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The Role of State in Achieving Sustainable Development Goals in Slovenia

Rola państwa w osiąganiu celów zrównoważonego rozwoju w Słowenii

SUMMARY

The article analyses the importance of an active role of the state in achieving the Sustainable Development Goals. Its starting point is that despite the fact that today there is a growing recognition in the world that for the implementation of sustainable development an active role of the state and local self-governing communities is indispensable and despite the fact that in Slovenia such a role of the state in implementing sustainable development stems from its Constitution, so far, too little has been done in Slovenia to achieve the Sustainable Development Goals. The purpose of this article is to analyse theoretical arguments and the Constitution in order to show the need for an active role of the state in implementing sustainable development goals, and also to discuss basic steps to be implemented in order to achieve an active role of the state in Slovenia. In this article comparative and analytical methods were used in studying the literature and regulation. The article, based on theoretical arguments and the constitutional analysis, identifies the need for an active role of the state in implementing sustainable development goals, and proposes arguments for it and also basic steps toward an active role of the state. The discussed topic is new and this article contributes to the field some fundamental arguments for the active role of state and for the more comprehensive policy-making. The article offers theoretical and constitutional arguments to be implemented in order to transform the present role of the state from a passive one into an active role and its findings are meant to be used by policy-makers and law-makers as a significant argument to pursue more active role of the state in implementing sustainable development goals.

Keywords: the Sustainable Development Goals; an active role of the state; comprehensive state sustainable development plan

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INTRODUCTION: SUSTAINABLE DEVELOPMENT – THE FUNDAMENTAL OBJECTIVE OF THE STATE

The increasingly devastated nature on the one hand and the spread of ecological awareness on the other led almost three decades ago (1992) to the conception of a global political agreement[1], whose essence is sustainable development principle. The agreement's objective is to achieve a social transformation in which economic growth could be maintained, but at the same time, the environment could be preserved. The principle, therefore, consists of two objectives[2]. The first is providing the highest material standard for all[3] individuals on the planet, and the other is to preserve the environment.

The principle of sustainable development is the central principle of social transformation; the goals of sustainable development[4] are the fundamental goals that all world societies or states should pursue.

Particularly serious, comparatively speaking, has been the commitment of the EU to this goal, which is evident from the majority of its founding acts, but more specifically the importance the EU attaches to sustainable development is reflected in a series of the EU policy documents[5], the latest is the current Europe 2020: A European Strategy for Smart, Sustainable and Inclusive Growth[6]. Likewise extremely wide-ranging as well as highly progressive in many areas is EU environmental law.

The sustainable development model, on the one hand, maintains a focus on economic development, but it must be such as to enable long-term environmental protection[7]. Applying this principle, therefore, means that we adapt economic

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[1] This agreement is covered by the so-called Rio Declaration adopted in 1992 in Rio de Janeiro (Declaration of the UN Conference on Environment and Development).

[2] Based on the aforementioned Declaration, an action programme was also drafted to achieve the objectives of the Declaration, called Agenda 21.

[3] One of the key issues of our civilization is the division of the world into developed and underdeveloped. Therefore, the principle mentioned above also covers efforts to bridge these differences, which at the same time appear as differences between the rich and the poor.

[4] More about sustainable development goals (SDG), see UN SDG, United Nation Sustainable Development Goals, www.un.org/sustainabledevelopment/sustainable-development-goals [access: 12.06.2020].

[5] For more on sustainable development in EU environmental policy, see M. Bahor, *Trajnostni razvoj v okoljski politiki Evropske unije*, Ljubljana 2005 (master's thesis, University of Ljubljana).

[6] For more details, see Europe 2020: A European Strategy for Smart, Sustainable and Inclusive Growth, http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf [access: 12.06.2020].

[7] In this paper the focus is on the balancing two main aspects of sustainable development: maintaining the orientation to the economic development and at the same time protecting the environemt. The discussion about the social aspect, which is oriented towards social justice, peace and prosperity (in one word: towards more fair world distribution of wealth – beginning with the erradication of hunger), would exeeds the purprose of this paper.

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development – so that economic development will no longer encroach upon the environment as has been done hitherto. The focus here is the so-called intergenerational solidarity – to provide future generations with the same opportunities to meet their material needs.

In different societies, the path toward such shift based on a different value system will not be a straightforward one. One of the critical roles on the path will have to be entrusted to the states. The state (and its main tool: legal regulation) should act as main agents in achieving the Sustainable Development Goals (SDGs)[8]. That means that more active role of the state and local self-governing entities is what is needed to implement the SDGs and transform the societies into sustainable ones. Such approach is also one of a guiding principles of the Organization for Economic Cooperation and Development (OECD)[9].

