

REGULATIVE ASPECTS OF PUBLIC SERVICES IN SLOVENIA

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The main points tackled in this paper are the evolution of regulation of public services and the way in which they are provided in Slovenia from the advent of the so-called transition period up to the present. The importance of this sort of regulation is to create a level playing field between the private and public sectors to function to their utmost mutual advantage and at the same time safeguarding the public interest. The paper further addresses also the objectives of regulation in this field such as promoting healthy competition, the creation of a level playing field for competition to play itself out properly and in congruity with the law and also in such a way as to prevent unjustified profiteering, monopolistic abuses etc. The paper also touched upon the functional characteristics of the regulating authority, appointment procedures, funding and the regulatory process. The focus of the paper is on the public service delivery landscape in our country: the direct provision by the central government or local government and the indirect service delivery, which has numerous sub-forms such as public companies, concessionary public service and public-private partnerships.

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I. Introduction

Public services represented one of the main problems in the reform of the entire legal system in Slovenia. Regulation of this field was unique in the world. Due to its inadequate bases this regulation produced rather poor results. By uniting the process of decision making with that of service provision, it introduced and strengthened monopolies in all fields of public services, and by unification of all forms of service provision, it prevented the introduction of elements of rationality and economy in this field.

The introduction of public services meant a completely new regulation of this field, the content of which were practically unknown in Slovenia. On the one hand this posed some difficulties for people to accept, since they had to get acquainted with conceptions which had already completely vanished from our conceptual world. On the other hand, such a situation meant certain advantages, too. We were not burdened with tradition concerning the regulation of this field, which in many countries represents one of the principal obstacles to modern solutions in this field. Slovenia had to start anew, so we were freely able to accept positive foreign experience and adapt it to our circumstances.

2. Bases for Legal Regulation of Public Services in Slovenia

The first question concerning the bases for a new legal regulation of public services in Slovenia was the question of system or partial approach. Most countries

with a long-standing tradition in this field favor the partial approach, which means that each particular field of public services is regulated by a special law, which is based solely on the constitutional system. This is a logical result of the development of public services in the developed countries, which in many years of their existence have developed common principles (and differences) without any special system law in this field.

The situation is different when a system of public services has to be built completely anew, with no direct reference to its continuous development. Such was the situation in Slovenia and slightly modified also in all other Central and East European countries. The urgency of reforms in this field did not allow these countries to wait and see the results of the development of a particular public service. Instead, they had to formulate uniform bases for the regulation of this field and these were provided by the system approach. This means that they had to pass a system law on public services which had to ensure the instruments for decision making and service provision in the field of public services. The laws referring to particular fields can then use these instruments for their own distinct solutions. Such regulation was necessary, the more so because such instruments simply did not exist in any other branch of their legal systems. So, the introduction of completely new legal institutions, so far unknown in these legal systems, was called for.

That is the main reason why Slovenia had decided to prepare a system law regulating the entire system of public services in the field of infrastructure. As a consequence, the Public Utilities Act was adopted back in 1993. This law does not regulate individual public services but, in a systemic way, defines fundamental relations within the administrative system in the field of public services, as well as possible forms of public service provision. Individual public service are governed by special laws using the instruments of the system law. A fairly uniform regulation of the administrative system has thus been achieved at the central level, whereas at the local level these matters are in most cases left to the future regulation of local government. On the other hand, the law introduced numerous, so far unknown forms of public service provision which could be used in particular fields according to the needs for rational and economic organization. In this way the new regulation corrected two basic flaws of the previous one by delimiting decision-making from service provision and by unifying all forms of service provision.

3. The System of Public Services

When regulation of a particular field is in question; we must bear in mind that we are regulating a certain system. That means that legal regulation has to define the elements of that system, regulate its internal and external relations and specify its functions. System regulation of public services is designed to regulate these matters in respective fields.

