

LEGAL BARRIERS IN THE BUSINESS OF BIOFERTILIZERS AND BIOPESTICIDES IN UKRAINE

PRÁVNE PREKÁŽKY V PODNIKANÍ S BIOHNOJIVAMI A BIOPESTICÍDMI NA UKRAJINE

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I. Introduction

Managing pests and improving soil fertility are key to increasing food availability. However, the unsustainable application of chemical fertilizers and plant protection chemicals have resulted in the steady decline of soil and crop productivities the world over. To overcome this challenge, rising food yields must be decoupled from the unsustainable utilization of water, fertilizers, chemicals, and land. Investing in sustainable agriculture is one of the most effective ways to simultaneously achieve the Sustainable Development Goals (SDGs) related to poverty and hunger, nutrition and health, education, economic and social growth, peace and security, and the preservation of the world's environment⁽¹⁾. 'Biologicals' (biofertilizers and biopesticides) are microbial products that increase agricultural productivity, while also contributing to the soil's ability to produce more in the future. These microbes, fungi and other plant-derived products are relatively safe for human consumption. Small quantities of biologicals are often effective, and biofertilizers and biopesticides

⁽¹⁾ Earth Alive (2017).

decompose quickly, leaving no footprint. However, the legal registration of microbial products and the operation of businesses in this sector face barriers that affect the expansion and widespread use of these green products.

In Ukraine, the 'Main State Inspection of Plant Protection' is the body responsible for the registration of biopesticides and all other plant protection products, as well as plant growth promoters and micronutrients. This body is also the main administrator of State trials, and it creates the annual State Register of allowable pest control products and regulates all the organizations and companies involved in the production, use, trade, transport, storage, disposal, and other activities along the post-registration value chain. There are 28 organizations and institutions involved in the certification and approval of pest control products. These organizations are also the main proponents of biopesticide research and development. Most of these organizations fall under the Research Institutes of the Ukrainian Agricultural Academy of Sciences (UAAN), National Academy of Sciences (NANU), or the various agricultural universities⁽²⁾.

⁽²⁾ Anishchenko et al. (2010).

Abstract (EN)

'Biologicals' (biofertilizers and biopesticides) are microbial products that increase agricultural productivity, while also contributing to soil health. These microbial products are relatively safe for human consumption. However, the legal registration of microbial products and the operation of businesses in this sector face barriers that affect the expansion and widespread use of these green products. A study of these barriers was conducted by researchers at the Université de Montréal, with the financial support of Mitacs and Earth Alive Clean Technologies, using participatory methods of semi-structured interviews, structured interviews and informal discussions with the manufacturers, suppliers and traders of biologicals, as well as the government officers dealing with biologicals in Ukraine. This article analyses the data collected from the participants concerning obstacles to the registration, licensing, and proliferation of microbial products.

Keywords (EN)

legal barrier, registration barrier, biopesticides, biofertilizers, license

Abstrakt (SK)

„Biologické látky“ (biohnojivá a biopesticídy) sú mikrobiálne produkty, ktoré zvyšujú produktivitu poľnohospodárskej výroby a súčasne prispievajú k zdraviu pôdy, pričom konzumácia týchto produktov je relatívne bezpečná. Zákonná registrácia mikrobiálnych produktov a prevádzka podnikov v tomto sektore však čelia prekážkam, ktoré ovplyvňujú rozšírenie a využívanie týchto ekologických výrobkov. Analýzu bariér uskutočnili vedci z Université de Montréal za finančnej podpory spoločností Mitacs a Earth Alive Clean Technologies s využitím participatívnych metód pološtruktúrovaných rozhovorov, štruktúrovaných rozhovorov a neformálnych diskusií s výrobcami, dodávateľmi a obchodníkmi s biologickými látkami, ako aj vládnymi úradníkmi zaoberajúcimi sa biologickými látkami na Ukrajine. Tento článok analyzuje údaje získané od respondentov týkajúce sa prekážok registrácie, licencií a šírenia mikrobiálnych produktov.

Kľúčové slová (SK)

právne bariéry, registračné bariéry, biopesticídy, biohnojivá, licencia

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Table 1

Participant Group	Sample Size	Names of Oblasts	Sampling Method	Research Method
G 1. Manufacturers and Suppliers	8	Lviv, Kiev, Ivano-Frankivsk, Kharkiv, Chernihiv	Snowball, Purposive	Semi-structured interview; Structured interview
G 2. Government Officers	8	Lviv, Kiev, Ivano-Frankivsk, Kharkiv	Purposive, Expert	Informal discussion; Semi-structured interview

With respect to biologicals, the major challenges for most countries revolve around inadequate legislation, lack of capacity, and weak implementation of policies related to biofertilizers and biopesticides⁽³⁾. Many countries have amended their policies to minimize the use of chemical pesticides and promote the use of biopesticides; however, biopesticides are still largely regulated by the system originally designed for chemical pesticides. This has created market entry barriers by imposing burdensome costs on the biopesticide industry⁽⁴⁾. Serious challenges in this regard include the relative immaturity of the policy network, limited resources and capabilities, and a lack of trust between regulators and producers.

Two groups of participants - manufacturers, suppliers and traders of biologicals, and government officers dealing with biologicals - were interviewed in 2018-19 using semi-structured interviews, structured interviews, and informal discussions. Variables such as the biological relevance and effectiveness of microbial products, and barriers to business and registration were studied. This article explores the perceptions and understanding of the participants concerning barriers to the registration, licensing, proliferation and business operation of microbial products. It is part of a larger study conducted between September 2017 and February 2020 by the authors at the Faculty of Law at the Université de Montréal, with the support of Mitacs and Earth Alive Clean Technologies, and field work support by Yaroslav Mudryi National Law University of Ukraine.

II. Methodology

Field research was conducted in Ukraine to understand barriers to the registration and licensing of biologicals, as well as the efficacy and efficiency of their monitoring. Primary data was gathered by interviewing participant groups, in addition to a desk review of the literature.

Sampling and Sample Techniques

This study was conducted by selecting two participant groups: Group 1 - Manufacturers and Suppliers; and Group 2 - Government Officers. Group 1 participants (listed in Appendix 1) are direct stakeholders who are affected by, and provided insights concerning, regulatory barriers concerning biologicals. Group 2 participants (listed in Appendix 2) are involved in policy/law implementation and enforcement. Some of the information shared by these officers was provided on an informal basis, as they cannot share such information in their official capacity. Table 1 contains the total sample size of each of the participant groups. After taking pre-appointments, in person interviews were conducted.

⁽³⁾ Urs (2015).

⁽⁴⁾ Kumar, Singh (2014).

Several sampling techniques were used to select the participants. The manufacturers/suppliers of biologicals (Group 1 participants) were sampled using purposive sampling and snowball sampling techniques (Table 1). Group 2 participants were sampled in each oblast of Ukraine using purposive sampling and expert sampling.

Methods of Data Collection

As mentioned in Table 1, different data collection methods were used to collect data from the two participant groups. Information from manufacturers/suppliers (Group 1 participants) was collected based on the questions listed in Table 2, using semi-structured and structured interviews (Table 1). Information from Group 2 participants was collected based on the questions listed in Appendix 3, using semi-structured interview and informal discussion methods (Table 1).

Certificat d'approbation éthique (Ethical Approval Certificate)

The Multi-Faculty Committee on Research Ethics (*Comité plurifacultaire d'éthique de la recherche - CPER*) of the Université de Montréal issued an Ethical Approval Certificate (no. CPER-17-114-P) to the study project. The conditions of the Ethics Certificate were fulfilled during the collection of field data from all three participant groups. In compliance with the Ethics Certificate, a Consent Form was presented to each of the individual participants in Ukrainian, and was signed by both the participant and field researcher. Before conducting the interview or discussion with the participants/participants, each individual was informed of the objectives of the research through an Information Sheet containing participant expectations, the benefits of sharing information, details concerning confidentiality, and participants' right to withdraw. The collection of information commenced only once explanations concerning the research had been provided and the freely given consent of the participant/participant was obtained.

III. Results and Discussion

The present article seeks to understand the legal and procedural barriers impeding the microbial biofertilizer and biocontrol agent business, including the trials, storage, transport, sale, trade, import, manufacturing and exhibition of these products. The following discussion is based on an analysis of the responses given by the manufacturers/suppliers and government officers who were surveyed.

Microbial Biofertilizers

Biofertilizers are microbial compounds that enhance soil fertility by using microorganisms in symbiotic relationships with plants. More precisely, they can be defined as microbial in-

oculants containing cultures of certain soil microorganisms that are multiplied under controlled conditions, and that can improve soil fertility and crop productivity ⁽⁵⁾. [5] Biofertilizers can be classified broadly into eight types: (i) Rhizobium, (ii) Azospirillum, (iii) Azotobacter, (iv) Blue Green Algae (Cyanobacteria) and Azolla, (v) Mycorrhiza (Phosphate Absorbers), (vi) Plant Growth Promoting Rhizobacteria, (vii) Phosphate Solubilizers, and (viii) Zinc Solubilizers. Biofertilizers can also be classified by technology type (carrier-enriched biofertilizers, liquid biofertilizers, and other technology types), by application (seed treatment and soil treatment), and by crop type (cereals, legumes, fruits and vegetables, plantations, and other crop types).

Biopesticides or Biocontrol Agents

Biopesticides have minimal impact on non-target organisms. Possessing complex modes of action, they are not prone to resistance and they help reduce the development of resistance when used in resistance management programs. Biopesticides hold significant benefits for growers, offering:

- Pest control, thereby enhancing crop quality and yields
- Improved export opportunities, because most are residue exempt
- An improved environmental profile
- Organically approved status that allows organic growers to control pests while maintaining their certified status.

Biopesticides may be categorized as:

- a) Biofungicides (e.g. *Trichoderma viride*, *Pseudomonas fluorescense*)
- b) Bioinsecticides (e.g. *Bacillus thuringiensis*)
- c) Bioherbicide (e.g. *Verticillium chlamydosporium*)

Types of Biologicals and their Effectiveness

In Ukraine, manufacturers/suppliers were not able to identify the categories of biofertilizers present in the country (Table 2). This lack of knowledge may be because statutory bodies have not defined those categories; rather all plant growth stimulators, bio-stimulants, nutrition supplements, etc. are treated as agrochemicals. By contrast, participant manufacturers/suppliers identified two categories of biopesticides being manufactured or supplied/traded: biofungicides and bioherbicides. Toxicological tests of these biopesticides are conducted by authorized laboratories or research institutes to establish that they are harmless and increase immunity of plants and soil (Table 2). On the question of biosafety issues associated with biopesticides, the participant manufacturers/suppliers provided no response (Table 2).

Barriers in the Registration and Certification Process

With respect to the procedures for the registration of manufacturing, import, trade/sale, transport, storage, disposal, etc. of biofertilizers and biopesticides (Table 2), all of the participants surveyed commented on the lack of an adequate legal framework in Ukraine and on the existing corruption. They also noted the absence of a procedure for registering biofertilizers, for registering an enterprise, and for obtaining permits

(Table 2). Some participants indicated that the procedure for registration is lengthy (sometimes up to two years), noting that a tremendous amount of data on phytosanitary parameters is required (Table 2), along with technical tests such as a passport of safety, phytosanitary and epidemiological data, bioassays and immunological tests. These tests are extremely hard to perform and comply with (Table 2). One participant stated that until 2009, biofertilizers did not require registration; however, since July 2015, registration has been required for plant growth promoters (Table 2). The documents required at the time of application include business registration, a permit from the Fire Department, waste disposal clearance, a sanitary passport for the warehouse, a copy of instructions for labour protection (labour rights and workplace safety), compliance for commercial premises, documents showing ownership, a certified copy of statistical reference, copy of an extract from the register of the Unified State Register of Enterprises and Organization of Ukraine (USREO), lease contract and statute, a letter of guarantee for the disposal of toxic waste, bank account of enterprise, copies of employees' diplomas, bank statements and tax compliance, quality certificates, test reports, evaluation by experts, and document containing names of workers (Table 2). In the opinion of the participant manufacturers/suppliers, the assistance of a lawyer is essential; otherwise, the registration process is more protracted (Table 2).

A large amount of data from laboratory tests and efficacy tests is required during the registration process (Table 2). This data pertains to biological, toxicological and ecological parameters. Once this registration is obtained by manufacturers, retailers or suppliers must also acquire certification from the manufacturer company in order to sell the products to farmers (Table 2). Similarly, international products require certificates on the part of foreign producers.

Responding to questions pertaining to a detailed account of the barriers at each step of the registration process, the surveyed manufacturers/suppliers indicated that the primary barriers are corruption, lack of a set procedure for the registration of biofertilizers, lack of a time-bound procedure, higher unofficial charges for registration, and the complexity of the registration process (Table 2). Moreover, there are several tests, such as the toxico-hygienic passport, that need to be obtained from specialized scientific institutions. Obtaining such tests and certifications is another barrier (Table 2). Finally, licenses are issued only three times a year, which is another barrier to registration (Table 2).

With respect to how biologicals are treated in comparison to chemicals, the participant manufacturers/suppliers commented that the terminology for biopesticide and biofertilizer legislation should be changed. They explained that as soon as a product is classified as a pesticide or fertilizer, the process of obtaining permits and licenses becomes complicated (Table 2). Biopesticide and biofertilizer words also comprise 'pesticide' and 'fertilizer', which attract the same treatment given to the microbial products despite the fact that these are not the chemicals and toxic.

The participant manufacturers/suppliers analyzed the costs involved at each step of the registration process (Table 2). They identified the long processing time as a significant cost; while the processing time to obtain a license without the help

⁽⁵⁾ Roychowdhury, Paul, Banerjee (2014).

Table 2: Manufacturers, suppliers, importers and traders of microbial biofertilizers and biopesticides

Questions	Responses - Ukraine
What kinds of biologicals in what quantities with what effectiveness are being used by farmers?	
Categories of biofertilizers manufactured or supplied/traded	<ul style="list-style-type: none"> • Microbes-based
Any efficacy or efficiency tests/data of such biofertilizers?	<ul style="list-style-type: none"> • Field trials result 42% increase of the yield of wheat. • For all products stated tests were conducted. 10-30% increase in efficiency.
Categories of existing biopesticides manufactured or supplied/traded	<ul style="list-style-type: none"> • Biofungicide • Herbicide
Any efficacy or efficiency tests/data of such biopesticides?	<ul style="list-style-type: none"> • Biopesticides exclude the mineral pesticides • 50% increase of immunity by biopesticides • Tests confirmed the claim of manufacturers
Any toxicological tests/data of these biopesticides?	<ul style="list-style-type: none"> • Biopesticides are harmless. They increase immunity of plants and soil.
Biosafety issues associated with biopesticides and ways of tackling	<ul style="list-style-type: none"> • No response
Identification and Characterization of Barriers in Registration and Certification Process	
Detailed procedures of registration of manufacturing, import, trade/sale, transport, storage, disposal, etc. of biofertilizers and biopesticides	<ul style="list-style-type: none"> • Lack of adequate legal framework • Corruption • Phytosanitary data required • Absence of well-timed terms on all stages of obtaining permits. • Absence of procedures of registration of biofertilizers, registration of enterprise, and obtaining permits. • Technical tests like toxic hygiene passport of safety, phytosanitary and epidemiological data are required. They are hard to maintain. • Lengthy procedure of registration (1 year almost, sometimes >2 years) • Until 2009, biofertilizers were not required registration. From July 2015, registration required for plant growth promoters. • Registration of business, permit from Fire Department, waste disposal clearance • Assistance of a professional lawyer is essential. Otherwise, registration process takes longer time. • Sanitary passport for warehouse • Copy of Instructions for labour protection • Compliance for commercial premises and documents showing ownership • Certified copy of statistics reference • Copy of extract from the USREO register (Unified State Register of Enterprises and Organization of Ukraine) • Lease contract and statute • Letter of guarantee for disposal of toxic waste • Bank requisites of enterprise • Copies of Employees' diploma • Registration also done of individual entrepreneur • Bank statements and tax compliance
What kind of laboratory tests or efficacy tests are required?	<ul style="list-style-type: none"> • Quality certificates, test report, evaluation by experts, document of workers and premises
Documents, preparations, facilities, compliances, etc. required at the time of applying for registrations	<ul style="list-style-type: none"> • Inclusion into the state plan of tests • Test reports of biological, toxicological and ecological tests • Registration of biofertilizer enterprise • Retailers need to acquire certification from producer company • International products need certificates of those producer companies
Detailed account of barriers at each step of the registration process	<ul style="list-style-type: none"> • Corruption • No set procedure of registration of biofertilizers • No time-bound procedure • To obtain toxico-hygienic passport of a biofertilizer a scientific institution is approached. • Frequency of commission meetings is less (3 times a year), which gives clearance to permits. • Unofficial charges of the registration are higher • Complexity of registration process of biofertilizers

How are biologicals treated vis-à-vis chemicals?	<ul style="list-style-type: none"> • Terminology of biopesticide legislation should be changed. Classification of a product as one belong to group of pesticides at once complicates the process of obtaining permits.
Detailed analysis of costs involved in all steps of registrations and associated preparations, compliances, etc.	<ul style="list-style-type: none"> • Time should be treated a big cost • Time period is 30 days for obtaining license without help of lawyer • Official fee is UAH 1378. But, through engaging legal firm, the cost increases to UAH 3500 or more • Cost increases 3-4 times
Barriers in licensing processes	<ul style="list-style-type: none"> • License is required for plant growth stimulators only [most companies do not declare their products as ‘growth stimulators’ because the procedure of registration is complex and costlier.] • License is mostly required storing the plant growth stimulators • License is issued by Ministry of Agrarian Policy and Food • Registration process of biofertilizers and biopesticides is very complicated, compared to the process of import of Chinese mineral fertilizers, which are of inferior quality. • Online stores work under permit of manufacturers • Simplification of registration process is required. • Lot of paperwork is required during registration process.
Difficulties in execution of registration conditions and license liabilities	<ul style="list-style-type: none"> • Difficulty in obtaining permits. Procedures are not very clear. • No set procedure of registration • Terms should be set for issuing the toxicological passport • Certificate of state is required certifying the producer of product, manufacturer of active ingredient, types and values of containers, sphere and conditions of use, and so on.

of a lawyer is officially 30 days, in reality it takes much longer.” (Table 2). According to them, the official fee is UAH 1378; however, when the cost to engage a lawyer is factored in, this amount increases to UAH 3500 or more (Table 2). Indeed, some of the participants stated that this cost increases three to four times (Table 2).