In Slovenia, some important steps have been done toward the SDGs. The principle of sustainable development was incorporated into Slovenian Constitution (discussed *infra*) and, following the EU environmental regulation, a comprehensive body of environmental regulation was passed in past years. However, still a gap exists between the main SDGs and the reality, despite the fact that Slovenia has solid, indeed excellent (compared to the other EU Member States, as well as globally) possibilities for sustainable economic development[10]. Slovenia has a relatively unspoilt and varied environment, but also a great human potential – a high rate of highly educated people and many successful individuals and companies in various fields[11], which are essential for the successful development of a green economy[12].

These are economic activities based on environmental conservation and not (undue) interference with it. Green economy thus signifies economic activities with

[8] There are 17 SDGs, defined by the UN. See more about them in *The 2030 Agenda for Sustainable Development*, https://sustainabledevelopment.un.org/post2015/transformingourworld [access: 12.06.2020]. It is well-known that, globally, none of them have yet been implemented. See more Ch. Kroll, A. Warchold, P. Pradhan, *Sustainable Development Goals (SDGs): Are we successful in turning trade-offs into synergies?*, 2019, www.nature.com/articles/s41599-019-0335-5 [access: 12.06.2020]; K. Bosselman, *The Principle of Sustainability: Transforming Law and Governance*, New York 2017.

[9] See OECD Better Policies for Sustainable Development, *A New Framework for Policy Coherence: Study*, 2016, https://sustainabledevelopment.un.org/content/documents/commitments/493_12066_commitment_Better%20Policies%20for%20Sustainable%20Development%202016.pdf [access: 12.06.2020].

[10] For more about the gap between the main SDG and the real life in Slovenia, see *Za zeleni razvojni preboj – Plan B za Slovenijo 4.0: Prispevek za strategijo razvoja Slovenije 2014–2020*, www.planbzaslovenijo.si/upload/SRS/plan-b-zeleni-razvojni-preboj.pdf [access: 12.06.2020].

[11] See statistical data about Slovenia's excellent possibilities to implement main SDGs: *ibidem*.

[12] Green economy has been widely seen as a great potential for achieving main SDGs, that is simultaneously maintaining the orientation towards economic development and the protection of the environment. For example, see *Towards a sustainable Europe by 2030*, www.guninetwork.org/files/rp_sustainable_europe_30-01_en_web.pdf [access: 12.06.2020].

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an to preserve the environment. These activities are, for example, green tourism, green agriculture, green marketing, green construction based on the use of wood as a renewable natural resource, green energy based on energy production from renewable energy sources, etc. For other economic activities, let us call them brown economy[13], which are based on activities affecting the environment, the "green" means a more considerable restraint in actions affecting environment. This should be achieved by better (state) environmental management of natural resources, economic instruments to promote more considerable restraint of activities affecting the environment (e.g. compensation for pollution, eco-label, etc.), with greater support for technological and other innovations that enable businesses greater restraint activities affecting the environment, and other instruments[14].

However, it is evident that, with a few exceptions[15], there are no significant shifts in this direction in Slovenia[16].

The main reason lies in the fact that in Slovenia, we are yet to see the realisation of the need for an active role of the state in achieving the Sustainable Development Goals.

RESEARCH QUESTION, RESEARCH METHODOLOGY AND MAIN GOALS

Research starting point: Despite the fact that today there is a growing recognition in the world that for the implementation of sustainable development an active role of the state and local self-governing communities is indispensable and despite the fact that in Slovenia such a role of the state in implementing sustainable development stems from its Constitution, so far, too little has been done in Slovenia to achieve the Sustainable Development Goals.

[13] This term has been used widely in last years to describe economic development that relies heavilly on fossil fuels and does not consider the negative side effects of economic production and consumption on the environment. For example, see Climate Transparency, *Brown to Green Report 2018*, www.climate-transparency.org/g20-climate-performance/g20report2018#1531904263713-04b62b8d-e708 [access: 12.06.2020].

[14] About the definition of green economy, see UN Environment Programme, www.unenvironment.org/regions/asia-and-pacific/regional-initiatives/supporting-resource-efficiency/green-economy [access: 12.06.2020].

[15] There are some examples mainly in the tourism sector. See more Slovenia Green, www.slovenia.info/sl/poslovne-strani/zelena-shema-slovenskega-turizma [access: 12.06.2020].

[16] This paper is based on the fact that too little has been done in Slovenia in regard of the implementation of the SDGs goals, especially regarding the promotion and development of green economy. That fact was elaborated in detail in *Za zeleni razvojni preboj…*, which was prepared by Slovenian NGOs.

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The research purpose of this article is to analyse theoretical arguments and the Constitution to show the need for an active role of the state in implementing sustainable development goals and also to discuss basic steps to be developed toward an active role of the state in Slovenia.

