail: dkoleva@city.academic.gr

** Julia Dobрева, PhD, VUZF University / University of Sheffield International Faculty, Sofia, Bulgaria, e-mail: jdobrega@cit.academic.gr

not want to (because of low profitability).¹ The role of social entrepreneurship is to find a flexible and quick problem solving method. Every entrepreneurship is to a certain extent social entrepreneurship, and social entrepreneurship has as a goal to show the public sector how to be more effective and efficient. In most cases social entrepreneurship is about the resourcefulness and the intelligence of the social entrepreneurs to do something good or something needed by society.

The social agenda of the European Commission aims at raising living standards and improving living and working conditions, strengthening social cohesion and combating exclusion, promoting equal opportunities, and safeguarding sustainability. Currently Bulgaria is trying to find a solution to the different problems that it is facing such as: unemployment, aging population, changes of economic gender roles, and environmental problems. Bulgaria is among the poorest of the EU Member States and needs to appropriate policies to bring the country closer to the EU levels. Over the last two decades Bulgaria has undergone difficult transformations as part of its transition to market economy and democratic political system. The transitional period in the country has been accompanied by a sharp economic decline, increased poverty and unemployment, and a high level of corruption. In its effort to come closer to the economic levels of the EU Countries, Bulgaria will have to invest more in social development and try to solve its own specific social problems. Currently, the low level of public spending in health, education and social protection is not conducive to social development. In addition, Bulgaria will have to address specific issues such as combating corruption and introducing reforms of the justice system and of public administration, in order to ensure proper enforcement of the law².

This colorful palette of social problems should make the country emphasize on and search for solutions based on social entrepreneurial ideas. According to the Economic and Social Council (ESC), social enterprises in Bulgaria should be encouraged to develop as a business model, not only within the so-called third sector through civil associations and foundations, but also in the private sector through regular business initiatives. It is necessary to discover and promote best practices and positive models achieved in Bulgaria, as well as to create conditions for the spread of good examples through the creation of national and international networks for the exchange of knowledge and experience.

This paper aims to provide a comprehensive literature review of the terms social responsibility and social entrepreneurship and to examine the current social entrepreneurship activities in Bulgaria. The analysis highlights the

¹ Kostetska, I., Berezyak, I. (2014): "Social Entrepreneurship as an Innovative Solution Mechanism of Social Problems of Society", *Management Theory and Studies for Rural Business and Infrastructure Development*, Vol. 36, No. 3

² Dulevski, L. (2013): *Analysis on "the social enterprise and social entrepreneurship"*, Republic of Bulgaria, Economic and Social Council, <http://www.esc.bg/> (03.02.2015).

importance of social entrepreneurial ideas for improving the business climate in the country through several case studies of particular entrepreneurial activities, which have successfully solved a number of social problems.

2. Social entrepreneurship

Definitions of social entrepreneurship focus on the operating sector and/or the processes and resources used by social entrepreneurs. These include identifying the manner in which the social enterprise is established as well as the primary activities undertaken by the social entrepreneur³.

Gregory Dees, widely considered to be the “father” of the field of social entrepreneurship, in an unpublished paper written in 1998, claimed that social entrepreneurs play the role of change agents in the social sector by:

- Adopting a mission to create and sustain social value (not just private value);
- Recognizing and relentlessly pursuing new opportunities to serve that mission;
- Engaging in the process of continuous innovation, adaptation, and learning;
- Acting boldly without being limited by resources currently in hand;
- Exhibiting a heightened sense of accountability to the constituencies served and for the outcomes created.⁴

In defining social entrepreneurship this way, Dees helps the understanding of the major characteristics of business entrepreneurship that apply, the characteristics that make social entrepreneurship unique, and how the two are blended.

For the purpose of this paper the authors will only discuss social entrepreneurship definitions after 2006 as a more modern understanding of the concept is needed. According to Tracey and Jarvis “the notion of trading for a social purpose is at the core of social entrepreneurship, requiring that social entrepreneurs identify and exploit market opportunities, and assemble the necessary resources, in order to develop products and/or services that allow them to generate “entrepreneurial profit” for a given social project.”⁵ Yunus defines it

³ Zahra, S. E., Gedajlovic, E., Neubaum, D. O., and Shulman, J. M. (2009): “A Typology of Social Entrepreneurs: Motives, Search Processes and Ethical Challenges”. *Journal of Business Venturing*, 24(5), 519–532.

⁴ Lyons, T. S. (2013): “The Role of Social Entrepreneurship in Sustainable Business”, <http://www.triplepundit.com/>, (<http://www.triplepundit.com/2013/09/role-social-entrepreneurship-sustainable-business/>) (03.02.2015)

⁵ Tracey, P., Phillips, N., and Jarvis, O. (2007): “Bridging institutional entrepreneurship and the creation of new organizational forms: A multilevel model”, *Organization Science*.

by claiming that “any innovative initiative to help people may be described as social entrepreneurship. The initiative may be economic or non-economic, for-profit or not-for-profit.”⁶ Zahra et.al. claim that “social entrepreneurship encompasses the activities and processes undertaken to discover, define, and exploit opportunities in order to enhance social wealth by creating new ventures or managing existing organizations in an innovative manner.”⁷

Masseti introduces the Social Entrepreneur Matrix (SEM)⁸. Based on whether a business has a more market or socially driven mission and whether or not it requires profit, the SEM combines those factors that most clearly differentiate social entrepreneurship from traditional entrepreneurship. Martin and Osberg define social entrepreneurship as having the following three components: (1) identifying a stable but inherently unjust equilibrium that causes the exclusion, marginalization, or suffering of a segment of humanity that lacks the financial means or political clout to achieve any transformative benefit on its own; (2) identifying an opportunity in this unjust equilibrium, developing a social value proposition, and bringing to bear inspiration, creativity, direct action, courage, and fortitude, thereby challenging the stable state’s hegemony; and (3) forging a new, stable equilibrium that releases trapped potential or alleviates the suffering of the targeted group, and through imitation and the creation of a stable ecosystem around the new equilibrium ensuring a better future for the targeted group and even society at large⁹.

Hockerts claims that “social purpose business ventures are hybrid enterprises, straddling the boundary between the for-profit business world and social mission-driven public and nonprofit organizations.”¹⁰ This is the definition supported mostly by the authors of this paper as it reflects to a high extent the current social and economic environment in Bulgaria.

Traditional “for profit” and social entrepreneurs would do well to learn from each other. There are forums where all kinds of entrepreneurs can gather to share experiences and knowledge (a good example is IESE’s annual Doing Good and Doing Well conference, the largest student-run event on responsible business and sustainability in Europe). These conferences and initiatives gather

⁶ Yunus, M. (2008): *Creating a World without Poverty: Social Business and the Future of Capitalism*. New York: Public Affairs Books.

⁷ Zahra, S. E., Gedajlovic, E., Neubaum, D. O., and Shulman, J. M. (2009): “A Typology of Social Entrepreneurs: Motives, Search Processes and Ethical Challenges”. *Journal of Business Venturing*, 24(5), 519–532.

⁸ Masseti, B. L. (2008): “The social entrepreneurship matrix as a “tipping point” for economic change”, *E:CO*, 10(3), 1–8.

⁹ Martin, R. J., & Osberg, S. (2007): “Social entrepreneurship: The case for a definition”, *Stanford Social Innovation Review*, Spring, 29–39.

¹⁰ Hockerts, K. (2006): “Entrepreneurial opportunity in social purpose business ventures. In J. Mair, J. Robinson, & K. Hockerts (Eds.)”, *Social entrepreneurship*. Basingstoke, UK: Palgrave Macmillan.

experts from all sectors, allowing attendees to learn best practices to achieve sustainability. Vaccaro makes a suggestion of what traditional business can take from social entrepreneurs¹¹:

- High aims – high motivation: Social entrepreneurs are primarily looking to solve big problems in society, such as poverty, health, education, equal opportunities, etc. This encourages them to set high objectives and makes them more motivated (and thus the rest of their teams), knowing that they are working for an important cause.
- Markets are the means, not the goal: When starting a social venture, entrepreneurs see the problem first and then use the markets as a way to solve it, and not the other way around.
- People at the center: This is perhaps the main lesson every entrepreneur and manager should apply to their companies. When you work in a social enterprise you discover that people and their needs are at the center of organizational attention. This means internal and commercial operations are carried out with the intention to improve lives: not only the lives of customers, but employees, communities and other relevant stakeholders as well. This might not be new, but it is the key to making any company sustainable through the years.
- Financial sustainability: Profits are important for social entrepreneurs, but only in so far as they are an indicator of a financial sustainability, which in turn guarantees the achievement of the social mission. Every company has to be financially sustainable but profit concerns must not divert the social objectives of the organization.¹²

In the Bulgarian legislation there is no legal definition of social enterprise, nor are there any rules that regulate their status, form and activities. A Bulgarian legal act where the term “social enterprise” is used still does not exist.¹³

The existing forms of social entrepreneurship in Bulgaria for the moment are **non-profit organizations which perform profit activities** and use that profit for financing of the social mission of the organization. Another model is a **non-profit organization which provides employment** of people with disabilities or provides training services (for, example trainings or development of labor abilities). The third popular model is **non-profit organizations engaged with social assistance**. The forth form of social entrepreneurship in Bulgaria is the **cooperative**. Historically it has had the longest practical application, mainly in the period after World War II until 1990, although it

¹¹ Vaccaro A. (2015): “4 Things We Can Learn From Social Entrepreneurs”, Forbes.

¹² <http://www.forbes.com/sites/iese/2015/01/28/4-things-we-can-learn-from-social-entrepreneurs/> (03.02.2015)

¹³ National Report on Social Economy Sector in Bulgaria, www.southeast-europe.net/document.cmt?id=191 (03.02.2015)

is rarely considered social entrepreneurship per se. In the survey conveyed by The South East Europe Transnational Cooperation Programme, **80% of the Bulgarian social enterprises note the lack of governmental policy** as a major obstacle to social entrepreneurship. Social enterprises in Bulgaria operate in different sectors. They are most frequently involved in:

- providing social services;
- providing employment for people with disabilities;
- mediation in finding a job for unemployed persons;
- providing healthcare services;
- activities related to education and others.

The provision of training and educational services is among the key sectors for social enterprises in Bulgaria.

3. Social responsibility

The European Commission puts forward a new definition of CSR as “the responsibility of enterprises for their impacts on society”. Respect for applicable legislation and for collective agreements between social partners is a prerequisite for meeting that responsibility. To fully meet their corporate social responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations with the aim of:

- maximizing the creation of shared value for their owners/shareholders and for their other stakeholders and society at large;
- identifying, preventing and mitigating their possible adverse impacts.

To maximize the creation of shared value, enterprises are encouraged to adopt a long-term, strategic approach to CSR, and to explore the opportunities for developing innovative products, services and business models that contribute to societal wellbeing and lead to higher quality and more productive jobs. To identify, prevent and mitigate their possible adverse impacts, large enterprises, and enterprises at particular risk of having such impacts, are encouraged to carry out risk-based due diligence, including through their supply chains.¹⁴

Corporate social responsibility is applicable to all enterprises. This communication is adopted together with a complementary but distinct Social Business Initiative (SBI)¹⁵ which supports a specific kind of enterprise, namely those whose primary purpose is explicitly social and/or environmental. These enterprises reinvest profits

¹⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions

¹⁵ http://ec.europa.eu/internal_market/social_business/docs/COM2011_682_en.pdf (03.02.2015)

for that purpose and their internal organization reflects the societal objectives. The SBI deals with the ecosystem required for social business and social innovation to flourish and contribute to the European social market economy.

In the Bulgarian legal doctrine, as well as in most other European legal doctrines, there are two views regarding what should be the focus in defining the criteria to be met by the social enterprise – the legal form of the entity, giving it an explicit legal form and regulatory framework – or the behavior of the entity. The draft definitions indicated below show that the Bulgarian framework (so far only strategic) favors not so much the legal form, which will organize the social enterprise as a subject of the law, but rather its objectives and how it aims to pursue them. It is important that the activities of the social enterprise should be geared towards the provision of goods or services to persons with disabilities, the involvement of these actors in the production and provision of goods or services so as to achieve a positive social impact on society.

According to the National Report on Social Economy Sector in Bulgaria¹⁶, the following definitions apply to social enterprise:

- cooperatives, businesses and organizations duly registered under national law, whose business aims at social and humanitarian effects and which reinvest their profits for social causes;
- a business with leading social objectives, whose surplus is reinvested back into the business or in the community;
- a business that combines market opportunities with social causes, so that the main priority are the people and their needs.

Also, the report defines “social entrepreneur” as a person who mobilizes resources and uses opportunities to meet existing needs to help disadvantaged people. In this process s/he may use “compass for social enterprise” – a method to identify the affiliation of a legal entity to the social economy.

4. Social entrepreneurship cases in Bulgaria

4.1. The National Alliance for Social Responsibility¹⁷

The National Alliance for Social Responsibility /NASR/ is a national non-governmental organization working actively for the creation and realization of effective national and local social policies, activities and services. The founders have made it their aim to unite the possibilities and stimulate the

¹⁶ National Report on Social Economy Sector in Bulgaria, www.southeast-europe.net/document.cmt?id=191 (03.02.2015)

¹⁷ National Alliance for Social Responsibility, <http://naso.bg/en/about-us/activities/main-objectives> (03.02.2015)

efforts of NGOs, corporate subjects, municipalities and other entities to create a socially responsible environment, stimulating social engagements in the community network, helping the people in Bulgaria afford a better quality of life.

NASR realizes its activities through long-term aims in several directions:

- Support for persons with disabilities and other social groups mainly through the National Network of Social Service Providers, participation in the National Council for Integration of Persons with Disabilities and an active European partnership through the EASPD as its representative in Bulgaria.
- Formation and implementation of active local social policies, creation and development of social responsibility through the municipalities by increasing their opportunities and contribution to improving the social services, the quality of life of people in need and all citizens.
- Support for development of corporate social responsibility in Bulgaria and focusing on person centered approaches, especially those concerning people in need, including people with disabilities. Some of the biggest corporations in Bulgaria, which are members of NASR, for example Solvey Sodi AD, KCM 2000 AD, Aurubis Bulgaria AD and others, have made a strong contribution to reaching these aims.
- Spirituality, art and culture have an important role in the activities of NASR; they are a crucial condition for the success of any initiative and an integral part of the criteria for a better life.

Among their successful projects are: Pass It On — From Raising Awareness to Open Labour Market Opportunities for People with Disabilities through Vocational Training and Lifelong Strategies; The Common Voice Network Project - to build an international network for national lobby networks of social service providers for persons with intellectual, multiple disabilities and autism in the Central and Eastern European region; Empathy – an active social inclusion of people with disabilities through promotion and implementation of policies for equal opportunities and social inclusion by the creation of a Support Center for People with Disabilities.

4.2. SOS Entrepreneurs

SOS Entrepreneurs Foundation is a not-for-profit Bulgarian organisation, which offers supporting service for micro, small and medium-sized enterprises and for new entrepreneurs and start-ups in all phases of creation or consolidation of their project. Its mission is to promote and develop social entrepreneurship and private initiative in Bulgaria. SOS Entrepreneurs Foundation supports and accompanies entrepreneurs by providing information and

consultancy. Its vision is to act as intermediary between companies seeking support and the supporting organization.

The main activities of the Foundation include:

- elaborating informational materials, databases, development of research, manuals, analyses and strategies;
- supporting civil society initiatives, projects, NGOs and entrepreneurs;
- organizing and participating in workshops, roundtables, conferences and thematic forums, seminars and workshops;
- establishing and developing networks of cooperation and participation in such networks, exchange of experiences, training and partnership initiatives;
- promoting case studies, “best practices” and innovative approaches among entrepreneurs in Bulgaria.

4.3. Junior Achievement¹⁸

Junior Achievement /JA/ is among the world’s leading organization, offering contemporary programs and courses in business, economics, and entrepreneurial spirit development through educational and practical activities in economic and financial literacy, business skills, leadership, and success strategies. Since 1997 the organization motivates young people to be active and proactive and prepare them to know how to be able to realize their ideas in a competitive environment. JA Bulgaria realizes a number of initiatives with a special focus towards providing opportunities for personal development of disadvantaged young people:

- The Smart Start and Manager for a Day initiatives in 2012 featured the participation of 50 high school students of Roma ethnic origin from schools in Samokov, Sliven, Kotel, and Yambol. They all spent a busy working day at companies and institutions and learned how to write a CVs and motivation letters. Every year, young people from the SOS Kinderdorf network take part in the Manager for a Day initiative. Even without enjoying a special priority, they get selected by leading companies and institutions as one-day interns.
- JA Bulgaria gives opportunity to disadvantaged students (usually young people living in foster care) to be part of its summer internship program.
- In partnership with Coca Cola HBC Bulgaria, JA Bulgaria delivered a specialized one- week training in personal development, career management and entrepreneurship to students without parents living in the Foster Care Home in Doganovo village near Sofia.

¹⁸ Junior Achievement Bulgaria, www.jabulgaria.org(03.02.2015)

- JA Bulgaria designed in 2014 partnership project on financial literacy with Metlife Bulgaria with an exclusive attention towards 4 schools in Sofia characterized by disadvantaged location in less developed neighborhoods, lower income of the families and poorer educational achievements. Financial literacy is especially crucial for young people with such background.
- JA Bulgaria “Social cohesion” project, funded by the U.S. Embassy, piloted a social innovation model for local community development and active participation of stakeholders through encouraging entrepreneurship education in grades 1-7 in schools in preselected economically and socially disadvantaged areas of the country. Two regions characterized with ethnically diverse population, low economic activity and high levels of unemployment benefited from the project – Shumen and Targovishte.
- JA Bulgaria project “Green Entrepreneurship for Sustainable Development” was specifically created with the idea to contribute to the creation of businesses that respect nature and embed a concern for nature at the very heart of their economic activity. JA Bulgaria’s team took part in a tree-planting activity in 2014 (together with their partner company Traventuria) and their goal is to take part in at least one such activity every year.

4.4. ABLE¹⁹

The Association of the Bulgarian Leaders and Entrepreneurs (ABLE) is a non-governmental organization, established by alumni of Bulgarian Young Leaders Program (BYLP). Their mission is to develop active civil society, inspire leadership and promote entrepreneurial culture in Bulgaria. ABLE is a vibrant community of entrepreneurial young people who try to make a difference in the Bulgarian reality.

ABLE engage in a variety of activities and projects among which different public events, competitions, incubator initiatives and others. The project ABLE Mentor aims to connect young professionals with high-school students and build a network of people, who are willing to share their experience, knowledge, personal challenges and aspirations. The project raises awareness among students about entrepreneurship as a means to overcome difficulties on the way to their goals. It makes information about career and academic development readily available. Finally, it helps students to dare make their first step to that long desired project. I- hub is another initiative of ABLE that aims to bridge the gap between the academic education and the design of marketable technological products. It is a two-month program that encourages **cross-field**

¹⁹ ABLE Bulgaria, <http://ablebulgaria.org/en/> (03.02.2015)

innovation and the cooperation between students and professionals with different backgrounds which is crucial for both their personal and professional advance. *I-hub* is also an opportunity **for the best ideas to become reality**. The program enables the participants to gain fundamental knowledge about how they can apply their ideas in the world of business through:

- short study of basic economics and business concepts;
- contest for market-oriented technological products developed in teams;
- exchange of knowledge and know-how with professionals in the field of business and innovation;
- constant feedback by mentors with experience;
- presentations before investors.

4.5. The Unicredit Foundation

Uni Credit Foundation was set up in 2003 as a corporate foundation of UniCredit and as testimony to the work done by the Group to promote a comprehensive set of values that form the basis of its corporate identity. Through corporate philanthropy, the Foundation intends to contribute to the growth of the community it works in, promoting the processes of social cohesion against a complex backdrop of inequality, need and transformation that characterizes modern society. With this objective, UniCredit Foundation undertakes to promote long-term initiatives, to seek innovation in different areas of social action and to construct effective, lasting partnerships with non-profit organizations.

The Foundation supports actions and players representing the social economy, which combine charity work with market principles to provide an ongoing response to the need for welfare services in the community, while simultaneously creating employment. The social objective may be sought through the direct provision of services in the field of welfare, education and training, healthcare, etc. or through the production of goods and services of any type, intended to create job opportunities for vulnerable individuals.

Uni Credit Foundation leverages the social enterprise model in its relationships with different non-profit players, relying on companies' natural predisposition to economic and financial sustainability and levels of efficiency usually required of them. It enables them to continuously produce and supply goods and services of social benefit, while simultaneously helping groups at serious risk of exclusion to find employment.

Another essential feature of the projects supported by UniCredit Foundation is innovative social research, combining the development of new means of interaction between the public sector, the private sector and the non-profit sector to come up with sustainable solutions on emerging social issues.

5. Conclusion

In order to encourage social entrepreneurship, it is necessary to ensure better awareness and promotion of the benefits and general impact of social enterprises to the economic and social development. The social and economic hardships during the last 20 years in Bulgaria can be overcome through the discovery and promotion of best practices and positive models as well as by spreading good examples of social entrepreneurship and social responsibility.

This aim of this paper was to provide a comprehensive literature review of the terms social responsibility and social entrepreneurship and to examine the current social entrepreneurship activities in Bulgaria. Several case studies were discussed to illustrate the successful implementation of particular entrepreneurial activities, which have successfully solved a number of social problems. The analysis highlighted the importance of social entrepreneurial ideas for improving the business climate in the country. A major future challenge is the formulation of a sound legislative basis for social entrepreneurship as well as the development and implementation of governmental policy to support social entrepreneurs in their efforts.

Acknowledgement

This work was partially supported by the Project Grant BG051PO001-3.3.06-0053 of the European Social Fund and Bulgarian Ministry of Education and Science under the contract No. DO 01 -4314/13.08.13.

Literature

- ABLE Bulgaria, <http://ablebulgaria.org/en/> (03.02.2015)
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions
- Dulevski, L. (2013): *Analysis on "the social enterprise and social entrepreneurship"*, Republic of Bulgaria, Economic and Social Council, <http://www.esc.bg/> (03.02.2015)
- http://ec.europa.eu/internal_market/social_business/docs/COM2011_682_en.pdf (03.02.2015)
- Hockerts, K. (2006): "Entrepreneurial opportunity in social purpose business ventures". In J. Mair, J. Robinson, & K. Hockerts (Eds.), *Social entrepreneurship*. Basingstoke, UK: Palgrave Macmillan.
- <http://www.forbes.com/sites/iese/2015/01/28/4-things-we-can-learn-from-social-entrepreneurs/> (03.02.2015)
- Junior Achievement Bulgaria, www.jabulgaria.org (03.02.2015)

- Kostetska, I., Berezyak, I. (2014), "Social Entrepreneurship as an Innovative Solution Mechanism of Social Problems of Society", *Management Theory and Studies for Rural Business and Infrastructure Development*, Vol. 36, No. 3.
- Lyons, T. S. (2013): "The Role of Social Entrepreneurship in Sustainable Business", <http://www.triplepundit.com/>, (<http://www.triplepundit.com/2013/09/role-social-entrepreneurship-sustainable-business/>) (03.02.2015)
- Martin, R. J. and Osberg, S. (2007): "Social entrepreneurship: The case for a definition", *Stanford Social Innovation Review*, Spring, 29–39.
- Masseti, B. L. (2008): "The social entrepreneurship matrix as a "tipping point" for economic change", *E:CO*, 10(3), 1–8.
- National Alliance for Social Responsibility, <http://naso.bg/en/about-us/activities/main-objectives> (03.02.2015)
- National Report on Social Economy Sector in Bulgaria, www.southeast-europe.net/document.cmt?id=191 (03.02.2015)
- Tracey, P., Phillips, N., and Jarvis, O. (2007): "Bridging institutional entrepreneurship and the creation of new organizational forms: A multilevel model", *Organization Science*.
- Vaccaro A. (2015): "4 Things We Can Learn From Social Entrepreneurs", *Forbes*.
- Yunus, M. (2008): *Creating a World without Poverty: Social Business and the Future of Capitalism*. New York: Public Affairs Books.
- Zahra, S. E., Gedajlovic, E., Neubaum, D. O., and Shulman, J. M. (2009): "A Typology of Social Entrepreneurs: Motives, Search Processes and Ethical Challenges", *Journal of Business Venturing*, 24(5), 519–532.

Dr Danijela Ilijeva Koleva

Međunarodni fakultet Univerziteta u Šefildu / Univerzitet VUZF,
Sofija, Bugarska

Dr Julia Dobрева

Međunarodni fakultet Univerziteta u Šefildu / Univerzitet VUZF,
Sofija, Bugarska

DRUŠTVENO PREDUZETNIŠTVO KAO OBLIK DRUŠTVENE ODGOVORNOSTI U BUGARSKOJ

S a ž e t a k

Društveno preduzetništvo postaje sve popularniji oblik društvene odgovornosti i način da se reše mnogobrojni gorući socijalni problemi. Da bi neka zajednica podstakla društveno preduzetništvo, potrebno joj je okruženje u kojem takve ideje mogu da nastanu i razviju se u živu poslovnu aktivnost. Ovaj rad ima za cilj da pruži sveobuhvatan pregled literature o pojmovima društvene odgovornosti i društvenog preduzetništva i da ispita postojeće aktivnosti društvenog preduzetništva u Bugarskoj. Analiza rasvetljava značaj ideja društvene odgovornosti za poboljšanje poslovne klime u zemlji. Razmotreno je nekoliko studija slučaja, da bi bili pruženi konkretni dokazi o specifičnim preduzetničkim aktivnostima, zahvaljujući kojima je uspešno rešeno nekoliko socijalnih problema.

Ključne reči: korporativna društvena odgovornost, socijalno preduzetništvo, socijalna odgovornost

ENHANCING WELLBEING OF EMPLOYEES THROUGH CORPORATE SOCIAL RESPONSIBILITY CONTEXT

During last 25 years technological development has accelerated the globalization process which has caused dramatic changes within and across organization. Business performance is varying, complex, global and is changing faster than ever before. Over the time, society expectations have changed, changes have affected customers, partners and employees as well. In order to retain on the global market, organizations integrate corporate social responsibility into their business performance with the objective to reinforce their competitiveness. In the knowledge economy, where knowledge is a significant resource and the demand for more highly skilled workers has increased, employees became the most important and in fact the only remaining realistic challenge of competitive ability. Workplace wellbeing refers to mental, psychological or emotional aspect of employee's life. The awareness of management on the employees' wellbeing which takes into consideration the employees satisfaction, health and professional development is an effective approach in strengthening of an organizational performance. The aim of this paper is to analyze and assess how socially responsible orientation also incorporated in strategic human resource management can contribute to the achievement of wellbeing of employees. Strategic management of human resources includes the necessary coordination between various employees' health and performance aspects. This contributes to the balance between private and working life. Social responsible activities coordinated through strategic human resource management significantly influence the employees' wellbeing as well as competitiveness of the organization.

Key words: corporate social responsibility, strategic human resource management, wellbeing, competitiveness

* Karmen Dežmar Krainz, PhD Candidate, Croatian Institute for Health Protection and Safety at Work, Zagreb, Croatia, e- mail: kdezmar-krainz@hzzzsr.hr

1. Introduction

Globalization, technology development, demographic changes and changes in the economic concepts have strongly influenced the changes in human resource management (HRM). The 20th century is the century of information society while the 21st century is characterized as the century of knowledge society, where knowledge is significant resource and main competitive part of every organization.¹ Since last century the awareness of business organizations having some responsibilities to society, beyond that of making profits for the shareholders, is raising.²

Laurinavičius and Romeris³ claim that corporate social responsibility (CSR) is a commitment of an organization to meet the needs and interests of their stakeholders (shareholders, suppliers, employees, customers, community and others). Employees, being considered as one of the most important internal resource, require special attention because of their key role. In order to achieve competitive advantage, organizations should invest into intellectual human capital, ensuring safe and healthy working conditions for their employees so contributing to their wellbeing. All the aspects of employees' wellbeing make a constituent part of internal dimension of CSR.

2. The Context of Corporate Social Responsibility

It is well known around centuries⁴ that business enterprises have some responsibilities to society beyond that of making profits for the shareholders. The concept of CSR significantly varies within specific social context. Some organizations present it as moral obligation towards certain value principles or redistribution of wealth from managers and shareholders to other stakeholders. For other organizations it represents hiding profit maximization or strategy that aims to avoid rigorous legislation in certain business segments, while there

¹ Lapina Inga, Maurane Gunta, Starineca Olga (2014): "Human resource management models: aspects of knowledge management and corporate social responsibility", *Social and Behavioural Sciences*, 110, 577-578

² Carroll B. Archie, Shabana M. Kareem (2010): "The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practise", *International Journal of Management Reviews*, 12/ 1, 85

³ Laurinavičius Alfonsas, Romeris Mykolas (2013): „Impact of responsible organisations to ensure socio- economic justice, Industry, Science and Policy Makers for Sustainable Future”, *Proceedings of the 14th Management International Conference Koper, Slovenia*, 21- 23 November 2013., 56, <http://www.fm-kp.si/zalozba/ISBN/978-961-266-148-9/papers/MIC1099.pdf>, (08. 04. 2015)

⁴ Carroll B. Archie, Shabana M. Kareem, 85

are organizations that using CSR as fashionable rhetoric when communicating with external influential groups.⁵

2.1. Determination and Definition of Corporate Social Responsibility

Deliberation of CSR intensively began in the 60's of the last century when public awareness raised together with public expectations that business organizations should invest their financial resources to solve social problems. It is expected from the business organizations to direct their activities on poverty reduction, environmental protection, improvement of public health, better education, etc.⁶ It is simply expected from management not to manage organizations exclusively from proper interest, but to work in synergy with the environment. Some authors distinguish social obligation and social responsibility. According to Bahtijarević - Šiber, et al.⁷, social obligation and liability of a company is to satisfy economic and legal duties and responsibilities, while social responsibility is an obligation of the company to follow good long-terms goals for society beyond legal and economical requirements. Thus, social responsibility alongside with the fulfilment of legal and economic obligations imposes ethical obligation for management to act in the society interest.⁸ In the past 50 a large number of different definitions of CSR have appeared which are complete opposite to the initial Friedman's definition⁹ "the social responsibility of business is to increase its profits." Carroll's definition of social responsibility has been successfully used for research purposes for many years. He differs four different categories of social responsibility involving the fulfilment of economic, legal, ethical and discretionary/philanthropic responsibilities.¹⁰ According to Carroll¹¹ "the social responsibility of business encompasses the economic, legal, ethical and discriminatory [later referred to as philanthropic] expectations that society

⁵ Omazić A. Mislav (2007): „Društvena odgovornost i strategije hrvatskih poduzeća“, PhD Thesis, University of Zagreb, Faculty of Economic and Business, 40

⁶ Bahtijarević- Šiber Fikreta, Sikavica Pere, Pološki Vokić Nina (2008): „Suvremeni menadžment - vještine, sustavi i izazovi“, Školska knjiga, Zagreb, 561

⁷ Ibid, 562

⁸ Ibid.

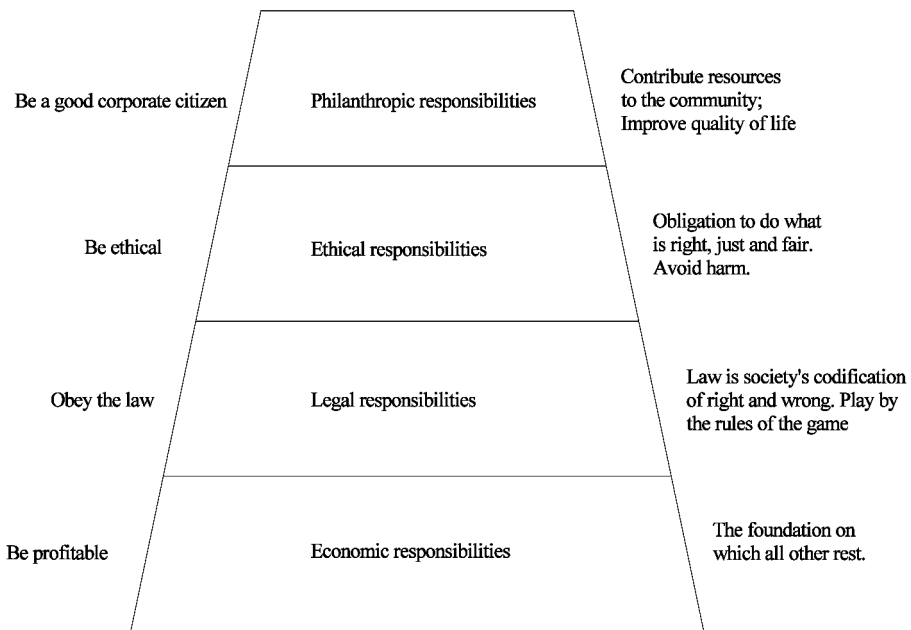
⁹ Friedman Milthon (1970): „The social responsibility of business is to increase its profits“, *The New York Times Magazine*, September 13, 122, [http://query.nytimes.com/mem/archivefree/pdf?res=9E05E0DA153CE531A15750C1A96F9C946190D6CF, \(07 04 2015\)](http://query.nytimes.com/mem/archivefree/pdf?res=9E05E0DA153CE531A15750C1A96F9C946190D6CF, (07 04 2015))

¹⁰ Caroll B. Archie, Shabana M. Kareem, 89

¹¹ Carroll, A.B. (1979): "A three-dimensional conceptual model of corporate social performance", *Academy of management Review*, 4, 497- 505 (1991): "The pyramid of corporate social responsibility: towards the moral management of organizational stakeholders", *Business Horizons*, July - August, 39- 48, referenced by Carroll, A. B., Shabama, K.M., (2010): "The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practise", *International Journal of Management Reviews*, 12/1, 89

has of organizations at a given point in time". This definition made a distinction between traditional and new approach to the CSR, which it includes, ethical and discretionary/philanthropic responsibilities reflecting comprehensive social link between business and society, apart from traditionally considered economic and legal responsibilities. It is also well known in the literature the Carroll's Pyramid of CSR which illustrates his definition. Carroll's CSR pyramid¹² represents four levels indicating relative importance of economic, legal, ethical and philanthropic responsibility. His fourth – part, conceptualisation has been the most cited one. The model incorporates and gives priority to the economic dimension which is an aspect of CSR.

Figure 1: *The Pyramid of Corporate Social Responsibility*



Source: Wayne (2007): *Revisiting Carroll's CSR Pyramid: An African Perspective*, In A. Crane & D. Matten (eds.), *Corporate Social Responsibility: Three Volume Set*, London: Sage, 34, http://www.waynevisser.com/wpcontent/uploads/2012/04/chapter_wvisser_africa_csr_pyramid.pdf, (29 03 2015).

¹² Wisser Wayne (2007): "Revisiting Carroll's CSR Pyramid: An African Perspective", In A. Crane & D. Matten (eds.), *Corporate Social Responsibility: Three Volume Set*, London: Sage, 33, http://www.waynevisser.com/wpcontent/uploads/2012/04/chapter_wvisser_africa_csr_pyramid.pdf, (29 03 2015)

Basically, Kotler and Lee¹³ defines CSR in the similar way, as “a commitment to improve community’s well - being through discretionary business practices and contributions of corporate resources.”