Most companies do not label their products as ‘growth stimulators’ because the registration procedure is complex and costly (Table 2). The process of registering biofertilizers and biopesticides is very complicated compared to the process for importing Chinese mineral fertilizers or chemical pesticides (which are of inferior quality) (Table 2). In light of these factors, simplification of the registration process is required (Table 2).

The participant manufacturers/suppliers also identified miscellaneous difficulties in the execution of registration conditions and license liabilities (Table 2). According to them, the procedures are unclear, and these procedures of registration need to be changed (Table 2). Therefore, terms should be set for the issuance of the toxicological passport, since a certificate of State is required certifying the producer of the product, the manufacturer of the active ingredient, types and values of containers, and the conditions of use, among other things (Table 2).

IV. Conclusion

In Ukraine, significant barriers in the business of biologicals include the lack of an adequate legal framework, corruption, the absence of a registration procedure for biofertilizers, and difficulties in obtaining permits. A large amount of data pertaining to biological, toxicological, ecological and phytosanitary parameters is required during the registration process,

along with a toxico-hygiene passport, phytosanitary and epidemiological data, bioassays and immunological tests. These tests are extremely difficult to undertake. Moreover, the list of required documents is long. Other reported barriers include the lack of a set procedure for the registration of biofertilizers, no time-bound procedure, higher unofficial charges for registration, and the complexity of the registration process. The costs involved at all steps of the complicated registration process are high, and it is simpler to import Chinese mineral fertilizers or chemical pesticides. Conclusively, barriers make it hard to manage the registration, licensing and trade of biologicals in Ukraine.

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Appendix

Appendix 1: List of Group 2 Participants (Manufacturers and Suppliers of Biofertilizers and Biopesticides)

M.1	Roman Yuriovich	OOO FuTech, Kharkiv (Kharkiv Region)
M.2	Alexander Nikolaivich	Rokosan TOB 'Green Service Group', Kharkiv
M.3	Ivan Vladimirovich	Life Force (Power of Healthy Earth), Kharkiv (Kharkiv Region)
M.4	Ivan Volodymirovich	Life Force Ukraine, Kharkiv (Kharkiv Region)
M.5		Agro Shop - Sad Ogorod, Chuguev district (Kharkiv Region)
M.6	Dmitriy Anatolievich	Organic Farming Club, Kharkiv (Kharkiv Region)
M.7	Vitaliy	Zemlya, Kharkiv (Kharkiv Region)
M.8	Maxim Vitaliyevich	AMAI Group, Kharkiv (Kharkiv Region)

Appendix 2: List of Group 3 Participants (Government Officers)

O.1	Lobodzec Jaroslav, Head of Plant Protection Department, Lvivska Region, Lviv
O.2	Yaroslav Novitsky, Raiyon Chief of Agriculture, Kosiv (Ivano-Frankivsk Region)
O.3	Igor Honcharenko, Inspector of Agriculture, Kharkiv Region
O.4	Dr. Buchatsky Leonid Petrovych, Ministry of Ecology and Natural Resources, Kyiv
O.5	Vasyl Rafalskiy, Deputy Head of Registration Department, Ministry of Ecology and Natural Resources, Kyiv
O.6	Tetiana Chuchko, Permaculture Expert, Lviv
O.7	Dr. Gu Humeniuk Vasyl, Officer for Agrarian Development, Dolyna Raiyon, Ivano-Frankivsk Region
O.8	Victoria Viktorivna Chaykovska, Deputy Head of Department of Handling Pesticides & Agrochemicals, Ministry of Ecology and Natural Resources, Kyiv

Appendix 3: Questions for Government Officers (Semi-Structured Interviews and Informal Discussions)

Documentation and Analysis of Microbial Product Registration Procedures in Ukraine

- Acquisition and collection of documents concerning the registration process of biofertilizers and biopesticides
- Review and analysis of registration processes
- Earmarking of grey areas where further investigations are needed
- Analysis of dispute cases

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DEVELOPMENT OF MUNICIPAL SOCIAL ENTREPRENEURSHIP IN THE CONDITIONS OF THE BANSKÁ BYSTRICA SELF-GOVERNING REGION

ROZVOJ OBECNÉHO SOCIÁLNEHO PODNIKANIA V BANSKOBYSTRICKOM SAMOSPRÁVNOM KRAJI

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I. Introduction

Social entrepreneurship is still a relatively new form of entrepreneurship that was recently regulated in Slovakia through Act No. 112/2018 on the Social Economy and Social Entrepreneurship. Social entrepreneurship is defined as a traditional business activity, as a systemic and continuous activity carried out by an entrepreneur independently, in his own name and at his own risk, but with the difference that the entrepreneur does not carry out this activity primarily for profit, but in order to achieve a certain positive social impact, such as providing services beneficial to society in general or to a particular group of persons, e.g. handicapped, long-term unemployed or other vulnerable natural persons^{(1), (2), (3)}. A social enterprise is thus an enterprise that carries out its activity, while its primary goal is not to achieve economic profit, but to provide a positive so-

cial service to society (so-called social profit)^{(4), (5)}.

On the other hand, towns and municipalities are eligible under Act No. 369/1990 Coll. on Municipal Establishment to establish their own enterprise through which they can provide certain services, as well as services falling within their competencies⁽⁶⁾. A municipal enterprise is thus defined as an enterprise established and owned by the relevant town or municipality carrying out a certain business activity to make a profit. However, municipal enterprises of a social nature are beginning to appear, the so-called municipal social enterprise that carries out its activities in order to achieve a positive social impact. The advantage is the knowledge of the territory and thus the object of such enterprises reflects the specific needs of the locality where they were established, i.e. specifically the

⁽¹⁾ Martin (2007).

⁽²⁾ Saifan (2012).

⁽³⁾ Act No. 112/2018 on the Social Economy and Social Entrepreneurship.

⁽⁴⁾ Korimová (2007).

⁽⁵⁾ Pangriya (2019).

⁽⁶⁾ Act No. 369/1990 Coll. on Municipal Establishment.

Abstract (EN)

Social entrepreneurship is important tool in eliminating regional disparities, inclusion of socially excluded people into society, overall improvement of the quality of life and much more. This paper aims to analyse the development of municipal social entrepreneurship in the conditions of the Banská Bystrica self-governing region, where some of the less developed districts are located. The main sources of research were questionnaire realized among local government representatives, plan of the economic and social development of the district and statistical data. In the article, there were many indicators examined, such as quantity of the municipal social enterprises, its activities, support or barriers of its development. The results points to fact that only 7% of the participants of research own municipal social enterprise. The most common barrier to establish and manage these enterprises is inadequate knowledge of the relevant legislation.

Keywords (EN)

social policy, social economy, social entrepreneurship, municipal entrepreneurship

Abstrakt (SK)

Sociálne podnikanie je významným nástrojom štátu na odstraňovanie regionálnych disparít, nakoľko prispieva k začleneniu vylúčených ľudí do spoločnosti tým, že zlepšuje kvalitu ich života a má mnoho ďalších pozitívnych účinkov na spoločnosť. Príspevok si kladie za cieľ analyzovať rozvoj obecného sociálneho podnikania v kraji, kde sa nachádza väčšie množstvo menej rozvinutých okresov Slovenska, konkrétne v Banskobystrickom. Hlavným zdrojom informácií boli dotazníkový prieskum realizovaný medzi predstaviteľmi samospráv v kraji, plán hospodárskeho a sociálneho rozvoja kraja či štatistické údaje o kraji. V príspevku boli skúmané ukazovatele ako množstvo obecných sociálnych podnikov v kraji a ich podnikateľská činnosť, podpora obecného podnikania v kraji či bariéry jeho rozvoja. Výsledky poukazujú na to, že len 7% zo samospráv zúčastnených vo výskume je majoritným alebo minoritným vlastníkom sociálneho podniku, pričom najčastejšou bariérou v riadení týchto podnikov je nedostatočná informovanosť o príslušnej legislatíve.

Kľúčové slová (SK)

sociálna politika, sociálna ekonomika, sociálne podnikanie, obecné podnikanie

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needs of the town or municipality⁽⁷⁾.

As far as situation in Slovakia is concerned, social enterprises as tools of the social economy arose as a result of persistent and increasing regional disparities in consequence of long-term unemployment or social exclusion of the population, especially in the lagging regions. For the first time, these enterprises appeared in Slovakia in the second half of the 19th century. They appeared in the form of self-help cooperatives and unions⁽⁸⁾.

Banská Bystrica self-governing region is also one of the lagging regions. It is situated in Central Slovakia. There are sufficient geographic and geomorphic conditions, especially for the development of tourism or agriculture. Moreover, it is the largest self-governing region by area in Slovakia, which consists of 13 districts, 24 towns and 516 municipalities⁽⁹⁾. The problem of its development partially lies in fragmented settlement structure with a predominance of small municipalities⁽¹⁰⁾, which represent 53% of the total number of municipalities in the region. This indicator shows that Banská Bystrica Region is predominantly a rural region. In terms of demographic indicators, the Banská Bystrica Region is the least densely populated territory in Slovakia (69 inhabitants per km²). There is a trend of declining population growth, aging and also the female predominance. As far as education is concerned, the majority of the population has obtained secondary vocational or elementary education. The qualification of the population is low, which is a sign of a low level of development in the region⁽¹¹⁾. The Banská Bystrica Region also has a problem with a high number of Roma people (they represent the second largest nationality in the region after Slovak with 12.8% of the total population)⁽¹²⁾. In 2019, there were 210 municipalities with Roma communities in the Banská Bystrica Region, mostly in the Rimavská Sobota, Lučenec and Krupina districts⁽¹³⁾. The lagging of the region is also confirmed by socio-economic indicators. In 2020, 51.2% of the population from this region were economically active people. 3.8% of job seekers were registered at the Office of Labor, Social Affairs and Family and the unemployment rate in the region was 6.67% (1.69% higher than the Slovak average). Regarding the comparison of these statistical data between individual districts, the most backward of them was Rimavská Sobota district with the highest number of job seekers or the highest unemployment rate, while the data for this district lagged significantly behind the average data of the region. Moreover, Rimavská Sobota district is the second district with the highest unemployment rate (14.96%) in Slovakia⁽¹⁴⁾.

Based on the facts mentioned above, it follows that the development of municipal social entrepreneurship in Banská

Bystrica self-governing region as a tool of social economy is appropriate for overall development of the territory. It is therefore necessary to study the municipal social entrepreneurship potential and the barriers of the development, both from the perspective of present or potential owners of social enterprises and from the regional government point of view, to come up with proposals to eliminate them and support the establishment and functioning of these enterprises.

II. Objective and methodology

This paper follows the research role of the Department of Regional Studies and Rural Development of the Slovak University of Agriculture in Nitra. It aims to analyze the current state of municipal social entrepreneurship in Banská Bystrica self-governing region and the possibilities of the development. Statistical data obtained from the Statistical Office of the Slovak Republic and the Central Office of Labour, Social Affairs and Family of the Slovak Republic were used as secondary data sources to investigate the issue. Another important source of secondary data which was processed in the article through content analysis, citation or paraphrase is the plan of economic and social development of Banská Bystrica self-governing region. The primary source was a questionnaire survey realized in the municipalities of the Banská Bystrica self-governing region, which was distributed at the end of 2019 and at the beginning of 2020 to employees of municipal authorities (called local government representatives) via an electronic form repeatedly in 3 phases. The total number of questions was 41 (11 open, 12 semi-open, 18 closed). As the research itself was part of a broader research task of the Department of Regional Studies and Rural Development, the questions in the survey were taken from questionnaire surveys conducting in parallel in other regions of Slovakia. The success rate of the survey was 57%. The total number of surveyed towns and municipalities in the region was 540 and 305 employees of the interviewed municipal authorities and offices participated. In accordance with the research goal, which is the analysis of municipal social entrepreneurship and the possibilities of its potential development in the Banská Bystrica self-governing region, the survey examined indicators, such as the number of municipal social enterprises in the region and their business activities, employees, support for municipal entrepreneurship in the region or barriers to its development from the owners' point of view. These were evaluated through the Google Forms system, followed by tabular transformation and graphical processing. Another primary source of information in the field of the social entrepreneurship that provided the regional self-government perspective on this issue was an interview with Ing. Milan Vaňo, who is one of the Banská Bystrica self-governing region representatives. He is a specialist in the social economy, an employee of the Regional Development Agency Dobrý kraj and co-founder of several municipal social enterprises in the region. The main topics of conversation were the current state of the municipal social enterprise in the region, opportunities or barriers to its development and the position of the development agency.

⁽⁷⁾ Geller (2019).

⁽⁸⁾ Lubelcová (2012).

⁽⁹⁾ The Economic and Social Development Programme of Banská Bystrica self-governing region, 2015-2023.

⁽¹⁰⁾ Based on the classification of municipalities by Fáziková (2005), the population of small municipalities is less than 500 inhabitants.

⁽¹¹⁾ Statistical Office of the Slovak Republic (2011).

⁽¹²⁾ Statistical Office of the Slovak Republic (2020).

⁽¹³⁾ Atlas rómskych komunit/Atlas of Roma Communities (in the MVSР/Ministry of Interior of the Slovak Republic, 2019).

⁽¹⁴⁾ ÚPSVR/Office of Labour, Social Affairs and Family (2020).

Table 1: Comparison of legislation regulating the concepts of social economy and social entrepreneurship in the European Union and Slovakia

European Union	Slovak republic
Europe's Charter of Principles of the Social Economy	Act No. 213/1997 Coll. on Non-profit Organizations Providing Generally Beneficial Services
Decision No. 1672/2006 of the European Parliament establishing a Community Programme for Employment and Social Solidarity	Act No. 34/2002 Coll. on Foundations
Regulation No. 346/2013 of the European Parliament on European Social Entrepreneurship Funds	Act No. 5/2004 Coll. on Employment Services
Regulation No. 1296/2013 of the European Parliament and of the Council on Social Inclusion	Act No. 448/2008 on Social Services
Regulation of the European Parliament and of the Council on the Social Fund, the Cohesion Fund	Act No. 112/2018 Coll. on the Social Economy and Social Enterprises

Source: own processing based on eur-lex and slov-lex, 2020

III. Social economy and entrepreneurship legislation

The concepts such as social economy and social entrepreneurship emerged in Europe in the 1990s as a response to arising and persistent social problems of certain population groups⁽¹⁵⁾. Despite the fact that the first specific forms of the social economy existed in Europe in the first half of the 19th century, it was difficult to define and implement in legislation the related concepts of social economy or entrepreneurship because this issue is still relatively new and constantly evolving. Due to the mentioned facts, the regulation of these sectors was, and still is, slightly chaotic and not specified. We processed its comparison related to the European Union and Slovakia in the table below.

As far as the social economy and social entrepreneurship are concerned within the European Union, there is no comprehensive regulation of these concepts. The most important document in this field is the European Charter of Principles of the Social Economy as a tool for its application. Furthermore, the legislation is represented only by decisions of the European Parliament or regulations of the European Parliament and the Council within the concepts such as social solidarity, promotion of employment, social inclusion or the European funds to support the social economy and social entrepreneurship.