The first question that arises is the definition of the term public services itself. With regard to its system orientation the law does not explicitly specify particular public services but provides only their general definition. Such an approach ensures great flexibility, since rapidly advancing social and technological developments greatly affect the nature of individual activities. Due to rapid changes in their nature, these activities are shifting from the private to the public sphere and vice versa. From the point of view of system legislation it would therefore be unsuitable to directly determine particular public services. Instead, this is left to laws regulating particular fields within their framework.

The definition itself of the term public services is by no means simple. The standpoints concerning this matter are not uniform in specialized literature nor in the legal regulations in different states. For system regulation of public services this definition is of key importance, but it should be neither too extensive nor too narrow. Taking this into account, the law has bypassed the extensive functional definition of public services and accepted the so-called target definition. That means that it does not attempt to define common characteristics of particular activities but only their joint result, which consequently affects the nature of these activities. According to this definition public services are

those activities which provide public goods and public services. The nature of the results is thus defining the nature of the activity. A discussion about what the main characteristics of public goods and public services should be like, would undoubtedly surpass the aim of this paper. We will confine ourselves to only two essential features: to their indispensability for the functioning of the whole social system or part of it, and to their non-market nature.

On the other hand we may agree with those who advocate the view, that there is no need to define the public services in the law in a general way. They say that such a definition is only the matter of theory and thus cannot be the subject of legal regulation, or that it doesn't make any sense to come forward with such a definition. This position is validated by the fact that such a definition would not have any effect on real life. Public service must anyway be defined by the different laws governing their specific areas of application, which means that a general definition is not needed. Such a litigation would be possible only in case of general definition of public utilities in the Constitution, where the law is subordinated to the Constitution and the Constitutional Court may decide that the provision of the law is not in accordance with the general definition in the Constitution, so it is to be abolished. In our case it cannot do it since the general and the special definition are regulated by the laws which take the same position in the hierarchy of the legal system. According to this situation we may conclude that in spite of the systemic law, the laws which regulate different areas of public utilities are completely independent in defining public utilities in their own fields. The definition of the public services in the systemic law is thus only a guideline for other laws, but it cannot affect them more than that.

Types of public services, with regard to the level of formation and to the obligatory or optional nature of services provided, represent the next problem of system regulation. As to the level of formation, the law distinguishes central and local public services, and as to the necessity of services provided, it distinguishes obligatory and optional public services. Central public services are determined, regulated and provided by the State through its agencies and service-providing organizations, while local public services fall within the scope of local communities. The latter can make totally independent decisions only on local optional public services, since local obligatory public services are governed by the law that regulates primarily a uniform scope of their provision. The aim of such regulation is to ensure a minimal unified standard of public services falling within the local competence on the territory of the entire country. A scope greater than the one legally prescribed for a particular local obligatory public service fall within the competence of local communities.

At the present moment, the division between central and local public services causes some problems, since the local government system is being restructured. The Local Government Act envisaged local units at two levels, with a high degree of independence and large competencies precisely in the field of public services. However, these upper-tier units have not yet been territorially defined and nor have their mutual relations been defined. It is therefore difficult to foresee the network of public services in particular fields. The processes of modeling public services are running simultaneously with the remodeling of the system of local government, where the country is on the verge of introducing regions as the second tier to the existing municipalities.

The Constitution and the Law introduce on the one hand the most democratic and on the other hand the most unpredictable and irrational way of creating the territory of the new municipalities. The decision about the territory is left to the people, who with referenda decide the size of individual municipalities and before this referenda they can also influence the decision on the area, where the referenda for new municipality will be carried out. Slovenia was split in very small municipalities with the lack of competencies and financial sources due to their weakness, what enhanced the process of the centralization of the state. The only weapon against this process

is establishing the second tier of local government, which is on the verge of being introduced exactly at this point in time, where up to fourteen provinces are planned to be established. Such provinces shall have besides their own competences also competences, which they shall acquire from the state level.

