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## **Innovative Issues and Approaches in Social Sciences (IIASS)**

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# THE MANAGEMENT OF COMPLEX (SECURITY) CRISIS

Marjan Malešič<sup>1</sup>

| 6

## Abstract

Crises occur frequently and in very complex ways however routine responses of crisis management often do not follow the changing pattern, nature, intensity and scope of crises. Extensive research has been accomplished in Europe and North America to create bases for creative changes in this field. Common theory and methodology were developed and the huge amount of cases was empirically explored to this effect. The article brings about core findings on legal, system and functional dimensions of crisis management in Slovenia. Its assumption is that inconsistent legal and doctrinal solutions, and consequently system deficiencies hamper the development of effective and rational crisis management. The officials' fear of innovations that change every day routine is not helpful in this process, either. The discourse of the article is analytical and prescriptive by its nature.

**Keywords:** crisis, crisis management (system), legal basis, coordination, innovation.

## Introduction: conceptualization of the problem

Crisis analysts (Yehezkel Dror, Patrick Lagadec, Boris Porfiriev, Enrico L. Henry Quarantelli, Uriel Rosenthal, Arjen Boin, Paul t'Hart, Bengt Sundelius, Eric Stern, Louise K. Comfort and others) agree that this phenomenon is changing in terms of both quantity and quality. They believe that more crises can be expected in the future (a quantum jump), and that crises will be characterized by endemicity (crises will constitute a logical opposition to the increasingly complex systems, which will fail to meet the high security standards and expectations due to technological, financial or political factors), complexity (crises will consist of several combinations of crisis events and of causal relations triggering them, which means that a crisis permanently reproduces itself in various

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<sup>1</sup> The article is based upon research project Crisis Management in Slovenia sponsored by the Ministry of Defense of Republic of Slovenia and the Slovenian Research Agency. Prof Dr, Head of Defense Research Center, Faculty of Social Sciences, University of Ljubljana.

forms) (Rosenthal, Boin and Comfort, 2001).<sup>2</sup> In other words, according to Boin, t'Hart, Stern and Sundelius (2005) crises are a result of several causes, interacting in a given time span and producing a risk with destructive potential. Porfiriev (2001) believes that future crises will be characterized by growing heterogeneity, complexity and insecurity. These characteristics refer to the causes, conditions and directions of development. However regardless the changing nature of crises, their consequences will be fairly conventional; we will continue to assess them in terms of victims, damage, risk, urgency, uncertainty, stress and decision-making dilemmas.

The administrative repertoire of crisis management preventive and intervention strategies is not adapted to the character of present and future crises which are, and will continue to be, primarily characterized by a complex and intricate structure. The conventional organizational forms of co-ordination cannot be used to organize the work of the increasing number of different organizations and individuals participating in crisis management (Rosenthal, Boin & Comfort, 2001: 13–14). Scholars agree that the available tools for dealing with crises are themselves also facing a crisis.<sup>3</sup> Routine ways of decision-making and of the political process need to be thoroughly upgraded. This calls for a broader approach to and a reflection on the policies and government competencies which should also integrate crisis management.<sup>4</sup>

Researchers understand crisis as a situation, in which basic social values, norms and structures are at risk, where the time for decision-making is limited, and which entail uncertainty, stress and frequently also the element of surprise (Malešič, 2004: 11–12). Boin and 't Hart (2001) define crisis management as the formulation of procedures, agreements and decisions which affect the course of a crisis, including the organization, preparation, measures and distribution of resources needed to control it.

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2 The last example of such extremely complex event is the Japanese crisis that occurred in March 2011. It was triggered by the earthquake, followed by tsunami and nuclear disaster.

3 In the context of the new critical theory of the world risk society, Beck (2008: 5) holds that the traditional technologies of risk assessment, management and insurance are no longer fully functional.

4 The most successful attempt seems to be the restructuring of crisis management system in Sweden in 2009. A Swedish Civil Contingencies Agency was established to enhance and support societal capacities to cope with crises.



One of the key tasks of crisis management is decision-making that involves key values trade-offs and political risks (Boin, 't Hart, Stern and Sundelius, 2005). Main feature of crisis decision making is interagency, intergovernmental and inter-group coordination that prevents miscommunication, overlapping of activities and value or organizational conflicts between state, private and non-governmental, sometimes concurrently national and international crisis management actors.

### **Empirical evidence**

Researchers around different parts of Europe and North America have carried out about one hundred case studies under the auspices of the Swedish CRISMART (Crisis Management Research and Training) to explore contemporary crises and their management. The research gave an emphasis on individual crises caused by natural disasters, epidemical conditions, technical errors, human mistakes, political conflicts, terrorist attacks and alike, that occurred in different countries. The research was multidisciplinary by its nature, mainly involving disaster sociology and psychology, international relations, security studies, public administration and public policy, and organizational theory. The vast empirical evidence allows for theory building across various scientific disciplines and policy reflections in huge number of crises.

#### **Research design**

The analyses of crises and crisis management in the framework of abovementioned research program have been taking place in Slovenia from 2000 on. We selected ten different cases to be explored ranging from political crises to natural and man-made disasters (Malesic and Brändström 2004, 13-14). Our main assumption was that inconsistent legal and doctrinal solutions, and consequently system deficiencies hamper the effective and rational crisis management. The officials' fear of innovations that change every day routine is not helpful in this process, either.

In the first stage researchers applied a cognitive-institutional approach towards crisis decision-making, having in mind, that we should explore cognitive capacity of people involved in crisis decision-making and institutional framework the decisions are made in (Stern 1999). We used four-level model of exploring various cases: (1) installation of individual crisis in adequate historical, political, cultural and institutional context; (2) general description of the case and time-frame; (3) dissection of crisis on specific situations that require decision-making; and (4) use of holistic approach, where crisis is seen again as a complex and comprehensive entity and not only as a sum of its specific sequences.

The following analytical themes were explored (Malesic and Brändström 2004, 14-18): Crisis preparedness, prevention and mitigation (preparedness of crisis managers and their organizations to respond to extraordinary events, experiences, psychological readiness, structures and plans, ability to identify and to perceive crisis). Leadership (the leadership styles and variations: operative or symbolic, concrete and personal or more abstract and distant, hierarchical or collegial). Decision units (how and where decisions are made in the complex institutional systems that are typically engaged in managing a crisis: an individual, a small group or whole organizational network, strategic or operative decision-makers, (de)centralization of decision-making process). Problem perception and framing (the subjective and socially constructed aspects of crisis management, a perceived picture of what is happening, problem-framing: the role of political considerations and cognitive processes). Value conflict (tension and conflict among the various values at stake in a crisis situation, parochial vs. social values, dilemmas and choices, do crisis actors cope with the real and tangible dilemmas of value conflicts that emerge in crisis situations?). Political and bureaucratic cooperation and conflict (patterns of convergence and divergence, parochialism and solidarity among actors and stakeholders in a crisis, cooperation vs. competition or even avoidance). Crisis communication and credibility (the relationship between the information available, its timely and appropriate procession, and the perception of crisis and actions that are taken to solve it; the balance between sorting of information and limiting gate keeping, the role of mass media, 'credibility trap', legitimacy). Transnationalization and internationalization (the tendency of crises to spill over national boundaries, transnational cooperation, international support for new policies and tools for regulations). Temporal effects (the time factor in crisis and its impact on stress, cognitive rigidity, reliance on past experience, importance of cognitive set, stereotyping and importance of short-run values, tolerance for ambiguity, sensitivity to others' perspective and resistance to pull of closure, ability to follow feedback). Learning (the ability of crisis management structures and individuals to learn: each and every crisis offers a vast reservoir of experiences and lessons for future crisis planning and training. A fair expectation is that those involved in crisis management will draw lessons from the event and will transfer them into organizational practices, policies and laws).

By selecting cases and themes, we actually created a matrix that allowed us not only to have a thorough insight into individual cases (through analytical themes), but also to explore analytical themes through various cases.

The methods we used were official documents content analysis, mass media content analysis, analysis of secondary sources and data, and individual and group interviews. Triangulation of methods gave us a comprehensive insight into crisis management characteristics at legal, doctrinal, system and functional levels. The research was accomplished in three stages and we will summarize the findings below.

### **Functional analysis**

Functional analysis revealed (see more in Malešič 2004 and Malesic and Brändström 2004) that the authorities in Slovenia have not taken all of the necessary precautions to prevent disastrous consequences of crises. As a matter of fact some measures are very costly (e.g. earthquake safe construction, measures against floods, installation of cleaning devices) whereas others were omitted due to subjective reasons. Response plans were at least formally there but our analysis revealed that the plan as an actual document has limited value in a crisis. However, planning as a learning process has proved to be important. This is evident by the fact that crisis managers know the crucial elements of the plan. The decision-making processes and leadership practices were in many cases in contradiction with the rules and planned procedures. There was a lot of shifting or simply assuming responsibility, improvisations and ad hoc solutions. The perception and definition of the crises were largely dependent on previous experiences. People who had already experienced a similar crisis, or more of them, were prone to develop a so called 'crisis subculture'<sup>5</sup> and they acted according to it. The capacity for timely responses was limited. The notification of affected population and general public by the authorities was late in several cases. The response of crisis management actors was often prompt however they were not notified to intervene in the earliest stages of crises. The organizational cooperation was rather good in many analyzed cases however, the relationship between different actors on the disaster site was not always clear enough. The mix of local, regional, state actors, the military and non-governmental actors sometimes produced a certain degree of tension and confusion regarding the responsibility and competencies. Civil-military cooperation in the process of protection, rescuing and help during disasters was not at the highest level. There are at least four key factors that have impact on the decision whether the military should be engaged in disaster relief or not: legal and doctrinal solutions, expectations of the public and

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<sup>5</sup> We understand crisis subculture as an ability of community that is often affected by crises to cope with them in a routine way: Individuals shift from normal to crisis roles, and every day norms and rules are replaced by crisis ones relatively smoothly and rapidly.

political elite, willingness of civilian disaster relief structures to ask for military help and last but not least the operational preparedness of the military to cope with such civilian crises. It seems that in Slovenia civilian authorities are reluctant to ask the military for help in case of disasters. We witnessed situations in which affected people expected prompt assistance of the military however it was provided rather late and in a limited scope. However in the last decade the conscript army was replaced by an All-Volunteer Force and civil-military cooperation in case of disasters improved. The role of mass media in crisis communication process was rather important especially in revealing deficiencies of the system and creating public pressure to improve the situation. It seems that mass media themselves play an ambivalent role in this process – on a one hand it is an opportunity to enlarge the audience or increase the intensity of media attention, while on the other hand mass media are according to the law part of crisis management.<sup>6</sup> The adequate balance between their business (profit) interest and crisis communication role was not always achieved. Although mass media connected affected people with the 'outside', normal surroundings, which helped them in psychological terms, and reduced uncertainty by providing information, mass media also triggered conflicts with authorities and reported in sensational manner.<sup>7</sup> The international cooperation does not refer to all examined cases, but in some of them it seemed that other countries respected international obligations and solidarity did work. Sometimes neighbouring and other countries offered even more help than needed in a certain case. The level of internationalization of crisis depends on the nature and scope of crisis – some crises are not severe and are of local scope, others affect regions, the entire country and some of them even international community as a whole.<sup>8</sup> The lessons learned to a certain extent improved crisis management in Slovenia. Experiences were applied to crisis management practices: more investments in some prevention measures, adoption of national program and act on the protection of environment, improved notification system, psychological assistance to affected people and most exposed crisis management

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6 Mass Media Act; Civil Protection and Disaster Relief Act.

7 Extremely positive exception of mass media role in crisis was their performance during the Slovenian ten-day independence war in June and July 1991. The worst case was a communication process during preparation for a potential Y2K crisis.

8 It is important to emphasize that not only the dimension local-global is an issue but vice versa, as well. In the past analysts were more interested in the process of local crisis transformation into a global problem, whereas in globalized world a question is frequently raised, how global processes influence the emergence of crisis in local environment (e.g. pending financial, economic and social crisis).

actors and alike. However some lessons were not documented, were forgotten and were not embedded in future crisis planning. Let alone cognitive and institutional barriers to the process, one should not neglect the fact that lesson drawing is constrained by the role of these lessons in determining the impact that crises have on a society. Simply put, lessons learned might easily reveal deficiencies in crisis prevention, preparedness and response, a matter not pleasant for incumbent leaders (see also Boin, 't Hart, Stern and Sundelius, 2005).

### **Analysis of legal and doctrinal bases**

The logical question after the first stage of the research was why crisis management in Slovenia faces functional difficulties? In the second stage we wanted to find the answer through the analysis of legal structure regulating crisis management and system analysis in this field (see more in Malešič, 2009). The findings of the content analysis of relevant legal documents indicate that lack of precision and serious legal inconsistencies are hampering the development of effective crisis management. This is even more evident in the strategic and doctrinal documents. A firm and consistent legal basis is a necessary but by no means a sufficient precondition for effective crisis management at the national level.

The system analysis reveals the insufficient development of inter-organizational co-operation, and the inadequate co-ordination of actors and promotion of innovative approaches to crisis preparation and response. In this respect, the lack of a coordinating mechanism can be observed. Such a mechanism would integrate crisis management actors at the state, regional and local levels, and could ensure a flexible, rational and efficient crisis response.

The government policy is not entirely based on the recent achievements of individual sectors in the crisis management field and it fails to integrate them into a functional entity or even into several functional modules which would provide for a crisis response adapted to the nature, intensity and scope of a particular crisis.<sup>9</sup> The results of the analysis also point to the absence of an umbrella act, i.e. an act on crisis management, which would regulate this field, overcome the existing situation and enable the establishment of co-ordination structures at the national level, e.g. an agency for crisis management. This institution should be attached to the executive authorities.

### **Analysis of experts' ideas and views**

In the third stage of research we interviewed high-ranking officials to explore crisis management grey spots that were not revealed by other approaches and methods.<sup>10</sup> In the following section we present the main ideas and views of our respondents.

Many common points were found in the respondents' answers. It is evident that there is a high level of consensus on the fact that crisis management actors in Slovenia have a different understanding of the concepts of 'crisis' and 'crisis management'. This can also be seen implicitly in their answers. They believe that a sectoral approach to the phenomena is prevailing, which is strongly conditioned by the unclear and unharmonized legislation. In addition, problems also arise from inconsistent application of the legislation. However, the respondents were less worried about functional integration and co-operation between actors in concrete crisis situations.

The key problem in development of the crisis management system is that a bottom-up approach has been used, whereas a top-down approach would be more appropriate. Many crisis management actors stick to their existing competencies and relations, thereby failing to meet the requirements to build a more modern and functional system. Another problem is the absence of strategic reflection at the level of the system

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9 In case of overwhelming crisis, national structures could be also supported by international organizations' programs such as United Nations' Office for Coordination of Humanitarian Affairs, European Union's Civil Protection Mechanism, and NATO's Civil Emergency Planning.

10 Representatives of the following institutions were interviewed: the Administration for Civil Protection and Disaster Relief, the Office for Civil Defense at the Ministry of Defense, the Slovenian Armed Forces, the Ministry of the Interior, the Ministry of Health, the Public Health Institute, and the Ministry of Foreign Affairs. These institutions are the key actors involved in crisis management in the country.

as a whole which would allow for different systemic solutions and doctrinal groundings. In addition, the role of crisis management related expertise is underestimated.

All the respondents observe a need for adequate co-ordination mechanisms to integrate the crisis management actors during the stages of preparation, response and after a crisis. It is evident that coordination is relatively good within practically all the sectors or at least within their organizational entities, but the co-ordination among them is insufficient. However, the respondents do not agree when assigning authorities to the existing organs. Some believe that the National Security Council (NSC) could perform the co-ordination function at the national level, but what is lacking is the political will; while others believe that the NSC is a government advisory body, or a more strategic body, and is therefore unsuitable for this function.

Another solution for better coordination could be the National Crisis Management Centre (NCMC), which has been operating for several years now. The majority of respondents agree that the existing solution, whereby the NCMC operates within the Ministry of Defense, is not good. Some see the NCMC as primarily a center for logistic, material and technical support in the crisis response process, while others are afraid that some people understand the NCMC in a broader sense as expanding beyond the legal framework, as a kind of super-body, which is unacceptable to many actors within and especially outside the Ministry of Defense. The NCMC also comprises a cross-sectoral analytical group for crisis management. This group could perform the tasks now carried out by other cross-sectoral coordinating groups, addressing crises partially.

The respondents mainly do not mention the issues of different organizational cultures and interpersonal problems. However, they observe the introverted nature of sectors, insufficient integration with other actors, in particular during planning and preparation. The crisis management actors overcome many of these problems during a crisis response, but they cannot catch up on everything that has been missed in the previous stages. It seems that crisis management could be significantly more efficient and rational if adequate systemic and doctrinal solutions are found and followed in practice.

The respondents also differ in their proposals for solutions to the existing situation. Most agree that we need a cross-sectoral organ, attached to the government, and authorized to co-ordinate agents in different government sectors. The respondents believe that this would certainly

be an opportunity to overcome the residues of the former system of total defense, which can still be noticed particularly at the system and organizational levels, but less so in the content and the functional domains. On the other hand, it seems that the main obstacle to introduce crisis management innovations into national security structures, lies in high-ranking officials and politicians who are reluctant to accept ideas that change every day routine, bring about uncertainty and potentially jeopardize their positions. Fear, resistance to changes and even conflicts with researchers were experienced during the research process.

## **Conclusion**

Contemporary security crises are ever more characterized by a transformation in terms of their quantity and quality. This is reflected in the increased number of crises, their endemicity, composition, durability and complexity. The effects of big contemporary crises expand beyond national borders, refer to different social fields and relate to existing social problems which, in turn, exacerbate them. These changes directly influence crisis management. The adequacy of conventional organizational and co-ordination forms has obviously come into question. This situation requires innovation in both politics and crisis response capabilities to address the national and international levels of the phenomenon. The changed characteristics of crises and crisis management are also relevant to Slovenia, which has relatively well-developed crisis management within individual government sectors, although adequate co-ordination between them has yet to be established.

The findings of the content analysis of relevant legal documents confirm our initial assumption. They indicate that a lack of precision and serious legal inconsistencies, and consequently system solutions are hampering the development of effective crisis management in Slovenia. This is even more evident in the strategic and doctrinal documents. As suggested in the responses of the interviewees, at first sight it seems that the legal impediments can be overcome in an actual crisis and that co-operation can be achieved among all the crisis management actors. Nevertheless, improvisation during a crisis response action cannot completely do away with the shortcomings stemming from differences in understandings of the concepts of crisis, crisis management, and from uncoordinated crisis planning. The sterility of the 'crisis' legislation is therefore only partially compensated for by the activist improvisation of the crisis management actors. However, the problem does not only lie in the legal structure and in the derived systemic, organizational and consequently also co-ordination solutions. In the preparations for



different crises we also encounter an inadequate legal culture, namely disrespect of the existing norms, principles and solutions, or the inability to fully take advantage of the possibilities they offer. This means that a firm and consistent legal basis is only a necessary but by no means a sufficient precondition for effective crisis management at the national level. A fear of change among high officials and politicians is also an obstacle in the process of introducing crisis management innovations.

The analysis therefore reveals a lack of awareness about the changed nature of contemporary crises, the insufficient development of inter-organizational co-operation, and the inadequate co-ordination of actors and promotion of innovative approaches to crisis preparation and response. In this respect, the lack of a coordinating mechanism can be observed. Such a mechanism would integrate crisis management actors at the state level and could ensure a flexible, rational and efficient crisis response. The Strategy of the National Security of the Republic of Slovenia fails to integrate them into a functional entity or even into several functional modules which would provide for a crisis response adapted to the nature, intensity and scope of a particular crisis.

Conceptual inconsistencies can be observed in the analyzed laws, ordinances and regulations. This prevents the framing of a more or less unified representation of crisis and of crisis management by the key actors in the country. The results of the analysis also point to the absence of an umbrella act, i.e. an act on crisis management, which would regulate this field, overcome the existing situation and enable the establishment of co-ordination structures at the national level, e.g. a crisis management agency. This institution should be attached to the executive authorities.

The efforts deployed by the government in the crisis management field are insufficient. The government is failing to take the initiative and implement a top-down approach. Moreover, it is not sufficiently providing for the harmonization of ordinances relative to planning in the fields of security, military, internal security, and disaster relief. Planning is only partially targeted to the concept of crisis planning and it is therefore impossible to provide for integrated training including comprehensive (simulation) exercises or the testing of different scenarios as foreseen by the plans.

The crisis management innovations proposed in the article are only partly suitable to solve pending financial, economic and social crisis in Slovenia, however these phenomena are related. On the one hand, every security crisis occurs in the context of broader social crisis, which

exacerbates it (crisis within the crisis) and makes it difficult to solve, whereas on the other hand coordinated crisis management effort in austerity times could create synergies and reduce entropy within the national security system, making it more rational and efficient despite budget cuts imposed on various crisis management actors.

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Constitution of the Republic of Slovenia. Official Gazette of RS nos. 33I/91-I, 42/97, 66/00, 24/03, 69/04, 68/06.

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# THE INTERCONNECTION OF THE LOCAL DEMOCRACY AND THE FINANCES OF LOCAL SELF-GOVERNMENT

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## Abstract

In this paper the author gives a legal vision of the link between the local democracy and finances of the local self-government by comparing the legislation and its impact in France and in Russia, as well as by introducing some comparative elements with Slovenia. The analysis, made essentially on the basis of the Russian federal law n° 131-FZ and the French General Code of Territorial Entities (GCTE), reveals three main aspects of the interaction of the local democracy with local public finances: (1) direct elections of local officials and its impact on the municipal finances, (2) responsibility in front of the population of directly/indirectly elected mayors in the public finances field, (3) participation of the local population in the financial decisions. The practical influence of the legislation on the problem under scrutiny is mainly examined in the Russian case; for France there are normally predictions which are used in order to demonstrate the impact of legal dispositions, because the most of the provisions of French law n° 2010-1563, modified the GCTE concerning the local democracy or local public finances, are not still implemented or the short period of their application does not allow to assess its interconnection.

**Keywords:** local democracy, public finances, self-government.

## Introduction

The local democracy is considered as a school of democracy which contributes into the transformation of individuals into responsible citizens (Zittel, 2008 : 131). There are many factors determining the local democracy: population's involvement in decision-making process, degree of legal and financial autonomy, implementation of minority rights, civil society, media, etc (Gadjanova, 2006: 1). According to the ultimate goals, all these determinants can be divided into two groups:

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those which develop their direct participation in the decisions of the local self-government and those which guarantee the local citizens' representation. According to the content, we can also distinguish the institutional determinants and the procedural ones. The first group consists of the civil society, the political units on the local level, the local authorities, the legal frameworks of the functioning of local self-government, the electoral systems, as well as the media (Gadjanova, 2006: 2). The second group includes the capacity of population to influence on the local decision-making through various tools, the degree of openness of local authorities, as well as the administrative ability to ensure the elections transparency and fairness.

In this paper we will try to combine all these groups of factors of the local democracy in order to analyse how the last one is connected with the local public finances. The scrutiny of the legal, political and economical sciences sources revealed that this question was understudied. Only several references on the existence of such interconnection were found. That is why we would like to study this problem by examining the direct and indirect population's participation in the municipal affairs through the legal frameworks of the local self-government and the citizens' capacity to influence on the municipal politics.

In order to demonstrate not only theoretical, but also practical interaction of the local democracy with the local public finances we chose mainly two States – France and Russia. They have a significant number of differences in the relevant field, so, their comparative study could be useful. Thus, France is a unitary State and an old Western European democracy. Russia is a federation and a young Eastern European democracy. The local self-government (one of the corner stone of the local democracy) in the both countries represents the different models. France is not far from the classic Romanic (continental) model and in Russia the initial model was closer to the Anglo-Saxon model and then acquired some characteristics of the Romanic one and transformed into an intermediate pattern inclined to the German system. It is curious, that in spite of the broaden decentralization movement in France since the beginning of the 1980s, France ratified the European Charter of Local Self-government only in 2006, whereas Russia being a young member of the Council of Europe under the recent decentralization process ratified this international legal act in 1998. However, in the constitutional and legislative provisions of the both countries, adopted even before the ratification, we can observe the influence of the Charter. The reflection of the Charter we can also notice in the Slovenian Constitution (Slovenia ratified the Charter in 1996) (Internet 1). This country has a common communist past with Russia, nowadays this Central European State

represents also a young democracy but its local self-government model is closer to the continental one. Thus, by using the legal and practical experience of these countries we can demonstrate how the local democracy and the local public finances interact within the different legal, political and economical scopes.

The framework of this paper is mainly legal, but the political science point of view will be also applied. The principal legal provisions used in this study are the Federal law of the Russian Federation n°131-FZ on 6th of October, 2003 on the general principles of the local self-government (federal law of 2003), as well as the Organic law of the Republic of France n° 2010-1563 on 6th of December, 2010 on the reform of territorial entities (organic law of 2010).

Before we pass to the analysis of the main elements of the interconnection between the local democracy and the finances of the local self-government, we should give a notion of the local democracy, because firstly, it is usually used by the political or public administration's science, but in this paper we propose a legal vision of the question, and, hence, we should apply the main concepts in their legal sense and, secondly, even in the political science there is no exact definition of the local democracy.

Actually, the local democracy can be understood in two ways: through the institutions of local self-government and through the organizations and activities of civil society (Sisk, 2001: 12). In the ideal situation, local authorities and civil society collaborate closely in order to identify the problems between the local population and municipal authorities and elaborate the appropriate solutions. First time the notion of local democracy was introduced into the French legislation through the law of February 6th, 1992 on the territorial administration of the Republic. According to the concept elaborated by the French legislator of that epoch (part II of the law of 1992), the local democracy was a principle of territorial organization ensured by the territorial entities and the de-concentrated bodies of the State. The sense of this principle was reduced to the information and consultation (participation) rights of population. Thus, initially the local democracy comprehension in France was limited by the direct consultations, as well as to the local population access to the budgetary documents, proceeding of local authorities meetings concerning the economic interventions. Such concept of the local democracy is actually reproduced in the article L2141-1 of the General Code of Territorial Entities (GCTE). It was broadened by the law of February 27th, 2002 on the democracy of proximity, the main objective

of which was the improvement of citizens' participation in the local decisions through a reinforcement of participative democracy.

The examining of the Russian federal, regional and municipal legislative and executive acts did not reveal any definitions or even mentions of local democracy with the exception of the Order of prefect of the South-eastern Administrative County of Moscow city of March 30th, 2011 on the organization of the Week of local democracy. This executive municipal act does not contain any definition of local democracy, but we can observe that the last one is understood within the French meaning of local democracy. Thus, the framework of this event (Week of local democracy) is defined as the federal law of the Russian Federation of February 9th, 2009 concerning the provision of access to information about the activities of state and local self-government authorities. The main measures provided within the Week of local democracy were the meetings of prefect and municipal deputies with local population and representatives of the lowest level of local self-government – responsible persons of each house (block of flats houses).

Thus, for the purposes of our study we will consider the local democracy as a legally stipulated possibility of the local population to participate in a passive way (being informed) or in an active way directly or via their representatives in the decision-making process at the local level in order to provide the normative acts mandatory and/or non-bounding for the local self-government bodies.

### **Direct elections of local officials and its impact on the municipal finances**

The elections of municipal officials is one of the mechanisms of the participatory democracy which is the part of the local democracy. The article L4131-1 of the French GCTE, modified by the organic law on the reform of territorial entities of 2010, provides a creation of territorial councillors instead of the departmental and regional councillors since the March of 2014 which will attend in the departmental and regional councils at the same time. This category of councillors will be elected by the direct universal suffrage. Usually, this measure is represented like a simultaneous contribution to the local democracy and budgetary costs reduction. We could observe a rare balance between the democracy and the economical efficiency but...During the debate in the French Parliament on the reform of the local self-government, the proponents of this measure affirmed that the dismissal of 3903 general councillors and 1757 regional councillors and their replacement by 3493 territorial councillors would in favor of the public expenditures (Pauliat, Deffigier, 2011: 17). However, in the reality it may be more complicated because



the increasing of councillors salary by 20% due to their «double mission» is necessary, as well as the expenditures covering their assistants, travel costs, accommodation, etc.

The article 36 of the Russian federal law of 2003 attributes to the competence of municipality (notably to the statute of municipality) a choice between the election of the municipal mayor directly by the local population and his election from the municipal deputies by the local representative body. We should notice that this federal law became the main step of the municipal reform which is realized in Russia from the beginning of the 1990s and till now. In spite of one of the main ideas of the reform – advancing of the principle of subsidiary – last few years we can observe the tendency of replacement of the elected by local population mayor by the head of local administration chosen from the Council of deputies and the city-manager designated by the deputies. The most important argument of such politics is the economy of budgetary funds.

Thus, for example, in 2010 the proponents of the abolition of direct city mayor's elections in Perm (Urals) noted that it would allow to the municipal budget to save approximately 25 million roubles (610 thousand euros). In their opinion, such costs were inefficient due to the lack of the population interest and a low turnout of voters (Usoltseva, 2010). Political experts, in the contrary, highlighted that the purpose of the municipal reform was a convergence of local authorities with population. The abolition of electivity of any officials is an opposite process, hence, contradictory to the main purpose of the municipal reform. Besides, the argument of budgetary expenditures reducing gets weaker, if we take into consideration that normally the elections are organized once per five years, 610 thousand euros are spent on 1 million voters, hence, each voter costs 12 cents per year or 1 cent per month. Therefore, there is a question whether the local democracy costs so expensive. However, already in one and half year after the abolition of direct elections of the mayor and the introduction of the institute of the city-manager, the local authorities of the city Perm decided to restore a status quo. Nowadays by discussing the new changes in the statute of municipality Perm, the local authorities do not refer to the argument of «economical efficiency versus democracy». In the contrary, a current head of the administration emphasised that «Perm is one of the most democratic territories, where the level of civil society is high enough », thus, the local population should be involved in a decision-making process (Internet 2).

In Russian practice we can find the examples, when the removal of the tool of directly elected mayor from the arsenal of the local democracy not only does not mean the economy of budgetary money, but in the contrary entails the increasing of municipal expenditures. Thus, in the first half of the year 2012 a possibility of mayor's direct elections abolition was discussed in Angarsk municipal district (Irkutsky region, Eastern Siberia). However, for their organization the budget for 2012 provided the costs of half a million roubles (13 thousand euros), whereas by certain estimations of experts a salary of city-manager would be around 200 thousand roubles per month (4,8 thousand euros) (Internet 3). Recently the Angarsk district Duma (representative body) adopted at the extraordinary meeting the amendments to the municipal statute. The practice will show, whether the taken decision has positive impact at least on the socio-economical development of the municipality due to the designation of professional city-manager.

Within the framework of the reform of the French local self-government in 2010 the article L5211-6 of the GCTE provides that from March 2014 public institutions of intermunicipal cooperation with own taxation (PIIC, établissements publics de coopération intercommunale à fiscalité propre) with own taxation (metropolises, urban communities, agglomerated communities and communities of municipalities) are administered by a deliberative organ composed by delegates of the member municipalities elected by the direct universal suffrage. The following article establishes a uniform and common frame for the definition of number and the distribution of places of these delegates. According to the study of impact made within the framework of the reform of 2010, an implementation of new rules should entail a significant reduction of the number of community delegates (Internet 4). So, the total number of delegates would pass from 92091 to 71496, hence reduce at 22%. Here we can observe a classic dilemma «democracy versus economical efficiency». Thus, with a decreasing of delegates by 3678, the agglomerated communities will lose in average a quarter of seats which may entail a reducing of indirect participation of the population in local affairs. Besides, the French legislator provided a limitation of the weight of every municipality within the municipal council up to 50%. On the one side, this measure allows to ensure a comparable rate of the municipal representation, hence the equality between municipalities. On the other side, in certain cases connected to the demographic situation, a municipality represents more than a half of the population of intermunicipal entity and, consequently, this legislative limitation may restrict the local democracy.

This measure, potentially negative for the local democracy, may contribute to the reduction of the expenditures of local authorities. According to the study of impact, an agglomerated community, where an approximate amount of habitants is 85000 and the number of vice-presidents will pass from 18 to 12, would reduce the expenditures by 29%. A community of municipalities, where an approximate amount of the habitants is 8000 and the number of vice-presidents will decrease from 8 to 4, would entail a reduction of its expenses by 38%. Thus, by the conservative estimation made within the framework of the study of impact, for these two types of the municipalities the reduction of 49 % of the number of vice-presidents and thus, a reduction of only 20% of the salary costs would save 36 million euros.

We can summarize that the abolition of the municipal elections does not always mean a significant reducing of public costs, in the contrary sometimes their increasing is observed. The reducing of the number of local elected officials does not entail indisputably the economy of municipal budget funds as well.

### **Responsibility in front of the population of directly/indirectly elected mayors in the public finances field**

The local democracy assumes the local population possibility not only to participate in the decision-making, but also influence on the decisions already taken independently by the mayor and/ or the municipal representative body. One of the main goals of the municipal reform in Russia was the broadening of legal<sup>2</sup> or political<sup>3</sup> responsibility of local elected officials. The article 74-1 of the Russian federal law of 2003 stipulates an indirect responsibility in front of the municipality's inhabitants, this is the innovation introduced in 2009 within the municipal reform of the Russian self-government. Actually, a dismissal of the mayor is an intermediary form of responsibility, because a Council of deputies is able to dismiss the mayor by the initiative of deputies on the one hand (responsibility in front of the people), or by the initiative of the head of region on the other hand (responsibility in front of the State). Such responsibility is based on the mayor's decisions, actions (inaction) entailed inter alia a municipal past-due indebtedness exceeded 30% of own revenues and/or 40% of state grants, as well as a misapplication of budgetary funds during the exercise of certain state powers transferred at the local level. We can find in the Russian practice some cases which

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2 Legal in lato sensu, because the forms of responsibility were provided by the law.

3 Political in stricto sensu, because these forms do not represent the financial, criminal or civil liability.

prove a direct influence of this tool of local democracy on the public finances through ceasing the infractions and preventing the further ones in this field. Thus, on the 2nd of October, 2009 the deputies of the Blagoveshchensky district (Amursky region, border with China) dismissed their mayor because firstly, he had not fulfilled his obligations of decision-making on the local affairs and had not exercised his powers provided by the federal laws and the statute of the Blagoveshchensky district during more than three months and secondly, a past-due indebtedness of the municipality had exceeded 30% of own budgetary revenues in this financial year (Soloviev, Tchetvergova, 2011). On the one hand, this sanction could be considered as harmful for the direct local democracy because the mayor, dismissed by the deputies, had been chosen directly by the population. On the other hand, here we can observe a protection of the local population interests by their representatives (indirect local democracy). It seems to be efficient due to the fact that even if the federal law of 2003 (article 24) provides a possibility of the local elected officials' recall by at least 50% of registered voters by their initiative through the local referendum; in the reality a real mechanism of deputy's/mayor's recall does not exist.

As regards to France, there is no direct possibility for the population or its representatives to recall a mayor of their municipality. The article L2122-16 of the GCTE stipulates that the work of the mayor and his assistants, providing the oral or written explanations on the accusing facts, can be suspended only by a motivated ministerial decree for a maximum term of one month. The mayor and his assistants can be dismissed only by a motivated decree taken in the Council of Ministers. As for the members of the municipal council, under the article L2121-5, they can be dismissed in the case of non-compliance of their functions without an appropriate reason only by an administrative tribunal.

It is not rare in the world practice when the local population can not directly dismiss their mayor or dissolve the representative body. In Slovenia, according to the Local Self-Government Act, only the National Assembly is able to dissolve a municipal council at the government's suggestion in certain cases including the adoption of budget out of the legal time limits or to remove mayors from office under certain conditions. However, we should always remember about such tool of the local democracy as elections. Thus, the re-election of the mayor of the city Ljubljana is considered as a sign of the satisfaction expressed by the local citizens with regard to the local policy and the activities of the municipality, including financial decisions (Internet 1).

We should notice that the dismissal of the mayor by the municipal representative body may become a tool of the political pressure of the legislative power on the executive one. Besides, we can see in this sanction the intervention of one branch of power into the competence of another which is hardly compatible with the theory of the separation of powers – one of the main bases of the democracy.

### **Participation of the local population in the financial decisions**

Finally we arrived to the direct decision-making by the local population in the field of municipal finances. In certain Russian regions the legislation provides such type of own municipal revenues as a self-taxation. Under the federal law of 2003, the self-taxation funds are the once-only payments of citizens collected in order to finance the concrete questions of local significance. According to the article 56 (al. 2) of the above-mentioned federal law, this question should be decided by the population through the local referendum. But in the practice this tool of local democracy is expensive and complicated from the organizational point of view. Therefore, sometimes the municipalities could not use this revenue source legally provided (Internet 6). Nevertheless, recently the local referendum is applied quite actively in order to involve the local population in the financial decision-making process concerning a self-taxation. Thus, on March 14th, 2010 145 municipalities of 6 Russian regions organized such referenda (Republic Northern Osetia (Caucasus), Stavropolsky region (South of Russia), Rostovsky region (South of Russia), Kurgansky region (Southeast of Russia), Kirovsky region (Center of Russia), Altajsky region (Southeast of Russia)). The turnout of voters was relatively high, between 52,41% and 74,21%, only in 16 municipalities a low participation rate entailed recognition of the referenda as non-taking place (Internet 5).