Until recently, there was no comprehensive legislation regarding the regulation of the social economy and social entrepreneurship in Slovakia. These concepts have been partially regulated by law, such as Act No. 213/1997 Coll. on Non-profit Organizations Providing Generally Beneficial Services, Act No. 34/2002 on Foundations and on the Change of the Civil Code as amended, Act No. 5/2004 Coll. on Employment Services, Act No. 448/2008 on Social Services, etc. However, the mentioned laws were dealing with these concepts only very marginally. There were many inconsistencies in the realization of social economy and social entrepreneurship. This incongruity deterred many subjects from creating the social enterprises. In 2018, Slovakia adopted Act No. 112 Coll. on the Social Economy and Social Enterprises and on amendment and sup-

plement of some acts. It defines the basic concepts of the social economy, social entrepreneurship or the forms and methods of its support. The aim of this act was to clarify the basic concepts of the issue, unify the rules and create favorable conditions for social entrepreneurship in Slovakia or remove its barriers⁽¹⁶⁾.

IV. Municipal social entrepreneurship in Banská Bystrica Region

305 representatives of the surveyed towns and municipalities participated in the research on the issues of municipal social entrepreneurship in the Banská Bystrica Region. Regarding the basic characteristics of the representatives 68% were men, while the predominant age of the respondents was 40-59 years (up to 72% of the respondents). 50% of local government representatives have been in the office for the third term.

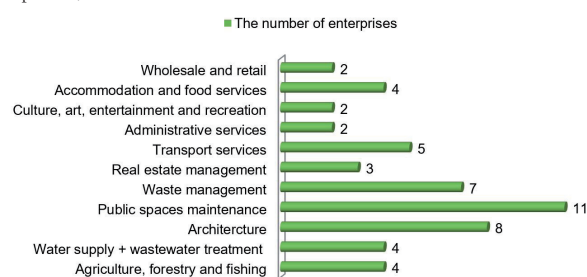
The knowledge of the relevant concepts and the relevant legislation in this field are the main conditions for successful management of the municipal social enterprise, therefore in the questionnaire were also included the questions verifying the knowledge of local government officials in this area. In the Banská Bystrica self-governing region, 80% of local government representatives are familiar with the term social entrepreneurship, and 54% of representatives are familiar with the term social agriculture. 54% of local government representatives partially know the relevant Act No. 112/2018 on Social Economy and Social Enterprises, while the remaining 15% master this law and 31% do not know it at all. As far as the knowledge of running and managing a municipal social enterprise is concerned, 14% of respondents are absolutely sure about it, 49% of respondents stated that they have at least partial knowledge, but the remaining 37% of respondents do not have the knowledge at all. Based on these results, the first barrier to the development of social entrepreneurship in the region was formulated, and thus ignorance and insufficient awareness of the region representatives and municipal social enterprises operators in the relevant laws and terms.

The aim of the most important part of the survey was to find out the current state of municipal social entrepreneurship in

⁽¹⁵⁾ Borzaga (2012).

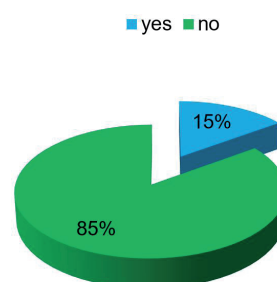
⁽¹⁶⁾ MPSVR/Ministry of Labor, Social Affairs and Family (2018).

Figure 1: Sectors in which interviewed representants of self-government enterprises of the Banská Bystrica self-governing region operate, 2020



Source: own processing based on the results of survey, 2020.

Figure 2: The share of BBSK (Banská Bystrica self-governing region) towns and municipalities that plan to establish a municipal enterprise, 2020



Source: own processing based on the results of survey, 2020.

the Banská Bystrica self-governing region. There were questions focused on finding out the number of social enterprises located in the region and their characteristics.

The results of the research showed that only 7% (21 respondents) are the owners of a municipal social enterprise.

The mayors as representatives of the local government-initiated establishment of 12 enterprises (57%). Furthermore, members of municipal councils (28%) or residents of towns and municipalities (5%) participated in the establishment of enterprises to the greatest extent. The most common motives that initiated the establishment of municipal social enterprises were, in particular, the effort to solve the long-term unemployment, to increase income or to improve services and the overall quality of life within the territory of the relevant self-government.

Research also shown that as far as the organizational structure of these companies is concerned, leading positions were held by men to a greater extent (67%), mostly with a university degree (67%). Municipal social enterprises in the Banská Bystrica Region employ 353 people, while 64% (225) are male and the remaining 36% (118 employees) are women. As far as employees are concerned, 7 out of 21 companies (33%) owned by towns and municipalities of the Banská Bystrica self-governing region employ disadvantaged applicants on the labor market. These are municipal enterprises that also have the character of a social enterprise.

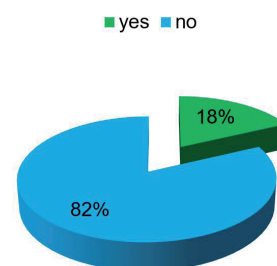
The figure illustrates the business objectives of the companies.

The research showed that companies are involved in several sectors. They usually maintain the public spaces, provide various construction works or dispose of waste. As the figure does not contain the infrequent answers (in the number of 1 company), we have listed these outside the figure and they are: industrial production, education, health care, social assistance and social services, pasta production, cemetery management and also flower and vegetable production.

The aim of the research was to find out which respondents plan to establish such an enterprise, whether just a municipal enterprise or an enterprise performing social functions.

The results of the research pointed to the fact that only a minimum of interviewed local government representatives plan to establish a municipal (15% of respondents) or social enterprise (18% of respondents) in their town or municipality in the future. This led us to assume that local government

Figure 3: The share of BBSK towns and municipalities that plan to establish a social enterprise, 2020



Source: own processing based on the results of survey, 2020.

representatives are not sufficiently motivated to pursue such forms of business. Insufficient motivation to set up municipal or social enterprises may also stem from insufficient support of such enterprises. The support can take various forms (financial, material, etc.) and can be directed from several levels (European, national or local)⁽¹⁷⁾.

Therefore, other questions in the survey dealt with the currently used forms of support by existing municipal social enterprises in the region and the desired forms of support for enterprises by respondents who do not own such enterprises but they would like to. The following tables summarize the answers.

Financial support to social enterprises in the Banská Bystrica Region derives mainly from European sources. The local level is the main source of the material, technical and other support (including consultancy). The social enterprises in the Region use the national level of support the least.

The results point out that the most local government representatives in the Banská Bystrica Region who own a social enterprise or plan to set up their own would accept help from the local community in the form of volunteering. Towns and municipalities want to draw the most financial and technical support for their companies from regional self-government and state administration (up to 100% of respondents) and as a form of support, they could also imagine the co-ownership of a social enterprise. Within all three possible levels of support, the respondents showed the least interest in consultancy

⁽¹⁷⁾ Lubelcová (2012).

Table 2: Forms of support used by social enterprises owned by BBSK towns / municipalities, 2020

Form of support	Level	Number of enterprises that use it
Financial support	European	4
	national	3
	local	2
Material support	local	6
	national	1
Technical support	local	7
	national	1
Other support	local	5
	national	1
	European	1

Source: own processing based on the results of survey, 2020.

in the field of establishment or management of a general social enterprise.

Regarding the current state of the social economy or social entrepreneurship, 34 social enterprises are currently legally registered in the Banská Bystrica Region. 11 of them are municipal enterprises⁽¹⁸⁾. There is also a large Roma community and relatively high unemployment rate. As a result, 5 districts from this region belong to the least developed in the Slovak Republic. Based on the answers of the respondents and information from Ing. Milan Vaňo, the greatest barrier for local governments to set up social enterprises is lack of courage as currently the business environment in Slovakia is not very favorable for small entrepreneurs. The other problems are fear of administrative complexity, maintenance of own resources and last but not least lack of qualified workforce or workforce in general, because many inhabitants leave the Banská Bystrica self-governing region for work, either to the West Slovakia or abroad. Another problem is insufficient awareness and knowledge of the representatives in the relevant concepts or legislation regulating social entrepreneurship and the reluctance to learn in this field.

Dobry kraj Regional Development Agency is the only one in Slovakia that has specialized department for social economy. Based on information from Ing. Vaňo, thanks to this department, it mediates the assistance to local self-governments and their social enterprises in the form of:

- direct support: the agency itself is the founder of two social enterprises mediating employment for the long-term unemployed and disadvantaged jobseekers,
- indirect support: in the form of public procurement contracts (with Act No. 112/2018 on the Social Economy and Social Enterprises stipulating a 6% share of public procurement contracts to social enterprises), administrative support and consultancy.

V. Conclusion

The present state of quality of life indicators of population (such as the unemployment rate, the number of job seekers,

⁽¹⁸⁾ MPSVR/Ministry of Labor, Social Affairs and Family (2020).

Table 3: Desired support of existing and potential social enterprises owned by BBSK towns / municipalities, 2020

Level of support	Form of support	Number of answers
From the local community	voluntary work	23
	financial support	6
	material support	2
	technical support	2
	advice	1
	willingness to start the employment	1
From regional self-government	financial support	22
	material support	7
	technical support	12
	advice	3
From state administration	co-ownership of the company	1
	financial support	27
	material support	13
	technical support	15
	consultancy/ legislation	2

Source: own processing based on the results of survey, 2020.

etc.) in the Banská Bystrica self-governing region is average or even below average in comparison with the whole of Slovakia. Among other things, it raises the need for effective social policy instruments, including social entrepreneurship.

The aim of this paper was therefore to analyze the current state of municipal social entrepreneurship in the Banská Bystrica self-governing region and the possibilities of its development. These facts were researched through the analysis of geographical, demographic and socio-economic indicators of the region based on available statistics, as well as through direct inquiries of local governments.

The results of the research pointed to the deteriorating economic situation in the Banská Bystrica self-governing region, especially in some districts. As far as municipal social entrepreneurship is concerned, the deteriorating economic situation is an opportunity to establish or develop municipal social entrepreneurship. Thanks to social enterprises, long-term disadvantaged jobseekers may have the opportunity to employ. This could help to reduce the unemployment rate or the number of registered jobseekers, recipients of social benefits, etc. At the same time, according to Ing. Vaňo, the municipal social enterprises are the most desirable forms of social entrepreneurship, because the result of their activities is not only a positive social profit, but they can adapt their business activities directly to the needs of the territory in which they are established, which leads to overall development of the area. Compared to social enterprises established by private owners, they usually bring social profit, while they don't consider the development and needs of the specific area. Therefore, it is more effective for problematic localities to focus on the development of municipal social entrepreneurship. A particular opportunity for the development of municipal social entrepreneurship is the

crisis caused by the coronavirus. The unemployment rate has increased rapidly, because many people lost their jobs due to measures to limit the spread of the disease. Social entrepreneurship is therefore an important tool for the overall regional development. It is also a tool to balance the deteriorating regional disparities.

Regarding the current state of municipal social enterprise in Banská Bystrica self-governing region, only 7% of towns and municipalities that participated in the questionnaire were the owners of municipal social enterprise, while most of the towns and municipalities do not plan to establish such enterprise in the future. According to the local governments, the most common barriers to the development of municipal social entrepreneurship are a lack of knowledge of the relevant legislation and the other concepts, insufficient awareness of social entrepreneurship and its opportunities, which is associated with the courage to establish such enterprises. Some towns and municipalities also confirmed that the persistent prejudices of the local community towards the target group that the social enterprise would employ are also a problem. According to collective consciousness, it is especially a large Roma community that is unable to work effectively. Another major problem is extremely fragmented settlement structure of the region, which is also associated with the issue of financing. Small municipalities have a more limited budget for financing the social enterprise, which could be beneficial for the municipality, but financially unsustainable.

Based on the research, the social entrepreneurship in Banská Bystrica Region could be a desirable social policy tool that contributes to higher employment, social inclusion of individuals, improves the quality of life of the population and partially a tool to balance the regional disparities.

In connection with the need for its development, we finally came up with several proposals to remove the social entrepreneurship barriers in Banská Bystrica self-governing region. Some of them have already been implemented by Dobrý kraj Regional Development Agency. First of all, it is necessary to organize regular trainings, workshops or seminars for local government representatives to study the legislation and other concepts in the field of social economy and business, to study the administrative or other types of activity, to go through the advantages and disadvantages associated with the establishment and management of social enterprises. Through this form of consultancy, the local governments would gain certain insight and their confidence in this area would increase, which could lead to greater courage in business and thus increase the total number of social enterprises in the region. The solution to improve the financial aspect and thus to contribute to promotion of social entrepreneurship and its development in the towns and villages of Banská Bystrica Region may lay in connecting or association of small town and municipalities, and thus their mutual partnership in founding and managing social enterprises, regarding its fragmented settlement structure. The recommendation is also to pay more attention to the creation of social enterprises with regard to the needs of the territory or region itself, which should result not only in the branch of the enterprise (e.g. agricultural social enterprise in the south of Banská Bystrica self-governing region), but also in the nature of the social enterprise (e.g. enterprise employing candidates

after serving a sentence in a territory with the high number of these people). At the same time, these measures must be applied to the greater extent, especially in the districts with the highest unemployment rate, poverty or total social exclusion, because these factors increase territorial disparities. Rimavská Sobota, Revúca and Lučenec belong to these districts.

As far as our proposals are concerned, the positive fact is that several of them have already been applied by Dobrý kraj Regional Development Agency, which plans to persist and to do it more intensively.

The deficiency in the field of research is represented by the insufficient participation of the respondents (57%), therefore it is not possible to determine municipal social entrepreneurship in the Banská Bystrica self-governing region and the condition of its development to be mapped enough. However, the results which were achieved may provide baseline data for wider and more comprehensive research in this area.

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DIMENSION OF JUSTICE
IN RESTORATIVE JUSTICE PARADIGM
IN THE CRIMINAL SYSTEM
FOR SEXUAL VIOLENCE IN INDONESIA
ROZMER SPRAVODLIVOSTI V PARADIGME
RESTORATÍVNEJ JUSTÍCIE
V TRESTNOM SYSTÉME
PRE SEXUÁLNE NÁSILIE V INDONÉZII

Nurianto RACHMAD SOEPADMO*

I. Introduction

Principally, every state has their legal obligation to protect and promote the rights of people without any exception based on the constitution and principles of human rights. In ideology and constitution, nothing can take the rights of others, includes the rights of women and children⁽¹⁾. Thus, violence that occurs to women and children, especially sexual violence, is a violation of human rights, a violation of dignity and gender

discrimination that must be eliminated⁽²⁾.

Victims of various kinds of illegal behaviour from sexual harassment to sexual violence in general are women, children, and people with disabilities, as cultural stereotype in society⁽³⁾. Women and children as victims often experience more violence, both physical and mental, either at home and society⁽⁴⁾. The victims and their families experience prolonged suffering due to sexual violence, in form of trauma and de-

⁽¹⁾ Siregar (2018).

⁽²⁾ Makara, Taufik, Bukamo and Azri (2013).

⁽³⁾ Achie Sudiarti Luhulima (2000).

⁽⁴⁾ Khanif (2019).

Abstract (EN)

The act of sexual violence is a crime that is classified as a violation of human rights (HAM). The increase number of sexual violence cases in the world, including Indonesia, shows that the current justice system is unable to guarantee justice for victims, and most importantly recovery for victims. For this reason, a justice restoration approach is needed as an alternative in law enforcement against sexual crimes. Practically, marriage used as a way to approach justice restoration. This article used normative and juridical approach to discuss law enforcement on sexual crimes through restorative justice approach. It can be concluded that law enforcement on sexual crimes should observe based on criminology, victimology and ontology aspects, in order to be able to place the problem objectively. As a complaint offense, sexual crimes may not be passed on to criminal process, if there is peace between the victim and the perpetrator, provided that there is an agreement among the victim, perpetrator, family and society without coercion from various parties. The main focus in restorative justice of sexual crimes is to provide protection and assistance to victims from various parties, thus, the victims can be released from trauma or psychological impact that caused by sexual violence experienced by the victim or the impact received after the occurrence of sexual crime.