The first hypothesis of this article is that strong theoretical arguments exist for an active role of the state in implementing sustainable development goals.

The second hypothesis of this article is that in Slovenia an active role of the state and local self-governing communities in implementing sustainable development goals stems from its Constitution.

In this article, the hypotheses will be tested using analytical methods. In that regard theoretical literature will be analysed to test the first hypothesis and Slovenian Constitution and the most important decisions of the Constitutional Court of the Republic of Slovenia (hereinafter: the Constitutional Court) will be analysed to test the second hypothesis.

The main goals of this article are to develop theoretical and constitutional arguments for an active role of the state in implementing sustainable development goals, and to develop basic steps to be implemented to transform the present role of the state in Slovenia from a passive one into an active role.

DISCUSSION: AN ACTIVE ROLE OF STATE IN THE IMPLEMENTATION OF SUSTAINABLE DEVELOPMENT GOALS

1. Theoretical approach

Today, there is a growing recognition in the world that for the promotion of sustainable development an active role of the state and local self-governing communities is indispensable (in the EU, as well as in the world, regions are of particular importance – which is logical, since to promote sustainable economic development, it is necessary to manage the territories representing the entireties). The active role of the state and local self-governing entities is exhibited in the need that the state and local communities for their respective areas have a clear, realistic and very concrete plan for realisation of the sustainable economic development goals. As has been elaborated by various authors, it must clearly set priorities[17] by the state

[17] In regard of main SDGs, the main priority should be the promotion of the green economy. When it comes to brown economy (i.e. the economic activities conducted on the principle "more profit, more interference with environment"), the priority should be to promote the use of new technologies, which enable more efficient (i.e. less destructive) interference with the environment.

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and local self-governing communities, which should be implemented with all the means at their disposal[18].

These means are legal regulation[19] (environmental, spatial and tax legislation are of particular importance in this context) and promotional activity. In this context, it is quintessential for awareness-raising, education and training for sustainable development to reach as many individuals as possible: both public administration employees and the wider public sector, as well as those employed in the business sector. Thus, the active role of the state is critical – it is impossible to direct society towards sustainable economic development relying solely on the market mechanisms[20]. History has taught us to the contrary[21]. Today, for the most part, it is not disputed that in modern market economies, the active role of the state is inevitable[22] – the only difference is how extensive government intervention should be[23].

However, such advanced approaches are inevitably invalid if they disregard the position of human beings in the environment. It is precisely the tension between state intervention and the market that is perceived rather differently when we introduce the environment into the debate, or when we focus on balancing material progress and human freedom on the one hand and preserving the environment on the other[24].

Therefore, it is not feasible to formulate a consistent social theory without the inclusion of the issue of maintaining a natural balance[25]. The intellectual traditions of Western (legal and political) philosophy must confront the issues of the human

[18] K. Bosselman, *op. cit.*; M. Stallworthy, *Sustainability, Land Use and Environment: A Legal Analysis*, London 2002; J.R. Nolon, P.E. Salkin, *Climate Change and Sustainable Development Law in a Nutshell*, USA 2011.

[19] Different economic instruments should be used in legal regulation, in order to promote green economy. The command and control instruments should be avoided as much as possible.

[20] N. Klein, *This Changes Everything: Capitalism vs the Climate*, New York 2014.

[21] H. Latin, *Ideal Versus Real Regulatory Efficiency: Implementation of Uniform Standards and "Fine-Tuning" Regulatory Reforms*, "Stanford Law Review" 1985, vol. 37(5), DOI: https://doi.org/10.2307/1228632; A. Dan Tarlock, *Environmental Protection: The Potential Misfit Between Equity and Efficiency*, "University of Colorado Law Review" 1992, vol. 63(4).

[22] S. Breyer, *Regulation and Its Reform*, Cambridge 1982, pp. 15–35; B. Bugarič, *From Plan to Market – One Way or Alternative Paths? (A Critique of Institutional Reforms in Central and Eastern Europe)*, Ljubljana 1997 (doctoral thesis, University of Ljubljana), p. 10; J.D. Sachs, *The Age of Sustainable Development*, New York 2015, p. 502; N. Klein, *This Changes Everything*….

[23] With regard to different social theories, mention should be made of neoliberalism (which tends to diminish the role of the state), which is dominant today (in the traditional Western states and the transitional states), and various alternatives to neoliberalism, of which the so-called anti-necessity social theory or empowered democracy project. For more on this issue, see B. Bugarič, *op. cit*.

[24] In recent decades, several authors (especially in the US) have convincingly demonstrated that the dilemma between material progress and human freedom is a false dilemma. The real dilemma of humanity at the turn of the millennium is balancing the human community with the boundaries of natural balance. See, e.g., *The Ecological Community*, ed. S.R. Gottlieb, New York 1997.

