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PREVARE U FINANSIJSKIM IZVEŠTAJIMA

Nemanja Gogić[1]

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Rezime

Poznata činjenica u naučnoj i stručnoj javnosti, da ne postoji savršeno finansijsko izveštavanje. Kompleksnost poslovanja preduzeća sa jedne strane i nemogućnost praćenja razvojem računovostvenih pravila za evidentiranjem svake poslovne situacije koje nastaju u toku poslovne godine sa druge strane, otvaraju manevarski prostor za pojavu prevara u finansijskim izveštajima. Odgovornost za počinjene prevare u finansijskim izveštajima snose menadžeri, računovođe, interna i eksterna revizija. Određene pozicije u finansijskim izveštajima su česta meta počinilaca prevara. U radu ćemo analizirati koje su to stavke koje su česta meta počinioca prevara. Cilj istraživanja ovog rada je da ukažemo na tehnike manipulacije i instrumente za sprečavanje prevara u finansijskim izveštajima. Metode istraživanja koje su korišćene u radu su: analički metod, statistički metod, deskriptivni metod. Rezultati ovog istraživanja je sistematičan prikaz identifikacije pojedinačnih stavki u finansijskim izveštajima i instrumente za njihovo sprečavanje. Na osnovu rezultata, sprovedenih istraživanja u radu, zaključujemo da je odgovornim licima za sastavljanje i ispitivanje stavki u finansijskiim izveštajima najvažnija etika.

Ključne reči: *prevare, lažiranje finansijskih izveštaja, korupcija, otuđivanje imovine*

Uvod

Svako preduzeće je u obavezi da pored periodičnih, sastavlja i redovne finansijske izveštaje. Sastavljanjem tih izveštaja dajemo neophodne informacije o trenutnom finansijskom stanju korporacije. Korisnici tih informacija mogu da budu: investitori, bankari, stejkholderi, državne institucije i dr. Na osnovu dostavljnih informacija, korisnici tih informacija mogu doneti veoma bitne i značajne odluke. Neredak je slučaj da se u proteklom periodu desilo da se određeni finansijski

[1] Nemanja Gogić, master ekonomista, "Elektroprivreda Srbije", Balkanska ulica br. 13, Beograd, Republika Srbija, Telefon: +381 61 108 22 02, E-mail: gogicn89@gmail.com

izveštaji morali ići i na dodatne provere. Prijavom značajnih materijalnih grešaka u finansijskim izveštajima sa tendencijom namernog iskrivljavanja slike o materijalnom i finansijskom položaju preduzeća nazivamo prevarom. Prevare nisu zastupljene samo u manje razvijenim i srednje razvijenim privredama, već i u razvijenim privredama. Identifikovanje i sprečavanje prevara u finansijskim izveštajima je jako teško. Da bi se identifikovale i sprečile prevare u finansijskim izveštajima, neophodno je da odgovrno lice poseduje znanje i specijalizovanu metodologiju jer su posledice od prevara nemerljive. Cilj istraživanja je da ukaže na tehniku manipulacije pozicijama u finansijskim izveštajima, kao i neophodne instrumente za sprečavanje istih. Manipulacije informacijama neophodnih za prikazivanje u finansijskim izveštajima mogu se desiti na svim nivoima, od prikrivanja i lažiranja dokumentacije neophodne za knjiženje poslovnih promena preko naduvavanje prihoda, smanjenje obaveza, smanjenje prihoda, pa sve do naduvavanje zarada. Instrumenti za otkrivanje prevara mogu biti različite, nabrojećemo neke od njih: aktivnim učešćem interne i eksterne revizije, primenom novih softverskih rešenja, analiza finansijskih izveštaja. Međutim, nijedan od ponuđenih metoda nemože da bude pouzdan ukoliko učesnici u poslovnoj dokumentaciji i kontrolu iste, ne posediju profesionalni i etični kodeks.