Abstrakt (SK)

Sexuálne násilie je trestný čin, ktorý sa klasifikuje ako porušovanie ľudských práv. Nárast prípadov sexuálneho násillia vo svete, vrátane Indonézie, dokazuje, že súčasný súdny systém nie je schopný zaručiť spravodlivosť pre obeť, a čo je dôležitejšie ani zotavenie obeť. Z tohto dôvodu je ako alternatíva v presadzovaní práva proti sexuálnym trestným činom potrebná restoratívna justícia. V praxi sa ako spôsob obnovy spravodlivosti používa manželstvo. Tento článok využíva normatívny a právny pohľad v diskusii o presadzovaní práva v oblasti sexuálnych trestných činov prostredníctvom prístupu restoratívnej justície. Možno konštatovať, že pri presadzovaní práva v oblasti sexuálnych trestných činov na to, aby bolo možné problém objektívne vyhodnotiť, je potrebné skúmať kriminologické, viktimologické a ontologické aspekty. Sexuálne trestné činy nemožno preniesť do trestného konania, ak medzi obeťou a páchatelom panuje mier, čím sa myslí, že dôjde k dohode medzi obeťou, páchatelom, rodinou a komunitou bez nátlaku z nejakej strany. Dôležitým aspektom v prípade restoratívnej justície pri sexuálnych trestných činoch je poskytnúť obeť ochranu a pomoc, aby bolo možné im uľaviť od traumy alebo psychologických následkov spôsobených sexuálnym násillím, alebo následkov po sexuálnom zločine.

Keywords (EN)

restorative justice, sexual violence, victim protection, victim assistance

Kľúčové slová (SK)

restoratívna justícia, sexuálne násilie, ochrana obeť, pomoc obeť

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pression⁽⁵⁾. Approximately the third of all cases of sexual violence are perpetrated at home, committed by closest people to the victim, such as family members or friends, and often caused other victimization. One of the reasons could be a fact of criminal law enforcement system, especially prevention of sexual-related offenses, is still weak. Generally, sexual violence is revealed when the victim files a criminal complaint, or the victim's family reports sexual harassment. However, the absence of prevention efforts and the absence of severe sanctions for perpetrators of sexual harassment have led to the repeated actions⁽⁶⁾.

Even in several big countries such as USA, the complexity of sexual violence problem is known as a condition where gender and sexuality intersect with racial and class-based oppression systems in society. Several cases of sexual violence indicate that perpetrators of sexual violence tend to be committed by victims of sexual violence during their adulthood, which is caused by past trauma and depression experienced by victims⁽⁷⁾. This is also expressed by⁽⁸⁾ in his study which revealed that 31% in America were victims of sexual violence during their childhood. This indicated that the existing justice system still unable to guarantee justice for victims, and most importantly victims recovery.

In Indonesia criminal procedural law regulates the formal procedures that must be followed in criminal case, including the crime of sexual violence. However, practically, the system is often used as a repressive tool for law enforcers. The adage of "*fiat justitia ruat caelum*" seems to be implemented in a narrow frame of mind on the pretext of law enforcement and certainty. It can be said that what is meant as a tangible form of law enforcement is the imposition of penalties or sanctions.

Bagir Manan, in his view, stated that law enforcement in Indonesia can be considered as failed to achieve the indicated objectives of law. Thus, it needs law enforcement within the socio-cultural approach and not only formalistic/legalistic approach since every legal norm presupposes some kind of normativity a normative approach. In various countries, dissatisfaction and frustration with formal justice system has regenerated interest in preserving and strengthening customary law as an alternative to prevent a crime and social disruption. The concept of restorative justice is an alternative system in law enforcement. The concept was based on belief that the conflicted parties must be actively involved in resolving and reducing negative consequences.

The existence of restorative justice in Indonesian criminal justice system in Indonesia already exists for a long time. However, the implementation of restorative justice concept, especially in sexual violence, actually creates a new problem. Particularly, criminal justice system continues to operate against the backdrop of sex-based stereotypes and the "rape myths" that are pervasive in our society. One of these beliefs is that "rough sex" is an accepted cultural practice or that some women enjoy it⁽⁹⁾. In fact, it is not uncommon in marriage is

an option in solving acts of sexual violence on the pretext of providing justice for victims. This is especially when perpetrator is still the closest person or a community leader. In cases of sexual assault, if there is no agreement, every acts of violence can certainly occur when the victim is threatened. Marriage is not a form of settlement in the concept of restorative justice, because it clearly ignores the interests and roles of victims. It is necessary to modernize the criminal justice system to ensure that every victim of sexual violence is treated with the same compassion and respect. Efforts are needed to suppress recidivists and help to change the social and cultural conditions that promote violence. Then the application of concept of restorative justice in solving cases of sexual violence.

Based on the description above, the purpose of this paper is to explain how the concept of restorative justice can be applied to solve the cases of sexual violence due to the interests of victims, where in it process, it should be able to provide justice for victims based on the interests of victim recovery. Qualitative methods are used in this research by using a qualitative method approach within the normative juridical approach (legal research) and juridical empirical as a support for Normative approach. Juridical empirical approach in this study is an approach of applicable laws and regulations both nationally and internationally and based on primary data that directly obtained, while normative approach is an approach that is carried out by examining library materials or secondary data on legal principles, legal systematics, legal comparisons and case studies which in other words are often referred to as literature law research⁽¹⁰⁾.

II. Discussion

Global Restorative Justice Paradigm

Restorative justice practices are currently interest of modern politicians, where policies and practices are being reformed using restorative justice paradigm. The term restorative justice itself was introduced in literature and practice of modern criminal justice in 1970. The 1970s seemed to be the decade that criminologists around the world began to think about the missing part in the criminal justice system. Randy^{(11),(12),(13)} were the first to talk about crises in criminal justice system, regarding the alternative paradigms that can fundamentally replace the punishment paradigm, who claim that criminal justice system ignores the interests of victims. In 1990 Restoration justice was expanded to include the people that also care for the families, friends of victims, and perpetrators participate in collaborative processes. This new focus on recovery and associated empowerment of those affected by crime appears to have great potential to increase social cohesion in severed society. It seems clear that restorative justice is a collaborative process that involves those most directly affected by crime, which

ment Has Exposed Inequalities in the Legal System That Disadvantage Women. Restorative Justice Could Help in Certain Sexual Violence Cases," policy options, 2018.

⁽⁵⁾ Sarong (2019).

⁽⁶⁾ Susila (2019).

⁽⁷⁾ Probosiwi, Bahransyaf (2015).

⁽⁸⁾ Faulkner

⁽⁹⁾ Daniel Del Gobbo and Vathsala Illesinghe, "The #MeToo Move-

⁽¹⁰⁾ Zainudin Ali (2010).

⁽¹¹⁾ Yantzi (1998).

⁽¹²⁾ Barnett (1977).

⁽¹³⁾ Christie (1977).

called as “key stakeholders”, in determining the best way to repair the damage caused by the offense⁽¹⁴⁾.

In its development, there has not been a conception of restorative justice that could satisfy every party, because there are many practices of implementing restorative justice in various countries within every variation, and ideas related to restore the justice continue to develop. Several experts formulated the concepts that are often used as reference in restorative justice approach, include,⁽¹⁵⁾ and ⁽¹⁶⁾, ⁽¹⁷⁾, ⁽¹⁸⁾, ⁽¹⁹⁾. British criminologist stated that “Restorative Justice is a process where all the parties with a stake in a particular offence were gathered to resolve collectively how to deal with the aftermath of the offence and its implication for future”⁽²⁰⁾. In this view, restorative justice is an approach to resolve violations where in its process, the parties with an interest in a particular violation gather in a place to resolve the problems collectively for the common interest and the future.

As a legal system, restorative justice aims to restore the welfare of victims, perpetrators and societies that damaged by crime and prevent further violations or crimes⁽²¹⁾. Principally, there are three main concepts in restorative justice. First, crime is seen as the main conflict between individuals that causes suffering to the victim, society and the perpetrator himself. In this case, violations against the state are not seen as the main thing. Second, the aim of criminal justice process should be aimed at creating peace in society by reconciling the parties and correcting the suffering caused by the conflicted subject. Finally, the criminal justice process must be able to facilitate the active participation of victims, perpetrators and the society to find any solutions to solve the conflicts⁽²²⁾.

This is in accordance with the three basic principles of restorative justice as stated by⁽²³⁾. First, restorative justice emphasizes in the principle of improvement. Justice should be able to recover the victims, perpetrators, and society who were injured or harmed as a result of the occurred violations. Second, justice restoration emphasizes on the active participation of stakeholders. Handling conflicts, disputes or violations cooperatively and constructively as early as possible in the judicial process must involve victims, perpetrators and the community. The third principle emphasizes on the transformation in the roles and relations of society and government. Through the restorative justice approach, it must be able to rebuild the roles and responsibilities of government and society in promoting justice, the government is responsible for public order to create a peace.

Referring to this, it is clear that restorative justice movement began as an attempt to rebuild the unfulfilled needs in ordi-

nary judicial processes. Restorative justice expands on the circle of stakeholders or parties involved in cases where it is not only the government and perpetrators but also includes victims and members of public. Restorative justice is a response to the operation of justice system which places the parties in an unbalanced position and has an impact on the creation of injustice. In the current criminal justice system, there is an assumption that the rights of parties have been taken by the state as the sole of monolithic authority in the settlement of criminal cases. Therefore, until now criminal law still exists as a means of social control, the idea of restorative justice is increasingly developing and applied by various countries⁽²⁴⁾, ⁽²⁵⁾.

Restoration of justice in the context of Criminal Law in Indonesia

Criminal justice system in Indonesia adheres to retributive justice system that inseparable from Law Number 8/1981 concerning on Criminal Procedure Law, which in its implementation refers to formal law. Under the regulations, law enforcement powers are exercised by the police, prosecutors and courts at every level. These legal institutions have the authority to carry out the criminal justice process, from the investigation stage to the verdict stage in court. Related to the criminal justice system, it cannot be separated from the criminal procedural of law. Both have a close relation to the legal system in country force. This is normal because criminal justice system is one of the sub-systems on national legal system as a whole adopted by a country. Therefore, every country in the world has a criminal justice system which is almost same but has its own character which adapted to the social, cultural and political conditions adopted⁽²⁶⁾.

In the practice of justice system in Indonesia, the concept of the purpose of punishment has developed, starting from retribution as a form of absolute counterfeiting against criminals, without seeing further impacts and benefits. Furthermore, there is a restraint concept within the aim of alienating criminals from society, to ensure a sense of security for community. There is also a concept of deterrence, within the aim of providing a deterrent effect on perpetrators and as an example for society not to take similar actions. Next development is the concept of reformation (rehabilitation) as a form of punishment within the aim of correcting the perpetrator. In this context, the concrete form of law enforcement is in the form of imposing penalties or sanctions based on the existing regulations⁽²⁷⁾, regardless the impact and benefits made for victims, perpetrators, and society.

In the development of criminal justice system, Bagir Manan views that law enforcement in Indonesia is considered to have failed in achieving the goals of law or termed “communis opinio doctorum”. Therefore, it is necessary to introduce an alternative approach based on socio-cultural and normative; it can be carried out through the system of restorative justice. Restorative justice aims to empower victims, perpetrators, families, and the community to correct illegal act by awareness and

⁽¹⁴⁾ Eglash (1977).

⁽¹⁵⁾ Paul Mccold and Ted Wachtel (2003).

⁽¹⁶⁾ Bazemore, McLeod

⁽¹⁷⁾ Sullivan

⁽¹⁸⁾ Bazemore, McLeod (2002).

⁽¹⁹⁾ Sullivan (2006).

⁽²⁰⁾ Patrick Gerkin et al., “Implementing Restorative Justice Under the Retributive Paradigm,” SAGE Open 7, no. 1 (January 2017): 215824401769156, <https://doi.org/10.1177/2158244017691562>.

⁽²¹⁾ Liebmann (2007).

⁽²²⁾ Sullivan (2006).

⁽²³⁾ Bazemore, McLeod

⁽²⁴⁾ Braithwaite (2002).

⁽²⁵⁾ Zulfa (2009).

⁽²⁶⁾ Atmasasmita (2010).

⁽²⁷⁾ Arief, Ambarsari (2018).

conviction as a basis to improve social life⁽²⁸⁾.

Justice is no longer measured as the amount of retribution from the victim to perpetrator, physically and psychologically, but the results of crime can be cured by providing support to the victim, and punish the perpetrator, either with the help of his family or the societies if necessary. In this case, it is clear that restorative justice is intended for a fair settlement within the active involvement of victims, perpetrators, families, and other parties related to the criminal act, and emphasizes efforts to restore the original state. Law is placed as progressive law aimed at humans and not the other way around. Law is not an absolute and final institution, but as a moral, conscientious institution and largely determined by its ability to serve humans. Law is an institution that aims to lead people to a just, prosperous life and build happiness for human. Humanity and justice are the goals of every legal life. This is in line with the objectives of Indonesian state which stated inside Pancasila state, to create a justice and prosperous society.

The position of restorative justice in Indonesia is clearly regulated in various laws and regulations such as the 1945 Constitution of the Republic of Indonesia; Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 as amended by Law Number 5 of 2004 as lastly amended by Law Number 3 of 2009 concerning the Supreme Court. Given that the Supreme Court (MA) is a state institution that exercises judicial power and is the top of the judiciary, so it should be if the Supreme Court (MA) adopts or adopts and implements the approach or concept to restorative justice. In addition, the Law on Judicial Power, namely the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, specifically Article 5 clearly states that judges are obliged to explore the values that live in society (the living law or local wisdom). In this context, judges are obliged to apply a restorative justice approach in resolving conflicts and law enforcement based on the values contained in Pancasila, by prioritizing the principles or values of morals, religions and beliefs of the Indonesian nation.

The definition of restorative justice itself can be found in Law Number 11 of 2012 concerning the Criminal Justice System for Children in Article 1 states that "Restorative Justice is the settlement of criminal cases by involving the perpetrator, the victim, the family of the perpetrator / victim, and other related parties to work together the same as seeking a just solution by emphasizing restoration to its original state, and not retaliation". In handling violations of the law on the age of children must be based on a welfare approach. This is based on the consideration that children are deemed not to fully understand the wrongs that have been made, therefore it is appropriate to reduce the punishment, and differentiation of punishment for children and adults. Another factor that is taken into consideration is children are believed to be easier to nurture and bring a life than adults. Even though in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 7, there is a requirement that diversion can only be carried out on children who are threatened with imprisonment under 7 (seven) years, and not a repetition of criminal act (recidivism). However, this is a real step towards solving cases through other

alternatives to minimize the case court handling, and a form of protection not only for the victim, but also for the perpetrator and community⁽²⁹⁾.

As previously stated, the fundamental value contained in the principle of restorative justice is the balance of justice, and the absence of domination between one parties to another, and on the other hand, there is no discrimination with the criminal case settlement system. Besides, the basic value contained in this restorative process is carried out through a collaborative process that involves all parties (stakeholders). This value, which tends to be exactly the same as the principle of mediation contained in civil disputes as stipulated in Perma No. 1 of 2016. This is different from a criminal act. In principle, a criminal case is a complaint offense, so if the complainant withdraws his complaint, the legal process can be terminated. However, this is different from the usual complaint offense, where the case can be processed without the consent/report of the victim (victim). However, it should be noted that the settlement of criminal cases can still be carried out in a family manner or based on restorative justice based on the following provisions: Prosecutor's Regulation Number 15 of 2020 concerning Cessation of Prosecution Based on Restorative Justice ("Perkejaksaan 15/2020"); Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigation ("Perkapolri 6/2019"); and Circular of the Chief of the National Police of the Republic of Indonesia Number SE/8/VII/2018 of 2018 concerning the Application of Restorative Justice in the Resolution of Criminal Cases ("SE Kapolri 8/2018").

The principle of restorative justice cannot be interpreted as a method of terminating a case peacefully, but is broader in fulfilling a sense of justice for all parties involved in a criminal case through efforts involving victims, perpetrators and the local community as well as investigators/investigators as mediators, while case settlement is one of them in In the form of a peace agreement and revocation of the right to sue from the victim, it is necessary to request a judge through the public prosecutor to abort the authority to prosecute from the victim and the public prosecutor. In other words, the application of restorative justice in criminal justice process can be done through several stages or processes that must be passed for justice seekers at the level of investigation, prosecution, examination in court to the stage of judge's decision.

Sexual Violence in the Justice Restoration

Sexual crime consists of all sexual acts, attempted sexual acts, unwanted comments, sex trafficking, using force, threats, physical coercion by anyone regardless the relationship with the victim, under any circumstances⁽³⁰⁾. Sexual crimes can take many forms including rape, sexual slavery and/or sex trafficking, forced pregnancy, sexual violence, sexual exploitation and/or sexual abuse and abortion⁽³¹⁾. Not all types of violence can be identified as having subjective and objective elements as required in the criminalization of criminal law, therefore the types of sexual violence which are practices, traditions and pol-

⁽²⁸⁾ Nikmah Rosidah (2014).

⁽²⁹⁾ Sianturi (2016).

⁽³⁰⁾ IASC (2005).