Thus, in Kirovsky region the self-taxation became a source of the municipal budgets which is actively used since 2006. Already during that year the local referenda were organized in 10 municipalities and brought 268 thousand roubles (6 536 euros). In 2006-2008 the local budgets of Kirovsky region received 1 million 700 thousand roubles (41 463 euros) due to the self-taxation. For example, in the rural settlement Pishchalsky the local population decides through the local referendum about the self-taxation and hence, certain municipal expenditures since 2009. The inhabitants voted for the annual payment of 100 roubles (2,43 euros) by each voter. 25% of total revenue is spent for a roads cleaning, 32% – for a street lighting, the rest – for a garbage disposal (Trukhina, 2011).

In Russia the local population may decide not only about the self-taxation and some municipal expenses but also about the main

directions of the budgetary and tax policy of municipality. Thus, the gathering of local population in the Utainsky <sup>4</sup> adopted the Decree «About the elaboration, adoption, implementation and monitoring of execution of the perspective financial plan of the municipality» in 2009 (Internet 7). Besides, several versions of the perspective financial plan proposing by the Financial-Treasury Department of the Sakha Ministry of finances should be approved by the local population gathering. The results of the monitoring of execution of the perspective financial plan are also examined by the gathering and taken into consideration during the elaboration and adoption of the next three-year perspective financial plan.

We did not find any forms of the local inhabitants participation in the financial field of the municipalities explicitly provided by the French legislation. But since the law of 2004 adopted within the constitutional reform of 2003, the municipal voters may be consulted on the decisions appropriate to the competence of this municipality (article L1112-15 of the GCTE). Such consultation is organized by a relevant decision of municipal representative body but the initiative belongs to the one fifth (one tenth in some cases) of the registered voters (article L1112-16 of the GCTE). Besides, the article L2143-1 of the GCTE provides such form of participation of the population in the municipalities with 80000 inhabitants and more as a council of quarter. Such councils may be consulted by the mayor and may make proposals on the all questions concerning the quarter of the town. Therefore, by applying the above-mentioned articles of the GCTE, the local population can participate directly in the decisions concerning the public finances. According to the data of the Ministry of the Interior of France, between 2008 and 2009 17 municipalities organized the consultations with the voters concerning inter alia the following questions (Internet 8):

- municipal budget revenues including the reducing of public expenditures – exploitation of the sand pit, destruction of micro power plant, removal of the church bells, project of sustainable and solidary development of the municipality (both municipal budget revenues and expenditures);
- municipal budget expenses – maintenance of the church, project of sewerage.

However, we should remind that this is only the consultations, hence, the decision taking by the population through this tool of local democracy does not bound the local authorities.

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<sup>4</sup> Nasleg is the municipal (former family) settlements in the Republic Sakha (Yakutiya), the utmost North of Russia

For comparison: in Slovenia the local referendum can be hold on all questions except the budget, municipal taxes and other contributions (Internet 1), so we may consider the population participation in the municipal financial decision as zero.

Not only the application of the tools of local democracy influences on the public finances of the local self-government, but sometimes this process is opposite. Thus, one of the objectives of the municipal reform in France in 2010 was the delimitation and clarification of competences in order to reduce the crossed financing or co-financing made by the regional and departmental authorities which injure the principles of responsibility of the elected officials in front of the citizens and transparency of the public activity because the co-financing and crossed financing schema did not allow to identify the authors of the investments (Internet 9).

Besides, we can see some links between the tax autonomy of municipalities and the local democracy. Remind, that the tax autonomy is a part of the financial autonomy which is on of the main determinants of the local democracy. By using the preparatory documents for the constitutional law of 2003 (French constitutional reform of 2003), we can consider by the tradition shared between the majority and at least a part of opposition of the French Parliament a local tax autonomy as an inseparable part of the responsibility of executives officials in front of the voters (Internet 10). If the Center gives to the local self-government a possibility to develop the own tax revenues through a vote of local taxes even within the legislative limits, this measure can potentially serve to the responsibility of local elected officials by maintaining a narrow connection between these last ones and the citizens-taxpayers. Through this link the local population can observe for which services and equipments and how the local authorities spend their money and possibly influence on the supplied public services. Such measures foster the local self-government to use their finances more effectively. On the other side, there are certain apprehensions connected to the interaction of the tax autonomy, the local democracy and the municipal finances.

The local authorities can be under an excessive pressure from the part of the local population and in this case the municipal expenditures suffer from the degradation. Usually, from the economic point of view, the strengthening of influence provided by a local taxpayer on the tax decisions of local authorities is considered as a positive consequence of strong tax autonomy. From the legal point of view (Internet 11), such influence is examined as the counterargument. Thus, this link between taxpayer and administration limits a margin of tax action of local authorities, entails a heavy pressure exercised by a local voter on the

self-government and force the last one to reduce necessary public expenditures and hence, its freedom of choice of expenses even if an income is guaranteed. However, this negative impact can be significantly diminished by using some legal tools: the national legislator may stipulate the local self-government expenditures, mandatory for all municipalities (as the French legislator did). In the contrary, the Russian experts distinguish only a positive impact of the broaden tax autonomy on the local level on the increasing of the responsibility of the both local elected officials and voters (Internet 12). Thus, they consider that the possibility of the municipal competence to establish the taxes non-provided by the federal legislation can entail a growth of responsibility of the local self-government regarding the municipal financial policy and a decrease of «parasitism» spirits in the municipality, as well as an increasing of the voters responsibility for the results of their own electoral activity. And actually they are not wrong, the tax autonomy can really contribute to the dialogue between the local population and municipal authorities. This is “only” a challenge to find a golden mean of the tax autonomy of the local self-government.

## **Conclusion**

The purpose of this paper was to reveal in which aspects and how the local democracy was connected with the finances of the local self-government from the legal point of view. We distinguished three main fields of interaction.

The analysis of the first one, the direct elections of local officials and its impact on the municipal finances, allows concluding that the abolition of the municipal elections does not always lead to a significant decreasing of public expenditures, in the contrary sometimes their increasing is observed. The reducing of the number of local elected officials does not obviously save the municipal budget money as well.

As regards the second aspect, the responsibility in front of the population of directly/indirectly elected mayors in the public finances field, the existence of legally provided tools of the mayor dismissal by the population through their representatives – deputies of the municipal council – can entail a political pressure and the non-compliance with the separation of powers principle. When the recall/dismissal possibility is in the hands of the local population directly, it can cause the excessive voters pressure on the local authorities, which is sometimes harmful for the structure of municipal revenues and expenditures.

Finally, as for the third aspect, the participation of the local population in the financial decisions, such participation in the direct form is relatively



rare. Normally the financial decision are taken by the representative bodies and/or mayors. On the one hand, this situation can be considered as a restriction of the local democracy. On the other hand, we can argue that such decisions and especially their consequences should be taken and evaluated by the specialists. But immediately we have to remember the problem of the local elected officials professionalization. However, this possible discussion is more in the study field of sociologists: it seems that they are able to make a research on the educational and professional background of the municipal deputies and mayors in order to determine whether the financial policy of the municipalities is elaborated and implemented by the specialists.

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# **PRESERVATION OR DEGRADATION OF LOCAL CULTURAL ASSETS IN CENTRAL TOKYO – THE CASE OF THE PLANS TO RELOCATE THE TSUKIJI FISH MARKET**

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## **Abstract**

Most cultural-led redevelopment projects in today's global cities are devised with the clear objective of stimulating their economic growth. Redevelopment schemes usually aim to develop consumption services and urban settings to make the city more attractive for investors. In many cases, redevelopment has led to a diminishment in diversity of local cultural spaces in the inner-city areas. Historically and socially important services and institutions like Tokyo's Tsukiji Fish Market tend to be relocated and replaced by less traditional and culturally less attractive spaces. This short-term strategy cannot really succeed in preserving or integrating local cultures, which may in the long run help Tokyo to become distinctively different from other global competing cities and to benefit from these advantages. The article analyses the plans to renovate or redevelop specific local consumption spaces in Tokyo, and explores what mechanisms and strategies are being used by the involved actors to accomplish their goals.

**Keywords:** urban policies, culture, preservation

## **Introduction - competitive (global) urban policies and the diminished importance of local consumption spaces**

The prosperity of today's global cities largely depends upon preserving their comparative advantages, networking capabilities and efficient management of the economic strategic resources that provide adequate conditions for the city's fast economic growth. In order to follow this scheme, cities are required to implement very competitive urban policies, exerting heavy pressure at the local level. Competitive urban policies are directly reflected in urban redevelopment projects that strive to concentrate the consumption activities, products, information, urban

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settings, and events that make the city attractive to investors, visitors, and affluent groups of the population. The article focuses on the processes of transformation affecting the remaining locally embedded consumption spaces in central Tokyo. More specifically, it explores the attempts and plans to relocate, renovate, or redevelop these spaces to stimulate the city's economic growth. To gain better insight into the extent of these transformation processes, we took a closer look at a particular urban redevelopment scheme, the plans to relocate the Tsukiji Fish Market, located in one of Tokyo's central wards (Chūō-ku). Although the Tsukiji Fish Market is symbolically, historically and socially one of the most important local consumption spaces in the city, the spatial plans of the Tokyo Metropolitan Government<sup>2</sup> (2006) have once more made it one of the focal points of the city's future redevelopment.

Most urban redevelopment projects may indeed introduce new qualities (e.g. new shopping areas, improved traffic infrastructure, new green spaces) to the transformed areas, but the basic objective remains economic growth. Competitive urban policies bring new economic resources to the city, but redevelopment often leads to a diminishment in diversity of consumption spaces at the local level. Many unique, vibrant, culturally and socially important consumption spaces, like the small economic subjects, local establishments, which in the past contributed to "urbanism as a way of life" (Wirth 1938, 2000), are being either removed, transformed, or substituted with high street shops, exhibition halls, exclusive shopping malls, and other consumption spaces of the type found in any metropolis around the world. As such, the diminishment in diversity of consumption spaces refers not only to the reduced heterogeneity of ethnic, cultural, historical elements present in these spaces, but also to the diminishment in variety of activities, services and experiences, constituting and integrating local communities and granting specific identities to these spaces. Local consumption spaces therefore cannot be simply defined as any open/closed space where the operation of trade, the exchange of materialized economic value, is performed, but also as places constituting networks of personal relationships and sustaining special forms of "embodied" and "institutionalized cultural capital" (Granovetter 1985; Bourdieu 1986; Thornton 1997).

When it comes to transforming local consumption spaces, Tokyo is not an exception in comparison to other world cities. Nevertheless, Tokyo has special features that intensify these processes. During its short modernisation history, which started about a century and a half ago, Tokyo has climbed from the position of a rather peripheral Asian city to

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2 Below referred to with the abbreviation 'TMG'.

that of a nodal point for international trade, investment and headquarter operations. As one of the main centres for the operation of global capital, Tokyo is often described in terms of a “world city” or “world-class city” (Sassen 1994, 2001; Taylor 2004). Although Tokyo has a strong position in the global system, it has to constantly renew its status against the rival cities that try to divert the flows of foreign investments, transnational corporations and tourists.<sup>3</sup> Machimura (1997, 149) mentions that there are huge differences between Tokyo and other primary world cities in the core countries. Compared to New York or London, Tokyo lacks a more “ethnically and culturally diverse nature” and does not have a long history as an immigrant destination. Both London and New York have long histories as centres, not only of economic, but also global political power; combined with their great influx of international immigrants, this presented them with a favourable starting point for trade, exchange of information, and creative industries. Tokyo, on the other hand, is a “purely economic world centre” (ibid.), distant from the western countries, and consequently highly dependable upon the network system, advances in telecommunications, and transport technology, and the city is therefore compelled to implement a competitive urban policy in order to keep up the economic pace.

Globalization policies carried out within the city generate strong ambivalences at the local level. By stimulating competitive urban development they both enable economic growth and exclude small local actors, who generally are not capable of joining the big “growth coalitions” (Logan, Molotch 2007). Especially areas occupying strategically important spaces in the city, full of less profit-oriented small economic services accumulated in the past, now experience huge pressures from urban developers. These developments enhance our awareness of the importance of alternative or non-standardized local consumption spaces, which represent an important cultural asset but are gradually being driven out to marginal locations and replaced by less traditional and culturally less attractive spaces.

Though the article centres on an analysis of the effects of the possible relocation of the Tsukiji Fish Market, it also tries to address the problem of diminishment in diversity of local consumption spaces from a broader perspective. Based on qualitative analysis of interviews the article tries to identify various views, opinions and ideological perceptions of the

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<sup>3</sup> Based on a network analysis of global producer services, Taylor (2004) identifies Shanghai, Seoul and other Asian metropolises as cities that would like to join the prestigious club of cities with the highest global connectivity index like London, New York, Hong-Kong, Paris, and Tokyo.

different actors involved in the process of relocation. Analysing the attempt to relocate the Tsukiji Fish Market is actually an investigation into the discourse strategies used by the various actors to support their arguments. The discourse of the city authorities is confronted with that of other important city actors involved in the spatial transformation of Tokyo. Comparisons between the groups reveal huge discrepancies in the perceptions and orientations on how to continue with the redevelopment of local consumption spaces. These discrepancies are thoroughly explored in the article as they may in the long run lead to the process of redevelopment that would diminish the value of local cultural assets and attractiveness of the central wards for specific groups of users. Consequently, these processes could reduce the advantages of rich cultural heritage that Tokyo has in comparison with other global cities.

### **Diminishment in diversity of local consumption spaces – from reflexive to instrumental spaces**

In the context of globalization and competitive urban planning, the process of diminishment in diversity is obvious from the specific organization of space, aimed at attracting global capital investments and maximizing the city's profits (Harvey 1989; Friedmann 1995). The consequence of this primarily urban-growth oriented formula is reflected in the accumulation of similar elements, i.e. the homogenization of world cities whose economic bases, social structures and spatial organizations are becoming more and more alike. Even though New York, London, and Tokyo have different types of market economies and are governed by different political and cultural systems, their common denominator remains a trend towards concentrating global capital flows. Striving for their cities to have greater appeal and a globally competitive edge, their business and political leaders do not want to risk disappointing potential investors, and they resort to an organization of space that will yield the highest level of economic profitability in the shortest possible time. This results in a new cultural and commercial redevelopment strategy which by "...rebuilding the centres of cities produces an instantly recognizable corporate zone with cultural amenities for a discerning 'global eye' ..." (Zukin 2009, 23). Similar developmental ideas, connected with the expansion of branded businesses, shopping and cultural quarters, are applied in many cities around the world, resulting in turn in a pronounced homogenization of central areas.

Zukin (1998, 825) notes that city governments tend to rely on "strategies that 'aestheticise', or focus on the visual consumption of public space - although this has been accompanied by an increase in private groups' control over specific public spaces". By distinguishing between

'acceptable' and 'non-acceptable' elements, authorities establish specific rules or standards to be applied in the course of urban redevelopment processes. This evaluation process produces standardised spaces, resulting in uninspiring urban impulses, depleted of local identity elements and experiences.<sup>4</sup> Analyzing urban lifestyles, Donald (1999) writes that the balance between the Apollonian and disciplinary dimensions of modernity in the city has been upset. The latter dimensions are greatly endorsed by municipal authorities, which try to remove, or at least camouflage, all traces of social conflict and chaos, which are an equally important aspect of urban experience. Sennett (1996) explains that the body becomes more stimulated when confronted with difficulties and ruptures in the routine of everyday life. Moderate impulses of confrontation and stress are necessary elements for stimulating and enlivening the senses, enabling the individual to acquire specific life experiences through the process of entering a dialogue with the environment and negotiating with it. These experiences also serve the individual to construct self-identification and establish personal defence mechanisms for coping with the challenges of everyday life. Standardised spaces cannot fully reproduce the excitement of heterogeneity and unexpected events. In fact, these spaces reproduce impulses of planned stress, i.e. adrenaline surges or amusement advertised by multifunctional shopping malls and theme parks, but they cannot provide opportunities for experiencing real social confrontations or ambivalent urban situations of the kind a person needs to experience to construct a socio-critical view of society.

The processes of standardization of spaces combine with changes that have occurred to the notion of urban lifestyle and the use of public spaces. Although urban lifestyles tend to become more diversified through individual switching between the use of one or another lifestyle (Featherstone, 1991), urban spaces and their users are also inherently more consumption oriented. Zukin (1991, 2009) notes that cities are no longer seen as landscapes of production, but rather as landscapes of consumption, relying on the offer of standardized products and spaces to stimulate urban growth. In order to create a more attractive space for consumers, urban planners tend to organize public space on the basis of a safe and highly controlled environment, functioning as a "theatre in which a pacified public basks in the grandeur of a carefully orchestrated corporate spectacle" (Crilly 1993, 153). In a similar vein, Tanaka (1994, 58) writes that the reconfiguration of Tokyo's commercial landscape in

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<sup>4</sup> Zukin (1998, 2009) mentions various cases of 'sterilization' of space (e.g. Las Vegas, Disney World, Times Square in New York), which combine protection of visual appeal with strict measures of surveillance and control over space.



the 1980's gave rise to a number of mediated urban spaces that relied on "cultural guidebooks", fashionable urban lifestyle magazines, which reshaped people's perception of consumption in the city. In effect, new navigation charts commodified urban spatial units as readily consumable products, saturated with pre-prepared fashionable contents for potential consumers.

Along with commodification pressures, it seems that public spaces are losing features of "heterogeneous reflexive placeness" and acquiring features of "standardized instrumental spaceness" (Hocevar 2000, 140). Standardized instrumental spaces are related to the features of homogenization, universality and globalization. From the perspective of everyday users, they represent a reliable structure or 'container', functioning according to well-known patterns of social behaviour. Instrumental spaces also operate as mediators, means, and factors, helping users to accomplish specific goals and they are strongly associated with the use of infrastructural networks. Reflexive spaces, on the other hand, are closer to the features of diversity, distinctiveness, and individualization. They are embedded in a specific context, which to some extent does not depend on the larger structure. They are "alone according to the context, goal and source (resource) of actors' activity" (ibid.). Reflexive spaces are based on an active process of self-organization and self-realization, creating unique spatial identifications with a very unpredictable span of duration. The distinctions between instrumental and reflexive urban spaces are presented in table 1.

**Table 1: Comparative features of instrumental and reflexive urban spaces**

INSTRUMENTAL SPACES	REFLEXIVE SPACES
Similarity (homogenization, indistinctiveness)	Diversity (heterogenisation, distinctiveness)
Exchangeability (universality, standardization)	Irreplaceability (uniqueness, particularity)
Repetitiveness	Occasionality (periodicity)
Rational selectivity (expediency)	Reflexive selectivity (contextuality)
Monotony (routinization, incumbency)	Dynamics (agitation)
Streaming (circulation)	Presence (attendance, stabilization)
Physical accessibility (transitoriness, access)	Joining (accession, participation)
Performance (necessity, usefulness)	Happening (desirability, event)
Atemporality (timelessness, durability)	Temporality (temporariness, fluidity)
Consolidation (fixed dependency)	Embeddedness (situated dependency)
Applicability (cognitive utility)	Expressiveness (symbolic-aesthetic expressiveness)
Materiality (resource)	Symbolism (source)
Anticipation (expectedness)	Surprisingness (unexpectedness)

Source: Hocevar, M. (2000). *Novi urbani trendi; Prizoriska v mestih - omrežja med mesti* (New Urban Trends; City Scenes – City Networks). Ljubljana, Znanstvena knjižnica.

Every public space in the city contains elements of both instrumental and reflexive spaces. In general, an efficient public space model comprises features of both types and the mixture will depend on the local context. A similar view can be applied when analyzing current transformations of local consumption spaces. Whereas traditional local consumption spaces had a lot of elements of both reflexive and instrumental spaces, they have recently been undergoing changes and acquiring more features of instrumental spaces. We may then speculate that traditional consumption spaces are losing specific elements of “cultural capital” found in embodied, institutionalised or objectified state (Bourdieu 1986, 248-250). The cultural capital in embodied state is represented in the individual, as a type of socialisation that has shaped his or her personality and is strongly linked to one's habitus - a person's

character and way of thinking.<sup>5</sup> The embodied cultural capital is linked with institutionalised cultural capital, represented in the individual's institutional perceptions, and most often understood as a credential or qualification acquired in the process of 'schooling - education' at a specific institution (*ibid.*). Objectified cultural capital is found in material things such as scientific instruments, works of art, or architecture. These cultural goods in physical form can be translated into economic capital and today represent a well-established form of commercial entity.<sup>6</sup>

In specific occasions, competitive urban planning intentionally evades such complex definitions of cultural capital. By taking into consideration the features of instrumental spaces, redevelopment procedures often tend to concentrate on the mere physical preservation of objectified cultural capital. The shift from reflexive to more instrumental spaces may thus be marked by a shift in the level of preservation of the specific forms of cultural capital present at a specific locality undergoing redevelopment. Such redevelopment orientations cause the diversity of cultural elements of consumption spaces to be reduced by redeveloping whole streets of small, local establishments and substituting them with "Disneyfied" (Serizawa 1987; Zukin 1991, 1995) shopping districts, offices, gentrified housing units or theme parks. Even when the redeveloped areas include a mixture of various elements in the form of interrelated offices, housing, restaurants, museums and street structures, the new urban arrangement usually does not support close coexistence of different social groups, luxury and cheap shopping spaces, or highly (corporate) and non-profitable economic activities. Consequently, the collateral damage of redevelopment projects is evident in the spatial segregation, adapted forms of zoning and gentrification processes.

How to establish spaces of non-destructive coexistence of different interests, less compatible functions and distinctive lifestyles, is one of the most subtle challenges of (post)modern planning. How to overcome the principles of exclusion, zoning or gentrification, which may be subdued, but are still present during the redevelopment process? The most attractive and picturesque scenes in a city are usually found in

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5 While people can possess objectified cultural capital by owning a house or a painting, they can only 'consume' a painting, i.e. understand its cultural meaning, if they have the correct type of embodied cultural capital (Bourdieu 1986).

6 Cities with a rich cultural-historical heritage (e.g. Venice, Florence), important museums (e.g. Louvre, Prado) or art galleries (e.g. National gallery) have relied on this type of capital for centuries. By using various marketing and promotional strategies they convert cultural capital into economic capital.

places with the highest contrast between apparently non-compatible ingredients. Such concentration of extremes and diversities is undoubtedly highly problematic and potentially conflictive. For these reasons, specific formal and informal spatial regulations undoubtedly have to be in place - not with the intention to exclude, but to integrate and enable the coexistence of various groups, institutions and services. The following chapter describes what various actors involved in the redevelopment of the Tsukiji Fish Market view as the most suitable form of applying spatial regulations. The official redevelopment scheme, proposed by the city authorities (TMG 2006), is supposed not to harm the existing coexistence of groups, institutions and services in the market. However, our analysis of the interviews revealed radical differences in opinions between specific groups, implying that an important part of the socio-cultural features at the present locality may be irreversibly transformed during the redevelopment process.

## **Analysis of the issues connected with the relocation of the Tsukiji Fish Market**

### **Contextual description of the Tsukiji Fish Market**

Tokyo is a so-called “postmodern multi-centred city” (Soja 1996) with not just one distinguishable centre, but a network of centres supplementing each other’s functional roles. In accordance with the urban structure, the areas under the greatest pressure of redevelopment are located around the central terminal stations of the suburban railways and main stations on the Yamanote Train Loop. Because of their exceptional location, the areas close to the main transport hubs face great transformations. Yet, even in these areas one can find spaces which have managed to establish themselves as niches in the redevelopment process. According to the data from the research studies “Social atlas of Tokyo” (Kurasawa 1986) and “New social atlas of Tokyo” (Kurasawa, Asakawa 2004), these non-standardized spaces mostly constitute of ‘small pockets’, i.e. limited areas with a special functional and social structure, which for various reasons managed to escape intensive redevelopment and commodification. Many of these small pockets<sup>7</sup> can be found in various central areas of the city, including the Tsukiji Market, which is located in

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7 Examples range from miniature areas, pockets like Omoide-yokochō, “Memory Lane” or colloquially ‘Piss alley’ (a small alley full of yakitori bars, eateries near the Shinjuku station) to bigger areas like the Shinjuku Golden Gai (a small network of alleys full of tiny bars and eateries), as well as neighborhoods like Shimo-Kitazawa (a vibrant area full of second-hand shops, galleries, studios, bars, cafés etc.). Recently, all these have been facing great challenges due to intensive redevelopment processes that try to change their social, economic and functional structure (see Echanove 2006).

Chūō-ku,<sup>8</sup> between the district of Ginza and Tokyo bay. Chūō-ku lies on the “gentrification frontier” (Smith, 1996), which encompasses Tokyo on the periphery and extends from Shinjuku-ku, Shibuya-ku, Ikebukuro to the west, to Ueno, Asakusa, Sumida-ku, Edogawa-ku to the north and east (Uemura 1989; Kondo 1990). The area of Chūō-ku is interesting for further analysis, not only because it is close to some of Tokyo’s central commercial areas, but also on account of the many brown fields, which are being redeveloped into commercial and business areas following the relocation of industrial plants. As such, the area is subjected to more intensive redevelopment and commodification processes.

The Tsukiji Fish Market<sup>9</sup> is the focal point of the food and culinary industry in Tokyo and influences the whole chain of seafood distribution in Japan and wider. It functions as the main hub linking Japan’s domestic fishing and food industries to international networks. Day after day, tons of fresh fish are delivered to Tsukiji by plane from all around the globe, to be sold at the auctions. The Tsukiji Fish Market has an approximate 15 percent share of all the seafood that goes through Japan, but even more importantly, it is a special cultural and economic institution that helps to determine the prices of specific seafood at the global level. The market functions as a cultural institution in the sense that it promotes specific culinary trends and governs what is fashionable or not in the field of seafood preparation. In this form, it functions as a central node for accumulating human potentials in specific fields of culinary culture and industry. The Tsukiji Fish Market operates as a delicate structure of social relationships, concentrating a great deal of knowledge about the preparation of seafood in Japan.

The marketplace is a good example of how unique and complex forms of cultural capital can be. All three forms of cultural capital can be found here. The old functionalist architecture, influenced by Bauhaus and the International Style, stands for objectified, i.e. materialized cultural

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8 The area of Tokyo City is divided into 23 special wards (tokubetsu-ku), which have special administrative relationships with the prefectural and metropolitan government. The Chūō-ku or Chūō ward is historically one of the three core wards of Tokyo, together with Chiyoda and Minato. The Chūō ward consists of several districts, one of them being the Tsukiji district where the wholesale market is located.

9 The Tsukiji Central Wholesale Market (Tsukiji Shijō) is the world’s largest seafood market. Although most of the market’s area is occupied by the seafood division, a small part of the market includes a division with a variety of other food products. When referring to the seafood division, we will use the term Tsukiji Fish Market (Tsukiji Uoichiba) or TFM, and the term Tsukiji Market (Tsukiji Shijō) will refer to the entire market, including both divisions.

capital. The institutionalized and embodied forms of cultural capital are less visible on the surface, but they are in fact the most important part of the marketplace's cultural heritage. Bestor (1999) explains that the marketplace and its provisioning roles are "generators of cultural meaning", where "traders – both small and large scale<sup>10</sup> – regard themselves as stewards of Japan's culinary heritage, a significant source of cultural capital"(1999, 203-209). The Tsukiji traders and their knowledge about seafood, accumulated over generations, represent embodied and to some extent institutionalised cultural capital. As Bestor describes: "Traders possess cultural capital through their affiliation with the upscale marketplace that lays claim to great historical venerability. At the same time, their cultural positions are reproduced and reinforced daily by their central involvement in disseminating and creating the distinctions among foodstuffs upon which the restaurant trade as well as amateur connoisseurship depend" (ibid.). The role of the traders and the importance of their cultural capital is most evident from the marketplace's auction system, the principal mechanism determining the prices of specific types of fresh seafood. The auction enables traders to show their unique skills, knowledge and to confirm their reputation as primary judges of the quality of fresh seafood. Because of its importance to the cultural and economic structure of Japan, it is not surprising that the debate about the possible relocation of the Tsukiji Fish Market raised a number of problematic issues.

The marketplace is located just a few blocks away from the glittering lights of Ginza, one of Tokyo's most famous shopping districts. The headquarters of some of Japan's leading companies like Dentsu and Asahi Shimbun are located in its vicinity. New business and commercial areas are constantly emerging in the area, and together with the protected Hama-rikyu gardens they now virtually encircle the Tsukiji market (see figures 1 and 2).

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10 The market has a complex internal socio-economic structure. The main actors at the market are 7 primary wholesalers or auction houses, which sell seafood to approximately 800 intermediate wholesalers and 350 authorized buyers (see the Tsukiji Market's official web page: [http://www.tsukiji-market.or.jp/tukiji\\_e.htm](http://www.tsukiji-market.or.jp/tukiji_e.htm)). All the socio-economic actors require a special license, issued by the TMG, to operate in the market. The authorized buyers have the right to participate at the auctions, but not to resell the seafood in the market. This group consists of agents buying seafood for big customers like supermarkets and restaurant chains. The intermediate wholesalers not only have the right to participate at the auctions, but also to resell the seafood from their stalls in the market. The intermediate wholesalers sell seafood to more than 30,000 small buyers, who come to Tsukiji on a daily basis.

Figure 1(left): Part of the Tsukiji Market (left from the bridge) and the new high-rise estates to the north-east of Chūō-ku

Figure 2 (right): Day-time operations at the Tsukiji Market and the redeveloped area in the background (e.g. Dentsu Incorporated building, Asahi Shimbun newspaper building)



Source: Photographs taken by Matjaz Ursic (14.8.2009)

The unique position of the Tsukiji Fish Market, which sits on one of the world's most expensive building grounds, has provoked numerous plans, talks and rumours about its reconstruction or rebuilding at a new location

in the past.<sup>11</sup> So far, all the announced plans have been abandoned or have been realized only in part. The most ambitious plan for reconstruction at the present location was unfolded in 1990, when the TMG presented a vision of a technologically sophisticated complex, which would integrate all possible infrastructures needed for the marketplace's functioning. The existing pre-war structures, some of them built in the 1930s, were to be gradually replaced with adequate modern buildings. Reconstruction began in 1990, but was stopped in 1996 after the governor elections and the restructuring of government funding. During this period only one of the great buildings was finished – the multi-storey garage - while the marketplace continued to operate in its pre-war buildings.

In 2001, a new plan for the area of the Tsukiji market was presented by the TMG. The plan changed from reconstruction to complete relocation and building a new modern market at a location in Toyosu island in Tokyo bay. The relocation plan raised a number of issues dividing the public, city authorities, and the workers at the Tsukiji Fish Market into two groups, one opposed to and the other supporting relocation.

Besides the problems with contaminated soil on the de-industrialised land of Toyosu<sup>12</sup>, some of the most problematic issues related to the tangible and intangible cultural heritage that would be lost by the relocation.

To analyse the problematic issues of the Tsukiji Fish Market's relocation, we performed a series of in-depth interviews with the various actors connected with the marketplace and wider spatial processes in Tokyo. The information acquired through these interviews was then combined with field on-site observations of Tsukiji and its neighbouring environments. The analysis included diverse information, but the primary

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11 For example, in the official announcement of Tokyo's bid for the Olympics 2016, the area of the Tsukiji Fish Market was designed to be cleared to make way for the media center or Olympic Village (see Mainichi Daily Hantai News, 28th April 2006), while the TMG's 2006 spatial plan, called "Tokyo's big change – The 10 year plan", included a series of traffic infrastructure projects for this location.

12 According to the preliminary blueprints, the Tsukiji Fish Market is to be transferred to a vacant lot owned by the Tokyo Gas Company. The soil analysis from the area drew a lot of attention from civil groups because of the high degree of soil liquefaction and concentration of heavy metals and other toxic waste. The construction of a seafood market on unstable and contaminated land could present a potential risk in the case of earthquakes, floods or corrosion of building materials. This article does not deal with the environmental problems, because its main focus is on the analysis of the social and cultural issues connected with the market's relocation.



data came from in-depth interviews with representatives of official institutions, economic and civil groups, as well as local leaders familiar with the planned relocation of the Tsukiji Fish Market. More specifically, the interviewees included: traders at the Tsukiji Fish Market (intermediate wholesalers), experts on Tokyo's and Japan's spatial issues (urban sociologists, planners, architects), TMG officials involved in spatial issues, adjacent residents (up to 500m from the location), residents from other parts of Tokyo (outside the Chūō ward), and representatives of the civil initiative for the preservation of the Tsukiji Fish Market. Each interviewed group consisted of 5 to 6 persons, while the total number of performed in-depth interviews was 34. The method of interviewing was based on a semi-structured questionnaire or "structured open-ended interview" (Kitchin, Tate 2000, 213), according to which the interviewee's responses were not fully constrained to the categories provided by the interviewer. Using this method, all the interviewees were asked the same basic questions in the same order, but given the opportunity to change their mode of response and add their own opinions. The interviews were performed in August and September 2009.

In the analysis of the interviews, several discourse analytical methods (Fairclough 1992; Wodak 2001; Verschueren 1995) were used. The analytical approach did not follow the conceptual schemes of specific authors in detail, but was developed as a mixture or combination of various discursive approaches. To be even more exact, the used methodological approach cannot be defined as discourse analysis, but more appropriately as text analysis fitting into the field of discourse analysis. The basic intention was to establish an approach that would explore and reveal the fabric of meaning production in the case of the various groups connected to the issue of the marketplace's relocation in a simple and adequate manner.

The comparative analysis of the interviews revealed how the different groups, in which the individuals are embedded, produce different discourses in order to have a certain effect on the listeners. Discourses can be described as "patterns in argumentation" (Cruikshank 2003, 4) in the sense that opinions about a specific subject can be connected to other opinions about related subjects. Based on the numerous connections between related subjects, discourses have the form of 'solid' structures, which have "an intrinsic logic between different opinions and meaning connected to them" (ibid.). The main subjects of discourse analysis are therefore not fragmented opinions emerging in conversation, but entire patterns of meaning, i.e. meaning systems.

The analysis of meaning systems within the various groups enabled us to differentiate between real (actual) and potential (apparent) interests, relations and processes generated by the debate concerning the relocation of the Tsukiji Fish Market. The analysis shed light on a great variety of communication, i.e. discourse techniques, used by specific groups to try and legitimise their interventions in space and gather sufficient public support for them. By emphasising some themes and arguments and silencing other, unpleasant ones, below the threshold of attention, these groups try to steer the public discussion towards 'desirable' topics.

**“Location does not matter” - Instrumentalisation of the Tsukiji Fish Market in debates on the marketplace’s relocation**

The Tsukiji Fish Market contains various forms of cultural capital, which are not recognized in the same way by all the interest groups involved in the issue of its relocation. Unsurprisingly, the central issue of debate in the interviews was the definition and value of the intangible cultural capital, revealing sharp distinctions between the perceptions, opinions, and use of arguments between the different actors.

Based on opposition/indifference/support to the marketplace’s relocation, the interviewed groups can be divided into three clusters. These three clusters are further differentiated by the intensity of using instrumental/reflexive features to describe the marketplace. In most groups the members stated that the Tsukiji Fish Market comprises features of both instrumental and reflexive spaces. Consequently, each group could be included in several clusters. However, for the clarity of this analysis, some secondary or residual group features were excluded and specific groups were judged only according to the dominant feature (see table 2).

**Table 2: Dominant features of clusters, divided by opposition/indifference/support to the marketplace’s relocation**

	1st cluster SUPPORT to relocation	2nd cluster INDIFFERENCE to relocation	3rd cluster OPPOSITION to relocation
INSTRUMENTAL features	XXX	XX	X
REFLEXIVE features	X	XX	XXX

\* The sign “X” shows the presence of a specific feature and the number of signs shows the intensity- the cluster’s dominant feature

The first cluster consists of groups favouring relocation and they mainly associate the Tsukiji Fish Market with features of instrumental spaces. The second cluster is composed of groups that are more or less indifferent about the relocation and equally use features of instrumental and reflexive spaces. The third cluster includes groups opposing relocation and these largely describe the Tsukiji Fish Market with features of reflexive spaces. Groups tending to use the features of instrumental spaces more intensely are also more prone to deny the presence of more complex forms of cultural capital at the Tsukiji Fish Market. On the other side are groups which mainly use the 'rhetorics' of reflexive spaces and acknowledge the marketplace's complex forms of cultural capital. How the interviewed groups differ by described features is presented in table 3.

**Table 3: Interviewed groups and their main features**

Interviewed groups, actors	Support/ Indifference/ Opposition to relocation	Types of recognized cultural capital by specific group	Use of DISCOURSE TYPES by specific groups
a) TMG officials involved in spatial issues	- strong support for relocation	* weak materialized	1. safety (hygienic, catastrophic) 2. economic (neo-liberal) 3. professional (functional, technician, systemic)
b) residents from other parts of Tokyo	- advocacy	* weak materialised	1. consumer discourse 2. lay discourse
	- indifference	* weak institutionalised	
c) experts in the field of spatial issues in Tokyo and Japan	- indifference	* weak materialised	1. lay discourse 2. culturalist discourse
	- opposition	* weak institutionalised * weak embodied	
d) residents in close vicinity (500m) of the TFM	- opposition	* weak materialised ** strong institutionalised ** strong embodied	1. localist discourse 2. economic (consumer) 3. nostalgic
e) traders at the TFM	- opposition	** strong materialised *** very strong institutionalised *** very strong embodied	1. nostalgic (culturalist) 2. participative (social, egalitarian, collective, activist) 3. economic (consumer)
f) civil initiative for the Tsukiji Fish Market	- opposition	*** very strong materialised *** very strong institutionalised *** very strong embodied	1. activist (ecological) 2. culturalist discourse 3. participative (social)

\* the intensity of shading or the number of asterisks suggests the level of affirmative perception of the listed categories: the higher the number of signs/intensity of shading, the more in favour of the category/proposal the opinion of representatives from a specific interest group is.