The role of these provinces now mostly depends on regulation of the particular fields, where the different laws will decide the scope of their competencies. The first level of local communities are relatively small in terms of territory, while provinces constituting second level are relatively large. This means that the former will provide primarily those public services, which directly relate to people and which, in terms of organization and capital, are not very demanding, whereas the latter will provide public services that are more demanding in terms of organization, technology and capital, among which are especially public services in the field of infrastructure. Today we are able to measure the rationality of provision of particular public services in their respective fields. An even more rational, although only supplementary, solution to this problem is provided by a special regulation, which enables the establishment of special administrative associations for managing those public services the rational provision and regulation of which surpass the territory of a particular local community. The basic problem is how to allocate public service activities to the central and local levels and to select between the activities falling within the scope of the latter level the ones that should be compulsory from the ones that should be optional. The solution to this problem is left to separate laws, which along with the system law represent the entire regulation of the public service system in Slovenia. Most of these laws are already in place, which means that the final picture of the regulatory framework of public services can be put together. This will raise not only the question of the distribution of decision making and public service provision at different levels of the administrative system, but also the initial question of the division between the private and the public sphere. In Slovenia, like in most East European countries, this division line is sometimes not clear enough. Moreover, it should be drawn anew, since the regulation of public services has to be adapted to changes in the social and economic system. This question reveals in its entirety the complexity of public services regulation in these countries. The system law on utilities provides only the foundations for their regulation, and these in turn represent only the base for the regulation of particular fields. Nevertheless, the system law introduces a whole range of interesting solutions and novelties.

The first such solution is relatively strict division between decision making and service provision in the field of public services. On the one hand, the law regulates the administrative system and on the other the system of service provision as well as their mutual relationships.

In addition, it also regulates their relations to their environment, i.e. to the users of public services, which are reflected in the rights and obligations of all parties concerned.

The administrative system in the field of public services represents a classic system of state administration, which defines the type and scope of particular public services and their development, and performs all administrative and a majority of the supervisory tasks. Public services were regulated incrementally, where the Public Utilities Act serves as a sort of general law. A novelty with regard to the previous regulation were considerably larger competencies of the government in this field. The parliament limits itself chiefly to strategic decisions and no longer deals with the operational ones. The parliament defined by statutory law primarily the fields and the scope of compulsory public services at all levels, while optional public services at the central level were defined by the government and the ones at local level by local community agencies. The competencies connected to the system of service provision have almost entirely been transferred to the government and administrative agencies, which enables greater flexibility in the choice of various forms of service provision. The government

can, for example, also choose to establish public companies and in almost all cases it can also formulate concession agreements and through its administrative agencies it can supervise all types of public service providers.

In the system of state administration the law also made a clear distinction between the regulative and the expert-advancement function.

The importance of the introduction of expert-advancement tasks in the state administration system for the field of public services need not to be specially emphasized. Public services comprise specialized activities, which must be organized and controlled by an Administration with enough expertise to be effective for the task. In this way a certain equilibrium is created between the management and provision system, since the preponderance of one or the other leads either to dilettante decision making or to the creation of a completely uncontrolled monopoly.

The expert-advancement function is reflected in a special administrative organization which is, as a rule, set up as a directorate. In principle it can be independent (at the local level) or incorporated in a particular administrative agency (at the state level). Its main tasks are on the one hand, the preparation of development programs and other expert bases for decision making in the administrative system, and on the other expert supervisory tasks concerning public service provision. Within the framework of the former, directorates, for example, are normally charged with preparing development plans for public services and, within the framework of the latter, tasks related to the establishment and organization of public companies, those related to the granting of concessions, expert supervising of providers, etc. As we can see, there has been a tendency to provide the administrative system with the appropriate knowledge of particular fields, which it previously lacked or did not need.

A special chapter of the law was devoted to the protection of consumers of public goods. Not the legal protection of their rights is in question here, since this is guaranteed in other branches of law, but the institutionalization of their direct influence on decision making and public services provision. This influence is secured by means of client associations established on the basis of a law or provision of a local community. These associations have no administrative competencies but can only make remarks and suggestions to the government and its administrative agencies which, in turn, have to discuss and react to them. They also oversee the obligatory concluding of contracts between providers and consumers, and in the event of a breach of contract they envisage special legal protection within the framework of the administrative procedure.