European Union’s Green Paper entitled¹⁴ “Promoting a European Framework for CSR” differ two dimensions of CSR internal and external dimension. Internal dimension encompasses HRM, health and safety at work, adoption of changes in management of environmental impacts and natural resources. It represents issues related to internal stakeholders of an organization such as investing in human capital, health and safety, managing changes and all employees’ welfare, training, education, participation etc. with the aim to enhance their wellbeing.¹⁵ External dimension comprehends local communities, business partners, suppliers and consumers. The external dimension represents external organization stakeholders like customers and consumers, local communities, business partners and suppliers and its impact to public life in sense of human rights, and global environmental concerns, etc. Furthermore, the question is what motivates business organizations to incorporate CSR and what are the tangible benefits from involving CSR activities, practice, strategies and policies into their business. The business case for CSR relates to the specific economic and financial benefits, incorporating socially responsible activities and practise. The rationale of the business case for CSR may be categorized under four arguments:¹⁶ (1) reducing cost and risk; (2) strengthening legitimacy and reputation; (3) building competitive advantage; and (4) creating win - win situations through synergistic value creation. In the 21st century being socially responsible means to go beyond legal requirements and invest “more” in human capital, environmental issues and relations with

¹³ Kotler Philip, Lee Nancy (2009): „Društveno odgovorno poslovanje“, *M.E.P. Counsult d.o.o.*, Zagreb, 14

¹⁴ European Commission (2001): *Green Paper: "Promoting a European Framework for Corporate Social Responsibility"*, [http://www.google.hr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCUQFjAA&url=http%3A%2F%2Feuropa.eu%2Frapid%2Fpress-release_DO9_en.pdf&ei=FnotVZiGNovXavOGgfgO&usq=AFQjCNF-ef7j_hp0XUAG_mtQ16dSt6dpOQ&bvm=bv.90790515,d.d2s,\(07 04 2015\)](http://www.google.hr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCUQFjAA&url=http%3A%2F%2Feuropa.eu%2Frapid%2Fpress-release_DO9_en.pdf&ei=FnotVZiGNovXavOGgfgO&usq=AFQjCNF-ef7j_hp0XUAG_mtQ16dSt6dpOQ&bvm=bv.90790515,d.d2s,(07 04 2015))

¹⁵ Polásek David (2010): "Corporate Social Responsibility in Small and Medium Sized Companies in the Czech Republic", *PhD Thesis, Czech management Institute Praha, Faculty of Management, Escuela Superior de Marketing y Administración Barcelona*, 56, www.csr-online.cz/wp-content/uploads/2012/.../DP_David_Polasek.doc (31 03 2015)

¹⁶ Kurucz, E., Colbert, B. and Wheeler, D., (2008): “The business case for corporate social responsibility”. In Crane, A., Mc Williams, A., Matten, D., Moon, J. and Siegel, D. (eds), *The Oxford Handbook of Corporate Social Responsibility*, Oxford; Oxford University Press, 83 -112, referenced by Carroll, A. B., Shabana, K.M., (2010): “The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practise”, *International Journal of Management Reviews*, 12/1, 101

stakeholders. Nowadays CSR is based on social, environmental and economic responsibility.¹⁷

3. Strategic Human Resource Management

Today, one of the major challenges for an organization is to attract and retain skilled and highly motivated workers.¹⁸ The concept of HRM has been permanently developed since the 80's of the last century. Nowadays practice of HRM treats people as the most important organization capital, developing resource as well as source of strategic competitive advantage. Investing in people is considered to be the most profitable investment in business performance.¹⁹ Employees are the most important assets of an organization that is very strategic instrument for company market competition.²⁰ One of the most important tendencies in the HRM development is emphasizing its strategic role and importance as well as exceptional development strategies of HRM. Strategic human resources management (SHRM) becomes significant and dominant new phase in development of HRM and its synonym. In fact it can be said that the concept of SHRM replaces the usual conception of HRM since everything what is done in HRM has a strategic importance and consequences. Its growing importance it is considered as the follow up of the constant HRM evolution. It connects and merges HRM with strategic management of the organization. SHRM enables that business objectives and organization strategy are aligned with the goals and strategies of human resource (HR) and acquires sustainable competitive advantage through people. In other words it defines the intensions of organizations how to achieve their business goals by people.²¹ In order to meet competitive changes HRM must go beyond functional level and should be strategic partner in the organization.²² Dave Ulrich²³ was the first who put together the term "HR as a

¹⁷ Lapina Inga, Maurane Gunta, Starineca Olga, 579

¹⁸ Polášek David, 56

¹⁹ Bahtijarević- Šiber Fikreta (2014): *Strateški menadžment ljudskih potencijala, suvremeni trendovi i izazovi*, Školska knjiga, Zagreb, 12

²⁰ Oraman Yasemin, Unakitan Gökhan, Selen Ufuk (2011): "Measuring Employee Expectations in a Strategic Human Resource Management Research: Job Satisfaction", *Social and Behavioural Sciences*, 24, 413

²¹ Bahtijarević- Šiber Fikreta, 41-58

²² Bas Abdurrahman, (2012): "Strategic HR Management: Strategy Facilitation Process by HR", *Procedia- Social and Behavioural Sciences*, 58, 313

²³ Ulrich Dave (1996): „Human Resource Champions“, *Harvard Business Press*, Boston, referenced by Bas Abdurrahman, A. (2012): "Strategic HR Management: Strategy Facilitation Process by HR, *Procedia- Social and Behavioural Sciences*, 58, 313

strategic partner” in organizations. According to Ulrich²⁴ four distinct roles of HR professionals are: administrative expert, employee champion, change agent and strategic partner. HR professionals must operate coordinated in all four areas in order to contribute the traditional functional HR orientation to a more strategic orientation. Strategic partnership is the prominent task of the HRM today and it relates to sharing the responsibility of the strategic initiatives and alignment of HR activities with the business strategy.²⁵ Bas argues²⁶ that HR can be only a real strategic partner if it (1) understands the business and takes its part in the strategy formulation process, (2) spreads the strategic word thought the organization, (3) takes an active role in the implementation of it and (4) generates the necessary competencies for the accomplishment of the strategy. Oraman, et al.,²⁷ introduce “human advantage” as being competitive strategy and system- based view of the value of HR which makes towards adding value to customers, towards managing cost, through accelerating operational and management processes, and in challenging the status quo through innovation and change. “Human advantage” tell us that in information time, human capital is the key resource to reach the competitiveness rather than physical assess or financial resources. In recent years, more and more emphasizes the value of human capital or intellectual capital which represents the intangible assets such as knowledge, ideas, creativity, competence etc.²⁸ According to Bahtijarević- Šiber²⁹ the main characteristics of the human capital concept are: focus on value creation, HR as a key asset of the organization, the role of HR and HRM in creating value; measuring their contribution to value and organizational success and highlighting systematic reviews and decision making based on the analysis and objective data. Some authors argue that is necessary to establish a strategic link between the internal resources of the organization and their environment, while the success of an organization is not based only on its internal strengths.³⁰ SHRM achieves the synergy between organizational

²⁴ Ibid.

²⁵ Ibid, 314

²⁶ Ibid.

²⁷ Oraman Yasemin, Unakitan Gökhan, Selen Ufuk (2011): “Measuring Employee Expectations in a Strategic Human Resource management Research: Job Satisfaction”, *Social and Behavioral Sciences*, 24, 414

²⁸ Bahtijarević- Šiber Fikreta, 25

²⁹ Ibid.

³⁰ Barrena- Martines Jesus, López- Fernández Macarena, Romero- Fernández, M. Pedro (2011): “Research proposal on the relationship between corporate social responsibility and strategic human resource management”, *International Journal of Management and Enterprise Development*, 10/ 2-3, 174

strategies and HR policies practices and activities and can prevent the positional threats and lead to competitive advantages in the organization.³¹

4. The Concept of Employees' Wellbeing

The research of wellbeing at the workplace is becoming a growing topic. In the past this topic referred to the absence of disease and was bounded to physical health, while nowadays it has a broader connotation, involving physical, emotional, mental and social aspects. Individual experiences at work can physically, emotionally, mentally and socially influence an employee, hence they spend at least one third of a working day. Working time and free time of an individual are not separated entities because very often workers do not necessarily leave their job behind when they leave the workplace. Those two entities very often overlap, which opens the space for extensive research in this area.³² The basic study of wellbeing comes from motivation theories which attempt to explain the reason why people behave the way they do and what causes of their behavior. Organization should consider employee's needs, investigate what makes them feel good and motivate them to work better.³³ Health and wellbeing in the workplace has become a common topic in organization research due to their mutual influence, and it is very difficult to analyze them separately. Figure 2 presents an organizational framework pointing out the factors which create wellbeing in the workplaces.

The third factor is occupational stress which also has direct impact on health and wellbeing. Occupational stress arises as a consequence of lack of harmony between individual needs and demands and those of the environment. In other words, occupational stress occurs when demands at work are above employee's capacity to deal with them. Cooper and Marshall³⁴ conceptualized six potential sources of occupational stress as follows: (1) factors intrinsic to the job (i.e. work overload, shift work, long hours, travel, risk and danger, new

³¹ Gilani, H.N. Mahnaz, Zadeh, S. Mohamed, Sanderi, R. Hamid (2012): "The Role of Strategic Human Resource Management in Creation of Competitive Advantages (Case Study: A Commercial Organization in Malaysia)", *International Journal of Business and Social Science*, 3/16, 237, http://ijbssnet.com/journals/Vol_3_No_16_Special_Issue_August_2012/24.pdf, (19 03 2015)

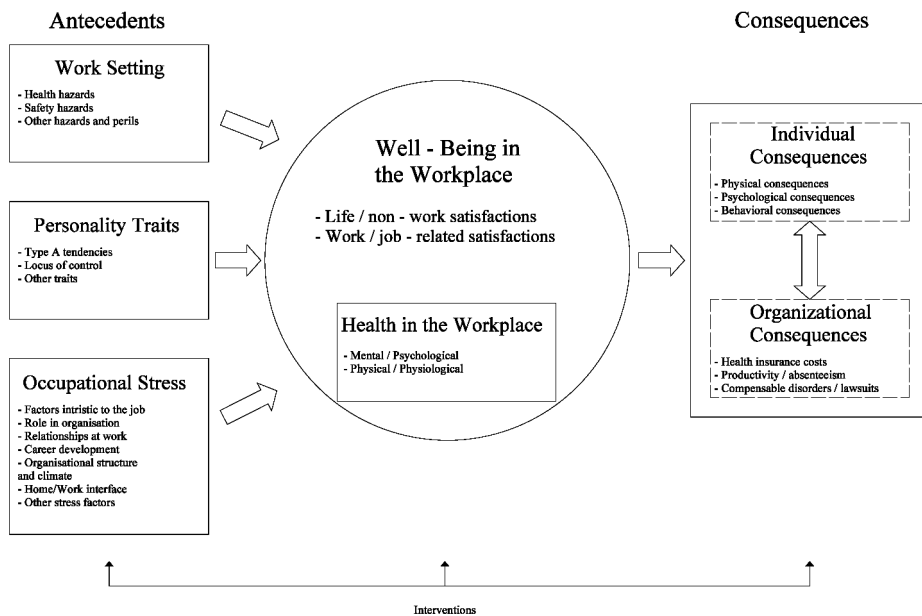
³² Danna Karen, Griffin W. Ricky(1999): "Health and Well- Being in the Workplace: A Review and Synthesis of the Literature", *Journal of Management*, 25/3, 358

³³ De Simone Stefania (2014): "Conceptualizing Wellbeing in the Workplace", *International Journal of Business and Social Science*, 5/12, 118, http://ijbssnet.com/journals/vol_5_no_12_november_2014/14.pdf, (07 04 2015)

³⁴ Cooper, C. L., & Marshall, J. (1978): "Understanding executive stress", London: Macmillan, referenced by Danna Karen, Griffin W. Ricky (1999): "Health and Well- Being in the Workplace: A Review and Synthesis of the Literature", *Journal of Management*, 25/3, 371

technology and the quality of the physical working environment), (2) role in the organization (i.e. role ambiguity, role conflict as well as the degree of responsibility for others), (3) relationship at work (i.e. with superiors, colleagues and subordinates), (4) career development together with job insecurity, (5) organizational structure and climate (i.e. lack of participation and effective consultation, poor communication, politics and the consequences of downsizing), (6) home/work interface (balance between private and working life).

Figure 2: A Framework for Organizing and Directing Future Theory, Research, and Practice Regarding Health and Wellbeing in the Workplace



Source: Danna Karen, Griffin W. Ricky (1999): "Health and Well- Being in the Workplace: A Review and Synthesis of the Literature", *Journal of Management*, 25/3, 360

New technologies, the move from manufacturing to service - based economics as well as globalization have caused all sorts of extensive changes and rapid lifestyle which has imposed the new and intensified the existing psychosocial risks such as the aging workforce and population, increase in the number of women in the workforce, and the transformation of work patterns. The above mentioned circumstances have inevitably required a new concept of keeping employees healthier, which in turn can increase the length of time spent

in the workforce.³⁵ According to European Agency for Safety and Healthy at Work (EU OSHA)³⁶, psychosocial risk arise from work design, organization and management, as well as a poor social context of work, and they may result in negative psychological, physical and social outcomes such as occupational stress, burnout or depression. Recent defining of occupational stress differs from the concept mentioned by Danna and Griffin³⁷, as the concept comprehension has been developed. Psychosocial risks³⁸ have been defined as those aspects of the design and management of work, and its social and organizational context, that have the potential for causing psychological or physical harm. Danna and Griffin framework³⁹ also identifies two levels of consequences related to the wellbeing in the workplace. The first level reflects the consequences for an individual including physical, psychological and behavioral consequence. The second level has implications to organizations and includes health insurance costs, productivity and absenteeism as well as compensable disorders/lawsuits. These two levels are interfering with each other.

4.1. *The Role of Occupational Health and Safety in Maintaining Employees' Wellbeing*

Occupational Health and Safety (OSH) is one of the key activities of HRM. It is defined as⁴⁰ “a set of technical, medical, legal, social and other measures and activities aiming to prevent and eliminate the hazards and harmful effects that could threaten the lives and health of people at work“. The role of OSH is to create a safe working environment and to protect employees from potential accidents, occupational diseases as well as work related diseases. According to EU OSHA Report⁴¹ in 2002 the European Commission calculated the cost of

³⁵ EU OSHA (2013): *Report- Well- being at work: creating a positive work environment, literature review*, 1, https://osha.europa.eu/en/publications/literature_reviews/well-being-at-work-creating-a-positive-work-environment, (07. 04. 2015)

³⁶ EU OSHA (2014b): *Report- Psychosocial risk in Europe prevalence and strategies from prevention*, 10, <https://osha.europa.eu/en/publications/reports/psychosocial-risks-eu-prevalence-strategies-prevention>, (07. 04. 2015)

³⁷ Danna Karen, Griffin W. Ricky, 370

³⁸ Cox, T., Griffiths (2005): „The Nature and Measurement of Work- Related Stress“, in J. Wilson and N. Corlett (eds.), *Evaluation of Human Work: A Practical Ergonomics Methodology*, 3rd edition (CRC press, Boca Raton, FL), 553- 573, referenced by Jain Aditya, Leka Stavroula, Zwetsloot Gerard, (2011): “Corporate Social Responsibility and Psychosocial Risk Management in Europe”, *Journal of Business Ethics*, 101, 622

³⁹ Danna Karen, Griffin W. Ricky, 359

⁴⁰ Ivandić Vidović Darija, Karlović Lidija, Ostojić Alen, (2011): *Korporativna sigurnost, Udruga hrvatskih menadžera sigurnosti- UHMS*, Zagreb, 2011, 257

⁴¹ EU OSHA (2014a): *Report- Calculating the cost of work- related stress and psychosocial risks*, 4-7, https://osha.europa.eu/en/publications/literature_reviews/calculating-the-cost-

work related stress in the EU - 15 at €20 billion per year. Among the employees suffering work - related health problems, stress, depression or anxiety was reported as the most serious health problem by 14 %. In 2010 the European Survey of Enterprises on the New and Emerging Risks (ESENER) showed that managers are also aware of this issue, with finding that 79% of European managers are concerned about stress in their workplaces.

Furthermore, less than 30% of organizations in Europe have procedures for dealing with occupational stress, harassment and third - party violence. ESENER has shown that more than 40% of European managers consider that psychosocial risk is more difficult to manage than traditional OSH risk. In 2013 the cost to Europe of work related depression was estimated to

€617 billion annually. The total was made up of costs to employers resulting from absenteeism and presentism (€272 billion), loss of productivity (€242 billion), health care cost (€63 billion) and social welfare costs in the form of disability benefit payments (€39 billion). The above mentioned figures show that the problem with the psychosocial risks and their consequences is quite huge in financial, medical and social terms and only coordinated OSH activities can mitigate their negative effects.

5. The Influence of Corporate Social Responsibility to Wellbeing

The raising awareness of CSR activities induces the questions on how socially responsible organizations influence the employee's wellbeing. It is a big challenge for SHRM how to recruit, retain and motivate employees applying socially responsible principles. Nowadays employees are more and more aware of the responsibility of organizations towards society.

The essential approach to CSR has its roots in the stakeholder theory and says that long term value of organization rests primarily on the knowledge, abilities and commitment of its employees and its relationship with investors, customers and other stakeholders.⁴² The role of managers is to satisfy different stakeholders which can influence their organization. According to stakeholders' view it is useful for an organization to engage CSR activities that stakeholders find important in order to get their support for organization.⁴³

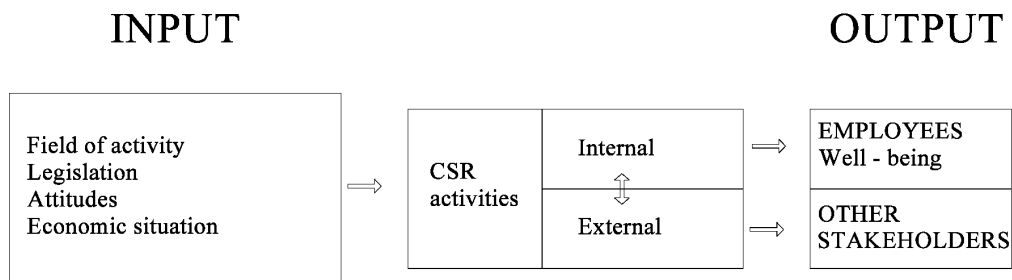
of-work-related-stress-and-psychosocial-risks (07. 04. 2015)

⁴² Wheeler, D., Sillanpää, M (1997): „The stakeholder corporation“, *London: Pitman*, referenced by Tamm Katrin, Eamets Raul, Motsmees Pille (2010): “Relationship Between Corporate Social Responsibility and Job Satisfaction: The case of Baltic Countries”, 9, <http://www.mtk.ut.ee/sites/default/files/mtk/RePEc/mtk/febpdf/febawb76.pdf>, (08 04 2015)

⁴³ Tamm Katrin, Eamets Raul, Motsmees Pille (2010): “*Relationship Between Corporate Social Responsibility and Job Satisfaction: The case of Baltic Countries*”, 9, <http://www.mtk.ut.ee/sites/default/files/mtk/RePEc/mtk/febpdf/febawb76.pdf> (08 04 2015)

The following figure developed by Tamm, et al.⁴⁴ shows the input - output analysis framework which shows the relations between employee's wellbeing and CSR.

Figure 3: CSR in the input - output framework



Source: Tamm Katrin, Eamets Raul, Motsmees Pille (2010): Relationship Between Corporate Social Responsibility and Job Satisfaction: The Case of Baltic Countries, 10, <http://www.mtk.ut.ee/sites/default/files/mtk/RePEc/mtk/febpdf/febawb76.pdf>

The framework has three elements: input, output and CSR activities in the middle. Input to CSR activities represents activities inside the organization which are determined by the general background in economy such as economic situation, legislation, attitudes and the field of activity. Output of CSR activities is related to employees' and other stakeholder's wellbeing. This model tries to connect internal and external social responsibilities. Internal CSR is directly linked to employees' wellbeing and can be measured through job satisfaction indicators which answer what employees expect from the organization. The literature suggests that employees expect that organization demonstrates its social responsibility towards them by guaranteeing considerable rewards and recognition, offering personal development opportunities and work - life balance, ensuring OSH, involvement and empowerment as well as good retirement benefits.⁴⁵ The empirical evidence shows that organizations undertaking CSR actions can face more efficiently the pressures and social demands from the environment and their stakeholders.⁴⁶ If an organization is viewed as socially

⁴⁴ Ibid.

⁴⁵ Maiganan, I., Ferrell, O. C., Ferrell, L. (2005): "A stakeholder model for implementing social responsibility in marketing", *European journal of marketing* 39 (9/10), 956- 977, referenced by Tamm Katrin, Eamets Raul, Motsmees Pille (2010): "Relationship Between Corporate Social Responsibility and Job Satisfaction: The case of Baltic Countries", 12, <http://www.mtk.ut.ee/sites/default/files/mtk/RePEc/mtk/febpdf/febawb76.pdf> (08. 04. 2015)

⁴⁶ Bhattacharya, C., Korschun, D. and Sen, S. (2008): "Strengthening stakeholder- company relationships through mutually beneficial corporate social responsibility initiatives", *Journal*

responsible in favour of the community and is fulfilling its social obligations, employees also tend to assess it responsible towards them.⁴⁷ The empirical research based on the survey of 3637 employees in Estonia, Latvia and Lithuania conducted by Tamm, et al.⁴⁸ has confirmed positive link between CSR and wellbeing of employees. Employees feel more satisfied in the organizations committing themselves more socially responsible. This indicates that developing socially responsible practices can be seen as a means to enhance job satisfaction among the employees. Employees play an important role in implementation of organizational strategies, especially CSR strategies. Referring to Sharma et al.⁴⁹ a strong organizational culture reinforced by responsible HR management practice can ensure high level of success in the market by improvement of employee's satisfaction, their productivity, customer loyalty, legal compliance and the approval of society. SHRM concept mentioned by Martin- Alcazar et al.⁵⁰ represents an evolution of the traditional HR concept towards a new integrative perspective which includes: a vertical link with the strategic management process, a horizontal link with the HR practices and an external link with other organizational and environmental factors. Implementing CSR activities through SHRM helps to retain and motivate employees, and increases their wellbeing and reinforces organizational performance and sustainability.

of Business Ethics, 85/2, 257- 272, referenced by Barrena- Martines Jesus, López- Fernández Macarena, Romero- Fernández, M. Pedro (2011): "Research proposal on the relationship between corporate social responsibility and strategic human resource management", *International Journal of Management and Enterprise Development*, 10/ 2-3, 174

⁴⁷ Tamm Katrin, Eamets Raul, Motsmees Pille, 13

⁴⁸ Ibid., 15

⁴⁹ Sharma, S., Sharma J. and Devi, A. (2009): "Corporate social responsibility: the key role of human resource management", *Business Intelligence Journal*, 2, 205- 213, referenced by Barrena- Martines Jesus, López- Fernández Macarena, Romero- Fernández, M. Pedro (2011): "Research proposal on the relationship between corporate social responsibility and strategic human resource management", *International Journal of Management and Enterprise Development*, 10/ 2-3, 177

⁵⁰ Martin- Alcazar, F., Romero- Fernández, P., Sanchez- Gardey, G. (2005): "Strategic human resource management: integrating the universalistic, contingent, configurational and contextual perspectives", *Int. J. Human Resource Management*, 16/5, 633- 659 & Martin- Alcazar, F., Romero- Fernández, P. , Sanchez- Gardey, G. (2008): "Human resource management as a field of research", *British Journal of Management*, 19/2, 103- 119, referenced by Barrena- Martines Jesus, López- Fernández Macarena, Romero- Fernández, M. Pedro (2011): "Research proposal on the relationship between corporate social responsibility and strategic human resource management", *International Journal of Management and Enterprise Development*, 10/ 2-3, 177

6. Conclusion

Today organizations play a vital role in the development of society and their duties go beyond their economic functions and legal requirements. In order to satisfy stakeholders' expectations they incorporate social, ethical and environmental commitments to their business performance. CSR as a comprehensive concept incorporated into organization strategy increases their competitiveness. In the new global economy, employees have become a central point for organizations as one of the factors to gain competitive advantage.⁵¹ In the past the employee was simply an executor of the given task, but today human capital is in the center of an organization and can significantly contribute to the achievement of organization goals. The development of technology is significant which opens a wide space for competitiveness improvement through investment in human capital. Organizations committed to implement CSR activities into their business performance significantly influence the employee's wellbeing. Wellbeing at work as a comprehensive concept, including well balanced physical, psychical, emotional and social issues inside and outside of a workplace, contributes to the total personal benefit of each employee, as well as to the organization long-term effectiveness and competitiveness.

Literature

- Barrena - Martinez Jesus, López - Fernández Macarena, Romero - Fernández, M. Pedro (2011): "Research proposal on the relationship between corporate social responsibility and strategic human resource management", *International Journal of Management and Enterprise Development*, 10/(2-3), 173- 187
- Bas Abdurrahman (2012): "Strategic HR Management: Strategy Facilitation Process by HR", *Procedia- Social and Behavioural Sciences*, 58, 313- 321
- Carroll B. Archie, Shabana M. Kareem (2010): "The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practise", *International Journal of Management Reviews*, 12/1, 85-105
- Bahtijarević- Šiber Fikreta (2014): *Strateški menadžment ljudskih potencijala, suvremeni trendovi i izazovi*, Školska knjiga, Zagreb
- Bahtijarević Šiber Fikreta, Sikavica Pere, Pološki Vokić Nina, (2008): *Suvremeni menadžment- vještine, sustavi i izazovi*, Školska knjiga, Zagreb
- Danna Karen, Griffin W. Ricky (1999): "Health and Well- Being in the Workplace: A Review and Synthesis of the Literature", *Journal of Management*, 25/3, 357- 384

⁵¹ Zakaria Maziana, Kamaruzaman A. Nik, Ali, Norli, (2014): "The role of wellbeing on performance in service sector", *Social and Behavioural Science*, 164, 359

- De Simone Stefania (2014): "Conceptualizing Wellbeing in the Workplace", *International Journal of Business and Social Science*, 5/12, 118- 122, http://ijbssnet.com/journals/vol_5_no_12_november_2014/14.pdf, (07 04 2015)
- European Commission (2001): *Green Paper: Promoting a European framework for Corporate Social Responsibility*, http://www.google.hr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCUQFjAA&url=http%3A%2F%2Feuropa.eu%2Frapid%2Fpress-release_DO9_en.pdf&ei=FnotVZiGNov XavOGgfgO&usg=AFQjCNF-ef7j_hp0XUAG_mtQ16dSt6dpOQ&bvm=bv.90790515,d.d2s (07. 04. 2015)
- EU OSHA (2014a): Report- Calculating the cost of work- related stress and psychosocial risks, https://osha.europa.eu/en/publications/literature_reviews/calculating-the-cost-of-work-related-stress-and-psychosocial-risks (07. 04. 2015)
- EU OSHA (2014b). Report- Psychosocial risk in Europe prevalence and strategies from prevention, <https://osha.europa.eu/en/publications/reports/psychosocial-risks-eu-prevalence-strategies-prevention> (07 04 2015)
- EU OSHA (2013). Report- Well- being at work: creating a positive work environment, literature review, https://osha.europa.eu/en/publications/literature_reviews/well-being-at-work-creating-a-positive-work-environment, (07 04 2015)
- Friedman Milthon (1970): "The social responsibility of business is to increase its profits", *The New York Times Magazine*, September 13, 122-126, <http://query.nytimes.com/mem/archivefree/pdf?res=9E05E0DA153CE531A15750C1A96F9C946190D6CF>, (07 04 2015)
- Gilani, H.N. Mahnaz, Zadeh, S. Mohamed, Sanderi, R. Hamid (2012): " The Role of Strategic Human Resource Management in Creation of Competitive Advantages (Case Study: A Commercial Organization in Malaysia)", *International Journal of Business and Social Science*, 3/16, 225- 235, http://ijbssnet.com/journals/Vol_3_No_16_Special_Issue_August_2012/24.pdf, (19 03 2015)
- Ivandić Vidović Darija, Karlović Lidija, Ostojić Alen, (2011): *Korporativna sigurnost, Udruga hrvatskih menadžera sigurnosti- UHMS*, Zagreb
- Jain Aditya, Leka Stavroula, Zwetsloot Gerard (2011): "Corporate Social Responsibility and Psychosocial Risk Management in Europe", *Journal of Business Ethics*, 101, 619- 633
- Kotler Philip, Lee Nancy (2009): *Društveno odgovorno poslovanje*, M.E.P. Counsult d.o.o., Zagreb
- Laurinavičius Alfonsas, Romeris Mykolas (2013): " Impact of responsible organisations to ensure socio- economic justice, Industry", *Science and policy makers for Sustainable Future, proceedings of the 14th management International Conference Koper*, Slovenia, 21-23 November 2013, <http://www.fm-kp.si/zalozba/ISBN/978-961-266-148-9/papers/MIC1099.pdf> (08. 04. 2015)
- Lapina Inga, Maurane Gunta, Starineca Olga (2014): " Human resource management models:aspects of knowledge management and corporate social responsibility", *Social and Behavioural Sciences*, 110, 577- 586

- Omazić A. Mislav (2007): *Društvena odgovornost i strategije hrvatskih poduzeća*, PhD Thesis, University of Zagreb, Faculty of Economic and Business.
- Oraman Yasemin, Unakitan Gökhan, Selen Ufuk (2011): “Measuring Employee Expectations in a Strategic Human Resource management Research: Job Satisfaction”, *Social and Behavioural Sciences*, 24, 413 – 420
- Polášek David (2010): *Corporate Social Responsibility in Small and Medium Sized Companies in the Czech Republic*, PhD Thesis, Czech management Institute Praha, Faculty of Management, Escuela Superior de Marketing y Administración Barcelona, www.csr-online.cz/wp-content/uploads/2012/.../DP_David_Polasek.doc., (31 03 2015)
- Tamm Katrin, Eamets Raul, Motsmees Pille (2010): “Relationship Between Corporate Social Responsibility and Job Satisfaction: The case of Baltic Countries”, <http://www.mtk.ut.ee/sites/default/files/mtk/RePEc/mtk/febpdf/febawb76.pdf>, (08 04 2015)
- Wisser Wayne (2007): “Revisiting Carroll’s CSR Pyramid: An African Perspective”, In A. Crane & D. Matten (eds.), *Corporate Social Responsibility: Three Volume Set*, London: Sage, http://www.waynevisser.com/wpcontent/uploads/2012/04/chapter_wvisser_africa_csr_pyrami_d.pdf, 195-212., (29 03 2015)
- Zakaria, Maziana, Abdulatiff K. Nik, Ali Norli (2014): “The role of well-being on performance in service sector”, *Social and Behavioural Science*, 164, 358- 365

Karmen Dežmar Krainz, doktorand

Hrvatski institut za zaštitu zdravlja i sigurnost na radu,
Zagreb, Hrvatska

UNAPREĐIVANJE BLAGOSTANJA ZAPOSLENIH U KONTEKSTU DRUŠTVENE ODGOVORNOSTI

S a ž e t a k

Tokom poslednjih 25 godina, tehnološki razvoj je uticao na ubrzanje procesa globalizacije što je izazvalo dramatične promene unutar i između organizacija. Poslovanje varira, kompleksno je, globalno i menja se brže nego ikada ranije. Tokom vremena, očekivanja društva su se izmenila, promene su uticale na potrošače, poslovne partnere kao i na zaposlene. Da bi opstale na globalnom tržištu, kompanije uključuju korporativnu društvenu odgovornost u svoje poslovanje sa ciljem osnaživanja njihove konkurentske pozicije. U ekonomiji znanja, u kojoj je znanje značajan resurs i tražnja za obrazovanim radnicima raste, zaposleni postaju najznačajniji i, u stvari, jedini preostali realni izazov konkurentske sposobnosti. Blagostanje na radnom mestu uključuje mentalne, psihološke i emocionalne aspekte života zaposlenih. Svest menadžmenta o blagostanju zaposlenih, koja uzima u obzir zadovoljstvo zaposlenih, njihovo zdravlje i profesionalno napredovanje je efikasan pristup jačanju organizacionog poslovanja. Cilj ovog rada je da analizira i proceni kako društveno odgovorna orijentacija inkorporirana u stratejski menadžment ljudskih resursa može da doprinese postizanju blagostanja zaposlenih. Stratejski menadžment ljudskih resursa uključuje neophodnu koordinaciju između različitih aspekata zdravlja zaposlenih i njihovih radnih performansi. Ova koordinacija doprinosi ravnoteži između privatnog i profesionalnog dela života. Društveno odgovorne aktivnosti koje su koordinisane posredstvom stratejskog menadžmenta ljudskih resursa značajno doprinose blagostanju zaposlenih kao i konkurentnosti organizacije.

Ključne reči: korporativna društvena odgovornost, stratejski menadžment ljudskih resursa, blagostanje, konkurentnost

EMPLOYEE BENEFITS IN MULTINATIONAL FIRMS: EMPIRICAL EVIDENCE FOR ROMANIA AND SERBIA

The paper aims to analyse post-employment benefits provided by multinational firms, focusing on retirement advantages and pension systems in Romania and Serbia from a comparative empirical perspective. Economic literature highlights the essential role played by pension schemes in assuring a proper level of income after retirement, thus reducing poverty and increasing productivity, with significant positive implications upon overall economic activity. Our research is based on developing several double-log fixed and random effects models, as well as a dynamic and distributed lags model, using a panel structure over the 2005-2013 period and a complex set of indicators (national accounts – GDP total and per capita; labour market – employment, unemployment, productivity, earnings; secondary and tertiary education; pension specific data – general beneficiaries, old age and survivor pensioners, total and by gender, and pension expenses as percentage of GDP). The results show that pensions represent an incentive for employees leading to an increase in resource productivity. At the same time, old age pensions are positively shaping economic growth and employment for the two countries considered, significantly reducing the poverty rate for pensioners. Nevertheless, the two pensions systems are modelled by the economic activity, educational background of employees, as well as by the level of net earnings.

Key words: Employee benefits, Economic growth, Earnings, Pension system, Productivity

1. Introduction

Employee benefits represent a complex set of incentives granted by employers (companies and various entities) in order to acquire and maintain their workers and to increase security and labor productivity within the framework of a spe-

* Margareta Caran, PhD Student, Faculty of Economics and Business Administration, West University of Timisoara, Romania, e-mail: margareta.maggie@yahoo.com

** Gratiela Georgiana Noja, PhD Lecturer, Faculty of Economics and Business Administration, West University of Timisoara, Romania, e-mail: gratiela.noja@e-uvr.ro

cific job¹. During the last few years, the budgets allocated for employees (human resources) have significantly decreased within the unfavorable economic context shaped by the global economic and financial crisis. Thus, employers transfer the costs of employee accounting and the entire process of adopting these types of decisions towards their workers. This procedure determined entities to become more creative in their efforts to stay competitive in hiring and maintaining their employees. Moreover, employers continue to shape their employee benefits schemes, by insuring a higher responsibility to workers for their coordination.

Overall, according to the 2012 report of the Society for Human Resource Management, the pre-defined pension plans based on employee contributions represent one of the most common and important post-employment advantages granted by firms (92%), followed by saving schemes (34%) or traditional pension plans (21%). In the case of pre-defined pension plans, the employer states that he will contribute with a certain fixed amount or even that he won't contribute at all to the individual account of the employee. Thus, the employee takes the risk of investing in these pension schemes since the values of performed investment through the pension account can decrease with time. Within this context, globally there are about 68% of the companies ensuring a similar scheme for all or even just for certain employee contributions and 66% of the companies granted loans for pre-defined pension plans based on contributions. These types of loans allow participants to borrow from the pension savings through specific types of developed schemes. Moreover, 39% of the companies have automatically subscribed their workers in pre-defined pension schemes, except for the case when they specifically mentioned that don't want to be caught in these types of systems.

Pre-defined benefits pension plans differ from pension schemes based on contributions through the fact that the employer promises to pay a certain benefit until worker's retirement, the amount granted being established according to specific factors such as age, earnings or working hours. Nevertheless, employers take the investment risk because they will have to pay the promise amount independently from the performance of investment plan. Globally, a relatively low share of companies (about 12%) have reported a temporary blockage of these pension schemes in 2012, thus making them unavailable for new employees.

¹ Banerjee Dina, Perrucci Cummings Carolyn (2012): "Employee Benefits and Policies: Do They Make a Difference for Work/Family Conflict?", *Journal of Sociology & Social Welfare*, 39(3).

Table 1: Types of employee benefits granted to workers under the form of pension plans and schemes by various companies globally, 2008-2012

Retirement (pension) benefits	% of companies offering employee benefits globally				
	2008	2009	2010	2011	2012
Pre-defined contribution pension plans	84%	90%	92%	93%	92%
Similar pension schemes of employers for pre-defined contribution pension plans of employees	75%	72%	72%	70%	68%
Loans granted based on pre-defined contribution pension plans	69%	69%	69%	69%	66%
On-line investment consultancy	-	-	-	-	55%
Personal investment consultancy	40%	38%	40%	42%	44%
Group investment advices and consultancy	-	-	-	-	41%
Automated subscribing for pre-defined contribution pension plans	32%	35%	39%	41%	39%
Planning advices and preparing for retirement	38%	35%	39%	37%	39%
Pension plans available for all employees	33%	29%	27%	22%	21%
Equilibrated pension plans granted in cash	9%	6%	9%	8%	6%
Formally defined pension plans	6%	6%	6%	5%	5%
Informally defined pension plans	-	-	-	-	5%
Pre-defined contribution pension plans based on debit cards	-	1%	2%	1%	2%

Source: Society for Human Resource Management (SHRM), 2012 *Employee benefits: A Research Report*, The Employee Benefits Landscape in a Recovering Economy.

Taking into account all these aspects, the research performed within this paper has a *double objective*: (i) *first*, the identification and highlight of post-employment benefits focusing on retirement, respectively on the existing pension plans and schemes in Romania and Serbia and the specific labor market mechanisms related to pension incentives and their linkages to labor productivity; (ii) *second*, performing an empirical analysis in order to identify and assess pension systems shaping factors for the two countries considered, as well as the impact of pension plans on economic activity and growth, long term economic development, labor market stability, productivity and earnings.

2. Literature review on employee benefits

The International Accounting Standard – IAS 19 describes the main types of employee benefits, including: (i) *short-term benefits*, such as wages, weekly rewards and social security contributions, paid annual and sick leave, bonuses, profit participation, as well as other non-monetary advantages, such as medi-

cal care, cars or other free goods and services provided by entities; (ii) *post-employment benefits*: pensions, other retirement advantages or post-employment medical assistance; (iii) *other long-term benefits*, including long-service leave and other long-service advantages, disability benefits, bonuses, profit-sharing and deferred compensation; (iv) *termination benefits*.

Post-employment benefits in the economic literature

The labor market and pension analysis within the new institutional economy perspective² highlights the importance of modeling the labor market policies and practices through effective and efficient solutions of productivity increase, generated by asymmetric or incomplete information. Economists applied this approach on employment factors and wages, such as labor earnings, inter-industrial wage differentials, bonuses and incentives for anticipated early retirement.³

Pensions represent one of the most important labor market institutions, assuring a high and increasing percentage of income for pensioners. The internal perspective on labor markets highlights that pensions generate incentives which promote labor productivity, along with insuring the necessary means for saving during the pension period. Employees involved into a pension scheme are maximizing their welfare in retirement by working without interruption during their entire lifetime until they reach the retirement age.⁴ The pension income is a result of the four specific pillars supporting elderly people, such as redistributive public pensions (pay as you go), private pensions with fund accumulation, private direct savings and post-retirement work.⁵

Economic theories on retirement reveal that the process of granting pensions by the government after retirement has a negative impact on savings during their active labor market participation and lifetime. Therefore, public and private pension plans are the main essential sources to provide the necessary income for the retirement period. In this context, the main indicators used to analyze the performance of various pension plans/ schemes are generally the dependency rate, respectively the fraction between the total number of pensioners and total active population, as well as the output and efficiency of assets accumulated in pension funds or labor productivity.

Taking into consideration all these aspects, we can highlight that globally there are two main types of pension schemes, respectively: (i) the pay as you go

² Simon Herbert (1991): "Organizations and Markets", *Journal of Economic Perspectives*, American Economic Association, 5(2).

³ Dorsey Stuart, Cornwell Christopher, Macpherson David (1998): "Pensions and the Labor Market", in *Pensions and Productivity*, Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 2.

⁴ Clark Robert, Morrill Melinda Sandler, Vanderweide David (2013): "Defined benefit pension plan distribution decisions by public sector employees", *Journal of Public Economics*.

⁵ Beju D. (2007): "Coordonate ale reformei sistemului de pensii: cazul României", *Transylvanian Review of Administrative Sciences*, 17.

pension system, based on long term savings and resource transfer from young to elderly people and (ii) accumulating funds pension system, which is also a long term saving program, but it implies resource transfer from youth to seniority.

Economic theories on pensions generally conduct the hypothesis that pension schemes increase labor productivity. This offer perspective follows the economists' assumption that pension incentives should generate sufficient added value in order to cover the costs. The constraints applied upon workers' ability to get more attractive jobs or to retire when they desire are extremely expensive, requiring that employers should pay compensation wages in order to attract employees. Employers can also attract workers at a lower cost by offering pension contributions if within those firms the pension incentives don't have productive functions.

In a different perspective outside the economic literature, the possibility for pension to be an instrument that promotes productivity is intentionally ignored or eliminated from the research and debates on pensions and retirement policies. The human resources approach observes pensions as being almost totally coordinated by the preferences of employees. Thus, the imperfect portability of advantages was mainly presented as a disadvantage of pre-defined benefit schemes, rather than a voluntary compensation policy. Nevertheless, pensions are usually discussed within the context of employee benefits, focusing on insuring them the retirement security. This perspective presents pensions exclusively as a mean to insure the necessary income for the after-retirement period.