In line with the level of their opposition/support to relocation, the way they resort to reflexive/instrumental features and their recognition/disregard of complex cultural capital, the groups use different types of discourses to support their arguments and reject the opponents' opinions. Members of the first and partly second group, including TMG officials and residents from other parts of Tokyo, used specific discourses to support relocation. Especially the group of TMG officials strongly advocated relocation, whilst a part of the group, composed of Tokyo residents, was more restrained in their opinions, but still more or less supported relocation for various reasons. The group of TMG officials often decidedly used the safety, economic and professional (functional) discourses to support their arguments (see table 4). Because of the great variety of discourses in the interviews, only a few examples of the most common discourses are presented (emphasized in italics) in tables 4 and 5 to show the basic rhetoric strategies used by specific groups.

**Table 4: Types of discourses used by groups in favour of relocation**

Discourse	Example
Safety discourse	<p>"The market is in bad hygienic condition due to its outdated infrastructure ..."</p> <p>"The market cannot provide appropriate security standards in case of fire, earthquakes or other natural disasters..."</p>
Economic discourse	<p>"The fish market has a great potential, but not in the present state, its potential is non-developed, non-existent..."</p> <p>"...the relocation (of the market) will benefit the trade and help all the employed at the TFM."</p> <p>"It (the relocated market) will provide clean, safe, comfortable and specialized tourist facilities..."</p>
Professional discourse	<p>"The experts think the only solution is to relocate the market..."</p> <p>"Based on professional opinions, the new location will improve the performance of the TFM ..."</p>
Consumer discourse	<p>"Sometimes, I go to buy food in the morning but it's too crowded and not really clean and tidy"</p> <p>"It's just a market where I go from time to time to buy fish"</p>

One of the most common rhetoric strategies in the safety discourse was the use of terms associating the marketplace with the process of irreversible deterioration. In the debate, the emphasis was strictly on the

process of the marketplace's degradation, while terms associated with the process of renovation and regeneration of the Tsukiji Fish Market were as good as absent. The safety discourse was often linked with the professional discourse, focusing on functional aspects of deterioration and perceiving relocation as an improvement, which would eliminate dysfunctional elements, i.e. "improve the market's performance". During the interviews, some group members identified these dysfunctional and "disturbing elements" as "bad hygienic condition" or inappropriate "security standards in the case of fire, earthquakes or other natural disasters". Simultaneously, the use of an economic (neo-liberal) discourse was strongly present in interviews with members from this group. The importance of economic arguments and the financial welfare of all the actors involved were frequently stressed. Superficially, TMG officials agreed that the Tsukiji Fish Market represents an important economic entity with a long tradition, but that this would be respected and recreated at the new site in Toyosu. According to them, changing the location of the economic activity will not influence the market's basic functioning, but on the contrary benefit the traders due to improved working conditions, better technical infrastructure, sanitary standards, tourist facilities and expanded shopping and storage space. The aspect of tourism, recreated at the new facility and location, was perceived as the fish market's great economic potential by this group. The interviews revealed that the members of this group imagine the potential in the form of a standardized mass tourist attraction - "clean, safe, comfortable and specialized tourist facilities", separated from the actual marketplace, which at present includes in an integrated form a mix of production, trading and auction areas. To support their arguments, they often resorted to the professional (functional) discourse, trying to convince the other discussants to accept 'facts' based on 'professional' knowledge. This rhetoric strategy is based on the presumption that the other discussants will accept expert opinions without questioning them and single out this group as 'people who know the truth'. However, it is not clear who exactly is supposed to be part of the profession (expert team) that demands certain measures.

One part of the group of Tokyo residents voiced support for relocation based on information gathered from the mass media. To justify their support for relocation they mainly relied on the consumer discourse, emphasizing the reasons that would offer them a comfortable, reliable, clean, safe shopping experience at the fish market. At the same time it turned out that members from this group tend to identify more with Tsukiji's 'outer' market, not with the 'inner' wholesale fish market. The outer market is situated alongside the Tsukiji Fish Market and is excluded from the redevelopment and relocation plans. The

neighbourhood offers a number of restaurants, shops and other consumption spaces, connected with or dependent on seafood products from the inner market. Due to its offer and its location between the inner market and Ginza, many consumers first stop at the outer market and do not enter the fish market's facilities. Consequently, some interviewees even perceive the outer market as the only original Tsukiji Market.

Another part of the group of Tokyo residents, together with a part of the experts on Tokyo's and Japan's spatial issues, was much more indifferent towards the marketplace's relocation. Their members showed a lack of adequate information and were, due their dependency upon the availability of mass-mediated news, indifferent about the marketplace's relocation. To some members of these two groups the situation at the Tsukiji Fish Market is ambiguous and confusing. Aware of their ambiguous perception, the members of these groups gave points of approval to both the advocates and opponents of relocation. During the interviews they therefore relied on the lay discourse, frequently stating that they were not competent enough to voice a proper opinion, that they "could not properly judge" the relocation issue. Interviews with members of these groups showed that the Tsukiji Fish Market is a strongly "mediated urban space" (Yoshimi 1987) and that it is not presented adequately in the public sphere due to the lack of basic sources of information.

Parts of the expert group, the group of adjacent residents (up to 500m from the marketplace), the group of traders at the marketplace, and the civil initiative group for the preservation of the Tsukiji Fish Market opposed relocation and highlighted several problems that may arise during its redevelopment. First and using the culturalist, localist discourse, their members emphasized that the marketplace's organizational structure is not similar to that of a standardized place of consumption and production, but includes some features of public spaces (table 5).

Table 5: Types of discourses used by groups opposing relocation

Discourse	Example
Culturalist discourse	"The Tsukiji Fish Market is an important part of Tokyo's history..."
Localist discourse	"I live in the neighbourhood but I meet with friends who work at market every day..." "Oh, I remember the traders from my street, who would go to the Tsukiji Fish Market to buy..."
Participative	"Me and my friends traders will not move until we

(social, egalitarian, collective)	know the details..." "There should be another agreement (lottery) to keep the group spirit alive..."
Nostalgic	"I still remember the times when we would..." "There were times when everybody was involved..."
Activist discourse	"The modernist buildings in the market must be preserved at any cost..."

These features include non-stop accessibility, the lack of efficient control over visitors, spontaneously formed grass-root social networks, and their symbolic representations in space. Especially the free access of visitors, who sometimes cross the invisible lines between the private and public<sup>13</sup> in the marketplace, puzzled the group members. The visitors, who may also be potential consumers and enter the marketplace to buy seafood or observe its functioning, have helped to establish the Tsukiji Fish Market as a world famous attraction, recognized in its present form. By enforcing tight security controls over the visitors and consumers, the traditional organizational structure of the marketplace would break down and new, unpredictable relationships would be formed. The members of these groups are convinced that in the long-term the marketplace would adapt and develop mechanisms that would establish peaceful coexistence of all involved actors, and thus preserve the core of the present organizational structure.

The groups of adjacent residents and marketplace traders voiced many doubts about the new plan, because it "does not explain in detail the functional and economic restructuring of the market" that may occur during the transfer. Although specific elements of the economic discourse were evident in these two groups, most members opposed relocation because they were concerned about the future organisation of the fish trade and its financial prosperity. Similarly to the civil initiative group, the traders' group stressed that in its present form the Tsukiji Fish Market represents a special cultural institution, based on a set of delicate social relations, shaped over decades. According to them, the forms of institutionalized and embodied cultural capital are best represented by the live auction system. Their concerns about the marketplace's relocation were therefore related to the (possible)

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<sup>13</sup> A series of violations of the market's internal behavior rules, mainly by foreign visitors, have been reported. These ranged from simple trespassing of restricted auction areas to touching seafood and improper behaviour towards market employees. Although the number of violations was minimal compared with the total number of visitors, they were highly exposed in the media, triggering huge debates about closing the market to specific groups of visitors (see Yoshida 2008).



introduction of new technologies, computerizing seafood distribution, which would diminish the importance of live auctions, the trader's traditional knowledge and their reputation as judges of fresh seafood.

The traders dedicated a lot of attention to preserving the social networks that constitute their community at the TFM. In this context, they often used the participative (social, egalitarian, collective) discourse in order to emphasize the importance of the internal, horizontal links existing inside the marketplace's walls. The community is made up of a variety of groups, based on friendship, camaraderie, family ties and informal educational processes, where knowledge is passed on from master to apprentice. In the case of the Tsukiji Fish Market, the internal community is not just a simple structure of superficial, temporary links, established for the purpose of exchanging information and for economic reasons. The community is an important element of social stability, aimed at "diminish[ing] socially disruptive competition by downplaying structural difference and amplifying a sense of egalitarianism" (Bestor 2004, 247). For this purpose, the traders at the TFM try to organize themselves in a manner that meets the social and economic needs of the individual and the collective.

How the community at the Tsukiji Fish Market strives to maintain its sense of egalitarianism is best illustrated by the intricate processes of reassigning stall locations, which takes place every four or five years. The reassignment follows a lottery procedure organised by the Tokyo Fish Market Wholesalers' Cooperative Federation (Tō-Oroshi) and moves the traders from their present location regardless of their wealth, specialties, size, or social influence.<sup>14</sup> The lottery prevents the marketplace's best locations from being monopolized and in the long run more or less evenly distributes the risks among all intermediate wholesalers. The last lottery and rotation of stalls occurred in 1995, but since then the timing of the next lottery has turned into a delicate issue. The plans for relocation inserted doubts, uncertainties among the traders and triggered many speculations about the marketplace's future

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14 The first lottery was performed in 1951 and since then repeated every 4 or 5 years. Each lottery was carried out under different circumstances and each with slightly different procedures. The lottery rearranges the position of approximately 1600 stalls of intermediate wholesalers. The reassignment of the intermediate traders' location in the market gives them the opportunity to upgrade their stalls with new infrastructure and equipment. It also allows intermediate wholesalers to rethink their trading activities and maybe close some economic operations and open new ones. The lottery is seen as an equity system that: "overcomes short-term inequalities created by physical location to ensure that wholesalers compete on a relatively equal footing on the long run" (Bestor 2004, 279).

organisation. The opponents to the relocation plan reported that all kinds of scenarios were being imagined, bringing great instability to the community of traders and slowly deteriorating the social networks, which for decades had maintained the principles of risk distribution and sharing.

To sum up, the analysis of the interviews showed that some groups did not fully recognize the importance of the Tsukiji Fish Market's institutionalized and embodied cultural capital. Especially the discourse of the city authorities is in the analysis confronted with the discourse of other city actors, who emphasize that the processes of redevelopment might at the same time transform socially and culturally diverse local consumption places into standardized i.e. non-distinctive spaces, deprived of the historical meanings and social character that shaped them in the past. By emphasizing the importance of the marketplace's economic dimensions and improved functioning at the new location, the advocates of relocation played down the role of the marketplace's subtle cultural environment, which constantly renews its embodied and institutionalized cultural capital. These groups perceived the marketplace as an abstract economic category without localized social networks, practices and cultural meanings. Similarly, the traders at the Tsukiji Fish Market were not perceived as generators of cultural meanings or "cultural intermediaries" (Urry 1995, 90), but as personnel involved in economic transactions. When the traders voiced their objections to this purely commercial categorization, the advocates of relocation often described them as sentimentalist and their attachment to the Tsukiji Fish Market as a form of nostalgia without real substance.

In the same vein, the members of the civil initiative group were labelled extreme activists without real solutions for the issue. The nostalgic and activist discourse, evident from the interviews with traders and the civil initiative group, was often used by the relocation's advocates to disparage the importance of the Tsukiji Fish Market's existing cultural capital. The advocates of relocation substituted the notion of 'marketplace' as a heterogeneous and socially situated place with the notion of 'market' as a limited economic space that is not embedded in the current networks of personal relationships (Granovetter 1985; Bestor 2004; Knorr-Cetina 2006). The advocates perceived the Tsukiji Fish Market as an instrumental space which can be transferred to another location without losing much of its standardized qualities, or as one of the TMG officials stated: "In the case of the fish market, the location does not matter". On the other hand, the opponents to the relocation recognized the marketplace as a unique, reflexive space that might lose an important part of its distinctiveness in the transfer.

## **Conclusions**

Global cities need attractive, unique places like the Tsukiji Fish Market. City authorities and other interest groups at times acknowledge their cultural heritage potential, but at the same time try to fashion it in line with global standards and mainly use it as a form of cultural curiosity to attract visitors and consumers. For this purpose, cities not only protect the existing cultural heritage, but also adapt or rather produce new, artificial cultural spaces, which “reinterpret local culture” (Urry 1995). Many world cities boast historical quarters, streets or districts with various layers of medieval, baroque, art nouveau, and other architectural styles that are legally protected as important cultural heritage. However, in the process of protecting these spaces, many original uses and spatial features have been substituted with ‘safer’, sterile environments, which rule out unpredicted social practices, rituals and events. In the process of protection or renovation, important quarters, historical buildings and streets can easily lose part of their ‘intangible’ cultural capital, while preserving that part of their original ‘tangible’ cultural capital that attracts the public.

In the case of the Tsukiji Fish Market the task is much harder since its cultural capital is literally embodied in the knowledge, practices, rituals and social networks of its community and thus more difficult to protect in the media and among the public. Furthermore, embodied cultural capital is by nature transferable, i.e. portable: it can ‘move’ with the individual, providing relocation supporters with a useful pretext. Their opponents have the difficult task of defending intangible cultural heritage on the basis of the argument that an inseparable link between the marketplace’s built environment and its embodied cultural capital can only exist at this specific location. The unique spatial organization of the stalls, the auctions and the traders are products of both the physical and social conditions that accumulated over decades. The Tsukiji Fish Market is embedded in a wider context, which would be difficult, if not impossible, to recreate at another location and keep the current relationships within the traders’ community intact.

The analysis of the interviews showed that in the case of the Tsukiji Fish Market the links between the locality and its non-materialized forms of cultural capital are not adequately acknowledged by all interest groups. The huge discrepancies in the use of a specific discourse suggest that the representatives of the city authorities tend to instrumentalize the issue, i.e. to represent the Tsukiji Fish Market as a cultural manifestation in a reduced or impoverished form in order to better fit into the commodification process. This instrumentalisation is evident from the vocabulary emphasising applicability, performance (rational selectivity),

exchangeability, universality, standardization, flow (circulation), materiality (resource). For this purpose, the members of this group resort to three types of discourse (safety, economic, and professional discourses), which serve to camouflage the intended implementation of competitive urban policies. Moreover, the elements or fragments of embodied cultural capital, identified by other interviewed groups, are sometimes 'translated' into economic capital, represented as mass tourism services and facilities. Although some features of instrumental spaces can be detected in all groups and although the foundations of the Tsukiji Fish Market are undoubtedly economic (market) mechanisms, it is impossible to overlook that its unique "spatial practices, representations of space, spaces of representation" (Lefebvre 1974, 1991) and other collective experiences of space have, over time, produced a new space which eludes the simple definitions of a standardized economic area. The Tsukiji Fish Market can be seen as a locality with a unique set of layers of memories, accumulated over decades and reflected in the social networks of the traders. To Bachelard (1969), memories are materially localized and their persistency depends on the actual place where they were formed. The relocation of the Tsukiji Fish Market would destroy part of the collective memories that accumulated at the location and may deeply affect the social networks and spatial practices of its community of traders.

Similar examples of instrumentalisation of intangible cultural heritage, leading to a diminishment in diversity of consumption spaces, can be found in other global cities, where competitive urban policies also try to create safe, economically viable and attractive, but culturally sanitized spaces. The cultural and economic development of global cities is based on efficient models of a "production and consumption strategy" (Bianchini, Parkinsson 1993), which seeks to promote cultural products that can be consumed both outside and inside the production region. The criteria to define a place of high cultural quality are in reality very fluid and cannot be easily defined. The case of the Tsukiji Fish Market suggests that during the process of 'preparing' such a cultural product, important qualities may be lost and more attention should be dedicated to methods trying to measure the non-monetary and non-material i.e. intangible values of a specific locality. In this respect, a shift in the paradigm of what is presumed to be a culturally worthy and attractive space should be implicit. Under these circumstances, the Tsukiji Fish Market in its current form could occupy a very high position in Tokyo's future symbolic hierarchy.

The analysis of the group discourses used in the case of the marketplace's relocation points to mechanisms of instrumentalisation,

which by limiting, i.e. putting restrictions on interpretative schemes of what is to be a valid form of cultural capital, dissolve the existing traditional symbolic hierarchies. According to this limited perception, an old and physically deteriorating market cannot be appreciated as a place of high cultural importance. Transforming unique, not yet standardized and locally embedded consumption spaces in accordance with obsolete symbolic hierarchies, or even using them as bridging gentrifiers for various political and economic interests, is defined by Berman (1988) as a form of “urbicide”, where resistance to any transformation of existing urban relations blocks the potentials of developing socially and culturally more inclusive mechanisms of urban planning.

At present, the Tsukiji Fish Market continues to operate at the old location, but the debate about its relocation goes on. Many unanswered questions remain, not only about its relocation, but also about renovating it at the present location. Inadequate renovation at the same location may equally radically transform the internal organizational structure within the traders’ community. As mentioned by members from the traders’ group, the Tsukiji Fish Market inevitably needs new adaptations due to its current physical state, limited visitor capacity, and degrading work conditions. How these transformations will in turn affect the delicate social networks of the traders’ community remains unanswered. We may speculate that an increasing number of visitors to the marketplace will probably force its authorities to adopt certain restrictions and consequently diminish the ‘genuine experience’ of less standardized spaces. The need for adaptation of the Tsukiji Fish Market is an issue recognized by all interviewed groups, but the principal question of how to address the (non)perception of non-materialised cultural capital by important city actors remains unanswered.

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# COMBATING DISCRIMINATION ON THE GROUNDS OF DISABILITY IN INTERNATIONAL AND EU LAW

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## Abstract

The article provides for a critical overview of international and in particular EU human rights and non-discrimination frameworks relevant and applicable to unequal treatment of persons with disabilities. Having considered the contents and scope of relevant international human rights and non-discrimination provisions the author turns to the questions as to how these provisions might be exercised, who the rights holders and duty bearers would be and what the challenges of balancing different rights and needs are. The article also includes the definition of the concept of disability in the context of non-discrimination law and examines the dimensions of disability discrimination as defined in international and EU law. The author concludes that international and especially modern EU non-discrimination law establish a wide and inclusive legal framework for dealing with disability discrimination. However, the actual scope of the realisation of international and European legal standards on disability discrimination in each state will depend on the consistency and effectiveness of their national implementation and on the manner of putting them into practice.

**Keywords:** Persons with disabilities, disability discrimination, international law, EU law, EU member states' legislations

## Introduction

In spite of a multitude of international, supranational and national legal and policy instruments and actions pursuing better participation and enhanced inclusion of persons with disabilities in the mainstream society, exclusion, discrimination and marginalisation of disabled people remain one of the greatest global human rights issues of our time which is still gaining importance due to the factors such as war and destruction, unhealthy living conditions and the global increase in chronic health conditions, ageing populations and the higher risk of disability in older people as well as the general absence of knowledge about disability, its

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causes, prevention and treatment. Discrimination against any person on the grounds of disability is “a violation of the inherent dignity and worth of the human person” as it is stated in the Preamble to the UN Convention on the Rights of Persons with Disabilities.

According to the 2011 World report on disability produced and published jointly by the World Health Organization and the World Bank Group disabled persons in all countries experience inequalities and are denied equal access to health care, work and employment, education, political participation, transport, public buildings and even information (World Health Organization, 2011: XI). In addition, in the General Comment No. 5 (on persons with disabilities) adopted by the Committee on Economic, Social and Cultural Rights it is stated that the consequences of the discrimination on the grounds of disability have been particularly severe also in the fields of housing, cultural life and access to public places and services.<sup>2</sup>

The overarching aim of this article is to critically analyse international and in particular EU human rights and non-discrimination frameworks and to find out whether these norms provide for the adequate legal, policy and institutional basis for dealing with problems that persons with disabilities face when it comes to their equal treatment and equal opportunities. Having considered the contents and scope of relevant international human rights and non-discrimination provisions I will turn to the questions as to how these provisions might be exercised, who the rights holders and duty bearers would be and what the challenges of balancing different rights and needs are. However, the article will not examine the existing mechanisms or institutions and procedural issues (e.g. burden of proof, remedies, sanctions, etc.) – at international, EU and national levels - for giving effect to and enforcing rights in question.

### **Disability-based discrimination and EU non-discrimination law**

As for the EU legislation on non-discrimination, disability is explicitly included on the list of prohibited grounds of discrimination. Following the new primary legal base of Article 13, inserted in the EC Treaty in 1999 (the Treaty of Amsterdam), the EU legislative framework on non-discrimination has been substantially extended and consolidated. There are now four core EU non-discrimination directives, including the Employment Equality Directive (Directive 2000/78/EC) which prohibits also discrimination on the basis of disability (in addition to other grounds such as religion or belief, age and sexual orientation), but only in respect

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<sup>2</sup> CESCR, General Comment 5, Persons with disabilities, 9. 12. 1994, para. 15.

of employment and vocational training, what is considered to be one of the major shortcomings of the advanced EU framework legislation on non-discrimination. It is not to expect any real advancement in this regard in the near future since the debates in EU institutions on Commission's proposal (known as "Horizontal Directive")<sup>3</sup> to extend protection for these discriminatory grounds outside the labour market (i.e. to the area of accessing goods and services) have been postponed due to some other "priority issues" related to global economic crisis. The Employment Equality Directive is binding upon the EU member states. They should have transposed its provisions into their national legal systems by December 2003, except for provisions on age and disability discrimination where it was possible to extend the implementation period until 2006. Candidate member states are required to have completed national implementation of this Directive before joining the EU.

Another very important document of the EU relevant for combating disability-based discrimination is the Charter of Fundamental Rights of the European Union which became legally binding with the entry into force of the Lisbon Treaty in 2009. As a result, the EU institutions are now legally bound to observe the Charter and to comply with its provisions. The EU member states (except for Czech Republic, Poland and the UK) are also legally bound to comply with the Charter, but only when implementing (i.e. interpreting and applying) EU law. Article 21 of the Charter contains general prohibition of discrimination on various grounds, including disability, while Article 26 provides for social and occupational integration of persons with disabilities as well as for their participation in the life of the community.

### **What does "disability" imply?**

In order to be able to identify those entitled to the international protection against discrimination on the grounds of disability it is first necessary to define more precisely what conditions the term "disability" covers in the context of international non-discrimination law. Although disability is included in the list of protected discriminatory grounds contained in the Employment Equality Directive and was recognised by the ECtHR as being covered by "other status" in Article 14 of the ECHR and Article 1 of the Protocol 12 to the ECHR, neither the Employment Equality Directive nor the ECHR case law provides a definition of the notion. However, the CRPD does provide some guidance in this respect by recognizing disability as an evolving concept which "results from the interaction

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3 Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008) 426 final, 2.7.2008.

between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others". Furthermore, Article 1 of the CRPD determines the personal scope of this convention by defining persons with disabilities as those having "long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others". Given that the EU (as a regional integration organisation) is a party to the CRPD it is very likely that the CJEU will also be guided by both the convention itself and the interpretations given by the Committee on the Rights of Persons with disabilities, a specific human rights treaty body responsible for the supervision of implementation of the principles and standards enshrined in the CRPD and for their interpretation. What is more, the EU and its institutions as well as the EU member states when implementing EU law will be required to pursue such broad and inclusive approach to the interpreting the meaning of disability as it ensues from the CRPD.

It has happened many times that both in theory and practice the terms "disability" and "handicap" have been used interchangeably. However, one should be aware of the difference in their meaning. Also, the 1993 UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities clearly distinguish between these two notions by ascribing to "disability" mainly medical connotation (i.e. permanent or transitory physical, intellectual or sensory impairment, medical conditions or mental illness) whereas defining "handicap" as disability in more social terms (i.e. an environmental barrier for a person to take part in life of the community on an equal footing with others). Still, there appears to be no general consensus on such an approach to these two definitions, although the term "disability" is usually employed in the context of European non-discrimination law. In addition, it is worth to note that disability can be defined as medical impairment or as social construct. The medical definition of disability is based on "a rather functional view of disability, which regards disability primarily as a physical or psychological impairment impeding someone's daily functioning in society" (Schiek, Waddington, Bell, 2007: 131). The medical model of disability is often criticised by authors for being inadequate in providing protection against disability-based discrimination because it pays too little attention to the failure of the social environment to adjust to the need and aspirations of persons with disabilities (Schiek, Waddington, Bell, 2007: 132). In contrast, the social model considers disability not so much a functional impairment but rather a social construct and explains disability discrimination as a consequence of disabling environment and impairments created by society. In order to provide an inclusion and

effective protection against disability discrimination a wide definition of disability, which is based on a social model and includes past, present and future disability, as well as assumed disability and discrimination by association, should be opted for. It must be mentioned here that the social approach to the concept of disability is also more in line with current international trends and with the EU policy instruments on disability than the purely medical approach. However, the definition of the concept of disability formulated by the CJEU in *Sonia Chacón Navas v. Eurest Colectividades SA* seems to be closer to the medical model than social model as it focuses on present disability, which is defined in a rather functional and medical manner.

Emphasizing the distinction that must be drawn between “disability” and “sickness” the CJEU produced a definition of disability which is made up of three requirements:<sup>4</sup> 1.) there must be a limitation which results in particular from physical, mental or psychological impairments; 2.) the limitation must hinder the participation of the person concerned in professional life; 3.) it must be probable that the limitation will last for a long time (disability must be permanent or at least long-term in character). Such restrictive interpretation of disability given by the CJEU is somewhat surprising as its previous case law relating to the EU non-discrimination directives always tended to pursue a broad and inclusive approach to the legal protection against discrimination. It is also true that the CJEU's definition of the term “disability” is not meant to be exhaustive and fixed. This means that the CJEU left itself enough room to further elucidate and develop this definition in favour of disability as social construct in later cases referred to it by the national courts.

The next very significant and also controversial question that pertains to the interpretation of disability as a basis for discrimination is whether “disability” should be defined in a symmetrical or asymmetrical way. The Employment Equality Directive does not provide for any implications in this regard, while the CRPD favours asymmetrical approach in many of its provisions. Various commentators and scholars seem to be divided on this issue either (e.g. Skidmore, 2001: 131 and Waddington, 2005: 115). In its first decision on the definition of disability in *Chacón Navas* case the CJEU did not touch upon this question. But it is quite obvious that a symmetrical approach is more protective of the rights of non-disabled persons. On the other hand, it is just as clear that an asymmetrical interpretation of disability in non-discrimination legislation provides better protection to persons with disabilities. Its future decisions

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<sup>4</sup> *Sonia Chacón Navas v. Eurest Colectividades SA*, CJEU, Case C-13/05 [2006] ECR I-6467, 11 July 2006, para. 43.

will probably show us what approach to this issue is preferred by the CJEU.

The question whether disability, as it is defined in international and EU law, can be perceived as a suspect ground for discrimination is also very relevant for defining the scope of protection against disability discrimination. Unfortunately, no answer to this question can be found in the so far case law of the CJEU and the ECtHR. However, if we take into consideration the fact that disability was included in the Employment Equality Directive's list of protected discriminatory grounds and the many legal and policy efforts made on both the international and European level we might arrive at a conclusion that a strong protection needs to be offered against disability discrimination and special accommodation measures need to be provided for to meet the needs and aspirations of persons with disabilities. Thus, in general disability can be regarded as particularly suspect ground for unequal treatment (Schiek, Waddington, Bell, 2007: 147). It is therefore to expect that the CJEU and the ECtHR will apply a relatively strict test in considering the justifiability of a distinction based on disability and that states will have on their disposal a relatively narrow margin of appreciation to decide if certain distinctions on the grounds of disability are reasonable and justifiable.

### **Defining dimensions of disability discrimination**

In this section I will try to work out what situations, incidents and concepts are to be seen as amounting to disability discrimination under international and EU law. The most important international legal instrument on the rights of persons with disabilities, the CRPD, defines discrimination on the grounds of disability as "any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (Article 2). We can see that the text of this universal definition to a great extent resembles wording in similar non-discrimination provisions contained in other UN specialised human rights treaties, such as the 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). In addition, one should note that in principle no free-standing claim can be made under Article 2 of the CRPD. As a result, its non-discrimination clause can be invoked only in conjunction with other substantive rights provided under the CRPD as it was also pointed out by the Committee on the Rights of Persons with disabilities in its first decision adopted in the frame of individual

communications procedure under the Optional Protocol to the CRPD.<sup>5</sup> The CESCRC also came up with the definition of disability-based discrimination in the context of the ICESCR. Such discrimination in its belief includes “any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights”.<sup>6</sup> On the other hand, a positive discrimination of persons with disabilities - in the form of appropriate and concrete measures - is necessary in order to do away with existing discrimination and to establish equitable opportunities for persons with disabilities. According to CESCRC such positive measures “should not be considered discriminatory in the sense of Article 2(2) of the ICESCR as long as they are based on the principle of equality and are employed only to the extent necessary to achieve that objective”.<sup>7</sup>

The prohibition of disability-based discrimination under Article 2 of the CRPD covers all forms and types of discrimination, including denial of reasonable accommodation. However, unlike in the Employment Equality Directive, in this Article it is not specifically mentioned whether this general prohibition of discrimination on the basis of disability extends also to the concepts such as indirect discrimination, harassment, discrimination based on imputed disability, discrimination by association, instructions to discriminate and victimisation. As far as indirect discrimination is concerned, it is not disputable that this form of discrimination is covered by the CRPD’s provisions as well. A statement in support of this view can be found in *H.M. v. Sweden* where the Committee on the Rights of Persons with Disabilities allowed for the possibility that a national law, though applied in a neutral way, may lead to discriminatory consequences if the particular circumstances of the individuals to whom it is applied are disregarded. Thus, in the Committee’s view discrimination can take place when persons who are in a significantly different situation are not treated differently by the state and there is no objective and reasonable justification for such treatment in the enjoyment of rights guaranteed under the CRPD.<sup>8</sup> In the same vein, the CESCRC took the position that “both de jure and de facto

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5 H.M. v. Sweden, Committee on the Rights of Persons with Disabilities, Communication No. 3/2011, CRPD/C/7/D/3/2011, 21 May 2012, para. 7.3.

6 CESCRC, General Comment 5, Persons with disabilities, 9. 12. 1994, para. 15.

7 CESCRC, General Comment 5, Persons with disabilities, 9. 12. 1994, para. 18.

8 H.M. v. Sweden, Committee on the Rights of Persons with Disabilities, Communication No. 3/2011, CRPD/C/7/D/3/2011, 21 May 2012, para. 8.3.

discrimination against persons with disabilities takes various forms, which range from invidious discrimination, such as the denial of educational opportunities, to more "subtle" forms of discrimination such as segregation and isolation achieved through the imposition of physical and social barriers".<sup>9</sup>

Harassment on any of the protected grounds of discrimination (including disability) is a particularly harmful and insidious type of discrimination. Therefore, it was included in the Employment Equality Directive as a specific form of unlawful discrimination which occurs when an "unwanted conduct" related to a protected ground (in our case to disability) takes place "with the purpose or effect of violating the dignity of a person and of creating an intimidating, degrading, humiliating or offensive environment" (Article 2(3)). As in the case of Employment Equality Directive, the CRPD protects persons with disabilities from harassment only in the context of work and employment (Article 27(1)(b)).<sup>10</sup>

A person may be subjected to less favourable treatment not so much because of his/her particular personal characteristic, such as disability but on the basis of assumptions relating to that characteristic. It might well happen, for instance, that employer decides not to employ a certain candidate because he thinks that he is disabled or chronically ill and therefore unable to perform his job responsibilities and tasks to employer's satisfaction. A crucial question here is whether such cases of unequal treatment are also covered by non-discrimination legislation. If we take into consideration that the primary mission of provisions on the prohibition of discrimination is to protect individuals against discrimination, this question should be answered in the affirmative. From this point of view it is completely irrelevant whether discrimination is based on real or on perceived characteristic. The Employment Equality Directive does not contain express references to discrimination on grounds of assumed characteristics. Also, it cannot be derived from its content that such discrimination is excluded from its scope. Thus, having in mind the importance of the inclusion of discrimination by assumption and the fact that relevant international instruments seem to offer protection against such discrimination, one can conclude that individuals are protected against discrimination based on assumed characteristics also under the Employment Equality Directive. International support for such a broad definition of the prohibition of discrimination can be found in the case of *Timishev v. Russia* in which the ECtHR held that Article 14

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<sup>9</sup> CESCR, General Comment 5, Persons with disabilities, 9. 12. 1994, para. 15.

<sup>10</sup> The CRPD does not contain any definition of the term "harassment".



of the ECHR prohibits not only discrimination based on one's real or actual characteristics, but also discrimination based on perceived characteristics (in this case ethnicity),<sup>11</sup> i.e. discrimination by assumption. As a result, even persons who are not really, for example, disabled can enjoy the legal protection against disability discrimination if they are regarded by others as having disabilities.

Another important concept is discrimination by association which relates to the situation where someone is discriminated against not so much on account of their own characteristics, but on account of their relations with someone else. An example is that of parents who themselves are not disabled and are refused entry to the bar because they are together with their disabled child. The Employment Equality Directive does not provide a clear answer to the question whether discrimination by association is covered by its non-discrimination provisions. However, in the *Coleman* case the CJEU were afforded the opportunity to consider the concept of discrimination by association and decided that unfavourable treatment of an employee by her employer, based on the fact that her son was disabled, amounted to discrimination and harassment by association.<sup>12</sup> The employee's requests were refused and she was threatened with dismissal as well as receiving abusive comments relating to her child's disability.

The Employment Equality Directive regulates also two phenomena which are closely related to non-discrimination law: instructions to discriminate and victimisation. While instructions to discriminate against persons on any of the protected grounds (including disability) are treated as a specific form of discrimination (Article 2(4)), victimisation is only outlawed in general and does not constitute discrimination (Article 11). It can be noticed that Employment Equality Directive provides wider protection of individuals against instructions to discriminate on the grounds of disability than other relevant international human rights instruments (e.g. ICCPR, ECHR) as it prohibits instructions to discriminate in relation to several grounds of discrimination (including disability) and not only the acts of advocacy of or incitement to racial, national or religious hatred, discrimination, hostility or violence. However, the Employment Equality Directive and other EU core non-discrimination directives do not provide a definition of what amounts to

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<sup>11</sup> *Timishev v. Russia*, ECtHR (Applications nos. 55762/00 and 55974/00), 13 December 2005, paras. 54, 56.

<sup>12</sup> *Coleman v. Attridge Law and Steve Law*, CJEU, Case C-303/06 [2008] I-5603, 17 July 2008.

an instruction to discriminate. The opaque formulation saying that an instruction to discriminate “shall be deemed to be discrimination” without any further explanations of the concept leaves crucial issues unresolved and to the EU member states and the CJEU to interpret.

A prohibition of victimisation in the Employment Equality Directive aims at providing protection to employees involved in a complaint of discrimination in whatever capacity (complainants, those who provide evidence or otherwise act in support of a discrimination claim, witnesses, those providing advice, information and representation) from facing adverse consequences as a result of their involvement in that claim. If people are fearful of the adverse consequences of their involvement in a discrimination claim, then enforcement of the non-discrimination law will become impossible. Protection against victimisation is thus crucial in maintaining the integrity and effectiveness of provisions contained in the Employment Equality Directive. Article 11 of the Employment Equality Directive requires the EU member states to “introduce into their national legal systems such measures as are necessary to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment”. It follows from that provision that the EU member states must take measures which are sufficiently effective to achieve the aim of this directive. This will also include an adequate legal and judicial protection against victimisation. The CJEU considered the scope of the concept of victimisation in *Coote v. Granada Hospitality*. In this case the CJEU recognised the importance of providing protection from victimisation by reasoning that the prohibition on victimisation includes not only dismissal but also any other measure that “may effectively deter a worker from making use of the right to judicial protection”.<sup>13</sup> In addition, the CJEU emphasized in this case that the scope of protection against victimisation must be extended beyond the employment relationship and include also retaliatory measures taken by an employer in response to proceedings brought against the employer which are intended to “obstruct the dismissed employee’s attempts to find new employment”.<sup>14</sup> In the context of disability discrimination a special attention needs to be paid to the specific concept of “reasonable accommodation”. The obligation to provide a reasonable accommodation is a relatively new

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<sup>13</sup> *Belina Jane Coote v. Granada Hospitality Ltd*, CJEU, C-185/97 [1997] I-5211, 22 September 1998, para.27.