The second part of the law dealt with the entire system of service provision by introducing numerous new forms for organizing such service provision. First of all, it distinguished two forms of public service provision: administrative and concessionary, the former being characterized by heavy dependence on the state or on local communities as regards establishment and operation, and the latter by contractual relations between the state and private legal entities.

With regard to administrative public services it envisaged two basic forms through which they are delivered, namely: directly by government bodies organizations and public enterprises. Public service provision rendered directly by government bodies is rare. This form is exceptionally utilized only when the scope of activities performed is so small that it would be uneconomical to establish a public enterprise and when there are no conditions for granting a concession. Administrative organizations are internal organizational units of government agencies. At the central level they can also exist within other administrative agencies. Since their operation is governed by regulations valid for state administration agencies, they represent a form of public services provision which is most closely bound to the state administration system.

The second and most common form of public service provision are public enterprises. Public enterprises thus mark a return to classic forms of public service provision, where greater or lesser influence of the state is assured. They can be set up either by the central government by means of a governmental decree or by local communities with their own regulatory provisions. Public enterprises are companies with public or mixed ownership, but also in the case of the latter, majority decision rights have to be assured to the founder, regardless of the amount of invested private capital.

An especially interesting feature in this regard is that public enterprises do not all fall within one uniform form of public service provision. Their direct dependence on the founder is not stipulated by the law, but regulated by the act of establishment. In it the founder and the public company define among other issues also the founder's rights to participate in the management of the company, his rights to share in eventual profits, his responsibility for the covering of eventual losses, etc. The degree of association or dependence of a public company upon its founder can vary considerably, depending on the degree of direct influence the founder will assure for himself when founding a company. Here we have the founder's right to influence the management and the supervisory board through representatives, as well as through the exercise of an exclusive right to appoint the director of the public company. These prerogatives are legally ensured in fact without any exception. All the other matters concerning the public enterprises, for example their legal status and all the consequences derived from this status are regulated by the Law on Commercial Companies. This fact subsequently contributed to a lot of problems, since quite a substantial number of the relevant statutory provisions were not applicable to public enterprises, whose purpose and way of operation differ vastly from those of commercial companies.

The third form of service provision took the form of concessionary public services. For the first time after a very long period the legislation introduced in our legal system the concept of concession. Concessionary public services are by definition services which are provided by a private legal entity (concessionaire) by order of the state or local community (conceder). In this case public services are not provided by a subject of public law, but by a qualified private legal entity, which regulates a greater part of its relations with its customer (the state) on a contractual basis. The main reasons for the establishment of a concessionary public service are rationality and economy, since the conceder can choose from many existing qualified service providers the one that is deemed in all aspects as the most suitable for the delivery of particular public services. Thus elements of market competition are introduced to a certain extent into the system of public service provision.

There is a lot of literature on concession as a legal institution. In general two theories exist, with different consequences for legal regulations: the first is administrative and the other contractual. According to the administrative theory concession is an administrative act, whereas according to the contractual theory concession is a contract. In our legal system it seems we borrowed elements from both theories, so that the concession itself is granted by an administrative act, which regulates also the relations directly concerning public interest in the provision of a particular public service. Other relationships, which involve only mutual rights and obligations of the conceder and the concessionaire, are regulated by a concession agreement

In addition to a brief outline of the concession act and the concession agreement, the law also regulates other matters related to concession, such as the procedure for the selection of concessionaires, their protection and arbitration of disputes, termination of concession, transfer of concession, compulsory concession and some special obligations of the conceder and the concessionaire. Concession is thus in its entirety regulated by this law, with exception of concession on natural resources which is governed by the Environmental Protection Act. Concessionary public service brought about a tremendous change in the field of public service provision by loosening the formerly tight grip of governmental monopoly.