At the same time, Lazear (1990)⁶ concluded that managers view pensions under the form of saving instruments for the after-retirement period, suggesting that they fail to understand the implications of pension incentives on output/ labor productivity, respectively the way in which these might have a strategic value. The economic literature points out the utility of pension incentives and instruments for companies and employees. Still, economists often characterize the penalties given for dropping the pension as barriers to an efficient mobility between jobs.⁷ Nevertheless, Mulvaney (2011)⁸ describes two major arguments for legal reinforcement of pension portability: (i) *first*, a high portability could increase pension benefits for those workers which, for various reasons, have experienced frequent job changes; (ii) *second*, the non-portability reduces labor productivity because it links workers to their job where productivity decreased due to various changes in consumer behavior and preferences or technological shocks.

⁶ Lazear Edward (2000): "Performance Pay and Productivity", *American Economic Review*, American Economic Association, 90(5).

⁷ Dorsey et al., 5.

⁸ Mulvaney Michael (2011): „A Study of the Role of Family-Friendly Employee Benefits Programs, Job Attitudes, and Self-Efficacy among Public Park and Recreation Employees”, *Journal of Park and Recreation Administration*, 29(1).

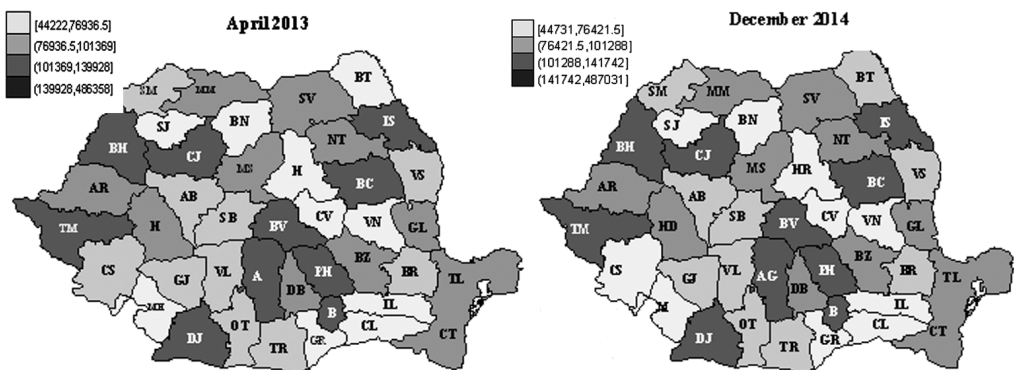
3. Employee benefits as pensions in Romania and Serbia: a comparative analysis

The Romanian and Serbian socio-economic and demographic context during the last decade reveals the importance of pension systems and social security benefits that can ensure the necessary income for the after-retirement period, as well as significant employee advantages legally reinforced.

In Romania, according to official data provided by the National House of Public Pensions, in December 2014 there were 4692711 pensioners, of which 3360361 were old-age pension beneficiaries, 21062 had an anticipated pension, 91089 had a partial anticipated pension, 686619 were disability pension beneficiaries and 532943 were survivor pensioners. At the same time, 637 people received social help of which 70% were females and 3675 people were comprised in a special category of invalidity and war widower's pension. Moreover, compared to the same period of previous year, there is a slight increase in pension values for Romania, especially in the case of old-age and anticipated pensions, while the disability and survivor pensions have increased at a much lower rate.

If we take into consideration the district distribution of the number of pensioners in Romania during 2013, we can observe that the districts with the highest number of pensioners are Timiș, Bihor, Cluj, Dolj, Argeș, Brașov, Prahova, Iași, Bacău and Bucharest, while a smaller number of pension beneficiaries are registered in Mehedinți, Sălaj, Bistrița-Năsăud, Harghita, Covasna, Giurgiu and Călărași. At the end of 2014, the geographical distribution of the number of pensioners in Romania is almost similar to the one registered in the previous year, with small changes for two districts, respectively Botoșani and Caraș-Severin.

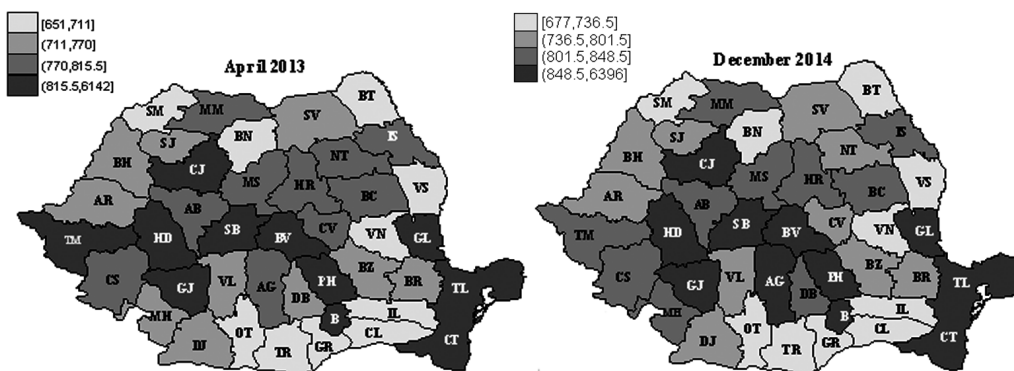
Figure 1: *Distribution by districts of the number of pensioners, total social security contributions in Romania*



Source: own process of statistical data published by the National House of Public Pensions in Stata 11

In 2014 the pension value remained unchanged compared to the previous year in almost all Romanian administrative counties, except for Bihor county where the average pension value overall social security registered a slight decrease.

Figure 2: *Average pension overall social security contributions by Romanian administrative counties*

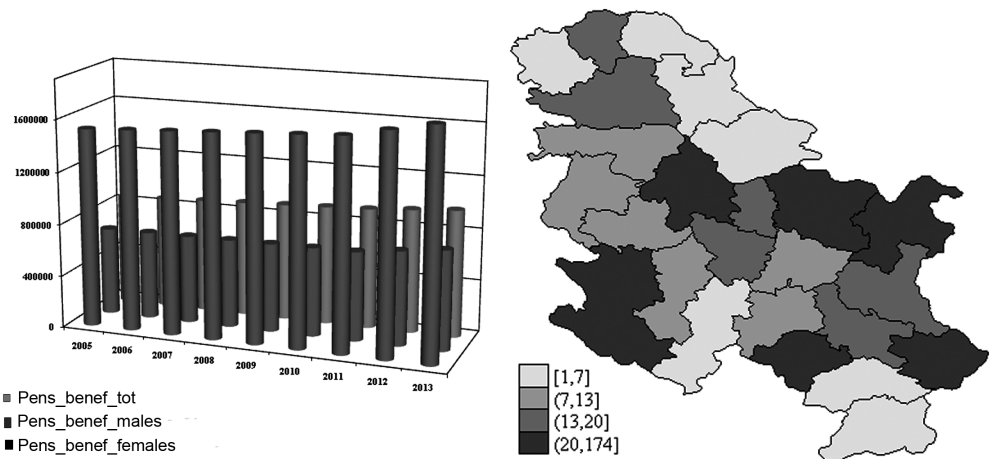


Source: own process of statistical data published by the National House of Public Pensions in Stata 11

The analysis performed based on pension indicators for Serbia during 2005-2013 highlights that there are three major types of pensions granted, respectively old-age, disability (invalidity) and survivor pensions. In 2013, Serbia registered a total number of about 1.74 million pension beneficiaries, most of which were women (about 970000). During 2005-2013 the evolution of pension beneficiaries was relatively stable, with an increasing trend especially in the second part of the period, respectively 2012 and 2013.

In the case of old-age pension beneficiaries, during 2005-2013 the number of pensioners has significantly increased, from about 950000 to 1.22 million people, most of them being males. In 2010, from the total number of pensioners in Serbia, more than half were old-age pensioners (55.3%), while 22.6% of the total pension beneficiaries have had disability pensions and 22.1% of the total pensions granted were survivor pensions.

Figure 3: Pension beneficiaries in Serbia, 2005-2013, total types of pensions and according to gender (right), respectively the employment density (employees by km2) in 2013 (left)



Source: own process of data published by the Statistical Office of the Republic of Serbia

Within this framework, we can state that, even though during the last few years the percentage of old-age pension beneficiaries has increased significantly, still, it remains at a low unfavorable level. The context is even more unstable in the case of employees as major type of insurance, where the percentage of old-age pensioners has reached 50% only in 2008. Nevertheless, the number of pensioners with disability pension registered a decline during 2005-2013, both in absolute and relative terms.

4. Methodology and data: developed models, ecuations, limits and testing

4.1. General form of developed models

The model developed for the analysis of pension systems determinants and shaping factors has the general form of a multiple regression model with panel data. Thus, for panel data, the general linear representation of the model is described as follows⁹:

$$y_{it} = \sum_{k=1}^k x_{kit} \beta_{kit} + \varepsilon_{it}$$

$$i = 1, \dots, N$$

$$t = 1, \dots, T$$
(I)

⁹ Baum F. Christopher (2001): *An Introduction to Modern Econometrics Using Stata*, Stata Press, 219.

where: N represents the number of panel units (countries), while T signifies the number of periods (time).

The *fixed effects model* has the following representation¹⁰:

$$y_{it} = x_{it}\beta_k + z_i\delta + u_i + \varepsilon_{it} \quad (2)$$

where x_{it} is a $1 \times k$ vector of variables varying between countries and in time, β represents a $1 \times k$ vector of x coefficients, z_i is a $1 \times p$ vector of the variables that are constant in time, but vary between countries (as elements of the panel), δ represents a $p \times 1$ vector of z coefficients, u_i is the individual effects, for every element of the panel, and ε_{it} is the disturbance term.

The *random effects model* has the following representation¹¹:

$$y_{it} = x_{it}\beta + z_i\delta + (u_i + \varepsilon_{it}) \quad (3)$$

where: $u_i + \varepsilon_{it}$ represents the compounded disturbance term, and u_i reflects the individual effects.

The general form of the developed model comprises several explanatory variables used within the analysis of the pension systems shaping factors and economic impact for considered panel countries:

$$Y_{it} = \beta_1 X_{1it} + \beta_2 X_{2it} + \beta_3 X_{3it} + \dots + \beta_k X_{kit} + \varepsilon_{it}, i = 1, \dots, n \quad (4)$$

The proposed model uses the logarithm of the variables in order to capture a precise estimation of parameters, respectively of the influence of different variables on the emigration process, thus taking the general form of a *double-log model*, with the following configuration:

$$\log(Y_{it}) = \beta_1 \log(X_{1it}) + \beta_2 \log(X_{2it}) + \beta_3 \log(X_{3it}) + \dots + \beta_k \log(X_{kit}) + \varepsilon_{it}, i = 1, \dots, n \quad (5)$$

The model's general equation can be rewritten under the following form taking into consideration the shaping factors of pension systems:

$$\begin{aligned} PBT_{it} &= \beta_0 + \beta_1 GDP_{tot_{it}} + \beta_2 UR_{it} + \beta_3 NE_{it} + \beta_4 EDtert_{it} + \varepsilon_{it} \\ PBT_{it} &= \beta_0 + \beta_1 GDP_{cap_{it}} + \beta_2 UR_{it} + \beta_3 NE_{it} + \beta_4 EDtert_{it} + \varepsilon_{it} \end{aligned} \quad (6)$$

where:

PBT = Pension Beneficiaries, total types of pensions; this pension specific indicator is used alternatively with the number of old-age pensioners (PBOA),

¹⁰ Baum F. Christopher, 220.

¹¹ Baum F. Christopher, 227.

individually and cumulated with the survivor pension (PBOAS), total and according to gender;

GDPtot = total Gross Domestic Product in absolute terms, mil. Euro;

GDPcap = Gross Domestic Product per capita, Euro;

UR = Unemployment Rate, %;

NE = Net Earnings, Euro;

EDtert = First stage of tertiary education, programmes that are theoretically based/research preparatory or giving access to professions with high skills requirements (level 5A).

Our developed model comprises, through its explanatory variables and accordingly to the literature, the determinants and shaping factors of the pension systems as post-employment benefits. Thus, within our empirical analysis, we focus on the country specific elements, by assessing the *push factors*, and to a smaller extent on the *pull factors* shaping pension levels and the number of pension beneficiaries. Nevertheless, our performed analyses take into consideration the particularities and characteristics of the economic activity, economic growth and the level of economic development and macroeconomic stability for considered panel countries, as well as the labor market elements (unemployment, earnings), respectively the educational background.

4.2. Variables and indicators used for the empirical analysis

The general set of indicators used for the empirical research of shaping factors of post-employment benefits as pension systems, as well as pension impacts on Serbian and Romanian economies (especially on productivity, labor market and poverty for pensioners) comprises:

i) *pension specific indicators*: the number of pension beneficiaries at 31st December during 2005-2013; the number of pensioners on overall pension schemes – total and according to gender (females and males); the number of old-age pensioner – total and according to gender (females and males); cumulated number of old-age and survivor pension beneficiaries; pension values; expenses on pension funds as percentage of GDP;

ii) *macroeconomic and labor market indicators*: total (mil. Euro) and per capita (Euro) gross domestic product; resource productivity (Euro per kg); at-risk-of-poverty rate for pensioners; employment and unemployment rates (%); net earnings (Euro), tertiary education level.

We used national data sources for pension and labor market specific indicators covering the 2005-2013 period, respectively the Eurostat Database of the European Commission for macroeconomic and productivity indicators.

All developed models and data were processed through Stata 12 econometric package.

5. Results and discussions

The empirical analysis conducted for the assessment of pension systems in Romania and Serbia has a *double objective*: (i) *first*, to highlight the shaping factors of the pension systems for the two countries considered and (ii) *second*, to evaluate the impact of pension schemes on the economic activity, productivity, and labor market. The main research limit for the performed empirical analysis is the lack of proper data detailed on long time series regarding the pension indicators, mainly for Serbia. Thus, in order to complete the database and provide accurate results for our developed models, we proceeded to interpolation and extrapolation in the early phase of the research for Serbian pension indicators.

5.1. Shaping factors of pension systems in Romania and Serbia

In order to identify and assess the shaping factors of pension systems in Romania and Serbia we developed a complex set of double-log macroeconometric models, based on various macroeconomic and pension specific indicators. The models were processed based on random and fixed effects through least squares method, respectively OLS (*Ordinary Least Squares*) for the fixed effects models (*FE – Fixed Effects Models*) and GLS (*Generalized Least Squares*) in the case of random effects models (*RE – Random Effects Models*). Moreover, we used the MLE – *Maximum Likelihood Estimator* to consolidate and verify the accuracy of estimated coefficients through a different method and we processed all developed models using robust standard errors. The results are synthesized and presented in *appendix 1*.

Taking all these into consideration and based on the literature review we developed four sets of double-log models based on random effects and maximum likelihood estimations. The first set of econometric models focuses on total gross domestic product in absolute terms (GDPtot), along with other indicators, respectively unemployment (UR), net earnings (NE) and the educational level (EDtert), while the second set is centered on the use of per capita GDP (GDPcap) along with the same labor market indicators in different combination.

As regarding the use of pension specific indicators, we took into account the number of old-age pension beneficiaries (PBOA), individually and cumulated with the survivor pension (PBOAS), total and according to gender.

The results obtained after processing these models based on GLS for random effects and maximum likelihood estimations are almost similar regarding the coefficients, slightly differences being registered only in the case of standard

errors of parameters associated with every model. Thus, we can observe that the level of statistical significance for the coefficients estimated through least squares (GLS) and maximum likelihood (MLE) methods is very high, mostly at 0.1%. At the same time, if we analyze the values of Wald tests for multiple regression models (especially model 5 and model 7), we can point out that all explanatory variables have a significant joint influence on pension specific indicators as dependent variables, these results being extremely important for correct specification of the model. Nevertheless, we used the correlation matrix and Stata algorithms for the multicollinearity hypothesis and Breusch Pagan test for homoscedasticity, the results being thus valid.

Through the perspective of the results obtained we can highlight the importance of economic activity in shaping pension systems in Romania and Serbia, the empirical analysis suggesting that there is evidence to attest that a 1% increase in the level of total GDP could lead to a 0.918% increase in the number of old-age pension beneficiaries, while the similar improve in per capita GDP could induce a significant increase in the number of old-age pensioners by 1.933%.

Moreover, an increase in unemployment rates may induce a perception of uncertainty for a specific job or the impossibility of finding one at an advanced age, these elements could then lead to an early retirement decision, thus increasing the number of old-age pensioners (with about 0.5%). At the same time, an improvement in the level of net earnings represents a significant incentive to remain active within the labor market, thus reducing the total number of pension beneficiaries, as well as the old-age pensioners with about 1.5%, according to the results presented in appendix 1. Still, the per capita income increase implies an improvement of living standards and the assurance of financial resources vital for after-retirement period, thus leading to an increase in the total number and old-age pensioners.

5.2. *The impact of pensions as post-employment benefits on economic growth and the labor market*

In order to assess the impact of pension systems on Romanian and Serbian economies, by following the economic literature and specific methodology, we developed a set of eight models processed based on fixed effects (FE) and random effects (RE) through least squares method (*Ordinary Least Squares* – OLS for FE models and *Generalized Least Squares* – GLS for RE models). The models are based on two fundamental pension indicators, respectively the total number of old age pension beneficiaries and the cumulated number of old-age with survivor pensioners. The results obtained are synthesized and presented in appendix 2.

Thus, we analyzed the pension impact on resource productivity (*model 1*), on net earnings (*model 2*), on the labor market through unemployment rate (*model 3*) and employment rate (*model 4*), as well as on the overall economic activity and

living standards through at-risk-of-poverty rate for pensioners (*model 5*), total (*model 6*) and per capita (*model 7*) GDP, respectively on tertiary education level (*model 8*).

In order to validate the models following OLS (Ordinary Least Squares) and GLS (Generalized Least Squares) basic hypotheses for BLUE (Best Linear Unbiased) estimators, we performed the correlation matrix and take use of Stata algorithms for the multicollinearity hypothesis, as well as the Breusch Pagan test for homoscedasticity, and Wooldridge test for serial correlation, the results being thus valid. Nevertheless, the Hausman test applied in order to differentiate the fixed from random effects estimates validated the results of random effects models.

The accuracy of estimated coefficients is also validated through the high level of statistical significance, mostly at 0.1%, as well as through the level of R-square and its adjusted values, Fisher and Wald tests. Thus, especially in the case of model 6, 7 and 8 which comprise the overall economic activity, the R-squared values highlight that more than 50% (about 90% in the case of model 6 – total GDP) in the variation of old-age pensioners, both individually and cumulated with the survivor pension beneficiaries could be explained by the selected explanatory variables.

Our results comply with the economic literature highlighting that post-employment benefits such as pensions can lead to an increase in productivity, earnings and improve the living standards, as well as the educational level. Thus, there is evidence to attest that an increase in the number of old-age pensioners for the two countries considered can lead to a 0.088% increase in productivity and a 0.351% increase in the level of net earnings. The positive effects of such a measure are also reflected in a total GDP increase by 1.041% and a per capita GDP increase by 0.275%, reducing at the same time the at-risk-of-poverty rate for pensioners by 0.265%. Moreover, a 1% increase in the old-age number of pensioners (a quantitative perspective) generates positive labor market impacts mainly through a significant reduction in unemployment rates by 0.573% and a slight increase in employment rates by 0.082%.

The positive impact is also revealed by an improvement in educational levels, the increase in the number of old-age pensioners leading to a significant increase in the number of persons finishing the first stage of tertiary education, respectively those programmes that are theoretically based/research preparatory or giving access to professions with high skills requirements.

Similar tendencies and impacts can be observed if we take into account the number of survivor pensioners.

6. Concluding remarks

The comparative analysis of employee benefits granted by various entities in Romania and Serbia highlights the importance given during the past few years to post-employment benefits, especially retirement advantages and pensions, locally and globally, as well as to the sustainability of the pension systems and to various measures that should be adopted and implemented to insure transparency and to facilitate a possible change in pension indexation methods.

The empirical research performed in order to assess the shaping factors and economic impacts of pension systems in Romania and Serbia complies with the major issues revealed by the literature and highlights that pensions can lead to positive economic effects, having a major impact on labor and resource productivity, labor market stability and general population welfare.

From the empirical perspective, our results point out that the main shaping factors of Serbian and Romanian pension systems are the level of total and per capita GDP, the labor market stability and the level of net earnings. Thus, there is a positive impact of the economic activity in shaping the pension systems for the two countries considered. An improvement in the living standards could lead to an increase in the number of pension beneficiaries due to a certain level of income for pensioners after their retirement. Nevertheless, labor market instabilities reflected mainly through a high level of unemployment could lead to an increase in the number of pensioners for Romania and Serbia.

The economic impact of pension schemes in Romania and Serbia is confirmed by the results and complies with the economic literature highlighting that post-employment benefits such as pensions granted by companies represent important incentives that increase employment, productivity and education, leading to economic growth. The results also point out that an increase in the number of old-age pensioners can reduce unemployment, having positive effects on total and per capita GDP, respectively on living standards through a significant reduction of the poverty rate for pensioners.

Literature

- Banerjee Dina, Perrucci Cummings Carolyn (2012): "Employee Benefits and Policies: Do They Make a Difference for Work/Family Conflict?", *Journal of Sociology & Social Welfare*, 39(3), 131-147.
- Baum F. Christopher (2001): *An Introduction to Modern Econometrics Using Stata*, Stata Press.
- Beju D. (2007): "Coordonate ale reformei sistemului de pensii: cazul României", *Transylvanian Review of Administrative Sciences*, 20, 16-32.

- Clark Robert, Morrill Melinda Sandler, Vanderweide David (2013): "Defined benefit pension plan distribution decisions by public sector employees", *Journal of Public Economics*, 1-16.
- Dorsey Stuart, Cornwell Christopher, Macpherson David (1998): "Pensions and the Labor Market", in *Pensions and Productivity*, Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 1-12.
- Lazear Edward (2000): "Performance Pay and Productivity", *American Economic Review*, American Economic Association, 90(5), 1346-1361.
- Mulvaney Michael (2011): „A Study of the Role of Family-Friendly Employee Benefits Programs, Job Attitudes, and Self-Efficacy among Public Park and Recreation Employees", *Journal of Park and Recreation Administration*, 29(1), 58-79.
- Simon Herbert (1991): "Organizations and Markets", *Journal of Economic Perspectives*, American Economic Association, 5(2), 25-44.
- Society for Human Resource Management (SHRM): *2012 Employee benefits: A Research Report*, The Employee Benefits Landscape in a Recovering Economy.
- International Accounting Standard 19 – IAS 19 – *Employee Benefits*.
- International Accounting Standard 26 – IAS 26 – *Accounting and Reporting by Retirement Benefit Plans*.
- National House of Public Pensions in Romania, Department of Projects, Studies and Analyses, Monthly Statistics, Pillar I.
- European Commission, *Eurostat Database*, EU LFS, National Accounts, Labor Market, Demography - Population.
- Statistical Office of the Republic of Serbia.

Margareta Karan, student doktorskih studija

Fakultet za ekonomiju i poslovnu administraciju,

Zapadni univerzitet u Temišvaru, Rumunija

Dr Gratiela Đordijana Noja

Fakultet za ekonomiju i poslovnu administraciju,

Zapadni univerzitet u Temišvaru, Rumunija

EMPIRIJSKA KOMPARATIVNA ANALIZA BENEFICIJA ZA ZAPOSLENE U MULTINACIONALNIM KOMPANIJAMA: PRIMERI RUMUNIJE I SRBIJE

S a ž e t a k

Ovaj rad ima za cilj da analizira beneficije koje zaposlenima posle prestanka radnog odnosa obezbeđuju multinacionalne kompanije, s akcentom na pogodnostima za penzionisanje i penzioni sistem u Rumuniji i Srbiji. Ekonomska literatura ističe bitnu ulogu programa penzionisanja u osiguranju odgovarajućeg nivoa dohotka posle penzionisanja, u cilju smanjivanja siromaštva i povećanja produktivnosti, sa značajnim pozitivnim efektima na sveukupnoj ekonomskoj aktivnosti. Naše istraživanje je zasnovano na razvoju nekoliko dvostrukih logaritamskih modela sa fiksnim i slučajnim efektima kao i dinamičkog modela sa raspoređenim vremenskim pomakom, koristeći panel strukturu za period 2005–2013. i kompleksan set indikatora (nacionalni računi – BDP ukupno i po stanovniku; tržište rada – zaposlenost, nezaposlenost, produktivnost, zarade; srednje i visoko obrazovanje; specifični podaci za penzije – opšti korisnici, starosne penzije i minimalne penzije, ukupno i po polu, kao i troškovi za penzije kao procenat BDP). Rezultati pokazuju da penzije predstavljaju podstrek za zaposlene utičući na porast produktivnosti rada. Istovremeno, starosne penzije pozitivno utiču na privredni rast i zaposlenost u obe ispitivane zemlje, značajno smanjujući stopu siromaštva penzionera. Ipak, oba penziona sistema su modelirana prema ekonomskoj aktivnosti, obrazovanju zaposlenih kao i prema nivou neto zarada.

Ključne reči: beneficije za zaposlene, privredni rast, zarade, penzioni sistem, produktivnost

UGOVOR O DOŽIVOTNOM IZDRŽAVANJU (neke specifične karakteristike)

Ovaj rad se bavi proučavanjem jednog od najsloženijih pravnih poslova savremenog srpskog prava. Budući da se radi o složenom pravnom poslu, prvo smo naveli hronologiju zakonskog regulisanja ugovora o doživotnom izdržavanju, bavili smo se njegovim pojmom kao ugovorom obligacionog prava. Pravnom analizom pojma ugovora utvrdili smo da se radi o ugovoru koji je imenovan, dvostrano obavezan i teretan, da se zaključuje s obzirom na posebna svojstva ličnosti, da je ugovor sa trajnim izvršenjem obaveze i da je formalan ugovor. Pri tome smo naveli njegove specifičnosti u odnosu na predstavljene karakteristike, što je i bio cilj rada. Takođe, govorili smo o doživotnom izdržavanju koje predstavlja specifičnu obavezu davaoca izdržavanja, dok se specifična obaveza primaoca izdržavanja odnosi na njegovu obavezu da posle svoje smrti na davaoca izdržavanja prenese svojinu na određenim stvarima ili kakvim drugim pravima. Takođe, u radu je bilo govora o sukcesiji prava na davanje i primanje izdržavanja u slučaju smrti davaoca izdržavanja. U istraživanju smisla i domašaja ovog pravnog instituta, korišćen je pravni metod u analizi zakonskih normi kojima je regulisan. Tumačeći zakon primenili smo gramatičko tumačenje, istorijsko tumačenje i ciljno tumačenje. Ispitujući pozitivno pravo (de lege lata), bavili smo se i budućim pravom (de lege ferenda) ovog pravnog instituta. Iz rezultata istraživanja dolazi se do zaključka da se kod ovog ugovora radi o obligacionim odnosima kompleksne sadržine, koji se neprestano menjaju, takoreći iz dana u dan, pa ni najveći poznavaoци prava – zakonodavac, sudije, pravni pisci, pravni praktičari ili ugovorne strane nisu u mogućnosti da ih sve predvide.

Ključne reči: ugovor, specifičnost ugovora o doživotnom izdržavanju, doživotno izdržavanje, primalac izdržavanja, davalac izdržavanja

* Prof. dr Dušan Novaković, Fakultet za pravo, javnu upravu i bezbednost, Megatrend univerzitet, Beograd, e-mail: du sannovakovic@megatrend.edu.rs

1. Uvod

Imajući u vidu značaj ovog ugovora i činjenicu da se on u praksi zaključuje masovno i skoro svakodnevno, to se pojavila potreba da ovaj ugovor bude zakonski regulisan, kao što je to nekada bilo u slučaju zakonski dopuštenih ugovora o nasleđivanju u Kraljevini Jugoslaviji.

To je i učinjeno Zakonom o nasleđivanju. Mada smatramo da ovom ugovoru nije mesto u Zakonu o nasleđivanju, ovaj pravni institut se našao u navedenom zakonu zbog potrebe prakse koja je zahtevala regulisanje ovog ugovora već u prvim posleratnim godinama, a Savezni zakon o nasleđivanju od 1955. godine bio je prvi zakon koji je regulisao jedan deo građanskog prava, tako da je pomenuti ugovor obuhvaćen tim zakonom.¹

Dakle, prvi put je ovaj ugovor predviđen saveznim Zakonom o nasleđivanju, koji je donet aprila 1955. godine (objavljen 11. maja, a stupio na snagu 11. jula 1955. godine²). Tada je ovaj ugovor predviđen u Glavi četvrtoj – „Naslednopravni ugovori“, Odeljku III – „Ugovor o doživotnom izdržavanju“ i bio regulisan članovima 122–127 Zakona o nasleđivanju.

Savezni Zakon o nasleđivanju pretrpeo je izvesne izmene koje su donete 1965. godine – „Službeni list SFRJ“, br 19/65, a prečišćen tekst objavljen je u „Službenom listu SFRJ“ br. 42/65. Ove zakonodavne promene nisu učinile nikakve izmene u ovom institutu u odnosu na Zakon o nasleđivanju iz 1955. godine.

Drugi put je na potpuno isti način i istom sistematikom bio regulisan ovaj ugovor, ali tada republičkim zakonom (ustavni Amandmani od 1971. godine izmenili su normativnu nadležnost u regulisanju naslednog prava), pa je posle prelaska naslednog zakonodavstva u nadležnost republika, republičkim Zakonom o nasleđivanju, regulisan ugovor o doživotnom izdržavanju u odredbama članova 117–127 Zakona o nasleđivanju.³

Treći put ugovor o doživotnom izdržavanju je regulisan u Glavi četvrtoj – „Ugovori u naslednom pravu“, Odeljku III – „Ugovor o doživotnom izdržavanju“, u odredbama članova 194–205 važećeg Zakona o nasleđivanju⁴, ali ovoga puta ne kao „naslednopravni ugovori“, nego kao „ugovori u naslednom pravu“.

Smatramo da ovaj ugovor nije naslednopravni ugovor, a ni ugovor u naslednom pravu, već je to *isključivo ugovor obligacionog prava*, i to njegovog posebnog

¹ Antić Oliver (2004): *Nasledno pravo*, Beograd, 307.

² Zakon o nasleđivanju, *Službeni list Federativne Narodne Republike Jugoslavije*, 20/1955.

³ Zakon o nasleđivanju Republike Srbije, *Službeni glasnik Socijalističke Rrepublike Srbije*, 52/1974.

⁴ Zakon o nasleđivanju Republike Srbije (u daljem tekstu: ZON) *Službeni glasnik Republike Srbije*, 46/1995, 101 / 2003- *odluka Ustavnog suda Republike Srbije*, IU br.358/1995, 6/2015.

dela – „obligacioni ugovori“, gde se u okviru nastavnog predmeta „Obligaciono pravo“ posebno izučava.⁵ O tome ćemo biti više govora u nastavku ovog rada.

2. Pojam ugovora o doživotnom izdržavanju

Odredbama člana 194 stav 1 Zakona o nasleđivanju⁶, ugovor o doživotnom izdržavanju se određuje kao ugovor kojim se primalac izdržavanja obavezuje da će posle njegove smrti na davaoca izdržavanja preneti svojinu na tačno određenim stvarima ili kakvim drugim pravima, postojećim u trenutku zaključenja ugovora, a davalac izdržavanja se obavezuje da na ime naknade za taj prenos svojine na stvarima ili pravima obezbedi izdržavanje i brigu o primaocu izdržavanja do kraja njegovog života, kao i da primaoca izdržavanja posle smrti sahrani, a „prema mesnim običajima“, kako se to uobičajeno formuliše u već ustaljenoj sudskoj praksi.

Takođe, zakonodavac navodi da obaveze izdržavanja naročito obuhvataju obezbeđivanje stanovanja, hrane, odeće i obuće, odgovarajuću negu u bolesti i starosti, troškove lečenja i davanja za svakodnevne uobičajene potrebe, ako nešto drugo nije ugovoreno. Ovaj ugovor može se zaključiti i za izdržavanje više lica, a može se zaključiti i u korist trećeg lica⁷. Isto tako ugovor mora biti zaključen u obliku javnobeležnički potvrđene (solemnizovane) isprave. Pri tome javni beležnik je dužan da ugovornike naročito upozori da imovina koja je predmet ugovora ne ulazi u zaostavštinu primaoca izdržavanja i da se njome ne mogu namiriti njegovi nužni naslednici, o čemu stavlja napomenu u klauzuli o potvrđivanju⁸.

Iz zakonske definicije ugovora o doživotnom izdržavanju sledi da se radi o obavezi primaoca izdržavanja da se posle njegove smrti na davaoca izdržavanja prenese svojina tačno određenih stvari ili kakva druga prava, postojeća u trenutku zaključenja ugovora, a na strani davaoca izdržavanja postoji obaveza da primaoca izdržavanja, kao naknadu za to, doživotno izdržava, da se brine o njemu do kraja njegovog života i da ga posle smrti sahrani.

⁵ Tako, na primer, države koje su posle raspada Socijalističke Federativne Republike Jugoslavije nastale na njenoj teritoriji, Slovenija, Hrvatska, Crna Gora i Makedonija, ugovor o doživotnom izdržavanju regulisali su u Zakonu o obligacionim odnosima. Videti: Obligacijski zakonik Slovenije, čl. 564, *Uredni list Republike Slovenije*, 81/2001, Zakona o obveznim odnosima Hrvatske, čl. 579 *Narodne novine Republike Hrvatske* 35/2007, 41/2008, 125/2011, Zakona o obligacionim odnosima Crne Gore, čl. 1075, *Službeni list Crne Gore*, 47/2008, 04/2011, Zakona o obligacionim odnosima Makedonije, čl. 1029, *Službeni vesnik Republike Makedonije*, 18/2001, 04/2002, 05/2003.

⁶ Zakon o nasleđivanju Republike Srbije, član 194/1, *Službeni glasnik Socijalističke Rrepublike Srbije*, 52/1974.

⁷ Ibid., čl. 197 i 198.

⁸ Ibid., čl. 195/1 i 2, i Zakon o javnom beležništvu, čl. 93, *Službeni glasnik Republike Srbije*, 31/2011, 85/2012, 19/2013, 55/2014, 93/2014, 121/2014, 6/2015.

Iz navedenog sledi da se radi o ugovoru sa odložnim dejstvom u pogledu prenosa svojine i drugih prava do smrti prenosioca (primaoca izdržavanja), a na ime naknade za doživotno izdržavanje od strane sticaoca (davaoca izdržavanja) njemu, davaocu izdržavanja – ugovorniku, ili nekom trećem (ugovor u korist trećeg), ili i njemu i trećem licu.

Takođe, ugovor o doživotnom izdržavanju je imenovan ugovor, jer je zakonom posebno uređen, a i naziv mu je određen zakonom. On je dvostrano obavezan ugovor jer proizvodi obaveze za obe ugovorne strane. Ugovor je teretan, pošto svaka ugovorna strana duuguje naknadu za korist koju dobija ugovorom. Radi se o otuđenju stvari i prava od strane primaoca uz naknadu od strane davaoca, te postoji uzajamnost koristi. Ugovor je formalan jer se traži da bude zaključen u obliku javnobeležnički solemnizovane isprave.

Smatramo da se radi o ugovoru obligacionog prava, da se ne radi o ugovoru koji je od nekog posebnog značaja za nasledno pravo i da nema razloga da se tretira sa naslednopravnog aspekta.

Ovaj ugovor, kao što je već rečeno, nije ni ugovor u naslednom pravu, a ni naslednopravni ugovor, već *isključivo ugovor obligacionog prava inter vivos* (davanje i primanje izdržavanja). Ovaj ugovor nikako ne predstavlja ugovor o nasleđivanju⁹ jer, ugovor o doživotnom izdržavanju jeste pravni posao sa naknadom, što je ređe karakteristika ugovora o nasleđivanju¹⁰, a ugovor o nasleđivanju bio je, kao što je navedeno, prisutan u pravnom sistemu Kraljevine Jugoslavije kao pravni posao sa dejstvom isključivo *post mortem*, kojim se naslednici međusobno određuju za naslednike, što je u poređenju sa sadašnjim ugovorom o doživotnom izdržavanju bitna razlika koja se iskazuje u prvom redu u uspostavljanju singularne sukcesije (tačno određenih prava) davaoca izdržavanja u odnosu na primaoca izdržavanja, kao i dospelosti ugovornih obaveza davaoca izdržavanja, praktično već od trenutka zaključenja samog ugovora (dok se pri zaključenju ugovora o nasleđivanju uspostavlja univerzalna sukcesija naslednika gde on dobija zaostavštinu u celini, ili u određenom njenom delu¹¹, u trenutku smrti ugovorača).

Ovaj ugovor nije ni naslednopravni ugovor u pravom smislu te reči, jer nije ugovor podoban da bude osnov pozivanja na nasleđe jednog ugovornika, odnosno trećeg lica (pored testamenta i zakona). Ugovor o nasleđivanju je pravni posao *mortis causa*, kojim se raspolaze imovinom za slučaj smrti (prenos imovine nakon smrti ugovorača). U našem naslednom pravu ugovor kojim neko

⁹ Načelnim mišljenjem ranijeg Saveznog Vrhovnog suda (SFRJ) br. 8/57 od 11. 1. 1957. godine podržano je rešenje definisano odredbom iz čl. 122 Zakona o nasleđivanju iz 1955. godine prema kojem „Ugovor iz člana 122 zakona nije ugovor o nasleđivanju, nego je to ugovor sa naknadom, kojim jedna strana u naknadu za doživotno izdržavanje ustupa drugoj strani u svojinu svoje stvari, no tako da je predaja ovih stvari u svojinu odložena do smrti vlasnika.

¹⁰ Momčilović Radosav, Živanović Milorad (2003): *Nasledno pravo*, Beograd – Banja Luka, 202.

¹¹ Blagojević Borislav (1982): *Nasledno pravo u Jugoslaviji*, Beograd, 234.

svoju imovinu ili njen deo ostavlja u nasleđe svom saugovaraču ili nekom trećem je apsolutno ništav¹².

Takođe važeći Zakon o nasleđivanju, u svojim odredbama o ovom ugovoru ne pominje imovinu, koja se prenosi na davaoca izdržavanja, već govori o pravu svojine na tačno određenim stvarima ili kakvim drugim pravima, koja se prenose na davaoca izdržavanja.

Imovinu treba razlikovati od svojine, jer ona predstavlja širi pojam i obuhvata pored svojine i ostala imovinska prava (sva stvarna prava, potraživanja koja glase na stvar ili novac, imovinska ovlašćenja autora, pronalazača i dr.). Pravo svojine je „najšire, u granicama zakona, pravo držanja, korišćenja i raspolaganja jednom stvari, koja se može isticati prema svim trećim licima“¹³.