⁽³¹⁾ Hawari (2011).

icies, do not have to be resolved by criminal regulations (for example sexual violence in the form of harmful sexual practices or traditions discriminating against women and sexual control, including through discriminatory rules based on morality and religion). For this reason, sexual violence also needs to be intervened by changing perspectives and mindsets through education and information dissemination. This is especially education and information about how to do gender justice without discriminating against women, improving cultural practices in society that still harm women.

Referring to the book “KUHP and its Comments”⁽³²⁾, the term sexual violence is included in the category of obscene acts, which are described as acts that violate the sense of decency, or other heinous acts, and all in an environment of sexual lust, for example, kissing, groping the organ of genitals and the breasts and others. Obscene acts in the Criminal Code are regulated in Book Two on Crimes, Chapter XIV on Crimes of Decency (Articles 281 to 303). For example, obscene acts committed by a married man or woman (Article 284), rape (Article 285), or inducing immorality to an immature person (Article 293). Furthermore, Soesilo explained that the term “obscene act” refers to Article 289 of Criminal Code, “Whoever with violence or threats of violence force someone to commit or allow committing obscene acts, is punished for committing an act that attacks the honour of decency with a sentence of perpetuity for nine years”. Thus, an important element of sexual harassment is the presence of unwillingness or resistance to any form of sexual attention. It could be actions such as whistles, words, comments which according to local culture or courtesy (sense of morality) are normal; however, if that makes the subject uncomfortable, those acts can be categorized as sexual harassment.

According to the annual records of National Commission on Violence against Women (Komnas Perempuan), in 2017 there were 348,446 cases of violence against women, 26% or 3,528 of which occurred in public spaces. Data obtained by Komnas Perempuan based on a questionnaire, shows an increase in cases of violence against women by 25% compared to 2016. Cases of violence against women in public spaces were recorded in 2017, there were 2,657 cases of sexual violence consist of sexual abuse (911 cases), sexual harassment (704 cases), rape (699 cases) and sexual intercourse (343 cases). The development of sexual violence acts and their handling has become an indication and evidence of the weak protection of human rights, especially women from sexual violence. The act of sexual violence was placed as an example of a criminal act that violates women’s human rights because it puts the advantage on gender discrimination.

It is an indisputable reality that in handling cases of sexual violence, the interests and rights of perpetrators (suspects) are more considered in comparison with the interests and rights of the victims. Since the beginning of the investigation process, the perpetrator receives protection of his rights, obtains legal assistance, receives good treatment, informed about the suspected crime, and even has the right to ask for compensation if an error occurs in the process of criminal case. Unlike the case with the victim, apart from the pain that was felt when the

⁽³²⁾ Soesilo, (1986).

crime occurred up to the trial process, the victim also received unpleasant treatment from her environment. This condition has implications for the reluctance of victims to report the incident, or to take other solutions, although sometimes it is outside the will of their conscience⁽³³⁾. Rape incident has been discussed in term to find individual actions of “private” situations. Several rape cases that occurred in Indonesia show that rape is not necessarily actions of an individual in private space but can also be the actions of groups in public space. Refer to this matter, the resolution of sexual violence cases cannot be done automatically through the restorative justice approach. To solve the cases, sexual crimes must be observed based on criminology, victimology and ontology aspects.

In criminological perspective, sexual crimes should not refer to motives and behaviour. This is different from criminal law, which focuses on the factors that cause crime. Criminology has been shown to reveal the motives of crime perpetrators, whereas criminal law is concerned within the relationship between actions and consequences⁽³⁴⁾. The motive factor can be traced to evidence that strengthens the intention to commit a crime. In criminological review, the causes of sexual violence were done based on internal factors, the negative personality of a person or individual, and they tend to commit crimes⁽³⁵⁾.⁽³⁶⁾, stated that crime can also be triggered from external invoices, such as the condition in family, environment, and society⁽³⁷⁾ in his study also states that the external factor of sexual crimes is the role of victim in the occurrence of crime, such as appearance, situation, environmental conditions and the position of victim, which can trigger the perpetrator’s intention to commit sexual crime (rape). Various conditions and situations become motives that cause the perpetrator to take the initiative to commit sexual crimes against the victim. However, every motives and factors that trigger sexual crimes, in the perspective of criminologists, include as the main thing that determines and qualifies an act as sexual violence or not. Steven Box and J.E. Sahetapy⁽³⁸⁾ stated that a criminological act of sexual violence was done based on the absence of women consent. This is what distinguishes it from a juridical perspective, which often sees acts of sexual violence from the presence or absence of an element of violence.

Criminology sees crime from the perpetrator’s point of view; Victimology sees crime from the victim’s perspective. Victims are people who either individually or collectively have suffered losses, including physical or mental, emotional, economic or substantial harm to their fundamental rights, through acts or conditions that violate the law in each country, including the abuse of power⁽³⁹⁾. Victims are those who suffer both physically and mentally as a result of the actions of others who seek fulfilment of their own or other people’s interests that contrary to the rights of the harmed parties⁽⁴⁰⁾. In this case, vic-

⁽³³⁾ Surbakti (2010).

⁽³⁴⁾ Atmasasmita (1995).

⁽³⁵⁾ Sahetapy

⁽³⁶⁾ Sahetapy (1983).

⁽³⁷⁾ Sianturi

⁽³⁸⁾ In Weda (1996).

⁽³⁹⁾ Gosita (2014).

⁽⁴⁰⁾ Mansur, Gultom (2007).

tims of sexual crimes are people who suffer both physically and mentally because they have received the consequences of the experienced sexual violence, therefore, legally positive, the victim has the right to claim any damages or compensation to the perpetrator as part of legal protection. However, it should be emphasized that, in order to observe the problem of crime according to the actual proportions of various dimensions, it should consider the role of victims in the emergence of crime, whether the victim plays a role directly or indirectly. Whether it is consciously or unconsciously, the role of victim can stimulate any sexual crimes.⁽⁴¹⁾ Stated about “victim precipitation”, which is the role of victim in terms of position and behaviour of the victim who intentionally or unintentionally encourages the crime. Victim precipitation can be happen because of the victim clothes, where the victim is in a quiet environment and position, and the victim is alone.

Ontology, sexual crimes cannot be viewed as crimes that are only a private matter (individual victims), but should be made as public problems, because this crime is clearly a form of primitive behaviour that emphasizes lust, revenge and superiority. That is the right to sacrifice others. Sexual crimes are one of the heaviest forms of violence. In the UN Convention regarding the Elimination of Violence against Women and others, it even extends to the protection of women in household matters such as the case of “marital rape” (rape in marriage), it is not limited on women’s rights outside the home or public sector. Although in cases such as rape by husband to wife, this is not recognized in Criminal Procedure Code and considers as an object of discourse by Islamic law experts, it can be used as a measure of increasing concern for women’s rights.

According to Article 1 of Declaration on the Elimination of Violence against Women, it has been stated that violence against women is any act based on sex differences that resulted in women physically, sexually or psychologically suffers, including the threat of certain actions, coercion or arbitrary deprivation of liberty - authority, whether occurring in public or in private life. It is very clear that women should be kept away from acts that involve abuse, deprivation of their rights and desecration of human dignity, therefore sexual crimes are one of the evil and heinous acts which in addition violate human rights and also cause physical, social and psychological suffering to women. Human rights are violated continuously, even after the mistakes were done. The victim does not receive humane treatment, but is treated the opposite, being positioned as an object such as an object that cannot be used or placed on an equal level in humanitarian level.

Referring to these conditions, this is where society plays a role in assisting victims of sexual crimes. As a crime that cannot be viewed as a private crime, of course, law enforcement in cases of sexual crimes cannot necessarily be carried out only as a restorative justice approach. In the articles of Criminal Code concerning on decency, not all cases of sexual crimes are included in the offense of complaint. To be able to find out whether an arrangement regarding a criminal act is a complaint offense or an ordinary offense, it has to carefully look at the construction of governing article. Based on the provisions in the formulation of Article 76D and Article 76E of Law

35/2014 concerning on Amendments to Law Number 23 of 2002 concerning on Child Protection, and Article 81 and Article 82 of 1/2016 concerning on the Second Amendment to Law Number 23 of 2002 concerning Protection Children, it appears that there is no obligation for the offense to be reported by the victim. Thus, the offense of intercourse with a child and fornication of child is an offense, not a complaint offense.

Ordinary crimes can be processed without the consent of the harmed person (victim). Generally, sexual crimes constituting offenses for complaints that can be prosecuted if there is a report from the victim, criminal sanctions are the last ultimatum remedium; if the reconciliation was achieved, the case would be withdrawn. The reconciliation referred to here can be in form of an agreement between the perpetrator and the victim resolve disputes through marriage, within the various considerations such as norms, pregnancy, etc., to prevent further crimes. Reconciliation is a form of restorative justice approach, which is based on the agreement of all parties, victims, perpetrators, families or communities, without any coercion, threats or pressure from other parties. Justice for sexual crimes should take into account the best interests of victim. Principally, the best restorative justice approach for sexual crimes is to provide protection and assistance to victims, to prevent victims from psychological impacts that will be received during the trial process and when they return to society. This is where the participation of all parties is not only the family, but also the society and law enforcers to provide any protection and assistance to victims.

III. Conclusion

Sexual crimes are crimes that cannot be categorized as private crimes, because they violate human rights. In enforcing cases of sexual crimes, it must be seen from the perspective of criminology (based on the perspective of the perpetrator), victimology (based on the perspective of the victim), and ontology (based on the substance of the sexual crime act itself). It is important to position the problem objectively, which provides justice for both the perpetrator and the victim. Sexual offenses are general offenses for complaints which can be processed when there is a complaint from the victim, except for sexual crimes against children, because they view children as persons who are not legally competent. Complaint offense enables case resolution through reconciliation as a form of law enforcement within the restorative justice approach. However, what should be noted here is that the restorative justice approach cannot automatically be carried out if there is no agreement between the perpetrator, victim, family or community. The active participation of all parties and the absence of compulsion must still be prioritized. The most possible step in restorative justice for sexual crimes is to provide legal protection and assistance to victims and to minimize the psychological impact received by victims, even provide a healing process from trauma caused by sexual crimes that received by victims. The role of families, law enforcement officials and the community is very important in providing protection and assistance to victims, and this is the fairest act that can be received by victims.

⁽⁴¹⁾ Weda

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STATUS OF THIRD SECTOR ENTITIES IN THE STATE AND SOCIETY

POSTAVENIE SUBJEKTOV TRETIEHO SEKTORA V ŠTÁTE A SPOLOČNOSTI

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I. Introduction

Already the ancient Greek philosopher Aristotle claimed at the time of his life that man is a social creature who can realize himself in various activities with other people through communication and language. However, in relation to other people, a person must behave in accordance with certain rules that are the basis of law-making in society⁽¹⁾. This statement is supported by the well-known and by modern society adopted and accepted „*Ubi homo, ibi societas; ibi societas, ibi ius*“⁽²⁾. Society as such is perceived by many authors from various points of view. In the broadest sense, it is synonymous with humanity as a whole, in the narrowest sense, it is a group of people living in a certain territory, which is controlled by political power based on social norms sanctioned

by law. Events in society can be determined by the existence of various organizations and entities that operate in the territory of the state. In terms of management and financing of the activities of these entities, we divide them into public sector entities (first sector), private sector entities (second sector) and non-profit sector entities (third sector)⁽³⁾. The non-profit sector may consist of organizations whose object of activity is either universal, public benefit or mutually beneficial services. The existence of these organizations guarantees citizens the right to associate. This right belongs to them thanks to the existence of the constitution of a democratic state, while the Slovak Republic is no exception. “The Slovak Republic is a sovereign, democratic and legal state.”⁽⁴⁾

⁽¹⁾ Fábry et al. 2019.

⁽²⁾ Where a (civil) society is, there is the law. M. T. Cicero (106-43 p. n. l).

⁽³⁾ Brozmanová-Gregorová et al. 2009.

⁽⁴⁾ Art. 1 par. 1, the first section of the Act no. 460/1992 Coll. Constitu-

Abstract (EN)

The basic definition of the third sector comes from the sectoral division of the Slovak economy. The sectoral breakdown of the economy operates with concepts such as the public sector, the private sector, and the third sector⁽¹⁾. Civil society represents the third sector of society that exists alongside the state and the market. The third sector is a commonly used term for all non-governmental organizations in the Slovak Republic. Their legal form may vary. This sector is characterized by the existence of organizations that have a formal structure, non-state character, do not aim to make a profit, are independent, operate on a self-governing basis and are voluntary. The existence of non-governmental organizations and their participation in the life of society characterizes every civil society. One type of such organizations are non-profit organizations, the scope of which is regulated by the Act no. 213/1997 Coll. on Non-profit Organizations Providing Services of General Interest, as amended. They represent non-governmental non-profit organizations operating in civil society. The register of these legal entities operating in the territory of the Slovak Republic is provided by the Ministry of the Interior of the Slovak Republic. The aim of this paper is to point out the importance of the existence and

⁽¹⁾ Fábry et al. 2019.

scope of non-profit organizations in civil society, to analyze the legal forms of their functioning, through analysis of current legislation, available literary sources with emphasis on analysis of development and employment in non-profit organizations providing public services in the territory of the Slovak Republic in the defined period from 2016 to 2018. According to the latest available data as of 31 December 2018⁽²⁾, there were 66 926 non-profit organizations registered and operating in the Slovak Republic, employing an average of 39 706 employees, while there were 3 272 of non-profit organizations providing services of general interest. The system of remuneration of employees of non-profit organizations is regulated by legislation in two ways. If the non-profit organization is not established by law, municipality, higher territorial unit or state, then it is possible to apply Act no. 311/2001 Coll. Labor Code as amended. Otherwise, if the non-profit organization is established by law, which means that the employee performs work in accordance with the law in the public interest, the procedure for his remuneration is in accordance with the Act no. 553/2003 Coll. on Remuneration of Certain Employees in the Performance of Work in the Public Interest and on Amendments to Certain Acts, as amended.

⁽²⁾ Where a (civil) society is, there is the law. M. T. Cicero (106-43 p. n. l).

Keywords (EN)

civil society, third sector, non-governmental organizations, non-profit organizations, financing

Kľúčové slová (SK)

občianska spoločnosť, tretí sektor, mimovládne neziskové organizácie, financovanie

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Critical perspective perceives democracy to be a government of ignorance, as neither those who govern nor those who vote know what is really good and what is bad for the state.⁽⁵⁾ A society that is independent of the state and which is characterized by developed social, economic, legal, cultural, but also political relations between its individual members is referred to as "civil society"⁽⁶⁾. Specifically, it is the civic sector, which is the third sector, whose goal is not to make a profit, but the realization of a certain interest, whether it is a higher interest, public interest, general interest, or partial, group or individual interest⁽⁷⁾. Civil society is built on a voluntary and largely pluralistic basis. Nevertheless, there is a high degree of organization and interconnection of civil society structures operating within its individual sectors in Slovakia. Existing umbrella and coordinating institutions bring together a significant number of organizations from the relevant civil society sector. In some cases, however, the real representativeness and real impact of such institutions is questionable. The presented paper points to the existence of non-profit organizations in the Slovak Republic (SR), as a part of civil society. Non-profit organizations are legal entities, whose purpose is to provide services of general interest under predetermined and equal conditions for all users and whose profit must not be used for the benefit of their founders, members of bodies or their employees, but must be used in its entirety to provide services of general interest⁽⁸⁾.

II. Material and Methods

Establishment, creation, dissolution, termination, position of bodies and management of non-profit organizations providing services of general interest are regulated by the valid wording of Act no. 213/1997 Coll. on Non-profit Organizations Providing Services of General Interest.

The main goal of this paper is to acquaint the reader with

tion as amended.

⁽⁵⁾ Plichtová - Šestáková. 2018.

⁽⁶⁾ Mesežnikov. 1995.

⁽⁷⁾ Ministry of Interior SR (2020)

⁽⁸⁾ Ministry of Interior SR (2020)

the scope of the existence of non-profit organizations in the Slovak Republic with emphasis on non-profit organizations providing services of general interest. The aim of this paper is to point out the importance of the existence and scope of non-profit organizations in civil society, analysis of the various legal forms of their functioning, through analysis of current legislation, available literary sources with emphasis on analysis of development and employment in non-profit organizations providing public services in the territory of the Slovak Republic in the defined period from 2016 to 2018.

Partial objectives of the paper include an analysis of the legislation of the Slovak Republic, which enshrines the position and activities of non-governmental organizations as leading representatives of the third sector, analysis of the number of non-profit organizations in the Slovak Republic (its development is processed for the period from 2016 to 2018), their employees and the development of donations and contributions, which were in the period from 2016 to 2018 remitted to non-profit organizations in Slovakia. The paper tries to continuously monitor, analyze the position, activities and financing of the basic subjects of the third sector by the method of analysis, deduction and use of grammatical and logical interpretation.