[25] M. Kloepfer, *Umweltrecht*, München 1989, pp. 49–50.

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relationship of the human community to the environment as fundamental questions for humanity (the same also applies to political philosophy and social theory)[26]. Today's modern democracies are faced with the implementation of a complex mission. On the one hand, to further develop the democracy project and, on the other, to revive the environment, i.e. to develop environmental democracy[27].

Therefore, when the environment is introduced into the debate on the extent of state intervention in the private sphere (in the market), we find that it is no longer a matter of discussing a greater or lesser degree of intervention or a division of labours between the market (as a self-regulatory mechanism) and the state. The key is to realise that an active role of the state is critical for changing human attitudes towards the environment. Just as important is the recognition that the market, as a critical instrument of regulating the economy, is inefficient (impotent) when it comes to shifting human attitudes toward the environment.

With respect to the (economic) theoretical argument about the reasons for the impotence of the market, (now) classical G. Hardin theory of *The Tragedy of the Commons* should be mentioned[28]. Hardin proclaims the (im)morality of current economics, derived from the classic parable of rational individuals, whose sole aim is to maximize material wealth. Such rationality guides the individual in their interaction with the environment, understood in Western civilisation as space, as something available for unrestricted exploitation – is, therefore, commons (air, rivers, etc.). In a society that believes in the unrestricted exploitation of the environment and in maximising material wealth as the main reason for its existence, the result of exploitative rationality is environmental destruction. Exploitation rationality regards human relations with the environment as a mere cost which is trying to avoid. The tragedy of the environment as commons is that such behaviour is a rule[29].

Therefore, if we are to prevent the tragedy of the commons, i.e. the further deterioration of the environment, we must achieve a transformation in human relations with its environment. Hardin is convinced of the crucial role of the normative system

[26] S.R. Gottlieb points to the difficult birth of a new and still dominant ignorance of the environment. "Denial is as prevalent in the academic community as it is in government, media, corporations, and the general population. Many scholars continue to talk about theoretical questions that presuppose that our children will have breathable air, that the sunlight is still safe, or that it is not that important that the United States produces tons of toxic waste per person per year. […] Yet, in the last twenty-five years or so there has been a realisation – not widespread enough but still real – that fundamentally new questions are in order" (*Ecological Community*, p. xiv).

[27] For example, see S.J. Dryzek, *The Politics of the Earth: Environmental Discourses*, New York 1997, pp. 200–201.

[28] G. Hardin, *The Tragedy of the Commons*, [in:] *Foundations of Environmental Law and Policy*, ed. R.L. Revesz, New York 1997, p. 58.

[29] *Ibidem*, p. 6. For more on the subject, also see E. Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action*, 1990, https://wtf.tw/ref/ostrom_1990.pdf [access: 12.06.2020].

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and the state in such a transformation. The main aim is to legislate temperance in regard of human relations with the environment. Given the dynamics of the environment, Hardin sees the crucial role of the administration and administrative law institutes in the implementation of the legalisation of moderation and, given the problem *quis custodiet custodes*, in the design of appropriate control mechanisms[30].

At the same time, there is increasingly prevailing belief that for the implementation of changes, i.e. the active role of the state in promoting sustainable economic development an informed public and its active function is needed – only a public pressure on the government will bring about sustainable development[31]. The tragedy of the commons convincingly exposes the existing framework of how the economy operates. Its exploitative framework simply prevents the human as an individual from preserving the environment. It would, therefore, be naive to rely on the "magic of the invisible hand" when changing human environmental behaviour.

However, the problem of the market is even more profound. When we discuss changing (economic) actions affecting the environment, we are talking about changing the ruthlessness and unrestraintedness in this. The market, as a central instrument of economics, is, in fact, the personification of such (ruthless) orientation[32].

The market itself is, therefore, a generator of environmental destruction. As an instrument of rational resource allocation[33], it ensures the economic, hence material, realisation of the exploitation-oriented Western civilisation, obsessed with economic growth and consumerism[34], and as such is, therefore, the "target" of normative intervention. While the sustainable development project is not aimed against material progress, it is undoubtedly its fundamental goal to achieve restrictions of economy into environmentally friendly frames.

The market is, therefore, an ideologically contaminated institution of human economic behaviour, which is why it should be eliminated as a possible instrument for changing human relations with the environment.

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[30] G. Hardin, *op. cit.*, p. 7.

[31] N. Klein, *This Changes Everything*..., pp. 120–161.

[32] J. Dryzek (*op. cit.*, p. 118) emphasises the mechanistic structure of Western economies, which, therefore, simply cannot capture the complexity of nature. Thus, he rejects the market autoregulation or the possibility thereof.