Isto tako „nasledno pravo uređuje prelazak imovinskih i eventualno drugih prava, sa ostavioca, u trenutku njegove smrti, na njegove naslednike“.¹⁴

Imajući u vidu navedeno, možemo konstatovati da važeći Zakon o nasleđivanju, i ako sadrži odredbe ovog pravnog instituta, pojmovno ne pripada naslednom pravu, već obligacionom pravu.¹⁵

3. Specifičnosti ugovora o doživotnom izdržavanju

Kod ovog ugovora javljaju se specifičnosti u ispunjenju obaveza kod oba ugovorača, pošto je stvaranje obaveze za ugovorače opšte dejstvo ugovora.¹⁶

Osnovna obaveza koja iz ugovora proizlazi jeste doživotno izdržavanje, koja je specifična obligacija za davaoca izdržavanja, a specifičnost za ovaj ugovor je i to što je izbor ugovorača obostrano zavisao od posebnih svojstava ličnosti. Kako se obaveza davaoca izdržavanja prostire u vremenu i sastoji se iz raznorodnih činidbi koje se izvršavaju u toku trajanja obaveza i tu se javljaju specifičnosti u njihovoj brojnosti i raznolikosti. U slučaju smrti jedne ugovorne strane, obaveza prestaje, ako je nastala s obzirom na lične osobine koje od ugovornih strana ili lične sposobnosti dužnika¹⁷ (ako je u pitanju ugovor *intuitu personae*), dok je u slučaju smrti primaoca izdržavanja zakonodavac predvideo prenos svojine i druga prava sa primaoca na davaoca i to posle smrti primaoca. Što se tiče dava-

¹² Zakon o nasleđivanju, op. cit., čl. 179.

¹³ Stanković Obren, Orlić Miodrag (2004): *Stvarno pravo*, Beograd, 56.

¹⁴ Stojanović Dragoljub, Antić Oliver (2001): *Uvod u građansko pravo*, Beograd, 16-17.

¹⁵ Antić Oliver, Panov Slobodan (2006): *Nasledno pravo*, Beograd, 175.

¹⁶ Zakon o obligacionim odnosima Republike Srbije, čl. 148 (u daljem tekstu ZOO), *Službeni list Socijalističke Federativne Republike Jugoslavije*, 29/1978, 39/1985, 45/1989 – Odluka Ustavnog Suda Jugoslavije, 57/1989, *Službeni list Savezne Republike Jugoslavije*, 31/93, *Službeni list SCG*, 1/2003 – *Ustavna povelja Državne zajednice Srbija i Crna Gora*.

¹⁷ Ibid., čl. 359.

oca izdržavanja, u slučaju smrti primaoca izdržavanja, neke obaveze prestaju a neke nastaju.

Što se tiče smrti davaoca izdržavanja, i tu se javljaju neke specifičnosti, na primer zakonska sukcesija obaveza i dr., o čemu će biti više reči u daljem radu.

3.1. Specifičnost u odnosu na primaoca izdržavanja

Osnovna obaveza koja ovaj ugovor izdvaja, jeste *doživotno izdržavanje*, koja je specifična obaveza. Zakonske odredbe koje regulišu ovaj ugovor ne nabrajaju detaljno sve obaveze davaoca izdržavanja. Zakonodavac, prvo, navodi da je obaveza davaoca izdržavanja da primaoca izdržavanja izdržava i da se brine o njemu do kraja njegovog života i da ga posle smrti sahrani.

Zakonodavac *exempli causa* navodi da, ako što drugo nije ugovoreno, obaveza izdržavanja naročito obuhvata obezbeđenje stanovanja, hrane, odeće, obuće, nege u bolesti i starosti, troškove lečenja i davanja za svakodnevne uobičajene potrebe.

Iz navedenog proizlazi da je obaveza izdržavanja *složena obaveza*, jer obuhvata veliki broj raznovrsnih davanja i činjenja koja primaocu izdržavanja treba da omoguće normalan život (zadovoljenje svakodnevnih uobičajenih potreba).

Obezbediti *normalan* život nije određen pojam, jer nije kod svih ljudi isti, već zavisi od mnogih okolnosti: navika, sposobnosti, potreba, interesovanja, stepena obrazovanja, zdravstvenog stanja, starosnog doba i drugih okolnosti koje postoje kod primaoca izdržavanja. Ovim ugovorom primalac izdržavanja želi sebi da obezbedi materijalno obezbeđenje do kraja života, i da eliminiše problem usamljenosti koji se javlja u starosti. Takođe, primalac izdržavanja želi da mu davalac izdržavanja obezbedi sve ono što mu je potrebno za zadovoljenje svakodnevnih uobičajenih potreba u *meri* u kojoj on to nije u mogućnosti da sebi sam obezbedi. Ta „mera“ čini izdržavanje u njegovoj realizaciji veoma različitim.

Pitanje zadovoljenosti ili nezadovoljenosti te „mere“ *diskreciono je pravo isključivo primaoca izdržavanja* – onog čijeg se života neposredno tiče, pa ako s njegove strane nije u tom pogledu bilo nikakvog nezadovoljstva, treba uzeti da je izdržavanja bilo i da je ta „mera“ zadovoljena. Izdržavanje je primaocu izdržavanja bilo obezbeđeno i mogao ga je koristiti, a ako ga eventualno nije koristio – to je njegovo subjektivno pravo da ga ne koristi. Na primer, bio je zdrav i radno i telesno sposoban, pa mu izdržavanje nije bilo potrebno. Ili se kod davaoca izdržavanja desila neka nevolja (ostao je bez posla, razveo se, razboleo, smanjila mu se radna sposobnost), pa se on solidarisao sa njim i nepružanje ili nedovoljno pružanje izdržavanja mu je oprostio ili tolerisao.¹⁸

Ugovor o doživotnom izdržavanju je ugovor koji se zaključuje s obzirom na posebna svojstva ličnosti ugovorača (*intuitu personae*). Izbor ugovorača obo-

¹⁸ Paunović Staniša (2004): „Ugovor o doživotnom izdržavanju“, *Sudska praksa, mesečni stručno-informativni časopis*“, 6-7 / 2004, Beograd, 56.

strano je zavisao od posebnih svojstava ličnosti. Pri izboru davaoca izdržavanja odlučujuće je poverenje i naklonost koje primalac izdržavanja ima prema davaocu ili posebne sposobnosti davaoca za koje je zainteresovan primalac. To poverenje može biti posledica različitih faktora, prvenstveno srodstva i slično.¹⁹ To je zbog toga što činjenica bliskog srodstva, sama po sebi, stvara pretpostavku izvesne naklonosti i poverenja među ugovoračima.

Obligacija je imovinske prirode, i sastoji se od davanja u novcu u određenim nominalnim ili procentualnim mesečnim iznosima posmatranim prema nekom objektivnom merilu²⁰, a može obuhvatati obezbeđenje stanovanja, hrane, odeće i obuće, nege u bolesti i starosti, troškove lečenja, sahrana i slično. Budući da se radi o *isključivo ličnoj obligaciji*, jer je primalac izdržavanja imao u vidu izdržavanje od tačno određenog lica sa određenim osobinama, i pitanje je da li bi pristao da ga doživotno izdržava neka druga osoba, jer se tiče njegovog života, izdržavanje je neodvojivo vezano za ličnost primaoca izdržavanja (lično imovinske je prirode).

Kao takva ona je i *neprenosiva* obligacija, kako singularno (pravnim poslom), tako i univerzalno (nasleđivanjem).²¹

Ovaj ugovor predstavlja jedan od najtipičnijih primera ugovora sa trajnim izvršenjem obaveze, jer se obaveza davaoca izdržavanja prostire u vremenu i sastoji se iz raznorodnih činidbi koji se izvršavaju u toku trajanja obaveze. Neki autori ovaj ugovor navode kao primer ugovora sa trajnim izvršenjem obaveze.²²

Kod ovog instituta radi se o redovno *dugotrajnoj prestaciji, ali vremenski ograničenoj – smrću primaoca izdržavanja*. Radi se o događaju za koji je izvesno da će nastupiti, ali ne i kada, tako da prestacija izdržavanja može trajati duže ili kraće vreme, ali sa *smrću* primaoca izdržavanja ona prestaje, dok obaveza sahrane primaoca i eventualno podizanje spomenika primaocu izdržavanja, za davaoca izdržavanja tek nastaje.

Dakle, radi se o ugovoru sa trajnim izvršenjem obaveze.

Za primaoca izdržavanja radi se o *jednoj trenutnoj prestaciji, ali sa odložnim dejstvom u pogledu prenosa svojine i drugih prava do smrti prenosioca* (primaoca izdržavanja).

¹⁹ Perović Slobodan (1980): *Obligaciono pravo*, Beograd, 223; Đorđević Živomir, Stanković Vladan (1987): *Obligaciono pravo*, Beograd, 427.

²⁰ Vuković Svetislav (2003): Komentar Zakona o nasleđivanju i Zakona o Vanparničnom postupku, Beograd, 209.

²¹ Zakon o nasleđivanju, čl. 200: „Potraživanja primaoca izdržavanja ne mogu se preneti na drugog“.

²² Perović Slobodan, Đorđević Živomir, Stanković Vladan i Radišić Jakov (1974): *Obligaciono pravo, Opšti deo*, Beograd, 115.

3.2. Specifičnost u odnosu na davaoca izdržavanja

Kako se u ovom ugovoru radi o uzajamnosti obaveza ugovarača, to na strani primaoca izdržavanja postoji obaveza *da se posle njegove smrti* na davaoca izdržavanja, kao naknada za doživotno izdržavanje, brigu i sahranu, prenese pravo svojine na tačno određenim stvarima ili kakva druga prava, postojeća u momentu zaključenja ugovora.

Svojina ili kakva druga prava (imovinska) su subjektivna prava i kao takva moraju imati svog titulara, fizičko lice, konkretno – primaoca izdržavanja i pripadaju njegovoj imovini. Svojina i prava čije je postojanje nezamislivo bez postojanja konkretnog subjekta – prestaju da postoje kad i subjekat prava kome su pripadale. Dakle, o njima možemo govoriti samo dok je titular imovine živ. *Smrću* prestaje da postoji pravni subjekt za koga su se vezivala navedena prava i njegova imovina prestaje biti imovina i postaje njegova zaostavština,²³ koja po sili zakona prelazi na njegove naslednike.

Dakle, zakonska obaveza primaoca izdržavanja da na davaoca izdržavanja u naknadu za doživotno izdržavanje brigu i sahranu, prenese svojinu na tačno određenim stvarima i kakvim drugim pravima, nije specifična a ni sporna. Specifično i sporno je to, što je tu obavezu *zakonodavac predvideo za posle smrti primaoca izdržavanja, kada on nije više subjekt u pravu.*

Tako se postavljaju najmanje dva pitanja. Prvo, kada posle, s obzirom da je „posle“ neodređen vremenski termin, i drugo, ko je taj koji je dužan da tu obavezu izvrši. Po pravilima naslednog prava odgovor na prvo pitanje je da je to neposredno u trenutku delacije,²⁴ jer u našem pravu nema zaostavštine bez titulara, i ne postoji ustanova ležećeg nasledstva (*hereditas jacens*). Odgovor na drugo pitanje je da bi to trebalo da budu naslednici primaoca izdržavanja, kao univerzalni sukcesori ili bar jedno lice koje će biti univerzalni sukcesor.

Međutim, Zakon o nasleđivanju to nije naveo u odredbama koje se odnose na ovaj institut, verovatno imajući u vidu „naročito upozorenje“ primaocu izdržavanja da imovina koja je predmet ugovora ne ulazi u njegovu zaostavštinu i da se njome ne mogu namiriti nužni naslednici.²⁵

Smatramo da je odredba da se obaveže primalac izdržavanja *da posle njegove smrti na davaoca izdržavanja prenese* svojinu tačno određenih stvari ili kakva druga prava nepravilna, i da treba formulisati tu obavezu u smislu obavezivanja primaoca izdržavanja na prenos u svojinu tačno određenih stvari ili kakvih drugih prava na davaoca izdržavanja u momentu njegove smrti, što se najčešće u praksi i čini, ili u smislu odlaganja predaje stvari i prava davaocu do smrti primaoca ili odložiti ovlašćenja iz prava svojine i drugih prava do smrti primaoca.

²³ Zakon o nasleđivanju, op. cit., čl. 1.

²⁴ Ibid., čl. 212.

²⁵ Ibid., čl. 195/2.

Kada je reč o prenosu prava svojine i kakvih drugih prava na osnovu ovog ugovora, radi se o *derivativnom i singularnom načinu sticanja*, jer novi vlasnik, sticalac (davalac *izdržavanja*) *svojinu stiče* na tačno određenim stvarima i pravima, prenosom sa njenog prethodnog vlasnika, prenosioca (primaoca *izdržavanja*), imajući u vidu da je zaključen ugovor upravljen na prenos prava svojine.

Derivativno sticanje se ovde pojavljuje u obliku singularne sukcesije jer davalac *izdržavanja* *svojinu* na tačno određenim stvarima i pravima stiče prenosom od primaoca *izdržavanja*.

U našem pravu ugovor nema translativno dejstvo, sam po sebi ne prenosi svojinu, ugovor ima samo obligaciono dejstvo. Ugovor je, kako se u praksi kaže, samo pravni osnov (*iustus titulus*), a za prelazak prava svojine na pribavioca potreban je još jedan momenat, način sticanja ili (*modus acquirendi*), a to je predaja pokretnih stvari, odnosno upis u javnu knjigu nepokretnih stvari. Tek nakon ispunjenja oba uslova, davalac *izdržavanja* postaje vlasnik onoga što je u ugovoru navedeno.²⁶

U praksi, advokat (sada javni beležnik)²⁷ često pri sastavljanju ovih ugovora, imajući u vidu da je za uknjižbu nepokretnosti potrebna i *clauzula intabulandi*, u ugovoru dodaju: (...) „i dozvoljava se davaocu *izdržavanja* da se, na osnovu ovog ugovora i pismenog dokaza o smrti primaoca *izdržavanja*, odmah uknjiži u javnim registrima nepokretnosti kao novi vlasnik“ na onom što je u ugovoru navedeno.

Ali, ima i suprotnih shvatanja. Po njima, „davalac *izdržavanja* bi se, od momenta smrti svog prethodnika/primaoca *izdržavanja*, smatrao vlasnikom prenetih mu stvari neposredno na osnovu samog ugovora (ugovor bi, dakle, imao konstitutivno dejstvo), a kasniji upis u javnu knjigu (kod nepokretnosti) imao bi samo deklarativno dejstvo.²⁸

Kada smo govorili o specifičnosti vezanoj za primaoca *izdržavanja*, naveli smo da se radi o doživotnom *izdržavanju* koje je kao obligaciono pravo, neodvojivo vezano za ličnost primaoca *izdržavanja* i da je kao takva neprenosiva obligacija.

Ona je neprenosiva i s aspekta davaoca *izdržavanja*.²⁹ Priroda obaveze *izdržavanja* je takva da je dužnik (davalac *izdržavanja*) mora lično izvršiti. Od ovog pravila postoji izuzetak kada ugovorači predvide da i treće lice može izvršavati obavezu *izdržavanja*.³⁰ Ali posle smrti davaoca *izdržavanja* njegove obaveze prelaze na njegovog supružnika i potomke koji su pozvani na nasleđe ako pristanu.³¹

²⁶ Babić Ilija (2008): *Nasledno pravo*, Beograd, 203.

²⁷ Zakon o nasleđivanju, op. cit., čl. 195/1.

²⁸ Paunović Staniša (2004): „Ugovor o doživotnom *izdržavanju*“, *Sudska praksa, mesečni stručno-informativni časopis*, 6-7/2004, Beograd, 59.

²⁹ Svorcan Slobodan (2009): *Nasledno pravo*, Kragujevac, 215.

³⁰ Đurđević Dejan (2012): *Institucije naslednog prava*, Beograd, 261.

³¹ ZON, čl. 204/1.

Reč je o zakonskoj ali *nenaslednopravnoj sukcesiji*, sa mogućim i uslovnim (ako pristanu) sukcesorima. „Okolnost da po odredbi člana 204 stav 1 Zakona o nasleđivanju, obaveze davaoca izdržavanja prelaze na njegovog bračnog druga i potomke koji su pozvani na nasleđe, ne ukazuje da je ovde reč o nasleđivanju, već samo bliže određuje nenasledne sukcesore.“³²

Zakonodavac za ovu sukcesiju nije predvideo postupak, niti se o ovome odlučuje u ostavinskom postupku. Takođe, zakonodavac za ovaj slučaj, kao uslov opstanka ugovora nije predvideo ni saglasnost primaoca izdržavanja, a što je po našem mišljenju bilo nužno budući da se radi o ugovoru *intuitu personae*.

U praksi se ta „praznina u zakonu“ rešava tako što primalac izdržavanja, s jedne strane, i predviđeni sukcesori davaoca izdržavanja koji žele nastavak ugovora, s druge, zaključuju „aneks ugovora“ kojim se postiže obostrana saglasnost za nastavljanje i izvršavanje ugovornih obaveza. Ova saglasnost mora biti, shodno odredbi Zakona o obligacionim odnosima, overena od strane javnog beležnika.³³ Ovde možemo postaviti pitanje, zašto je zakonodavac u čl. 204 stav 1 Zakona o nasleđivanju, kada je naveo da: „posle smrti davaoca izdržavanja njegove obaveze prelaze na njegovog bračnog druga i potomke“, izostavio usvojenike, koji u svemu imaju nasledno pravni položaj potomaka?³⁴

Isto tako, i davalac izdržavanja, kao i primalac izdržavanja, izuzetno vodi računa o ličnim svojstvima primaoca (njegovoj naravi, navikama, zdravstvenom stanju i slično), i davalac izdržavanja je u momentu zaključenja ugovora imao u vidu izdržavanje za tačno određenu ličnost. I ovde se pojavljuje pitanje kao i kod primaoca izdržavanja (da li bi davalac izdržavanja pristao, da doživotno izdržava, umesto primaoca izdržavanja, bilo koju drugu osobu?).

4. Zaključak

Ovaj ugovor ne pripada naslednom pravu, jer nije osnov pozivanja na nasleđe, ne uređuje prelazak imovinskih prava sa ostavioca u trenutku njegove smrti na njegove naslednike, i reguliše singularnu sukcesiju.

Isto tako, smatramo da je institut ugovora o doživotnom izdržavanju u sistemici naslednog prava zadržan više po tradiciji i da treba da bude regulisan odredbama Zakona o obligacionim odnosima kao što su to učinile države bivše SFRJ. Međutim, to se neće uskoro desiti jer je u Prednacrtu Građanskog zakonika Republike Srbije, četvrta knjiga, „Nasleđivanje“, Vlada Republike Srbije,

³² Vrhovni sud Srbije, Rev. 3897/97 od 27.09.1997. godine. Odluka preuzeta iz: Petrović Nevenka, Milisavljević Ostoja (2009): *Doživotno izdržavanje po Zakonu o nasleđivanju*, Beograd, 125.

³³ Zakon o obligacionim odnosima, op. cit., čl. 67/2; Zakon o javnom beležništvu, op. cit., čl. 93.

³⁴ Zakon o nasleđivanju, op. cit., čl. 34.

Komisija za izradu Građanskog zakonika, Beograd, 2011. godine, ovaj institut pravno regulisala članovima 199–210. Dakle, ugovor i dalje ostaje regulisan odredbama naslednog prava.

Smatramo da je jedan od razloga za normativno imenovanje ovog ugovora kao ugovora naslednog prava taj što se njegova posledica, njegovo specijalno dejstvo direktno ispoljava u sferi naslednopravnih odnosa. Kao obligacioni ugovor, proizvodi pravno dejstvo samo između ugovornih strana, dejstvo (*inter partes*), ali obavezuje i treća lica, naslednike primaoca izdržavanja, da kao treća lica u odnosu na sam ugovor, trpe posledice, koje prema zakonskim naslednicima primaoca izdržavanja budu ostvarene, a to je gubitak prava na nasleđe onog dela zaostavštine koja čini prestaciju primaoca izdržavanja.

Takođe smatramo da ovako složen odnos nije moguće detaljnije regulisati nikakvim zakonskim ili ugovornim normama, već samo približno označiti. Zakonodavac je obaveze primaoca izdržavanja precizno odredio, dok je obaveze davaoca izdržavanja uopšteno formulisao, jer one traju u dužem periodu. Kako se okolnosti u kojima se nalaze ugovorači neprestano menjaju, to je potrebno njihove činidbe prilagođavati za svaki vremenski trenutak trajanja ugovora. S obzirom na navedeno, neophodno je da se u svakom konkretnom slučaju o obavezama ugovorača i njihovom ispunjenju sudi prema prethodno utvrđenoj zajedničkoj nameri ugovorača, a kako se i tumače voljni akti i kako to odgovara načelima obligacionog prava utvrđenim u odredbama Zakona o obligacionim odnosima.

Literatura

- Antić Oliver (2004): *Nasledno pravo*, Beograd
- Antić Oliver, Panov Slobodan (2006): *Nasledno pravo*, Beograd
- Blagojević Borislav (1982): *Nasledno pravo u Jugoslaviji*, Beograd
- Babić Ilija (2008): *Nasledno pravo*, Beograd
- Đurđević Dejan (2012): *Institucije naslednog prava*, Beograd
- Đorđević Živomir, Stanković Vladan (1987): *Obligaciono pravo*, Beograd
- Momčilović Radosav, Živanović Milorad (2003): *Nasledno pravo*, Beograd-Banja Luka
- Petrović Nevenka, Milisavljević Ostoja (2009): *Doživotno izdržavanje po Zakonu o nasleđivanju*, Beograd
- Paunović Staniša: „Ugovor o doživotnom izdržavanju“, *Sudska praksa, mesečni stručno-informativni časopis*, 6-7 / 2004
- Perović Slobodan (1980): *Obligaciono pravo*, Beograd
- Radišić Jakov (1974): *Obligaciono pravo, Opšti deo*, Beograd
- Stojanović Dragoljub, Antić Oliver (2001): *Uvod u građansko pravo*, Beograd
- Vuković Svetislav (2003): Komentar Zakona o nasleđivanju i Zakona o Vanparničnom postupku, Beograd

- Stanković Obren, Orlić Miodrag (2004): *Stvarno pravo*, Beograd
- Svorcan Slobodan (2009): *Nasledno pravo*, Kragujevac

Propisi

- Obligacijski zakonik Slovenije, *Uredni list Republike Slovenije*, 81/2001.
- Zakon o obveznim odnosima Hrvatske, *Narodne novine Republike Hrvatske* 35/2007, 41/2008, 125/2011.
- Zakon o obligacionim odnosima Crne Gore, *Službeni list Crne Gore*, 47/2008, 04/2011.
- Zakon o obligacionim odnosima Makedonije, *Službeni vesnik Republike Makedonije*, 18/2001, 04/2002, 05/2003.
- Zakon o nasleđivanju, *Službeni list Federativne Narodne Republike Jugoslavije*, 20/1955.
- Zakon o nasleđivanju Republike Srbije, *Služben glasnik Socijalističke Republike Srbije*, 52/1974.
- Zakon o nasleđivanju Republike Srbije, *Službeni glasnik Republike Srbije*, 46/1995, 101/2003, odluka Ustavnog suda Republike Srbije, IU br. 358/1995, 6/2015.
- Zakon o obligacionim odnosima Republike Srbije, *Službeni list Socijalističke Federativne Republike Jugoslavije*, 29/1978, 39/1985, 45/1989 - odluka Ustavnog Suda Jugoslavije, 57/1989, *Službeni list Savezne Republike Jugoslavije*, 31/93., *Službeni list SCG*, 1/2003 - Ustavna povelja Državne zajednice Srbija i Crna Gora
- Zakon o javnom beležništvu, čl. 93, *Službeni glasnik Republike Srbije*, 31/2011, 85/2012, 19/2013, 55/2014, 93/2014, 121/2014, 6/2015.

Professor Dušan Novaković, PhD

Faculty of Law, Public Administration and Security,
Megatrend University, Belgrade

LIFE LONG CARE CONTRACT (some specific characteristics)

S u m m a r y

This paper deals with one of the most complex legal issues of contemporary Serbian law. Since it is a complex legal work, in the first place we have specified the chronology of legal regulation of the contract of lifelong care, and dealt with this term as a contract of law of obligations. Conducting legal analysis of the term of the contract, we determined that it was a contract that was nominated, bilaterally obligated and onerous, that it was concluded with regard to the special properties of individuals, that it was the contract with the permanent execution of obligations and that it was formal contract. In doing so, we noted its specificity in relation to the above characteristics, and that was the objective of this paper. Also, we discussed about the lifelong care representing a specific obligation of the provider, while the dependants specific obligations relates to the obligation that ownership of certain matters or any other rights will be after his death transferred to the provider. Also, in this paper we discussed succession of rights to give and receive support in the event of death of the provider. In studying the meaning and scope of this legal institute legal method was used in the analysis of legal norms by which it was regulated. In interpreting the law, we applied the grammatical interpretation, historical interpretation and target interpretation. Examining the positive law (*de lege lata*) we dealt with future law (*de lege*) of this legal institute. Results of the research lead to the conclusion that in this contract there are obligations of complex content, which are constantly changing, so to speak, from day to day, and so not even the greatest jurists - legislators, judges, legal writers, legal practitioners or contractors are able to predict them all.

Key words: legal regulation, the term of the contract, specificity of contract in fulfilling obligations in relation to the recipient and the provider of care

REALIZACIJA ZALOŽNOG PRAVA NA NEPOKRETNOSTI

Društveno-ekonomske promene u zemljama tranzicije, pre svega nestajanje državne svojine kao dominantnog oblika i ulazak banaka sa stranim kapitalom na domaće tržište, nametnule su kao potrebu donošenje zakona kojima bi se tadašnja privreda prilagodila zahtevima moderne tržišne ekonomije. Jedna od poluga uspešnog funkcionisanja moderne ekonomije je, svakako, i kreditni mehanizam, koji omogućava adekvatno usmeravanje društvenog bogatstva. Razvijeno kreditiranje podrazumeva i izgradnju i zakonsko utemeljenje principa kojima bi se pružilo dodatno obezbeđenje licima koja međusobno zasnivaju kreditni odnos, koji konstituiše prava i obaveze. Hipoteka, kao sredstvo obezbeđenja, imala je ograničen domašaj u zemljama čija se privreda zasnivala na snažnoj intervenciji države na tržištu. Samim tim, kao sredstvo obezbeđenja, nije mogla doći do izražaja u uslovima nesvojinskog koncepta zemalja sa vladajućom socijalističko-komunističkom ideologijom, odnosno u konceptu društvene svojine, ograničavanja privatne svojine i napuštanja tržišnih zakonitosti privrede, s obzirom na to da bi zalaganje društvenog vlasništva obesmišljavalo suštinu ove ustanove. Donošenjem novih propisa, ova ustanova ponovo postaje aktuelna i primamljiva, pre svega za banke kao sve zastupljenije zajmodavce na tržištu. Međutim, i pored nastojanja zakonodavca da ovu oblast pravno uredi i upriliči standardima zapadnih zemalja, u praksi se javljaju sporna pitanja.

Ključne reči: hipoteka, sredstva obezbeđenja, nepokretnost, založno pravo

1. Uvodna razmatranja

Hipoteka je stari institut građanskog prava koji predstavlja tekovinu civilizacije ljudskog društva. Ona je, zahvaljujući stalnom prilagođavanju, postala jedan od zastupljenijih oblika založnog prava koji je do današnjih dana ne samo zadržao, nego i povećao svoj značaj. Svrha hipoteke je da osigura, ali i omogućiti izvršenje obaveze iz obligacionog odnosa koju dužnik nije dobrovoljno ispunio. Njeno postojanje vrši psihološki pritisak na dužnika, a ukoliko to ne bi imalo efekta, hipotekarni poverilac može se namiriti iz vrednosti založene nepokretnosti¹.

* Slobodan Stošić, doktorand na Fakultetu za pravo, javnu upravu i bezbednost, Megatrend univerzitet; viši stručni saradnik u Drugom osnovnom sudu u Beogradu; e-mail: slobodanmusic@gmail.com

¹ Medić Duško (2006): „Hipotekarnopravni odnos kao aspekt sadržine hipoteke”, *Zbornik Pravnog fakulteta Sveučilišta, Rijeka*, 442.

Pojam hipoteke propisan je članom 2 Zakona o hipoteci² i to na sledeći način: „Hipoteka je založno pravo na nepokretnosti, koje ovlašćuje poverioca da, ako dužnik ne isplati dug o dospelosti zahteva naplatu potraživanja obezbeđenog hipotekom iz vrednosti nepokretnosti, pre običnih poverilaca i pre docnijih hipotekarnih poverilaca, bez obzira u čijoj svojini se nepokretnost nalazi“. Iz ove zakonske formulacije može se zaključiti da hipoteka predstavlja stvarno pravo na tuđoj stvari, i to pravo unovčenja, koje se aktivira kada dužnik ne isplati dug o dospelosti.

Imajući u vidu činjenicu da se zahtev za unovčenje, odnosno za prodaju nepokretnosti može istaći tek po neplaćanju duga o dospelosti, dolazimo do sledećeg bitnog obeležja hipoteke, a to je – akcesornost, odnosno zavisnost hipoteke, kao stvarnog založnog prava u odnosu na dug, tj. potraživanje koje obezbeđuje (obligaciono pravo).

U pravnoj teoriji postoji dosta definicija akcesornosti; na ovom mestu, bez daljeg upuštanja u analizu ovog načela, može se navesti da akcesornost predstavlja neposrednu i na samom zakonu zasnovanu zavisnost jednog prava, koje se naziva akcesornim ili zavisnim, od drugog prava, koje se naziva glavnim, pri čemu je cilj akcesornog prava realizacija cilja glavnog prava.³ Iz navedene definicije proizlazi da naplata potraživanja iz vrednosti ostvarene prodajom nepokretnosti zavisi od punovažnosti potraživanja, radi čijeg je obezbeđenja hipoteka i nastala.

Činjenica da se hipotekarni poverilac može namiriti pre običnih poverilaca i pre docnijih hipotekarnih poverilaca, predstavlja njegovo pravo prvenstva u naplati potraživanja, što je ujedno jedno od osnovnih obeležja obezbeđujuće svrhe hipoteke. Dakle, hipotekarni poverilac ne mora biti zabrinut time što je vlasnik nepokretnosti odnosno dužnik naknadno ponovo založio svoju nepokretnost, budući da će on kao poverilac prvog ranga imati prednost odnosno prvenstvo u namirenju, u odnosu na docnije poverioce. Dakle, kao i kod ostalih stvarnih prava, primenjuje se načelo: *Prior tempore, potior iure*.

Zakon o hipoteci u članu 2 propisuje da se hipotekarni poverilac može namiriti iz vrednosti hipotekovane stvari, bez obzira na to u čijoj svojini se nepokretnost nalazi; on, dakle, ima pravo da se naplati iz vrednosti koja se dobija prodajom hipotekovane nepokretnosti bez obzira da li se stvar (nepokretnost) nalazi u rukama hipotekarnog dužnika ili je prešla u svojinu trećeg lica (pravo sledovanja).⁴ Sama činjenica da hipoteka osigurava potraživanje poverioca, a dužnika ne lišava poseda i mogućnosti korišćenja založene stvari, ostavlja mogućnost vlasniku nepokretnosti da istu otuđi i time eventualno osujeti docnije pravo na namirenje hipotekarnog poverioca. Međutim, doslednom primenom ovog principa navedena mogućnost je isključena, te se hipotekarnom poveriocu pruža

² Zakon o hipoteci, „Službeni glasnik Republike Srbije“, 125/05.

³ Živković Miloš (2010): *Akcesornost založnih prava na nepokretnostima*, Beograd, 47.

⁴ Stanković Obren, Orlić Miodrag (1999): *Stvarno pravo*, Beograd, 275.

pouzđano sredstvo obezbeđenja i u slučaju pravnog raspolaganja predmetom založnog prava.

Kako se na ovom mestu analiziramo zakonsku definiciju hipoteke, valjalo bi pomenuti jedno od načela založnog prava – načelo oficijelnosti prilikom realizovanja obezbeđenog potraživanja. Naime, prema načelu oficijelnosti založni poverilac može namiriti svoje potraživanje jedino sudskim putem. Pomenuti Zakon o osnovama svojinsko-pravnih odnosa⁵ predviđao je doslednu primenu ovoga načela, i to na taj način što hipoteka stečena po tom zakonu nije predstavljala izvršnu ispravu na osnovu koje se u sudskom postupku moglo tražiti prinudno izvršenje, već je bilo potrebno hipotekarnom tužbom (*actio hypothecaria*)⁶ pokrenuti postupak u kome bi se dobila izvršna isprava, na osnovu koje bi se mogao pokrenuti izvršni postupak. Celokupna situacija je u krajnjem ishodu dovodila hipotekarne poverioce u prilično nezavidan položaj, s obzirom na to da im je, na putu realizacije prava na namirenje iz hipotekovane nepokretnosti, stajalo vođenje jedne parnice, a zatim i izvršnog postupka za prodaju nepokretnosti, što je u praksi trajalo veoma dugo, pa samim tim i uticalo na efikasnost hipoteke kao stvarnopravnog obezbeđenja potraživanja. Položaj založnih poverilaca se poboljšava reformom hipotekarnog prava. Zakon o hipoteci odstupio je od načela oficijelnosti, uvođenjem instituta izvršne vansudske hipoteke, i na taj način stvorio mogućnost vansudske realizacije, čija je svrha ubrzavanje postupka, koji je u periodu pre donošenja Zakona o hipoteci trajao predugo.⁷

Najzad, na ovom mestu trebalo bi pomenuti i *mortgage* – institut anglosaksonskog prava, koji se često dovodi u vezu sa hipotekom; međutim, između ovih ustanova postoje razlike. Naime, osnovna karakteristika ustanove *mortgage* je da na osnovu nje dolazi do prenosa prava svojine na nepokretnosti sa dužnika na zajmodavca. Tek ukoliko dužnik blagovremeno vrati dug, mogao je povratiti pravo svojine na predmetnoj nepokretnosti. I pored prednosti koje je ovaj sistem imao, isti je stavljao dužnika u prilično nezavidan položaj u odnosu na zajmodavca, pa je samim tim otvarao mogućnost zloupotrebe – npr. poverilac kome bi to bilo u interesu, mogao je namerno osujetiti isplatu duga, i na taj način zadržati nepokretnost.⁸

⁵ Zakon o osnovama svojinsko-pravnih odnosa, „Službeni list SFRJ“, 10/80, 36/90. i „Službeni list SRJ“, 29/96.

⁶ U vreme principata u Rimu poverilac je dobio realnu tužbu (*Actio Serviana*) koja se mogla upotrebiti protiv lica kod kojih se nalaze založene stvari.

⁷ Živković Miloš (2009): „Novo hipotekarno pravo u Republici Srbiji“, 12, dostupno na: <http://www.ius.bg.ac.rs/prof/Materijali/xivmil/NovoHipotekarnoPravoClanak.pdf>

⁸ Rose Carol (1998): *Crystals and Mud in Property Law*, Yale Law School, London, 583.

2. Nastanak hipoteke

Hipoteka nastaje upisom u nadležni registar nepokretnosti, na osnovu: ugovora ili sudskog poravnanja (ugovorna hipoteka), založne izjave (jednostrana hipoteka), zakona (zakonska hipoteka), sudske odluke (sudska hipoteka). Pravila o ugovornoj hipoteci shodno se primenjuju na jednostranu, zakonsku i sudsku hipoteku, osim ako je zakonom drukčije propisano.

Hipoteka, dakle, uvek nastaje upisom u nadležni registar nepokretnosti⁹, a upis se može zahtevati na osnovu ugovora ili sudskog poravnanja, založne izjave, zakona i sudske odluke, pa se tako prema pravnom osnovu deli na ugovornu, jednostranu, zakonsku i sudsku hipoteku. Upis hipoteke u nadležni registar predstavlja *modus acquirendi*, i zakonom je propisan za sve vrste hipoteke, bez obzira na pravni osnov.

Hipoteka može biti zasnovana na: nepokretnoj stvari (pravo svojine na zemljištu, građevinskom objektu i sl.); delu nepokretne stvari, u skladu sa odlukom o deobi; susvojinskom udelu u nepokretnoj stvari; posebnom delu zgrade na kome postoji pravo svojine, odnosno drugo pravo koje sadrži pravo raspolaganja (stan, poslovne prostorije, garaža, garažno mesto); pravu na zemljištu koje sadrži ovlašćenje slobodnog pravnog raspolaganja, a naročito na pravu građenja, pravu preče gradnje, ili raspolaganja u državnoj, odnosno društvenoj svojini; objektu u izgradnji, kao i posebnom delu objekta u izgradnji (stan, poslovne prostorije, garaža), bez obzira na to da li je već izgrađen, pod uslovom da je izdato pravosnažno odobrenje za gradnju u skladu sa zakonom kojim se uređuje izgradnja objekata.¹⁰

3. Pojam i subjekti hipotekarnog odnosa

Hipotekarno-pravni odnos je građansko-pravni odnos između hipotekarnog poverioca i hipotekarnog dužnika, s jedne, i hipotekarnog poverioca i trećeg lica, s druge strane, povodom objekta hipoteke. Smatra se da prvi predstavlja unutrašnju stranu hipoteke, a da drugi izražava njeno spoljašnje dejstvo. Radi se o dva međusobno povezana i uslovljena dijela složenog hipotekarnog odnosa.¹¹

Imajući u vidu da je hipoteka akcesorno pravo, može se zaključiti da su subjekti hipotekarnog odnosa po pravilu i lica koja se javljaju kao subjekti osnovnog, dakle glavnog pravnog posla, radi čijeg obezbeđenja je hipoteka i nastala.

⁹ Donošenjem Zakona o državnom premeru i katastru u upisima prava o nepokretnostima („Službeni glasnik RS“, br. 83/92) koji je stupio na snagu 20. 11. 1992. godine, Republički geodetski zavod (RGZ), kao pravni sledbenik Republičke geodetske uprave, preuzeo je sve opštinske geodetske uprave, Geodetsku upravu grada Beograda i pokrajinske geodetske uprave, pa se 1992. godina može smatrati godinom kada je RGZ počeo sa radom u današnjem obliku unutrašnjeg uređenja.

¹⁰ Član 3 Zakon o hipoteci, „Službeni glasnik RS“, 125/05.

¹¹ Medić Duško, 444.