From a methodological point of view, the fulfilment of the goal can be achieved through the analysis of the valid legislative of the Slovak Republic, available from the public system SLOV-LEX and literary sources of domestic and foreign authors. Data from the Statistical Office of the Slovak Republic for the years 2016 to 2018 serve as a base for the above-mentioned development analysis.

III. Results and Discussion

1 The Concept and Meaning of the Third Sector

In most countries, society is made up of three sectors: private, public and non-profit, which coexist and influence and complement each other. The prosperity of the non-profit sector is

Abstrakt (SK)

Základné vymedzenie tretieho sektora pochádza zo sektorového rozdelenia hospodárstva Slovenska. Sektorové členenie ekonomiky operuje s pojmami, ako sú verejný sektor, súkromný sektor, tretí sektor. Občianska spoločnosť predstavuje tretí sektor spoločnosti, ktorý existuje popri štáte a trhu. Tretí sektor je všeobecne zaužívané označenie pre všetky mimovládne organizácie v Slovenskej republike. Ich právna forma môže byť rôzna. Tento sektor sa vyznačuje existenciou organizácií, ktoré majú formálnu štruktúru, neštátny charakter, nemajú za cieľ vytvárať zisk, sú nezávislé, fungujú na samosprávnom princípe a majú dobrovoľný charakter. Existencia mimovládnych organizácií a ich podieľanie sa na živote spoločnosti charakterizuje každú občiansku spoločnosť. Jednou z takýchto organizácií sú aj neziskové/neziskové organizácie, ktorých pôsobnosť upravuje zákon č. 213/1997 Z. z. o neziskových organizáciách poskytujúcich všeobecne prospešné služby v platnom znení, sú jednou z foriem mimovládnych neziskových organizácií, pôsobiacich v občianskej spoločnosti. Register týchto právnických osôb pôsobiacich na území Slovenskej republiky zabezpečuje Ministerstvo vnútra Slovenskej republiky. Cieľom predkladaného príspevku je poukázať na dôležitosť existencie a pôsobnosti neziskových neziskových organizácií v občianskej spoločnosti, analýzu podôb jednotlivých právnych foriem

ich fungovania, a to prostredníctvom analýzy platnej legislatívy, dostupných literárnych zdrojov s dôrazom na analýzu vývoja a zamestnanosti v neziskových organizáciách, poskytujúcich verejnoprospešné služby na území Slovenskej republiky vo vymedzenom období rokov 2016 až 2018. Podľa posledných dostupných údajov k 31.12.2018 bolo na území SR registrovaných a pôsobiacich 66 926 neziskových organizácií, v ktorých pracovalo v priemere 39 706 zamestnancov, pričom konkrétne neziskových organizácií, poskytujúcich verejnoprospešné služby existujúcich k uvedenému dátumu bolo 3 272. Systém odmeňovania zamestnancov neziskových, teda neziskových organizácií je legislatívne upravovaný dvoma spôsobmi. V prípade, že nezisková organizácia nie je zriadená zákonom, obcou, vyšším územným celkom alebo štátom, tak pri odmeňovaní zamestnancov je možné aplikovať zákon č. 311/2001 Z. z. Zákonník práce v platnom znení. V opačnom prípade, ak je nezisková organizácia zriadená zákonom, čiže zamestnanec vykonáva prácu v zmysle zákona vo verejnom záujme, postupuje sa pri jeho odmeňovaní podľa zákona č. 553/2003 Z. z. o odmeňovaní niektorých zamestnancov pri výkone práce vo verejnom záujme a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

affected by the volume and quality of changes expanding its area of operation.

The term third sector refers to the organized sphere of free human behaviour and voluntary association located between the state, the market and the family. The researched area includes a wide range of human activities, while the main common features include organization, private character and legally individual, common or public benefit goals, which do not restrict the rights of citizens and are not aimed at achieving profit⁽⁹⁾. Other names are also used to indicate the diversity of third sector activities, highlighting different aspects of the issue. The term third sector emphasizes the fact that it is a sector that operates in the space between the state and the market. The term non-profit sector describes the absence of a profit motive, while the achieved profit is returned to other public benefit programs⁽¹⁰⁾. The third sector does not yet have a fixed place in the Constitution of the Slovak Republic and this designation is used for a certain institutionalized framework of our society's life⁽¹¹⁾. It is the non-profit sector that creates many opportunities for the implementation of various public benefit activities. The work of non-profit organizations is often underestimated and these organizations have to fight for their place in society.

The Slovak Republic needs a public sector of a good quality, as a product of public policy of the state, which will ensure quality and well-functioning systems of education, health care and social security within the framework of effective management of public resources. Only a well-functioning and sufficiently efficient public sector can effectively support the qualitative development of society, the socio-economic balance and the life security of the population⁽¹²⁾. However, these goals cannot be achieved automatically, or simply and easily, only with the effort and finances of the state. Civil society, based on citizens, which is one of the defining features of the state and its specific subjects, makes voluntary and responsible efforts to achieve these goals. The state, therefore, supports non-profit organizations as subjects of broad civil society, because in many cases they replace and relieve the state from their activities as they provide services that have a public benefit character.

2 Legal Regulation of the Position and Method of Financing Non-governmental Non-profit Organizations

The basic legal framework for the establishment of non-governmental non-profit organizations is formed by four laws, which stipulate the possibility of the establishment of associations, foundations, non-investment funds and non-profit organizations providing services of general interest.

According to the Act. no. 83/1990 Coll. on the Association of Citizens, as amended, citizens have the right to associate freely.

⁽⁹⁾ Skovajsa, M. - Dohnalová, M. (2010)

⁽¹⁰⁾ Čihovská, V. et al. (1999)

⁽¹¹⁾ Holúbková, T. (2011)

⁽¹²⁾ Government Office of the SR. 2018. Úloha štátu a verejného sektora. Online

They can form associations, companies, unions, movements, clubs and other civic associations, as well as trade unions. Associations may not perform the function of state bodies, unless a special law provides otherwise. They may not direct public authorities and impose obligations on citizens who are not members. The association is established by registration. The proposal for registration is submitted to the Ministry of the Interior of the Slovak Republic. Associations are obligatorily registered in the register of non-governmental non-profit organizations.

According to Act no. 34/2002 Coll. on Foundations and on the amendment of the Civil Code, as amended, a foundation is established as a special-purpose association of property that serves to support a public benefit purpose. For the purposes of the foundation's legal regulation, the public benefit purpose means in particular the development and protection of spiritual and cultural values, the realization and protection of human rights or other humanitarian goals, the protection and creation of the environment, the preservation of natural values, health protection, protection of children's and youth rights, scientific development, education, physical education and the provision of individually designed humanitarian aid for an individual or a group of persons who are in danger of death or in need of urgent assistance in the event of a natural disaster. The foundation is a legal entity that is also registered in the register of non-governmental non-profit organizations. Foundations may also perform other activities in accordance with the public benefit purpose of the foundation and with the implementation of the foundation's activities. The endowment activity is mainly the provision of monetary and non-monetary funds from the foundation's property to third parties.

According to Act no. 147/1997 Coll. on Non-investment Funds and on the amendment of the Act of the National Council of the Slovak Republic no. 207/1996 Coll. The fund is a non-profit legal entity that brings together funds intended for the fulfilment of a public benefit purpose or individually determined humanitarian aid for an individual or a group of persons who have found themselves in danger of death or need urgent assistance in the event of a natural disaster.

The development and protection of spiritual values, the protection of human rights, the protection and creation of the environment, the preservation of natural and cultural values, the protection and promotion of health and education, and the development of social services is considered to be of general interest. The fund's assets consist of the founders' deposits and other funds, which are mainly monetary gifts and contributions from individuals or legal entities, income from organizing cultural, educational, social or sporting events, income from the sale of own literature supporting the purpose of the fund and other statutory income.

According to Act no. 213/1997 Coll. on Non-profit Organizations Providing Services of General Interest, as amended (hereinafter referred to as a non-profit organization), a non-profit organization is a legal entity established for the purpose of providing services of general interest under predetermined and equal conditions for all users. The profit of a non-profit organization may not be used for the benefit of the founders, members of the bodies or its employees, but must be used in its entirety to provide services of general interest. For the

purposes of this Act, services of general interest include the provision of health care, the provision of social assistance and humanitarian care, research, development, scientific and technical services and information services, the creation and protection of the environment and the protection of public health, services to support regional development and employment, but also other objectives that the above-mentioned third sector entities meet. The scope of services of general interest can be extended by a non-profit organization, as the law defines it only by an exemplary calculation. A non-profit organization can be established by a natural person, a legal entity or the state. The non-profit organization ensures its activities and manages its property and may also use state property or territorial self-government property in accordance with special regulations. The property of the non-profit organization consists of deposits of the founders, income from own activities, income from business activities after taxation, inheritance and gifts from natural persons and legal entities.

The non-profit organization can also be provided with subsidies from the state budget, the state fund budget and the municipality budget. A non-profit organization may conduct business in accordance with special regulations provided that this activity achieves a more efficient use of its assets and does not jeopardize the quality, scope and availability of the services for which it was established. A non-profit organization may not participate in the business of other persons and may not enter into a silent partnership agreement. The resources of a non-profit organization may not be used to finance the activities of political parties and political movements or to benefit a candidate for elected office. The basic principle of funding non-governmental non-profit organizations is multi-source. Its essence lies in the use of several sources of income in order to ensure independence from a single financial source, which could lead to the demise of a non-governmental non-profit organization. The state has various tools at its disposal through which it can contribute to the co-financing of non-profit organizations by direct or indirect support⁽¹³⁾. Direct support to non-governmental non-profit organizations is support from budget revenues, which is complemented by support from extra-budgetary revenues⁽¹⁴⁾.

Significant indirect support is the allocation of 2% of the share of paid personal and corporate tax. The share of the paid tax up to the amount of 2% is the taxpayer, who is a natural or legal person, entitled to remit the legal person designated by him. The share of the paid tax can be provided to the recipient, which is also a civic association, foundation, non-investment fund, non-profit organization providing services of general interest and in this way to realize the use of the share of paid tax for special purposes⁽¹⁵⁾. The possibility to assign 2% of corporate income tax is a special mechanism of support for non-governmental organizations. The allocation of 2% tax gives the donor a legal opportunity to decide to whom the funds will be transferred. It is thus an indirect state support for non-governmental organizations by providing a part of the taxes that would otherwise end up in the state budget. The 2% allocation

interferes with the cooperation of the non-profit and business sectors⁽¹⁶⁾. A non-governmental non-profit organization can use its own capacities to create and obtain resources, which is done through self-financing, most often in the form of business. However, we do not classify it among business entities in the sense of the law, because its activity does not fulfil the legal features of business⁽¹⁷⁾, its mission is different.

The difference between the business of an entrepreneur or a trading company and the business of a non-profit organization is mainly in the way the profit is used. The non-governmental non-profit organization finances from the profit the activities by which it fulfils its non-profit public benefit goals. Non-governmental non-profit organizations perform entrepreneurial activities because funds from grants, subsidies or donations are pre-tied to certain projects and activities, and funds obtained from self-financing from business are untied and can be used based on the needs and decisions of non-governmental non-profit organizations⁽¹⁸⁾. The ban on business activity is enshrined for non-investment funds.

3 Comparison of the Development of the Number of Non-profit Organizations Providing Services of General Interest and Their Employment in the Period from 2016 to 2018

Act no. 213/1997 Coll. on Non-profit Organizations Providing Services of General Interest, as amended, regulates the establishment, dissolution, termination, position of bodies and management of non-profit organizations providing services of general interest. One of the most significant amendments was amendment no. 35/2002, which introduced into the law the definition of a non-profit organization so that both its basic defining features are clear, namely the provision of services of general interest as a subject of non-profit organization activity and non-profit as a basic criterion for the functioning of a non-profit organization. However, in the context of the activities of non-profit organizations, this is not the only legal norm that is related to the above.

The establishment of any single non-profit organization, which a natural person or legal entity or the state has the right to establish by a foundation deed signed by all founders is conditioned by its registration. A written proposal for the entry of a non-profit organization in the register must be submitted by the founder or a person authorized by him in writing within 60 days of the establishment of the non-profit organization. The authenticity of the petitioner's signature must be officially certified⁽¹⁹⁾.

If a non-profit organization is to provide services regulated by special regulations (e.g. Act no. 448/2008 Coll. on Social

⁽¹³⁾ Adolfová, I. 2009.

⁽¹⁴⁾ *Ibid.*

⁽¹⁵⁾ §50 section. 4 Act no. 595/2003 Coll.

⁽¹⁶⁾ Marček, E. 2005.

⁽¹⁷⁾ §2 section. 1 Act no. 513/1991 Coll. Business Code.

⁽¹⁸⁾ Adolfová, I. 2009.

⁽¹⁹⁾ §5 Act no. 213/1997 Coll.

Tab 1: Development of the number of non-profit organizations in the Slovak Republic (2016 to 2018)

Third sector	Year 2016	Year 2017	Year 2018
Non-profit organizations total:	60 128	64 136	66 926
Associations	40 386	43 544	45 938
Church organizations	3 471	3 489	3 508
Homeowners' associations	10 297	10 302	10 310
Non-profit organizations	2 186	3 071	3 272
Foundations	468	469	468
Interest associations of legal entities	973	984	1 026
Non-investment funds	524	518	504
Estates chambers	85	85	86
Non-profit organizations providing services of general interest	1 556	1 501	1 602
Other	182	173	212

Source: Own processing of the data from the Statistical Office of the SR (2016 – 2018)

Services and on the Amendment of Act no. 455/1991 Coll., on Trade Licensing (Trade Licensing Act), as amended, Act on the Protection, Support and Development of Public Health and on the amendment of certain acts as amended, Act no. 578/2004 Coll. on Health Care Providers, Health Care Workers, Professional Organizations in Health Care and on the amendment of certain laws as amended) is obliged to prove their fulfilment to the registration office within 30 days from the fulfilment of the conditions laid down by these special regulations.

The registry office shall issue a decision on registration and make an entry in the register if the foundation deed and the statute are in accordance with the law.

The registration of non-profit organizations in the public register of non-profit organizations is regulated by the wording of Act no. 346/2018 Coll. on the Register of Non-Governmental Non-Profit Organizations and on amendments to certain acts, as amended. This law also specifically regulates the fees associated with the registration of a non-profit organization, while it should be noted that the amount of the fee for a non-profit organization providing services of general interest is 66 €.

The register of non-governmental non-profit organizations represents a reliable, up-to-date and unified source register of non-governmental non-profit organizations whose registration is carried out in the Ministry of the Interior of the Slovak Republic. The register of non-governmental non-profit organizations acts as a logically unified and data-consistent source of data on all citizens' associations, non-profit organizations providing services of general interest, foundations and non-investment funds. In this way, it is possible to obtain comprehensive data on non-governmental non-profit organizations in one place with the possibility of immediate and reliable identification of a legal entity⁽²⁰⁾.

One of the goals of non-profit organizations, as we have already mentioned, is to provide services of general interest. Public benefit services can be provided in non-profit organizations by employees, employees by agreement or volunteers. They can be remunerated for exercising this competence in two ways. The first case concerns the remuneration of an em-

ployee working in the public interest in accordance with the Act no. 553/2003 Coll. on the Remuneration of Certain Employees in the Performance of Work in the Public Interest and on the amendment of certain acts as amended (§1 of the given Act specifies which employees are concerned). In the second case, it is the remuneration of employees who work in a non-profit organization, which is not established by law, municipality, higher territorial unit or state. In this case, the remuneration of employees is carried out in accordance with the Act no. 311/2001 Coll. Labour Code as amended.

According to the available data of the Statistical Office of the Slovak Republic, Table 1 expresses the development of the number of small non-profit organizations that were established in the territory of the Slovak Republic in the period 2016 - 2018.

From the Table 1 it is possible to identify that the number of entities in the third sector has been growing in recent years. According to the latest available data of the Statistical Office of the Slovak Republic, the number of non-profit organizations in the Slovak Republic increased by 49,68% in 2018 compared to 2016, while the number of non-profit organizations providing services of general interest increased by 2,95%. The emergence and growth of the number of entities in the third sector dates back to the events of November 1989, when the political system and the economic system changed and a vibrant civil society emerged. The growth trend of these entities and organizations is directly related to the events of November 1989, when the democratic system of government came to the fore, as the basis for the formation of civil society⁽²¹⁾. Some non-profit organizations existed before 1989, but only in small numbers. These were, for example, the Slovak Red Cross, the Academy of Education, and Živena. From 1989, more than 6 000 private non-profit organizations were registered until 1993, and more than 12 000 until 1996. Subsequently, however, state interventions in the conditions of the establishment of non-profit organizations and the setting of financial limits for their existence took place. This decision of the then state power caused, but only for a certain time, a decrease in the number of pri-

⁽²⁰⁾ Explanatory memorandum to the Act no. 346/2018 Coll.