Of course, there was not only the bright side in all this, but also some pitfalls and problems, that had to be dealt with in this field. The concessionary system demands quite developed market, especially on the side of the public services providers. This is not always the case, what may cause only the shifting of the monopoly from the state to the private hands. Such a situation could be still worse than the previous one, so the state must be very careful in granting the concessions. At the first stage there was a need to establish some public enterprises, which beside service provision had the purpose to enhance the development of the market in this fields. After the consolidation of the market it was much easier to grant the concessions with increasing chances that the basic aim of their granting had been achieved.

The object of a concessionary contract is by definition an exclusive right, which allows its holder to operate a certain activity or to use a certain things or commodities, which are not universally accessible under equal conditions to all. The aforementioned definition is quite in congruence with the one given by the E.U. Council Directive No. 93/37/EEC.

The granting of concessionary exclusive rights covers roughly four distinct areas, namely:

- i) Concession of a mercantile technical public service for example in the field of gas and electricity distribution covered in Slovenia by the Energy Act, Official. azette. No. G79/99, 8/00
- ii) Concession of a social public service for example in the field of health services covered in Slovenia by the Public Health Act 9/92 & its supplements 26/92, 13/93, 37/95, 8/96, 59/99, 90/99 98/99, 31/00, 36/00 – especially used in the field of granting concessions for pharmacies etc.
- iii) Concession of exploitation of a natural resource is covered in Slovenia by the Environmental protection Act , Official Gazette No. 32/93, 44/95, 1/96, This legislation was especially utilized for granting of concessions in the waste disposal and similar areas
- iv) Concession on a built public good is covered in Slovenia for instance by the Public Roads Act, Off. Gazette Of the Republic of Slovenia No. 29/79, 18/00. The Public Roads Act was especially frequently used in cases, where the state granted concessions for operating gasoline pumps along super- highways etc.

The delimitation line between concession and public tendering is drawn according to the same criteria put forward in the E.U. Directive on Public Works 93/37/EEC, which states that concession is always at issue as long as risk for payback of concession investment is borne by the investor, while it is interpreted conversely as public tendering if risk for payback regarding concessionary investment is borne by the government or local community granting concession via public tender. This criterion was also more precisely elaborated in the Commission interpretative Communication On Concessions under Community Law, 2000, pages 7-9.

According to the newly passed law on public-private partnership, there are a number of possible forms of such partnership, where the private sector is sought to be lured into financing and managing large infrastructure projects, where the role of the state is relegated to regulation and supervision. There is a broad spectrum of the public-private partnership arrangements. On one hand of the spectrum we encounter service contracts, where the state and/or local community retains not only the ownership over the outsourced infrastructure, but is also responsible for investment and risk. On the other hand are pure concessions and BOT (Build-operate-transfer) project finance agreements, where the concessionaire builds, finances and owns the infrastructure, which he then transfers to the conceding authority upon expiry of the concession. Other forms similar to the above-mentioned are also agreements such as Build-own-operate (BOO), Build-operate-renewal of concession (BOR), Build-transfer-operate (BTO), Build-rent/lease-transfer (BRT or BLT) and also Rehabilitate-operate-transfer (ROT), etc. Somewhere in between we can classify management contracts, where only

management is by contract transferred to the private sector, while commercial risk is still borne by the contracting authority, which is ultimately responsible also for the delivery of the service. Under the previous category we can also classify lease contracts concluded with the private sector, where according to such agreement public infrastructure is leased for a duration of 5 to 10 , maximum 15 years. The government or local community in this case retains ownership of the infrastructure and is still responsible for securing the financing of new investments and the ensuing debt payment, while the private sector contractor covers the day-to-day operational expenses. The profit margin depends on the differential between generated income fixed in the agreement and the ability of the private operator to effectively cut expenses.

The fourth form of providing of public services - investing of state capital with individual private legal entities delivering public services - is even less directly bound to the state. In this form the state has no other institutional levers to influence the operation of such an entity than those originating from its share of invested capital. A great majority of relations in this field are regulated by the provisions of commercial law. The law on public services regulates only some special topics, like procedures for the selection of a private legal entity with which the state or local community will invest its capital. In contrast to some foreign legal regulations, the law does not specify any special rights of the state in the management of such an entity, but they can be guaranteed in a mutual agreement which regulates also all other mutual relations.