[33] And as an instrument that deals with environmental protection solely as an issue of economic costs or the willingness of individuals (the majority of them) to pay to preserve the environment. So, it is about the "cost-benefit" principle as the "ideological" core of Western economics. Also, R. Coase is a captive of such a framework who believes in the effectiveness of the market mechanism. His approach, which perceives nature as merely a source of the production of material goods, stems from the belief that the pollution of nature should be evaluated, and negotiations between the polluters and the affected would necessarily lead to optimal results. For more, see R. Coase, *The Problem of Social Cost*, [in:] *Law and the Environment*, eds. V.R. Percival, C.D. Alevizatos, Philadelphia 1997, pp. 46–48.

[34] N. Klein, *The Economic System We Have Created Global Warming*, 2015, www.spiegel.de/international/world/global-warming-interview-with-naomi-klein-a-1020007.html [access: 12.06.2020].

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The active role of the state also stems from the need for permanent adaptation of human (economic) interactions to environment dynamics[35]. It is about adapting the desired, hence future, interactions as well as the already existing interactions between humans and the environment. Therefore, it is a matter of necessity, in the language of system theory, to consciously direct system interactions, which only the state can provide. The spontaneity of the market orientation of systemic interactions is simply insufficient in terms of environmental dynamics[36].

Also, all newer market mechanisms designed to contribute to the achievement of sustainable development (i.e. more effective protection of the environment while providing the economic growth) – for example, recently linked to the problem of climate change (e.g. trading in carbon dioxide emissions allowances) – are entirely ineffective[37].

2. An active role of state in the Constitution

In Slovenia, such a role of the state in implementing sustainable development stems from its Constitution[38]. Although there is no explicit provision in the Constitution to that effect, some of its provisions provide a sufficiently firm basis for such an interpretation. In particular, Article 72 (2) of the Constitution is important, which stipulates that the state shall promote a healthy living environment and to this end shall establish the conditions and manner for pursuing of economic and non-economic activities[39]. While at the same time, the Constitution legalises economic growth as a legal value. This indirectly stems from Article 74 of the Constitution, guaranteeing free economic initiative[40]. In conjunction with the clear focus of the

[35] A. Dan Tarlock, *The Nonequilibrium Paradigm in Ecology*, [in:] *Law and the Environment*, p. 5, 30, 31.

[36] S. Rose-Ackerman, *Controlling Environmental Policy: The Limits of Public Law in Germany and the United States*, New Haven – London 1995, p. 19.

[37] N. Klein, *The Economic System…*

[38] The sustainable development principle was incorporated in the constitutions of most western (developed) countries. For more, see R. O'Gorman, *Environmental Constitutionalism: A Comparative Study*, "Transnational Environmental Law" 2017, vol. 6(3), DOI: https://doi.org/10.1017/S2047102517000231, pp. 435–462.

[39] Article 72 ("Healthy Living Environment"): (1) Everyone has the right in accordance with the law to a healthy living environment. (2) The state shall promote a healthy living environment. To this end, the conditions and manner in which economic and other activities are pursued shall be established by law. (3) The law shall establish under which conditions and to what extent a person who has damaged the living environment is obliged to provide compensation. (4) The protection of animals from cruelty shall be regulated by law.

[40] Article 74 ("Free Enterprise"): (1) Free economic initiative shall be guaranteed. (2) The conditions for establishing commercial organisations shall be established by law. Commercial activities may not be pursued in a manner contrary to the public interest. (3) Unfair competition practices and practices which restrict competition in a manner contrary to the law are prohibited.

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EU on sustainable development, there is a firm enough basis for a finding that such a policy is required by the Constitution itself.

As already emphasised, there is a predominant comprehension in the world that the implementation of sustainable development requires the active role of the state and local self-governing communities and municipalities. The active part of the state and municipalities is exhibited in the need for them to establish a clear, realistic and very concrete plan for sustainable economic development. Accordingly, such a plan should include, in particular, all necessary elements to promote those economic activities based on the preservation of the environment and not on the excessive encroachment upon it, i.e. green economic activities. Let me reiterate the increasingly prevailing belief that for the implementation of changes – i.e. the active role of the state and municipalities in promoting sustainable development – an informed public and its active role is needed since only a public pressure on the government will bring about sustainable development[41]. The participation of the informed public in such process, from its very beginning (i.e. policy-making) to spatial and land-use planning could prove to be very beneficial.

In Slovenia, such a role of the state in implementing sustainable development is based in its Constitution. The Constitution, by such provision, confers upon the state a new function, i.e. care for a healthy living environment. A similar provision is found in the German Constitution (based on the 1994 amendment[42]), which stipulates in Article 20a that it is the duty of the state, also because of its responsibility to future generations, to protect the natural realities of life within the constitutional order, through the legislative, executive-administrative and judicial branches of power.