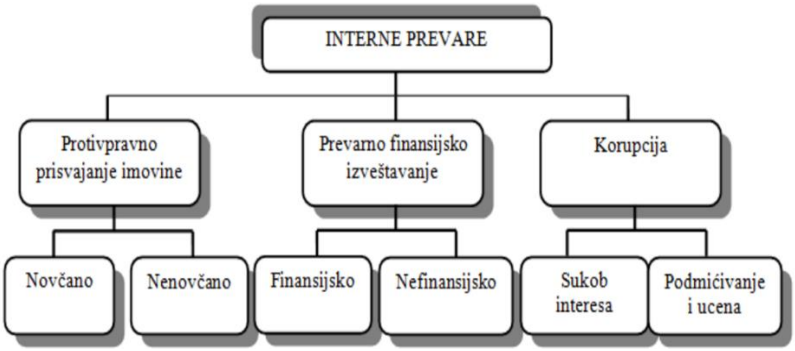
Pregled literature

Lažno predstavljanje i krivotvorenje postoji još od postanaka sveta. Prvi pisani zakon o prevarama nastao je 1800 godine u Hamurabijevom Zakoniku u kome je zapisano „Ako pastir kome je vlasnik poverio ovce na čuvanje, pogrešno prikaže prirodni prirast ovaca ili ih proda za novac biće proglašen krivim i biće obavezan platiti vlasniku deset puta više od utvrđenog gubitka“(Stančić et al.,2013). Pararelno sa razvitkom čovečanstva, razvijao se i način poslovanja. Razvitkom poslovanja, razvijala se i način manipulacije i prevara. Naučna i stručna javnost nije se previše bavila značaju i prevenciji u finansijskim izveštajima, sve dok se nije desio veliki računovodsveni skandal 2001 godine, koji je uključivao vanbilansne obaveze, fiktivne prihode i neregulisani cech flow u firmi Enron (Dimitrijević,2016). Zatim se u junu 2002 godine otkrila nova finansijska prevara WordCom. WordCom je u periodu od 1999 do 2002 izvršio nepravilnost, nepravilnom kapitalizacijom troškova, precenio svoju dobit koju je iskazao u finansijskim izveštajima za približno 10 miliona dolara više (Bešlić,2016). Finansijski skandal vezan za Lincoln Saving and Loan, je karakterističan po tome što je likvidacija i zatvaranje obe predhodne firme rezultiralo sudskom tužbom protiv tri od tada šest najvećih revizorskih firmi. Na kaju su se revizorske firme nagodile sa sudijom o plaćanju nadohnade u iznosu od 15 miliona dolara (Mayer et al.2000). Pored navedenih u Evropi su se desila još dva slučaja manipulacije finansijskih izveštaja u kompanijama Parlament i Vivendi, u Aziji, su to bili Saty i Computer Ervis Sino

Fest. Sve ove prevare se ne bi dogodile da nisu bile praćene propustom revizora. Unificirana definicija prevara ne postoji. Svako nepošteno i nezakonito iskorišćavanje druge osobe radi prisvajanja imovinske koristi nazivamo prevarom. Prevara je niz nezakonitih, kriminalnih radnji u koje ubrajamo krađa, podmićivanje, pronevera idr. Prevare i ne ovlašćene aktivnosti obuhvataju područije ne zakonitih i ne ovlašćenih radnji koje karakteriše namerna prevara odnosno obmana(Milačić et.al., 2014; Koler, 2010).

Pod krivičnom i materijalnom odgovornošću podležu svi učesnici u sastavljanju i prezentiranju finansijskih izveštaja. Po Kati Škarić Jovanović, pod prevarom se ubrajaju sledeće radnje: manipulacije, falsifikovanje računovodsvenih podloga, protivpravno prisvajanje sredstava, namerno sprečavanje ili propuštanje evidentiranja nastalih poslovnih događaja, knjigovostveno ubuhvatanje događaja koji su nastali bez adekvatne podloge (Škarić Jovanović,2011). Klasifikacija prevara, vrši se u tri grupe, i to: korupcija, protiv zakonito otuđivanje imovine i lažiranje finansijskih izveštaja (Dimitrijević, 2018).