Poverilac obezbeđenog potraživanja je uvek istovremeno titular hipoteke.¹² Navedeno rešenje je i logično imajući u vidu obezbeđujuću svrhu hipoteke, drugim rečima – suština hipoteke je da obezbedi realizaciju potraživanja određenog poverioca, pa bi samim tim postala nezamisliva situacija da poverilac iz osnovnog posla i titular hipoteke budu različita lica.

S druge strane, vlasnik založene nepokretnosti i dužnik obezbeđenog potraživanja mogu biti različita lica. Ovakva situacija postoji, recimo, u slučaju kada vlasnik nepokretnosti upiše hipoteku na istoj, a nakon toga je otuđi. Pribavilac prava svojine na nepokretnosti istu stiće opterećenu založnim pravom, a prenosilac, odnosno prvi vlasnik i dalje ostaje dužnik iz osnovnog posla.

4. Izvršna vansudska hipoteka i izvršna sudska hipoteka

Jedna od osnovnih novina Zakona o hipoteci, kao posledica odstupanja od načela oficijelnosti, jeste izvršna vansudska hipoteka. Naime, članom 15 st. 2 Zakona o hipoteci, propisano je da se hipoteka zasnovana na osnovu izvršnog ugovora ili izvršne založne izjave, upisuje u registre nepokretnosti kao „izvršna vansudska hipoteka“, a da se vansudski postupak namirenja sprovodi u skladu sa odredbama tog zakona. Reč je o hipoteci koja se zasniva na ugovoru o hipoteci koji sadrži sastojke određene zakonom, koja je neposredno izvršiva i to vansudski, privatnom prodajom bez obraćanja sudu. Parnični postupak nije više obavezna faza u realizaciji hipoteke, poverilac dakle ne mora da vodi parnični postupak čiji bi cilj bio dobijanje izvršne isprave, kojom će dokazati dospelost i visinu potraživanja, i na osnovu koje će pokrenuti izvršni postupak radi prodaje založene nepokretnosti, već može na osnovu izvršne vansudske hipoteke sam organizovati prodaju nepokretnosti.

Srbija je, uz Ukrajinu, još uvek jedina kontinentalno evropska zemlja u kojoj je privatna prodaja hipotekovane nepokretnosti radi namirenja dozvoljena kao redovan način namirenja.¹³

Izvršna sudska hipoteka se zasniva na sporazumu stranaka – hipotekarnog poverioca i dužnika, odnosno vlasnika hipotekovane nepokretnosti, sačinjenim pred sudom. Uvedena je u pravni sistem tadašnje SFRJ, 1990. godine izmenama i dopunama Zakona o izvršnom postupku iz 1978. godine („Sl. list SFRJ“, br. 20/78, 6/82, 74/87, 57/89, 20/90, 27/90. i 35/91. i „Sl. list SRJ“, 27/92/31/39, 24/94 i 28/00). Njena suština leži u činjenici da sporazum stranaka koji sačinjava sud u obliku zapisnika, ima snagu sudskog poravnanja, pa se za realizaciju ove hipoteke ne traži prethodno vođenje parničnog postupka protiv dužnika, odnosno po hipotekarnoj tužbi.¹⁴

¹² Živković Miloš (2010), 124.

¹³ Živković Miloš (2010), 161.

¹⁴ Živković Miloš (2009), 2.

Zakon o izvršenju i obezbeđenju pravila o izvršnoj sudskoj hipoteci koncipira u delu koji se odnosi na sredstva obezbeđenja. Prema članu 266 navedenog zakona, poverilac i dužnik mogu saglasno tražiti od suda da odredi i sprovede upis založnog prava na nepokretnosti dužnika, odnosno da odredi i sprovede popis pokretnih stvari dužnika radi obezbeđenja novčanog potraživanja poverioca zasnivanjem založnog prava na nepokretnoj ili pokretnoj stvari dužnika. Na zajednički predlog stranaka, sud će odrediti ročište na kome će u zapisniku utvrditi sporazum stranaka o postojanju novčanog potraživanja i vremenu njegovog dospeća i njihovu saglasnost da se upisom založnog prava na nepokretnosti dužnika, odnosno zasnivanjem založnog prava popisom pokretnih stvari dužnika i upisom u odgovarajući registar, obezbedi novčano potraživanje. Potpisani zapisnik o sporazumu stranaka ima snagu sudskog poravnania i osnov je za upis založnog prava. Založno pravo stiče se trenutkom upisa sporazuma u odgovarajući registar.¹⁵

Dakle, sporazum stranaka predstavlja samo osnov za sticanje založnog prava, dok se samo založno pravo stiče upisom sporazuma u registar. Takođe, analizom navedenih odredbi može se zaključiti da sud ne vrši upis založnog prava po službenoj dužnosti, već se radnje u vezi sa upisom založnog prava u registar nalaze u dispoziciji stranaka.

5. Sudski ili vanskudski postupak namirenja – pravo izbora hipotekarnog poverioca

Pitanje koje se nameće na samom početku analize sudskog i vanskudskog postupka namirenja hipotekarnog poverioca jeste, da li se izvršenje na osnovu izvršne isprave iz člana 15 Zakona o hipoteci može odrediti i sprovesti prema pravilima sudskog izvršnog postupka, ili je poverilac po toj ispravi samo ovlašćen da izvršenje sprovede samo prema pravilima vanskudskog postupka namirenja iz čl. 29 do 38 Zakona o hipoteci?

Navedenu nedoumicu produbljuju i donekle oprečni zaključci do kojih se može doći analizom člana 13 stav 1 tačka 4 Zakona o izvršenju i obezbeđenju i člana 15 stav 2 Zakona o hipoteci. Prvi, kao izvršnu ispravu navodi ugovor o hipoteci, odnosno založnu izjavu, sačinjenu saglasno propisima kojima se uređuje hipoteka, dakle nameće zaključak da se namirenje potraživanja može ostvariti u sudskom izvršnom postupku. S druge strane, članom 15 stav 2 Zakona o hipoteci, propisano je da se hipoteka zasnovana na osnovu izvršnog ugovora ili izvršne založne izjave, upisuje u registre nepokretnosti kao „izvršna vanskudska hipoteka“, a da se (vanskudski) postupak namirenja sprovodi u skladu sa odredbama tog zakona. Navedeno pitanje pored teorijskog ima i praktičnog značaja, budući da su se prvostepeni sudovi, do stupanja na snagu Zakona o izvršenju i

¹⁵ Zakon o izvršenju i obezbeđenju, Službeni glasnik RS, 31/11.

obezbeđenju, oglašavali nenadležnim u postupcima koji su pokretani na osnovu izvršne vansudske hipoteke iz člana 15 Zakona o hipoteci, a svoje odluke zasniivali na stavovima da za navedeni postupak namirenja hipotekarnog poverioca, nije predviđena sudska nadležnost.¹⁶

Poverilac čije je potraživanje obezbeđeno izvršnom vansudskom hipotekom ima pravo da bira pravni put namirenja svog potraživanja, tj. da li će svoje potraživanje ostvariti u sudskom ili vansudskom postupku. Prvi je regulisan odredbama Zakona o izvršenju i obezbeđenju, a drugi Zakonom o hipoteci. Naime, odredbama Zakona o hipoteci ni na koji način nije isključena mogućnost, odnosno pravo ovakvog poverioca da od suda zahteva da odredi i sprovede izvršenje na osnovu već navedene izvršne isprave, u skladu sa zakonom koji uređuje izvršni postupak. Ovakav zaključak sledi pre svega iz odredbe člana 13 stav 1 tačka 4 Zakona o izvršenju i obezbeđenju, koji kao izvršnu ispravu propisuje ugovor o hipoteci, odnosno založnu izjavu, sačinjenu saglasno propisima kojima se uređuje hipoteka. Kada se izvršni poverilac opredeli za vansudski postupak namirenja svog potraživanja, tada se namirenje sprovodi po pravilima propisanim odredbama članova od 29 do 38 Zakona o hipoteci; međutim, navedeno ne znači da on nema pravo da se obrati sudu. Stoga, određivanje i sprovođenje izvršenja na osnovu izvršne vansudske hipoteke, kao izvršne isprave, u sudskoj je nadležnosti, bez obzira na to što je zakonom predviđena i mogućnost vanskog postupka namirenja.¹⁷

Međutim, mišljenja smo da se hipotekarni poverilac, pošto se opredelio za jedan pravni put namirenja svog potraživanja, npr. pokrenuo je vansudski postupak prodaje hipotekovane nepokretnosti, ne može se koristiti i drugom alternativom, tj. ne može pokrenuti i sudski izvršni postupak, čiji bi predmet bio izvršenje prodajom založene nepokretnosti. Navedenoj tvrdnji u prilog možemo navesti činjenicu da se ne mogu voditi uporedo dva postupka za prodaju jedne nepokretnosti na osnovu iste izvršne isprave; stoga bi zahtev sudu, hipotekarnog poverioca koji je već pokrenuo vansudski postupak prodaje, bio neosnovan. Takođe, u slučaju namirenja potraživanja poverioca u jednom od pomenutih postupaka, drugi postupak postaje bespredmetan.

6. Ko je izvršni dužnik kada dođe do promene vlasnika nepokretnosti?

Hipoteka je, kao stvarno pravo vezana za nepokretnost a ne za ličnost, tako da u slučaju promene vlasnika nepokretnosti, na kojoj je konstituisana hipoteka, na novog vlasnika nepokretnosti prelazi hipoteka, i ista nepokretnost odgovara za raniji dug. Sudska praksa, takođe, stoji na navedenom stanovištu, pa u tom

¹⁶ Rešenje Privrednog apelacionog suda, Iž. 1369/2010 od 6.5.2010. godine, dostupno na sajtu <http://propissoft.profisistem.rs/>

¹⁷ Ibid.

smislu, kada je nepokretnost opterećena hipotekom radi namirenja potraživanja zbog koga se izvršenje sprovodi, onda se izvršenje ne može proglasiti nedopuštenim zbog promene vlasnika nepokretnosti.¹⁸

Dakle, proizlazi zaključak da se u predlogu za izvršenje, kao izvršni dužnik, u situaciji kada dužnik iz izvršne isprave i vlasnik nepokretnosti nisu ista lica, isključivo treba naznačiti vlasnik nepokretnosti. U prilog navedenom, treba istaći i činjenicu da hipoteka, kao založno pravo, stiče publicitet upisom u javne knjige koje su svima dostupne, otuda i pretpostavka da je pribavilac opterećene nepokretnosti bio prethodno upoznat sa postojanjem hipoteke na nepokretnosti koju pribavlja.

Na ovom mestu, valjalo bi se osvrnuti i na izvorna pravila izvršnog prava, prema kojima se založno pravo na nepokretnosti upisanoj u zemljišnoj knjizi zasniva uknjižbom; tom prilikom u zemljišnoj knjizi se naznačava izvršivost potraživanja za koje je dozvoljeno založno pravo.¹⁹ Uknjižba založnog prava i zabeležba izvršivosti potraživanja imaju dejstvo da se izvršenje na toj nepokretnosti može sprovesti i prema trećem licu koje je tu nepokretnost docnije steklo.

Moguće rešenje navedenog problema možemo potražiti u članu 23 Zakona, odnosno u odredbama koje se odnose na prenos i prelaz potraživanja i obaveze. Naime, ukoliko bi izvršni poverilac uz predlog za izvršenje, na osnovu založne izjave, podneo npr. overeni ugovor o kupoprodaji dužnika sa vlasnikom nepokretnosti, sud bi mogao tretirati ovaj ugovor kao ispravu iz člana 23 st. 1 i 2 Zakona o izvršenju i obezbeđenju, i dozvoliti izvršenje protiv vlasnika nepokretnosti, i pored činjenice da on nije izvršni dužnik iz izvršne isprave.

7. Vansudski postupak namirenja hipotekarnog poverioca

Ceo postupak namirenja propisan odredbama Zakona o hipoteci, sprovodi se mimo sudske kontrole, što otvara mogućnost zloupotreba, posebno imajući u vidu privilegovan položaj hipotekarnog poverioca koji isti po zakonu ima, kao i činjenicu da se u ovoj ulozi po pravilu nalaze banke koje su u neuporedivo boljem ekonomskom položaju u odnosu na hipotekarne dužnike. Hipotekarni poverilac jednostrano utvrđuje postojanje, visinu i dospelost potraživanja. Takođe, na ovom mestu ćemo pomenuti i odredbu člana 15 stav 3 Zakona o hipoteci, a prema kojoj izvršni ugovor o hipoteci, odnosno izvršna založna izjava mora da sadrži, između ostalog, i jasno naznačenu odredbu, odnosno izjavu, kojom vlasnik nepokretnosti neopozivo ovlašćuje poverioca da, ako dug ne bude plaćen o dospelosti, poverilac može da naplati potraživanje iz cene dobijene prodajom u skladu sa vansudskim postupkom prodaje utvrđenim ovim zakonom, bez podnošenja tužbe sudu. Navedenom odredbom zakonodavac je našao za shodno da derogira

¹⁸ Presuda Vrhovnog suda Srbije, Rev. 230/2003 od 5. marta 2003. godine.

¹⁹ Član 249 st. 2 Zakona o izvršnom postupku, „Službeni list SRJ“, 27/92, 31/93. i 24/94.

pravo na pravnu zaštitu utvrđenu Ustavom Srbije.²⁰ Navedeno rešenje bi se moglo pravdati jedino dobijanjem na efikasnosti vanskudskog postupka. U navedenom slučaju dužniku bi na raspolaganju jedino stajala mogućnost podnošenja tužbe za poništaj pravnog osnova hipoteke, tj. ugovora odnosno založne izjave.

Vanskudski postupak namirenja se može pokrenuti samo na osnovu izvršne vanskudske hipoteke, a koja nastaje na osnovu ugovora ili založne izjave, sačinjenih u skladu sa odredbom člana 15 Zakona o hipoteci. Poverilac, bez obzira na način namirenja, nije obavezan da se prvo namiri iz predmeta hipoteke, već je zadržano pravilo prema kojem je hipoteka dodatna pogodnost za poverioca kojom se on može, ali ne mora služiti, tako da se može naplaćivati iz dužnikove (ostale) imovine i ako nije pokušao da se naplati iz hipoteke; međutim, isti se po pravilu naplaćuje iz vrednosti dobijene prodajom hipotekovane nepokretnosti, budući da tu uživa prvenstvo u namirenju. Odatle sledi da bi u slučaju namirenja iz ostale dužnikove imovine hipotekarni poverilac imao položaj običnog hirografernog poverioca.

Postupak vanskudskog namirenja inicira hipotekarni poverilac; ukoliko dužnik ne isplati dug o dospelosti, hipotekarni poverilac iz verodostojne isprave ili izvršne isprave iz člana 15 ovog zakona, poslaće opomenu (*prva opomena*) u pisanoj formi istovremeno dužniku i vlasniku predmeta hipoteke (ako su različita lica). Opomena sadrži sledeće elemente: podatke o ugovoru o hipoteci i hipotekovanoj nepokretnosti; opis povrede ugovora o hipoteci na osnovu koga se zahteva realizacija hipoteke; radnje koje dužnik mora da preduzme da bi isplatio dug i izbegao prodaju nepokretnosti; rok u kome dužnik mora da isplati dug da bi izbegao prodaju nepokretnosti; opomenu da, ukoliko dužnik ne preduzme te radnje i time isplati dug, poverilac će potraživati celokupan iznos potraživanja i prodajom hipotekovane nepokretnosti izgubiti državinu na nepokretnosti; ime i neophodne podatke o predstavniku poverioca kome se dužnik može obratiti za dobijanje više informacija; druge informacije za koje poverilac smatra da su od značaja.²¹

Ukoliko u roku od 30 dana od dana prijema prve opomene dužnik ne isplati dug, poverilac će dužniku i vlasniku nepokretnosti uputiti *opomenu o prodaji nepokretnosti*, i istovremeno podneti registru nepokretnosti zahtev da se izvrši zabeležba hipotekarne prodaje u korist poverioca. Registar nepokretnosti će, u roku od sedam dana od dana prijema zahteva za zabeležbu, izvršiti zabeležbu hipotekarne prodaje u korist poverioca i dostaviti poveriocu, dužniku i vlasniku nepokretnosti rešenje o zabeležbi hipotekarne prodaje; vlasnik, dužnik i poverilac imaju pravo žalbe nadležnom organu na rešenje o zabeležbi hipotekarne prodaje u roku od 15 dana od dana prijema rešenja. Žalba će biti uvažena ako dužnik ili vlasnik dostavi registru nepokretnosti nesporne pisane dokaze da: potra-

²⁰ Bodiroga Nikola (2010): „Vanskudsko izvršenje na osnovu Zakona o hipoteci“, *Pravni život* br. 12/2010, Beograd, 93.

²¹ Član 29 Zakona o hipoteci, „Službeni glasnik RS“, 125/05.

živanje ne postoji; hipoteka ne postoji; potraživanje nije dospelo za naplatu, ili je dug isplaćen. Drugostepeno rešenje iz stava 5 ovog člana, konačno je i izvršno i protiv njega nije dozvoljena tužba ili pravni lek.²²

8. Aukcijska prodaja i prodaja neposrednom pogodbom

Poverilac pristupa prodaji hipotekovane nepokretnosti putem aukcije ili neposredne pogodbe, ukoliko dužnik ne isplati dug do dana pravosnažnosti rešenja o zabeležbi hipotekarne prodaje, a od dana izdavanja tog rešenja prođe rok od 30 dana, pri tome izbor jednog načina prodaje ne isključuje mogućnost primene drugog načina prodaje, ako nepokretnost ostane neprodana. Pre pristupanja prodaji poverilac je dužan da utvrdi orijentacionu tržišnu vrednost nepokretnosti angažovanjem ovlašćenog sudskog veštaka. Na ovom mestu zakonodavac, ponovo favorizuje položaj hipotekarnog poverioca, imajući u vidu da isti jednostrano vrši utvrđivanje vrednosti nepokretnosti, a da, s druge strane, dužniku, odnosno vlasniku nepokretnosti nisu stavljena na raspolaganje nikakva pravna sredstva kojima bi pobijao odluku o utvrđivanju vrednosti. Kako se u ulozi hipotekarnog poverioca nalaze po pravilu banke koje vrše procenu vrednosti nepokretnosti pre odobrenja kredita, moguća je situacija da banka, prilikom prodaje, proceni vrednost nepokretnosti kao znatno nižu nego što je bio slučaj pri odobravanju kredita.²³

Kada za to budu ispunjeni uslovi, poverilac će organizovati aukcijsku prodaju nepokretnosti ili je može poveriti licu koje se time profesionalno bavi. Oglas o održavanju aukcijske prodaje mora biti na vidan način objavljen u dnevnom listu koji se prodaje u regionu u kome se nalazi hipotekovana nepokretnost i to najmanje 45 dana pre zakazane prodaje. Početna cena na aukciji ne može biti niža od 75 % procenjene vrednosti. Ako prva aukcija ne uspe, početna cena na drugoj aukciji ne može biti niža od 60 % procenjene vrednosti; izuzetno, poverilac i vlasnik, odnosno dužnik mogu, prilikom organizovanja aukcijske prodaje, u pisanom obliku ugovoriti da se nepokretnost može prodati i po nižoj ceni od 75 % procenjene vrednosti, odnosno od 60 % procenjene vrednosti.²⁴ Poverilac može, takođe, dati svoju ponudu na aukciji. Međutim, kako poverilac prodaje nepokretnost u svoje ime, ako se pojavi u svojstvu kupca dolazi do zaključenja „ugovora sa samim sobom“, što može izazvati kasnije poteškoće prilikom upisivanja prava svojine u javne knjige.²⁵ Podsećamo da, prema Zakonu o izvršenju i obezbeđenju, početna cena na prvom nadmetanju iznosi 60 % utvrđene vred-

²² Član 30 Zakona o hipoteci, „Službeni glasnik RS“, 125/05.

²³ Bodiroga Nikola, 98.

²⁴ Član 35 Zakona o hipoteci, „Službeni glasnik RS“, 125/05.

²⁵ Stojilković Srđan (2013): „Vansudsko namirenje hipoteke – stanje i potencijalni pravci razvoja“, *Pravni život* br.10/2013, Beograd, 507.

nosti, dok na drugom ne može biti niža od 30 % procenjene vrednosti. Takođe, navedene odredbe Zakona o izvršenju i obezbeđenju, imperativnog su karaktera, i ne ostavljaju mogućnost strankama da ugovore nižu cenu od propisane, na prvom odnosno drugom nadmetanju.

Poverilac, na osnovu pravosnažnog rešenja o zabeležbi hipotekarne prodaje, a po isteku roka od 30 dana od dana izdavanja rešenja, može u svoje ime prodati nepokretnost neposrednom pogodbom, po ceni koja je približna tržišnoj. Pod tržišnom cenom podrazumeva se uobičajena cena koja se može postići prodajom te nepokretnosti u dobroj veri, u vreme hipotekarne prodaje. Poverilac može prodavati nepokretnost samostalno ili uz angažovanje advokata, odnosno agencije za promet nepokretnosti. Ukoliko se prodaja vrši preko advokata ili preko agencija za promet nepokretnosti, uobičajeni honorar, odnosno provizija mogu biti uključeni u prodajnu cenu. Ukoliko se prodaja vrši preko advokata ili preko agencija za promet nepokretnosti, uobičajeni honorar, odnosno provizija mogu biti uključeni u prodajnu cenu. Najkasnije u roku od 15 dana pre zaključenja ugovora o prodaji nepokretnosti, poverilac će o prodaji obavestiti dužnika, vlasnika nepokretnosti i lica koja imaju druga prava na nepokretnosti, obaveštenjem koje sadrži: iznos celokupnog potraživanja; procenjenju vrednost nepokretnosti; bitne elemente ugovora o prodaji nepokretnosti; datum za kada se predviđa zaključenje ugovora o kupoprodaji; način na koji će se sredstva dobijena od prodaje raspodeliti; datum kada nepokretnost mora biti iseljena i ispražnjena; izjavu u kom roku može da se ispuni celokupna obaveza, da bi se izbegla prodaja nepokretnosti.²⁶ Prema Zakonu o izvršenju i obezbeđenju izvršni poverilac i izvršni dužnik se mogu tokom celog postupka sporazumeti o prodaji neposrednom pogodbom i o uslovima prodaje.²⁷

9. Namirenje iz cene dobijene prodajom nepokretnosti i raspodela sredstava dobijenih prodajom nepokretnosti

Budući da Zakon o hipoteci dozvoljava vlasniku nepokretnosti da istu optereći hipotekom u korist docnijeg poverioca, česta je situacija da se na aktivnoj strani u hipotekarnom odnosu pojavljuje više lica – hipotekarnih poverilaca. U tom slučaju, kad je jedan predmet hipoteke založen nekolicini hipotekarnih poverilaca, redosled po kome se isplaćuju njihova potraživanja iz cene dobijene prodajom predmeta hipoteke određuje se prema danu, času i minutu nastajanja hipoteke, računajući od momenta prve upisane hipoteke.²⁸ Prema navedenoj zakonskoj odredbi zastupljen je princip rangiranja i ustanovljenje ranga. Mogućnost rangiranja stvarnih prava je posledica okolnosti da na istoj stvari može biti

²⁶ Član 36 Zakona o hipoteci, „Službeni glasnik RS“, 125/05.

²⁷ Član 122 Zakona o izvršenju i obezbeđenju, „Službeni glasnik RS“, br. 31/2011.

²⁸ Član 40 Zakona o hipoteci, „Službeni glasnik RS“, 125/05.

konstituisano više ograničenih stvarnih prava iste ili slične sadržine, tako da je neophodno utvrditi prioritet, odnosno redosled njihovog vršenja. Rang postaje važan kada se primenjuje prinudno izvršenje na nepokretnosti i njena cena postignuta javnom prodajom stvari nije dovoljna za namirenje svih poverilaca.²⁹

Nakon prodaje predmeta hipoteke, najpre se namiruju: troškovi prodaje, uključujući troškove i honorare trećih lica; potraživanje hipotekarnog poverioca; potraživanje hipotekarnog poverioca nižeg reda ili drugog poverioca sa jednakim redom obezbeđenja; preostali iznos pripada dužniku. Poverilac će, u roku od sedam dana nakon raspodele sredstava, dužniku i svim trećim licima koja imaju prava na nepokretnosti, dostaviti konačni obračun raspodele sredstava.³⁰ Zakonom o hipoteci je smanjen broj privilegovanih potraživanja, što svakako pogoduje hipotekarnim poveriocima, i smatramo da može biti jedan od razloga za opredeljivanje za vansudski postupak namirenja.

Namirenje iz hipotekovane nepokretnosti u sudskom izvršnom postupku po odredbama Zakona o izvršenju i obezbeđenju vrši se na način propisan članovima 137 i 138 navedenog zakona. Analizom odredbe člana 41 Zakona o hipoteci i odredaba članova 137 i 138 Zakona o izvršenju i obezbeđenju, može se zaključiti da Zakon o hipoteci stavlja hipotekarnog poverioca u povoljniji položaj, s obzirom na to da se njegovo potraživanje, prilikom raspodele sredstava dobijenih prodajom, namiruje drugo po redu, odmah nakon troškova prodaje nepokretnosti. S druge strane, prema navedenim odredbama Zakona o izvršenju i obezbeđenju, izvršni poverilac, odnosno hipotekarni poverilac po čijem se predlogu određeno izvršenje, namiruje se tek peti po redu.

10. Problem vansudskog namirenja – član 49 Zakona o hipoteci

Jedan od najvećih problema u postupku vansudskog namirenja hipotekarnog poverioca, i slobodno se može reći – jedan od glavnih razloga zbog kojeg se hipotekarni poverioci opredeljuju za sudski postupak namirenja, jeste sporna odredba člana 49 Zakona o hipoteci. Prema navedenom članu, hipoteka prestaje i kad je, na osnovu verodostojne isprave ili izvršne isprave, u skladu sa zakonom, predmet hipoteke prodat vansudskim putem i kad je poverilac namiren ili kad je poverilac namiren na osnovu naknadnog ugovora; u skladu sa ovim zakonom, ispis se vrši na zahtev kupca predmeta hipoteke, s tim da, prava docnijih hipotekarnih poverilaca ostaju rezervisana. Navedeno bi značilo da kupac nepokretnosti u vansudskom postupku, i nakon isplaćene kupoprodajne cene stiće nepokretnost opterećenu založnim pravom docnijih hipotekarnih poverilaca,

²⁹ Zaključak usvojen na sednici Građanskog odeljenja Vrhovnog kasacionog suda 4. 10. 2010. godine, dostupan na sajtu: <http://www.vk.sud.rs/sites/default/files/attachments/Zaklju%C4%8Dak%20-%20Izvr%C5%A1na%20vansudska%20hipoteka.pdf>

³⁰ Član 41 Zakona o hipoteci, „Službeni glasnik RS“, 125/05.

naravno, ukoliko ista postoje. Drugim rečima, za razliku od sudskog postupka prodaje nepokretnosti, u vansudskom ne dolazi do brisanja založnog prava na nepokretnosti, odnosno ne dolazi do brisanja kasnije upisane hipoteke niže po rangu namirenja. S tim u vezi, opravdano se postavlja pitanje. ko bi kupio takvu nepokretnost na kojoj i dalje postoje prava docnijih nenamirenih poverilaca.³¹ Može se zaključiti da bi se u postupku vansudske prodaje nepokretnosti opterećene hipotekom nižeg ranga retko mogao naći kupac, pre svega zbog činjenice da će Republički geodetski zavod odbiti zahtev kupca nepokretnosti za ispis kasnije upisane hipoteke. Navedeno rešenje dovodi u pitanje efikasnost celokupnog postupka vansudskog namirenja hipotekarnog poverioca.

Upravo zbog toga banke, koje se najčešće javljaju u ulozi hipotekarnog poverioca, opredeljuju se za sudski postupak prodaje, i pored činjenice da su sudovi dosta opterećeni brojem predmeta u radu, što utiče i na efikasnost samog postupka, i brzinu realizacije obezbeđenog potraživanja.

Samo ilustracije radi, u donjoj tabeli dat je pregled broja predmeta u izvršnom sudskom veću Prvog osnovnog suda u Beogradu.

Tabela 1: Pregled broja predmeta u izvršnom sudskom veću Prvog osnovnog suda u Beogradu

Preneto			Primljeno	Ukupno u radu nerešenih	Ukupno u radu u sudu
Nerešeno	Rešeno ali ne i konačno	Ukupno			
753	9.378	10.131	821	1.574	10.952
			Ostalo na kraju		
Rešeno	Konačno rešeno		Nerešeno	Rešeno, ali ne i konačno	Ukupno
1.389	0		3.507	29.985	33.492

Izvor: AVP informacioni sistem sudova, Prvi osnovni sud u Beograd, 2013. godina.

Kako bi rešile navedeni problem, banke su počele da pribegavaju praksi da u ugovore o hipoteci unose odredbe o zabrani otuđenja, odnosno daljeg opterećenja založene nepokretnosti.³² Navedeno rešenje suprotno je članu 13 st. 3 Zakona o hipoteci, prema kojem je ništava odredba ugovora o hipoteci na osnovu koje vlasnik ne može da otuđi predmet hipoteke ili da ga optereti hipotekom u korist docnijeg poverioca. S druge strane, valjalo bi pomenuti i Mišljenje ministarstva finansija Republike Srbije od 8. 7. 2009. godine, povodom tumačenja člana 49 Zakona o hipoteci, a prema kojem mišljenju se sudski i vansudski postupak prodaje nepokretnosti izjednačavaju u pogledu brisanja založnog prava nakon prodaje

³¹ Bodiroga Nikola, 103.

³² Program dugoročnog stambenog kreditiranja profesionalnih vojnih lica za 2014. godinu, http://www.mod.gov.rs/sadrzaj.php?id_sadrzaja=4398

nepokretnosti. Prema pomenutom mišljenju, ne postoji opravdanje da se pravo na namirenje iz hipotekovane nepokretnosti vanskudskom prodajom nepokretnosti tretira na drugačiji način od prava koje se ostvaruje u sudskoj prodaji nepokretnosti. Poučen negativnim efektima navedene odredbe, zakonodavac je Nacrtom o izmenama i dopunama Zakona o hipoteci iz 2014. godine, izjednačio sudski i vanskudski postupak prodaje u pogledu brisanja tereta na nepokretnosti. Naime, prema navedenim izmenama, prilikom vanskudske prodaje, sve upisane hipoteke i drugi tereti prestaju po sili zakona i nadležni registar nepokretnosti vrši brisanje po službenoj dužnosti, bez obzira na to da li je potraživanje namireno u celosti, delimično, ili je ostalo nenamireno. Smatramo da je ovo suštinska izmena koju će pretrpeti Zakon o hipoteci, što će omogućiti jednostavnije odobravanje kredita, čime bi se olakšao pristup privrednih subjekata izvorima finansiranja.

11. Zaključna razmatranja

Poverilac iz izvršne isprave, iz člana 15 Zakona o hipoteci, ima pravo izbora – da svoje potraživanje prinudno ostvari u sudskom izvršnom postupku, po pravilima Zakona o izvršenju ili obezbeđenju, ili u vanskudskom postupku, po pravilima Zakona o hipoteci. Izmenama procesnih zakona kojima je regulisan sudski postupak prinudnog izvršenja, kao izvršna isprava uvodi se i ugovor o hipoteci, odnosno založna izjava sačinjena saglasno propisima kojima se reguliše hipoteka. I pored brojnih pravnih instrumenata koje uvodi Zakon o izvršenju i obezbeđenju, a koja postupak izvršenja čine efikasnijim, u njihovoj primeni otvaraju se brojna sporna pitanja na koja odgovor treba potražiti u stavovima sudske prakse. Međutim, i nakon reformi pravosudnog sistema u Republici Srbiji, sudovi su i dalje neadekvatno organizovani, što se između ostalog ogleda u preopterećenosti velikim brojem predmeta u radu, što osujećuje i samu efikasnost sudskog postupka zaštite, odnosno ostvarivanja subjektivnih prava. Nadamo se da će najavljene izmene hipotekarnog prava preusmeriti založne poverioce ka vanskudskoj realizaciji obezbeđenog potraživanja, i time sam postupak učiniti efikasnijim.

Literatura

- Bodiroga Nikola (2010): „Vanskudsko izvršenje na osnovu Zakona o hipoteci“, *Pravni život*, br. 12/2010.
- Brkić Jelena (2008): „Domašaj načela oficijelnosti u založnom pravu Republike Srbije“, *Pravna riječ*, br. 28.
- Vuksanović Draginja (2006): „Vanskudsko namirenje hipotekarnog povjerioca“, *Pravni život*, br. 10/2006.

- Vuksanović Draginja (2008): „Sud ili ovlašćeno lice u postupku namirenja hipotekarnog potraživanja“, *Pravna riječ*, br. 28.
- Medić Duško (2006): „Hipotekarnopravni odnos kao aspekt sadržine hipoteke“, *Zbornik Pravnog fakulteta, Sveučilište „Rijeka“*
- Živković Miloš (2010): *Akcesornost založnih prava na nepokretnostima*, Pravni fakultet, Univerzitet u Beogradu
- Živković Miloš (2009): *Novo hipotekarno pravo u Republici Srbiji*, dostupno na: <http://www.ius.bg.ac.rs/prof/Materijali/xivmil/NovoHipotekarnoPravoClanak.pdf>.
- Zaključak usvojen na sednici Građanskog odeljenja Vrhovnog kasacionog suda 4. 10. 2010. godine, dostupan na sajtu: <http://www.vk.sud.rs/sites/default/files/attachments/Zaklju%C4%8Dak%20-%20Izvr%C5%A1na%20vansudska%20hipoteka.pdf>.
- Izveštaj o radu odeljenja sudske prakse za izvršnu materiju za period od 3. 1. 2013. do 31. 10. 2013. godine, Prvog osnovnog suda u Beogradu
- Nikolić Mladen, Šarkić Nebojša (2012): *Kritička analiza pojedinih odredaba novog Zakona o izvršenju i obezbeđenju*, Beograd
- Planojević Nina (2006): „Pravo stranog pravnog lica na hipoteku“, *Pravni život*, br. 10/2006. godina.
- Presuda Vrhovnog suda Srbije, Rev. 230/2003 od 5. marta 2003. godine
- Radni materijal sa XX savetovanja privrednih sudova Republike Srbije, dostupno: www.pa.sud.rs
- Radovanović Miloš (2011): „Ugovor o hipoteci i založna izjava kao izvršne isprave“, *Izbor sudske prakse*, 11/2011.
- Ristić Vukašin (2006): *Komentar Zakona o izvršnom postupku*, Beograd
- Rogić Zoran (2008): „Izvršenje na nepokretnosti“ – članak sa savetovanja „Ka novom građanskom pravu, *Bankarstvo*, br. 7/8.
- Rose Carol (1998): *Crystals and Mud in Property Law*, Yale Law School
- Rešenje Privrednog apelacionog suda, Iž. 1369/2010 od 6. 5. 2010. godine
- Stamenković Jasmina, Pavlović Ivana, Dimitrijević Mirjana (2012): *Zakon o hipoteci i prinudno ostvarivanje potraživanja*, Beograd
- Stanković Obren, Orlić Miodrag (1999): *Stvarno pravo*, Beograd
- Stojilković Srđan (2013): „Vansudsko namirenje hipoteke – stanje i potencijalni pravci razvoja“, *Pravni život*, br.10/2013, Beograd

Slobodan Stošić, PhD Candidate

Faculty of Law, Public Administration and Security,
Megatrend University, Belgrade

MORTGAGE ENFORCEMENT ON REAL ESTATE

S u m m a r y

In modern economy credit mechanism provides adequate guidance of social wealth. Developed lending involves the construction and establishment of legal principles that would provide additional security to persons who establish mutual credit relationship, which constitutes the rights and obligations. Mortgages as collateral, had a limited scope in countries with economy is based on strong state intervention in the market. The adoption of new regulations, these institutions again became important and tempting, especially for banks as lenders are all prevalent in the market. If debtor fails to pay its debt when it is due, mortgage creditor can choose between two modes of payment. Mortgage agreement is now enforceable title, by the amendments of executive law. However, after the reform of the judicial system in the Republic of Serbia, courts are still inadequately organized, which is also reflected in the large number of overload of cases, which frustrates the very efficiency of the judicial proceedings for the protection and realization of individual rights.

Key words: mortgage, collaterals, real estate

MALOLETNIČKI KRIMINALITET U RUSIJI – KRIVIČNOPRAVNA REAKCIJA, TRENDOWI KRETANJA I KLJUČNI PROBLEMI**

U literaturi, kao i u internacionalnim statističkim pregledima, retko pronalazimo detaljnije podatke o maloletničkom kriminalitetu u Ruskoj Federaciji, kao i o načinima reagovanja na ovaj značajan problem. S obzirom na turbulentne prilike i velika društvena previranja koja su se u poslednjih nekoliko decenija odvijala u ovoj državi, trebalo bi da postoji veće interesovanje i za problem maloletničkog kriminaliteta. Za Srbiju bi iskustva Ruske Federacije mogla biti posebno značajna, ukoliko se ima u vidu da je i naša zemlja prolazila i još uvek prolazi kroz tranziciju, raslojavanje stanovništva i ekonomsku krizu, pri čemu Republiku Srbiju i Rusku Federaciju vežu kulturne, verske i druge sličnosti. Stoga je cilj rada da se na sumaran način predstave osnovne odlike maloletničkog kriminaliteta i ustrojstvo i funkcionisanje sistema formalne reakcije u Ruskoj Federaciji, te da se time izgradi baza za neka buduća istraživanja i poređenja.

Ključne reči: maloletnički kriminalitet, krivičnopravna reakcija, Ruska Federacija

1. Uvodna razmatranja

Strateško razmišljanje o načinima borbe protiv kriminaliteta iziskuje upoznavanje i uvažavanje iskustava drugih zemalja. To se, svakako, odnosi i na oblasti maloletničkog krivičnog prava i maloletničkog pravosuđa.¹ Naime, postoji gotovo opšta saglasnost o tome da se pri suzbijanju maloletničkog kriminaliteta moraju poštovati standardi za koje plediraju međunarodni dokumenti, poput načela najboljeg interesa deteta i načela minimalnog intervenisanja, te se utoliko može očekivati i da će se među nacionalnim sistemima različitih država pronaći veći broj međusobnih sličnosti i podudaranja.

* Dr Milica Kovačević, asistent, Fakultet za specijalnu edukaciju i rehabilitaciju Univerziteta u Beogradu, e-mail: bucak80@gmail.com

** Tekst je nastao kao rezultat rada na projektu „Razvoj metodologije evidentiranja kriminaliteta kao osnova efikasnih mera za njegovo suzbijanje i prevenciju“, br. 179044, koji finansira Ministarstvo prosvete, nauke i tehnološkog razvoja RS, a implementira Fakultet za specijalnu edukaciju i rehabilitaciju.