By the provision of Article 72 (2), the Slovenian Constitution imposed on the state a new task and obliged the authorities to implement it with their instruments in "everyday life". Here, the German Constitution is more explicit in stating that the state shall fulfil this task through the instruments of the legislative, executive-administrative and judicial branches of power. This is not a programmatic but a legally binding norm that obliges the holders of state power (legislative, executive-administrative and judicial), as well as other entities governed by public law (for example, local self-governing communities)[43]. Failure to perform this task, which means abandoning the normative regulation of the conditions and ways of performing economic and other activities, would be unconstitutional[44].

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[41] N. Klein, *This Changes Everything*….

[42] On the genesis of this amendment to the German Constitution, see more M. Kloepfer, *op. cit.*, pp. 3–9.

[43] Thus, also M. Kloepfer as regards the provision of Article 20a of the German Constitution (*ibidem*, p. 12 and 13). Cf. R. Breuer, *Umweltschutz*, [in:] E. Schmidt-Assman, *Besonderes Verwaltungsrecht*, Berlin 1988, p. 615, 616.

[44] This position was adopted by the Constitutional Court in its decision U-I-263/95.

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The question is, however, whether an entity governed by private law may – if the state fails to fulfil the said task – cause damage to its property or injury to its (physical or mental) health, seek compensation from the state. The Constitution does not oblige the state to exclude each environmental risk that could have adverse effects on humans. M. Kloepfer proposes that a similar provision as in the German Constitution should be interpreted as obliging the state to provide a minimum environmental standard, which of course should be defined by law. Failure to provide the said standard could result in the state being liable for damages if such omission resulted in damage to an entity governed by private law[45].

The addressee of this constitutional provision is the state. However, this provision should be understood in the broadest sense of the word. The concept of state thus encompasses state bodies (legislative, executive, administrative and judicial) and all other bodies governed by public law. These are, in particular, bodies governed by public law established by the government, holders of public authority, as well as local self-governing communities. It is clear, however, that the said provision does not address entities governed by private law[46]. The Constitution, in particular, empowers the legislature (to determine the conditions and ways of carrying out economic and other activities), which, given that determining the conditions and methods of pursuing an activity often means (permissible) interference with (including constitutionally protected) rights, is logical. However, the obligation to care for a healthy living environment (or to ensure sustainable economic development) applies equally (within their competence) to other state bodies as well as to all other bodies governed by public law.

The state must be active in caring for a healthy living environment and at the same time, sustainable economic development or economic growth that does not endanger a healthy living environment. It is not merely a constitutional power for the legislature that it can determine the conditions for performing economic and other activities. The state must determine them because the Constitution defines them as its task.

The provision of the second sentence of Article 72 (2) of the Slovenian Constitution clearly establishes one of the two critical attributes of the principle of sustainable economic development, i.e. active role of the state in enforcing the principle mentioned above. Together with the provision of Article 74 (2)[47], the Constitution places the economy within the frame of the environmental capability and provides the state with the authority for a (necessary) normative intervention in the economy.

[45] M. Kloepfer, *op. cit.*, pp. 22–23.

[46] *Ibidem*, pp. 16–18.

[47] It provides that economic activity may not be pursued against the public interest.

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The interventions that occur due to the performance of the discussed task of the state are directed in particular to those rights related to the performance of (economic) activities. The most prominent is the freedom to conduct business as stipulated by the Slovenian Constitution in Article 74 (1). The Constitutional Court thus already took a position[48] that the performance of the task referred to in Article 72 (2), for which the legislature and the government have prescribed the opening hours of catering establishments, does not constitute a violation of free economic initiative. Weighing in on the two values protected by the Constitution – freedom to conduct business and a healthy living environment – the Constitutional Court also sided with the environment because it considered that the omission of such normative activity could be unconstitutional.

With regard to defining the conditions and ways of performing economic and other activities to maintain a healthy living environment – while at the same time facilitating and promoting sustainable economic development or economic growth – it should be emphasised that this is the primary baseline of modern environmental law. The question of "how to legislate temperance" concerns, in particular, the formulation of appropriate legal institutes, which should enable to carry out the task entrusted to it by the Constitution, i.e. to promote the principle of sustainable economic development.

Therefore, we are talking about legal norms of statutory law and by-laws, which determine the boundaries of use and pollution of the environment (i.e. actions affecting the environment) with the aim of ensuring, on the one hand, a healthy environment, according to the Constitution, and on the other, enabling and promoting sustainable (green) economic development or economic growth. This corpus of Slovenian law could be called environmental legislation. It refers to the use and pollution of water, forests, nature[49], minerals, wildlife, air and soil.

[48] In the above-mentioned decision U-I-263/95.