Slika 1. Tipovi internih prevara



Izvor:Gulian Lees, 2012

Posledice od pogrešno prikazanih finansijskih izveštaja su nesagledive i mere se u milijardama dolara. Negativne posledice od pogrešno prikazivanih stavki u finansijskim izveštajima ima(Dimitrijević, 2015):

1. Gubitak poverenja u verodostojnosti i pouzdanosti finansijskog izveštavanja;
2. Gubitak kredibiliteta računovodsvene i revizorske profesije;
3. Smanjena ili potpuno degradirana efikasnosti korporativnog upravljanja;
4. Može doći do stečaja i velikih finansijskih gubitaka;
5. Poljuljana efikasnosti finansijskog tržišta i privrede u celini(Bešlić, 2016).

Najveća odgovornost za prikazivanje lažnog finansijskog izveštavanja snose menadžeri, revizori i računovođe. Menadžeri u savremenom poslovnom okruženju

mogu da „friziraju“ tj. ulepšavaju finansijske izveštaje, a sve sa ciljem dobijanja povoljnog kredita, privlačenje potencijalnog investitora, rasta cena akcija na berzama (Dmitrović i Milutinović, 2009). Lažnim finansijskim izveštajem, menadžment može iskazati:

- Visinu iskazane dobiti u bilans uspeha;
- Visinu iskazane neto imovine u bilans stanja;
- Visinu iskazane neto imovine iz operativne aktivnosti(Škarić, Jovanović, 2007);

Lažnim finansijskim izveštajem, menadžment želi da realizuje sledeće strategije:

- ✓ Prezetovanjem veće dobiti u odnosu na ostvarenu dobit, povećanjem prihoda i dobitka / ili smanjenje rashoda i gubitka u tekućem periodu;
- ✓ Prezentovanjem niže dobiti u odnosu na ostvarenu dobit, smanjenjem prihoda i dobiti/ ili povećanjem rashoda i gubitka na tekućim računa (Đorđević i Mitić, 2020).

Metode istraživanja

Lažnim povečanjem finansijskog rezultata dovodi do povečanja sopstvenog kapitala, a sa tim u vezi i do boljeg imovinskog položaja preduzeća. Povećanjem sopstvenog kapitala obmanuće najveće korisnike finansijskih informacija, a to su investitori i kreditori tj. banke. Manipulacije prihodima se može izvršti lažnim povećanjem prihoda ili lažnim smanjenje rashoda (Dimitrijević,2013). Razlozi zbog čega se povećava prihod je taj što preduzeća nastoje da se poveća dobit jer su time bonusi menadžmenta veći i da bi se sakrili nastali gubici. Postupci za lažno povećanje prihoda su sledeći: dvostruko knjiženje istih računa i računa kupaca, knjiženje fiktivnih računa, prikazivanje prihoda koji se ostvariju u budužnosti, naduvavanje prihoda, pretvaranje rezervi u prihode (CFA Level,2004). Smanjenje rashoda vrši se sa namerom da se prihodi u finansijskom izveštaju ne budu veći od prihoda iz predhodne godine, a posebno ne naredne godine. Redukcija prihoda sprovodi se različitim dozvoljenim tehnikama, ali i nedozvoljenim kao što su: nefakturisanje kontinuiranih isporuka na kraju perioda, odlaganje prihoda na razne načine, prodaja na „ crno“, nefakturisanje delimično ostvarenih usluga, prenošenje prihoda na iduću godinu. Razlog za lažno povećanje rashoda su najčešće nastojanje da se smanjenje dobiti pa samim tim i porez na dobit na tekući period optereti rashodima iz narednog perioda, kako bi se rasteretio naredni period. Računovodstveni postupci lažnog povećanja rashoda su:

1) Knjiženje računa za privatne rashode menadžmenta na teret preduzeća;
2) Knjiženje fiktivnih iznosa rashoda;

3) Agresivni opis imovine (takozvano računovodstvo, velikog pranja ili velikog čišćenja –Big –Bath accouting“),
4) Propuštanje troškova koje je potrebno razgraničiti,
5) Primanje računa za neobavljanje usluga od preduzeća kojima istovremeno odgovara priznavanje većih prihoda u njihovim poslovnim knjigama,
6) Povećanje troškova amortizacije;
7) Opterećenje troškova rezervisanja preko normalnih granica i za ne postojeće razlike (CFA Level, 2004).