¹ Vid. Preporuka Saveta Evrope No. R (87) 20 o reakciji na maloletničku delinkvenciju, 17. septembar 1987. godine, V deo.

U Srbiji se tokom poslednjih godina veoma mnogo polaže na usaglašavanje našeg maloletničkog krivičnog prava sa dominantnim naučnim tendencijama u ovoj oblasti, te sa međunarodnim, i posebno, evropskim standardima u ovoj oblasti. To je vrlo uočljivo od 2006. godine i stupanja na snagu Zakona o maloletnim učiniocima krivičnih dela, „Službeni glasnik Republike Srbije“, 85/2005,² kada su u naš sistem uvedeni vaspitni nalozi i veće mogućnosti za diverziono i restorativno postupanje. Jedna od tih tendencija odnosi se i na razmenu znanja i iskustava na što širem nivou, te tako naša zemlja doprinosi prikupljanju podataka učešćem u različitim internacionalnim istraživačkim projektima i anketama. Ovo smatramo pohvalnim, te nalazimo da je osim diseminacije naših iskustava nužno i upoznavanje sa iskustvima drugih. U tom smislu uočavamo da postoje one države o čijim iskustvima sasvim malo znamo, a uz to nam nisu ni dostupni izvori iz kojih bismo ta oskudna saznanja obogatili. Takav je slučaj upravo sa Ruskom Federacijom (u daljem tekstu: Rusija), iako se u proteklih nekoliko decenija društvene, ekonomske i političke prilike u ovoj državi mogu porediti sa prilikama u Srbiji. Kada se tome dodaju i brojne sličnosti našeg i ruskog podneblja u pogledu tradicije, te verskih i kulturnih osobenosti, onda postaje jasno zašto smo se opredelili da u daljim izlaganjima predstavimo rusko maloletničko krivično pravo i pravosuđe.

U Rusiji živi približno 145 miliona stanovnika, a od toga je 29 miliona dece.³ Ekonomske i društvene prilike su takve da gotovo 6 miliona ruske dece živi u siromaštvu.⁴ U 2006. godini zabeleženi su podaci shodno kojima u državi ima 731.000 dece bez roditeljskog staranja. Procenjuje se da je bez doma između 800.000 i 4.000.000 dece,⁵ što uvećava rizik da mnoga od ove dece u budućnosti dođu u sukob sa zakonom. Demografske prilike su takve da se kontinuirano smanjuje broj dece, što je od strane ruskih zvaničnika okvalifikovano kao jedna od ključnih pretnji za budućnost i bezbednost države.⁶ Nakon sloma Saveza Sovjetskih Socijalističkih Republika 1991. godine dolazi do porasta maloletničkog kriminaliteta, te je u narednih nekoliko godina svake godine milion maloletnika kršilo zakon, od čega je približno 500.000 procesuirano.⁷ U aktuelnom trenutku Rusija, uz SAD i Englesku i Vels, spada među države sa najvišom stopom smešta-

² Vid. Stojanović-Milošević Gordana (2010): „Maloletničko krivično zakonodavstvo i standardi Evropske unije“, 321, u: Bejatović Stanko (ur.): *Krivično zakonodavstvo Srbije i standardi Evropske unije*, XLVII redovno godišnje savetovanje Srpskog udruženja za krivičnopravnu teoriju i praksu, Zlatibor

³ Dutkiewicz Piotr *et al.* (2009): *Juvenile Justice in Russia: Models, Design and the Road Ahead*, Canadian International Development Agency, Ottawa, 5.

⁴ *Ibid.*, 26.

⁵ Kliucharev Grigory, Trofimova Irina (2011): „Youth at risk in The Russian Federation: Reasons for social protection“, *Corvinus journal of sociology and social policy* 1/2011, 88.

⁶ Hakvag Una Kirstine (2009): *Juvenile Justice in the Russian Federation*, Master's Thesis, University of Oslo, Oslo, 9.

⁷ Dutkiewicz Piotr *et al.*, 27.

nja maloletnih prestupnika u zatvorene ustanove,⁸ što se direktno kosi sa opšte-prihvaćenim standardom o izbegavanju institucionalizacije maloletnika.

2. Istorijat i aktuelno stanje u maloletničkom krivičnom pravu Rusije

Najpre treba naglasiti da termin maloletničko krivično pravo možda ne bi ni trebalo koristiti kada je reč o Rusiji, s obzirom na to da u ovoj zemlji ne postoje posebni maloletnički sudovi, niti zasebni propisi o tretiranju maloletnih učinilaca krivičnih dela. Maloletnicima su posvećeni određeni, neveliki delovi zakona iz oblasti materijalnog i procesnog krivičnog prava koji se primenjuju i na odrasla lica. Osim toga, pri ukazivanju na odlike pravnog sistema u Rusiji ne treba gubiti iz vida da ovu državu čini 85 subjekata Federacije koje odlikuju bitne razlike u administrativnom uređenju, ali i u ekonomskim, demografskim i drugim prilikama. Rusiju tvori 9 pokrajina, 46 regiona, 22 republike, 3 grada od saveznog značaja, 1 autonomni region i 4 autonomne oblasti. To znači da se ne može dati jedan jedinstven i celovit pregled kada je u pitanju postupanje prema maloletnicima u sukobu sa zakonom. Naime, krivičnopravna materija se reguliše na federalnom nivou, ali su zato pitanja u vezi sa porodicom, zaštitom dece i preventivnim aktivnostima u nadležnosti kako Federacije, tako i subjekata koji tvore Federaciju. Konačno, nakon sloma Sovjetskog Saveza, mnoge od ovih jedinica su postigle veći stepen samostalnosti u odnosu na Moskvu, što neujednačenosti čini utoliko izraženijim.⁹

Prvi put se u nekadašnjoj carskoj Rusiji značajnija pažnja posvećuje problemu maloletničke delinkvencije tek u doba kada je došlo do prve sveobuhvatne reforme krivičnog prava, dakle šezdesetih godina 19. veka. Tada su usvojene kodifikacije u oblasti materijalnog i procesnog krivičnog prava, dok se zakoni iz ranijeg perioda ne mogu smatrati sistemskim rešenjima, već tek većim ili manjim ograničavanjem apsolutne vlasti careva.¹⁰ Uvedeno je obavezno odvajanje maloletnika od odraslih prestupnika, odnosno smeštanje maloletnika u korektivne ustanove, gde se pažnja posvećuje pre svega radnom angažovanju i obrazovanju. Takve ustanove su se otvarale pri crkvama, ali su ih mogle držati i razne kompanije i privatnici. Sistem je uzimao u obzir i socijalne i porodične okolnosti iz kojih maloletnici potiču i primenjivao se sve do oktobarske revolucije 1917. godine.¹¹

Moglo bi se reći da se postupanje u periodu od druge polovine 19. veka pa do dvadesetih godina 20. veka i velikih društvenih i političkih previranja zasnivalo

⁸ *Ibid.*, 28.

⁹ *Ibid.*, 15.

¹⁰ Pridemore William (2005): *Ruling Russia-Law, Crime and Justice in a Changing Society*, Roman and Littlefield Publishers INC, Lanham, 226.

¹¹ Pridemore William, 226.

na onome što bismo danas mogli nazvati pravosudnim modelom (*justice model*). Dakle, kažnjavanje maloletnika u skladu sa težinom krivičnog dela, a u principu zasnovano na retributivizmu i generalnoj prevenciji. Za razliku od zaštitničkog pristupa, koji će kasnije imati primat, maloletnik se ne posmatra kao biće nesposobno da odlučuje o svojim postupcima, već kao i svaki drugi pojedinac koji se svojom voljom opredeljuje za nedozvoljeno ponašanje, što istovremeno podrazumeva da se nešto manja pažnja posvećuje upoznavanju ličnih i socijalnih prilika iz kojih maloletnik potiče, odnosno da se maloletnik upućuje u penalne ustanove umesto da se sistem socijalne zaštite bavi njime. Osnov odgovornosti maloletnika pravosudni pristup pronalazi u donekle modifikovanim idejama klasične škole.

Početak 20. veka propusti u obrazovanju su se smatrali glavnim uzrokom maloletničkog kriminaliteta, te se zato velika pažnja pridavala obrazovnim sadržajima u korektivnim ustanovama. Međutim, u narednim godinama stvari se menjaju, pa se prioritet daje činionicima poput siromaštva i uslova u kojima maloletnici odrastaju. Tako se 1910. godine formira prvi maloletnički sud u Sankt Peterburgu, te će od tada glavni zadatak ovakvih sudova biti da nakon utvrđivanja maloletnikove krivice, ustanove kakav uticaj su imale socijalne prilike iz kojih maloletnik potiče i kako bi se moglo korektivno uticati na njih.¹² Tada su ustanovljeni i svojevrсни organi starateljstva koji su sudovima pribavljali neophodne informacije, a smatra se da su ovakve promene nastale pod uticajem naučnih tendencija iz zapadnih zemalja.

Oktobarska revolucija 1917. godine dovodi do zaokreta ka pristupu koji bi se mogao okarakterisati kao zaštitnički (*welfare model*). Inače, zaštitničko reagovanje na maloletnički kriminalitet javlja se u rudimentarnom obliku još s kraja 19. veka kao posledica intenzivnog razvoja sociologije i drugih nauka o čoveku i društvu. Naime, kako se sve više proučavaju priroda i mehanizmi nastanka patoloških društvenih odnosa, dolazi se do zaključka da bi nauka putem sagledavanja društvenih problema mogla da pomogne, te da bi psihologija i psihijatrija mogle uticati na promenu negativnih osobina date individue. Uviđa se da su deca osobito podložna različitim uticajima, te da posebni organi i ustanove za maloletnike svojim angažmanom mogu blagotvorno uticati ukoliko se pri sankcionisanju ne vodi strogo računa o stegama zakona i o procesnim formalnostima, već i o potrebama i razvoju mladih.¹³ Sve više se govori o kaznenom pravu koje proučava ličnost učinioca krivičnog dela, pri čemu je proučavanje maloletničke ličnosti posebno bitno, nasuprot kaznenom pravu koje proučava prevashodno delikt.¹⁴ Državi se u zaštitničkom modelu prepušta briga o najboljem interesu maloletnika, ona se postavlja kao roditelj (*parens patrie* doktrina), zbog

¹² Hakvag Una Kirstine, 30.

¹³ Junger-Tas Josine (1994): „Will the juvenile justice system survive?“, *European Journal on Criminal Policy and Research* 2-3/1994, 76, 77.

¹⁴ Perić Obrad, Milošević Nikola, Stevanović Ivana (2008): *Politika izricanja krivičnih sankcija prema maloletnicima u Srbiji*, Centar za mir i demokratiju, Beograd, 20.

čega nema potrebe za svim onim procesnim garancijama i pravnim lekovima koji štite punoletna lica u sličnim situacijama. Ovaj model karakteriše odsustvo suvišnog formalizma i neodređenost pri izricanju sankcija, što znači da služba socijalne zaštite dobija izuzetno značajnu ulogu, jer se na osnovu njenih evalvacija trajanje i modalitet sankcije mogu drastično menjati.

U Rusiji su 1918. godine formirane posebne Komisije za maloletnike, pa se u narednim godinama najveći broj maloletničkih krivičnih stvari rešavao upravo pred njima. Komisije su pre svega uvažavale lične potrebe maloletnika, dok je krivično delo bilo u drugom planu, pre kao povod zbog koga se država bavi vaspitno zapuštenim maloletnikom. No, već 1920. godine odlučeno je da ova tela ipak ne budu nadležna za teža krivična dela maloletnih učinilaca starosti od 14 do 18 godina, već da takvi slučajevi budu u nadležnosti redovnih sudova.¹⁵ Novi krivični zakon iz 1922. godine ustanovio je blaže sankcije za maloletnike, zabranu smrtne kazne i medicinsko-pedagoške mere, tako da je u ovom periodu zatvaran znatno manji broj maloletnika no ranije.¹⁶

Era Staljinove vladavine donosi krupne promene i zaokret ka retributivnijem pristupu. Tako se tokom tridesetih godina 20. veka odustaje od posebnih lokalnih komisija i blaže kaznene politike prema maloletnicima, te čak više nije isključena ni mogućnost primene smrtne kazne. Uzrast od koga maloletnik može biti krivično odgovoran spušta se na 12 godina, a svi maloletnički predmeti vraćaju se u nadležnost redovnih sudova. Ovo je direktna posledica stanovišta da je kriminalno ponašanje pretnja po održanje i napredak socijalističkog društvenog uređenja, te da je ono zapravo posledica negativnih uticaja zapadnih zemalja.¹⁷

Oštrij pristup prema maloletnicima održao se do pedesetih godina 20. veka, i do reformisanja krivičnog zakonodavstva 1961. godine. Potom se opet uvode komisije za maloletnike, a uzrast za krivičnu odgovornost se vraća na 14 godina. I dalje se obilato primenjuje zatvaranje maloletnika, ali se sve više primenjuje i upućivanje u vaspitne kolonije.¹⁸ Smatra se da je upravo sredinom 20. veka postavljen temelj maloletničkog krivičnog prava, na kome se i danas zasniva sistem maloletničkog pravosuđa u Rusiji. Tako je sistem dvostrukog koloseka bio zastupljen sve do 2001. godine i poslednjeg reformisanja ruskog krivičnopravnog sistema. Takav sistem, pojednostavljeno rečeno, podrazumeva postupanje od strane lokalnih komisija za maloletnike, kada je reč o mlađim maloletnicima i blažim oblicima kriminaliteta, i postupanje redovnih sudova, kada je reč o težim oblicima kriminaliteta i starijim maloletnicima.¹⁹ Komisije nisu bile deo pravosudnog sistema, tako da su se one pre svega bavile antisocijalnim ponašanjem dece, dakle lica mlađa od 14 godina, mada su vrlo često rešavale i pomenute

¹⁵ Hakvag Una Kirstine, 30.

¹⁶ *Ibid.*

¹⁷ Hakvag Una Kirstine, 31.

¹⁸ *Ibid.*

¹⁹ *Ibid.*, 32.

teže slučajeve. Zato se u praksi često isticao problem legaliteta u postupanju ovih organa, pošto je na mestu bila zamerka da se mimo onoga što ustav predviđa presuđivanje stavlja u nadležnost organa koji se ne može poistovetiti sa sudskom vlašću, čime se dovode u pitanje procesne i druge garancije koje bi morale štiti prava maloletnih lica. Stoga su komisije za maloletnike konačno, makar formalno-pravno posmatrano, ukinute 2001. godine.²⁰

Tako dolazimo do aktuelnog trenutka u kome se i te kako osećaju posledice i uticaj nekadašnjih rešenja i prilika iz kojih su takva rešenja proizašla. Da sumiramo, sistem maloletničkog krivičnog prava nastaje sredinom 19. veka kada je tadašnja ruska carevina nastojala da svoja pravna rešenja uskladi sa naučnim tendencijama, ali i uticajima iz zapadnih evropskih zemalja i iz Severne Amerike. Revolucionarna zbivanja donose preokret ka zaštitničkom modelu, koji je potom sa manje ili više izraženim osobenostima pravosudnog modela bio na snazi zaključno s aktuelnim momentom. U literaturi se ističe da čitav ovoj period zapravo odlikuje nedostatak jednog jasnog strateškog usmerenja u pogledu toga šta se zapravo želi postići krivičnopravnom reakcijom kada je u pitanju maloletnički kriminalitet, a ne bi bilo daleko od istine ni da se kaže da je tako i danas.

Trenutno je na snazi Krivični zakonik iz 1996. godine koji je menjan više puta, kao i Zakonik o krivičnom postupku iz 2001. godine, takođe sa većim brojem izmena. Za postupanje u maloletničkim predmetima, pa i za svojevrsno reformisanje ove oblasti, od posebnog su značaja i preporuke Vrhovnog suda Rusije. Tako je Vrhovni sud, zasedajući u opštoj sednici, usvojio Preporuku o primeni opšte prihvaćenih međunarodnih standarda i normi od strane sudova opšte nadležnosti, od 10. oktobra 2003. godine, u kojoj se navodi da su ruski sudovi direktno vezani odredbama međunarodnih dokumenata poput Konvencije UN o pravima deteta, te da odredbe tih akata imaju primat i u slučaju kolizije sa nacionalnim propisima.²¹ Preporuka opšte sednice o postupanju sudova u maloletničkim krivičnim stvarima, od 7. februara 2000. godine, sugerise da sudije koje u ovim predmetima postupaju moraju biti posebno edukovane, da treba da koriste usluge socijalnih radnika i drugih stručnjaka, te da sarađuju sa drugim državnim strukturama nadležnim za staranje o deci i prevenciju kriminaliteta, kao i da se mere institucionalnog karaktera mogu primenjivati tek kao poslednje raspoloživo sredstvo i uz eksplicitno navođenje razloga koji to opravdavaju.²²

Pozitivno zakonodavstvo Rusije predviđa da se krivično odgovornim može smatrati maloletnik sa navršenih najmanje 14 godina, što je usklađeno sa uzra-

²⁰ *Ibid.*

²¹ Вид. Пленум Верховного суда Российской Федерации, *Постановление Пленума Верховного Суда Российской Федерации от 10 октября 2003 г. N 5, О применении судами общей юрисдикции общепризнанных принципов и норм международного права и международных договоров Российской Федерации.*

²² Пленум Верховного суда Российской Федерации, *Постановление от 14 февраля 2000 г. N 7, О судебной практике по делам о преступлениях несовершеннолетних.*

stom krivične odgovornosti u većini evropskih država,²³ te sa međunarodnim standardima, dok je gornja granica maloletstva označena 18. godinom starosti.²⁴ Maloletnicima mogu biti izrečene kazne ili vaspitne mere, ali isto tako mogu biti smešteni u obrazovne ustanove zatvorenog tipa i nakon izvršenja kazne, ukoliko se proceni da je to potrebno. Takvim ustanovama upravlja ministarstvo nadležno za prosvetu, što znači da se ovoj oblik reakcije formalnopravno razlikuje od standardnog izvršavanja krivičnih sankcija, iako može rezultirati ograničavanjem slobode. Kazne za maloletnike su: novčana kazna, zabrana učestvovanja u određenim aktivnostima, rad u javnom interesu, ograničenje slobode kretanja i zatvorska kazna. Zanimljivo je da i roditelji mogu biti obavezani da plate novčanu kaznu, kao i maloletnik koji ima lična primanja, pri čemu može biti obavezan da plati iznos u protivvrednosti svojih primanja za period od dve nedelje do šest meseci.

Dalje, zatvorska kazna ne može biti duža od 6 godina, ukoliko je reč o maloletnicima koji su imali manje od 16 godina u vreme izvršenja krivičnog dela. Ipak, kada je reč o najtežim krivičnim delima, lišavanje slobode može potrajati do 10 godina, a izvršava se u vaspitnim kolonijama, s tim što u tom slučaju i mlađi maloletnici mogu biti zatvoreni. Tokom poslednjih godina zakon je izmenjen tako da se isključuje zatvorska kazna za lica mlađa od 16 godina koja su po prvi put izvršila lakša krivično delo, kao i za druge maloletnike koji su po prvi put učinili najlakša krivična dela. Dodatni ustupak za maloletnike uveden je izmenom zakona koja predviđa da će se u slučaju najtežih krivičnih dela posebni zakonski minimum zatvorske kazne umanjivati za polovinu. Uz to, za maloletnike koji u toku trajanja probacije izvrše krivična dela koja ne spadaju u najteža, postoji mogućnost ponovnog odobravanja uslovne osude, što u slučaju punoletnih prestupnika nije moguće.

U duhu individualizacije kazne, zakonodavac je izričito predvideo da će se pri izricanju sankcije voditi računa o uslovima u kojima maloletnik živi, o njegovom obrazovanju, mentalnom razvoju, te o drugim ličnim osobinama, kao i o uticaju odraslih lica iz maloletnikovog okruženja. Ukoliko je maloletnik učinio lakše ili krivično delo srednje težine i ukoliko se proceni da bi se i tako mogao ostvariti odgovarajući vaspitni uticaj, maloletniku će se izreći različite vaspitne mere. Ove mere su slične našim vaspitnim merama, pa se tu ubrajaju: upozorenje, nadzor od strane roditelja, staratelja ili nadležne državne institucije, nadoknada štete, te ograničenja u pogledu korišćenja slobodnog vremena i posebni nalozi za ponašanje. Moguća je i primena više od jedne mere istovremeno, a trajanje vaspitnih mera uslovljeno je težinom krivičnog dela. Primena mera može trajati od jednog meseca do tri godine. No, ukoliko se maloletnik ne vlada u skladu sa

²³ Sa navršenih 14 godina maloletnici postaju krivično odgovorni u Srbiji, Austriji, Bugarskoj, Nemačkoj, Mađarskoj, Italiji itd. Vid. Radulović Ljiljana (2010): *Maloletničko krivično pravo*, Pravni fakultet, Beograd, 47.

²⁴ Od navršenih 18 godina redovni krivični postupak se vodi u Austriji, Belgiji, Češkoj, Danskoj, Švedskoj itd. - Radulović Ljiljana, 47.

onim što mu je naloženo, odgovarajuće telo/agencija može predložiti sudu da se primena mere obustavi i da se krivični postupak ponovo pokrene.

Nalozi u vezi sa korišćenjem slobodnog vremena su nešto sa čime se u našoj zemlji nismo susretali u obliku u kome je to predviđeno u Rusiji. Tako maloletniku može biti zabranjeno da odlazi na pojedina mesta, da se bavi određenim zabavnim aktivnostima, da upravlja motornim vozilom ili se može odrediti satnica nakon koje maloletnik ne sme biti van kuće u večernjim satima. Zakonodavac naglašava da se ovime ne iscrpljuje lista naloga, što znači da u obzir dolaze i druge mere shodno potrebi.

S obzirom na to da se u Rusiji obilato primenjuje zatvorska kazna, Krivičnim zakonikom je predviđena mogućnost da se maloletnik sa zatvorske kazne uputi u vaspitnu ili obrazovnu ustanovu zatvorenog tipa. Ovakve ustanove su pod nadzorom ministarstva nadležnog za prosvetu, a u njima maloletnik boravi do punoletstva, to jest do navršene 18. godine, ali ne duže *od tri godine ukupno*. Izmenama i dopunama zakona je predviđeno da i maloletnik koji je osuđen za teža krivična dela može biti preusmeren u ovakvu ustanovu, što ranije nije bio slučaj. Postoji mogućnost i da maloletnik pre isticanja zatvorske kazne napusti obrazovnu ustanovu, ukoliko se ispostavi da dalji tretman nije potreban ili da je pak maloletnik oboleo od neke bolesti koja isključuje boravak u ustanovi. Ipak, upućivanje u obrazovnu/vaspitnu ustanovu umesto u zatvor je isključeno u slučaju osude za teška krivična dela, kao što su umišljajno nanete teške telesne povrede, prenošenje infekcije HIV-om prema više *od dva lica ili maloletniku*, otmica i mnoga druga. Uslovni otpust za maloletnike je moguć nakon izdržane jedne trećine kazne za lakša i teža krivična dela, dok je za uslovni otpust sa izdržavanja kazne za najteža krivična dela neophodno da protekne makar dve trećine kazne.

Mlađim punoletnicima se smatraju lica koja su u vreme izvršenja krivičnog dela imala više od 18, a manje od 20 godina. Od prirode i vrste dela, ali i ličnih odlika mlađeg punoletnika zavisi da li će se on tretirati kao maloletno lice. Ipak, mlađi punoletnici ne mogu biti upućeni u obrazovne i vaspitne ustanove, niti u vaspitne kolonije.

Što se tiče krivičnog postupka prema maloletnicima, ključno je napomenuti da se zapravo primenjuju odredbe o redovnom krivičnom postupku, uz određene modifikacije koje su predviđene ruskim Zakonikom o krivičnom postupku. Zakonodavac izričito naglašava da će se, osim onoga što se uvek utvrđuje u krivičnom postupku, dakle okolnosti u vezi sa krivičnim delom i krivicom okrivljenog, u krivičnom postupku prema maloletnicima posebno utvrđivati i okolnosti u vezi sa ličnošću maloletnog lica. Tako je u čl. 421 predviđeno da će se utvrditi uzrast maloletnika, okolnosti koje se tiču njegovih životnih uslova i obrazovanja, nivo mentalne razvijenosti i uticaj starijih lica na njegov razvoj i ponašanje. Ukoliko postoje okolnosti koje ukazuju na zaostajanje u mentalnom razvoju, posebna pažnja će se posvetiti utvrđivanju maloletnikove sposobnosti da razume značaj i smisao krivičnog dela i da kontroliše svoje postupanje u vezi sa tim.

U Rusiji nema posebnih maloletničkih sudova, već i maloletničke predmete presuđuju sudovi opšte nadležnosti. Zavisno od težine krivičnog dela, za lakša krivična dela (kazna do 2 godine zatvora) sude sudovi prvog stepena, a za teža dela okružni sudovi. U duhu ideja restorativne pravde postoji mogućnost da se za lakša krivična dela postigne poravnanje između oštećenog i maloletnog učinioca krivičnog dela, te da se tako postupak okonča. Ovakva procedura nije jasno definisana Zakonikom o krivičnom postupku, te se smatra da se na ovaj način na mala vrata u sistem uvodi nešto poput nekadašnjih lokalnih komisija za maloletnike, budući da je i preko njih bilo moguće poravnanje na neformalan način.²⁵

U krivičnom postupku za teža krivična dela posebno se razmatra da li postoje smetnje ili oboljenja usled kojih ne bi bilo primereno smeštanje maloletnika u obrazovnu ustanovu. Zanimljivo je da utvrđivanje ovakvih okolnosti nije nužno u krivičnom postupku za teška krivična dela, poput terorizma i otmice, s obzirom na to da tada nije ni moguće upućivanje u obrazovnu/vaspitnu ustanovu. Na samom početku postupka, u onome što bi bio pandan našem pripremnom postupku, obaviće se medicinski pregled maloletnika.

No, i pored svega što pozitivno zakonodavstvo predviđa, u praksi se neretko dešava i to da se lakša krivična dela tretiraju kao prekršaji, te da se onda prepuštaju u nadležnost lokalnih tela, pa i školskog sistema, zbog čega se smatra da se zapravo tek jedna trećina maloletničkih krivičnih predmeta zaista nađe pred sudom.²⁶

Pritvaranje maloletnog lica je regulisano na istovetan način kao i pritvaranje odraslih lica, s tom razlikom što će se uvek voditi računa da se prema maloletniku umesto pritvora primeni neki drugi oblik nadzora koji će obezbediti njegovu prisustvo u krivičnom postupku. Roditelji ili staratelji imaju pravo da bez odlaganja budu obavешteni o pritvaranju maloletnika i o produženju pritvora.

Zakonodavac je nešto detaljnije opredelio uslove pod kojima maloletno okrivljeno lice može biti saslušano. Prvo, saslušavanje ne može trajati duže od 2 časa u kontinuitetu, niti duže od ukupno 4 časa u toku jednog dana. Zatim, saslušanju obavezno prisustvuje maloletnikov branilac. Za maloletnike kod kojih se sumnja na smetnje u mentalnom razvoju, obavezno je aktivno učešće pedagoga ili psihologa pri saslušanju.

U duhu savremenih tendencija koje ukazuju na celishodnost izbegavanja intervenisanja, i ruski Zakon o krivičnom postupku ostavlja mogućnost odustanka od krivičnog gonjenja, s tim što se ova mogućnost odnosi na lakša krivična dela i krivična dela srednje težine. Predlog za obustavu krivičnog postupka daje agencija koja se bavi istraživanjem krivičnih dela²⁷ i tužilaštvo, a o osnovanosti predloga odlučuje sud. Sud će usloviti obustavu postupka primenom odre-

²⁵ Hakvag Una Kristine, 37, 38.

²⁶ *Ibid.*

²⁷ O ulozi i karakteru ove agencije vidi: Smith Gordon (1996): *Reforming the Russian Legal System*, Cambridge University Press, New York, 119.

đenih mera edukativnog karaktera, a ukoliko maloletnik ne poštuje obaveze s kojima se saglasio, onda se postupak vraća u standardnu proceduru.

Zanimljivo je da je u krivičnom postupku prema maloletnicima sud posebno dužan da se postara da se prema maloletniku, ako je to moguće, ne primenjuje zatvorska kazna, te da se zato utvrđivanju činjenica s tim u vezi posvećuje posebna pažnja. Ukoliko se opredeli za neinstitucionalnu sankciju, sud mora posebno naglasiti koja institucija je dužna da vrši nadzor nad maloletničkim ponašanjem.

Na kraju izlaganja o važećim propisima o maloletnim učinocima krivičnih dela u Rusiji, treba naglasiti da je na promene tih propisa bitno je uticalo to što se tokom poslednjih decenija na internacionalnom planu snažno ističe nužnost posebne zaštite maloletnika u sukobu sa zakonom. Tako s kraja 20. veka biva aktuelizovan proces usvajanja niza izuzetno bitnih međunarodnopravnih akata koji se bave pravima deteta. Uz Konvenciju UN o pravima deteta (1989), ovde mislimo pre svega na Pravila UN za maloletničko pravosuđe (Pekinska pravila, 1985) i Pravila UN za zaštitu maloletnika lišenih slobode (Havanska pravila, 1990). U prvi plan izbija problem nepoštovanja prava deteta, odnosno negarantovanja jasno definisanog korpusa prava maloletnih lica, što se svakako nije moglo tolerisati u momentu kada prava odraslih lica jesu jasno uobličena i neprikosnoveni. U tom kontekstu treba spomenuti da prava iz domena maloletničkog pravosuđa spadaju u najčešće ignorisana i povređivana prava, i to širom sveta.²⁸ U takvoj klimi i nakon brojnih zamerki različitih međunarodnih organizacija i komisija koje nadziru poštovanje prava deteta, dolazi do modifikovanja propisa. Ipak, u Rusiji i pored određenih obećanja i najava u tom smislu, nije došlo do izdvajanja maloletničkog pravosuđa kao posebnog segmenta, a smatra se da je jedan od razloga i protivljenje pravoslavne crkve, ali i strahovanje javnosti da bi reformisanje ove oblasti podrazumevalo i ograničavanje roditeljskih prava u vaspitavanju, te zadiranje u porodična pitanja.²⁹ Treba imati u vidu da dopunjavanje i menjanje zakona još uvek ne mora da znači i stvarnu promenu u pogledu poštovanja prava maloletnih prestupnika, što se čini da je upravo slučaj u Rusiji.

3. Maloletnička delinkvencija u Rusiji – aktuelno stanje i kaznena politika

Prva konstatacija od koje nažalost polazimo pri predstavljanju aktuelnog stanja po pitanju maloletničke delinkvencije u Rusiji jeste da su izuzetno oskudni podaci o ovoj problematici. Nešto su brojnije analize koje se tiču maloletničkog

²⁸ Vid. Baza presuda Evropskog suda za ljudska prava u vezi sa poštovanjem prava deteta: <https://wcd.coe.int/ViewDoc.jsp?id=1276185&Site=COE> (16. 2. 2015)

²⁹ Hakvag Una Kristine, 81.

kriminaliteta u nekadašnjem Sovjetskom Savezu.³⁰ Naime, retke su obimnije studije o stanju i trendovima u ovoj oblasti, teško se dolazi do detaljnijih statističkih podataka, a ni broj naučnih radova o ovim pitanjima nije veliki, što posebno važi za radove koji potiču od neruskih autora.

Na postojeće prilike suštinski utiču društvene okolnosti zastupljene tokom prethodnih dvadesetak godina sazrevanja mladih i dece. Ekonomska situacija je bila takva da je nastupilo izraženo raslojavanje u kome je gotovo uništena srednja klasa. U toku 1998. godine na svega 20 % najbogatijih građana otpadalo je čak 47,4 % ukupnih ostvarenih prihoda, dok je 20 % najsiromašnijih raspolagalo tek sa 6,2 % ukupnih ostvarenih prihoda za datu kalendarsku godinu.³¹ Problemi nezaposlenosti, nejednakosti i siromaštva posebno su se iskazali u lokalnim sredinama gde su upravljanje na sebe preuzele vlasti nedovoljno sposobne da se nose sa zadacima koji su im pripali,³² što je uslovalo još veću nejednačenost u različitim delovima ove prostrane države. Dalje, u 1996. godini je zabeleženo da je čak 23% dece rođene u toj kalendarskoj godini nastalo iz vanbračnih veza, što je pre svega samohrane majke dovelo u situaciju da se u veoma teškim prilikama same staraju o deci.³³ Protekle dve decenije je takođe obeležilo nedovoljno ulaganje u škole i negativna selekcija pri zapošljavanju u prosveti, koja je bila neminovna zbog niskih i neredovnih plata,³⁴ što se nesumnjivo odrazilo na kvalitet obrazovanja, ali i na ključne vrednosti koje se prenose najmlađima.³⁵ U Rusiji je u sistem obrazovanja ulagan tek treći deo onoga što se ulaže u SAD, pri čemu se ni ova država ne može pohvaliti velikim ulaganjem u prosvetu.³⁶ Negativan uticaj na razvoj mladih, te samim tim i na statistike o kriminalitetu, imao je i nedostatak zabavnih aktivnosti i drugih sadržaja kojima se ispunjava slobodno vreme, ali i to što su mladi počeli masovnije da izbegavaju regrutaciju nakon srednje škole, s obzirom na činjenicu da je vojska ranije nesumnjivo predstavljala bitan oblik socijalne kontrole mladih koji ne nastavljaju školovanje, a ni ne zapošljavaju se.³⁷

Ipak, i pored svega navedenog, počev od 2000. godine pa nadalje uočava se stabilizacija trendova, odnosno nije bilo bitnijeg porasta stope maloletničkog

³⁰ Williams James, Rodehaver Daniel (2002): „Punishing Juvenile Offenders in Russia“, *International Criminal Justice Review* 12/2002, 93.

³¹ Pridemore William (2002): „Social problems and patterns of juvenile delinquency in transitional Russia“, *Journal of research in crime and delinquency* 2/2002, 189.

³² Pridemore (2002), 189.

³³ *Ibid.*, 190.

³⁴ *Ibid.*, 191.

³⁵ Vid. Damjanović Mijat (2013): „Značaj etike i morala u sferi obrazovanja“, *Megatrend revija* 4/2013, 5-16.

³⁶ Pridemore (2002), 191.

³⁷ *Ibid.*, 194.

kriminaliteta.³⁸ Naime, nakon sloma Sovjetskog Saveza 1991. godine pa sve do 1995. godine maloletnički kriminalitet je bio u stalnom porastu, da bi od 1996. godine usledio pad stopa i stabilizovanje prilika. No, zanimljivo je da i pored toga Rusija prednjači po primeni institucionalnih mera i po zatvaranju maloletnika, iako se ne može poreći da se procenat zatvorenih maloletnika umanjuje u odnosu na onaj iz sovjetske ere.³⁹

Određene podatke o stanju kriminaliteta, pa tako i maloletničkog, ipak možemo naći u studijama koja sadrže zbirne statističke podatke iz većeg broja zemalja. Tako evropski stručnjaci već više decenija rade na kreiranju jedinstvene i što jednostavnije metodologije za sagledavanje statističkih podataka o kriminalitetu na nivou Evrope. Ovakvi podaci postaju jednostavno neophodni za osmišljavanje bilo kakvog strateškog pristupa u suzbijanju kriminaliteta. Stoga je CDPC (*European Committee on Crime Problems*) tokom 1993. godine formirao grupu specijalista za pitanja u vezi sa statistikom i kvantitativnim istraživanjima iz domena krivičnog pravosuđa.⁴⁰ Ova grupa je 1995. godine predstavila radnu verziju prve Evropske zbirke podataka o kriminalitetu i krivičnom pravosuđu (u daljem tekstu: Zbirka), čiji su se podaci odnosili na deset evropskih zemalja i kriminalitet u 1990. godini. Nakon toga je CPDC istoj grupi poverio izradu jednog celovitog pregleda podataka o krivičnom pravosuđu za područje čitave Evrope.⁴¹ Do sada je objavljeno pet zbirki sa uporednim podacima o kriminalitetu i krivičnom pravosuđu na teritoriji Evrope. Prvo izdanje objavljeno je 1999. godine, drugo je usledilo 2003. godine, treće 2006. godine i četvrto 2010. godine. Zahvaljujući ovoj zbirci možemo se upoznati makar sa ključnim karakteristikama maloletničke delikvencije u Rusiji, iako ruski zvaničnici nisu dostavili sve podatke iz upitnika koji države popunjavaju.

Kada je reč o opštim prilikama, brojke govore da je u Rusiji u periodu od 2007. do 2011. došlo da pada ukupnog broja izvršenih krivičnih dela, posmatrano na svakih 100.000 stanovnika. Tako je 2007. godine zabeležen broj od 2510 učinilaca krivičnih dela, 2008. godine 2260, 2009. godine 2110, 2010. godine 1852 i 2011. godine 1683 učinilaca na svakih 100.000 stanovnika. Radi poređenja, u Danskoj je u 2010. godini prijavljeno 8511 učinilaca krivičnih dela, u Grčkoj 2954, a u Srbiji 1384 osumnjičenih na svakih 100.000 stanovnika.⁴² Što se tiče teritorijalne raspodele ukupnog kriminaliteta, u literaturi se ističe da poslednjih godina nema bitnijih odstupanja, tako da je i 1998. godine i 2008. godine najveći broj izvršenih

³⁸ Moestue Helen (2008): *Lost in the justice system: Children in conflict with the law in Eastern Europe and Central Asia*, UNICEF, Geneva, 17.

³⁹ Dunkel Frieder (2014): „Juvenile Justice Systems in Europe – Reform developments between justice, welfare and ‘new punitiveness‘“, *Kriminologijes studijes* 2014/1, 37.

⁴⁰ Aebi Marcelo et al. (2014): *European Sourcebook of Crime and Criminal Justice Statistics*, HEUNI, Helsinki, 15.

⁴¹ Aebi Marcelo et al., 15.