<sup>14</sup> *Belina Jane Coote v. Granada Hospitality Ltd*, CJEU, C-185/97 [1997] I-5211, 22 September 1998, para.27.

phenomenon in international and European non-discrimination law. However, the concept has quickly received global international recognition in Article 2(4) of the CRPD which defines discrimination on the grounds of disability as including a failure to make a reasonable accommodation.<sup>15</sup> Reasonable accommodation, as defined in this provision, means “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”. The issue of the reasonable accommodation is relevant also in the European context, given that the Employment Equality Directive in its Article 5 expressly requires employers to take appropriate measures and make reasonable accommodation for persons with disabilities in the field of employment and training. Such measures may include, for instance, installing a lift or a ramp or a disabled toilet in the workplace in order to allow wheelchair access. The CJEU has only briefly referred to the obligation to provide for reasonable accommodation in *Chacón Navas*<sup>16</sup> and the concept is not expressly provided for in the ECHR or the ESC. However, according to Gerard Quinn the ECSR on several occasions interpreted Article 15 of the (revised) ESC in combination with Article E to require also reasonable accommodation (Quinn, 2005: 300).<sup>17</sup>

The Employment Equality Directive, unlike the CRPD, contains a reasonable accommodation requirement with regard to persons with disabilities only in the employment context. The purpose of the employment-related accommodation for people with disabilities is to equalize their opportunities in the labour market with non-disabled employees and job applicants. Whilst Article 5 of the Employment

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<sup>15</sup> Also, the Committee on Social, Economic and Cultural Rights adopted the approach that for the purposes of the CESCR discrimination on the grounds of disability may be defined as including “denial of reasonable accommodation”. See CESCR, General Comment 5, Persons with disabilities, 1994, para. 15.

<sup>16</sup> The CJEU held in this case (regarding the issue of reasonable accommodation) that Employment Equality Directive prohibited dismissal of an individual with disability where, following the making of a reasonable accommodation, the individual would be competent, capable and available to perform the essential functions of the post in question. *Sonia Chacón Navas v. Eurest Colectividades SA*, CJEU, Case C-13/05 [2006] ECR I-6467, 11 July 2006, paras. 49-51.

<sup>17</sup> Quinn, Gerard (2005): The European Social Charter and EU Anti-Discrimination Law in the Field of Disability: Two Gravitational Fields with one common purpose. In: de Burca, Grainne and de Witte, Bruno (eds.): Social Rights in Europe. Oxford: Oxford University Press (pp. 279-304).

Equality Directive clearly locates the obligation to make a reasonable accommodation within the paradigm of equal treatment as this can be seen from the text “in order to guarantee compliance with the principle of equal treatment”, it does not explicitly define a failure to comply with the duty as a (specific) form of discrimination. Given the brevity of this article, and the scarcity of the CJEU’s case law regarding the interpretation of the concept, there remains plenty of room for further elaboration on the extent of the duty to accommodate as well as for a wide-ranging and authoritative interpretation of key terms within this provision.

When transposing the Employment Equality Directive into their domestic legislations, a vast majority of the EU member states did not go beyond the minimal requirements of the directive, for example, by extending the obligation to provide reasonable accommodation to people with disabilities also outside the employment context. Nonetheless, a limited number of member states did adopt legal measures requiring reasonable accommodation for people with disabilities who wish to access certain facilities such as goods, services and education.

## **Conclusion**

This analytical review of the international and EU law on the prohibition of disability discrimination revealed an overwhelming advancement in the field being made in the last two decades through the adoption or amendments of relevant international and European legal instruments on human rights and non-discrimination as well as through case law and scholarship related to these instruments. Various concepts of discrimination on the grounds of disability have been extensively elaborated and elucidated. Thus, it is possible to conclude that international and especially modern EU non-discrimination law establish a wide and inclusive legal framework for dealing with disability discrimination which can take different forms in societies, ranging from direct and indirect disability discrimination and harassment to instructions to discriminate, victimisation and, last but not least, denial of reasonable accommodation. Also, the concept of “disability” in the context of non-discrimination law has been interpreted broadly in order to cover cases of discrimination based on assumed disability as well as incidents of discrimination due to association with a disabled person.

The EU member states and other European countries are under international and EU law required to develop, adopt and implement comprehensive non-discrimination legislation in relation to disability in order to eliminate all forms of disability discrimination. Such legislation should not only provide persons with disabilities with judicial remedies,

but also provide for social-policy programmes which enable persons with disabilities to live an integrated, self-determined and independent life. Disability policies should ensure the access of persons with disabilities to all community services. Therefore, anti-discrimination measures should be based on the principle of equal rights and equal opportunities for persons with disabilities and the non-disabled. Indeed, the actual scope of the realisation of international and European legal standards on disability discrimination in each state will depend on the consistency and effectiveness of their national implementation and on the manner of putting them into practice.

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## **PROMOTING SUSTAINABILITY OF TOURISM BY CREATIVE TOURISM DEVELOPMENT: HOW FAR IS SLOVENIA?**

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### **Abstract**

In this paper we introduce sustainability dimensions of creative tourism and develop a model of sustainable creative tourism. The concepts of culture-based creativity and sustainability as tools for a value-adding impact on cultural tourism and local culture are discussed in the theoretical part of the paper. Our empirical analysis reveals that higher GDP per capita does not necessary correlate with higher competitiveness of an economy: a comparison analysis of Slovenian and Estonian international competitive positions in various domains shows several weaknesses of Slovenian competitiveness and offers an explanation for indispensable systemic view on tourism competitiveness. Our world wide web analysis of the steps made in creative tourism development in both countries indicates Estonian advantage, which could be taken as an example of good practice. Some suggestions for Slovenian policymaking with regard to institutional support for culture-based creativity and creative tourism development are made in the final part of the paper.

**Keywords:** sustainability, culture-based creativity, creative tourism, competitiveness, Slovenia.

### **Introduction**

The importance of sustainability principles has been increasingly recognized in science and politics as the world is faced with several economic, environmental and social challenges. The appearance of new economy, which is characterised by new forms of consumption and organisation of economic activities, calls upon new tools for achieving sustainability and triple bottom line performance (Elkington, 1994), respectively. One of these tools is creativity, since in the new economy, labelled also as the "experience economy" (Pine and Gilmore, 1999) and the "creative economy" (Howkins, 2001), the ability to create social

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experiences and networking by memorable events is an important factor of competitiveness and, herewith, sustainability. At the same time, the world has entered the "all cultural" age (Dru, 1996) where the value of meaning prevails over material value. In the economy transformed from the "giant factory" to the "grand theatre" (Rifkin, 2000), creativity is becoming the new source of wealth (Florida, 2002). The recognition of the economic potential of creativity (e.g. Landry, 2000; Florida, 2002, 2005; Tepper, 2002; UNCTAD, 2008, 2010; European Commission, 2010) and culture (e.g. UNESCO, 1986; Throsby, 2001; OECD, 2006; KEA, 2006, 2009; European Commission, 2007), has set culture-based creativity as a development tool and as a potential solution to the range of economic, social and environmental problems (i.e. new approaches to learning, new marketing approaches, developing social capital and community cohesion, environmental innovation, etc.).

In line with the rise of experience economy and skilled consumption, the tourism, like other sectors, has undergone major transformations. The rapid growth of cultural tourism has caused problems and there are signs that cultural tourism is becoming a victim of its own success (Richards, 2009: 2). A growing number of tourists at major sites and in small communities have raised questions about the sustainability of this form of tourism. Historic city centres have started to suffer from a "vicious circle" of cultural tourism development in which famous sites attract large number of tourists thus degrading the quality of experience and driving "serious" cultural tourists away (Russo, 2002). In the search for their uniqueness through cultural tourism, many places have followed similar strategies, which have resulted in making those places feel and look the same (Richards and Wilson, 2006). Consequently, several places have started to search for the new forms of articulation between culture and tourism to help to strengthen rather than water down local culture.

Creative tourism (Richards and Raymond, 2000; Richards, 2005; Wurzbürger et al., 2008) could respond to the need of cultural tourism to re-invent itself as well as to the need of tourist destinations to do something different in a saturated market. It deeply involves the tourists in the culturescape of the destination as they take part in different activities – such as crafts, arts, culinary and other creative activities. This, in turn enhances their opportunities for learning new skills and establishing a close link between them and the local population and its cultural heritage (Richards and Wilson, 2007). It meets the desire of tourists for more fulfilling and meaningful experiences. In this sense, creative tourism is similar to "experiential tourism" (Smith, 2006).

So far, only few studies (eg. UNESCO, 2006; Solène, 2011) have explored the connections between sustainability and creative tourism development. This is not surprising since the concept of creative tourism has only begun to be recognized and many of the creative tourism initiatives currently operating around the world are still at an early stage in their development. The purpose of this paper is to introduce the sustainability dimensions of creative tourism and to develop a model of sustainable creative tourism. In the theoretical part of the paper, the concepts of culture-based creativity, creative tourism and sustainable tourism are described and integrated into a model of sustainable creative tourism. In the empirical analysis, various international competitive positions of Slovenia and Estonia are compared and the steps taken in the field of creative tourism development in both countries are analysed. In the final part of the paper the potentials of Slovenia for creative tourism are estimated and suggestions for Slovenian policymakers with regard to the institutional support for culture-based creativity and creative tourism development are stated.

### **Methodology and data**

In the theoretical part of the paper, a model of sustainable creative tourism is formed on the basis of synthesized key aspects of culture-based creativity, sustainability of tourism and creative tourism concepts. The empirical analysis is based upon the secondary data from Travel & Tourism (T&T) Economic Impact 2012 Report (WTTC, 2012), composite indices in The Global Competitiveness Report (WEF, 2011), The Global Innovation Index 2012 (WIPO, 2012), The Travel & Tourism Competitiveness Report 2011 (WEF, 2011a), The Country Brand Index 2011-2012 (Future Brand, 2011), several studies on cultural and creative industries (CCIs) development and primary data gathered in our websites analysis.

Our research is based on the following two hypotheses:

- H1: Travel & Tourism (T&T) economic impact is higher in economies with higher T&T government expenditure.
- H2: Culture-based creativity can be used as a tool for tourism sustainability enhancement in economies, where the institutional environment efficiently supports innovation.

The aim of our paper is to present creative tourism as a form of cultural tourism that contributes towards sustainability of a country's T&T industry. As the bases for T&T competitiveness and herewith sustainability, the relative positions of Slovenia and Estonia in various international competitiveness domains are analysed. We test the reliability of hypothesis on a positive correlation between government



expenditure for the development of certain industry and the latter's impact on the economy as well as the reliability of hypothesis on positive correlation between economy's efficient support to innovation and its creativity and sustainability development potentials, respectively.

## **Theoretical Background**

### **Culture-based creativity**

Several scientific disciplines ranging from psychology and sociology have contributed to the science of creativity. Their different perspectives highlight that creativity comes from various combinations of individual pre-disposition and social context. Research on creativity in relation to culture has tended to focus on the understanding of artistic achievement (see Gardener, 1982 and Csikszentmihalyi, 1996) since artists and creative professions share in common the ability (1) to think laterally, (2) to communicate, and (3) to challenge traditional solutions and visions. These individuals, who are interlopers and polymaths, are the driving force behind the creativity and they personify the influence of art and culture on creativity. In relation to the economy culture-based creativity is recognised as a tool to create emotional experience, to empathise and influence human behaviour (KEA 2009: 24). It is capable of adding additional meaning to the act of consumption by giving a sense of ethical or aesthetic value to production and by facilitating product or service differentiation. Culture-based creativity can be defined as a process of innovation by using culture as an input. It is an essential feature of the post-industrial economy where the ability of creating the “unexpected” and the “emotional” is of paramount importance.

### **Cultural and creative industries**

The comprehension of conception and characteristics of cultural and creative industries (CCIs) is of key importance for our paper since cultural tourism (and herewith creative tourism as a form of cultural tourism) is classified as a sub-sector of “related CCIs” according to the study *The economy of culture in Europe* (KEA, 2006). This study takes into consideration different European and international classifications of CCIs (UNESCO, 1986; WIPO, 2003; DCMS, 2006; OECD, 2006; Hesmondhalgh, 2007; UNCTAD, 2010) and distinguishes between a “cultural sector”, constituted of traditional art fields and cultural industries, whose outputs are exclusively “cultural”, and a “creative sector”, which gathers the remaining industries and activities that use culture as an added-value for the production of non-cultural products. The definition includes a third category, which includes “related industries” but it does not belong to the “cultural and creative sector”; i.e. culture and creativity are not their production inputs. Nevertheless, they

are strongly linked to it as these industries depend on cultural and creative products and services.

Several studies (e.g. Müller et al., 2008; Potts and Morrison, 2008; Bakhshi and McVittie, 2009; HKU, 2010; UNCTAD, 2010; KEA, 2011) have shown that in CCIs operate highly innovative enterprises with high economic potential. The analyses of the European CCIs (Oakley, 2004; KEA, 2006; European Commission, 2010a) have shown that these sectors grow at a higher pace than the rest of the economy. The CCIs directly and indirectly contribute to competitiveness, more and better jobs, sustainable development, innovation, cohesion and local development (see for example Oakley (2004), Hartley (2008) and Potts et al. (2008)). Recent study (European Commission, 2011a: 8) has shown that the regions with above average concentrations of CCIs have highest prosperity levels in Europe.

## **Creative tourism**

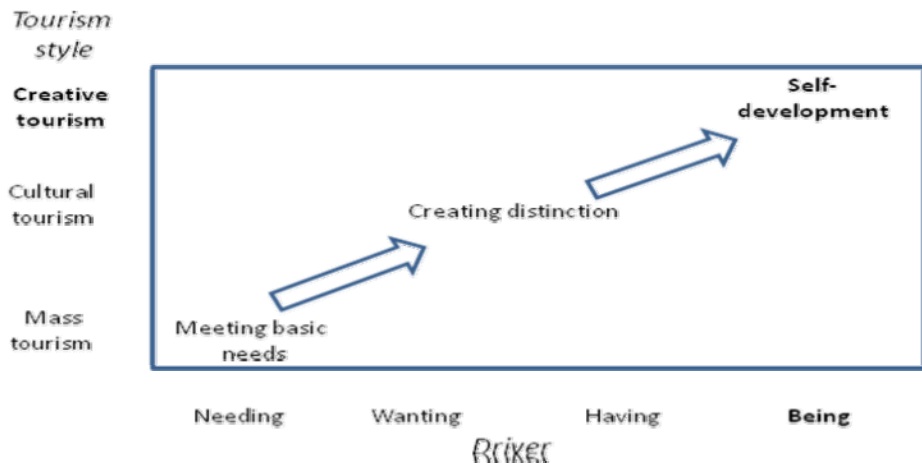
### **The concept**

Many “cultural tourists” these days seem to want to become part of the local community and have direct contact with the everyday lives of locals. They increasingly say that they want to experience local culture, to live like locals and to find out about the real identity of the places they visit. With the increasing interest in intangible heritage<sup>19</sup>, creative tourism is a newly emerging form of cultural tourism that satisfies the higher level need of self-actualisation with a primary focus of active skill development (Richards and Wilson, 2006). The shift towards creativity in tourism can be seen as part of an evolution in the basis of tourist experiences (Richards and Wilson, 2007) (Figure 1).

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<sup>19</sup> Intangible heritage comprises elements such as music, dance, beliefs, ceremonies, rituals and folklore, whereas tangible heritage includes buildings, rural landscapes, cities, art collections, artifacts, historic gardens, handicrafts and antiques.

Figure 1: Changes in the drivers of tourism over time.



Source: Richards and Wilson, 2007.

In the early stages of the development of mass tourism, the essential value of holidays for many people was the aspect of 'having', i.e. having a holiday conferred a certain status, an intangible extension of having physical possessions. As holidays became more of a normal part of everyday life, the emphasis shifted to what one saw or 'did' on holidays. However, more recently people have begun to tire of seeing an endless series of 'sights' or 'doing' a series of standardized activities. There is evidence to suggest that in current modes of tourism consumption, the source of distinction lies increasingly in the arena of 'becoming', i.e. moving away from having or consuming goods and services towards becoming transformed by the tourism experience itself (see Binkhorst, 2007). The idea of 'being' on holiday places more emphasis on the creativity of the tourists rather than on seeing them as passive consumers. The concept of creative tourism implies a level of co-creation, or co-makship between visitors and locals (Richards and Raymond, 2000: 18). Creative tourism can be seen in numerous situations where visitors, service providers and the local community exchange ideas and skills and influence each other in a synergetic way. In this sense, it can be a means of involving tourists in the creative life of the destination, a creative means of using existing resources, a means of strengthening identity and distinctiveness, a form of self expression/discovery, a source of atmosphere for places and a source for recreating and reviving places (Richards, 2011). The research on the relationship between tourism and creativity suggest that there are a number of ways in which they can be linked in order to enhance the tourism product and the visitor experience. Different types of creative

tourism experiences, such as learning, tasting, seeing, buying, can be delivered in a variety of ways, including the creation of itineraries, workshops, courses and events.

## **Advantages**

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Because creativity is a process (creative tourism utilises tourist resources that are processes in essence, e.g. dancing, singing, crafts, culinary, painting, festivals), creative resources are more sustainable than tangible cultural products (Prentice and Andersen, 2003). Creativity can potentially add value more easily because of its scarcity. It allows destinations to innovate new products relatively rapidly, giving them a competitive advantage over other locations. Creativity is generally more mobile than tangible cultural products. While cultural consumption is dependent on a concentration of cultural resources, arts performances and artworks can today be produced virtually anywhere, without the need for much infrastructure. Further, creativity involves not only value creation (economic wealth) but also the creation of values (Richards and Wilson, 2006). For the tourism based on creativity there is no need to have a lot of built heritage and there is also no need for expensive preservation and maintenance of ageing structures. On the other hand, the lack of physical assets means that the raw material of creative tourism has to be created not just by the producers, but also by the tourists themselves. This requires both creative consumption and creative production on the part of the tourist. The spatial collocation of creative consumption and production (Richards and Wilson, 2006) is seen as a key mechanism in avoiding the onset of serial reproduction often associated with traditional models of cultural tourism development.

## **Sustainability of tourism**

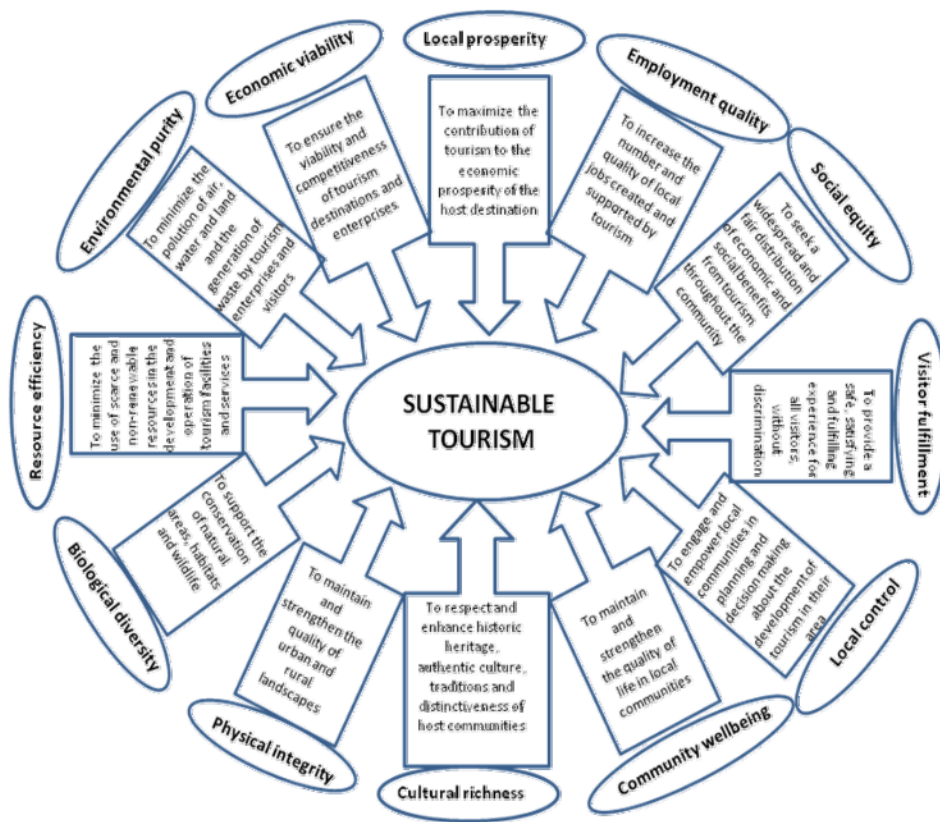
Sustainability principles refer to the establishment of suitable balance between environmental, economic and socio-cultural aspects of tourism development. Thus, the sustainability of tourism is achieved when (1) the environmental resources are optimally used (maintaining essential ecological processes and helping to conserve natural resources and biodiversity), (2) the socio-cultural authenticity of host communities is respected (conserving built and living cultural heritage and traditional values and contributing to inter-cultural understanding and tolerance), and (3) viable, long-term economic operations are ensured (providing socio-economic benefits to all stakeholders that are fairly distributed) (UNEP and UNWTO, 2005)<sup>20</sup>. Sustainable tourism should also maintain a high level of tourist satisfaction and ensure a meaningful experience to

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20 For a literature review on sustainable tourism research see Buckley, 2012.

the tourists, raise their awareness about sustainability issues and promote sustainable practices among them. Making tourism more sustainable means taking its current and future economic, social and environmental impacts into account in the planning, development and operation of tourism (UNWTO, 2012). It is a continual process of improvement and one which applies equally to all forms of tourism. An agenda for sustainable tourism (UNEP and UNWTO, 2005), composed of twelve dimensions that address economic, social and environmental impacts (Figure 2), can be used as a framework to develop policies for sustainable tourism.

Figure 2: Dimensions of sustainable tourism and their policy implications.



Source: adapted from UNEP and UNWTO, 2005.

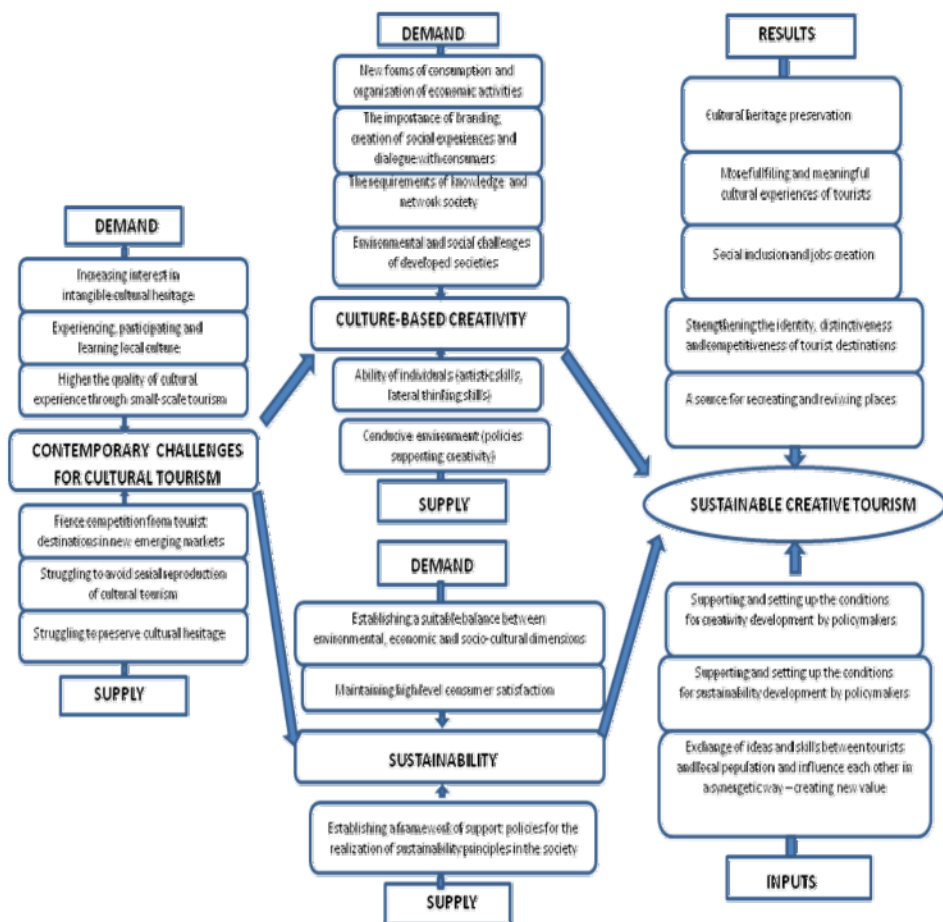
Governments have a crucial role to play in the development and management of tourism and in making it more sustainable. A primary function of government in fostering a more sustainable tourism is

therefore to create an environment that enables or influences the private sector to operate more sustainable, and influences patterns of visitor flows and behaviour so as to maximize the benefits and minimize the negative impacts of tourism.

### The model of sustainable creative tourism

Our theoretical part of the research has shown several demand and supply challenges for contemporary cultural tourism as well as several demand factors for culture-based creativity and sustainable development in contemporary societies. Figure 3 shows how they can be linked in the concept of sustainable creative tourism with specific supply-side characteristics.

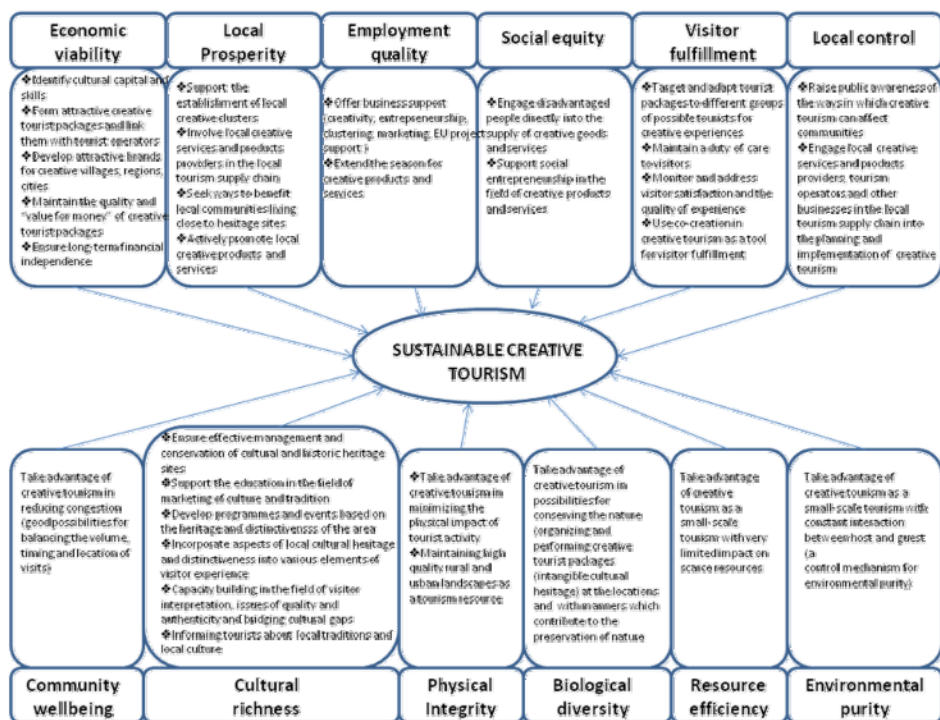
Figure 3: The possible development path of cultural tourism.



Source: own model.

Based on the above concept and advantages of creative tourism and the agenda for sustainable tourism (UNEP and UNWTO, 2005), we have developed the model of sustainable creative tourism (Figure 4). By proposing policy measures and suggesting advantages of creative tourism development, the model supports each of the twelve dimensions that address triple-bottom line goals. Considering the fact that creative tourism is a form of cultural tourism, cultural richness as a dimension of sustainable tourism is emphasised in the model. This model can be used for setting up the framework of policies for creative tourism development.

Figure 4: The model of sustainable creative tourism.



Source: own model.

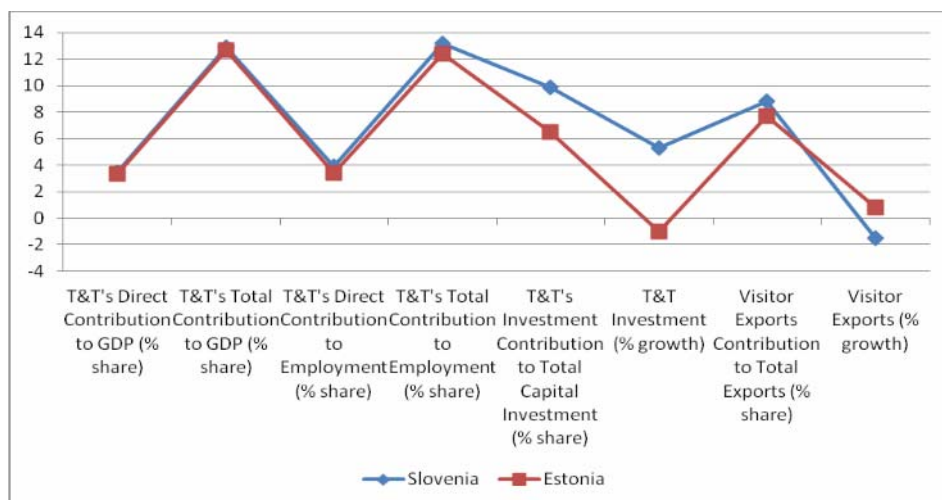
## Empirical Research

Selected domains of Slovenian and Estonian international competitiveness

In view to the fact that sustainability is a component of competitiveness and that successful development of specific form of tourism is based on a country's competitiveness and competitiveness of its travel and tourism industry, relative position of Slovenia in various competitive

domains is evaluated in this section. We have chosen Estonia as a comparable country due to four important factors: size (population), location (close to advanced neighbouring country), year of independence (1991) and year of joining the European Union (2004). It is evident from Figure 5 that contributions of tourism to GDP and employment in Slovenia and Estonia in 2011 were almost the same whilst the tourism investment contribution to total capital investment and tourism investment growth were much higher in Slovenia. The questionable effectiveness of tourism investment in Slovenia is also evident from the share of visitor exports contribution to total exports, which was almost the same in Slovenia and Estonia, as well as from visitor exports growth, which was much higher in Estonia than in Slovenia.

Figure 5: Slovenian and Estonian Travel and Tourism Economic Impact in 2011.



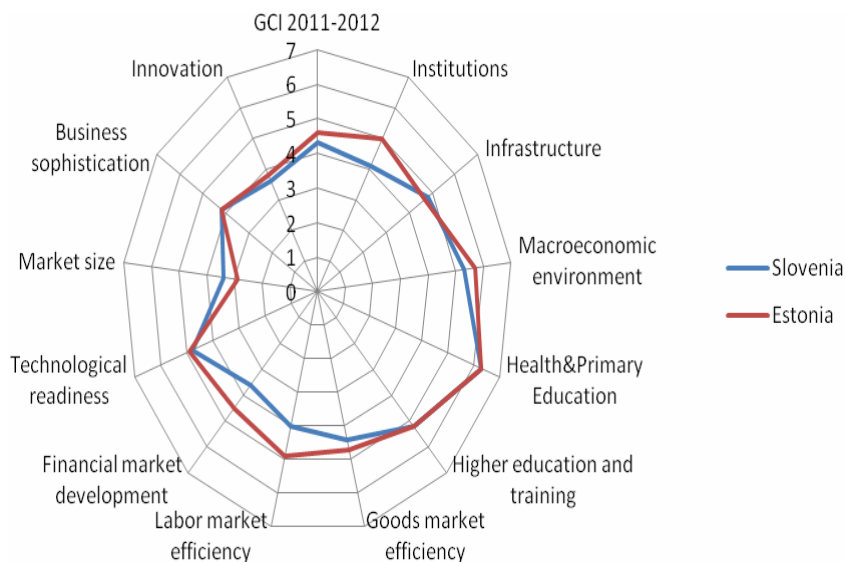
Source: WTTC Travel & Tourism Economic Impact, 2012.

Notes: direct contribution to GDP and employment – GDP and jobs generated by industries that deal directly with tourists (hotels, travel agents, airlines and other passenger transport services, restaurants, leisure industries); total contribution to GDP and employment – direct plus indirect contribution (capital investment, government collective spending, supply-chain effects) plus induced contribution (the broader contribution to GDP and employment of spending by those who are directly or indirectly employed by travel & tourism industry); visitor exports – spending within the country by international tourists for both business and leisure trips, including spending on transport.



Although Slovenia's GDP per capita was more than one third higher than that of Estonia, the latter achieved much higher international competitiveness. Since a country's international competitiveness is an important basis for its tourism competitiveness, global competitiveness of both countries is analysed. According to The Global Competitiveness Report 2011-2012 (WEF, 2011) Slovenia lagged behind Estonia in seven out of twelve competitiveness domains (i.e. institutions, macroeconomic environment, goods market efficiency, labor market efficiency, financial market development, technological readiness and innovation), whereas Slovenian competitive advantages (market size, infrastructure) were much lower than its weaknesses (Figure 6). In the domains of health and primary education, higher education and training and business sophistication there were no differences in competitive positions of both countries. The noteworthy ascertainment of the analysis is the fact that Slovenian overall global competitiveness has been deteriorating for three successive years, whilst Estonia is in a stand-still position in this regard.

Figure 6: Global competitiveness of Slovenia and Estonia.

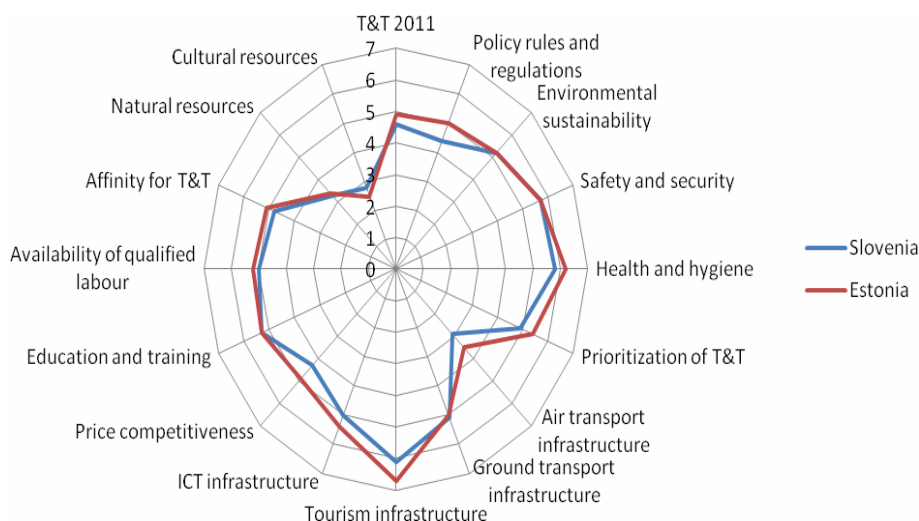


Source: The Global Competitiveness Report, 2011.

Note: The values are scores on the scale from 1 – 7 (1 – the worst, 7 – the best).

Consequently, the position of Slovenia in comparison to Estonia in the field of tourism competitiveness is worse as well. According to The Travel & Tourism Competitiveness Report 2011 (WEF, 2011a), in 2011 Slovenia ranked 33rd, while Estonia ranked 25th among 139 countries. Slovenia achieved worse position in eleven out of fifteen tourism competitiveness domains (policy rules and regulations, health and hygiene, prioritization of travel & tourism, air transport infrastructure, tourism infrastructure, information-communication infrastructure (ICT), price competitiveness in the travel & tourism industry, availability of qualified labour, affinity for travel & tourism and natural resources). On the other hand, Slovenia had two advantages over Estonia (ground transport infrastructure and cultural resources) whilst in the fields of environmental sustainability, safety and security and education and training, the positions of both countries were the same (Figure 7).

Figure 7: Competitiveness of Slovenian and Estonian Travel and Tourism.



Source: The Travel & Tourism Competitiveness Report, 2011.

Note: The values are scores on the scale from 1 – 7 (1 – the worst, 7 – the best).

Some sub-indicators reveal serious gaps in the conditions for higher competitiveness of Slovenian tourism industry. Among the most non-competitive domains of Slovenian tourism industry (hiring and firing practices, openness of bilateral air service agreements, number of operating airlines, ticket taxes and airport charges, prevalence of foreign ownership and government prioritization of the travel and tourism

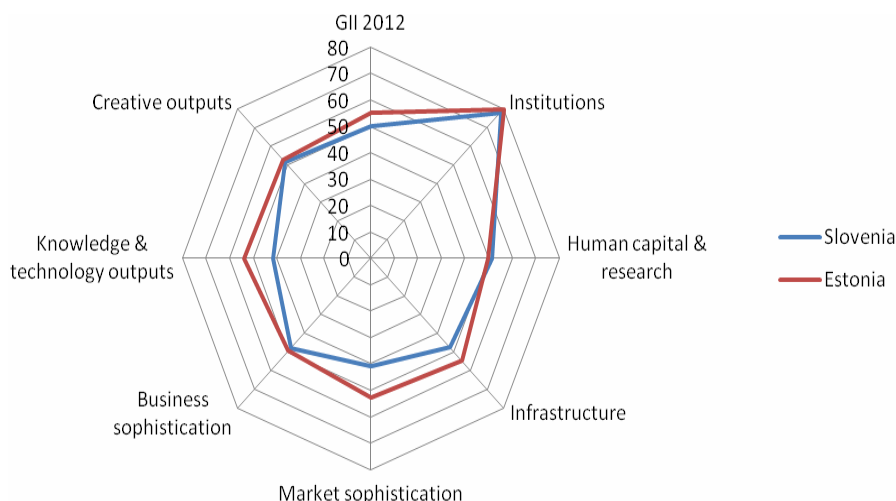
industry), there are also three domains which are important for the development of sustainable creative tourism in Slovenia. Although Slovenia achieved a relatively good position in the field of environmental sustainability, it failed in the domain of sustainability of travel and tourism industry development as it ranked 71st among 139 countries.