⁽²¹⁾ Kuvíková - Švidroňová (2010)

Tab 2: Third sector by number of employees and number of hours worked by volunteers (development from 2016 to 2018)

Third sector	Indicator	Year 2016	Year 2017	Year 2018
Total statistics for the Slovak Republic	Average registered number of employees	38 999	40 085	39 706
	Employees employed by agreement	52 176	35 089	43 586
	Volunteers	343 566	240 341	176 530
	Hours worked by volunteers	18 812 775	15 351 189	10 234 009
Non-profit organizations	Average registered number of employees	2 358	2 551	2 669
	Employees employed by agreement	2 508	3 365	6 508
	Volunteers	15 475	18 125	3 601
	Hours worked by volunteers	1 133 335	1 394 729	233 352
Non-profit organizations providing services of general interest	Average registered number of employees	2 027	1 448	1 584
	Employees employed by agreement	2 663	916	3 817
	Volunteers	2 718	3 941	2 107
	Hours worked by volunteers	244 247	221 512	197 218

Source: Own processing of the data from the Statistical Office of the SR (2016 - 2018)

vate non-profit organizations, but not for long. The change in political positions following the 1998 elections re-established the liberalization of regulations governing the existence and development of the third sector and created relatively favourable legislation and economic conditions for the development of this sector.

According to the data of the Statistical Office of the Slovak Republic, the following Table 2 expresses the development of the number of employees who performed work activities in the third sector in the period 2016–2018. The table also shows the number of hours worked by volunteers in the third sector.

Although the number of entities in the third sector increased (Table 1), the number of employees in this sector fluctuated. Table 2 shows the number of employees employed by agreement and volunteers in the third sector in the period from 2016 to 2018. Their interest in performing this activity decreased in the period under review, which is also reflected in the number of hours worked by volunteers in this sector. This may be due to the fact that employment in this sector does not bring such financial benefits as employment in the private sector. Many people choose to work in the third sector after overcoming various life situations, such as overcoming serious health problems, after long-term treatment and, in many cases, after changing the perception of human values by reassessing life priorities.

According to the Statistical Office of the Slovak Republic, the third sector employs more women than men (more than 50% of women).

The financial sustainability of the non-profit sector is influenced by many factors. The sources of income of these entities are state resources, funds obtained from fees for their own activities, public collections, 2% of income tax and donations. The 2% income tax mechanism is considered to be an effective source of funding for the third sector from state support. The benefits of this mechanism for the non-profit sector are clear. It has been shown that a reduction in the taxes collected by the State by a possible percentage as a result of contributions will bring more resources to the third sector than corresponds to

the possible percentage of taxes paid⁽²²⁾.

The source of income of the third sector are also contributions and donations from other natural or legal persons operating in the territory of the Slovak Republic or abroad. This type of support can be remitted to non-profit organizations in monetary or non-monetary values. In 2016, third sector entities received donations and contributions in the amount of 300 621 743 €. Compared to 2018, these donations and contributions decreased by 3,01%, which means to the value of 288 854 306 €.

At present, the third sector does not expect them to increase; on the contrary, they are expected to decline in the future. The reason is the current crisis situation (associated with 2019 and the unexpectedly threatening year 2020), the end of which is still unpredictable and in the offing.

4 New dimensions of non-governmental non-profit organizations

Although the activity of the analysed non-governmental non-profit organizations in the sense of the text above focuses on the fulfilment of statutory public benefit objectives, the law leaves room for practice to extend the implementation of this public benefit objective to other, less mentioned areas of the state economy. Non-governmental non-profit organizations can and do work on campaigns for greater visibility of agriculture, healthy agricultural products, healthy food produced in accordance with environmental protection, healthy crop cultivation leading to climate change mitigation. Non-governmental organizations can make visible the facts about the inappropriate use of fertilizers in industrial agriculture, toxic chemicals, especially pesticides, which in turn pollute water and soil and again lead to further climate change. These agricultural initiatives aim at them and can lead to a reduction in the use of pesticides. Pesticides are primarily intended for killing pests and weeds, but have a major undesirable side effect. They also

⁽²²⁾ Ibid.

affect non-target organisms and pollute the environment. Farmers, their families and people living in close proximity to industrial agricultural areas are the most vulnerable groups in terms of the health effects of pesticides. Non-governmental non-profit organizations can help to achieve increased state support for organic farmers, or to achieve financial support for farmers in the transition to organic methods of crop production⁽²³⁾.

Mutual cooperation between the third and the business sector creates an opportunity for the business sector to help the third sector, whether financially, with its own products and services, contracts, renting of premises or with its own employees. A business entity can provide financial and non-financial support to a non-profit organization. In return, the non-profit organization can provide information, joint projects and provide various services to the business entity, such as consultations, professional and methodical assistance under the contract, assistance in solving current issues of digitalisation of agriculture or training in alternative plant protection products. Cooperation can also be supported by such motives as tax incentives, visibility and image enhancement of both cooperating entities.

IV. Conclusions

30 years apart, 1989 brought many changes to society. One of them was a new perception of the position of the third sector in the state economy. Changes in societal events ensured that the third sector began to develop on the foundations of a democratic state. The third sector is an important part of the economic and political environment of any developed country. The basic motive for the activities of organizations belonging to this sector is not the return on investment, but always goodwill and effort to help. Any profits are invested back into the activities of the organization. The non-profit sector includes, for example, entities providing public services, entities working for their members, entities financing the activities of others, etc. Non-profit organizations operate in many areas of public benefit, such as social services, care for the disabled, social problem-solving, environmental protection, culture and the protection of cultural monuments, or community development. An important area of non-profit work is also the area of sports.

The legislative framework of non-profit organizations providing services of general interest is regulated by Act no. 213/1997 Coll. as amended.

In the conditions of the Slovak Republic, the development of the number of non-profit organizations in the period from 2016 to 2018 increased, while it should be noted that the number of employees working in them decreased slightly. The reason may be the fact of insufficient benefits from the performance of activities of non-profit organizations, unmotivating for a certain group of people, unless it is volunteering or own life decision. The third sector is financed in various forms. We pointed out the amount of donations and contributions to third sector entities in the defined time horizon. It seems important to point out that these sources of financing decreased slightly during the period under review, which may also result in the current crisis situation in society.

⁽²³⁾ Enviroportál. Informačný portál MŽP SR. 2020. Online.

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PUBLIC SERVICES IN CONSTRUCTION SECTOR AND WASTE MANAGEMENT IN SR

VEREJNÉ SLUŽBY V STAVEBNOM SEKTORE A ODPADOVOM HOSPODÁRSTVE V SR

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I. Introduction

The basic definition of public services is that they are services performed in the public interest. This means that individuals, whose role is to provide these services must act in the name of the public interest and abstract from group and individual interests⁽¹⁾. In the conditions of the Slovak Republic, since 2002, in accordance with Act no. 416/2001 Coll. on the transfer of certain powers from the state administration bodies to municipalities and higher territorial units and Act no. 50/1976 Coll. as amended, municipalities are building authorities.

The municipality, among other things, as an independent territorial self-governing and administrative unit of the Slovak Republic, brings together persons who have a permanent resi-

dence in its territory and take care of their needs when exercising self-government.⁽²⁾

This was due to the process of decentralization of public administration and due to the adoption of the Act no. 416/2001 Coll. on the transfer of certain powers from the state administration bodies to municipalities and self-governing regions. „Process of decentralization was and constantly is an important part of public administration reform. Decentralization signifies transfer of competences and responsibilities from central to lower (autonomous) level of government“.⁽³⁾

In Slovakia “The conception of decentralization and modernization of public administration” was approved for the period 2000-2004 in which more than 300 competences were

⁽¹⁾ Ivanovič (2014).

⁽²⁾ §1 section 1 and 2 Act no. 369/1990 Coll. as amended.

⁽³⁾ Žárska, E. - Vámošová, M. (2017).

Abstract (EN)

The issue of public interest is regulated by the legislation of the Slovak Republic, which addresses services provided in the public interest in specific fields. One of these areas is also the provision of services in the construction sector, while these competencies were transferred by the Act no. 416/2001 Coll. from the state administration to self-government - municipalities and each municipality became a building authority. The problem, however, is that mostly small building offices have existential problems with the performance of this delegated competence, as the basis of their existence - financial resources for this competence - are insufficient. The way out of this unfavourable situation in this case could be the adoption of new legislation consisting of legally defined seats of joint building offices. When investigating the construction competencies of municipalities, we also encounter a solution for waste management (since it is also one of the competencies transferred to municipalities, but only partially). Municipalities are burdened by insufficient legislative specification of sorting biodegradable municipal waste from mixed municipal waste and subsequently an alternative in practice - waste sorting by citizens themselves. The population is dissatisfied with the amount of the fee for the collection and removal of municipal and small construction waste. In order to avoid paying fees for the storage of small construction waste, municipal residents export it to black dumps, which is in conflict with the EU and Slovak legislation in the field of waste management, whereas this type of waste can be the basic material for new, especially construction, materials.

Keywords (EN)

transferred competences, construction competence, waste, public interest

Abstrakt (SK)

Problematika verejného záujmu je upravená legislatívou Slovenskej republiky, ktorá rieši služby poskytované vo verejnom záujme v špecifických oblastiach. Jednou z týchto oblastí je aj poskytovanie služieb v stavebnom sektore, pričom tieto kompetencie boli prenesené zákonom č. 416/2001 Z.z. zo štátnej správy na samosprávu (obce) a každá obec sa stala stavebným úradom. Problémom však je, že prevažne malé stavebné úrady majú existenčné problémy pri výkone tejto prenesenej kompetencie, nakoľko základ ich existencie - finančné zdroje na výkon kompetencie - sú nepostačujúce. Východisko z tejto nepriaznivej situácie by v tomto prípade mohlo nastať prijatím novej legislatívy pozostávajúcej zo zákonom definovaných sídiel spoločných stavebných úradov. Pri výkone stavebných kompetencií obcí sa stretávame aj s riešením nakladania s odpadmi (taktiež ako jednou z prenesených kompetencií na obce, avšak len čiastočne). Obce sú zaťažené nedostatočnou legislatívnou špecifikáciou vytriedovania biologicky rozložiteľného komunálneho odpadu od zmesového komunálneho odpadu a následne alternatívou v praxi - triedenia odpadu samotnými občanmi. Obyvateľstvo je nespokojné s výškou poplatku za zber a odvoz komunálneho a drobného stavebného odpadu. Aby obyvatelia obcí predišli plateniu poplatkov za uskladnenie drobného stavebného odpadu, vyvážajú ho na čierne skládky, čo je v rozpore s legislatívou EU a SR v oblasti nakladania s odpadmi, pričom tento druh odpadu môže byť základným materiálom pre tvorbu nových, najmä stavebných materiálov.

Kľúčové slová (SK)

prenesené kompetencie, stavebná kompetencia, odpad, verejný záujem

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planned for transfer from local state governments (regional and district offices) to regional and local self-governments.⁽⁴⁾

In addition to the transfer of competence in the area of building regulations from the state bodies to self-governing units, the competence in the area of waste management – municipal waste and small construction waste – was also transferred. Municipal waste can be defined as the total amount of used materials originating from households and smaller local businesses, where collection is provided by the local self-government⁽⁵⁾. Waste is a necessary amount of materials that arise from people's lives and the performance of their economic activities⁽⁶⁾. Most of the waste produced is recycled or landfilled, where it is decomposed for decades or even centuries.

In Slovakia, competence in waste management and building regulations is provided both by municipalities as self-governing units (as delegated competence) and by district authorities as part of state administration. The exercise of competence in the area of construction regulations or waste management improves the quality of life of the inhabitants of each municipality. It should also be noted that in terms of the management of construction waste generated during construction, these competencies are interlinked. It can be stated that these are services of general interest to citizens, which are performed in the public interest.

In Slovakia, however, we are currently in a situation where “the smaller the municipality, the greater the problems with securing the transferred competencies”.⁽⁷⁾

In the paper, we point out the issues associated with the exercise of competence in the field of construction regulations and waste management (including small construction waste), which are performed for the population in accordance with the aforementioned public interest.

II. Objective and Methodology

The main objective of the presented paper is to point out, by using the domestic sources, the exercise of competencies in the field of building regulations and waste management in terms of the public interest in the conditions of the Slovak Republic with emphasis on the EU legislation. In the Slovak Republic, the management of municipal waste and small construction waste, which is generated in the municipality is the responsibility of the municipality, in accordance with the Act no. 369/1990 Coll. as amended. According to Act no. 582/2004 Coll. on local taxes and local fees for municipal waste and small construction waste, as amended, the fees apply to natural and legal persons, who have a residence/registered office in the territorial district of the municipality.

Competence in the area of building regulations is regulated in accordance with the Act no. 50/1976 Coll. as amended and financing is regulated by the Act no. 523/2004 Coll. as amended. Through the process of decentralization of public administration, the state is fully committed to financing all costs that will arise with the exercise of competence in the field of build-

ing regulations.

The main goal is followed by the secondary goals, which are:

- analysis of problems that arise for municipalities in the exercise of competence in the field of building regulations – through conducted controlled interviews with representatives of a sample of municipalities in the Slovak Republic,
- analysis of problems that arise for municipalities in the exercise of competence in the field of waste management on the basis of controlled interviews with PZO Nitra (Ponitrianska Association of Municipalities Nitra),
- pointing out the method for obtaining funds for the exercise of competence in the field of building regulations and waste.

The main and secondary objectives of the paper are fulfilled through the analysis of the EU legislation, valid legal norms of the Slovak Republic and through the analysis of domestic and foreign sources.

We defined the specific secondary goals related to the problems of municipalities that arise in the exercise of competence in the field of building regulations through guided interviews conducted with employees of a sample of municipalities (building authorities) located within the Nitra Region. Problems that arise for municipalities in waste management were identified through the PZO Nitra, also within the municipalities of the Nitra Region.

III. Suggestion for solutions for the problems identified during the research

Through the process of reform – decentralization of public administration – in Slovakia there were a large number of changes related to the performance of public services.

Citizens expected the reform to bring changes to the management of public affairs, specifically they expected high quality level and higher speed in management of public affairs without unnecessary bureaucracy. As an example, many set the ideal situation the one in the Western European countries where there was a shift from “govern to governance”.

One of the burning problems that the administration of public affairs in Slovakia has to deal with is the area of municipal waste and construction proceedings. These are the two most problematic and criticized areas.

Via the mentioned reform in Slovakia, more than 300 competencies originally exercised by state authorities were transferred to municipalities/self-governing units⁽⁸⁾.

Among the competencies, one of the most problematic, when it comes to its provision, is also included, namely the competence in the area of building regulations. Naturally, many other competencies are directly or indirectly related to it, for example the competence of waste management – municipal waste and also small construction waste.

The Slovak Republic has currently 2927 municipalities⁽⁹⁾. All these municipalities are obliged, in terms of the public inter-

⁽⁴⁾ Žárska et al. (2010).

⁽⁵⁾ Wright R. T. A - Boorse D. T, (2011).

⁽⁶⁾ Mohammed et al.(2018).

⁽⁷⁾ Kováčová (2014).

⁽⁸⁾ Leško, (2015).

⁽⁹⁾ Bačík, (2020).

est, to perform services for the population, society – building regulations, as well as waste management. In accordance with the Building Act no. 50/1976 Coll. as amended and Act no. 79/5015 Coll. on waste, as amended, all inhabitants are entitled to such services within the given provision. Public services associated with the exercise of these competencies are regulated by legal norms, which public authorities and residents are obliged to respect. In the introduction of the paper, we mentioned that problems often arise in the exercise of delegated competencies to municipalities.

Based on our previous analyses and studies⁽¹⁰⁾ concerning the exercise of competence in the area of building regulations, we have stated that municipalities identified the problem of financial underdimensioning for the provision of transferred competencies. To provide their competence in the area of building regulations, municipalities have obtained only limited financial resources provided by the state. These resources have been recalculated per capita.

As an example, we present the municipality, which had a population of 7⁽¹¹⁾ inhabitants as of 31 December 2018 (the municipality Prikra) and received 7,77 €⁽¹²⁾ from the state budget for 2019. On the other hand, the municipality Smižany, which had population of 8 698⁽¹³⁾ as of 31 December 2018, received for the year 2019 the sum of 9 654,78 €⁽¹⁴⁾. The amount of the subsidy was recalculated for the relevant year by a coefficient of 1,11 € per capita in accordance with the Decree of the Ministry of Transport, Construction and Regional Development of the Slovak Republic of 21 December 2010 no. 20786/2010-SRVS/z.54145-M on the provision of subsidies from the state budget to municipalities to cover the costs of the delegated performance of state administration in the field of building regulations. Without further inspection, it is already possible to conclude that the municipality of Prikra did not have sufficient financial resources to exercise its competence in the area of building regulations. In the event that no construction activity or administration related to the performance of construction competence was registered within the year, it was still necessary for the municipality to have a qualified employee to perform the competence, to whom it was necessary to pay the minimum wage costs.