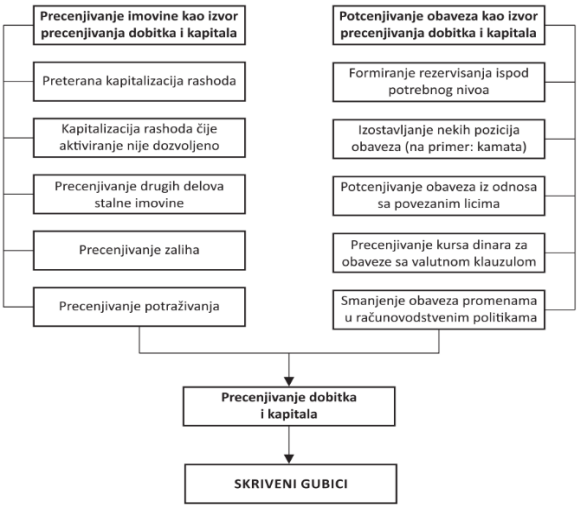
Izbegavanje prikazivanja gubitaka, skrivanje gubitaka ili povećanje dobiti radi dobijanja bonusa ili ostalih kompezacija. Računovodstveni podaci lažnog snižavanja rashoda su: smanjenje troškova amortizacije, uklanjanje tekućih rashoda iz računa dobiti i gubitka i njihova kompenzacija, sklanjanje tekućih rashoda na razgraničenja, prestanak knjiženja dobavljača na račune troškova, odlaganje rashoda iz tekuće poslovne godine (Dimitrijević, 2013). Američki autor u otkrivanju prevara i manipulacija finansijskih izvetaja Howard Schilt, grupisao je prevare u sedam grupa (Vukoja, 2012):

I. Priznavanje prihoda koji nastaju u budućnosti;
II. Priznavanje fiktivnog prihoda. On nastaje usled priznavanja odobrenog rabata od strane dobavljača, prodajom privrednog društva ili nakon spajanja sa drugom kompanijom;
III. Prebacivanje tekućih rashoda u kasniji obračunski period. On nastaje usled prebacivanje tekućih troškova na predhodni obračunski period uz pomoć promenjene računovodstvene politike, usled ne otpisivanja imovine ili otpisivanja u umanjenom iznosu, priznavanje rashoda od umanjenja imovine, produženjem veka trajanja osnovnih sredstava,
IV. Naduvavanje zarada vanrednim gubicima. Nastaje usled prodaje ranije otpisane imovine, prodaja nekretnine radi izmirenja tekućih obaveza, prihod od prodaje nekretnina a uvrstiti ga kao prihode od prodaje;
V. Prevare nastaju usled pogrešnih knjiženja.
VI. Prebacivanje tekućih prihoda na buduće obačunske periode.(Vukoja 2012);
VII. Prebacivanje budućih rashoda u tekući obračunski period kao specijalna zaduženja. One nastaju usled neosnovanog povećanja iznosa uključenih u specijalna zaduženja, ne dokumentaciono otpisivanja troškova istraživanja i razvoja u vezi sa aktivizacijom, skraćenje veka trajanja osnovnih sredstava)(Belšić D., Belšić I 2013).

Mogućnost zloupotreba na području vrednovanja zaliha su različite. Navešćemo neke od njih:

- Precenjivanje ili potcenjivanje vrednosti zaliha. One nastaju usled manipulacijama količinama, što predstavlja bezobzirnu praksu kreativnog izveštavanja koja se, na žalost, upražnjava,
- Precenjivanje (podcenjivanje) vrednosti zaliha odlaganjem(ili obrnuto, ubrzavanjem) otpisivanja nedovoljno kvalitetnog materijala, nekuretnih zaliha gotovih proizvoda i roba;
- Precenjivanje vrednosti zaliha odustajanjem od primene neto prodajne vrednosti za vrednovanje zaliha kada je ona niža od cene koštanja ili nabavne vrednosti;
- Precenjivanje (potcenjivanje) vrednosti zaliha opredeljenjem za odgovarajući metod vrednovanja zaliha (LIFO, FIFO i sl.) i
- Precenjivanje (potcenjivanje) vrednosti zaliha manipulacijama sa sadržinom cene koštanja, što pokreće problem podvaljivanje troškova proizvoda od troškova perioda (Malinić 2009a).