[49] In addition, the attention should be drawn to anachronistic (not only Slovenian) distinction between environment and nature. Slovenian (equally found in comparative law) law defines nature in broader terms (whereby the law states that human is an integral part of nature), and environment as that part of nature where the influence of human action extends or could extend. Such a division is problematic because it is based on the assumption that everything on our planet can be divided into (unspoiled) nature that is not affected by human influence and to that part of nature to which this influence extends (environment). Today, it is clear that humans directly or indirectly affect all living and non-living entities existing on the planet. Therefore, living beings and inanimate nature should be treated holistically, with humans as an integral part of nature. Of course, those parts of nature that, due to their special value or threat, require special legal protection are more strictly protected. Such perception of duality between environment and nature has its roots in the turn of the 19th and 20th centuries in response to the realisation of the damage caused by humans to the environment in all the decades of rampant exploitation and pollution. The reaction to such realisation was: conserve those parts of nature that are (still) intact and thus prevent catastrophe. Such a response is, of course, understandable in the circumstances at the time. Today, on the one hand, it is clear that humans are

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Achieving the sustainable development goals, therefore, requires an active role for the state, in which it should, more than before, interfere with the private sphere (especially the economy or the market) and direct it towards the sustainable development goals through appropriate legal regulation, as well as through its promotion activities, where this directing should be planned[50].

3. Goal-oriented governance: state and local level policy-making in Slovenia

Slovenia (on the state and local levels), as UN, OECD and EU Member State, should play a more active role, therefore, in reaching the Sustainable Development Goals by regulating and directing the private sphere (especially the economic activities) based on a clear, feasible and very concrete plan for achieving the goals. As already explained, this should clearly set out the priority SGDs and the ways to achieve them[51].

The first step should be the development and adoption of a comprehensive state sustainable development plan for achieving the SDGs in Slovenia. The fundamental basis for it can be found right in the above-mentioned provision of the Constitution. If the state is to provide a healthy living environment accompanied by economic growth (by setting conditions for the pursuit of economic and non-economic activities), it is reasonable that it should have a clear vision (plan) on meeting these targets. Such a plan should be adopted by the executive and legislative branches of the state power. In doing so, it is essential that in the drafting process of a development plan, the development interests (oriented towards economic development) be equivalently dealt with the conservationist interests (geared towards environmental protection).

In Slovenia, an approximation of such a plan is the Development Strategy of Slovenia 2030[52]. However, the document is far too general and insufficiently focused on sustainable development. The state sustainable development plan should be elevated to a higher level. It should be incorporated into the legal system by a statutory

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leaving their "footprints" on every corner of the planet (and that there is no longer an intact nature), and on the other, we want to treat everything on the planet holistically, because only from such perspective the effective protection of nature (environment) can be ensured. For more, see A. Leopold, *A Sand County Almanac*, [in:] *Law and the Environment*, p. 4.

[50] The "dynamics of the environment" dictates the adaptation of directing or its planning to changes in the environment.

[51] An example of a good practice of planned state governance is the management of the EU. The EU action signifies the implementation of its policy acts, with the current Europe 2020 basic policy act at the forefront. Cf. S. Princen, *Agenda-setting strategies in EU policy processes*, "Journal of European Public Policy" 2011, vol. 18(7), DOI: https://doi.org/10.1080/13501763.2011.599960, pp. 927–929.

[52] Strategija razvoja Slovenije 2030 (draft), www.gov.si/assets/vladne-sluzbe/SVRK/Strategija-razvoja-Slovenije-2030/Strategija_razvoja_Slovenije_2030.pdf [access: 12.06.2020].

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law adopted by the Parliament. The law should specify the state sustainable development plan as the underlying instrument of (sustainable) development planning in the state[53]. It is particularly important to plan the implementation of sustainable economic development on regional level. Thus, for such an EU approach, which directs the promotion of sustainable economic development across regions, this model is a basis for the way of the EU funding as well because, in Slovenia, it is a necessity due to excessive fragmentation of Slovenian municipalities.

The plan should clearly identify the economic activities that will be promoted in Slovenia – those, which can generate economic growth in the long run and secure employment for the majority of the population of Slovenia while preserving the environment at the same time. Only green economic activities fit these criteria.

The state sustainable development plan should thus reflect a compromise between restrictions on the actions affecting the environment, which are necessary for its protection, and activities affecting the environment that is necessary for economic growth.

In the next step, these activities and the related actions affecting environment should be subject to suitable spatial placement. Thus, it is necessary to determine the areas (zones, land or parcels) in which it will be possible to construct facilities related to the performance of these activities.

Then, in the next step, this compromise must be implemented spatially, i.e. it will have to specify down to a single plot whether construction is possible in a particular plot and under what conditions. The trade-off between the necessary and required restrictions of actions affecting environment for economic growth, however, is concretised as possible land use[54].