⁴² Ne treba gubiti iz vida da i Zbirka pati od brojnih metodoloških nedostataka, tako da poređenja ipak mogu da navedu i na pogrešne zaključke.

krivičnih dela zabeležen u Moskvi i Moskovskoj oblasti, te u Sankt Peterburgu, Sverdlovskoj oblasti i Čelebinskoj oblasti, odnosno u Novosibirsku i na području Severnog Kavkaza, pri čemu se središte najtežeg kriminaliteta izmešta iz većih gradova evropskog dela Rusije ka Uralu i daljim istočnim delovima države.⁴³

Čini se da učešće maloletnika u ukupnom kriminalitetu u Rusiji znatno opada poslednjih godina. Tako je u 2010. godini učešće maloletnika u ukupnom kriminalitetu iznosilo 2,8 %. Poređenja radi, ta stopa je u Estoniji bila 9,9 %, u Srbiji 8,4 %, a u Bugarskoj 7,8 %.⁴⁴ Tokom 2004. godine je, po drugom istraživanju, učešće maloletnika u ukupnom kriminalitetu iznosilo čak 12,2 %.⁴⁵ Naravno, i ovde se pojavljuje problem komparabilnosti podataka, jer nije sasvim izvesno šta se sve smatra krivičnim delom kada su u pitanju maloletnici u različitim evropskim državama. Takođe, u prilog tvrdnji da je veoma teško doznati nešto više o maloletničkom kriminalitetu u Rusiji govori i to što u Zbirci nema podataka o strukturi maloletničkog kriminaliteta. Ova država tako nije učinila dostupnim podatke o broju izvršenih ubistava, o razbojništvima, krađama, niti zapravo o bilo kom drugom krivičnom delu kada su u pitanju maloletnici. Osim toga, ni o osudama i krivičnim sankcijama nema detaljnijih podataka, iako za brojne druge evropske države, uključujući i našu, postoje obimni podaci. No, treba napomenuti da razlog za nedostatak podataka nije nužno namera da se podaci ne izlože na uvid javnosti, već i činjenica da u Rusiji zapravo ne postoji poseban sistem sudova za maloletnike, niti zasebni maloletnički propisi, što bi moglo da znači da su podaci o maloletničkom kriminalitetu neodvojivo uključeni u podatke o kriminalitetu na opštem nivou.⁴⁶

Podaci o izvršenju krivičnih sankcija ukazuju da Rusija ima najveći broj lica na izdržavanju zatvorske kazne u celoj Evropi. Osim toga, Rusija je na drugom mestu u svetu po broju zatvorenika, odmah iza SAD.⁴⁷ Tako je u 2007. godini na svakih 100.000 stanovnika bilo zatvoreno 621 lice, s tim što je ta brojka u 2010. godini pala na 577 zatvorenika. Poređenja radi, u 2010. godini je u Austriji bilo 103 zatvorenika, u Danskoj 75 zatvorenika, u Srbiji 153 zatvorenika, a u Gruziji 534, u Estoniji 253 i u Letoniji 301 zatvorenik na svakih 100.000 građana.⁴⁸ Iz ovoga proizlazi zaključak da se u zemljama bivšeg Sovjetskog Saveza, kao i u Rusiji, kaznena politika u značajnoj meri zasniva na lišavanju slobode, što nesumnjivo ima veze sa političkim i istorijskim nasleđem ovih država.

⁴³ Dominique Moran, Judith Pallot, Laura Piacentini (2011): „The Geography of Crime and Punishment in the Russian Federation“, *Eurasian Geography and Economics*, 2011/1, 98.

⁴⁴ Aebi Marcelo *et al.*, 78.

⁴⁵ Kaminskiy Vladislav: „Juvenile Justice System Structure in Russia: Prerequisites and Impediments“, <http://www.oijj.org/en/docs/multimedia/development-of-the-juvenile-justice-system-in-russia-prerequisites-and-difficulties> (16. 2. 2015)

⁴⁶ Aebi Marcelo *et al.*, 294.

⁴⁷ Dominique Moran, Judith Pallot, Laura Piacentini, 84.

⁴⁸ Aebi Marcelo *et al.*, 270.

Kada je reč o kaznenoj politici prema maloletnicima, podaci iz Zbirke ukazuju da se kontinuirano umanjuje učešće maloletnika u ukupnom broju lica na izdržavanju zatvorske kazne. Tako je ovo učešće iznosilo 1,6 % u 2007. godini, 1,3 % u 2008. godini, 0,9 % u 2009. godini i 0,7 % u 2010. godini,⁴⁹ što je u granicama evropskog proseka koji je u 2010. godini iznosio 1,3 %.⁵⁰ U Danskoj je u 2010. godini učešće maloletnika među zatvorenim licima iznosilo 0,4 %, u Gruziji 0,9 %, u Srbiji 2,2 %, a u Engleskoj i Velsu 1,9 %.⁵¹ Svakako, i ove podatke treba prihvatiti sa rezervom, budući da nije poznato da li se u broj maloletnika lišenih slobode u Rusiji računaju i oni koji su u raznim vaspitnim kolonijama širom ove države, imajući u vidu da su takve kolonije pod upravom ministarstva nadležnog za prosvetu. Treba naglasiti i da deca već od 11. godine mogu biti smeštena u škole, kolonije i ustanove zatvorenog tipa, ukoliko se uoči vaspitna zapuštenost i problemi u socijalizaciji. Posebno zabrinjava što tada lokalna tela administrativnog karaktera rešavaju praktično o lišavanju slobode, što dovodi u pitanje garancije za zaštitu prava.⁵²

Poseban problem pri izvršavanju maloletničkih krivičnih sankcija predstavlja i to što su, isto kao i u Srbiji, u Rusiji maloletničke institucije malobrojne, što znači da će maloletnici biti veoma udaljeni od svojih kuća,⁵³ što negativno utiče na kasniju reintegraciju, pa samim tim i na recidivizam.⁵⁴ Malobrojnost ustanova ostavlja prostor za širenje supkulture maloletničkih bandi i onemogućava odvajanje maloletnika sa različitim potrebama i različitim kriminalnim dosijeima. Situacija je posebno loša za maloletnice s obzirom na činjenicu da u celoj državi postoje samo tri ustanove za devojke.⁵⁵ Zbog svega navedenog postoji plan da se celokupan sistem penalnih ustanova reformiše, i da nadalje maloletnici ne borave u kolonijama pod nadzorom obezbeđenja, već u maloletničkim centrima gde će provođenje vremena biti drugačije strukturirano.⁵⁶ Ključna ideja se ogleda u zamisli da se odustane od baraka za kolektivni smeštaj velikog broja zatvorenika, a da se prave manje smeštajne jedinice, s tim što bi se sredstva za rekonstrukciju postojećih kapaciteta pribavila prodajom suvišnih zgrada u kojima su bile smeštene penalne ustanove.⁵⁷ Slično kao i u našoj zemlji, za sada je malo učinjeno na realizaciji plana o reformama, a bilo je govora o tome da će svakako biti velikih problema u finansiranju radova.

⁴⁹ *Ibid*, 273.

⁵⁰ *Ibid*.

⁵¹ *Ibid*.

⁵² Moestue Helen, 37.

⁵³ Dominique Moran, Judith Pallot, Laura Piacentini, 87.

⁵⁴ Recidivizam je po podacima iz 2006. godine veći od 30%. Vid. Moestue Helen, 22.

⁵⁵ *Ibid.*, 87.

⁵⁶ Dominique Moran, Judith Pallot, Laura Piacentini, 92.

⁵⁷ *Ibid.*, 90.

4. Završna razmatranja

Kada se razvoj maloletničkog krivičnog prava i pravosuđa posmatra s aspekta propisa koji su važili počev od sredine 19. veka pa zaključno s aktuelnim trenutkom, čini se da je protek vremena kontinuirano donosio promene i reformisanje postojećih rešenja. Tako se počelo od ugledanja na razvijeni Zapad i njegovu praksu i nauku, pa preko perioda Staljinove vladavine i ideologije, do sadašnjeg doba u kome se nastoje uvažavati međunarodni standardi i preporuke u vezi sa najboljim interesima maloletnika. Ipak, raspoloživa literatura o Rusiji nas upućuje na to da promene nikada nisu bile tako korenite da onemoguće opstanak nekih dobro utemeljenih odlika ruskog modela postupanja sa maloletnim prestupnicima. Taj model se u osnovi odlikuje izraženom primenom institucionalnih mera i upućivanjem maloletnika u kolonije i ustanove neretko veoma udaljene od mesta stanovanja ovih mladih lica. Takođe, kroz ceo period ne manjka ni primenjivanje invazivnih mera kako bi se spram dece mlađe od 14 godina primenile preventivne mere. Sve to, po pravilu, ne rezultira povoljnim efektima, tako da po izvršenju krivičnih sankcija maloletnici nisu bolje pripremljeni za svakodnevne izazove.

Slično kao u Srbiji, i u Rusiji su zakonski tekstovi usvajani sa željom da se postigne usklađenost sa međunarodnim dokumentima, ali iza toga nisu usledile sistemske reforme koje bi učinile da ono što je napisano ne ostane samo mrtvo slovo na papiru. U ovoj prostranoj državi bi takve sistemske reforme iziskivale značajne promene u ogromnom sistemu penalnih institucija koje su neravnomerno raspoređene i međusobno udaljene, te edukovanje stručne, ali i opšte javnosti. Baš kao i u Srbiji, ispostavilo se da se primena alternativnih sankcija, restorativne pravde i drugih savremenih ideja ne može realizovati bez opsežnih priprema. Smatramo da bi rešenje problema u ovoj državi, slično kao i u našoj, pre moglo da se pronađe u reformama koje ne bi bile korenite i usmerene na raskid sa postojećim sistemom, već postepene i kontinuirane. Tako bi se postojeći resursi, poput lokalnih komisija za maloletnike, ili nekadašnjih naših mirovnih veća, mogli znatno više uposliti i iskoristiti, dok bi se izgradnji novih vaspitnih ustanova i demontaži postojećeg sistema pristupilo postepeno, kako se budu sticali uslovi. Domaćinski pristup problematici iziskuje da se zaista osmisli strategija i da o njoj postoji najveći mogući stepen slaganja svih zainteresovanih aktera, umesto prepisivanja gotovih rešenja koja su neki drugi osmislili za sebe.

Literatura

- Aebi Marcelo *et al.* (2014): *European Sourcebook of Crime and Criminal Justice Statistics 2014*, HEUNI, Helsinki
- Damjanović Mijat (2013): „Značaj etike i morala u sferi obrazovanja“, *Megatrend revija* 4/2013, 5-16
- Dominique Moran, Judith Pallot, Laura Piacentini (2011): „The Geography of Crime and Punishment in the Russian Federation“, *Eurasian Geography and Economics* 2011/1, 79-104
- Dunkel Frieder (2014): „Juvenile Justice Systems in Europe – Reform developments between justice, welfare and ‘new punitiveness’“, *Kriminologijos studijos* 1/2014, 31-76
- Dutkiewicz Piotr *et al.* (2009): *Juvenile Justice in Russia: Models, Design and the Road Ahead*, Canadian International Development Agency, Ottawa
- Hakvag Una Kirstine (2009): *Juvenile Justice in the Russian Federation*, Master's Thesis, University of Oslo, Oslo
- Junger-Tas Josine (1994): „Will the juvenile justice system survive?“, *European Journal on Criminal Policy and Research*, 2-3/1994, 76-91
- Kliucharev Grigory, Trofimova Irina (2011): „Youth at risk in The Russian Federation: Reasons for social protection“, *Corvinus journal of sociology and social policy* 1/2011, 85-100
- Moestue Helen (2008): *Lost in the justice system: Children in conflict with the law in Eastern Europe and Central Asia*, UNICEF, Geneva
- Perić Obrad, Milošević Nikola, Stevanović Ivana (2008): *Politika izricanja krivičnih sankcija prema maloletnicima u Srbiji*, Centar za mir i demokratiju, Beograd
- Пленум Верховного суда Российской Федерации, Постановление Пленума Верховного Суда Российской Федерации от 10 октября 2003 г. N 5, О применении судами общей юрисдикции общепризнанных принципов и норм международного права и международных договоров Российской Федерации.
- Пленум Верховного суда Российской Федерации, Постановление от 14 февраля 2000 г. N 7, О судебной практике по делам о преступлениях несовершеннолетних.
- Preporuka Saveta Evrope No. R (87) 20 o reakciji na maloletničku delinkvenciju, 17. septembar 1987. godine.
- Pridemore William (2002): „Social problems and patterns of juvenile delinquency in transitional Russia“, *Journal of research in crime and delinquency* 2/2002, 187-213
- Pridemore William (2005): *Ruling Russia-Law, Crime and Justice in a Changing Society*, Roman and Littlefield Publishers INC, Lanham

- Radulović Liljana (2010): *Maloletničko krivično pravo*, Pravni fakultet, Beograd
- Smith Gordon (1996): *Reforming the Russian Legal System*, Cambridge University Press, New York
- Stojanović-Milošević Gordana (2010): „Maloletničko krivično zakonodavstvo i standardi Evropske unije“, 316-326, u: Bejatović Stanko (ur.): *Krivično zakonodavstvo Srbije i standardi Evropske unije*, XLVII redovno godišnje savetovanje Srpskog udruženja za krivičnopravnu teoriju i praksu, Zlatibor
- Williams James, Rodehaver Daniel (2002): „Punishing Juvenile Offenders in Russia“, *International Criminal Justice Review* 12/2002, 93-110
- <https://wcd.coe.int/ViewDoc.jsp?id=1276185&Site=COE> (16.02.2015).
- <http://www.oijj.org/en/docs/multimedia/development-of-the-juvenile-justice-system-in-russia-prerequisites-and-difficulties> (16.02.2015).

Teaching Assistant Milica Kovačević, PhD

Faculty for special education and rehabilitation,
University of Belgrade

JUVENILE DELINQUENCY IN RUSSIA - CRIMINAL JUSTICE, TRENDS, KEY ISSUES

S u m m a r y

In the literature, as well as in international statistical surveys, we can rarely find more detailed information on juvenile delinquency in the Russian Federation, as well as on the criminal reaction towards juvenile offenders. Due to the turbulent conditions and great social turmoil which took place in the last few decades in this country, there should be a greater interest in the problem of juvenile delinquency. For Serbia, the experience of the Russian Federation could be especially important if one bears in mind that our country is still going through a transition, population stratification and through economic crisis, and also that Serbia and the Russian Federation share some cultural and religious similarities. Therefore, the aim of this paper is to present, in the summary way, the basic features of juvenile delinquency and the criminal justice system, and thereby build a basis for future research and comparison.

Key words: juvenile delinquency, criminal reaction, Russian Federation

PIRATERIJA FILMSKIH DELA U ERI DIGITALNE TEHNOLOGIJE

Umnožavanje filmskih dela u eri analogne tehnologije bilo je povezano sa nizom teškoća koje su, između ostalog, uključivale tehnički složen postupak umnožavanja, kao i visoke novčane izdatke. U tom smislu, sama analogna tehnologija je predstavljala barijeru umnožavanju filmskih dela od strane neovlašćenih lica. Prelaskom na digitalnu tehnologiju, umnožavanje navedenih dela je znatno olakšano, u smislu omogućavanja pojedincima da, lako dostupnim i relativno jeftinim tehničkim sredstvima, na brz i kvalitetan način, naprave veliki broj umnoženih primeraka filmskih dela.

Budući da digitalna era odslikava napredak tehnologije u oblasti umnožavanja i distribucije, kako filmskih, tako i autorskih dela uopšte, značajno je uvođenje novih isključivih ovlašćenja u okviru autorskog prava, ali i sužavanje postojećih ograničenja autorskog prava i produžavanje roka trajanja zaštite. Efikasno sprovođenje autorskopravne zaštite u novim uslovima otvorilo je spektar brojnih pitanja, od kojih je pitanje piraterije u oblasti filmske produkcije jedno od najvažnijih, što je i bio motiv autora da obradi ovu temu.

Ključne reči: umnožavanje filmskih dela, digitalna tehnologija, internet piraterija, *file sharing*

1. Uvod

Prvi film u trajanju od svega nekoliko minuta nastao je 1895. godine.¹ Njegovi tvorci, braća Limijer, kamerom su zabeležili slike dolaska voza na železničku stanicu. Prilikom prve projekcije filma u Parizu, 28. decembra iste godine, ljudi su, videvši da im voz ide u susret, počeli da vrište i beže po sali, ne shvatajući da je to samo projekcija filma na platnu.² Ovim je otpočela era analogne informaciono-komunikacione tehnologije u razvoju kinematografije.

* Vukašin Petrović, doktorand, Pravni fakultet, Univerzitet u Kragujevcu, e-mail: vukasinkg@hotmail.com

¹ Parkinson David (2014): *Istorija filma*, Dereta, Beograd, 15.

² *Ibid.*, 34-36.

Autorskoppravna zaštita kinematografskog dela u okviru analogne informacione tehnologije zasniva se na postojanju primerka dela, odnosno telesnog nosača na kojem je zabeležen film, kao nosećem elementu zaštite, i na isključivom pravu autora na proizvodnju, odnosno njegovo umnožavanje i reprodukovanje.³ Naime, autor ustupa svoje pravo na korišćenje dela privrednom subjektu (korisniku dela), koji delo pretvara u robu ili uslugu i nudi ga publici, publika plaća cenu, ulaznicu, pretplatu i slično, a jedan deo tog novca preko korisnika dela stiže do autora u vidu autorskog honorara.⁴ Analognu informaciono-komunikacionu tehnologiju u početku karakteriše skupo i složeno umnožavanje autorskih dela. Dalji razvoj tehnologije postepeno je učinio da umnožavanje i distribucija autorskih dela postane sve lakša, kvalitetnija i jeftinija, ali je taj posao i dalje bio rezervisan za specijalizovane privredne subjekte sa odgovarajućim tehnološkim i finansijskim kapacitetom, u koje spadaju producenti, distributeri, prikazivači ili emiteri.⁵ Nesavršenost analogne tehnologije, koja se ogleda u nedostatku tehničkih i finansijskih uslova za umnožavanje autorskih dela, dugo je predstavljala prirodnu zaštitu dela protiv masovnih i nelegalnih umnožavanja.⁶ Klasično autorsko pravo time je bilo usmereno na uređivanje odnosa između autora i privrednog korisnika autorskog dela.

Digitalna revolucija u oblasti informaciono-komunikacione tehnologije kompletno je izmenila postojeće uslove umnožavanja i distribucije autorskih dela, u smislu drastičnog pada troškova, sa tendencijom njihovog svođenja skoro na nulu, a sam proces umnožavanja i distribucije postao je brži, lakši i kvalitetniji.⁷ U novim uslovima, pod pojmom kinematografskog dela podrazumeva se, *inter alia*, film bilo koje dužine, bez obzira na nosač (vrstu podloge) na kojem je snimljen.⁸ Naime, beleženje slika u uslovima digitalne tehnologije zasniva se na određivanju mesta brojnih tačaka uz pomoć binarnih brojeva, kao i na definisanju boje svake tačke uz pomoć tri binarna broja koja izražavaju kombinaciju crvene, zelene i plave boje.⁹ Proces reprodukovanja digitalne slike podrazumeva proces dešifrovanja svih binarnih brojeva koji predstavljaju digitalni zapis slike i

³ Ulmer Eugen (1980): *Urheber und Verlagsrecht*, Springer, Berlin, 117-119.

⁴ Marković Slobodan (2014): *Pravo intelektualne svojine i informaciono društvo*, Službeni glasnik, Beograd, 141.

⁵ *Ibid.*, 145.

⁶ U analognim uslovima kvalitet kopija opada sa porastom broja proizvedenih kopija. *Ibid.*, 142-143.

⁷ Ruby Jay (2000): *Picturing Culture: Explorations of Film and Anthropology*, The University of Chicago Press, Chicago, 32.

⁸ Zakon o kinematografiji, *Službeni glasnik Republike Srbije*, 99/2011, 2/2012 - ispr. i 46/2014 - odluka US, čl. 3.

⁹ Kracauer Siegfried (1960): *Theory of Film: The Redemption of Physical Reality*, Oxford University Press, 57.

sklapanja svih tačaka u sliku.¹⁰ Time se filmsko delo oslobađa nosača, odnosno svog telesnog primerka, i u formi bitova se kreće kroz komunikacione mreže, bez rizika da izgubi na tehničkom kvalitetu.¹¹ Istovremeno je digitalnom tehnologijom uz pomoć interneta omogućeno da filmsko delo koje je pohranjeno na udaljenom računaru bude pristupačno milionima korisnika širom planete u istom trenutku.¹²

U promenjenim uslovima korišćenja autorskih dela, u bitnom se menja, kako uloga i interesi svih relevantnih subjekata, tako i tradicionalne pravne norme na kojima je u protekla dva veka počivalo autorsko pravo. U tom kontekstu, nastala su nova rešenja koja imaju za cilj balansiranje odnosa između ekonomske stimulacije autora da stvaraju nova dela, ali i potrebe korisnika za lakim pristupom već stvorenim delima.

2. Pojam i pravna priroda filmskog dela kao vrste autorskog dela

Autorsko delo je originalna duhovna tvorevina autora, izražena u određenoj formi, bez obzira na njegovu umetničku, naučnu ili drugu vrednost, njegovu namenu, veličinu, sadržinu i način ispoljavanja, kao i dopuštenost javnog saopštavanja njegove sadržine.¹³ Kao poseban oblik autorskog dela koje se izražava uz pomoć slike i tona, u domaćoj i stranoj pravnoj literaturi, izdvaja se i filmsko delo.

Da bi se filmsko delo zaštitilo propisima autorskog i srodnih prava, mora da bude originalno i da ispunjava određenu formu, odnosno da je fiksirano na materijalnoj podlozi, tj. filmskoj traci.¹⁴ Filmsko delo je složeno autorsko delo, čija je glavna karakteristika učešće velikog broja lica koja doprinose nastanku dela i njegovom javnom prikazivanju. Ovo delo je dobilo zaštitu tek polovinom XX veka.¹⁵ Osnovne vrste filmskog dela su: dokumentarni film, igrani i animirani film.¹⁶

¹⁰ Marković Slobodan, 149.

¹¹ Barlow P. John (1994): „The Economy of Ideas: A framework for patents and copyrights in the Digital Age“, *Wired Magazine*, Issue 2.03/1994, 1-13, <http://archive.wired.com/wired/archive/2.03/economy.ideas.html> (12.04.2015).

¹² *Ibid.*

¹³ Zakon o autorskom i srodnim pravima, *Službeni glasnik Republike Srbije*, 104/2009, 99/2011 i 119/2012, čl. 2.

¹⁴ Makeen, F. Makeen (2000): *Copyright in a Global Information Society: The Scope of Copyright Protection Under International, US, UK and French Law*, The Hague: Kluwer Law International, 8-14.

¹⁵ Dahlstrom Dana *et al.*: „Piracy in the Digital Age“, CSE 291 (D00) – *History of Computing* 2006, 4-5.

¹⁶ Zakon o kinematografiji, *Službeni glasnik Republike Srbije*, 99/2011, 2/2012 - ispr. i 46/2014 - odluka US, čl. 3

Filmsko delo spada u grupu koautorskih dela i nastaje na osnovu ugovora o filmskom delu. Ovaj ugovor nije jedinstven, već je to zbirni naziv za niz ugovora između producenta i svih lica koja na bilo koji način učestvuju u stvaranju filma.¹⁷ Na osnovu ovih ugovora, sva ova lica ustupaju svoja ovlašćenja producentu koji traga za projektom, scenarijem, angažuje režisera i glumce, formira ekipu, pravi budžet, upravlja tehničkim i ljudskim resursima projekta, i određuje ritam realizacije.¹⁸ Čak je i u preambuli Direktive Evropske unije o harmonizaciji određenih aspekata autorskog i srodnih prava u informacionom društvu, kao programski okvir, naglašena neophodnost kompromisa između autora i producenata (korisnika) dela sa obrazloženjem: „Da bi autori ili izvođači mogli da nastave svoj kreativni i umetnički rad, oni moraju dobiti odgovarajuću nagradu za korišćenje njihovih dela, što važi i za producente da bi mogli da nastave da finansiraju taj rad. Potrebna je značajna investicija za proizvodnju takvih proizvoda kao što su fonogrami, filmovi ili multimedijalni proizvodi, i usluga kao što su usluge „na zahtev“. Potrebna je odgovarajuća pravna zaštita prava intelektualne svojine da bi se obezbedilo postojanje te nagrade i stvorile mogućnosti za zadovoljavajuće prihode od te investicije.“¹⁹

U stvaranju filmskog dela učestvuje veliki broj lica, sa različitim statusom. Naime, ova lica mogu imati status koautora, autora, i interpretatora. Po Zakonu o autorskom i srodnim pravima Republike Srbije, koautorima filmskog dela smatraju se: režiser, scenarista, glavni snimatelj, kao i kompozitor (ako je muzika bitan element filmskog dela, i komponovana je za to delo), i glavni animator (ako se radi o crtanom, odnosno animiranom filmu, ili su crtež ili animacija bitni elementi filmskog dela).²⁰ Režiser je osoba koja je određena za postavljanje na scenu, ili pred kameru, određenog dramskog dela ili događaja, kao i za kreativne detalje, i on koordinira aktivnostima produkcijskog i tehničkog osoblja.²¹ Scenarista je pisac filmskog scenarija, tj. osoba koja radi jednu od sledeće dve stvari: stvaranje scenarija po sopstvenoj zamisli, ili adaptaciju postojećeg dela (romana, priče, pozorišnog komada) za film.²² Glavni snimatelj je osoba koja snima glavni deo filma pomoću kamere, koja je izvršno odgovorna za optički izgled filmske slike i upravlja radom drugih snimatelja.²³ Kompozitor je osoba

¹⁷ Davies Gillian (1994): *Copyright and the Public Interest*, IIC Studies, München, 174.

¹⁸ *Ibid.*, 178.

¹⁹ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, *OJ L 167*, 22.6.2001, p. 10–19.

²⁰ Zakon o autorskom i srodnim pravima, *Službeni glasnik Republike Srbije*, 104/2009, 99/2011 i 119/2012, čl. 11.

²¹ WIPO: *Intellectual Property Handbook: Policy, Law and Use*, http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf (17. 4. 2015).

²² *Ibid.*

²³ *Ibid.*

koja piše muziku nekom vrstom muzičke notacije, koja omogućava ostalima da tu muziku izvode. Međutim, neko može biti kompozitor i bez stvaranja muzike u pisanom obliku, jer nemaju svi muzički pravci pisanu notaciju, pa u ovom kontekstu, kompozitor je onaj koji stvara muziku, i obično je njen prvi izvođač.²⁴ Na kraju, animator je stvaralac koji oživljava karakter ili predmet.²⁵ S druge strane, status autora imaju, na primer, autor kostima, autor maski, autor koreografija, autor scenografije, autor muzike (ako ista nije specijalno komponovana za film) i druga lica.²⁶ Pored toga, u stvaranju filmskog dela učestvuju i lica koja imaju status interpretatora. Reč je o licima kao što su glumci, izvođači muzike, pantomimičari i dr.²⁷ Na kraju, četvrtu grupu lica čine sva ostala lica koja obavljaju pojedine tehničke i fizičke poslove u toku stvaranja filmskog dela.²⁸

Šire posmatrano, filmska dela reflektuju različite kulturne, socijalne i istorijske događaje. S obzirom na činjenicu da predstavljaju i veoma značajna ekonomska dobra, zemlje članice Evropske unije ulažu velika finansijska sredstva u cilju podrške razvoju ovog tipa autorskog dela.²⁹ Takođe, zemlje članice Evropske unije poseban značaj pridaju adekvatnoj pravnoj zaštiti prava intelektualne svojine.³⁰

3. Pravni propisi Evropske unije koji se odnose na digitalne sadržaje

Pravna regulativa Evropske unije koja se odnosi na zaštitu digitalnih sadržaja, načelno se može svrstati u dve grupe. Prvu grupu predstavljaju propisi tzv. prve generacije. Naime, digitalni sadržaj, kao i pitanja autorskog i srodnih prava su propisima prve generacije regulisani na nivou Unije, ali i zakonima na nacionalnom nivou.³¹ Usklađivanje između država članica sprovedeno je u periodu između 1991. i 1996. godine na osnovu nekoliko Direktiva koje su za cilj imale ostvarivanje vertikalne standardizacije. U okviru prve generacije

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Marković Slobodan, Miladinović Zoran (2014): *Autorsko pravo i srodna prava*, Pravni fakultet Univerziteta u Kragujevcu, Kragujevac, 167.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Information from European Union institutions, bodies, offices and agencies - European commission, Communication from the Commission on State aid for films and other audiovisual works (Text with EEA relevance), *OJ C 332*, 15.11.2013, p. 1–11, tač. 6.

³⁰ Miladinović Zoran (2005): *Vrednovanje prava intelektualne svojine u Evropskoj uniji*, Institut za međunarodnu politiku i privredu, Beograd, 3.

³¹ GartnerG2 and The Berkman Center for Internet & Society at Harvard Law School: *Copyright and Digital Media in a Post-Napster World: International Supplement*, January 2005, 9.

merodavnih propisa koja se odnose na zaštitu autorskih prava, najveći doprinos pripada Direktivi o pravnoj zaštiti računarskih programa,³² kojom je ostvaren izuzetan doprinos u smislu sankcionisanja upotrebe piratskih programa. Naime, na osnovu člana 4 stava 1 tačka (a) ove Direktive, sam proces rada programa u računaru istovremeno je okarakterisan kao akt umnožavanja autorskog dela.³³ Pored toga, u navedenom periodu donete su Direktiva o pravu zakupa i pravu posluge, kao i o određenim pravima srodnim autorskom pravu u oblasti intelektualne svojine,³⁴ Direktiva o koordinaciji određenih pravila u vezi s autorskim i srodnim pravima koja se primenjuju na satelitsko emitovanje i kablovsku retransmisiju,³⁵ i Direktiva o pravnoj zaštiti baza podataka,³⁶ kojima je ostvaren cilj u smislu vertikalne standardizacije propisa u oblasti zaštite nosilaca autorskih prava.

Drugu generaciju propisa u ovoj oblasti zaštite intelektualne svojine na nivou Evropske unije čine Direktiva o harmonizaciji određenih aspekata autorskog i srodnih prava u informacionom društvu,³⁷ čijim se odredbama štite digitalni sadržaji, ali i rešavaju pitanja pristupa i korišćenja ovih sadržaja. Na osnovu člana 2 ove Direktive eksplicitno je određeno da „autor ima isključivo pravo da zabrani neposrednu ili posrednu, privremenu ili trajnu reprodukciju dela bilo kojim načinom i u bilo kojoj formi, u celini ili delimično“.³⁸ Drugim rečima, lice koje uz pomoć računara priključenog na internet pristupa filmskom delu da bi ga gledalo, istovremeno vrši i radnju umnožavanja filmskog dela u smislu autorskog prava, pa po tom osnovu dolazi do dupliranja obaveza prema nosiocu autorskog prava.³⁹

³² Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, *OJ L 122*, 17.5.1991, p. 42–46.

³³ *Ibid.*

³⁴ Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, *OJ L 346*, 27.11.1992, p. 61–66.

³⁵ Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, *OJ L 248*, 6.10.1993, p. 15–21.

³⁶ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, *OJ L 77*, 27.3.1996, p. 20–28.

³⁷ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, *OJ L 167*, 22.6.2001, p. 10–19.

³⁸ *Ibid.*

³⁹ Hugenholtz Berndt *et al.*: „The Recasting of Copyright & Related Rights for the Knowledge Economy“, *Report to the European Commission, DG Internal Market; Amsterdam Law School Research Paper No. 2012-44; Institute for Information Law Research Paper No. 2012-38*, 308.

4. Najčešći oblici piraterije u filmskoj industriji

Filmska industrija predstavlja složeni oblik ekonomije, u koju su uključena brojna lica. Protivpravna distribucija filmskih dela je globalni problem bez održivog rešenja, posebno u vremenu kada nova tehnologija omogućava kopiranje filmskog dela na nosače zvuka, slike i tona i podstiče nelegalno postavljanje i preuzimanje filmova uz pomoć interneta.⁴⁰

Filmsko delo u celini, kao i prava pojedinih nosilaca, treba da bude propisno zaštićeno. Nosioc prava imaju zakonsko pravo da koriste filmsko delo kroz prenos prava distribucije, pa sve do distributera filmskog dela.⁴¹ Distributer je fizičko ili pravno lice, koje ima pravo da generiše prihode ostvarene puštanjem filmskog dela javnosti ili licenciranjem prava. Distributer može biti i korporacija ili veliki studio, kao što su: *Warner Bros*, *Gaumont Film Company* ili *Universal*.⁴²

Povreda autorskih prava u filmskoj industriji može biti različita, i kreće se od slučajeva u kojima nije moguće razrešiti pitanja prava:

- 1) producenta za korišćenje filmskog dela;
- 2) nezakonite distribucije kopija filmskog dela;
- 3) protivpravnog postavljanja na raznim internet portalima.⁴³

Piraterija filmskih dela predstavlja krivično delo povrede prava intelektualne svojine, koje se odnosi na krivotvorenu i piratsku robu, proizvedenu i prodatu za profit, bez saglasnosti nosioca prava.⁴⁴ U ovoj oblasti, njeni pojavi oblici su raznoliki, u zavisnosti od načina sticanja filma, kao i načina reprodukovanja i distribucije protivpravne kopije filmskog dela.⁴⁵ Naime, postoje brojni načini protivpravnog sticanja filmskog dela, a najčešći su:

- 1) snimanje kamerom u bioskopu;
- 2) krađa otiska filma prilikom distribucije filmskim kućama;
- 3) krađa prilikom postprodukcije.⁴⁶

⁴⁰ WIPO Document LI/WG/DEV/1/2 Rev., Annex II, 39.

⁴¹ *Ibid*, 54.

⁴² *Ibid*, 56.

⁴³ Munzer R. Stefan (2001): *New Essays in the Legal and Political Theory of Property*, Cambridge University Press, 168.

⁴⁴ Treverton F. Gregory *et al.* (2009): *Film Piracy, Organized Crime, and Terrorism*, Rand Corporation, 35.

⁴⁵ Commission staff working document accompanying the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Europe's Digital Competitiveness Report: *Volume1: i2010 - Annual Information Society Report 2009 Benchmarking i2010: Trends and main achievements*, 58.

⁴⁶ *Ibid.*, 64.

U odnosu na načine reprodukovanja i distribucije, piraterija filmskih dela ostvaruje se pomoću *DVD* diskova, odnosno puštanjem u komercijalnu prodaju nosača zvuka, slike i tona, ili preuzimanjem protivpravno postavljenih kopija filmskih dela na internet portalima.⁴⁷ Presnimavanje i puštanje u komercijalnu prodaju *DVD* diskova je, tehnološki, jednostavan način povrede autorskih prava i vrlo unosan posao. Prema podacima kojima raspolaže Svetska organizacija za zaštitu intelektualne svojine, ekonomska vrednost *DVD* piraterije koju ostvare povrediocima prava iznosi jednu četvrtinu ukupnog novčanog iznosa koji je uložen u stvaranje filmskog dela.⁴⁸

Razvoj interneta doprineo je stvaranju novih formi piraterije, potpuno različitih od *DVD* piratstva. Naime, u pitanju je digitalna piraterija koja se ostvaruje putem različitih sajtova/mreža za digitalnu razmenu sadržaja, poput *Torrent* mreža i *Warez* sajtova.⁴⁹ Pod piraterijom digitalnog sadržaja na internetu podrazumeva se nezakonito korišćenje ili distribucija autorizovanog digitalnog sadržaja koji se distribuira preko interneta,⁵⁰ pri čemu se vlasniku digitalnog sadržaja nanosi šteta, bilo kada pojedinac pribavlja preko interneta zaštićen digitalni sadržaj i koristi ga u komercijalne svrhe ili radi zabave, bilo kada ga besplatno distribuira, ili ga prodaje.⁵¹

Internet piraterija ima različite oblike i može se ispoljavati kroz: piratske veb-sajtove koji nude softver za besplatno preuzimanje novih programa na internetu, internet aukcije koji nude krivotvoreni softver kreiran od redovnih kanala distribucije, i *P2P* mreže koje omogućavaju neovlašćenu razmenu softvera.⁵²

Širenje interneta, kao najvećeg slobodnog medija, uslovalo je i inovacije u primeni protokola za razmenu podataka na mreži.⁵³ U oblasti distribucije filmskih dela beleži se porast broja sajtova za deljenje digitalnih sadržaja, kao što su: *Megaupload*, *Rapid Share*, *Fileserve*, *DepositFiles*, i drugi. Navedeni sajtovi su u 2010. godini zabeležili najveći porast na osnovu procene da ih je mesečno posećivalo 500 miliona korisnika interneta.⁵⁴

Najpopularniji oblik internet piraterije u oblasti filmskih dela je *P2P* mreža *Bittorrent*.⁵⁵ Razmena podataka u okviru ovog sistema ostvaruje se tako što se u

⁴⁷ Reding Viviane: *Digital Europe - Europe's Fast Track to Economic Recovery*, The Ludwig Erhard Lecture 2009. Lisbon Council, Brussels 2009, 9.

⁴⁸ WIPO Document LI/WG/DEV/1/2 Rev., Annex II, 12.

⁴⁹ Cane Peter, Tushnet Mark: *The Oxford Handbook of Legal Studies*, Oxford University Press 2005, 617.

⁵⁰ *Ibid.*, 624.

⁵¹ Staletić Predrag, Staletić Nada (2013): „Piraterija digitalnog sadržaja“, *Infoteh - Jahorina*, Vol. 12, 905.

⁵² Kalezić Biljana (2010): „Software piracy in Serbia“, *INFOtheca* № 1/vol XI/2010, 42.

⁵³ *Ibid.*, 45.

⁵⁴ Price David (2011): *The State of Digital Piracy*, Cambridge, 23.

⁵⁵ *Ibid.*, 26.

okviru mreže povezuje veliki broj računara, pri čemu se svaki od njih ponaša kao zaseban server, odnosno svaki računar prima određene podatke i istovremeno ih deli, odnosno šalje drugim računarima, koji ih u tom momentu traže. Na ovaj način je omogućeno da se vrši umnožavanje filmskih dela od velikog broja korisnika, koji brzo i nesmetano preuzimaju sadržaje za koje su zainteresovani.⁵⁶

Jedna od najpoznatijih mreža koje predstavljaju masovni oblik protivpravne distribucije filmskih dela je *Torrent*, a u okviru ove mreže se naročito izdvaja *The Pirate Bay*, koji je 2003. godine osnovan u Švedskoj.⁵⁷ U periodu od 2010. do 2011. godine zauzimao je 50. mesto po posećenosti na globalnom internetu. Zabranjen je u 14 država, uključujući Kinu, SAD, Englesku, Holandiju, Indiju, Švedsku i većinu zemalja Evropske unije.⁵⁸ Prema udelu u ukupnom internet saobraćaju, *The Pirate Bay* je najpopularniji u Srbiji, gde se 23 % ukupnog internet saobraćaja odvija preko *The Pirate Bay Torrent* mreže.⁵⁹

5. Prikaz file sharing slučajeva

5.1. Slučaj *The Napster*

File sharing servis *Napster* je prvi sudski slučaj razmene podataka koji je postao poznat širom sveta. Naime, Apelacioni sud SAD-a je naložio *Napsteru* da ugasi svoj servis u septembru 2001. godine, jer je utvrđeno da je servis *Napster* izgrađen na osnovi P2P mreža, ali da je centralni server omogućio preuzimanja od strane brojnih korisnika.⁶⁰ Na osnovu kontrole centralnog servera utvrđeno je da je *Napster* imao mogućnosti da spreči kršenje autorskih prava, ali da to nije učinio, već je deljenjem datoteka upravo doprineo mnogobrojnim povredama autorskih prava.⁶¹

Sud je smatrao da je *Napster* doprineo povredi autorskih prava pružajući odgovarajući softver, alate za pretragu i server za razmenu fajlova korisnika, pa je na osnovu toga navedeni servis ugašen.