Slika 2. Precenjivanje imovine i potcenjivanje obaveza



Izvor: Malinić Dejan (2009b)

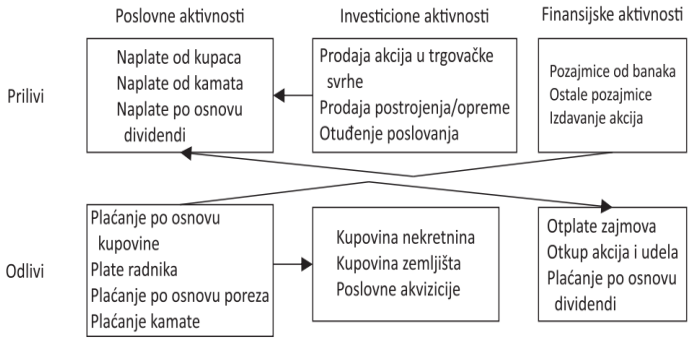
Obaveze su sastavni i neizostavni deo svakog preduzeća. Obaveze su podložne prevarama i manipulacijama i njihova podložnost se može preneti na bilans stanja i bilans uspeha. Mogućnost za prevaru daju različite obaveze (Milojević, 2010). Pod tim podrazumevamo: skrivanja i neprikazivanje stvarnih tekućih obaveza, evidentiranje obaveza koje i ne postoje, precenjivanje ili podcenjivanje vrednosti obaveza (Dimitrijević,2015). Otkrivanje prevare pri formiranju obaveze je veoma

teško, čak i nemoguće. Manipulacije obavezama se mogu javiti u sledećim slučajevima:

1. Prilikom kupovine zaliha, nastalih kupovinom različitih vrsta robe, a prikazane kao da su ranije plaćene.
2. Vremenski razgraničeni a obračunati troškovi koji nastaju usled: obračuna za isplatu zarada, plačanja taksi i naknada, porezi i doprinosi na zarade, rente, komunalne usluge, kamate.
3. Podcenjivanje obaveza, nastale po osnovu obračunatih rashoda, obaveze prema državi koji će biće prikazani u manjem iznosu i tako će izostati njihovo priznavanje sa njihovim povezanim rashodima (Dimitrijević 2015).

Prikrivanja obaveza se najčešče dešava kada se namerno izostavljanja nastala obaveza. To se jednostavno dešava uništavanjem ili, skrivanjem dokumentacije o nastalim obavezama i njima pripadajućim troškovima. Tim postupkom, računovodstvene podloge se ne mogu proknjižiti jer se smatra da se poslovna obaveza nije ni desila. (Dimitrijević,2015). Prevare sa gotovinom se dešavaju ukoliko nastane krađa gotovine iz kase, plaćanja gotovinom iz blagajne bez valjane dokumentacije radi prisvajanja dela gotovine za sopstvenu korist. Izveštaj o novčanim tokovima predstavlja jedan od redovnog godišnjeg finansijkog izveštavanja. Novčani tok pruža drugačije i detaljnije informacije o prilivima i odlivima novčanih sredstava unutar preduzeća. Izveštaj o novčanom toku je vredan i pouzdan informacioni resurs preduzeća. Teže je manipulisati novčanim tokom nego bilansu stanja i bilansu uspeha (Dimitrijević, 2015; Jones, 2011).

Slika 3. Prevare u novčanim tokovima



Izvor: Dimitrijević D. 2015.The detection and prevention of manipulations in the balance sheet and the cash flow statement, Ekonomski fakultet Kragujevac, Ekonomski horizonti,17(2):137-153