Another two very noteworthy indicators are the number of world heritage culture sites and the creative industries exports. In 2011, Slovenia recorded the lowest number of world heritage culture sites among European and Central Asian countries (122nd place among 139 observed countries) and it fell for 6 places in comparison to the year 2009. Without doubt, larger countries have advantages in this respect; however, according to WEF, several smaller new EU member states achieved much better positions than Slovenia (e.g. Estonia ranked 53rd, Cyprus 62nd and Malta 73rd). Regarding the creative industries export, which is an important indicator of the potential for the development of creative tourism, Slovenia was on the 41st place in 2011 and stagnated in comparison to 2009. Several new EU member states had better positions than Slovenia in this domain in 2011 (Poland (17th), Czech Republic (22nd), Romania (32nd), Slovak Republic (34th) and Hungary (38th)) and progressed in comparison to 2009. The share of all employees in cultural and creative industries (CCIs) in Slovenia amounts 3.33 %, which positioned Slovenia on the 27th place among 30 European countries, Estonia, on the other hand, was on the 14th place with 4.38 % share of all employees in CCIs (European Commission, 2011a). Concerning the annual employment growth in CCIs in the period 2003–2009, the first three places among the EU27 member states belonged to the new EU member states: Cyprus (25.79 %), Slovakia (25.60 %) and Estonia (11.48 %) (Korez-Vide, 2012).

The Global Innovation Index (WIPO, 2012), which measures innovation efficiency of 141 economies, is in 2012 based on two subindices – the innovation input sub-index (institutions, human capital and research, infrastructure, market sophistication and business sophistication) and the innovation output sub-index (knowledge and technology outputs and creative outputs). As regards the two factors of innovation input (i.e. market sophistication and infrastructure) where Slovenia lags behind Estonia to the highest degree, the most problematic areas are the ease of getting credit, venture capital deals, market capitalization, total value of stocks traded, as well as e-participation, government's online service and GDP/unit of energy use (Figure 8). In the field of innovation outputs, the big gaps between Slovenia and Estonia are in the fields of research and development (R&D) performed and financed by business, firms offering formal training, R&D financed from abroad, high-tech imports

less re-imports, foreign direct investment (FDI) net inflows, information-communication technology (ICT) & business model creation, ICT & organizational model creation, recreation & culture consumption, national feature films, creative goods and services exports and online creativity.

Figure 8: Innovation efficiency in Slovenia and Estonia.



Source: WIPO, 2012.

Note: The values are scores on the scale from 0 – 100 (0 – the worst, 100 – the best)

Considering the fact that tourism development in a country is greatly influenced by the perceptions about the country, we compare the perceptions of Slovenian and Estonian country brand according to The Country Brand Index 2011-2012 (CBI) (Future Brand, 2011)<sup>21</sup>. The CBI evaluates a country brand against five key dimensions – value system (political freedom, tolerance, stable legal environment, freedom of speech and environmental friendliness), quality of life (job opportunity, most like to live in, standard of living, safety, healthcare system and education system), good for business (regulatory environment, skilled workforce, advanced technology and investment climate), heritage and culture (history, art and culture, natural beauty and authenticity) and

<sup>21</sup> The Country Brand Index 2011-2012 is based on quantitative data from business and leisure travellers, experts in tourism, export, investment and public policy, as well as on the data from online discussions amongst experts and interested third-parties around the world.

tourism (resort and lodging options, food, attractions, value for money, beaches, nightlife and shopping). Among the 33 observed European countries, Slovenia ranked 23rd while Estonia was on the 25th place in 2011. Nevertheless, in comparison to the year before, Slovenia improved its position for only 2 places among all 113 observed countries in the CBI. Estonia's ranking, on the other hand, increased by 23 places, which is the highest improvement among all countries observed in the CBI. According to CBI, Estonia ranked very high in good for business, quality of life and value system categories. Because it had improved its position across every dimension in the CBI, it was considered a rising star not only in the region but also in the world.

### **Present development path of creative tourism in Slovenia and Estonia**

Since the link between culture and tourism has not yet been established in Slovenia, cultural tourism is also not yet present in an organized form in Slovenia (GRS, 2012). However, Slovenian tourism policymakers stress the unprecedented importance of cultural heritage for the sustainable tourism; the improvement and better linkage of immobile heritage, living culture (concerts, festivals, crafts, culinary) and mobile heritage (exhibitions, museums) is seen as a support to the recognisable and effective tourism supply and a comparative advantage of the destination.

Our website analysis regarding creative tourism in Slovenia has shown that there are no institutional initiatives to support creative entrepreneurship in Slovenia (see [www.japti.si](http://www.japti.si)) and no creative tourism offers on the official web portal of Slovenian tourism (see [www.slovenia.info](http://www.slovenia.info)). Some projects that are co-financed by various European funds and by the European Commission (e.g. [www.centres-eu.org](http://www.centres-eu.org)) and which are currently run or are to be officially launched in Slovenia, will only try to establish the possibilities for setting up a creative entrepreneurship environment in Slovenia. As regards the creative tourism offer, private attempt to offer creative experiences on holidays and trips in Slovenia (see [www.creativeslovenia.com](http://www.creativeslovenia.com)) unfortunately does not comprise one key element of creative tourism, i.e. learning skills. On the other hand, Estonia supports creative entrepreneurship (see [www.looveesti.ee/en.html](http://www.looveesti.ee/en.html)) by an initiative established in 2009 by the Estonian entrepreneurship support agency (Enterprise Estonia) and funded by European Social Fund. Today, »Creative Estonia« initiative is supported by several public and private institutions, associations and organizations (see [www.looveesti.ee/support-structures.html](http://www.looveesti.ee/support-structures.html)). Estonian creative tourism offer, arranged per Estonian regions, is linked to the official tourism web

portal in Estonia (see [www.visitestonia.com/en/things-to-see-do/interests-lifestyle/learn-a-skill](http://www.visitestonia.com/en/things-to-see-do/interests-lifestyle/learn-a-skill)).

### **Implications for Slovenian policymakers**

According to a new political framework for tourism in Europe (European Commission, 2010), the improvement of the competitiveness of tourism in the European Union plays a crucial role in the strengthening of the sector for the purpose of a dynamic and sustainable growth. In order to achieve this objective, it is worthwhile to develop innovation in tourism, to reinforce the quality of supply in all its dimensions, to improve professional skills in the sector, to attempt to overcome the seasonal nature of demand, to diversify the supply of tourist services and to help improve statistics and analyses relating to tourism. The sector's competitiveness is closely linked to its sustainability as the quality of tourist destinations is strongly influenced by their natural and cultural environment and their integration into a local community.

Slovenian Tourism Development Strategy 2012 – 2016 “Partnership for Sustainable Development of Slovenian Tourism” (GRS, 2012), the sustainable development of tourism and other sectors is listed alongside several other obstacles for higher competitiveness of Slovenian tourism. These other obstacles include a limited amount of financial means intended for tourism in light of the significance it has on the Slovenian economy, poor accessibility of Slovenia, low level of recognition of Slovenia on target markets, lack of qualified and motivated human resources in tourism and rigid labor legislation, discouraging investment and innovation environment, inefficient inter-ministerial coordination for the needs of faster development of tourism, inconsistent and inadequate legislation on tourism, lack of competitive tourist products with added value, non-cooperation of tourist providers and unconnected tourist offer. Our analysis has shown that Slovenia in absolute terms performs well in the domains of country's innovation and tourism international competitiveness. However, in comparison with Estonia as a country with very similar foundations for operation to Slovenia, Slovenia's international competitiveness position and the perceptions of foreign tourists and experts about main dimensions of the country brand are non-enviable. A stagnating or decreasing position in many of the observed international competitiveness domains is a sign of Slovenia's non-sustainable development path. Thus, a very low sustainability of Slovenian travel and tourism industry should be viewed as a systemic problem of Slovenian economy since it has its roots in several non-competitive domains of both – the country's as well as the innovation international competitiveness. The attention should also be paid to the

value system in Slovenia, which is the main determinant of country's brand perceptions (Future Brand, 2011).

Our website analysis of national policy support to the development of creative entrepreneurship in Slovenia and Estonia has shown that Slovenia is only beginning to make its first steps in this area whilst Estonia has already consolidated entrepreneurship policy support mechanisms. Consequently, creative tourism in its proper form is not yet developed in Slovenia, whereas in Estonia, this type of tourism is already promoted on the official national tourist website. Concerning the broader Slovenian environment for cultural and creative industries (CCIs) development, it has to be taken into account that the share of micro enterprises in Slovenian CCIs is higher (96.6%) than the average share in the EU's CCI (82.7%). Thus, Slovenia is faced with the phenomenon of the »missing medium«, i.e. the deficiency of small- and medium-sized enterprises that, on one hand, enable the growth of micro enterprises and, on the other hand, represent the support to large enterprises (Bradač Hojnik and Rebernik, 2012). Additionally, Slovenian CCIs are concentrated in two regions – the Osrednjeslovenska region with 43.4% of all CCIs enterprises and the Podravska region with 13.3% of all CCI enterprises. Further analysis has shown that present policy measures for the development of CCIs in Slovenia are divided into two groups. The first group comprises financial measures (the scheme of social security for artists and tax relieves) while the second one includes and non-financial measures (national and other rewards for the work in the area of culture) (Compedium, 2009) and have been focused only on traditional art fields and cultural industries and not to the related CCIs activities.

Slovenia has heterogeneous cultural heritage of skills in arts and crafts and culinary tradition as well as excellent natural conditions and rich experiences in making wine, beer and various other types of liqueurs. This type of cultural and natural heritage should be turned into competitive advantages of Slovenian tourism via creative tourism development. Due to the well established high economic potentials and advantages of creative and cultural industries for the sustainable development of societies as well as planned significant increase in the European Commission's budget support for these sectors until the year 2020, Slovenian entrepreneurship and tourism policymakers should strive to support creative entrepreneurship and to form an initiative for creative tourism development. The necessary institutional support for creative tourism development could arise from examples of good practice of individual countries or towns (e.g. Austria ([www.kreativreisen.at](http://www.kreativreisen.at)), New Zealand ([www.creativetourism.co.nz](http://www.creativetourism.co.nz)), Paris

([creativeparis.info/en/](http://creativeparis.info/en/)), Santa Fe ([www.santafecreativetourism.org](http://www.santafecreativetourism.org)) and Barcelona ([www.barcelonacreativa.info](http://www.barcelonacreativa.info))) and from gathering new ideas through membership in the “creativetourismnetwork” (see [www.creativetourismnetwork.org/cms/index.php?lang=en](http://www.creativetourismnetwork.org/cms/index.php?lang=en)). The appeal for new ideas in tourism<sup>22</sup> should be more target-oriented – towards new ideas about learning skills on holidays - and promoted among the broadest Slovenian public. There should be also some discussions with different tourism operators (hotels) and cultural institutions (museums, galleries) about the possibilities of their involvement in creative tourism as creative tourism providers. Local tourist boards should be given a significant role in this initiative as important partners in the dissemination of information and new ideas in this field.

In view of the fact that creativity has been proven to be an important tool for the achievement of competitiveness and herewith sustainability in 21st century, it is necessary that Slovenian government engages in a firm declarative institutional support in the field of the formation of creativity and its dissemination into various domains of the economy. This is even more important with regard to several European Union's present<sup>23</sup> and future financial initiatives for the development of creative societies<sup>24</sup>. Policy has a crucial role in providing appropriate conditions for the enhancement of culture-based creativity and herewith creative tourism. Slovenian policymakers have to set up efficient mechanisms which would stimulate creativity, creative capabilities and innovation and help spread the enablers of creativity more equally. Policy measures should be directed towards the improvement of competitive position of cultural and creative products and services. Culture must be seen as a resource for creativity by policy makers and be given greater prominence in the broader policies (KEA, 2006). Innovation policy should foster multi-disciplinarily and interactions between art, sciences and business; cultural policy should stimulate cross-cultural collaboration and circulation of local cultural expressions; regional policy should research links between culture and regional economic and social

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22The Bank of Tourism Potentials in Slovenia (see [www.btps.si/infopage.aspx?info=BTPS&lng=en](http://www.btps.si/infopage.aspx?info=BTPS&lng=en)).

23 In the context of its innovation policy the European Commission is launching the initiative »The European Creative Industry Alliance« (CreativeBusiness.org) with the purpose of developing policy instruments to support the development of creative industries in Europe. This initiative is considered as a test for the new support policies and measures for SMEs.

24 See for example »Creative Europe - A new framework programme for the cultural and creative sectors (2014-2020) (European Commission, 2011).



development and should make investment in culture a priority in regional policy instruments as part of the innovation strategy and promote cross regional partnerships to improve market access of local culture-based creativities; social policy should use culture as a resource for social innovation; education policy should promote the role of art and culture in developing creativity as well as the value of intellectual property and the value of competence in creative skills; environmental policy should mobilize creators - artists, architects and designers – and creative SMEs for the objective of environmental sustainability and should raise the awareness regarding the environment through culture; foreign policy should promote the principle of cultural diversity by encouraging cultural exchanges and use technical assistance programmes with third countries to promote trade in the creative sector and cultural exchanges. Policymakers should give a greater value to imagination and disruptive creative thoughts via the promotion of art and culture in lifelong learning, the recognition of the value of alternative education methods whose focus is on the development of individual creativity, the encouraging of interdisciplinary activities at university level and creative partnerships between educational, cultural and entrepreneurial activities. The awareness about culture as a resource for creativity and innovation should be raised by the assurance of relevant statistical data at national level to enable the monitoring of creativity and intangible assets. The attention should also be also given to the CCI's access to finance, to the establishment of creative clusters and the development of creative entrepreneurship.

Country branding, as a crucial requirement for the 21st century nations, is closely tied to the full spectrum of its political, cultural and commercial history. The difference between a successful, defined and understood brand and a weaker, less differentiated one can have a significant impact on a nation's attractiveness for investment and tourism (Future Brand, 2011). Slovenian policymakers have to be aware that since social media intensifies and accelerates the distribution of images, ideas and associations that shape perception, country's economic, social and political changes can influence brand strength year to year. Such a systemic nature of a country brand calls upon the improvement of Slovenian competitiveness positions and upon careful management as well as continuous relative assessment of a country brand.

## **Conclusion**

In this paper we argue that present economic, social and environmental challenges of the world economy call upon new tools for achieving nation's international competitive advantages and sustainability, respectively. In the age when the developed economies have to

compete on the strength of their skills base, and when art and culture play an important role in moderating a technocratic vision of the world, culture-based creativity is gaining its significance.

Due to the stated changes in the world economy and sustainability concerns, cultural tourism is looking for its new forms. One of it could be creative tourism by offering self-development possibilities and co-creation experiences to tourists. By developing a model of sustainable creative tourism, we have shown in the paper how to achieve a suitable balance between the economic, social and environmental aspects via creative tourism development. Our empirical analysis has shown that international competitiveness of travel and tourism industry depends on several other aspects of individual economy's competitiveness and has to be discussed from the systemic point of view. The comparison analysis of tourism economic impacts in Slovenia and Estonia has shown that higher government expenditures for tourism do not necessary relate to higher economic impact of this sector; thus, we cannot confirm our first hypothesis. However, the comparison analysis of various international competitive domains of Slovenia and Estonia has shown that more effective support to innovation increases the creativity potential in the country and herewith the possibility to use culture-based creativity as a tool for sustainability of tourism enhancement, which confirms our second hypothesis.

In view of several present challenges of cultural tourism development, i.e. the shift in the cultural tourists' demand, competitive pressures for European tourism from new emerging markets, the calls for higher sustainability of tourism development and the consideration of various advantages of creative tourism development (high sustainability and mobility of creative resources, ability of value creation, no need for lots of built cultural heritage, good possibility for balancing the volume, timing and location of visits, small-scale tourism with very limited impact on scarce resources and nature, high potential for more equal regional development due to social inclusion component), there is no doubt that creative tourism is an argued form of cultural tourism in the 21st century. This statement is extremely important for Slovenia, which, according to our analysis, achieves relatively low position in various international competitive domains. Slovenian government should discuss the European Unions' financial initiatives for the development of creative societies also from the perspective of opportunities for tourism development in Slovenia.

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## EUROPEAN COMPLIANCE AND POLITICIZATION OF PUBLIC ADMINISTRATION IN ROMANIA

Diana - Camelia Iancu<sup>1</sup>

### Abstract

This paper addresses the problem of public administration politicization in Romania between 1990 and 2012. The approach taken here is that of Europeanization by conditionality and social learning, and of reform reversal hypothesis where the social learning is absent. This theoretical framework consists, briefly stated, in the belief that the adhering CEE (Central and Eastern European) states are subjected to a "sticks and carrots" mechanism and they respond to it by a (usually high enough) degree of compliance with the EU (European Union) norm. From this, once this mechanism gone (when EU membership is granted) if the social learning was unsuccessful, it is to be expected to observe a regress of reform or a reform reversal. I discuss this reform reversal hypothesis for the Romanian case. The paper is organized as follows: first, I briefly deal with the problem of Europeanization; second, I discuss the problem of the general class of international compliance theories and I analyze the specific case of compliance by Europeanization; third, I discuss the problem of conditionality and conditional regress hypothesis; fourth, I deal with a specific case of European compliance, the problem of civil service's neutrality in CEE states before and after EU accession; fifth, I address the problem of Romanian public administration reform as a case of reform reversal. The argument I employ here is that the Romania experienced a reversal of reform after joining the EU and that might suggest a poor level of social learning in the case of depoliticization.

**Keywords:** politicization, public administration, Europeanization, conditionality, reform regress.

### Europeanization

After the fall of the communist regimes, CEE countries experienced a process of democratization which along the way transformed itself in a

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process of democratization by Europeanization. As a result of becoming Member States of the EU, Europeanization was amongst the main factors of democratic consolidation. A few definitions of Europeanization are needed here. Ladrech (1994), for instance, defined Europeanization as "an incremental process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making" (Ladrech, 1994, p.69). Börzel (1999) offered a similar definition: "Europeanization is a process by which domestic policy areas become increasingly subject to European policy-making." (Börzel, 1999, p.574). Olsen (2002, pp.923-924) described Europeanization as: a) a change in external boundaries, b) developing institution at the European level, c) central penetration of national systems of governance, d) exporting forms of political organization, e) a political unification project. These are only a few of the large amount of definitions which Europeanization received in the literature. Drawing partly from them, I will use Europeanization so as to label the incremental process of import-export of norms and practices between EU and candidate countries (and potentially between candidate countries themselves) with a focus on the exporting process from EU to the candidate states – therefore a process in which EU mainly exports norms and candidate states (mainly) comply with them. This brings forward the problem of compliance.

### **The problem of international compliance**

Why comply? The process of compliance of an actor to an external rule or norm was studied in various ways. Checkel (2001) identified two main strategies of assessing the compliance of national actors to international norms: a rationalist one which emphasized "cost-benefit calculations and material incentives"<sup>2</sup> (Checkel, 2001, p.553) and a constructivist one which emphasized "social learning, socialization and social norms" (Checkel, 2001, p.553). The rationalistic approach is in fact the old rational choice approach to politics applied this time to international compliance. Checkel (2001) described it as a "neo-utilitarian, contractualist, and interest-based approach" (Checkel, 2001, p.556). So its tenets are based on methodological individualism, the utility maximizing paradigm, (mainly) the homo economicus principle and on preferences treated as exogenous (for this qualification see for example March, Olsen, 1984, p.737). In this approach rational actors behave

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<sup>2</sup> This is similar to what March and Olsen (1998) called *logic of anticipated consequences and logic of appropriateness*. Here, the first stands for the rationalistic strategy of research while the second for the constructivist – socio-historical one. As I noted elsewhere (Iancu, 2013, p.74), these descriptions are referential for what Börzel and Risse (2000) and Schimmelfenning and Sedelmeier (2002) acknowledged as the (classical) rationalist and sociological institutionalism.

instrumentally and the compliance is stated only in cost-benefit terms. In other words, an agent will comply with the norm of an external agent if that is the lowest opportunity cost available action. On the other part, constructivists, as Checkel (2001) noted, traditionally focused not on the “why`s” of the compliance but rather on its later stage where norm internalization would be almost complete. “The result was a somewhat static portrayal of social interaction” (Checkel, 2001, p.557). The new constructivists though, focused on the dynamics of compliance and identified “two causal mechanisms through which social actors comply with norms: social protest/mobilization and social learning” (Checkel, 2001, p.557). This approach could be described as institutional or in its extreme version, methodologically holistic and preferences would be taken usually as endogenous – they are nested by social and formal institutions (March, Olsen, 1984, p.739). So what one has here is a picture of two apparently methodologically incompatible views of social research and scientific explanation<sup>3</sup> both carrying a claim of universality. This claim was challenged amongst others, by Checkel (2001), Kelley (2004) or Schimmelfenning (2005). They all talked about a third (hybrid) alternative, but only Checkel assumed it explicitly. “For elites [...] norms are not internalized, they merely constrain behavior. Rationalist models easily explain elites’ compliance [...] Deriving systematic explanations for compliance at the grass-roots, activist, and NGO-levels is more problematic. In some cases, norms genuinely constitute agents in the sense meant by constructivists, providing them with new understandings of interest/identity.” (Checkel, 2001, p.558) From this, one needs both “eye glasses” to view the entire social phenomena.

### **Conditionality and the conditional regress hypothesis<sup>4</sup>**

Building on the above argument and turning back to the initial problem, compliance to the European norm, this paper’s argument is fourfold (Table 1).

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<sup>3</sup> This distinction draws on a suggestion made by my colleague from NSPAS, Dr. Mihai Ungureanu. For a detailed methodological analysis of rational choice theory see Ungureanu (2011), Ungureanu (2012).

<sup>4</sup> This idea of conditional regress hypothesis is based on Ungureanu and Iancu (2013).

Table 1: Patterns of Europeanization

<b>Conditionality</b>	<b>Social learning</b>	
	Effective	Ineffective
Present	<b>Type 1:</b> High level of compliance, Fair changes	<b>Type 2:</b> Fair level of compliance, Pretense changes
Absent	<b>Type 3:</b> Fair level of compliance, Internalized changes	<b>Type 4:</b> Low level of compliance, Reversed changes

(Source: Ungureanu and Iancu, 2013)

First, if social learning is effective at the grass-roots level, and an external mechanism of sticks and carrots is in action, they will both act as external constraints on political elites<sup>5</sup> and one should observe a compliance of national actors to the European norm. Second, if social learning is ineffective but external conditionality is present, one should expect an effective compliance to the external norm. Third, if the external conditionality is absent (or almost absent) and social learning is ineffective then one should observe a lack of compliance to the European norm. And finally, if the external conditional is absent, but social learning is effective, then one could observe compliance to the European norm.

Putting this to work for the Europeanization of CEE states, the problem could be reformulated in terms of "before accession" and "after accession". Before accession the CEE states complied with the European norm. This is a fact acknowledged by almost any scholar of Europeanization and it is backed up by EU Regular Reports and the final stage of the accession process - the EU membership. After the accession, though, the conditionality<sup>6</sup> mechanism of the EU is no longer in place (at least not for most of the CEE countries<sup>7</sup>). Compliance by rewards and sanctions is not available anymore. Starting from this factual observation, the rationalistic Europeanization literature argued

<sup>5</sup> The hidden assumption here is the classic rationalistic (public choice) assumption that politicians seek re-election and they will be sensible to the median voter's ideal point. Here, internalization by social learning changes the position of the median voter and a change in policy position it is expected to occur.

<sup>6</sup> By European conditionality I mean a system of positive and/or negative stimuli used as a central strategy by the EU to induce non-member state harmonization with its own standards. This definition draws from Kelley (2004, p. 428) and Schimmelfennig, Engert and Knobel (2003, p. 495).

<sup>7</sup> Romanian and Bulgaria remained under scrutiny due to the Cooperation and Verification Mechanism (CVM).

that one should observe a reform regress or a reform reversal from the part of the new Member States. This is the regress hypothesis or reform reversal hypothesis. This hypothesis was formulated, amongst other, by Schimmelfenning and Sedelmeier (2004), Schimmelfenning (2005, 2008), Epstein and Sedelmeier (2008), Meyer-Sahling (2009), (2011), Pridham (2008), Iancu and Ungureanu (2010).

At the beginning of this section I briefly stated a fourfold argument about the effectiveness of European compliance. As it can be seen, this argument belongs to the class of regress hypothesis theories but it is a special case of this class. It states the regress hypothesis conditional. Applied to CEE compliance after accession, the hypothesis should have the following form: Once EU conditionality is gone, the compliance of CEE states to EU norm should regress *if* social learning was ineffective. In other words: compliance to EU norms was costly to the national CEE elites. Once gone, if there is no domestic (popular) pressure to maintain it, they will change the rules and one will witness a reform reversal. This argument is useful for a large class of phenomena and its domain is large enough to explain almost any aspects of reform and de-form in CEE states. I will, though, use it here only for the case of Romanian public administration reform and de-form or reform reversal for the politicization dimension.

### **Civil service politicization and reform reversal**

The Wilsonian – Weberian tradition favors the civil service as the most advanced form of public administration. In other words, bureaucratic production is considered to be superior to its counterparts. Wilson (1892) and Weber (1922) argued that bureaucracy has (unlike other forms as spoils system or the older system of class and privilege) two of the most important characteristics: it is neutral or impartial and it is efficient or effective. In this paper I am interested only in the problem of neutrality<sup>8</sup>. The systematic study of neutrality of modern public administration began rather recently. Starting with the nineties though more scholars manifested scientific interest in it. Rauch (1995), Rauch, Evans (1999), (2000), Goetz, Margetts (1999), Goetz, Wollmann (2001), Meyer-Sahling (2001), (2004), (2008), (2009), Peters, Pierre (2004), Gajduschek (2007), Eichbaum, Shaw (2008) are some examples of this kind of studies. These authors are mostly focused on the ways in which CEE countries imported formally and behaviorally the bureaucratic EU norm. Explicitly stated, non-neutrality or politicization on the public

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<sup>8</sup> It is though reasonable to argue that a politically biased public administration will produce other goods than those wanted by the citizens and therefore it will be inefficient with respect to their demands.

administration was the status quo of these states. By conditionality, EU guided these states through a long, difficult and sometimes not fully successful process towards an impartial public administration. Quoting Nunberg (1999), Meyer-Sahling (2004) argued that “more than one decade after the change of regime, the record of civil service reform in post-communist Europe suggests that civil service developments are characterized by reform delays, failures to implement legislation and the continuing politicization of personnel policy processes” (Nunberg in Meyer-Sahling, 2004, p.72). Further, Meyer-Sahling describes this situation arguing that Poland, Lithuania and Latvia adopted civil service laws but they were ineffective in implementing it. This failure was patch by revised laws in 1998, 1999 and 2000. Estonia adopted such a law in 1995, Bulgaria and Romania in 1999, Slovakia in 2001 and Czech Republic in 2002 (another failure case because the 2002 law was never implemented). The only CEE country which is an exception from the slow progress rule is Hungary which adopted a civil service law in 1990 and 1992 and which deepened its reforms by 1997, 2001 and 2002 laws. (Meyer-Sahling, 2004). The Nunberg-Meyer-Sahling argument has at least two important implications: first, the existence of a zero point – an over-politicized communist type public administration (Goetz, Wollman, 2001, p.864) is presumed. Second, the process of de-politicization actually took place. It was slow but it existed. Absent (or not strong enough) were, however, - as Meyer Sahling (2009), (2011) argues - the mechanisms to ensure the durability of these reforms. “EU failed to address the issue of post-accession durability, as it devised virtually no instruments to prevent post-accession reform backsliding in the area of civil service governance.” (Meyer-Sahling, 2011, p.235). Indeed, Slovakia, Czech Republic, Poland and Slovenia are, as Meyer-Sahling (2011) shows, cases of reform reversal after accession. In the Baltic countries case the regress hypothesis is not confirmed and for the Hungarian case the evidences are not conclusive. (Meyer-Sahling, 2011, p.251).

The underling theory here is that politicians or political elites are interested in having a power instrument as bureaucracy in their grasp. As a result of external pressure (EU conditionality) they slowly reform the public administration. Since after accession the compliance external incentives are gone, one should expect that the CEE political elite seek to reinstate the politicized status quo. Of course, this explanation is not valid for the Baltic states cases and therefore one should add either the possibility of a methodological failure from Meyer-Sahling (2011) or a case of successful social learning. Since I think that the methodological problem is rather improbable, the latter case seem to be more appropriate. So I should rewrite the regress hypothesis in the case of

public administration politicization as the absence of both terms. In other terms, it is not the case of a true disjunction of the conditionality term and the social learning term or of a conjunction of both.

This theory and its fully rationalistic cousin (the unconditional regress hypothesis) have, of course, to be tested. In this respect, Rauch and Evans (1999) used a Webberianess Scale Rauc and Evans, 1999, p.749) to assess the degree in which central agencies are characterized by meritocratic recruitment and the degree in which they provide a predictable long term career for civil servants. Gajduschek (2007) addressed the Hungarian case using an imaginary merit-patronage scale, while Eichbaum and Shaw (2008) used a similar index of "administrative politicization" (Eichbaum and Shaw, 2008, p.337). The politicization literature is scarce for the Bulgarian and the Romanian cases (Iancu and Ungureanu 2010 and 2011; Andrei et al., 2012). From this point of view, it could be said that both Romania and Bulgaria fall under the shadowy part of EU, one to be partly (only on the Romanian case) dealt with in the following section.

### **Politicization in the hidden part of EU: The Romanian case**

For some time now, reform and democratization in CEE countries have triggered the interest of many public administration scholars (Klimovsky, 2013; Iancu, 2013b; Pinterič and Prijon, 2013). Romania, with its institutional changes targeted to satisfying the public interest and the EU membership criteria was no different. Several national researches focused on reform patterns and actors involved in democratizing central and local public administration. Politicization emerged as a subject *per se*, and arguments were raised on whether the country was still (really) a viable and stable democracy. In fact, by July 2012, the Commission Report on the progress of Romania under CVM its serious concerns on the democratic status of the country: "Political challenges to judicial decisions, the undermining of the constitutional court, the overturning of established procedures and the removal of key checks and balances have called into question the Government's commitment to respect the rule of law and independent judicial review" (p. 3). And although by December 2012, Romania formally assured the European leaders of its commitment to democracy (in an "agreement of inter-institutional collaboration" signed by the Romanian President T. Basescu and Prime Minister V. Ponta), eyebrows still raise on account of politicization.

A recent study relevant to civil service and thus to the scope of this article, is the one written by Andrei et al. (2012). Their general argument was that civil servants were highly vulnerable to legislative changes, as top politicians usually altered the rules of recruitment so as to better fit

their appointees into management positions (Andrei et al. 2012, p.7). Following a survey conducted on 550 employees from public administration, the authors operationalize politicization as: changes in top management and executive positions based on political reasons and membership of public administrators in political parties. As results are presented, one reads that abruptly 36% of the respondents opted for a “I do not know” answer when asked “Were there any changes in personnel based on political criteria in your institution during the last year?”. Such a behavior, as argued by Andrei et al. (2012, p.10), could be seen as fear for acknowledging the politicization of the system. Furthermore, regarding the political membership variable, 57.1% of the top management civil servants working for the central administration and 42.9% of those employed by local administrations declared their political affiliation to a party (Andrei et al., 2012, p.12). That led the authors into concluding that between 2007 and 2010 the neutrality of civil service in Romania could be questioned (Andrei et al., 2012, p.19).

In the same vein, but arguing on the dead letters<sup>9</sup> of the civil servants' code of conduct in Romania stands the work of Bryane (2012). As his argument unfolds, he comes to the very interesting conclusion that “no sane civil servant in Estonia, Romania or another Central European country would reasonably disobey their bosses' orders because they believe their own decisions would better serve the public interest or the economise on government resources. No sane civil servant would rely on an administrative court, tribunal or arbiter to rule in their favour in such a circumstance. As civil servants can not rely on these codes of conduct in their daily work, they fail to provide substantive rights for these civil servants” (Bryane, 2012, p.297). Giving that the Romanian Code of Conduct (Law 7/2004 with amendments) speaks quite clearly of impartiality and political independence (article 3), Bryane's work (2012) provides an excellent opportunity for consolidating the view that Romanian civil servants as well as politicians exhibit an instrumental behavior: the first do not attempt to disobey their political leaders, and the latter dissimulate political impartiality for the eyes of monitoring agents, while altering the rules according to their discretionary agendas.

Nuțu and Ioniță (2012) provide, at their turn, another proof for the existence of a deeply politicized administration in Romania. Their “clientelism index”, built on the frequency of discretionary transfers from

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<sup>9</sup> See Falkner and Treib (2008). They argue that the new member (and two other old member states) states appear to fall within a group that could be dubbed the “world of dead letters” (Falkner, Treib, 2008, p.293). This label refers to the inconsistent behavior of the mentioned states in regard to European norm.

central budget to local administrations serving the ruling party shows a peak between 2007 and 2008. Amounting to almost 80% of the total own revenues of local governments in 2008, such transfers were made based on power affiliation “with a twist” – money were targeted not only to mayors of the political color of the ruling coalition, but also to the independent officials (who usually denounced the opposition parties and became independent after election) (Ioniță, 2012). Giving that according to the law, mayors are actively involved in recruiting civil servants, one could infer at this point that politicization of the recruitment system might be worth testing.

On this issue, Ungureanu (2012) and Iancu and Ungureanu (2010) and (2011) built a quite comprehensive outlook of the bureaucracy and civil service reform in Romania. In fact, Iancu and Ungureanu (2010) and (2011) suggest that the European Union played an important role in adjusting the instrumental behavior of politicians and hence, directed the reform so as to better accommodate the accession expectations. Such an argument, supported by an overview of the civil service act, amendments and reform strategies adopted between 1999 and 2010, present a pattern of reform in two stages.

The first one seemed obvious during the negotiation trials (1999-2006): Romania was a candidate (adhering) country, interested in playing by the rules (as set by the European Councils of Copenhagen and Madrid) and following to the letter the recommendations provided by the European monitoring agents. The analysis of the Regular and Monitoring Reports the European Commission issued for Romania (and the rest of the CEE region, for that matter) between 1998 and 2006 offered a comprehensive ‘to do list’ for civil service reform. In a non-exhaustive manner, Romania was kindly advised to adopt a civil service act, draft a code of conduct, improve the transparency of the recruitment procedures, adjust its institutional mechanisms for better fighting against corruption, and improve the overall efficiency of the public system. And if one follows the legislative innovations of the time, one may find that Romania adopted a Civil Service Act by 1999 (and amended it no less than 38 times up to present and 24 times between 1999 and 2006), created a National Agency for Civil Servants in 1999 (and by 2006 it reinforced its objectives and mission), allowed free access to public information by 2001, designed a Reform Strategy for Public Administration and e-Government by 2001 and one targeted at fighting against corruption by 2002, and elaborated a Code of Conduct for Civil servants by 2004.



The second stage was evident between 2007 and 2010. Iancu and Ungureanu (2010), (2011) argued that some of the provisions regarding the meritocratic civil service recruitment and mobility were changed thus allowing politicians to discretionary allocate offices within public administration. They especially referred to the 2009 changes in the Act of civil servants, when the list of eligibility criteria for high rank civil servants (top management positions) was amended so as: to allow the equivalence between graduating a training program and exercising a full Parliamentary mandate; to acknowledge the mayor's power to recruit his/her own civil servants locally; and to approve the situations when, upon request, top management civil servants would suspend their public office so as to exercise a parliamentary mandate.

The studies presented so far roughly argued in favor of the very same conclusion: politicization is present in the Romanian civil service, and the law and regulations allow it. Under-regulating the recruitment and mobility of civil servants, the competencies of the National Agency for Civil Servants or the methodology for allocating financial resources gives room to discretionary powers. How do these powers manifest in the case of civil service reform, or most specifically in that of recruiting personnel in Romania? Did EU made any difference?

With EU conditionality present, but not yet a clear vision on the effectiveness of social learning, two reform patterns seem to be under investigation:

1. *Conditional reforming* - seems to have happened between 1999 and 2006. Romania was officially a candidate country to the EU and the conditionality mechanisms were very much present. It was during that time that almost all regulations on meritocratic recruitment of personnel were enacted. As Iancu and Ungureanu (2010), (2011) presented it, the Act on civil service (1999) spoke of merit base selection, stability and a civil service free of political pressure. It also proclaimed the obligation of all civil servants to restrain themselves from expressing their political beliefs while on duty and announced free public competitions to be monitored by a National Agency for Civil Servants. The Act failed yet to include any pieces of information on how recruitment committees were to be formed or how the competition was to be organized. Such a situation made the European Commission give a rather blunt comment on the success of the reform, as it stated in 2002 that "little substantial progress could be reported" (Regular Report 2002, p.28). A year later, the Act on civil service undergone major revision: new (more merit-base) recruitment procedures were put in place, a new rank of civil servants was introduced and formerly political appointees (the prefects) were

transformed into career officials; still, recruitment commissions for top management positions (high rank civil servants) would have been formed out of people nominated by the Prime Minister at the proposal of the Ministry of Internal Affairs and Administration. While the National Agency seemed to have consolidated its powers, it remained under the political supervision of the Government. At the time, the European Commission had already advocated in favor of signing the accession treaty, and by 2004, Romania closed all the negotiation chapters. As EU's Monitoring reports (issued in 2005 and 2006) were still quite scrupulous in advocating against corruption in the system and more transparency in the public administration, by 2006, a peak in civil service reform was reached.