If we make a brief summary, we can find out that the described system of public services is based on the following principles:

1. The principle of system regulation, according to which the law regulates only basic relations and legal institutions which can be adapted for their needs by laws and decrees relating to particular fields.
2. The principle of division between the administrative and the service provision system.
3. The principle of flexibility and variety in the selection of various forms of service provision which can be used as a "tool" by particular laws for the regulation of respective fields.

On the one hand we therefore have certain elements of the administrative system, represented by the parliament, the government, administrative agencies and directorates, and on the other the elements of the service provision system composed of administrative organizations, public companies, concessions and capital investments. The connective tissue of this system are legally regulated internal relations between its two sub-systems and their mutual relations, as well as all its relations with users which are reflected in their mutual rights and obligations. The legal systems of this field should function as a basis and generator for future regulation of particular fields of public services.

3. Privatization of public services

One of the basic questions arising today world-wide in connection with public services is the question of their privatization. It is not the aim of this paper to make a detailed and in-depth analysis of the problem, but due to its pressing actuality we can not avoid it. Chiefly so, because in our opinion the possibilities for and the process of privatization in Central and East European Countries differ from those in the developed world.

Privatization of public services must fulfill some fundamental conditions, if it is not to result in a simple financial transaction or in the transfer of state capital to private hands, with no effect on greater efficiency of public services. We will define some (not all) of these conditions and compare them with the situation in Slovenia, which is similar to the situation in this field in other Central and East European countries. These conditions are:

1. a clear distinction between the public and the private sphere
2. an elaborate and relatively stable legal and economic system

3. a sufficient amount of domestic capital
4. a sufficient number of qualified subjects who could operate in the field of public services.

In countries where everything was public or quasi public, there is no clear demarcation line between the public and the private sphere. An all-embracing state provided a majority of activities within its framework, so there was practically no room for the private sphere.

In all these countries detailed analyses have been carried out first, which enabled the creation of a true public sector, and only then was it possible to think about its privatization. In Slovenia this was done by laws relating to particular fields, which specified which activities within particular public services needed to be performed in the public sphere and which could be transferred to the private sphere. Thus, the process of division into the public and the private sphere and the process of privatization of public services were, to a certain extent, going on simultaneously. For other cases instrumental bases for the implementation of this process were first set in order to come into effect when all other conditions for the realization of this process had been fulfilled.

A similar problem relates to the second condition for privatization of public services.

In Slovenia this step has partly been made by the law on public services in the field of infrastructure, which is supplemented in this context by the legal regulation on privatization of the economy sector.

The third problem common to these countries is the lack of domestic capital. Slovenia, for example, does not lag behind the developed world in personal standards of living of the people as it does in the field of public services. Expansion and up-dating of public services demand large amounts of capital which Slovenia lacks. The only remedy to this problem would have been to invite the inflow of foreign capital, but this would lead to other problems in consequence. Most activities of public utility services are linked to a particular territory but, above all, foreign investments in these activities require concessionary arrangements

From the development point of view these concessions are delicate because, in spite of their short-term positive effects, they can be detrimental in the long run. On the other hand, the interest of foreign capital in investing in public services in these countries is questionable, because in the short run no special profits can be expected from these activities.

Finally, there is also a problem of a sufficient number of qualified subjects in the private sector for the delivery of public services. In conditions of a relatively undeveloped private sector there is not a lot of such subjects, although some of the new possible public service providers were brought about by the process of privatizing the economy at large. In some fields (e.g. waste collection) market competition and discipline was rapidly introduced, since, due to their simplicity, there was enough supply of qualified subjects. In more demanding fields of public services, however, a sufficient number of qualified subjects was not reached in good time, and in some fields in fact never. We must be aware that Slovenia is a small system, which can not develop a large number of service suppliers, as can be done by a bigger country. With respect to this, the possibilities for privatization are largely restricted and only particular forms of transfer of authorization for public service provision are relevant, with simultaneous control of their execution.