The spatial placement of economic (and other) activities is primarily legal regulation. Spatial placement activity may manifest itself only in legally regulated decision-making process regarding land use, known as the legal system of spatial planning. A legal system governs the decision-making process regarding land use. In this process, two sets of interests are confronted: the development interests (these relate to activities affecting the land – either for the construction of buildings and other facilities or to carry out agricultural activities) and environmental protection

[53] The first step in this direction is The Vision of Slovenia 2050 – The Design of a Comprehensive Development Plan of Slovenia, which the Government prepared in 2017, https://slovenija2050.si [access: 12.06.2020].

[54] In fact, virtually all major actions affecting environment are carried out in buildings and other constructed facilities, with the exception of agriculture – so there is no action affecting environment without having the construction of the facility as a type of land use. Of course, the construction of the facility on the land is a type of action affecting environment. All major environmental pollution and use is emitted from constructed facilities. Economic activity, which can also pollute the environment and does not need constructed facilities, is agriculture.

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interests (they refer to the protection of land, i.e. restrictions of activities affecting the environment when it is necessary for the protection of the environment).

In the process of preparing a spatial plan, both development and environmental protection interests should be considered equally.

CONCLUSION

The article analyses the importance of an active role of the state in achieving the Sustainable Development Goals. Its starting point is that despite the fact that today there is a growing recognition in the world that for the implementation of sustainable development an active role of the state and local self-governing communities is indispensable and despite the fact that in Slovenia such a role of the state in implementing sustainable development stems from its Constitution, so far, too little has been done in Slovenia to achieve the Sustainable Development Goals.

The article, based on theoretical arguments and on the constitutional analysis, identifies the need for an active role of the state in implementing sustainable development goals and proposes arguments for it and also basic steps toward an active role of the state.

In this article, it was confirmed that there are strong theoretical arguments for an active role of the state in implementing sustainable development goals. Also, it was confirmed that in Slovenia an active role of the state and local self-governing communities in implementing sustainable development goals stems from its Constitution.

This article also develops some basic steps to be implemented to transform the present role of the state in Slovenia from a passive one into an active goal-oriented governance.

The article offers theoretical and constitutional arguments to be implemented to transform the present role of the state from a passive one into an active role and its findings are meant to be used by policy-makers and law-makers as a significant argument to pursue more active role of the state in implementing sustainable development goals.

Although legal regulation is the main tool of the state (in Slovenia and in any state) in implementing its functions and thus also in implementing SDGs, legal regulation is far from being omnipotent. Law cannot solve all problems and cannot ensure (by itself) the implementation of the SDGs. Therefore, the state should also pay much more attention to promotional activities[55] in this context, awareness raising, education and training – for sustainable development – are especially important.

[55] Similar to New Zealand, for example. For more, see *Creating our future: Sustainable development for New Zealand*, www.pce.parliament.nz/publications/all-publications/creating-our-future-sustainable-development-for-new-zealand-3 [access: 12.06.2020].

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STRESZCZENIE

W artykule przeprowadzono analizę znaczenia aktywnej roli państwa w osiąganiu celów zrównoważonego rozwoju. Punktem wyjścia jest fakt, że mimo iż współcześnie na świecie wzrasta uznanie dla wdrażania zrównoważonego rozwoju, to niezbędna jest aktywna rola państwa i lokalnych wspólnot samorządowych. W Słowenii taką rolę odgrywa państwo, co wynika z Konstytucji, jednak uczyniono tu zbyt mało, aby osiągnąć cele zrównoważonego rozwoju. Celem opracowania jest analiza argumentacji teoretycznej oraz Konstytucji w celu wykazania potrzeby aktywnej roli państwa w realizacji celów zrównoważonego rozwoju, a także omówienie podstawowych kroków, jakie należy podjąć. Wykorzystano metody porównawcze i analityczne w badaniu literatury i regulacji. Autor, opierając się na argumentacji teoretycznej i analizie konstytucyjnej, identyfikuje potrzebę aktywnej roli państwa w realizacji celów zrównoważonego rozwoju, a także przedstawia argumenty przemawiające za tym oraz proponuje podstawowe działania. Omawiany temat jest nowy, a niniejszy artykuł wnosi do tej dziedziny kilka podstawowych argumentów przemawiających za aktywną rolą państwa i bardziej kompleksowym kształtowaniem polityki. Ponadto opisano argumenty teoretyczne i konstytucyjne, które należy zastosować w celu przekształcenia obecnej roli państwa z roli pasywnej w rolę aktywną, a poczynione ustalenia mogą być wykorzystane przez decydentów i ustawodawców jako istotny argument do kontynuowania bardziej aktywnej roli państwa w realizacji celów zrównoważonego rozwoju.

Słowa kluczowe: cele zrównoważonego rozwoju; aktywna rola państwa; kompleksowy plan zrównoważonego rozwoju państwa