2. *Unconditional de-forming* – seems to have happened as of 2007. One could argue that EU continued its monitoring through the CVM reports. While fully aware of the role such documents might present for the overall image of Romanian reforms, there are two reasons for which I consider them of lesser importance for the conditionality argument. First refers to the scope of the CVM: in the case of Romania, EU seemed interested in how the fight against corruption went within the judicial system. Surely, when question on whether there was a rule of law present appeared in the summer of 2012, political neutrality became an indirect subject of concern. Still, no direct references in that regard were being made. Second, what could Romanian politicians lose should EU got suddenly upset by their behavior in recruiting civil servants? Such a question (and not really its possible answers) made me think twice on considering EU's conditionality present after 2007. Under these limits I consider safe to assume that after gaining the EU membership, Romania faced no real conditionality in terms of merit-base recruitment of civil servants. In such context, the amendments to the Act on civil servants that followed suggest an increase in re-politicization - just as argued by Andrei et al. (2012), and Iancu and Ungureanu (2010). For example, in 2009, former high rank civil servants (as of 2003, the prefects) were re-converted into political appointees; recruitment commission were reformed so as to comprise three members from the institution where the job opening is present, and only two delegates from the National Agency; no unanimity vote was required. And giving that with the start of the financial crisis, almost all new public recruitments were blocked, it comes as no surprise that no legal substantial changes were further reported as of 2009.

If read under the lenses of Table 1, the two reform patterns presented above seem to suggest that while EU conditionality was present (1999-2006), politicization of the civil service (and recruitment procedures) was

at its lowest levels; however, with the conditionality gone (2007-2012), politicization re-appeared. That might suggest that the levels of social learning effectiveness were quite low, and therefore that the Romanian case could belong to the fourth type of Europeanization (low level of compliance, reversed changes) – the de-europeanization.

## **Conclusion**

This article started with defining Europeanization as the incremental process of import-export of norms and practices between EU and candidate countries, where EU mainly exported norms and candidate states (mainly) complied with them. That raised the argument of compliance, which led me into assuming a hybrid model of compliance which implied that there were four possible types of Europeanization. The first one relies on the existence of political conditionality and an effective social learning; the second, maintains the conditionality but reduces the social learning of candidate / Member States. The third and fourth types assume the absence of conditionality, while addressing a case of internalized changes (type 3) and one of reversed changes (or type 4, de-Europeanization). The Romanian case, a hidden part of the EU studies on conditionality and politicization suggested that public administration there had experienced a fair trial of reforms during the accession period (1999-2006), only to revert to a politicized behavior soon after the EU conditionality stopped.

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## **MARKETING CAPABILITIES FOR INNOVATION-BASED COMPETITIVE ADVANTAGE IN THE SLOVENIAN MARKET**

Vojko Potočan<sup>1</sup>

### **Abstract**

The primary role of marketing within the competitive advantage is innovation. The customer value-based differentiation strategies will drive the company's market research efforts, its selection of target markets, its product development processes, its market communications programs, and its delivery processes. These processes require many specific capabilities that enable the firm to carry out activities necessary to move its products or services through the value chain. We must explore the role of distinctive marketing capabilities in competitive strategy of the company. As sources of competitive advantage, companies try to create their product or service differentiation by developing higher product or service quality, by using their knowledge to solving marketing problems, by communicating with their customers, and by satisfying customer's needs. We also would like to confirm that superior customer service lead to company's innovation. The paper closes with the implications of the findings and highlights promising future research avenues.

**Keywords:** competitive advantage, innovation, marketing capabilities, entrepreneurship, customer service

### **Introduction**

In recent years the resource-based view of the firm has become a dominant paradigm in management literature. This paradigm has been extended to marketing and to studying the assets and capabilities underlying superior performance in the marketplace (Day, 1994: 37; Fahy et al., 2000: 63). The resource based view of the firm has an inward focus in that it considers a firm's resources as primary sources of competitive advantage. Providing these internal resources (products/services, capital, technology, specialised knowledge, human resources, contacts and networks, meet certain criteria (e.g., difficult to

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imitate and difficult to substitute), then they can form the basis of creating a superior competitive advantage (Patterson, 2004). This paradigm has been extended to marketing and to studying the assets and capabilities underlying superior performance in the marketplace. Resources enable the firm to develop a sustainable competitive advantage, and create customer value in the marketplace (Fahy et al., 2000). Although different types of resources can be identified (e.g., organisational culture, marketing assets), the discussion in this paper is focused on marketing capabilities.

For firms competing in a global marketplace, innovations play an increasingly vital role in achieving superior performance (Bindroo et al., 2012: 17). Customers are important relationship partners who possess unique information that can be advantageous to the competitors (e.g., related to services, marketing communication, new technology, and customer preferences) (Bindroo et al., 2012: 18). The company must exploited many differences in an offering, and the value of these is dependent upon the importance to the customer. In identifying and serving customer needs for products and services, timing of exploiting sustainable resource, executing differentiating capabilities or launching an innovative technology are critical factors (Adhikari and Gill, 2011: 76).

Entrepreneurship is essential for the firm to accumulate dynamic capabilities and to create sustainable competitiveness (Charlie and Yan, 2011: 513). Entrepreneurs have to create value and to keep close observation on the performances of the value added procedures of the value chain. Value chain can be defined as »an integrated series of processes that produces service or product« (Guy, 2011: 63). According to Lee (2004: 104), »high speed and low costs, though essential, are not enough to maintain sustainable competitive advantage«. Thanks to new technology, executives can divide up their company's value chains, handle the key strategic elements internally, outsource others and coordinate all essential activities more effectively to meet customer's needs. Companies that understand this build their strategies around knowledge of developed core skills and developing new products or services to differentiate from other companies (Adcock, 2001).

Effective sales management, products, pricing, advertising, and distribution in any business has always required that marketing managers found available marketing capabilities in the company and organized them to create competitive advantage (Mathur, 1997: 199). It is the need of a business to focus on the areas of its core competencies, specifically those where it can deliver a real competitive advantage. It should be able to identify and accommodate other companies, which



can contribute their capabilities to ensure value to customers (Adcock, 2001).

The research consists of two parts: the theoretical foundation of the role of marketing capabilities for the competitive advantage and the empirical analysis, based on the primary data collected. The research has encompassed the analysis of strategic marketing sources of competitive advantage in the sample of Slovenian companies. This paper defines marketing as a function of the firm dealing with the mobilization of organizational resources for the acquisition and integration of market-based knowledge to value creating activities of the company; and the coordination of activities required for the company to reach its targeted customers with superior products and services. The assessment of the innovation in the sample companies is one of the indicators of the entrepreneurial activity.

This paper proceeds as follows. First, the theory of competitive advantage is explored, focussing on marketing sourcing for sustained competitive advantage. Second the empirical results of the sample Slovenian companies were examined and the results were presented. The paper concludes by discussing implications for future directions and the conclusions from the study.

### **Marketing sources for competitive advantage of a firm**

Competitive advantage is taken here to mean the strategic benefits gained by a firm over its rivals that enable the firm to compete more effectively in the marketplace, which then leads to superior profitability (Bharadwaj, Varadarajan and Fahy, 1993). This focus is based on the integration and coordination of firm activities towards satisfying customers in an effort to maximise long-term profitability (O'Cass and Voola, 2011: 629).

The capability-based theory suggests that a firm can achieve competitive advantage through distinctive capabilities possessed by the firm and that the firm must constantly re-invest to maintain and expand existing capabilities in order to inhibit imitability. Marketing capability of a firm is reflected in its ability to differentiate products and services from competitors and build successful brands and firms with strong brand names can charge premium prices in foreign markets to enhance their profitability (Weerawardena, 2003).

The marketing concept that has existed for many years was one of the first strategic frameworks that provided firms with a sustainable competitive advantage (Kumar et al., 2011: 16). The goal of marketing strategy is to understand how firms obtain and sustain a competitive

advantage. This goal is applicable to all types of organizations that compete in a competitive market (O'Cass and Voola, 2011: 628). It has been argued that market orientation has a positive influence on business performance (Le Meunier-FitzHugh and Piercy, 2011: 287).

The differentiation strategy emphasizes competition with a unique product on the entire market. In this case, the company has been developing an entirely new product in order to differentiate itself from its competitors, or improving an existing product by differentiating it from similar competitor products by design, usage characteristics, taste, etc. The final goal of the differentiation process is creating a product brand by which the company will be recognized in its industry. This is a very ambitious goal, which presumes that the company possesses large advantages in the fields of research and development, design, marketing and quality control (Buble et al., 2003). Capability creates no competitive advantage if it is easily achieved (imitated) by one's competitors. Thus, the potential sources of competitive advantage of a firm are those capabilities that are difficult to develop (Buble et al., 2003). Competitive advantage can come from any of the parts of an offering, but if the synergy exists, the combination will be stronger than the individual parts.

In intangible nature of an offering goes further than the service encounter. All marketers must remember to design and deliver the non-tangible product benefits that customers inevitably demand. Excellent physical and service characteristics alone are seldom enough to guarantee customers satisfaction and competitive effectiveness, achieving a balance of these product components aspects requiring attention from marketing. This should embrace all other contracts between supplier and customer at any level and the second requirement is the consistency between all elements of the offering so that each is supportive and leads to a balance from everything that is done (Murray and O' Driscoll, 1996).

Differentiation, as a means of achieving competitive advantage, could come from either the tangible or the intangible parts of an offering. While the merchandise (core offering) could be tangible or intangible, it is important to separate this core offering from the support (advice, instructions or assistance) given to augment the total product. It is possible to move away from a pure commodity - that is, the "expected" state, where both the product and the support are undifferentiated and no competitive advantage exists – and develop an offering that has real additional benefits for customers (Mathur, 1997).

Some author argue that managers are usually focused too much on core competencies of enterprises, critical sources and key factors of business efficiency, instead of being focused on the strategic coordination of activities of enterprises, which is a central factor in achieving a competitive advantage (Buble et al., 2003).

### **The dimensions of competitive advantage**

Competitive advantage can be viewed as a firm's ability to contribute more customer value than its competitors (Wu, 2012: 160). Sustainable competitive advantage is being determined by three major components, these are high perceived value and low delivered cost. All the above components will be part of the input that customers will use when they evaluate the perceived competitive position of an offering (Adcock, 2001).

It is suggested that entrepreneurial firms pursuing innovation as a key thrust in their competitive strategy build and nurture distinctive marketing capabilities. In turn, marketing capabilities lead to higher organizational innovation intensity and sustained competitive advantage (Weerawardena, 2003). In this paper are examined interrelationships among marketing capability and organizational innovation.

### **Marketing capability**

Competitive advantage of the company is focussing on the inside elements of the company. For those inside elements the variety of terminology can be summarized. It includes "resources", "invisible assets", "strategic assets", "firm resources", "capabilities", "competency" and "core competencies" (Juttner and Wehrli, 1994). The capability-based theory claims that the competitive advantage of a firm derives from its capabilities. Different authors use different expressions to describe the sources of capability-based competitive advantage. The most common expressions found in the related scientific literature are the following: core skills, distinctive capabilities, organizational capabilities, organizational capital, dynamic capabilities and core competencies (Buble et al., 2003).

Marketing capability is defined as integrative processes designed to apply the collective knowledge, skills, and resources of the firm to the market-related needs of the business, enabling the business to add value to its goods and services and meet competitive demands. In explicating the overall marketing capability of the firm it is important to examine the specific marketing processes that are adopted by firm in its competitive strategy. In this paper we have identified several processes

that are used by firms in their efforts to reach target customers with value-added products and services (Weerawardena, 2003).

The first process is customer service, defined as deeds, processes and performances which are largely intangible tasks that satisfy buyer or user needs (Adcock, 2001). Customer service is more than fast deliveries or product availability; it is primarily a way of providing an optimal supply process for the customer. Literature suggests that there is some evidence for a direct impact of customer service performance on market share, sales, or profits (Wouters, 2004). It is certainly true that no marketing strategy can be implemented without effective customer contact, and this involves all internal staff, as well as staff at partner distributors. These employees, whose meet customers but whose primary functions are not marketing – are the people who can ensure a product and, especially, a service meets customer expectations. They are people who are close to the customers all the time. They can usually tell more about the performance of existing products than any carefully structured research programme and they can sometimes actually spot opportunities that might lead to great new product ideas. So, customer contact point is obviously a critical resource within the organization (Adcock, 2001).

The second process is concerned with the effectiveness of promotional activities in gaining market share and sales growth. Communication with existing and potential customers is vital to marketing success especially on the terms of globalizations (Jerman and Završnik, 2012a). The challenge for marketer is to create a well-planned and comprehensive marketing communication program in order to achieve company objectives. We must integrate and coordinate different communication tools to achieve the desire results (Završnik and Jerman, 2011). The instruments of marketing communications comprise advertising, sales promotion, public relations, direct marketing and personal selling. Marketing communications can be described as »all the promotional elements of the marketing mix which involve the communications between an organisation and its target audiences on all matters that affect marketing performance« (Jerman and Završnik, 2012b).

Third is the quality of sales people. Sales force have taken a more strategic role in order to address the increased importance of buying process (Agnihotri and Rapp, 2011: 364). Direct selling efforts are one of the most important variable affecting a business firm's competitive advantage. The salesperson is also a very expensive resource. The ability to differentiate products (to boost the image of products by attributes other than prices such as superior quality, image or services) marketed by the firm.

Next is the firm market research which can gain reliable marketing information to reduce uncertainty to tolerable levels and facilitate planning and control at a reasonable cost (Bingham et al., 2001). The next area of importance is the speed of product introduction. Rapid development of new products and services is an integral component of innovation-based competition. Next is the firm's marketing research, which is defined as a set of processes, needed to learn about customer needs particularly latent needs and to monitor competitor product and service offering. The speed of product introduction is another important factor of company's competitive advantage (Weerawardena, 2003).

These processes are adopted in varying degrees by firms in their efforts to reach respective target markets. In this paper the overall marketing capability of the firm is operationalized using these marketing processes.

## **Innovation**

Through progressive and incremental innovation in the nature of the intangible resources, it may be possible to protect initiatives and create a combination and configuration that maintains their relative sustainability over time. The capability configuration approach requires a firm to remain original and creative, rather than an imitator, in creating a sustainable competitive advantage (Taghian, 2010: 829).

All types of innovations can lead to sustained competitive advantage. Although the literature suggests that innovations can occur in any value-creating activity, suggesting that it should be conceptualized to cover a broad range of activities, past innovation research is biased toward technological innovation. However, firms undertake both technological and non-technological innovations and all such innovations can lead to competitive advantage. In this paper, organizational innovation is defined as the application of ideas that are new to the firm, to create added value either directly for the company or indirectly for its customers, whether the newness and added value are embodied in products, processes, services, or in work organization, management or marketing systems (Weerawardena, 2003).

Marketing capability is critical at the product development stage where consumer needs and competition must be assessed and information shared for comprehensive new product ideas to be advanced into the development stage (Weerawardena, 2003). Based on this discussion, we argue that marketing capability is related at all types of innovations pursued by the firm. We suggesting that marketing capability can be a

key source of competitive advantage, and can influence company's innovation. Accordingly, the relationship between marketing capability and organizational innovation is hypothesized.

## **RESEARCH METHODOLOGY**

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### **Characteristics of the sample**

The main research instrument for empirical investigation, i.e. a questionnaire, was developed on the derived theoretical basis. The covering letters with questionnaires were mailed to the corporate directors of 150 Slovene biggest enterprises. We choose the strata based on the annual income. The survey was conducted in December, 2011. This research is still in progress, so during the four-week period following the mailing, a total of 30 responses were received and that gave the response rate of 20,0 %. The results present in this paper are related to the sample of 30 respondents. The collected empirical data were processed with SPSS 17, where the emphasis was given to descriptive statistical analysis. We intend to use the regression analysis and hypothesis testing too as organizational innovation. The regression analysis and hypothesis testing produced very modest research findings because of the too small sample of the companies in the sample.

Some of the possible limitations of the survey results should be noted. First, the low response rate might be considered a concern, but in fact, it is expected in organizational research as opposed to consumer research (Hansen, Swan & Powers, 1996). When small sample sizes are being employed, when each subpopulation of interest has fewer than 30 respondents, we should be very careful to ensure that any inferences are appropriate given the data collection. But in this paper a small sample represents a high proportion of our population and such concerns are less relevant (Bock and Sergeant, 2002).

The relevant data of the companies were provided mainly by members of the managing boards (73,3% of cases). Other respondents appeared in not more than three companies (See Table 1).

Table 1: Position of respondents in the companies

Position in the company	Frequency	Percent (%)
Members of the managing board	22	73,3
Head executive	2	6,7
Counselling specialist	1	3,3
Business consultant	2	6,7
Other	3	10,0
Total	30	100,0

The companies included in the sample are distributed according to industries (see Table 2).

Table 2: Distribution of the companies in the sample according to industries

Industry	Frequency	Percent (%)
Production of industrial products	10	33,3
Production of consumer products	5	16,7
Business services	5	16,7
Services for final consumer	4	13,3
Trade	6	20,0
Total	30	100,0

The sample consists of one company (3,3%) with less than 100 employees, 36,7% of the companies with less than 500 employees but more than 100, 40,0% of the companies with the number of employees bigger than 500 but smaller than 1001, and 20,0% of the companies with more than 1000 employees (See Table 3).

Table 3: Size of the respondents companies

Number of employees	Frequency	Percent (%)
51-100	1	3,3
101-500	11	36,7
501-1000	12	40,0
More than 1000	6	20,0
Total	30	100,0

Then respondents in the surveyed companies were asked about their largest sales geographic region. The respondents had the possibility to choose among different answers. The results show that the largest respondent sales market is Slovenia, followed by EU market. The next large sales market is the market of former Yugoslavian countries, followed by the market of East Europe (See Table 4).

Table 4: Respondents largest sales geographic region

Geographic region	Frequency	Percent (%)
Slovenia	29	96,7
EU	22	73,3
Former Yugoslavian countries	22	73,3
East Europe	22	73,3
CEFTA	18	60,0
USA	12	40,0
Pacific - Asia	9	30,0
Australia and New Zealand	8	26,7
Japan	7	23,3
Africa	7	23,3
Latin and Middle America	6	20,0

The presented research findings in the continuation relate to the above-stated sample of companies.

## Analysis and results

### Marketing capability

The marketing capability scale captures the quality of the company's customer service, marketing communications effectiveness, the quality of sales force, market research ability and the speed of new product introduction. Scores on the marketing capability scale suggest that the firm possesses distinctive capabilities in the use of marketing tools and techniques. The reliability of construct was assessed by Cronbach alpha reliability coefficient. The measure had 5 items and reported an Alpha of 0,72.

### Organizational innovation

Organizational innovation construct is operationalized in terms of the type of innovation. The types of innovation included are product, process, managerial and marketing innovation. The concept of organizational innovation had 4 items and the measure reported an Alpha of 0,76.

Both the construct, i.e. marketing capability and company's innovation were measured on the Likert scale. The respondents had to indicate their agreement with the statements on the on a 5-point Likert (1 strongly disagree to 5 strongly agree) scales. Despite the fact that the Likert-type measure does not claim to be more than an ordinal scale, it has,



nevertheless, been accepted as a means of achieving interval measurement quality, and there are several arguments favouring a variety of positions on this issue (Avlonitis and Papastathopoulou, 2004).

We were interested if the correlation between different marketing capabilities and company's innovation exist. Accordingly, we make the hypothesis as follows:

Null hypothesis H0: There is no correlation between marketing capabilities and innovation.

Alternative hypothesis H1: There is a correlation between marketing capabilities and innovation.

Table 5: Correlation matrix between different marketing capabilities and innovation

CORRELATION		Innovation
The quality of our customer service is high	Pearson Correlation	0,450(*)
	Sig. (2-tailed)	0,012
We have trained sales persons in the company	Pearson Correlation	0,442(*)
	Sig. (2-tailed)	0,014
We ensure high budget for marketing communications	Pearson Correlation	0,444(*)
	Sig. (2-tailed)	0,014
Marketing research is a constant activity in our company	Pearson Correlation	0,457(*)
	Sig. (2-tailed)	0,011
Speed of the new product introduction	Pearson Correlation	0,499(**)
	Sig. (2-tailed)	0,005
Innovation	Pearson Correlation	1,000
	Sig. (2-tailed)	-
* Correlation is significant at the 0,05 level (2-tailed).		
** Correlation is significant at the 0,01 level (2-tailed).		

The correlation coefficients between 0,300 and 0,700 are considerate that there's a moderate correlation between marketing capabilities and innovation. The test statistic exceeds the critical value so we reject the null hypothesis and conclude that there is a significant correlation between all marketing capabilities and company's innovation.

Because the pairwise correlation is found to be significant the relationship between the variables will be investigated by producing a regression model in the form of a linear equation. The independent variables (marketing capabilities) have been constructed on the basis of questionnaire items, detecting the distinct potential sources of the competitive advantage and innovation in the company. It is important to note that all the variables have been measured on a five-level Likert scale. For each independent variable, the average value and the standard deviation have been calculated.

Table 6: Marketing capabilities of the company

Marketing capability	Mean	St. deviation
Customer service	3,39	0,69
Sales person	3,77	0,86
Marketing communication budget	3,67	0,92
Market research	3,33	0,99
Speed of new product introduction	3,70	0,95

We would like to test if is the regression model with five predictors (i.e. customer service, sales person, marketing communication budget, market research and speed of new product introduction) significantly related to the criterion variable Y (i.e. company's innovation)? Non significant predictor variables were deleted from the initial regression model and the model re-run to give a parsimonious result. We test the equivalent null hypothesis that there is no relationship in the sample between dependent variable and independent variables, but we found significance level only at one specific marketing capability i.e. customer service. Accordingly to this, the null hypotheses, which we tried to reject by means of regression analysis, could be formulated as follows:

Null hypothesis H0: There is no relationship between the dependent and independent variables, i.e. The correlation coefficient between the dependent and independent variables equals 0 ( $H_0: R_{xy} = 0$ ).

Alternative hypothesis H2: There is a positive relationship between the dependent and independent variables, i.e. The correlation coefficient

between the dependent and independent variables is significantly higher than 0 (H2:  $R_{xy} > 0$ ).

For the tested relationship, we selected the regression model with the highest significance, i.e. the model with the significance closest to the significance level of 5%. To investigate the hypothesis, entering all variables in a single block, we found that the proposed model explains a significant percentage of variance in the innovation. Table 7 shows that 20,3 per cent of the observed variability in company's innovation is explained by the one independent variable i.e. customer service ( $R^2=0,203$ ; adjusted  $R^2=0,174$ ).

Table 7: Relationship between customer service and company's innovation

Independent variable (x)	Dependent variable (y)	R <sup>2</sup>	Adjusted R <sup>2</sup>	Model	(Sign.) $\alpha$
Customer service	Company's innovation	0,203	0,174	Lin: $y = 1,607 + 0,494x$	0,012

Although the empirical results do not provide a high level of support to the conclusion, we believe that the positive relationship between the innovation in the company and its marketing capability (in this case "customer service") can be still accepted on the basis of the available data. Such a result is in accordance to the findings of other authors (Spanos and Lioukas, 2001).

Table 8: Results of regression coefficients

Model	Unstandardized Coefficients		Standardized Coefficients	t	Sig.
	B	Std. Error	Beta		
(Constant)	1,607	0,739		2,176	0,038
The quality of our customer service is high	0,494	0,185	0,450	2,670	0,012a
a Dependent variable: Innovation					

Results from Table 8 indicate that we can reject the null hypotheses that the coefficients for customer service ( $\text{Beta} = 0,450$ ,  $t = 2,670$ ,  $p = 0,012$ )

are 0. The beta weight (Beta = 0,450) shows that the quality of customer service have a significant influence on company's innovation.

### **Implications**

The findings discussed above have some managerial implications. The critical success marketing capabilities put forward in this paper serve as building blocks for the development of high level of innovation in the companies. It provides useful guidelines in the form of the critical marketing capabilities that can affect company's innovation. In term of innovation are included all types of innovation: product, process, managerial and marketing innovation. The marketing capabilities proposed in the study also enhance the current practice of company's innovation for sustained competitive advantage.

### **Conclusion**

The challenge for organisations today is to understand the factors that play a critical role in utilising marketing capabilities and their applications on business strategic objectives to enable them to compete successfully in today's marketplace. As sources of competitive advantage, companies try to exploit different marketing capabilities in order to create competitive advantage. They attempt to introduce new product, by satisfying customer's needs, by developing higher product or service quality, by training efficient sales person.

Top managers assessed that the most important marketing capabilities of companies for creating a competitive advantage and innovation. The study confirms that there is an association between all marketing capabilities and company's innovation. A statistical test did not support the hypothesis that a positive relationship exists between all marketing capabilities and company's innovation. But with statistical test confirm a positive relationship between one specific marketing capability (i.e. the quality of customer service) and company's innovation. Results suggest that marketing capability (the case of customer service) influences the company's innovation. The research contributes to theory and practice of strategic marketing by developing measures and refining measures of marketing capabilities and innovation. Further, the model captures the role of key decision-makers in the development of marketing capabilities.

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## THE INFLUENCE OF GAMBLING ON CRIMINAL ACTIVITIES IN THE REGION OF GORIŠKA

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### Abstract

The discussion of social consequences of gambling includes also the influence of gambling on the occurrence of criminal activities. The start-point of the present article is based on criminological theories which explain causal-consecutive connection between crime and gambling. We performed an examination of relevant studies about the existence of correlation between gambling and crime and a comparison of statistical data about criminality in the region of Goriška with the regions where there is no gambling or it is present in a minor extent.

**Keywords:** gambling, criminality, region of Goriška, Slovenian regions

### Introductory start-points and definition of the problem

Gambling represents for the environment and society numerous advantageous economic results: economic development, diminished unemployment, increased profits, increased tax receipts and other advantages (Prašnikar and others 2005, Pahor 2006, Stokowski 1999a), which leads to the amelioration of well-being and life quality. At the same time we face also the negative social consequences of gambling. Numerous authors identified them with the fields that concern the influence of gambling on the population demographic structure (Stokowski 1999b), the change of values and the attitude towards gambling, which should represent a step aside from traditional values (Miers 1997) and with that the downfall of the traditional society, traffic aggravation, an increased extent of public jobs (Stokowski 1999b, Oh 1999), the phenomenon of problematic and pathologic gambling (Walker

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1995), the influence on the family life, the occurrence of suicide and criminality<sup>3</sup>.

The influence and the connection of crime with gambling in the present study is first discussed in the context of basic criminological theories that explain the causal-consecutive connections between crime and gambling, relevant scientific studies about the connection between crime and gambling, with which we also identify frequently appearing forms of crime within gambling.

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Criminal activities connected to gambling are roughly divided into 3 basic groups: integrity of the gamble alone, organized crime and secondary crime. The threatening of the integrity or of the honesty of gambling games is present especially in the modification of gamble requisites and instruments, in the form of arrangements between the gambler and the employee in the casino, the paying out of expected percentage of payment and in other forms of fraud.

Gambling is connected to organized crime, money-laundering and corruption, which is presented in the form of public servants bribery by the illegal casino managers, in the form of officials bribery, who confer gambling licenses or in the form of politics bribery, who have an influence on the changing of gambling legislation. Organized criminal groups can also become providers of goods and services for the gambling industry, which they can offer for elevated prices (Kurež 2008: 118).

Secondary crime, connected to gambling, is presented in the form of thefts, car stealing, robberies, drug trafficking, prostitution, rape, causing physical injuries, homicides, murders. We can find a lot of problematic gamblers among the authors of these criminal activities, who find themselves in trouble because of the most different reasons. Gambling can indirectly influence the crime of a white collar in the form of forgery, fraud and imposture. The gamblers are threatened by theft, addressing to prostitutes and drug dealers. Regarding the criminal activity, hotel rooms and the casino property are also in the firing line (ibid: 119).

The criminological theories, focused on the interpretation individual and interactive level, make the point that the motives of a criminal act are

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3 The criminality is determined as an individual occurrence that represents the violation penal legislation. Criminality defines actions that attack and threaten the human basic values and in the same time they are noted as punishable in the penal legislation (Meško 2006: 16-17).

part of an individual's personality or the reflection of social factors. An individual's criminal activities connected to gambling, on the basis of the individual theory are based on the model of an individual's rational choice, in connection to that the potential criminal-law sanctions or the intimidation theory, according to which it could prevent or obstruct the illegal activities regarding how strict the criminal-law sanctions are, have an influence on that choice (Zimring and Hawkins in Smith and others 2003: 34).

The next individual theory, the theory of social learning, presupposes that a criminal behavior, like all the other forms of behavior, is trained namely by an immediate experience as also by imitating a role model. A learning process such as this presumes that an individual will turn into a person committing crimes provided that he keeps company with individuals that expose him to deviant behavior and belief patterns (Akers v Smith and others 2003:34).

In opposition to the individual theories the interaction theories accentuate the concept of self-control. Criminal activities explain the control theory with the break of social controls. Individuals with a strong self-control are rarely involved in criminal acts as individuals with a lower self-control. Gottfredson and Hirschi (in Smith and others 2003: 35) indicate an unsuitable socialization as a reason for a low level of self-control, especially an ineffective parental education, which could be responsible also for the occurrence of other destructive behavior of a person (alcohol abuse, drugs, etc.).

Self-control is connected to a larger concept of the social ties theory, whose central thesis is that crime is the consequence of weak and torn ties between an individual and society, which includes the connection with the so-called "important others", the responsibility of conventional behavior, the involvement in conventional activities and the belief or approval of conventional norms, social and moral standards and values. The weaker the ties among these four components are, the bigger is the possibility that an individual will commit a criminal act (Smith and others 2003: 36).

Structural theories accentuate the meaning of opportunities that enable an individual or stimulate him to commit a criminal act (Sacco and Kennedy in Smith and others 2003: 37). The theory of protecting space, which affirms that criminal activity can be prevented by a self-protective behavior of people and a more severe control, which explains the presence of criminal activities in less protected areas, is based on the theory of opportunities (Meško and others 2002 in Korež 2008: 104).

This means that a more strict security control can cause the transferring of criminality away from the casino area, where the control is not that tight (Kurež 2008: 104).

The theory of routine activities is intended for explaining criminal activities like robbery, theft, physical assaults, etc. The main supposition of this theory is that the probability of crime occurrence augments in places where in the same time and space there is a big convergence of motivated perpetrators, appropriate victims and the absence of formal and informal guardians, who could tour away potential perpetrators (ibid: 104). This convergence is connected to individual's normal, legal or routine activities. A large concentration of people represents potential victims for thieves and violent persons, and also potential drugs abusers, users of prostitute services, etc. Cash transaction in casinos represents a large magnet for organized crime, which can transform illegal incomes by money-laundering into a legally won income. This is why the local gambling community is believed to be a magnet for different types of criminal activities (ibid: 105).

The application of the criminological theory in the field of explaining crime connected to gambling is showed that "crime in the casino area and its surroundings can increase, provided that the security control there is incomplete or there is a large quantity of extremely attractive potential targets, which surpass the potential risk of being captured. As far as the control is effective or there is no sufficient amount of attractive potential targets, the crime searches for opportunities elsewhere, which represents a potential for the so-called transferring of criminality outside the casinos areas" (ibid: 106).

The authors of studies of crime forms connected to gambling warn about the problems about the general definition of crime connected to gambling and the typology for characterizing forms of that kind of crime (Campbell and others 2005: 38). The definition of criminal activities represents a difficulty – which ones are influenced directly by gambling, meaning that they developed with gambling, and indirectly, these are the criminal activities that can manifest also in a non-gambling environment (theft, rape, etc.).

- Smith and others (2003: 8) prepared a classificatory system of criminal acts for necessity of studying crime connected to gambling, which includes the following categories:
- Illegal gambling – gambling activities not allowed by the legislation,
- Problematic gambling criminality – activities that enable addicted gamblers to continue gambling (falsification, fraud, dissimulation, cheat, etc.),

- Gambling crime – crime that happens in the casino and in its vicinity (crediting, money-laundering, money falsification, theft, aggressions, prostitution, vandalism, etc.),
- Family abuse – victimization of family members, caused by another family member's gambling (family violence, child abuse, suicide, etc.).

Based on the criminality characteristics and on the study researches and other contributions of numerous authors, the following four categories of crime connected to gambling have been identified:

- Honesty or the integrity of the games alone,
- Infiltration of organized crime and
- Street and other crimes or secondary criminality (Thompson and others 1996: 3-6; Albanese 1997: 351-366; Morris and Block 1997: 663-688; Albanese 1999: 3-7; Luin 1999: 122; Smith and others 2003: 8-21; Stitt and others 2003: 253-283; Campbell and others 2005: 38-48).

The difficulties with honesty or gambling integrity represent a secondary product of gambling and they manifest themselves as falsifying gambling requisites, devices or instruments, like e.g. marking the playing cards, using weighted dices, rigging and setting gambling machines, irregular weighted gambling roulette, etc.; like secret agreements between the gambler and the employee in the casino, e.g. inserting non mixed cards, etc.; and like other various scams, like e.g. bets taken after the result is already known or any type of behavior agreed in advance between the gambler and the employee, etc. (Thompson and others 1996: 3; Smith and others 2003: 12; Campbell and others 2005: 46).

As for organized crime<sup>4</sup> connected to gambling, it represents one of the most serious manifesting forms of money-laundering, whose primary goal is avoiding the discovery of criminal financial irregularities and the tax paying, so that the money becomes a part of legal paying circulation (Dobovšek 1999: 130; 2005: 308). Money-laundering represents all the techniques used for converting dishonestly and illegally gained incomes into an honest and legal income (Dobovšek 2005: 308).

The gambling industry is sensitive to the manifesting of corruption. Most of the corruption is related to cases of abuse of government clerks'

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<sup>4</sup> The American definition of organized crime says that it's an union of two or more people with the intention of establish a monopoly in a specific geographic area, with criminal activities of the type that brings a continuous financial income (Criminal Investigation Specific Offenses, 1971: 218).

positions, nepotism, appropriation of public sources, giving preference to certain solutions, etc. In the private sector it manifests in the forms of economic agreements abuse and of business usage violation (ibid: 308-309).

In gambling there are especially known cases of corruption of public officials by the managers of illegal casinos. Bribery can already occur in the processes of giving gambling licenses. The infiltration of organized crime into gambling activities is shown in supplying gamblers with loans, illegal drugs and white slavery, which cause a dependence of criminal groups and performing various favors in return. In relation to the usurious crediting, certain groups for collecting debts based on violence and threatening were formed (ibid: 307-308).

Secondary crime – criminal activities, that happen in a casino or its surroundings and do not include elements of organized crime or gambling integrity, are in a larger measure a consequence of the activities that accompany gambling and are attached to it.

Belonging among the authors of secondary criminal activities connected to gambling, there are the so-called problematic gamblers. The appearing forms of crime, directly or indirectly caused by problematic gamblers, are connected to the attempts to assure for themselves the necessary financial means for gambling or repaying gambling debts (Volberg in Campbell and others 2005: 42).

Some theories and empirically acquired data show just a little connection between problematic gambling and proneness to committing crimes (Smith and others 2003: 17; Campbell and others 2005: 42), while associations of anonymous gamblers affirm that the connection between problematic gambling and crime is much stronger (Brown 1987: 98-112).

The Australian Productivity Commission – APC13 in the report Australia's Gambling Industries asserts that problematic gamblers cause a large spectrum of criminal acts. This appears in the form of money and goods theft in the family or at work, cheques falsification, pick pocketing, etc. In case of necessity the problematic gamblers also undertake more serious criminal activities which can also contain elements of physical violence. This kind of activities include car stealing, drug trafficking, armed or unarmed robberies, prostitution, violence at home, rape, murders, etc. As a rule, problematic gamblers decide for criminal acts because of losing at gambling, accumulated debts, draining their own financial funds, borrowing from family and friends, usurious loans, etc. (APC 1999).

Gambling can also influence the crime of a white collar (Sutherland), which, within his profession, is caused by people with a higher social status (Albanese 1999: 6) and it includes all the criminal acts that the perpetrator commit with cheat or fraud, falsification and they are aimed towards the public administration and influence the public morale, security, well-being, etc. (ibid). The most common persons committing these kinds of crimes are the so-called problematic gamblers. Albanese (1999) in his study, in which he studied the connection between gambling and criminality of a white collar, proves that not one factor of gambling causes frauds, as one of the three occurring forms of crime of a white collar. He discovered that the criminality of a white collar is influenced by the fact how an individual understands his financial problems. Provided he thinks that this is something that can endanger him or his family, it has an influence on committing a criminal act of forgery, cheat or fraud.

### **Review of studies about the causal connection of gambling and crime**

The review of studies about crime and gambling includes studies that deny the connection of gambling with crime or they are indifferent to it, and studies that confirm the connection of gambling with the occurrence of crime.

A relevant study from the field of connection between gambling and crime is the study of Jay Albanese by the title *The Effect on Casino Gambling on Crime* from 1985. The author of the study researched the connection on the case of Atlantic City and he ascertained that the introduction of gambling activities brought a nominal augmentation of criminal acts, but he gave also the explanation that it's not because of a direct influence of gambling, but because of the influence of the increased average daily population in the city. In this way he attributes the increase of the number of criminal acts to the increased number of people in the city and as reflection, the general augmentation of crime in the country (Albanese 1985: 44).