The scope of possible ways of privatization is indeed very wide. Here we are going to list only some of them, as follows:

- transfer of public companies to private hands
- sale of government shares to private persons,
- transfer of authorization for the provision of public services to private service suppliers,
- sale of public property
- sale of land and flats to tenants under favorable conditions,
- investing of state capital in the private sector,
- elimination of state monopolies on certain activities, etc.

Privatization was accompanied also by other measures which had been devised to ensure effective provision of public services, such as the following:

- elimination of state control over private supply of goods and services,
- introduction of consumer taxes and contributions for the provision of certain services which were hitherto free of charge, as well as their gradual increase until they cover total costs of supply,
- introduction of market principles in the field of public services to assure the sovereignty of users (e.g. voucher system),
- expansion of authorization and autonomy in managing public companies,
- introduction of efficiency criteria instead of the traditional system of remuneration, - a reduced number public service staff, etc.

We can see that privatization is a mixture of ways and measures designed for greater efficiency of public services. These ways and measures are the substance of the future policy in this field. Which of them and to what extent will be adopted is a question that depends on our future development. But we must not neglect foreign experiences which are very rich in this field. Today, positive and negative effects of privatization in the field of public services can already be seen in the developed world. Our task is to analyze and confront them with our possibilities for the regulation of this field.

4 Conclusion

This paper has very briefly outlined the system of public services in Slovenia, ways of implementing public service outsourcing and some problems of privatization of public services. We can say that the system of public services represents quite an unusual approach to solving this problem. But it must be emphasized once again that, with regard to our situation, the system approach is necessary. As far as privatization of public services in transition countries is concerned, we can say that simple transfer of models from the developed world is impossible, because suitable conditions for its realization have to be created first. One such condition was first the setting up of a coherent legal regulatory framework of the system of public services, which was followed by designing of a policy directed to higher efficiency and rationality of public services.

The Public Utilities Act as adopted in 1993, regulates the principal forms of public utilities implementation. The most crucial of these forms is the form of public company regulated by Articles 25 to 28 of the PUA. The basic deficiency of the current legislation concerning the status of public companies is the Government's dual involvement in this area. On the one hand, the Government functions as the regulator by setting general rules for the implementation of public utilities, while on the other hand, it functions as the "founder" that is entitled to certain founders' rights. The provisions of the PUA do not clearly distinguish between these two functions. It is therefore necessary to clearly distinguish between these two functions, namely the Government's regulatory power regarding public utilities from the role where the Government exercises owners' rights due to its share of capital participation in individual public companies.

The consequence of the harmonization process to the European Union law was the liberalization in numerous areas where previously the activities were being performed in the form of public services and under conditions of legal monopoly as in telecommunications, energy, and railway transport. The abolition of legal monopolies is not enough to solve the problem of actual position on the market, which also requires an active regulatory role of the Government in ensuring the conditions for actual liberalization. On the other hand, the Government will have to abandon its ownership role in companies performing liberalized activities.

In the area of activities that will remain under the regime of public utilities, the Government should retain the institute of public company and modify the arrangement in such a manner so as

to approximate the statuses of public companies and “ordinary” companies as much as possible, excluding special founder rights of the Government and/or those of local communities, respectively. It is also necessary to clearly distinguish the regulatory role from ownership role, regardless of level of authority- be it central government or local government. The issues that demand a special legal regime (modes of administration selection, criteria for the determination of salaries and remuneration for members of administration and advisory boards, modes of concluding collective agreements) have to be determined. Namely, the employees of public companies are neither subject to the regime laid down by the Civil Servants Act nor to the Public Sector Salary System Act.

Irrespective of the fact that the status of public companies defines them as companies, certain elements in their actual position designates them somewhat closer to the position of legal persons in public law (implementation of public service, monopoly position, regulated prices...)

In all this endeavor we must keep in mind not to neglect foreign experience in order to have an insight into positive and on the other hand negative effects of privatization in countries that embarked on this path early on. Our task is to analyze and confront these different outcomes with our specific situations.

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