⁵⁶ *Ibid.*, 27.

⁵⁷ *Ibid.*, 29.

⁵⁸ Staletić Predrag, Staletić Nada, 907.

⁵⁹ Price David, 47.

⁶⁰ United States Court of Appeals for the Ninth Circuit, *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (2001) [US]

⁶¹ Daly Maureen (2007): „Life after Grokster: Analysis of US and European approaches to file sharing“, *European Intellectual Property Review* (EIPR) Vol. 29/2007, 320.

5.2. Slučaj *The Kazaa*

U ovom sporu je utvrđeno da je *file sharing* mreža *Kazaa* odgovorna za povredu autorskih prava, jer je svesno odobrala korisnicima deljenje i razmenu datoteka, bez obzira na to što je imala mogućnosti da spreči ili da makar značajno smanji povredu.⁶² Sud je dalje zaključio da su se mere preduzete od strane mreže *Kazaa*, a koje se odnose na postavljanje upozorenja da je deljenje datoteka protivpravno, kao i sporazumi sa korisnicima koji sadrže klauzulu u kojoj se korisnici obavezuju da poštuju autorska prava, pokazale neefikasnim i nedovoljno preciziranim.⁶³ U cilju sprečavanja budućih povreda nadležni sud je naložio da *Kazaa* instalira filtere.⁶⁴

5.3. Slučaj *The Pirate Bay*

Najpraćeniji *file sharing* sudski slučaj bio je predmet švedskog *The Pirate Bay* sajta, koji je osnovan za indeksiranje i pretraživanje funkcija za *Torrent* fajlove, čime se korisnicima sajta omogućava deljenje sadržaja na brži način i u većem obimu.⁶⁵ Spor se odnosio na zakonitost postojanja *Torrent* pretraživača koji sadrži određene datoteke koje ukazuju na postojanje nelicenciranog sadržaja koji je zaštićen autorskim pravima.⁶⁶ Tužilac je podigao optužnicu 2008. godine, tvrdeći, između ostalog, da su osnivači sajta pomagali i podržavali kršenje autorskih prava.⁶⁷

Vrhovni sud Švedske utvrdio je da su tuženi objektivno doprineli kršenju autorskih prava omogućujući korisnicima da pretražuju i preuzimaju *Torrent* fajlove.⁶⁸ U presudi je, takođe, naglašeno da su tuženi bili svesni kršenja autorskih prava, kao i da, uprkos toj činjenici, nisu preduzeli nikakve mere da spreče dalje povrede.⁶⁹ Presuda je izrečena 17. 4. 2009. godine, tuženi su proglašeni odgovornim za kršenje autorskih prava i osuđeni na godinu dana zatvora i isplatu odštete nosiocima autorskih prava u iznosu od 3,6 miliona dolara.⁷⁰

⁶² Chalmers Damian, Davies Gareth, Monti Giorgio (2010): *European Union Law: Cases and Materials, 2nd Ed.*, Cambridge University Press, 156.

⁶³ Smith Seagrumn (2003): „From Napster to Kazaa: The Battle over Peer-to-Peer Filesharing Goes International“, *2 Duke Law & Technology Review* 1/2003, 1-9.

⁶⁴ Chalmers Damian, Davies Gareth, Monti Giorgio, 159.

⁶⁵ Larsson Stefan (2013): „Metaphors, law and digital phenomena: the Swedish pirate bay court case“, *International Journal of Law and Information Technology* 2013, 7.

⁶⁶ District Court of Stockholm, *Public Prosecutor v Neij [Pirate Bay]*, Judgement of April 17, 2009.

⁶⁷ Larsson Stefan, 7.

⁶⁸ *Ibid.*, 8.

⁶⁹ *Ibid.*

⁷⁰ Manner Mikko, Siniketo Topi, Polland Ulrika (2009): „Pirate Bay Ruling – When The Fun and Games End“, *Entertainment Law Review* Issue 6/2009, 207.

5.4. Slučaj *The OiNK's Pink Palace*

U Velikoj Britaniji je 2004. godine osnovan sajt *The OiNK's Pink Palace*, čime je po prvi put registrovan sajt za deljenje datoteka u okviru filmskih dela.⁷¹ Da bi koristili usluge navedenog sajta, korisnici su morali da se registruju, čime bi im se omogućio pristup za preuzimanje velikog broja filmskih i muzičkih datoteka. Korisnici sajta nisu plaćali naknadu za registraciju, ali je postojala mogućnost doniranja novca na dobrovoljnoj osnovi.⁷² Internet sajt *The OiNK's Pink Palace* je ugašen od strane holandske i britanske policije 2007. godine, a pored pet članova, odnosno osnivača sajta koji su optuženi za kršenje autorskih prava, optužen je i administrator sajta za udruživanje radi prevare. Osnivači su proglašeni krivim za kršenje autorskih prava u decembru 2008. godine.⁷³ Međutim, sud je takođe utvrdio da administrator sajta nije odgovoran, jer je poštovao zahteve podnete od strane nosilaca autorskih prava i uklanjao sadržaje kojima se nanosi povreda.⁷⁴

6. Predlozi za rešavanje problema

Pod pritiskom nosilaca autorskih prava, države članice Evropske unije preduzele su brojne inicijative da u svoja zakonodavstva uvedu efikasne mere koje će biti usmerene na borbu protiv ilegalne, tzv. *file sharing* upotrebe filmskih dela.⁷⁵ Međutim, propisi usvojeni na nacionalnim nivoima odražavaju fragmentirano zakonodavstvo Evropske unije, s obzirom na činjenicu da se Direktivama, kao najčešćim pravnim aktima, uređuju samo smernice i da su države članice slobodne da u svoja zakonodavstva uvedu neke od predloženih mera sa različitim nivoima nadzora i efikasnosti.⁷⁶ Upravo ove razlike izražene u nacionalnim zakonodavstvima nameću potrebu zemalja članica za sistematskim

⁷¹ Lucas V. L. Paul (2014): *Policing Access to Knowledge: an Analysis of the Intellectual Property Prohibition Regime*, dissertation, Texas A & M University, 168, <https://repository.tamu.edu/bitstream/handle/1969.1/154048/LOGAN-DISSERTATION%202014.pdf?sequence=1&isAllowed=y> (28.04.2015).

⁷² Kretschmer Martin, Hardwick Philip (2007): „Authors' earnings from copyright and non-copyright sources: A survey of 25,000 British and German writers“, *Centre for Intellectual Property Policy & Management, Bournemouth University*, http://www.cippm.org.uk/alcs_study.html (30. 4. 2015).

⁷³ Stein Alex (2010): „Set-Back for New Digital Bill Following Landmark Case Acquittal“, <https://www.no5.com/news-and-publications/news/51-set-back-for-new-digital-bill-following-landmark-case-acquittal/> (5. 5. 2015).

⁷⁴ *Ibid.*

⁷⁵ Hugenholtz Berndt (2000): „Why the Copyright Directive Is Unimportant, and Possibly Invalid“, *EIPR* 11/2000, 501-502.

⁷⁶ *Ibid.*, 502-503.

pristupom u okviru Unije, usvajanjem jedinstvene politike koja će biti adekvatna ovim izazovima.

Tako je, na primer, francuska vlada, u saradnji sa svojim organizacijama za zaštitu autorskih prava, formirala nezavisni organ uprave pod nazivom *HADOPI*,⁷⁷ koji je nadležan za obaveštavanje o ilegalnim aktivnostima i kršenju autorskih prava, kao i za promovisanje legalne distribucije sadržaja, i zaštite filmove na internetu od strane nelegalnih korisnika.⁷⁸ Ovaj nezavisni organ, nakon upozorenja korisniku ilegalno postavljenog sadržaja, može se obratiti sudu za izricanje predviđenih sankcija za povredioce autorskih prava.

Sličan model je u aprilu 2010. godine usvojila i Velika Britanija donošenjem Zakona o digitalnoj ekonomiji, koji predviđa da vlasnici autorskih prava mogu putem *IP* adresa identifikovati korisnike ilegalno postavljenih sadržaja.⁷⁹ Pored toga, provajderi internet servisa proveravaju *IP* adrese i naknadno obaveštavaju pretplatnike da su identifikovani, pri čemu vode evidenciju o povredama.⁸⁰ Iako je od donošenja, navedeni zakon osporavan pred britanskim nacionalnim sudovima, presuda Evropskog suda pravde u slučaju *Scarlet v SABAM*⁸¹ ukazuje da su njegove odredbe u saglasnosti sa zakonodavstvom Evropske unije.⁸²

U Belgiji je organizacija za kolektivno ostvarivanje prava *SABAM* predložila sprovođenje kontrole, filtriranje i blokiranje postavljanja filmskih i drugih autorskih dela.⁸³ Belgijski prvostepeni sud je presudio u korist predloženih mera, naglašavajući da filtriranje i blokiranje postavljanja ilegalnih kopija autorskih dela predstavlja jedan od načina sprečavanja povrede, zbog čega je i Savet Evrope usvojio Preporuku o korišćenju filtera u oblasti interneta.⁸⁴

⁷⁷ *Haute Autorité pour la Diffusion des (Euvres et la Protection des Droits sur Internet - HADOPI)*.

⁷⁸ Loi n° 2009-669, du 12 juin 2009, favorisant la diffusion et la protection de la création sur Internet, 135 *Journal Officiel de la République Française*, 13 June, 2009, p. 9666.

⁷⁹ Digital Economy Act 2010 (c. 24)

⁸⁰ Rantou Marianna (2012): „The growing tension between copyright and personal data protection on an online environment: The position of Internet Service Providers according to the European Court of Justice“, *European Journal of Law and Technology*, Vol. 3/Issue 2/2012, 3-7.

⁸¹ Case C-70/10 *Scarlet Extended SA v Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM)* [2011] ECR I-11959.

⁸² Videti i: *British Telecommunications Plc v Secretary of State for Business, Innovation and Skills* [2011] EWHC 1021 (Admin); (2011) 108(18) L.S.G. 18 (QBD (Admin)).

⁸³ Internet Service Providers' Association EU (EuroISPA): *Consultation on the Commission's Report on the Enforcement of Intellectual Property Rights*, March 2011, http://www.euroispa.org/files/1103_euroispa_contribution_ipred.pdf (15.05.2015).

⁸⁴ Recommendation CM/Rec. 2008/6 of the Committee of Ministers to Member States on measures to promote the respect for freedom of expression and information with regard to internet filters (adopted by the Committee of Ministers on 26 March 2008 at the 1022nd meeting of the Ministers' Deputies).

U Švedskoj i Španiji, ilegalno deljenje filmskih i drugih autorskih dela na internetu predstavlja jedan od glavnih načina povrede autorskih prava. Vlade i organizacije ovih zemalja pokušavaju, uz velike napore, da identifikuju i zaustave povredioce na osnovu nacionalnog zakonodavstva.⁸⁵ Međutim, mora se imati u vidu i uloga distributera i proizvođača, koji mogu biti od velike koristi u ograničavanju piraterije.

U određenim kulturnim zajednicama u SAD-u, i u većim gradovima širom sveta, prodavnice u svojoj ponudi imaju ilegalne duplikate verzija filmova koji su, u tom trenutku, popularni. U tom kontekstu vlasti SAD-a preduzimaju i ulažu velike napore u borbi protiv piraterije. Međutim, postoje brojne situacije u oblasti filmske industrije u kojima su nosioci autorskih prava često pojedinci, na primer, u Nigeriji ili Koreji, i koji nemaju nikakve informacije o kršenju njihovih prava, pa samim tim ne mogu da zaštite svoja prava podnošenjem tužbe protiv povredilaca. U takvim slučajevima, nadležni organi ne mogu da deluju u cilju zaštite autorskih prava bez podnošenja odgovarajućih tužbi.⁸⁶

7. Zaključak

Povreda prava nosilaca prava na filmskim delima, deljenjem datoteka koje sadrže navedena dela preko internet mreža, pitanje je za čije su rešavanje zainteresovani svi relevantni činioci, u svim državama sveta. Pri rešavanju pomenutog pitanja treba imati u vidu da pojava sve brojnijih pojedinaca širom sveta koji su uključeni u tokove ilegalne razmene navedenih datoteka, čini rešavanje ovog problema težim. S druge strane, ne sme se zanemariti sve veći broj zahteva nosilaca prava u okviru filmske industrije da njihova dela budu zaštićena od neovlašćene upotrebe.

U tom smislu, postojeći pravni okviri za regulisanje ove materije nisu se pokazali dovoljno efikasnim, jer se nosiocima prava ne pruža adekvatna zaštita od različitih oblika neovlašćenog korišćenja njihovih dela na internetu. Evropska unija je, u navedenom cilju, usvojila niz Direktiva, kao i različite pravne dokumente, u cilju bližeg regulisanja ove materije, vodeći računa o održavanju ravnoteže između zaštite autorskih prava koja pripadaju nosiocima prava u okviru filmske industrije, i prava trećih lica. Međutim, kako se Direktivama ostavlja sloboda državama članicama za propisivanje različitih nivoa zaštite nosilaca prava na filmskim delima, potreba regulisanja navedenog problema na jedinstven način na nivou svih država članica Unije se nameće, pre svega, iz razloga pravne sigurnosti i adekvatne zaštite nosilaca prava. U tom smislu, tumačenja i preporuke za unapređivanje postojećeg pravnog okvira koje

⁸⁵ 'Ley Sinde', Ley 2/2011, de 4 de marzo, de Economía Sostenible (BOE du 5 mars 2011, p. 25033), (Sustainable Economy Act, Act 2/2011 of 4 March 2011)

⁸⁶ WIPO Document LI/WG/DEV/1/2 Rev., Annex II, 39.

Evropski sud pravde daje odlučujući u postupcima piraterije filmskih dela, kao i različiti modeli zaštite nosilaca prava u država članicama, mogu predstavljati polaznu osnovu za efikasno rešavanje pomenutog problema.

Literatura

- Barlow P. John (1994): „The Economy of Ideas: A framework for patents and copyrights in the Digital Age“, *Wired Magazine* Issue 2.03/1994, 1-13, <http://archive.wired.com/wired/archive/2.03/economy.ideas.html> (12. 4. 2015)
- *British Telecommunications Plc v Secretary of State for Business, Innovation and Skills* [2011] EWHC 1021 (Admin); (2011) 108(18) L.S.G. 18 (QBD (Admin)).
- Cane Peter, Tushnet Mark (2005): *The Oxford Handbook of Legal Studies*, Oxford University Press
- Case C-70/10 *Scarlet Extended SA v Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM)* [2011] ECR I-11959.
- Chalmers Damian, Davies Gareth, Monti Giorgio (2010): *European Union Law: Cases and Materials, 2nd Ed.*, Cambridge University Press
- Commission staff working document accompanying the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Europe's Digital Competitiveness Report (2009): *Volume1: i2010 - Annual Information Society Report 2009 Benchmarking i2010: Trends and main achievements*
- Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, *OJ L* 122, 17.5.1991, p. 42–46.
- Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, *OJ L* 346, 27.11.1992, p. 61–66.
- Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, *OJ L* 248, 6.10.1993, p. 15–21.
- Dahlstrom Dana *et al.* (2006): „Piracy in the Digital Age“, *CSE 291 (D00) – History of Computing* 2006, 1-24.
- Daly Maureen (2007): „Life after Grokster: Analysis of US and European approaches to file sharing“, *European Intellectual Property Review* (EIPR) Vol. 29/2007, 319-324.
- Davies Gillian (1994): *Copyright and the Public Interest*, IIC Studies, München
- Digital Economy Act 2010 (c. 24)

- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, *OJ L 167*, 22.6.2001, p. 10–19.
- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, *OJ L 77*, 27.3.1996, p. 20–28.
- District Court of Stockholm, *Public Prosecutor v Neij [Pirate Bay]*, Judgment of April 17, 2009
- GartnerG2 and The Berkman Center for Internet & Society at Harvard Law School (2005): *Copyright and Digital Media in a Post-Napster World: International Supplement*, January 2005.
- Hugenholtz Berndt *et al.* (2006): „The Recasting of Copyright & Related Rights for the Knowledge Economy“, *Report to the European Commission, DG Internal Market; Amsterdam Law School Research Paper No. 2012-44; Institute for Information Law Research Paper No. 2012-38*.
- Hugenholtz Berndt (2000): „Why the Copyright Directive Is Unimportant, and Possibly Invalid“, *EIPR* 11/2000, 501-502.
- Information from European Union institutions, bodies, offices and agencies - European commission, Communication from the Commission on State aid for films and other audiovisual works (Text with EEA relevance), *OJ C 332*, 15. 11. 2013, p. 1–11
- Internet Service Providers' Association EU (EuroISPA) (2011): *Consultation on the Commission's Report on the Enforcement of Intellectual Property Rights*, http://www.euroispa.org/files/1103_euroispa_contribution_ipred.pdf (15. 5. 2015).
- Kalezić Biljana (2010): „Software piracy in Serbia“, *INFOtheca* № 1/vol XI/2010, 39-51.
- Kracauer Siegfried (1960): *Theory of Film: The Redemption of Physical Reality*, Oxford University Press
- Kretschmer Martin, Hardwick Philip (2007): „Authors' earnings from copyright and non-copyright sources: A survey of 25,000 British and German writers“, *Centre for Intellectual Property Policy & Management, Bournemouth University*, http://www.cippm.org.uk/alcs_study.html (30. 4. 2015).
- Larsson Stefan (2013): „Metaphors, law and digital phenomena: the Swedish pirate bay court case“, *International Journal of Law and Information Technology* 2013, 1-26.
- 'Ley Sinde', Ley 2/2011, de 4 de marzo, de Economía Sostenible (*BOE du 5 mars 2011*, p. 25033), (Sustainable Economy Act, Act 2/2011 of 4 March 2011)
- Loi n° 2009-669, du 12 juin 2009, favorisant la diffusion et la protection de la création sur Internet, *135 Journal Officiel de la République Française*, 13 June, 2009, p. 9666.
- Lucas V. L. Paul (2014): *Policing Access to Knowledge: an Analysis of the Intellectual Property Prohibition Regime*, dissertation, Texas A & M University

2014, <https://repository.tamu.edu/bitstream/handle/1969.1/154048/LOGAN-DISSERTATION%202014.pdf?sequence=1&isAllowed=y> (28. 4. 2015).

- Makeen, F. Makeen (2000): *Copyright in a Global Information Society: The Scope of Copyright Protection Under International, US, UK and French Law*, The Hague: Kluwer Law International
- Manner Mikko, Siniketo Topi, Polland Ulrika (2009): „Pirate Bay Ruling – When The Fun and Games End“, *Entertainment Law Review* Issue 6/2009, 197-210.
- Marković Slobodan (2014): *Pravo intelektualne svojine i informaciono društvo*, Službeni glasnik, Beograd
- Marković Slobodan, Miladinović Zoran (2014): *Autorsko pravo i srodna prava*, Pravni fakultet Univerziteta u Kragujevcu, Kragujevac
- Miladinović Zoran (2005): *Vrednovanje prava intelektualne svojine u Evropskoj uniji*, Institut za međunarodnu politiku i privredu, Beograd
- Munzer R. Stefan (2001): *New Essays in the Legal and Political Theory of Property*, Cambridge University Press
- Parkinson David (2014): *Istorija filma*, Dereta, Beograd
- Price David (2011): *The State of Digital Piracy*, Cambridge
- Rantou Marianna (2012): „The growing tension between copyright and personal data protection on an online environment: The position of Internet Service Providers according to the European Court of Justice“, *European Journal of Law and Technology* Vol. 3/Issue 2/2012, 1-24.
- Recommendation CM/Rec. 2008/6 of the Committee of Ministers to Member States on measures to promote the respect for freedom of expression and information with regard to internet filters (adopted by the Committee of Ministers on 26 March 2008 at the 1022nd meeting of the Ministers' Deputies).
- Reding Viviane (2009): *Digital Europe - Europe's Fast Track to Economic Recovery*, The Ludwig Erhard Lecture 2009. Lisbon Council, Brussels
- Ruby Jay (2000): *Picturing Culture: Explorations of Film and Anthropology*, The University of Chicago Press, Chicago
- Smith Seagrurn (2003): „From Napster to Kazaa: The Battle over Peer-to-Peer Filesharing Goes International“, *2 Duke Law & Technology Review* 1/2003, 1-9.
- Staletić Predrag, Staletić Nada (2013): „Piraterija digitalnog sadržaja“, *Info-teh - Jahorina* Vol. 12, 905-909.
- Stein Alex (2010): „Set-Back for New Digital Bill Following Landmark Case Acquittal“, <https://www.no5.com/news-and-publications/news/51-set-back-for-new-digital-bill-following-landmark-case-acquittal/> (05.05.2015).
- Treverton F. Gregory *et al.* (2009): *Film Piracy, Organized Crime, and Terrorism*, Rand Corporation
- Ulmer Eugen (1981): *Urheber und Verlagsrecht*, 3. Aufl., Springer, Berlin

- United States Court of Appeals for the Ninth Circuit, *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (2001) [US].
- WIPO Document LI/WG/DEV/1/2 Rev., Annex II
- WIPO (2008): *Intellectual Property Handbook: Policy, Law and Use*, http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf (17.04.2015).
- Zakon o autorskom i srodnim pravima, *Službeni glasnik Republike Srbije*, 104/2009, 99/2011 i 119/2012
- Zakon o kinematografiji, *Službeni glasnik Republike Srbije*, 99/2011, 2/2012-ispr. i 46/2014-odluka US

Rad primljen: 25. jun 2015.

Odobren za štampu: 27. jun 2015.

Paper received: June 25th, 2015

Approved for publication: June 27th, 2015

Vukašin Petrović, PhD Candidate

Faculty of Law, University of Kragujevac

FILM PIRACY IN THE ERA OF DIGITAL TECHNOLOGY

S u m m a r y

Reproduction of films in the era of analog technology has been connected with a number of difficulties, involving, *inter alia*, technically complex process of reproduction, as well as high cash expenditures. In that sense, the very analog technology presented a barrier to reproduction of films by unauthorized persons. By switching to digital technology, the reproduction of mentioned copyright works became much easier, in terms of enabling individuals to, with easily available and relatively cheap technical means, in a fast and high quality way, make a large number of film copies.

Since the digital era reflects progress of technology in the field of reproduction and distribution of films, as well as copyright works in general, the introduction of new exclusive rights in copyright law is very significant, as well as narrowing the existing limitations of copyright law rights and extension of duration of the protection. Effective enforcement of copyright protection in the new conditions opened a range of numerous issues, out of which the question of piracy in the field of film production is one of the most important, which presented the motivation for the author to cover this issue.

Key words: reproduction of films, digital technology, internet piracy, file sharing.

GENERAL INFORMATION ON THE JOURNAL AND THE INSTRUCTIONS FOR AUTHORS

I. GENERAL INFORMATION ON THE JOURNAL

1. General. – 'Megatrend Review' is the scientific journal of Megatrend University.

According to the classification of Ministry of Education, Science and Technological Development of the Republic of Serbia, the journal is ranked amongst the leading national scientific journals in Serbia (M51).

'Megatrend Review' journal has been published since 2004 in Serbian and English language. It is open to all quality papers and authors from around the world. It has an international editorial board and international editorial council. Through international exchange it reaches readers beyond the borders of Serbia.

'Megatrend Review' journal is a multidisciplinary journal in the fields of social sciences. Papers on following topics are published:

- Economy
- Law
- Politics and Security
- Management and Marketing
- International Relations
- Public policies
- Information Society

2. Reviews. – Each paper is reviewed by two reviewers.

Paper that has received two positive reviews will be published according to standard categorization of the scientific journals: Transparent scientific article, original scientific work, reference, translation or display.

The categorization of the paper is determined by the reviewers and Editor in chief. If there is any doubt regarding the categorisation, the given higher category will be applied.

In case that one of the reviewers suggests that the paper should be published and the other that it should not, the paper is given to the third reviewer whose decision is final.

3. Anonymity of the authors and reviewers. – Editorial of the „Megatrend review„ journal abides by the rule on mutual anonymity between authors and reviewers. Further, if the author is not satisfied with the reviews of the paper, he / she, has the right to receive the reviews.

II. INSTRUCTIONS FOR AUTHORS

The papers are to be regulated in accordance with the following instructions:

1. The Manuscript

The manuscript is submitted in electronic version (MS Word). The papers written in Serbian language are submitted in Serbian Latin.

The paper is submitted in electronic form to the following e-mail address:
mtopic@megatrend.edu.rs / mtopic.megatrendrevija@gmail.com

The paper should be accompanied by the written Statement of originality signed by the author (written, signed and scanned).

Requirement for the paper to enter the reviewing procedure is that it fully satisfies technical criteria according to the instructions given here. Also, the paper must meet the criteria regarding the language and spelling. It is of outmost importance that the paper has been lectured before submission.

2. Number of authors

As a rule, papers written only by one author are published (an author as an individual). However, if consider justified, the editors will decide to publish the papers of co-authors, but not more than 3 Co – authors.

3. Language

The text is submitted in Serbian or English language. If accepted, it will be published in the language in which it was submitted.

Exceptionally, the editors will decide that the text submitted in Serbian language is to be translated and published in English, or vice versa.

4. Volume

The paper should approximately have 30.000 characters, including spaces (1 author's sheet). Alternatively, it could be shorter or longer, the number of characters with spaces not being smaller than 20,000 nor bigger than 45,000.

Due to particularly justified reasons (the special social importance of the topic, the co-authorship of a number of internationally recognized scientists,

etc.) the editorial board could exceptionally allow the publication of an article of a larger volume, but not larger than 2.5 author's sheets (75,000 characters).

5. Tables and Forms

The tables should only be made by the means of table tools in MS Word. The tables must have titles and be numbered by Arabic numerals.

The formulae should be written by means of the formulae editor in MS Word

6. Drawings and Photographs

Drawings can be submitted drawn on paper or in electronic form. When the drawings are submitted in electronic form, they should be in one of the following formats: EPS, AI, EPS, TIF or JPG. If the author uses these or uses a specific program, it is necessary to agree on the format with the technical editor. Drawing should not be made in MS Word!

Photographs must be sharp, in good contrast and undamaged. The authors are not advised to scan the images themselves, but to leave this sensitive job for the editorial office.

If the version on the paper does not include drawings and photographs, the spaces must be clearly marked where they should be inserted. The markings in the text must match the ones in the submitted photos (or files).

Drawings and photographs must have the signatures and be numbered in Arabic numerals

7. Organization of manuscript

The article must contain the following elements, in the following order:

1. Author s data. – Name and surname, title of the author, title of the institution where the author is employed (affiliation); the author's e-mail address.

2. Title of the paper. – The title should be clear and precise.

3. Abstract. – This is a brief informative representation of the article content, which contains the research goal, methods, results, and conclusions. It should be in the same language in which the paper was written. In terms of volume, it should contain 100 to 250 words or 4 to 8 sentences, or a third to half of

the printed page. It stands between the title and keywords, after which the text of the article follows.

4. Key words. – The terms or phrases which best describe the content of the article. It is allowed to give up to five words, i.e. phrases.

5. Text of the article. – The central part is the text of the article in which the author uses appropriate tools while processing the writing of a scientific paper (professional articles are not published).

6. List of used literature. – After the text of the article, the list of used literature is specified in alphabetical order by authors' last name.

The list is given according to the Citation instructions, with the year of publication coming right after the author's, i.e. editor's name. At the end of the information on an article or a paper in the collection of papers, the pages of the cited paper are given.

Examples:

- A book: Akehurst Michael (1984): *A Modern Introduction to International Law*, London

- A chapter in the book by several authors: Buchanan Allen (2010): "The Legitimacy of International Law", 79-96, in: Besson Samantha, Tasioulas John (eds.): *The Philosophy of International Law*, Oxford

1 Nature of Universal International Organizations", *American Journal of International Law* 3/1971, 502-521

The papers by the same author are specified in chronological order. If several papers have been written by the same author and published in the same year, the year of publication is accompanied by the letters 'a', 'b', 'c' etc.

Examples:

- Cassese Antonio (1999a): "Ex iniuria ius oritur. Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?", *European Journal of International Law*, 1/1999, 23-30

- Cassese Antonio (1999b): "A Follow-Up: Forcible Humanitarian Countermeasures and Opinio Necessitatis", *European Journal of International Law*, 4/1999, 791-799

7. Summary. – Summary is written at the very end of the text i.e. The resume of the paper can be same as the abstract, but could also be of a bigger volume, yet no longer than one page. If the paper is written in Serbian language, the summary in English language should also be submitted.

8. The levels of the titles. - Depending on the text, the titles have different levels therefore the following method is used:

1. The First Level Title

(middle, regular, bold, Latin numerals)

1.1 The second level title

(middle, italic, Arabic numerals)

1.1.1 The third level title

(Above the beginning of the paragraph, italic, Arabic numerals.)

In order to clarify any obstacles, authors are advised to refer to the past issues of 'Megatrend Review' journal available in PDF forms, under Archive, or contact the Editorial secretary via e-mail.

Depending on the specific characteristics of the text, and with the aim of achieving its clearer outlay, the editorial office reserves the right to edit the titles in a slightly different way, leaving the original heading divisions.

9. Citations. – The used literature is to be cited according to the instructions for citations given below.

10. The editorial staff address. – The papers are submitted in electronic form via e-mail to the following address: mtopic@megatrend.edu.rs. / mtopic.megatrendrevija@gmail.com

Mirjana Topic
Editorial Board
Megatrend Review
Megatrend University
Goce Delceva 8
11070 Belgrade
Telephone: + 381 11 220-31-50

III. INSTRUCTIONS FOR CITATIONS

1. General rules

1. Name of the author. - Author's surname and first name are specified. First letter of the middle name is specified between surname and first name.

Example: Shaw N. Malcolm

2. Several authors. – Names of the several authors are separated by commas.

Example: Simma Bruno, Alston Philip

If there are more than three authors, only the first author's surname and first name are specified, followed by the italicized et al. words (et alia).

Example: Henkin Louis et. al.(1993): *International Law: Cases and Materials*, St. Paul. Minn.

3. Pages. – When a particular page is specified (of the book or the paper), its number is written without any additions (p., pg., p., page, etc.).

Example: Akehurst Michael (1984): *A Modern Introduction to International Law*, London, 9.

4. Footnotes. – When a footnote is given, after the number of the page, the sign 'fn' is written, followed by the number of the footnote.

Example: Akehurst Michael (1984): *A Modern Introduction to International Law*, London, 9, fn 2.

5. The repeated citation of the same article. – When an article that has been cited before is recited, the author's surname and first name are specified, followed by the cited page, separated by a comma, without using *op. cit.* etc.

Example: Akehurst Michael, 15.

If several papers by the same author are specified, the author's surname and first name are stated. Following in the brackets: year when the paper has been published, followed by the number of the page.

Example: Akehurst Michael (1984), 15.

When specifying several papers written by the same author, published the same year, in the list of used literature (which is always given at the end of the paper) and after the year of publication, the papers are additionally marked by Latin letters 'a', 'b', 'c', etc. They are also stated as such when cited in footnotes.

Example: Akehurst Michael (1984a), 15.

6. Recitation of the previously cited article. – If a piece of data from the same page of the same paper cited in the previous footnote is cited again, only the Latin abbreviation *Ibid.* (from *ibidem*) is used without giving any other data.

Example: *Ibid.*

If a piece of data cited in the previous footnote is cited again, but from a different page, the Latin abbreviation *Ibid.* is used, followed by a comma and the number of the page.

Example: *Ibid*, 54.

7. Foreign names. – Papers submitted in Serbian language, foreign names are transcribed, i.e. written as they are pronounced in Serbian, and when first

mentioned in the text, the author's surname and first name are given in their original form within the brackets in italics.

Example: Hugo Crocijus (Hugo Grotius)

2. Books

1. General. – The books are cited in the following way:

1) author's surname, 2) author's first name, 3) semi-column, 4) title of the book in italics, 5) place of the publication in lowercase (ordinary letters), 6) the year of publication, 7) number of the page (without any additions), 8) footnote which is being cited. After the space for publication, there is no comma.

If the information on the publisher is given as well, it is written in lowercase (ordinary letters) before the place of the publication.

Example: Scott V. Shirley: International Law in World Politics, Lynne Rienner Publishers Inc., Boulder – London 2010, 71, fn 45.

2. Several editions. – If a book has several editions the number of the edition need/need not be specified in the superscript.

Example: Scott V. Shirley: International Law in World Politics, Lynne Rienner Publishers Inc., Boulder – London 2010

3. Editors. – If a book has one or more editors, the editors' surnames and first names are given first, separated by commas, then the sign 'ed', or 'eds' is written if there are more of them, followed by the title of the book in italics, and finally the place and year of publication.

Example: Besson Samantha, Tasioulas John (eds.) (2010): The Philosophy of International Law, Oxford.

If there are more than three editors, the data only for the first editor is given followed by a comma, then 'et al.', and finally 'ed.'

Example: Hamilton P. et al. (eds.) (1999): The Permanent Court of Arbitration: International Arbitration and Dispute Resolution, Kluwer International, The Hague-London-Boston.

4. Chapters in a book. – A chapter in a book with an editor is cited by giving the following: 1) the authors surname and name, 2) a column, 3) the title of the chapter in lowercase (under inverted commas), 4) a comma 5) the number of pages that are cited, 6) 'in', 7) the editor's surname and name, 8) '(eds.)', 9) the title of the book in which the cited text is in lowercase (in italics) and 10) the place and the year of publication.

Example: Buchanan Allen (2010): "The Legitimacy of International Law", 79-96, in: Besson Samantha, Tasioulas John (eds.): The Philosophy of International Law, Oxford.

4. Articles

1. General. – The articles are cited in the following way:

1) author's surname, 2) author's name, 3) semi-column, 4) the title of the article in lowercase in ordinary letters) under inverted commas, 5) the title of the journal (collection of papers etc.) in italics, 6) the issue and year separated by a slash, 7) the number of the page (without any additions), 8) the number of the cited footnote.

Example: Osakwe Chris(1971): "Contemporary Soviet Doctrine on the Juridical Nature of Universal International Organizations", *American Journal of International Law* 3/1971, 502, fn 1.

2. The abbreviation of the journal title. – If the title of the journal (collection of papers etc.) is a long one, when cited for the first time its abbreviation is given in brackets, which is later used when the same journal (collection of papers etc.) is cited again.

Example: Osakwe Chris: "Contemporary Soviet Doctrine on the Juridical Nature of Universal International Organizations", *American Journal of International Law (AJIL)* 3/1971, 502-521.

5. Regulations

1. General. – Regulations are cited in the following way:

1) title of the regulation is given in lowercase (in general letters), 2) the journal/magazine in which the regulation is published is given in italics, 3) the number of the issue and the year in which the journal is published are given at the end.

Example: Zakon o osnovama uređenja službi bezbednosti Republike Srbije, *Službeni glasnik Republike Srbije*, 116/2007.

2. If the regulations are re-mentioned. – If a regulation is mentioned again later in the text, at the place where it appears for the first time its short title is given within the brackets, with the words 'hereinafter referred to as' preceding it.

Example: Zakon o osnovama uređenja službi bezbednosti Republike Srbije (u daljem tekstu: Zakon o službama bezbednosti), *Službeni glasnik Republike Srbije*, 116/2007.

3. Amendments. – If a regulation has been changed and amended, one by one, the numbers of issues and year of the journals are given in the original text, i.e. amendments were published.

Example: Zakon o osnovama uređenja službi bezbednosti Republike Srbije, *Službeni glasnik Republike Srbije*, 116/2007, 72/2012.

4. Articles, paragraphs and items of regulations. - Articles, paragraphs and items of regulations are written separated by a slash, the number of the article comes first, followed by the number of the paragraph, and finally that of the item, etc.

Example: UN Convention on the Law of the Sea (1982) čl. 1/1/5/a/i.

6. The Internet texts

The citation of the text from the Internet should contain: 1) name of the author of the cited text (if it is the author's text), 2) title of the cited text under inverted commas, 3) data on where the text was published (if it is published in a printed version), 4) internet page, 5) date of the access to the page.

Example: Bradley A. Curtis, Gulati Mitu: "Withdrawing from International Custom", *The Yale Law Journal* 2/2010, 233-241, <http://yalelawjournal.org/images/pdfs/912.pdf>(18.11.2012).

IV. PAPER ORIGINALITY AND FIGHTING AGAINST PLAGIARISM

We kindly ask the authors to take into consideration the following:

1. Written confirmation that the work is original. - When submitting a manuscript the author is required to confirm in writing that his/hers paper is original and that it has not been published elsewhere. The paper that is sent without the written confirmation by the author, will not be accepted.

2. The paper that has previously been published elsewhere. - If for any reason the author submits the paper that has already been published elsewhere (abroad, in a foreign language), he/she is obliged to specify where the paper was published (the journal, issue and number, the number of pages) and enclose the written consent of the editorial board of the journal in which the paper was originally published. If these requirements are met, and editors conclude that the paper is for some reason of particular interest and should therefore be published, it will be published with indication where it was published first and that it is republished with permission.

However, if the paper has already been published elsewhere, and also submitted for publication to 'Megatrend Review' with no information about it, the paper will not be published. In addition, as a sanction for unfairness, in the next issue of 'Megatrend Review' the information that a particular author has unfairly tried to re-publish the same paper will be published in a special section. Apart from that, the papers by the same author will not be published by 'Megatrend Review' in the future.

3. Plagiarism. - Should the editors of 'Megatrend Review' journal or through reviewers discover that the paper submitted for publication is plagiarism, in a

special section of its next issue the information that a particular author has plagiarized a paper will be published, and the original paper from which the plagiarism is taken will be cited. In addition, the papers by the same author will be not be published in 'Megatrend Review' in the future. If necessary, the author whose paper has been copied or the editorial board of the journal that has published the original paper will be notified.