In 1999 Albanese prepared a study by the title *Casino Gambling and White-Collar Crime: An Examination of Empirical Evidence*. In that study he researches the influence of gambling on the so-called white collar crime, which includes the criminal acts of forgery, cheats and frauds (Albanese 1999: 6). He used for this method FBI's data analysis about the arrests and the number of criminal acts of forgery, cheat and fraud from 1988 to 1996 and he compared the data and trends from local

gambling communities with the data and trends from local non-gambling communities in the USA as a whole. He also analyzed the contents of newspapers articles about forgery, cheats and frauds. The key finding of the study is that gambling does not have a significant influence on the trends and levels of criminality of forgery, cheats and frauds (Albanese 1999: 1).

In 1991, Daniel Curran and Franc Scarpitti were verifying the statements from Albanese's study from 1985. Their study *Crime in Atlantic City: Do Casinos Make a Difference?* confirmed Albanese's statements, in fact they conclude in generally that the level of criminality has not increased significantly after the introduction of gambling (Curran and Scarpitti 1991: 444).

The study *Impact of Casinos on Crime: The Case of Biloxi, Mississippi* is from 1996. Semoon Chang, the author of the study measured the influence of gambling on 118 types of criminal activities that happened in Biloxi (Chang 1996: 431). The research perceived a little increase of the whole criminality level in the first year after the opening of the casino, but in the second year the level returned to the level of the year before the opening of the casino (ibid: 435-436).

In the same year Patricia A. Stokowski did a study entitled *Crime Patterns and Gaming Development in Rural Colorado* in which she compared the criminality level in three provincial cities of Colorado before and after the introduction of gambling. With the method of analyzing official data about criminality she stated that there was a nominal increase of the number of criminal acts in some categories, but it was not proportional with the increase of the visitors' number. The number of visitors increased more than the number of criminal acts, which means that, by taking into consideration the additional visitors, the relative level of criminality has actually lowered (Stokowski 1996: 63-69).

Peter Reuter's study *The Impact of Casinos on Crime and Other Social Problems: An Analysis of Recent Experiences* represents the analysis of the data about experiences of local communities that introduced gambling in the last 10 years. The study, carried out in 1997, represents a comparison and an analysis of the official data about criminality in 7 gambling and 8 non-gambling cities and it states that in the gambling cities the level of violent criminal acts in the first year after the opening of the casino remained almost unchanged, in the next years it has slightly increased. In the non-gambling cities the level of criminality has increased a little in the first year after the opening, then in the second year it has slightly decreased. After a two-year period there were no

more differences in the increasing of the criminality level between the gambling and non-gambling cities (Reuter 1997: 10).

In 1999, an ample study was made about the economic and social consequences of gambling in USA entitled National Gambling Impact Study. An analysis of past relevant studies and statistic data has shown that in some cases gambling leads to the increase of the criminality level, but it was not possible to prove it quantitatively.

In 2003, Smith, Harold and Hartnagel with the study Examining Police Records to Assess Gambling Impacts: A Study of Gambling-Related Crime in the City of Edmonton have studied the influence of gambling on the noted criminality extent in the city Edmonton in Canada. They analyzed the official national police statistics and the statistics of the police station in Edmonton. Based on the analyzed data they could not confirm the general thesis that gambling cause an increase of criminality and the existence of several forms of illegal gambling like internet bets, advising for races and illegal gambling houses (Smith and others 2003: 96).

Among the studies that confirm the connection between gambling and crime, there is the study of Simon Hakim and Andrew Buck who studied in 1989 the influence of gambling legalization in Atlantic City and its surroundings. They stated that the number of criminal acts lowers with the distance from Atlantic City and the increase of police expenses (Hakim and Buck 1989).

In 1996, Thompson, Gazel and Rickman finished the trilogy of studies about the influence of Indian gambling on Wisconsin. In the third study entitled Casino and Crime in Wisconsin they study the influence of gambling on crime. They stated that the introduction of casinos in Wisconsin caused a 6% increase of the criminality level. The augmentation of violent criminal acts, thefts and burglary could also be significant (Thompson and others 1996: 10-14).

In 1993 in the study Assessing the Impact of Casino Gambling on Crime in Mississippi Giacopassi and Stitt analyzed the official criminality data in Biloxi in Mississippi. The authors discovered an augmentation of financial crime, which followed the introduction of gambling, but in general the research did not perceive an important difference among the levels of criminality before and after the introduction of gambling.

In 2003 Stitt and Giacopassi with Nicholsom prepared an upgrade of the study from 1993 and they analyzed the levels of criminality in 6 new



local gambling communities and compared them with 6 local control communities in which casinos are not present (Stitt and others 2003: 260). In the study *Does the Presence of Casinos Increase Crime? An Examination of Casino and Control Communities* they came to the conclusion that crime augmented in some local gambling communities, and that the introduction of casinos does not necessarily lead to the increase of crime (Stitt and others 2003: 253).

In 2005 Aborn and Bennett did a research entitled *Gambling: Who's really at risk?*

The connection between gambling and crime. The research analyzed the criminal data in the American local gambling communities in the period of 10 years after the opening of the first casino (Aborn in Bennett 2005: 1). The research states that the levels of criminality in the local gambling communities have substantially increased, they also stated that gambling have a main influence on the increase of criminality in the near local communities (ibid: 2-11).

The studies that confirm the connection between gambling and crime state that the number of criminal acts lowers with the augmenting distance from gambling places, which does not coincide with the criminological theory of protected space and transferred criminality.

The comparison of statistic data about criminality within the region of Goriška with regions where there is no gambling activity

Among the European countries, Slovenia stands out for its high percentage, which is represented by the gross incomes from gambling in the gross social product, and for a high percentage of gross incomes of casinos in the gross incomes of the whole gambling activity (The development strategy of gambling in Slovenia, 2010: 20). The region where gambling is the most developed is Goriška, with three casinos and seven gambling salons, which in 2009 made 55% of the whole gross income from special gambling games in the Republic of Slovenia (ibid: 12). In Slovenia there is in total 33 active gambling salons.

Slovenian gambling is orientated towards foreigners<sup>5</sup>, especially Italians. This is proven also by the number of casinos and gambling salons in the regions bordering on Italy. In the regions of Goriška, Primorska in Kras, at the end of 2009, there were 5 functioning casinos of the total 10 operative and 19 gambling salons of the total 34 operative (ibid: 11). Based on the presented data we derived the hypothesis that regarding the presence of gambling activity there is a higher level of risk for criminality in the region of Goriška.

The ten-year comparison on criminality percentage<sup>6</sup> in Slovenia showed that the number of criminal acts has increased for 19,6% from 2001 to 2010, the number of the so-called classic criminal acts, like murders or homicides, bad and serious physical injuries, sexual offences, robberies and robbery thefts and stealing motor vehicles, has not changed substantially or it has even lowered a little (Kolenc and others 2011: 103). The number of criminal acts against property in the whole criminality structure has lowered from 71,5 to 60,7%, while the percentage of economic criminality in the whole criminality in a decade has increased from 9,7 to 14,6% (ibid).

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5 Casinos in Goriška, Primorska and Kras registered in 2009 between 92 (casino Portorož) and 96,5% (casino Park) of foreign visitors. The gambling salons on the stated area noted between 33 and 98% of foreign visitors. In the casinos in the country's interior the percentage of foreign visitors ranged among 23 (Ljubljana), 48 (Bled) and 58 % (Šentilj), in the gambling salons the percentage of foreign visitors ranged from 1 to 20%. In the casinos in Kranjska Gora and Rogaška Slatina and in the gambling salon in Kranjska Gora, which is situated in an distinctive touristic place, the percentage of foreign visitors in 2009 is 84% (the development strategy of gambling in Slovenia, 2010: 8

6 The statistic data of criminality show all the criminal acts, except for the ones from the street traffic area, and children's activities, for which the police, based on the ninth paragraph of the article 148 of the Law of criminal proceedings, has filed criminal complaints or reports to complete the criminal complaints. They do not include reported or uncovered criminal acts , where there was no confirmation of suspected offence or there was no basis for a criminal prosecution according to the tenth paragraph of the article 148 of the quoted law (Annual report of police work, 2011: 57).

Table 1: Criminal acts by units in the years from 2001 to 2010.

Unit	Percentage of criminal acts.									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
PU Celje	9,3	10,1	10,8	10,1	9,4	9,3	9,1	8,9	9,2	8,9
PU Koper	6,2	5,0	4,9	4,2	4,5	4,0	3,9	4,2	5,0	5,9
PU Kranj	4,7	5,1	4,7	5,1	4,8	5,2	5,2	5,1	6,5	7,2
PU Krško	3,1	2,8	3,0	2,8	2,6	2,5	2,2	2,5	2,3	2,3
PU Ljubljana	48,7	50,9	52,4	51,7	50,7	51,5	51,1	50,0	48,3	49,0
PU Maribor	12,1	9,7	9,7	12,3	13,7	14,2	16,1	15,7	15,1	13,9
PU Murska Sobota	4,3	4,0	3,5	3,4	3,4	3,1	2,8	3,1	3,2	2,7
PU Nova Gorica	4,0	4,3	3,5	3,0	3,4	2,7	2,9	3,1	3,0	3,0
PU Novo mesto	3,6	3,9	4,1	4,3	4,5	4,1	3,4	3,9	3,9	4,1
PU Postojna	1,8	2,1	1,7	1,6	1,5	1,9	1,8	1,8	1,7	1,4
PU Slovenj Gradec	2,1	2,1	1,8	1,5	1,4	1,5	1,5	1,5	1,7	1,7
GPU	0,0	0,0	0,0	0,0	0,1	0,1	0,0	0,1	0,0	0,1
Total	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0

Source: Kolenc and others 2011: 107.

We can gather from the table that in Police department Nova Gorica in the last decade criminality is decreasing, comparing to the year 2002 when it was the highest (3,9%), in 2009 and 2010 lowered for almost one percent (3,0%). In comparison with other regions where gambling is not present neither in a 40 km range, if we consider the theory of crime transferring into the surroundings of gambling cities, Goriška does not stand out by the number of criminal acts.

The number of criminal acts in 2011 in the region of Goriška is statistically the lowest compared to other regions, at the same time in comparison to 2010 we can perceive a decrease of 10,5% of the number of criminal acts. The data shows that the number of criminal acts is the highest in the regions of Ljubljana, Maribor and Celje, where there is one or two casinos in the distance of 40 km.

Table 2: Criminal acts by units.

	Number of criminal acts		increase in %	Number of searched criminal acts		Number of searched acts in %		Criminal acts discovered by police		Criminal acts discovered by police (%)	
	2010	2011		2010	2011	2010	2011	2010	2011	2010	2011
PU Celje	9.417	9.001	-4,4	5.717	5.138	60,7	57,1	1.717	1.307	18,2	14,5
PU Koper	6.318	6.019	-4,7	3.455	3.077	54,7	51,1	1.013	784	16,0	13,0
PU Kranj	6.428	5.772	-10,2	3.845	2.824	59,8	48,9	1.662	515	25,9	8,9
PU Ljubljana	44.023	44.988	2,2	19.608	19.419	44,5	43,2	3.089	3.641	7,0	8,1
PU Maribor	12.429	11.857	-4,6	6.549	6.295	52,7	53,1	2.005	1.927	16,1	16,3
PU M. Sobota	2.439	2.862	17,3	1.690	1.973	69,3	68,9	516	530	21,2	18,5
PU N. Gorica	2.640	2.362	-10,5	1.464	1.299	55,5	55,0	596	424	22,6	18,0
PU N. mesto	5.721	5.815	1,6	3.732	3.460	65,2	59,5	1.311	1.337	22,9	23,0
GPU	74	46	-37,8	73	44	98,6	95,7	38	29	51,4	63,0
Total	89.489	88.722	-0,9	46.133	43.529	51,6	49,1	11.947	10.494	13,4	11,8

Source: The police work report for 2001, 2012: 59.

Regarding the violation of regulations for public order by units, Goriška is again the region with the lowest number of violations in 2010 as in 2011. It is followed by Murska Sobota, Novo Mesto where gambling is not present (anymore), and Koper and Kranj, each one with two casinos. The violations of public order regulations are the most present in the regions of Maribor, Celje and Ljubljana.

Table 3: Violations of public order regulations by units.

	Number of violations		Change in %	Number of other violations*		Change in %	Total		Change in %
	2010	2011		2010	2011		2010	2011	
PU Celje	3.945	4.296	8,9	1.684	1.901	12,9	5.629	6.197	10,1
PU Koper	2.514	2.311	-8,1	5.386	5.479	1,7	7.900	7.790	-1,4
PU Kranj	2.430	2.476	1,9	1.407	1.263	-10,2	3.837	3.739	-2,6
PU Ljubljana	9.774	9.595	-1,8	7.186	7.510	4,5	16.960	17.105	0,9
PU Maribor	4.969	4.242	-14,6	4.327	4.645	7,3	9.296	8.887	-4,4
PU Murska Sobota	2.034	1.877	-7,7	1.085	1.122	3,4	3.119	2.999	-3,8
PU Nova Gorica	1.273	1.264	-0,7	838	948	13,1	2.111	2.212	4,8
PU Novo mesto	2.374	2.175	-8,4	2.858	3.430	20,0	5.232	5.605	7,1
GPU	19	24	...	6	6	...	25	30	...
<b>Total</b>	<b>29.332</b>	<b>28.280</b>	<b>-3,7</b>	<b>24.777</b>	<b>26.304</b>	<b>6,2</b>	<b>54.109</b>	<b>54.584</b>	<b>0,8</b>

\* Traffic violations are not included in this number

Source: The police work report for 2011, 2012: 70.

Criminal acts connected to the integrity of gambling games are included in the general statistics of criminal acts, because the casinos report them to the police, but they are being registered by the Office for the control of organizing gambling, by the concessionaires for casinos and the concessionaires for gambling salons. The office exercises their control directly, indirectly and over an information system (Work report 2011, 2012: 23).

The Office exercises a specific control over the information system in which the concessionaires information control systems are also directly connected. With this system the Office directly controls the individual working processes on the gaming devices daily which are in use from the moment the concessionaire or the organizer starts his business to the moment he ends it. The 31 December 2011 there was 7.625 gaming devices with 8.336 gambling places and 231 gambling tables included in the information system in the Office. The 31 December 2011 there was 41 casinos and gambling salons, one internet casino and two organizers, which means 16.060 controls of that kind in 2011 that were controlled daily (ibid: 24).

In reference to the performing of the control function, in 2007 the Office enacted 170 provisions about the correction of irregularities, 144 in 2008, 113 in 2009, 493 in 2010 and 163 in 2011. The number of provisions about the correction of irregularities in comparison to past years was increasing until 2006, in 2007, 2008 and 2009 it was a little lower, in 2010 the number increased greatly, especially as a consequence of procedures in connection with prohibited internet gambling, and in 2011 it lowered. In 2007 there were 15 issued administrative warnings, 59 in 2008, 126 in 2009, 27 in 2010 and 19 in 2011 (ibid).

In 2011 the Office, in reference to the carrying out of direct and indirect control of the field of organizing special gambling games, issued with the concessionaires 60 provisions for the correction of ascertained irregularities and pronounced 10 warnings for the correction of irregularities by the provisions of the supervisory control law (ibid: 28).

In the field of direct supervision the Office fluently examines and analyses the data, which the concessionaires for casinos and gambling salons have to send, about:

- The realization of the games, tips and entrance fees;
- Negative daily statements of account at individual gambling tables;
- Ascertained irregularities that happened because of non-compliance with the regulations or because of a technical error in a gaming device;
- Given and received credits, expenses and investments;
- Purchases and changes of gambling chips location;
- Tournaments organization;
- Chances and completions of internal organizing regulations and new internal organizing regulations that the concessionaires for gambling salons were obliged to accept after the asserting of the new Regulations book of organizing special gambles in gambling salons and
- Changing the proprietarily structure and the nominal capital (ibid: 29).
- The supervision is also exercised by the means of studying and analyzing the data that are noted by the information system in the Office, which is directly connected to the concessionaires information control systems that enables the Office to follow directly the individual working procedures on the gaming devices that are in use.

The information system of the Office notes among other things:

- The basic data of every gaming device;

- The data about happenings on the gaming devices (e.g. filling up and emptying, major prizes, alarms, errors);
- Counters values per hour on the gaming devices (e.g. values of insert banknotes, papers and chips, values of written paper receipts and paid chips, values of bets, prizes worth, number of played games) and
- Performed cash transaction (e.g. paying cash of major winnings, purchase and repurchase of chips, purchase and repurchase of paper receipts, the amount of emptying the banknotes receiver) (ibid: 30).

The Office for the supervision of organizing gamble games also exercise the function of a misdemeanour authority in the field of preventing money-laundering. The Office collaborates in the composition of a list of indicators for recognizing suspicious transactions for the subjects that it supervises and within its competences as a supervising agency, it also examines the performing of provisions of the quoted law (ibid: 7).

Table 5: supervisions by provisions of ZPPDFT (Prevention of money-laundering and terrorist financing act) in 2011.

	Inspections	Measures
Casinos	19	0
Gambling houses	60	1
Gambling events	1	0
Total	80	1

Source: work report 2011, 2012: 33.

## **Concluding statements**

Among the negative influences of the gambling activity there is the occurrence of criminal acts, among which we class property damage, violent behavior, economic crimes and prostitution. We presented the basic criminal theories that explain the causal-consecutive connections between crime and gambling and we identify the most commonly appearing forms of crime that manifest within or because of the gambling activity.

The review of scientific researches reports, whose subject of study is the connection between the so-called American type of gambling<sup>7</sup> and crime

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7 It's a type of gambling that is meant for a larger population, multiplicity, and not for exclusiveness, in comparison to the European type.

and other relevant documents of the discussed problems, showed that the opinions about the influence of gambling on crime are divided. The dichotomy of studies orientation should be searched also in a general definition of the gambling activity – a distinctive pro-gambling orientation or a distinctive anti-gambling orientation. In general the studies do not establish essential direct causal connections between gambling and crime.

Some local researches (Prašnikar and others. 2005, Zagoršek and others, 2007) have perceived an increase of the number of criminal acts per resident, but this increase is still lower than the Slovenian average. The single categories of criminal acts also have a lower average than the general average in Slovenia. Murders and criminal acts against sexual integrity are way under the Slovenian average. Based on the acquired data, the researches conclude that gambling did not contribute to the increase of criminality in Goriška.

Also the analysis of the data for the last two years showed that regarding the existing gambling in the region of Goriška, in comparison to other Slovenian regions, there is no perceiving total consequences. Even more, according to the criminality statistic data, Goriška belongs among the five most secure regions in Slovenia.

On the other hand due to the limitation of this study it is difficult to estimate the long term effects of gambling activity in the region. In addition new studies are required to measure the influence in the time of crisis. Finally a case must be raised upon the non-detected negative consequences of gambling activities and the criminal activity in a neighbouring Italian region. All these questions need to be addressed in future research.

A safe environment should be understood as an intention to protect and preserve a safe and quality life for the locals and a prevention of consecutive personal and public expenses, it should also be understood as an important factor for the development of tourism, which represents for Goriška and the entire country a very perspective economic branch.

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# DETECTION OF DOMESTIC VIOLENCE EXPOSURE OF ADOLESCENTS IN SLOVENE SECONDARY SCHOOLS

Ksenija Domiter Protner<sup>1</sup>

## Abstract

The article presents the research the intention of which is to determine the sensitivity of Slovene schools for the recognition of domestic violence exposure of adolescents and to investigate the practice and difficulties of Slovene secondary schools in detecting domestic violence and the resulting actions thereof. The results show that there are big differences between Slovene secondary schools in detecting domestic violence exposure of adolescents. The fear expressed by the teachers and school counsellors concerning their responsibility for intervening in a family is also important because it seems a significant part of the decision-making about reporting domestic violence. The majority of school counsellors interviewed feel helpless after making a report; this could also be related to respondents' prevailing dissatisfaction with the actions of other institutions. In the procedure of reporting domestic violence a quarter of teachers and school counsellors do not always have the support of the management.

**Keywords:** domestic violence, adolescent, secondary school, school counsellors

## Introduction

Within the framework of domestic violence the abuse of children of all ages is especially problematic. It is a common belief that mostly small children are often abused within the family environment (Filipčič, 2002: 151); whereas when child victims of age above 12 are considered the belief is that an adolescent is capable of being in control of ones own behavioural problems (ibid.) although the adolescents are exposed to similar kinds of violence and even suffer consequences of domestic violence.

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Schools which adolescents attend have continuous contact with them and can therefore present an important environment for recognising the exposure of adolescents to domestic violence. Different authors (e.g. Sterne et al., 2010; Venet et. al., 2007) established that teachers and other school officials can improve living conditions of children and adolescents who have experiences with domestic violence as they have optimal possibilities for recognising the signs of endangerment and reacting to the needs of these children and adolescents.

The article at hand presents the research the intention of which is to investigate the practice and difficulties of Slovene secondary schools in detecting exposure to domestic violence and the actions following it.

There are many consequences of violence and also many signs for it however, they are often specific regarding the characteristics of children, the type of violence and other circumstances. A generalisation of the phenomenon is therefore especially risky; knowing all characteristics and circumstances is crucial. School officials (teachers, school counsellors and others) rarely have the opportunity to get to know the child and the family as a whole although they have interactions on a daily basis. We should not neglect numerous factors which make the recognition of the victims and the response of school officials difficult. Mikuš Kos (1993: 28–30) states the principle of respecting the privacy of events in the family and educational treatment of children, educational standards of one's own culture as well as deeper psychodynamic reasons, such as anxiety following the action or identification with the offender as well as fear. A crucial factor is if teachers and other school officials are informed or uninformed; this is what influences the recognition of the signs of domestic violence exposure. McGee (2000), Byrne & Taylor (2007) and Austin (2000) quote the results of various researches which have shown that teachers and other school officials do not often recognise or dare to confirm the violence. Thus Byrne & Taylor (2007: 196) point out that apart from the fear of invasion into private family life and other types of distress, which they meet in this case, there exists also an important lack of suitable qualifications for recognising the signs of domestic violence exposure. Teachers and social workers (ibid.) mentioned in a research of public education in Ireland confirmed their statements that they do not have enough experience and expert knowledge concerning this topic. The findings about obstacles schools face while detecting and solving the problem of domestic violence exposure of children and adolescents can also be seen in the data of other researches on the reactions of schools in discovering cases of domestic violence. The Spanish national survey has shown that concerning the adolescents aged between 12 and 17 years the school

did not report as much as 78% of cases of neglecting the adolescents and domestic adolescent abuse exposure (Gracia, 2003: 41). The schools have reported only those cases where the adolescents themselves reported domestic violence and cases where the forms of violence were obvious (consequences of physical violence) and repeated (ibid.). After the examination of different studies Besharov's (1993 in: ibid.: 41) findings which concern the reports of domestic violence were similar; namely in cases of physical violence no more than 50% are reported, and in cases of psychological abuse 75% of child abuse is not reported. The research carried out by Abrahams et al. (1992 in: Gracia, 1995: 1084) on the knowledge, experience and opinion on child and adolescent abuse tried among other aspects, to establish the reasons for low sensibility of teachers when perceiving the exposure of children and adolescents to domestic violence, and the reasons for not reporting the violence detected. The teachers stated that important obstacles for reporting these cases are the lack of expert knowledge in this field, the fear of public disclosure, the fear of consequences of reporting the offence, parents' denial, the fear of interfering in the family's privacy and the lack of support from schools and society.

### **Methodology**

The purpose of our research was to discover the sensibility of school officials in Slovenia for recognising the exposure of adolescents to domestic violence, and to study the practice and difficulties of Slovene secondary schools in the detection domestic violence exposure of adolescents and the actions following it.

### **Hypotheses**

Numerous researches (e.g. Gracia, 2003; Besharov, 1993 in: Gracia, 2003, Abrahams et al. in: Gracia, 1995) discovered that the schools reported many more cases of pupils being exposed to physical domestic abuse than cases of psychological domestic abuse exposure; thus we have formed the following hypotheses:

- hypothesis H1; school counsellors are more sensible of physical domestic violence exposure of adolescents than other forms of domestic violence.

Various studies (e.g. Mikuš Kos, 1993; Byrne and Taylor, 2007; McGee, 2000; Austin, 2000; Gracia, 2003; Besharov, 1993 in: Gracia, 2003, Abrahams et al. in: Gracia, 1995) have proven that respecting the privacy of family life presents one of the important factors which has an influence on school officials at the level of recognising and reporting domestic violence exposure of children and adolescents. On the basis of these findings we have formed

- hypothesis H2; the decision-making of secondary school counsellors in schools regarding reporting the detected of domestic violence exposure of adolescents is influenced by the evaluation of family privacy.

Regarding the fact that Slovene social work centres invited the schools in 89 cases of proceedings involving children and adolescents via a multidisciplinary team<sup>2</sup> in 2010 (Murgel, 2011: 163) where the schools participated in 83 cases (ibid.), and that what is astonishing in 452 cases the schools were not invited to cooperate in the multidisciplinary team (ibid.), we have formed

- hypothesis H3. We presumed that the majority of school counsellors in the secondary schools are not satisfied with the work of other institutions when dealing with domestic violence exposure of adolescents.

## **Sample**

The sample consisted of school counsellors from 100 secondary schools in the Republic of Slovenia, which represents 75% of all secondary schools. We used the e-mail address database of secondary school counsellors to make a sample; this was provided by the Ministry of education and sport of the Republic of Slovenia, who uses the database for the purpose of registration procedures at secondary schools. A random selection of the addresses from that database provided us with 100 addresses of school counsellors from different schools, whom we have sent the survey questionnaires via e-mail. In order to gain a higher level of response we have personally contacted half of the secondary schools, i.e. their school counsellors by telephone. This is how we reached a cooperation or responsiveness of 60% degree, which means that we have received the answers of 60 school counsellors from different Slovene schools.

The school counsellors interviewed in the research sample were from the following schools: 28 (47%) from grammar schools and 32 (53%) from secondary technical schools.

The majority of the school counsellors interviewed in the sample were educationalists (56,67%) and psychologists (26,67%), there was a smaller number of social workers (5%) and other educational profiles (11,67%).

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<sup>2</sup> In Slovenia interinstitutional cooperation is regulated and stipulated by the Family Violence Prevention Act (Zakon o preprečevanju nasilja v družini, Ul. RS, no. 16/2008).

## **Method**

The interviewing of the school counsellors took place between February and April 2011. The school counsellors have received the survey questionnaires by e-mail. The questions were general (which secondary school programme does the school where they work implement, what profession, the length of service at the school counselling and their gender) as well as 7 units of questions about:

- sensibility of school counsellors toward domestic violence exposure of adolescents ("Have you ever detected a case of domestic violence exposure of students at your school?" (possible answers 1 = yes, 2 = no); "Please list the number of similar cases you detected at your school in the last three years." (open ended questions); "Which forms of domestic violence have the students been exposed to in the cases detected at your school? Please list the number of such cases according to their different forms in the last three years." The answers given: "1 = a student has been beaten at home; 2 = a student has been neglected at home; 3 = a student has been exposed to psychological abuse as a witness of violence between parents; 4 = a student has been exposed to other forms of psychological abuse; 5 = a student has been sexually abused within the family".);
- reporting the cases of domestic violence exposure of adolescents ("Who in your own experience most often detects domestic violence exposure of a student at your school?" (possible answers were: 1 = a class teacher, 2 = schoolmates, 3 = a school counsellor, 4 = others; with the answer number 4 we asked the respondents to list who that person was); "Please write the way the situation was dealt with in these cases and with what number of students." (the answers offered were: "1 = we have made/filed a report at the social work centre; the number, 2 = we have filed a report to the police; the number, 3 = a student felt strongly against reporting, therefore we have not proceeded with it; the number, 4 = we have not filed a report because the parents claimed the opposite of the student; the number, 5 = we have not filed a report as we were against the interfering with the family; the number, 6 = other; number");
- the satisfaction over the actions of other institutions which have dealt with the students who have been exposed to domestic violence ("Please explain the reasons for (not) being satisfied with further actions of other institutions, and what is the number of these cases.");
- cooperation with class teachers ("Please evaluate the cooperation of the class teachers with the school counselling service when trying to solve the issue in student's favour." We have prepared the answers: "1 = the majority of class teachers have shown an interest in solving



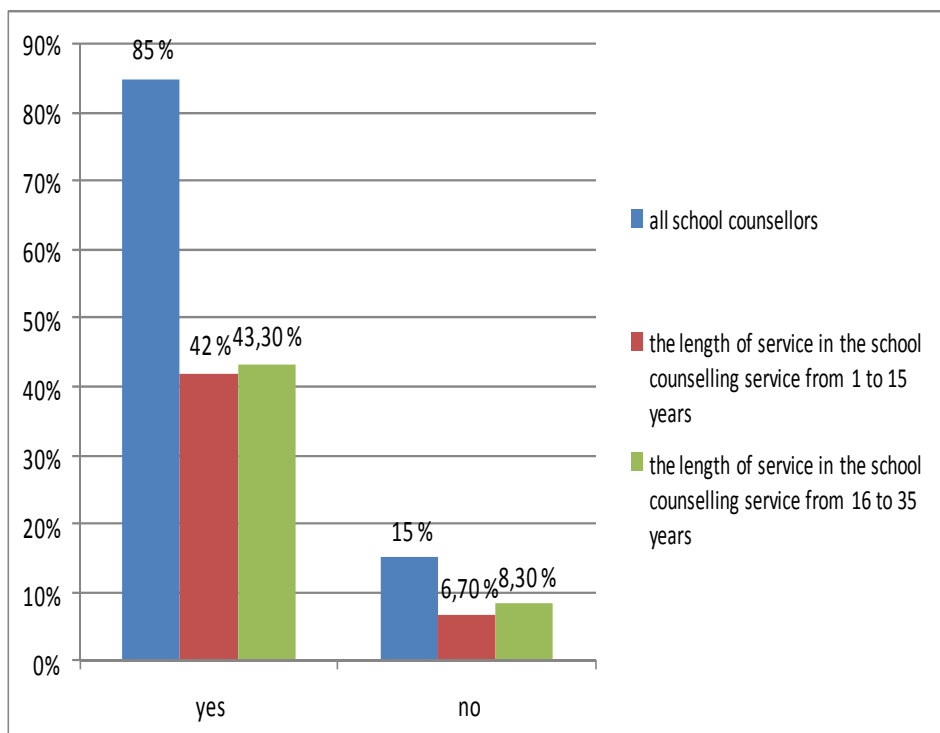
the problem, and have cooperated well, 2 = approximately half of the class teachers have shown an interest in solving the problem, and have cooperated well, 3 = the majority of the class teachers have not shown an interest for solving the matter, and have not shown the wish to cooperate, 4 = other”);

- cooperation with the school’s management (“Please, evaluate the cooperation of the principal when solving the issue in favour of the student.” The school counsellors surveyed could choose among the following answers: “1 = the principle of the school has always supported my decision to report the parents, 2 = the principle of the school has mostly supported my decision to report the parents, 3 = the principle of the school has mostly not supported my decision to report the parents.”);
- the feelings of school counsellors about solving the issue of domestic violence exposure of adolescents (“Have you ever felt helpless when you wanted to solve this issue despite reporting the case of domestic violence?” We have devised a 4-level scale of answers “1 = yes, always, 2 = yes, often, 3 = yes, but rarely, 4 = no, never”, and asked school counsellors to explain the answer.);
- evaluation/assessment of the influence of fear of responsibility on teachers’ detection of domestic violence exposure of adolescents (“Please evaluate how strongly the fear of responsibility influences the detection of domestic violence exposure.” We have made a 3-level scale of answers: “1 = it has a strong influence, 2 = it has some influence, 3 = it has no influence.”).

## **Results**

We have discovered that 15% of school counsellors interviewed have no experience with detecting domestic violence exposure of adolescents within a family or have not discovered even one case of domestic violence exposure of adolescent during their length of service at their school.

Figure 1: The share of all school counsellors who have ever detected a case of domestic violence exposure of adolescents, and the share of school counsellors according to their length of service in SCS/school counselling service



Information about whether a school has ever detected a case of domestic violence exposure of adolescents represents an important indicator of general sensibility of school officials towards domestic violence exposure of adolescents. On a basis of the data presented in the figure 1 the majority (85%) of schools and school counsellors interviewed have detected a case of domestic violence exposure of adolescents at least once. Considering the fact that some school counsellors have been working in the school counselling service for only a few years we cannot conclude that if they have not detected domestic violence exposure of adolescents yet, they are not sensible for detecting domestic violence exposure of adolescents at all. But as it is visible from the figure no. 1, 8,3% of the counsellors with longer or long length of service<sup>3</sup> have never detected a case of domestic violence exposure of

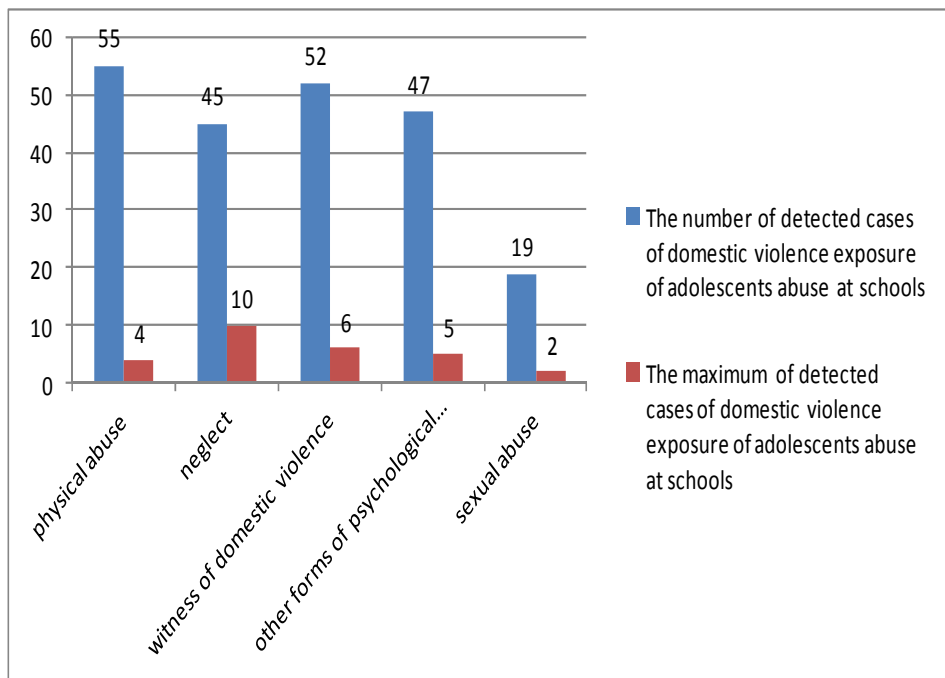
3 Counsellors have various lengths of service, therefore, we have divided them into two groups: the group of those with the length of service in the school counselling service

an adolescent nor has it been detected by other employees during their time at school.

The schools also differ in the number of detected cases of domestic violence exposure of adolescents in the period of the last three years (between the years 2008 and 2011). 77% of schools where they detected domestic violence exposure of adolescents by themselves the number of the cases detected varies largely between one and fifteen cases at one (the same) school. In this period the schools have most frequently detected one to three cases of domestic violence exposure of their adolescents.

There are also differences in the frequency of detecting individual forms of violence which adolescents are exposed to. This is presented in the figure no. 2 below.

Figure 2: The number and maximum of detected cases of domestic violence exposure of adolescents abuse at schools (in the period between 2008 and 2011) in the school counsellors research sample



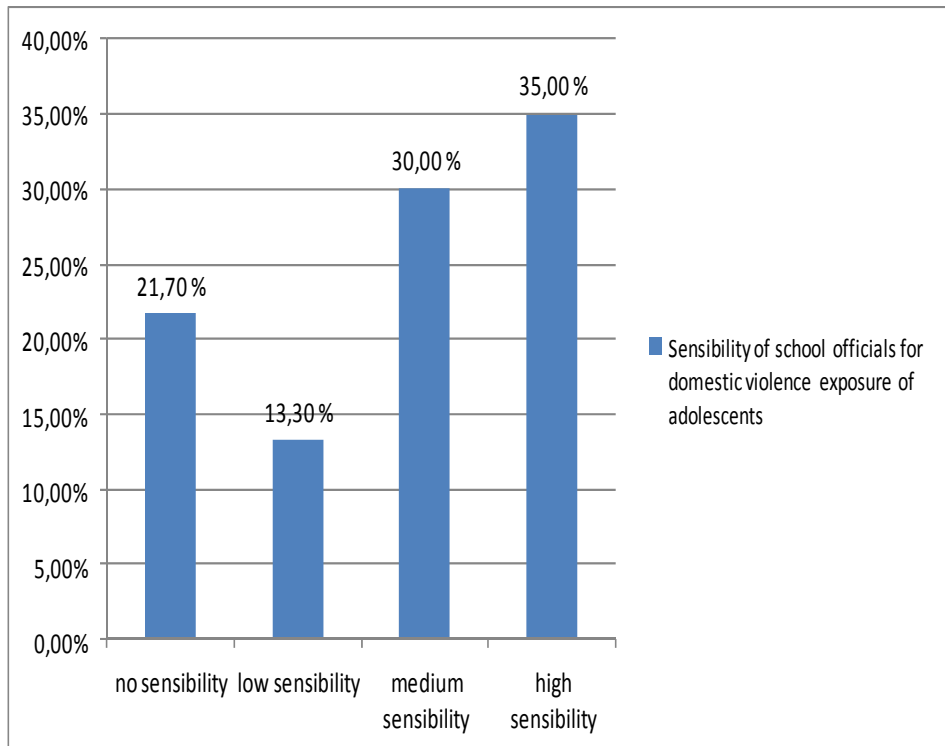
from one to fifteen years (48,3% of all in the sample) and the group of those with the length of service from sixteen to thirty-five years (51,7% of all in the sample).