An employee in public administration is a person who performs his/her work activity in the public interest and is remunerated in accordance with the applicable salary scales for the performance of work in the public interest. These salary tariffs are regulated by legislation⁽¹⁵⁾.

Specifically, an employee of the building authority falls into the 8th or 9th grade, which means that his monthly salary should range from 887 € to 1 167 € per month (for 100% work-

ing hours, depending on the number of years of experience).

Although the state guarantees full financing of competences in the field of building regulations⁽¹⁶⁾ in terms of budgetary rules of public administration⁽¹⁷⁾ – this is impossible to maintain in practice. Municipalities must pay extra for the exercise of competence in the area of building regulations, which appears to be illegal⁽¹⁸⁾. Municipalities in Slovakia solve this problem through possible contractual cooperation between municipalities on a voluntary basis⁽¹⁹⁾.

On the other hand, if we want to compare the Slovak Republic in the exercise of competence in the field of building regulations with the situation in other European countries, we must state that many of them have cooperation between municipalities for the exercise of competence in the field of building regulations (but also others) determined by legislation. As an example, we mention the neighbouring Czech Republic, which adopted a law on the designation of municipalities with extended powers and an authorized municipal office, which precisely determines the seats of municipalities that exercise competence in the building authority for a group of other municipalities.

Developed countries have a much more coordinated, interconnected and more comprehensive understanding of this area. Another example is Austria, where municipalities may associate for the purpose of cooperation within a province (in order to respect the correct division of the country). In Germany, the conditions are defined by the federal state. In Lower Saxony, municipalities with a population of less than 400 have an obligation to associate, the maximum number of municipalities in one association is 10 and the population of the association may not exceed 7 000. France, which is considered a highly fragmented state (currently has 36 000 municipalities), has ensured by law that not all municipalities have the same competencies. Their implementation was divided by legislation into three forms of community of municipalities, namely: municipal communities, agglomeration communities and urban communities. In order for each community to function, it must meet the conditions prescribed by law. In France, these statutory forms of inter-municipal cooperation are very popular, as their existence results in a reduction in the number of disadvantages of a fragmented municipal structure⁽²⁰⁾.

Municipalities in Slovakia do not merge for the purpose of implementing construction competencies, but conclude contracts on the exercise of construction competencies by joint building authorities pursuant to Section 20 of Act no. 369/1990 Coll. on municipal establishment as amended. Nevertheless, there are still municipalities in the territory of the Slovak Republic that exercise competence in the area of building regulations independently, but these are mostly large municipalities (such as the already mentioned municipality of Smižany).

⁽¹⁰⁾ Marišová - Lichnerová (2019); Lichnerová (2019).

⁽¹¹⁾ E-obce (2020) - <https://www.e-obce.sk/obec/prikra/prikra.html>.

⁽¹²⁾ Ministry of transportation of the SR (2019). https://www.min-dop.sk/uploads/extfiles/dotacie/2019/Rozpis_dotacie_na_PVSS_SP_a_dopravy_2019.pdf.

⁽¹³⁾ E-obce (2020) - <https://www.e-obce.sk/obec/smizany/smizany.html>.

⁽¹⁴⁾ Ministry of transportation of the SR (2019) https://www.min-dop.sk/uploads/extfiles/dotacie/2019/Rozpis_dotacie_na_PVSS_SP_a_dopravy_2019.pdf.

⁽¹⁵⁾ Annex no. 3 to the Government regulation no. 388/2018 Coll.

⁽¹⁶⁾ Act no. 369/1990 Coll. on municipal establishment as amended and Act no. 416/2001 Coll as amended, Report on the control activities of the Supreme Audit Office for the year 2015.

⁽¹⁷⁾ Act no. 523/2004 Coll. on budgetary rules in public administration as amended.

⁽¹⁸⁾ Act no. 369/1990 Coll. as amended.

⁽¹⁹⁾ §20 Act no. 369/1990 Coll. as amended.

⁽²⁰⁾ Klimovský (2011).

Table 1: Local fees for municipal waste and small construction waste in town Nitra

	Indicator	Fee rate	
		YEAR 2019	YEAR 2020
1.	Rate of fee for municipal waste per person and calendar year for entities for which quantitative collection of municipal waste is not introduced	0,0685 €	0,081973 €
2.	Fee rate for 1 litre of municipal waste (for entities for which quantitative collection of municipal waste is introduced)	0,012 €	0,02 €
3.	Fee rate per 1 kilogram of small construction waste without pollutants	0,05 €	0,05 €

Source: Generally binding regulation of the city of Nitra no. 11/2014 (as amended by Appendices 1, 2 and 3) on the local fee for municipal waste and small construction waste

In addition to the mentioned financial problem, our goal was, also through qualitative research carried out on a sample of municipalities located within the Nitra Region, to identify other problems that arise in the area. We carried out qualitative research through guided interviews with employees of the building authorities of the Nitra Region. Specifically, there are 354 municipalities (building authorities) located in the Nitra Region. The conducted interviews covered 89,19% of their total number. The responses of employees, who commented on the problems of their building authorities generally followed the problem of financing. They were unequivocally of the opinion that the building authorities were staffed by a staff base with insufficient qualification where they would welcome minimal legal training. Building authorities would need new staff, as legislation and “bureaucracy” require more and more work and competence-related activities. Here, however, the building authorities encounter the reluctance of new potential employees to perform this activity for a relatively low financial reward. Overall, however, it must be stated that even though the building authorities need new qualified staff, they still cannot recruit them, even if they have them at their disposal. The reason is that they are unable to provide them with adequate pay.

In the Slovak Republic for the management of municipal waste and small construction waste, which is generated in the municipality, in accordance with Act no. 369/1990 Coll. as amended, is the responsibility of the municipality. According to Act no. 582/2004 Coll. on local taxes and local fees for municipal waste and small construction waste, as amended, the fees apply to the natural and legal persons who have a residence/registered office in the territorial district of the municipality. The revenue from the local fee for municipal waste and small construction waste will be used by the municipality exclusively for the collection, transport, recovery and disposal of municipal waste and small construction waste.

The EU waste framework directive is the Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste. According to this directive in its consolidated version, each EU Member State must have a waste management program and a waste prevention program in place. In the Strategy of the Environmental Policy of the Slovak Republic until 2030, the Government of the Slovak Republic defined the goal of achieving a better quality of the environment and a sustainable circular economy using as few non-renewable natural resources and dangerous toxic substances as possible. Based on internationally comparable indicators that measure the level of results achieved in individual areas of the environ-

ment, Slovakia lags behind developed countries most in waste management and air quality. The recycling rate of municipal waste is one of the lowest in the EU, while landfilling is still the dominant form of waste management and its rate is one of the highest in the EU 21.

The basic vision of the Strategy of the Environmental Policy of the Slovak Republic until 2030 is to achieve a better quality of the environment and a sustainable circular economy using the least possible non-renewable natural resources and dangerous toxic substances.

All entities in Slovakia must gradually increase the level of waste sorting, thus supporting the circular economy. The circular economy (CE) differs from the “unsustainable” traditional economy by introducing a cyclical flow model. CE is a regenerative system that focuses on the elimination of waste through closing loops and reduces the volume of waste produced, which would otherwise end up in landfills and subsequently in incinerators.

Directive (EU) 2018/852 of the European Parliament and of the Council further requires Member States to ensure that they take further precautionary measures to prevent the generation of packaging waste and to minimize the environmental impact of packaging. According to this Directive, Member States are required to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 5 July 2020. The Slovak Republic has implemented this obligation, but it must not be forgotten that the Slovak Republic still lags far behind developed countries with waste and air quality. The recycling rate of municipal waste is one of the lowest in the EU, while landfilling is still the dominant form of waste management and its rate is one of the highest in the EU.

The Vision and Development Strategy of the Slovak Republic 2030 is currently being prepared, which introduces integrated strategic management and planning at all levels of public administration, which significantly contributes to reducing the negative impacts of the political cycle and ensuring continuity in implementing strategic programs and projects in the Slovak Republic. This circular economy strategy outlines several waste targets, namely increasing the sorting and recycling rate of waste to 65% and reducing landfilling to a maximum of 10% of the total volume.

In the Waste Management Program of the Slovak Republic for the years 2016 - 2020, the concept of circular management is included in waste recycling. It focuses in particular on limiting the landfilling of municipal and industrial biodegradable waste. Its strategic goals are: a significant reduction in the amount of municipal biodegradable waste deposited in

landfills and an increase in the recovery of waste material and energy.

Regarding the problems related to waste in the Slovak Republic, we can say that people are primarily bothered by the ever-increasing price for fees related to the collection of municipal waste and its disposal in landfills. As an example, we mention the local fee of the city of Nitra for municipal waste and small construction waste comparison of 2019 and 2020 (see Tab. 1).⁽²¹⁾

In the previous calendar year (2019), but also in the years before, the inhabitants of the town paid an annual bill for 1 person in the amount of 25 €. For the current year (2020), this amount has been increased to 30 €/person. Citizens over the age of 72 paid 50% less of the price per year. However, based on the current situation, it should be noted that the Municipal Office in Nitra is already considering increasing the fee for municipal waste disposal (bills of lading per person) in 2021 from the current 0,081973 € to the planned 0,10137 €. In total, the annual fee will be increased from 30 € to 37 € per person. The reason for the future increase will be the fact that the revenues from the waste fee need to cover the total cost of the city for this competence, otherwise there would be a violation of the law.

“The Supreme Audit Office stated in its report as early as 2018 that most municipalities finance waste from their own budgets, even though this activity is to be covered by the revenue from the local fee under the Waste Act.”⁽²²⁾

Reducing current and future waste prices would be possible with a higher separation rate than before, even though waste sorting works in the city. Unfortunately, in many examples, citizens do not have the required number of waste bins, which would be adequate for the ever-increasing amount of waste production. However, the company often encounters the problem of incorrect waste sorting. Here we also encounter the opinion that individual labelling of products does not contain information about its composition and therefore people do not know how to classify the “packaging” (when separating) – labelling on the packaging is unfortunately not mandatory.

Through qualitative research carried out in the Ponitrianska Association of Municipalities for Separate Waste Collection and Management (PAM), which is an interest association of legal persons and it unites 57 municipalities in the Nitra Region, we found that municipalities through PAM implement:

- ensuring the collection, transport and disposal of unsorted municipal waste
- sorting of municipal waste and building composting plants,
- solving problem phenomena in waste management in municipalities that are members of the association.

The problems that we identified in the conducted interviews with the representatives of the municipalities associated in the PAM and the representatives of the PAM are following:

1. insufficient processing capacity, as collection companies are forced to collect waste, but after sorting the sales are failing- they see the solution in the support of domestic processors,

2. currently, separate collection in Slovakia is financed by the producer responsibility organizations (PRO), with which the collection companies or municipalities agree on prices, but it happens that PRO refuses the collection company full reimbursement of costs, even though Slovak legislation imposes it on them,
3. in Slovakia, the consumption capacities for sorted raw materials are not sufficiently built, which results in a rapid decrease in their value and this has a negative impact on the management of collection companies,
4. the legislation of the Slovak Republic does not specify who will sort biodegradable municipal waste from mixed municipal waste, whether it will be sorted on sorting lines or this obligation will be taken over by the municipality in the form of waste sorting by the citizens themselves.

Another problem we have identified is that in every municipality it is not possible for residents to separate all types of waste. In this context, municipalities incur additional costs, as if municipalities want to separate such waste, they have to transfer it to another municipality that separates it. They must then pay the employee who transport such waste, as well as the treatment itself. This is also confirmed by the Supreme Audit Office Report⁽²³⁾.

When dealing with small construction waste, which is a product of construction activities related to construction competence, it is necessary to comply with Act no. 79/2015 Coll. on waste as amended. This is waste from routine maintenance work⁽²⁴⁾ performed by or for a natural person, this waste is a subject to the fee for municipal waste and small construction waste. The issue of disposal of construction waste and the possibility of its further use is gradually becoming one of the priority topics in the current effort to create a long-term sustainable development of environmental policy. Small construction waste can be used after its separation for further processing. This can be, for example, filling for engineering network backfills, embankment material for roads, filling for concrete, production of brick concrete or other building materials (of course depending on their technical standards).

In terms of the issue of storage of small construction waste in Slovakia, we often encounter the emergence of the so-called “black (illegal) dumps”. According to our analysis, the reason for the creation of such landfills is mainly the amount of fee for the storage of small construction waste in a “legal landfill”. However, these “black dumps” arise not only from small construction waste but also from municipal waste. This is an incomprehensible situation where residents arbitrarily throw waste into nature, even though the law prohibits such conduct. If such action is discovered by another person, e.g. within the city of Nitra, the detected event must be reported to the relevant District Office – Department of the Environment, whose duty is to investigate the situation and to investigate whether the extent of the “black dump” corresponds to a crime against the environment.

A person, a municipality, or, depending on the type of waste, a city or a competent body of the state administration of waste

⁽²¹⁾ Generally binding regulation of the city of Nitra no. 11/2014 (as amended by Appendices 1, 2 and 3).

⁽²²⁾ Final Report - The Supreme Audit Office of the SR (2018).

⁽²³⁾ Final Report - Supreme Audit Office SR 2018.

⁽²⁴⁾ §80 section. 5 Act no. 79/2015 Coll. on waste as amended.

management must ensure the disposal or recovery of waste in accordance with the law at its own expense. Prevention against “black dumps” can be done in form of photo traps, regular inspections or the creation of resting areas around the area where irresponsible residents tend to dump waste illegally.

Regarding construction activities in Slovakia and the exercise of competence in the field of building regulations, it is possible to emphasize the plan of the current Government, which was published through its program statement for the period 2020-2024. The Government of the Slovak Republic is planning structural changes in public administration in the construction sector, strengthening the importance of spatial planning and abolishing building authorities as self-governing units. From the point of view of the above, the competence in the area of the building regulations would again pass under the state administration bodies, whereby the municipalities would lose control over the exercise of this competence. According to the Government of the Slovak Republic, the abolition of building authorities will strengthen the position of specialized district offices when analysing the influences and interests of participating actors and strengthening the position of the Slovak Building Inspectorate in construction control and decision-making in conflict proceedings.

In the case of waste, the Government of the Slovak Republic will support international cooperation in the field of combating environmental crime and illegal activities related to waste. The Government of the Slovak Republic will strive to ensure that the basic penalty for those who create an illegal landfill is to return the affected site to its original condition at its own expense within a specified period ⁽²⁵⁾.

IV. Conclusions

In its Program Statement for the years 2020-2024, the Government of the Slovak Republic is planning many changes in the performance of public services. In terms of the competencies we analysed, namely competencies in the field of building regulations and waste, the following is planned: in the construction sector, strengthening the importance of spatial planning and abolition of building offices – this assumes strengthening the position of district offices as offices to which competencies will be transferred; in the case of waste, the Government of the Slovak Republic will support international cooperation in the field of combating environmental crime and illegal activities related to waste. The Government of the Slovak Republic will also strive to ensure that the basic punishment for those who create an illegal landfill is to return the affected site to its original condition at its own expense within a specified period.

At present, the dilemma is whether the intentions of the current government within the exercise of competence in the area of building regulations will contribute to a more effective exercise of the competence. From a practical point of view, this would mean that 2 927 municipalities in the Slovak Republic will cease to exercise construction competence and they will be exercised by 72 district offices according to Act no. 180/2013 Coll. on the organization of local government as amended.

Our opinion is that this question should be answered only after a more detailed analysis of all the advantages and disadvantages associated with the future of building competence in accordance with the Program Statement of the Government of the Slovak Republic for 2020-2024. In contrast, we would emphasize that the exercise of the competence in the field of building regulations could be carried out in the territory of the Slovak Republic even after the example of the Czech Republic or France. It means cooperation between municipalities in the exercise of competence in the field of building regulations (in the future also other competencies), while these municipalities would be precisely determined by legislation.

In the case of waste management, we consider the intention of the Slovak Government to be realistic in the context of further development. The problems and ambiguities of municipalities in the case of waste management and especially in case of fees associated with waste could be solved by increasing the share of waste separation, but especially by the subsequent technical and material provision of the implementation of this activity.

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⁽²⁵⁾ Program Statement of the Government of the Slovak Republic 2020-2024, part Environmental crime

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