Considering the fact that observing violence (to be a witness of violence) is a form of psychological abuse, the number of all detected cases of all forms of psychological abuse in Slovene society together (witnesses of violence and other forms of psychological abuse) was been the highest – an astounding 99 cases. The following form of domestic violence exposure of adolescents (considering the number of all cases detected (218) at the schools of the school counsellors interviewed) is the physical abuse or battering (55 cases). There was a small number of detected forms of sexual abuse of adolescents.

Attention should be given to data about maximal number of detected cases of exposure to individual forms of violence at individual schools. The findings conclude that a very high degree of sensibility for domestic violence is characteristic for individual schools – this is evident with negligence as almost a quarter of all detected cases (10 of 45 cases) of negligence expressed by the respondents from the schools in our sample has been detected at only one school.

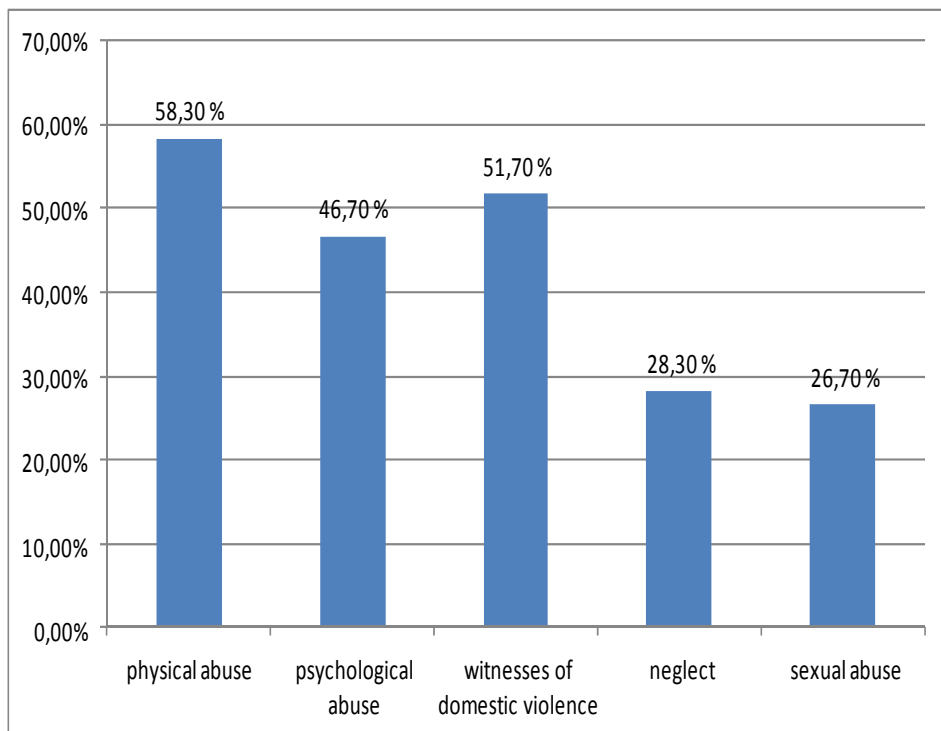
We tried to establish a general sensibility of school officials regarding the total number of detected cases of domestic violence exposure of adolescents in the last three years – in the period between 2008 and 2011 (0 cases = no sensibility, 1 case = low sensibility, 2 to 3 cases = medium sensibility, 4 and more cases = high sensibility).

**Figure 3: Sensibility of school officials for domestic violence exposure of adolescents**



The data on sensibility of school officials in the figure no. 3 show great differences between schools. The answers of the school counsellors interviewed reveal that 21,7% of schools were not sensible for any of the forms of domestic violence exposure of adolescents in the period of the last three years. These schools and the ones with a very low degree of sensibility for domestic violence exposure of adolescents (the schools where no more than one case of the exposure was found) combined are of the same percentage (35%) as the schools where high sensibility is characteristic (more than four cases detected); this amount is also 35 %. Concerning the given hypothesis we were mostly interested in the comparison of sensibility of school counsellors to physical and other forms of domestic violence exposure of adolescents.

**Figure 4: The comparison of individual forms of domestic violence regarding the share of schools or school officials who recognised one or more cases of adolescents being exposed in the period between 2008 and 2011**



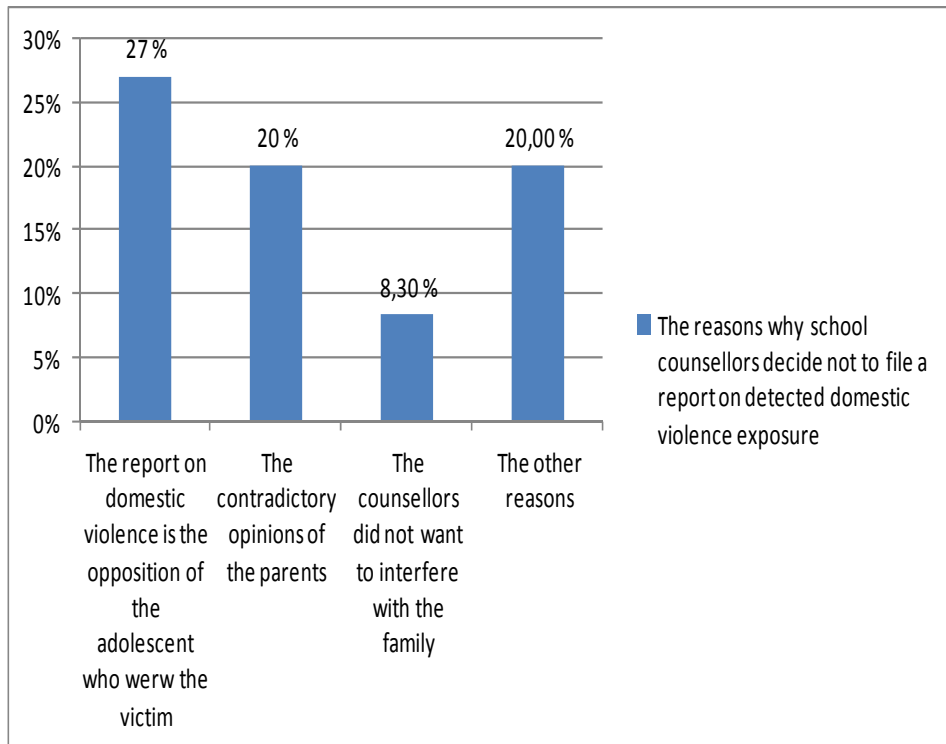
We have discovered that the highest number (58,3%) of schools and school officials interviewed recognised at least one case of physical abuse exposure of adolescents. The schools where negligence and sexual abuse of adolescents were detected are the fewest. On a basis of empirical data we can establish that hypothesis H1, which presumed that school officials interviewed are more sensible of domestic physical abuse exposure of adolescents than for other forms of domestic violence, has been partially confirmed by the number of detected cases of individual forms of domestic violence at schools from our sample and regarding the shares of the schools' recognition of the exposure to individual forms of domestic violence.

The highest number of schools where the interviewed school counsellors work discovered at least one case of physical violence exposure of adolescents in the period between 2008 and 2011. However, as it has already been shown in the figure no. 2, the total number of all cases of physical domestic violence exposure detected at schools in our research sample is almost half lower than the total number of detected cases of indirect and direct adolescent abuse together.

Chi-square tests showed that the sensibility of the interviewed school counsellors is not influenced by the secondary school programme carried out by the school, nor by the length of service and the level of education of school counsellors. There are no statistically significant differences in the sensibility of school counsellors for recognising domestic violence exposure of adolescents regarding the secondary school programme ( $\chi^2 = 0,082$ ;  $p > 0,05$ ), regarding the level of education ( $\chi^2 = 0,464$ ;  $p > 0,05$ ) and the length of service ( $\chi^2 = 0,568$ ;  $p > 0,05$ ) of the school counsellors interviewed.

We were also interested in how many interviewed school counsellors decided to file a police or social work centre report in cases of domestic violence exposure of adolescents detected in the last three years. For this reason we were trying to establish how many interviewed school counsellors reported at least one case of detected exposure of adolescents to a social work centre or the police. The results have shown that 10% of interviewed school counsellors have never decided to report detected domestic violence exposures. If we add the schools where the interviewed school counsellors have not detected cases of domestic violence exposure of adolescents in the last years (see figure no. 3), this presents 33,3% or one third of the schools (where the school counsellors were interviewed) which have never detected or reported a case of domestic violence exposure of adolescents. We also wanted to establish the number of interviewed school counsellors who did not decide to file a report a detected exposure of adolescent either because the adolescent – the victim – opposed, or because the parents claimed something completely different than the adolescent or because they did not want to interfere with the family or out of other reasons. The results are shown in the figure no. 5.

**Figure 5: The reasons why school counsellors decide not to file a report on detected domestic violence exposure**



The data gained shown in the figure no. 5 illustrates that the most common reason (27% of cases) for the interviewed school counsellors' decision not to file a report on domestic violence detected is the opposition of the adolescents who were the victims of abuse.

20 % of interviewed school counsellors did not decide to file a report on detected adolescent abuse exposure because of the contradictory opinions of the parents and 8,3% of interviewees did not file a report on detected violence exposure because they did not want to interfere with the family. Considering these results about the influence of the family and parents on decision-making of school counsellors about reporting detected domestic violence our predictions in the hypothesis H2, which presumed that valuation of the family's privacy has an influence on the decisions of secondary school counsellors about reporting the detection of domestic violence exposure of adolescents can be proven. The decisions of almost one third of the interviewed school counsellors (20% of those who considered the parents' arguments and 8,3% of those who did not want to interfere with the family) to report detected domestic



violence exposure of adolescents were influenced by valuation of the family.

We were also interested in the existence of the connection between the individual forms of violence and decisions of school counsellors to file a report. It turned out that the report to a social work centre has a statistically important connection with the detected cases of sexual abuse ( $r = 0,383$ ;  $p < 0,01$ ), with the detected cases of adolescents being the witnesses of domestic violence ( $r = 0,318$ ;  $p < 0,05$ ) as well as with the detected exposure of adolescents to other forms of psychological abuse ( $r = 0,285$ ;  $p < 0,05$ ). However, the decision of the school counsellors interviewed not to report the violence because the parents claimed different facts have statistically important connections with the detected negligence ( $r = 0,288$ ;  $p < 0,01$ ). The decision of interviewed school counsellors not to report with the families where physical abuse is detected is statistically significant ( $r = 0,283$ ;  $p < 0,05$ ). Despite these data we are surprised by the fact that school counsellors decide more easily to file a report in cases of different forms of psychological abuse than physical abuse, which leaves "visible marks".

An important finding is also that numerous counsellors feel powerless at and after reporting the violence. 22,4 % of interviewees always feel helpless and 59,2% often. Just 8,2% do not know the feeling and 10% feel it occasionally. School counsellors describe the feeling of powerlessness as a result of the fear that after filing the report the situation will worsen for the child. They also doubt about the benefits the child could gain from it. They say that they have negative experience with the victims not being protected and with unsuccessful actions of the social work centres. Open ended questions where we were asking school counsellors to explain why they were satisfied or dissatisfied with the further actions (after filing the report) of other institutions have shown that they were not satisfied with the actions of other institutions. On the basis of the analysis of the empirical data gained we have established that the hypothesis H3, where we predicted that the majority of secondary school counsellors is not satisfied with the actions of other institutions when dealing with exposure to adolescent domestic abuse, is confirmed as this dissatisfaction was expressed by 70% of interviewees. The reasons the interviewed school counsellors list as the cause for dissatisfaction are mostly long duration of procedures and slow work of social work centres and courts, the lack of feedback and cooperation of the social work centres with schools. They also expressed the concern that social work centres do not act in favour of adolescents but even work to their disadvantage and (too) often believe parents and not the victim. Among individual reasons the interviewees listed as the reasons

of dissatisfaction is constant changing of social workers in charge of an individual proceeding.

The interviewed school counsellors stated that they have very different experience in dealing and cooperating with different units of social work centres. The ones who expressed contentment with the mentioned level (29,7%) listed completely opposite arguments as the ones who expressed dissatisfaction. Quick response of the police and social work centres, good cooperation with social work centres and crisis response centres were especially stressed. The stated shows huge differences among individual social work centres in practice as they act and response with different speeds and enthusiasm in different procedures concerning the adolescents who were exposed to domestic violence.

## **Conclusion**

Slovene secondary schools vary regarding the sensibility for recognising domestic abuse exposure of adolescents. There are differences in the number of cases detected as well as in the frequency of detecting individual forms of violence the adolescents are exposed to. The highest number of schools where the interviewed school counsellors have been working detected at least one case of physical abuse exposure of adolescents in the period of three years. However, the total number of all cases of detected physical domestic abuse at all the schools in our research sample was almost smaller by half of the total number of detected cases of indirect and direct adolescent abuse together, which again confirms huge differences in sensibility for domestic violence among the individual schools. There is no statistically significant influence of factors in recognition of domestic violence such as the level of education, the length of service and the gender of the school counsellors as well as the secondary school programme the school implements. However, our opinion is that the valuation of the majority of interviewed school counsellors (90%) shows that the perception of domestic violence exposure of adolescents is influenced by the fear of responsibility; this is important for the understanding of the sensibility of the school counsellors. More than one third (34%) even estimate that the teachers' fear of responsibility for interfering in a family has a very strong impact. Therefore, by Bouwkamp (1993:13, 14), we should not disregard the fact that an expert (social worker, psychologist, educationalist, teacher etc.) can find oneself in a role of a "scared child" when he/she discovers the child's exposure to domestic violence. The stated explains why the fear of the school officials of taking the responsibility for breaking the family where the child abuse happened (ibid.). Bouwkamp's findings (1993: 13, 14) are reflected in our results about reporting detected domestic adolescent abuse exposure. Even though the

interviewed school counsellors who ever detected a case of domestic adolescent abuse exposure relatively often decide to file a report on domestic violence despite the judicial obligation<sup>4</sup> but do not always decide to do so. An important influence on their decision-making has the valuation of the family and also the wish of adolescents not to report their violence exposure. The valuation of a family and its privacy influenced the decision-making of almost a third of interviewed school counsellors not to report detected domestic adolescent abuse exposure. Beside all these difficulties and dilemmas a good quarter of interviewed school counsellors face the problem of inadequate support or they are even without a support of a school management or a principle. We are surprised by the result that school counsellors decide more easily to file a report in cases of different forms of psychological abuse than physical abuse, which leaves "visible marks". The result is especially interesting because various other researches (e.g. Gracia, 2003; Besharov, 1993 in: Gracia, 2003, Abrahams et al. in: Gracia, 1995) proved quite the opposite. Namely, schools report substantially more detected cases of physical domestic abuse exposure of students than detected cases of psychological domestic abuse exposure. The majority of school counsellors who reported detected domestic abuse exposure despite filing a report of detected adolescent domestic abuse exposure feel powerless occasionally or even most of the time because they worry about the adolescents' benefits and protection and take care that their situation does not worsen. The latter can be connected to predominant dissatisfaction of the interviewed school counsellors with the actions of other institutions and with detected inadequate interinstitutional cooperation. The school counsellors interviewed are mainly dissatisfied especially with the procedures of social work centres<sup>5</sup> and courts and miss the interinstitutional cooperation.

We can conclude that in order for schools to be more efficient in the field of detecting and helping the adolescents who are exposed to domestic violence as well as prevention acts it would be necessary for schools to plan not only help and protection of abused adolescents but also training and support for teachers and other school officials with detection and support for victims. From the viewpoint of domestic violence the school presents an important environment with an important role for the child or

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4 Family Violence Prevention Act (ZPND 2008: 5. Article) obliges the school officials to file a report on domestic violence suspicion.

5 When surveying the satisfaction of the school counsellors with the work of social work centres we have to emphasise that school counsellors stress huge differences in the work of individual social work centres and that almost 30% of school counsellors are satisfied with the work of social work centres and the police.

adolescent who is exposed to domestic violence as well as for the wider social environment and despite this fact or just because of it the school cannot solve the domestic violence issue on its own. It can present only one segment of solving this issue. Therefore the connections between different institutions: schools, social work centres, health care, the police, the prosecution and judicature are very important; raising the awareness of the entire public is also very important. In the field of awareness-raising of the entire public which highly values the family<sup>6</sup> and its intimacy and a closed position we will have to do a lot to even dare to see the signs and the consequences of the domestic child and adolescent abuse. An important braking factor which influences the prevention and detection and solving the problem of domestic child and adolescent abuse exposure are definitely stable cultural beliefs and family stereotypes. Because of that the school as a carrier of knowledge has an even more important and at the same time substantially more demanding role.

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<sup>6</sup> Similar as in other European countries all Slovenes put the evaluation of the family always on the first place; the same happened in the last SJM research (Toš, 2007: 6,7).

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## HUMAN RIGHTS IN TIME OF GLOBALIZING SECURITY

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### Abstract

Diversity of processes in the contemporary international environment and the attendant effects, including security risks bring rapid changes in society. On the other hand, new opportunities and challenges are characterized by globalization of security and modern security paradigm, triggered by the overwhelming number of processes within existing systems of national security that modify the state's role in ensuring the safety of its citizens or residents.

In the contemporary security paradigm appears a tendency to provide individual security or deviation to the concept of ensuring security of the individual. Security is becoming a fundamental civil right which requires the synthesis of a wide range of state and social policies, including respect of human rights.

International terrorism, as one of the security risks, against which many countries have accepted anti-terrorism laws, which intervene in the free exercise of individual rights and that leads to an imbalance between freedom and security.

**Keywords:** Human Rights, Civil Rights, Globalizing Security, Individual Security.

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## **Introduction**

Conception and understanding of security was under the influence of globalization process, especially after the Cold War, has changed considerably. Changed political and security environment has led to the professional security circles began to mention in addition to traditional, even non-state actors with transnational connections and influences. Also, there is a need to redefine the individual dimensions of threat, going beyond the existing temporal and spatial dimensions and in many modern societies is seen as a new and modern sources of threat, which could even lead to global chaos. These safety considerations expanding existing security agenda, which derives from the Cold War, taking into account the fact that only a few modern sources of threat can be eliminated only with military capabilities. These changes are largely provide conditions for the elimination of tensions and mistrust in relations within the international community, and thus to some extent possible to set up less conflict and more cooperative international relations as well as the possibility of an organized collective action in case of need.

Globalization and universalisation of the information revolution and, consequently, a high degree of interdependence, with associated processes bring with them all of the risks and increase their impact on the level, and hence the price that requires security. Therefore greater than the effects and consequences of globalization processes, the greater is the diversity and impact of modern security risks and threats to the safety of different reference objects. While not negligible even synergistic links between them, which may completely non-hazardous and isolated location and connectable, because of its abundance and the general globalization trends, grow into a completely real. From this we can conclude that globalization and security in mutual interdependence and proportionality. In other words, the higher is the risk and threats, the higher are the price of security, which means that the security, not only in financial but also in geo-strategic importance, and consequently increasingly becoming globalized and globalizing security.

The changing security environment and the processes of globalization, which they started in almost all aspects of social life, are to the fore the issue of human rights and their protection. The period after the end of the Cold War has prompted many countries to establish a more effective legal system, promote democratic principles and the approximation of the laws, greater legal protection and a clear definition of human rights and fundamental freedoms and duties arising therefore. Rights of the individual are perceived and understood as a matter of course, and has always been something as existing or acquired by birth with us no one

can take that away. Some of the fundamental rights as the right to life, liberty, etc are actually acquired at birth and are inalienable, threats and violations of those rights are subject to strict penalties.

Therefore the basic thinking and research question of the article is, to where individuals in a democratic society, which is the basis for the rule of law prepared their fundamental rights and freedoms for the sake consciously restrict higher level of security.

### **Relationship between freedom and security**

Diversity of processes in the contemporary international environment and the attendant effects, including security risks posed by rapid changes in society, on the other hand, new opportunities and challenges are organized in the new, modern security paradigm launch a number of irresistible processes within existing systems of national security, modifying the role of the state in ensuring the safety of its citizens and residents. As a result, today's conception of safety, be understood and studied as a multifaceted and comprehensive approach in which the importance and topicality of individual segments of security through different periods in history. Modern security includes various aspects of human existence and functioning of the social environment as well as all levels of integration and forms of social organization within and outside the country. System approach to the understanding of security related to an individual as an individuum, company or country as well as in the international environment. Providing a level of security is a necessary condition for the second level of security.

The study and understanding of contemporary security paradigm is often raised in the scientific literature to address security in three fundamental conceptual levels, which are closely related: an individual security, national security, international security.

Security in its social materiality is based only on the relationship between individuals and their perception of threat or a consequence and response to a specific threat source. Threats of individuals do not become only from the natural environment, the threats also come from the social environment and may manifest as individuals, individual segments of society, organizations, etc, and as such have an impact on the spiritual and physical dignity, but can also threaten means by which an individual directly or indirectly satisfy its addition to physiological, the other needs. Črnčec (2009: 25) pointed out that the safety of the operation in all fields of human activity, it occurs in all of its activities,



and should any classification in the public or private sector unnecessarily limiting.

Security is therefore an objective basis on which it is possible to develop an integrated and sustainable development of the individual and his values, social communities, states, and ultimately the global world. Satisfying of the need for security to individual provide qualitative development and, ultimately, the existence of them. In view of the known fact that there is no absolute<sup>3</sup> safety, we can say that the individual safety is relative, because of their dependence on the needs and expectations of other individuals, members of the contemporary social community that can help or threaten the safety of other in coexistence.

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Security threats to the individual, which is a direct or indirect source country, Buzan (1991: 44-48) is divided into:

- Threats by the national legal system (insufficient or excessive policy and law enforcement);
- Threats to individuals or groups by government institutions (legal discrimination);
- Threats to the individual from the disorderly political system (the struggle for control of state institutions also include internal political violence and political terrorism in order to discredit the government);
- Threats by foreign policy (foreign military intervention).

It is also not insignificant fact that any alienation of individual fundamental rights and freedoms represent of a threat to the security of the individual. In ideally circumstances, it would be excellent that individual and national security for individual be provide at the same time but nowadays, in modern times, accompanied by a constantly changing environment it is practically impossible.

Given the fact that security is related to the possibility of the free exercise of an individual, it can be said that the security and freedom complement each other. Security is one that allows freedom of the individual or society and therefore its prerequisite (Anžič, 2002: 457). Only in a free and safe society, the individual may, as subject of certain criteria (legal system, democracy, constitution), safely exercising his rights. It follows that security is a prerequisite for human rights. Modern democratic states tend to uphold the highest standards of safety of its citizens, but they want to allow as much freedom in their work. The key

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<sup>3</sup> In theory, the security may be absolute, which in real life means complete freedom from all sources of threat or complete security.

issue is to maintain a balance between freedom and security. Therefore, we can not allow the dominance of one over the other or to the detriment of another<sup>4</sup>.

Fundamental to the relationship of freedom and security is their implementation from the perspective of the individual within the legal system. The state shall guarantee human rights by legal means and the repressive apparatus, which represents the guardian of the state system (constitutional system, values, human rights, etc.). It is also responsible for supervising compliance with legal norms and full implementation of the obligations arising from them. The state needs to achieve these goals operate in accordance with statutory limits and not exceed its powers, otherwise a democracy and legitimacy becomes questionable (Anžič, 2002: 455-457). In case of violations the state is also legitimate to react to them accordingly and also penalize violators.

Based on the Constitution, implementation of rights is not absolute in relation to the rights of others, so security provides freedom of implementation of the rights as long as they are complying with the legal norms. If someone exceeds the legal norm and also violate of rights, from the state is expected that through its security apparatus to ensure the rights of those whose rights have been violated. Security and freedom are in the context of interdependent and complement each other, their relationship must be balanced. This means that security provides freedom and the freedom gives individuals possibility to choose and implement their individual rights in the country.

Taking into account that security is correlated with repression, its essential function must be guaranteeing the right to life. It is a fundamental right of the individual and a prerequisite for the provision of other forms of freedom that are part of the right to life.

In case of security threats, such as international terrorism, the state could adopt counter-terrorism measures, which aims to reduce the level of threat and increase the level of security. With this taken measures, the state can affect and restrict human rights and freedoms, to a certain extent.

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4 To achieve a higher level of security to the detriment restrictions or even violations of human rights.

## **More security to the account of freedom**

Fundamental human rights and freedoms in modern democratic countries already laid the basic constitutive act of the State - the Constitution, which also includes provisions on their legal protection. Development of human rights has contributed to greater awareness of the importance of rights not only for the individual but for the whole society and its political structure, depending on the legal and institutional arrangements in this area. Level of quality, respect and protect the individual rights of the individual is always more impact on the legitimacy of the political system, and also indirectly defines a system of social value (Cerar, 2002: 17).

International conventions and declarations on human rights and freedoms have been written and adopted to ensure the minimum rights to all people and to allow their legal protection. In this way, the relationship was established, which allows one to enforce his rights, but protects them from other possible violations. However, the law provides that in certain circumstances may intervene in certain acquired rights. In principle, it is true relationship in which the rights of individuals is limited by the rights of others, and the latter can not be implemented at the expense of meaning or even compromising the other<sup>5</sup>.

The state is therefore one which provides the implementation of the rights and protects them in the event of a breach and provides appropriate sanction against violator. Often it happens that the state does not allow for adequate protection of the rights enshrined or even appears in the role of the offender. The state may affect the rights and limited only by the Constitution and the law. This is mostly happening in the exercise of certain private, political,

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<sup>5</sup> Human rights and fundamental freedoms in the Constitution of the Republic of Slovenia defined from 14 to 65 Article. In the 15th Article expressly provides that they shall be exercised directly on the basis of the Constitution. The law may prescribe the manner of exercising rights and freedoms, but only where the Constitution so provides or is required by the very nature of the rights or freedoms. The same article also states that the right is limited only by the rights of others, otherwise, they may be limited only where the Constitution. The restriction of the rights is also important 16th of the Constitution, which allows the suspension and restriction of rights. Thus, some rights may be restricted or suspended, in war or state of emergency, with the restriction or revocation only applies for the duration of reason. It stressed that the restrictive measures should not be such as to lead to inequality based on race, nationality, sex, language, religion, birth, education or any other personal circumstance. The Constitution also provides for the rights, which in any case can not be suspended or restricted, such as the inviolability of human life, prohibition of torture, the protection of human personality and dignity, presumption of innocence, the principle of legality, legal guarantees in criminal proceedings and freedom of conscience.

economic and other interests, in the sense of "the aim justifies the means."

This theorem is in the era of globalization and the emergence of modern forms of threats, which include also international terrorism, established a completely new dimension. The desire and interest to strengthen national security, national security became the primary goal. Rigorous anti-terror measures become a means for its realization. These taken measures shall reach out to human rights, especially in terms of their restriction. Despite the fact that in exceptional cases may be right to a certain extent limited, the scope of the limitations often difficult to determine because of the sensitivity of institutions having the right to restrict.

The threat to individual freedom is meant mostly from the perspective of countries almost unlimited choice of means to achieve their goals, even if they are unethical in relation to human rights. Freedom, security and privacy are rights which are, by their very nature and content of the most sensitive, especially when it comes to their restriction or violation. In other words, the right to freedom in its broadest sense, and the right to security including the right to life, represents a condition of the implementation of all other rights.

Concerned for the safety of citizens and national security, the country adopted a variety of measures, including those to restrict certain rights of the individual. On account of these measures, the security might be increased, while on the other hand, the freedom and privacy is limited. Concerning of thin line between freedom and security is therefore necessary to find a suitable compromise, because, as Hagan (1997: 155) says "democratic society must not violate their own moral principles and values in the fight against terrorism, otherwise they become a monster to fight against."

For decades, international terrorism is a challenge for safety at all levels, and also for human freedom. Historical turning point, both for terrorism as well as human rights, represented a terrorist attack in the U.S., 11 September 2001. Countries have mostly reacted in such a way that they have taken measures to have increased security on account some restrictions on the rights of its citizens.

This led to an imbalance in the relationship between security and freedom. The main objective of counter-terrorism legislation is aimed primarily at ensuring security, while threatening people's freedom. In the context of international institutions existing international legal norms

which are accepted by the state also represent the cornerstone of implementation and protection of fundamental human rights and freedoms. In relation to terrorism both have become a second-rate importance.

Interference with these rights may be viewed from two perspectives: in terms of restricting the rights of due to the existence an increased security risk and in terms of the deliberate violations of rights in the form of a terrorist act. In the first case a State in the event of risk due to the potential threat to its citizens or public interest, should limit certain rights. The state independently decides about the range and for what time period. The boundaries of freedom and privacy, are difficult to resolve, therefore laws are those, to restrain the boundaries between them in the most legitimate way. However, it is necessary to ensure a balance and equality between rights, because all rights are equal and none has greater importance than the other. Otherwise it can easily lead to imbalance and conflict between rights.

In the second case, terrorist acts express the roughly interference in the most fundamental values of liberty and security. Assets which are to be used are unethical to human rights, moral principles and the rule of law. If these actions are seen through the eyes of terrorists, their ideas and actions perceived as legitimate and attributed the status of rights. This also means that they're willing to fight and lose lives for this right, regardless of the fact that this action will jeopardize the rights and lives of others. Thus they establish implementation of one right on account others, such as the right to a nation state, religion on account the right to life, freedom of others.

In order to increase security, the States have limited some of the basic rights and indirectly threaten them. Controversial at this is thinking and same time an apology that the restriction of certain rights increased higher level of security. This can have positive and negative consequences, depending on the type and the extent and duration of restrictions on individual rights. Assuming that the restriction of the right to acceptable limits may show a positive impact in significantly faster and more effective way of detecting terrorist activities, greater control over the operation of suspected persons and organizations, improved international cooperation, etc. Negative effects of limitation of rights in some countries expressed through an increased level of xenophobia and hatred, violence, intolerance to other, etc. The measures which have reduced the rights of foreigners, asylum seekers and immigrants, have compromised the validity of international standards to guarantee these

rights, but also endanger the obligations of States under international law.

Following the attacks on the World Trade Center and the Pentagon in the United States dominates the view that the national security, at least temporarily more important than civil rights and civil liberties. The Government has adopted a number of new laws that have greatly increased the powers above all intelligence and security services, such as monitoring of electronic communications in real time, tapping without a court order, control of air passengers, the proliferation of personal data, more difficult access to public information, etc. At the same time they allow abuse laws. In addition, the U.S. requested that European and other governments adopted similar changes in national legislation. With this, the U.S. has much greater access to information about their citizens. Thus is achieved greater control of EU citizens sharing personal data with the U.S. and respect for the American rules on the Internet.

### **At that time temporary remains**

With the adoption of "new patriotic legislation" events which followed 11th September 2001, triggering a wave of violations of the rights and freedoms in huge proportions. Democratic world then, and also in most of the current violation, to a greater extent and will not have the power to set their abuse. Artificial excessive fear of terrorism has been so strong and widespread that many people consciously forget about human rights. At that time, many European countries have adopted a number of laws that are not in accordance with the norms and accepted standards of human rights. "War on terror" has been used to cope with political opponents, separatists, members of different religious groups. Tolerance and multiculturalism have become irrelevant values. List of violators is long. U.S. Judge Sandra Day O'Connor was so long ago pointed out that "if we want to remain loyal to their values against the tyranny we can not fight with the tool of tyrants!" (Soban, 2011: 21).

Intelligence and security services have taken responsibility, unacceptable in terms of human rights. The principle that everyone has the right to a fair hearing (the court), in the current fight against terrorism does not respect nearly anyone. People are detained without any legal process and without any proof. In many places, the prisoners are tortured, even though torture is forbidden by all international conventions and although it is everyone perfectly clear that the data obtained with the method of torture are not credible. Also of concern is that many do not oppose such methods.

Instead, in order to protect the people, what their mission is, states in the

function of the war on terror, protect themselves. This may lead to the creation of the state within the country and the abuse of state secrets can lead to a kind of state terror. In order to prevent the complete degradation of democratic values and dignity, says Dick Marty, reporter for the Council of Europe, "... a necessary mechanism for control over their work, which will respect the specificity of their mission and the resulting tasks, while they constantly reminded to respect the laws." Mechanism represents parliamentarians (Marty in Soban, 2011: 21).

With a view to apology their actions they are trying to demonstrate that security is more important than freedom and human rights. Therefore the executive government concealed its activities behind the walls of state secrets but not with the objective of insurance protection and high-security data but usually in order to protect its own people involved in illegal actions.

It follows that we are returning to a period in which we are already located in the time of the cult of state secrets, as a tool of the executive, who is hiding behind the walls of state secrets tries to distance itself of any control of many increasingly marginalized legislative and judicial power. Executive government by taking actions which are in total contradiction with democratic policy, values and human rights, an ever more power, which creates an imbalance among all three branches of government. Escalation of this imbalance can undermine the foundations of democracy<sup>6</sup>.

With such unreasonable acts Europe and the world approaching a dangerous culture of impunity that has supplanted fatal foundations of democratic institutions. In democratic systems, based on transparency, citizens have a right to know what the executive government and its intelligence and security services are doing on their behalf. Justice is obliged to prosecute all those who are entitled to take into their own hands, even if it is for senior officials and political intelligence or security spheres.

So the key changes occurred in the area of responsibility of internal security authorities, especially the police and the intelligence and security services in the field of immigration and asylum policies as well as in ensuring the safety of air traffic. Addition to the mentioned there was also changes of policy in the financial field (measures to freeze the

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<sup>6</sup> That last thought may be escorted by the U.S. President statement in May 2011, after the extrajudicial statement by Osama bin Laden: "Justice has been done" or "Justice was served."

assets of suspected terrorism or links to it and measures related to intelligence and security services access to personal data and other bank accounts of their customers and financial transactions), the judicial and criminal matters (measures related to increasing penalties for perpetrators of acts of terrorism), the rail and maritime transport and the control of cross-border movement. It shall also be noted that there has been increased investment in modern control technologies, such as electronic search engines, brain fingerprints, computer translators, body scanners, the ever-present cameras and sensors, robots inspector, use of wireless networks, are just a few.

After that turning point R Slovenia has not received any special anti-terrorist measures. However, it has become even more active in countering terrorism and carried out certain preventative measures, which is particularly evident from enhanced cooperation and integration, against various threats, at the international level and in the adoption of various international instruments, conventions, declarations, protocols, etc. Also, public opinion polls related to the risk of its citizens do not attach great potential emergence of terrorism in its territory. Due to open borders and the free movement of people R Slovenia is much more exposed to other forms of organized crime.

## **Conclusion**

Modern international environment is characterized by the diversity of processes and related effects, including security risks posed by rapid changes in society. New opportunities and challenges characterized by globalizing and modern security paradigm launch a number of irresistible processes within existing systems of national security, changing the role of government in providing security to its citizens and residents. Changes in the concept of security are resulting from changes (new and modern) sources of threats as well as new players in the ensuring security. The changes are equally influenced by the perception of the real sources of threat.

In recent decades we can observe two different approaches in defining the concepts of security. In the traditional concept of security, the interests, needs and rights of individuals and social groups are subordinated to the interests of the country. While contemporary scientific discussion on the security follow to the changed security environment, also have influence of the changes in the reference security objects.

Instead of countries, individual, society, the environment, critical



infrastructure, etc are becoming more imperative that non-state actors. However, it would be completely unacceptable and wrong, taking into account the almost lacking in transparency number of contemporary sources of threat, pushed the country into the background, and other reference objects seen as the only and the most important in terms of security. Modern expert discussion on security is so focused and based primarily on reference objects, sources of threats and security mechanisms to ensure the security and what are the means to achieve safety.

In modern security paradigm we can trace a double deviation from state centric perspective of security, on the one hand, we are faced with transnational security, while on the other there is an increasing trend towards ensuring individual (human) safety, this means a shift to the concept of ensuring safety of an individual. Security is becoming a fundamental civil right that requires the synthesis of a wide range of countries and national social policies.

When limiting the rights at the expense of safety there has been a peculiar paradox. Developed western countries who advocate the rule of law, democracy and respect for human rights, with adoption of anti-terrorist legislation restricting or even breach the above mentioned principles. People are also under the influence of the media, in fear of losing security willing to give up some of their rights or even allow their violation. It follows that the relationship between freedom and security, priority to the safety, regardless of the resources necessary for its provision. With the implementation of the policy of restricting the rights, the states jeopardize their own freedom rather than to provide it.

Therefore to ensure security, it appears perfectly legitimate dilemma between freedom and security and where to apply "more security on account of liberty." Individuals with their rights and freedoms are the ones who will have to answer the question whether they are willing to accept certain restrictions on their rights because of security and for how long.

Increasingly, the public opinion is occurring, and we now have fewer freedoms than we had ten years ago, with the trend, which suggests that we will have even less in the future. Human rights and fundamental freedoms are the cornerstone of democracy and a just society. With them democracy begins and ends. Where there is no human rights there is home of dictatorship, totalitarianism, police state.

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