Istraživanje i rezultati

Iz priloženog se vidi da nedostaju osnovni principi, odnosno načela bilansiranja i urednog knjigovodstva. Na primer, jedan od većih političkih skandala vezanih za podmićivanje jeste Tepot Dome skandal koji je uništio administraciju presednika SAD Waren Harding-a. Glavni akter ovog skandala je bio sekretar unutrašnjih poslova Albert Falls. Uzimanjem mita da bi dozvolio bušenje na državnim naftnim poljima, a pronađeno je još nekoliko sličnih šema vezanih za podmićivanje. Podmićivanje u poslovnom svetu je dosta raširenо i prema izveštaju (ACFE) je izvršilo istraživanje gde je za 2004 godinu, korupcija kao oblik prevare čini 30.1% svih kriminalnih radnji (ACFE, 2004). Prevare u finansijskim izveštajima nastaju usled sukoba interesa. One nastaju kada odgovorna osoba u preduzeću ima ekonomske ili lične interese u vršenju transakciji.(Albert,Albert, 2004). Da bi određena radnja mogla biti smatrana sukobom interesa, interes ovlašćenog lica u transakciji ne sme biti obelodanjen. Ako poslodavac zna da zapošljeni ima ličnog interesa u nekom poslu ili pregovoru, tada nije reč o sukobu interesa, bez obzira koliko je ugovor povoljan za zaposlenog. Sukob interesa najčešće nastaje prilikom nabavke dobara ili usluga. Najčešće tehnike su precenjivanja ili „naduvavanja“ računa (Dimitrijević, 2018). Sukob interesa nastaje prilikom prodaje robe ili usluga ispod cene, u kome počinilac umanjuje izos račua koji šalje kupcu. Tim postupkom preduzeće proda svoju robu ili uslugu ispod tržišne vrednosti, i time nanosi gubitak svom preduzeću (Dimitrijević, 2018). Pored ove tehnike, kupcu se može dozvoliti odlaganje ili kašnjenje u plaćanjima, ne pravilni otpis potraživanja kao i razna knjižna odobrenja kojima se utiče na povlašćeni status kupca. Osobi od uticaja može se dati skupoceni poklon, besplatan odmor i slično, za uticaj koji je ta osoba izvršila u pregovorima ili u poslovnom dogovoru, sa tim što se poklon uručuje nakon okončanja tih dogovora (Dimitrijevič,2018). C obzirom da se dešava nakon poslovnog dogovora ovu prevaru je teško dokazati. Postoji i ekonomska ucena kao oblik manipulacije. Kod ekonomske ucene odgovorna osoba preduzeća ucenjuje poslovnog partnera da će biti isključen iz određenog posla ukoliko joj se ne da određeni iznos novčanih sredstava licno njima. (Dimitrijević,2018). U Protiv pravno prisvajanje sredstava ubrajamo: krađa, plaćanje u kriminalne svrhe, manipulacije sa fakturama, obačun zarada, naknade troškova, malverzacije sa čekovima, isplata gotovine iz kase, skimming, potraživanja. Najjednostavniji metod za otkrivanje kriminalnih radnji su dojave i prigovori (Eremič Đođić et.al 2017). Dojavom od strane zaposlenog čak 50%, kupci sa 22%, , dobavljač 11%, prevara je otkriveno, zatim sledi kontrola od strane menadžmenta 12%, 15% od strane interne konrole, dok se 15% prevara otkrije slučajno. 2020 godine prikazivana je analiza na 2504 slučajeva profesionalnih prevara u 125 zemalja širom sveta. U ovoj studiji pronevera imovine se javlja u 86% slučajeva i prosečno stanje gubitka iznosi 100000 dolara. Korupcija se pojavljuje u 43% slučajeva sa prosečnim gubitkom u iznosu od 200000 dolara (dosupno na web sajtu: https://acfepublic.s3-us-west-2.amazonaws.com/2020-Report-to-the-Nations.pdf) . Prevare u

finansijskim izveštajima se javljaju u 10% slučajeva, i prosečan gubitak iznosi 954 hiljada dolara (Đekić et.al 2016). Ukupni gubici analiziranih prevara iznosili su 3,6 biliona dolara, Od ukupnog broja slučajeva, čak 21% uzorkuje gubitke u iznosima od milion i više dolara. Istraživanje nam pokazuje da ogranizacija gubi 5% svog godišnjeg prihoda na finansijske prevare i malverzacije (Đekić et.al 2016; Spasić i Tanović 2017).

Tabela 1. Procenat učestalosti i srednja vrednost štete od prevara prema tipu kompanija u SAD

Tip kompanije	Procenat prevara/ srednja vrednost gubitka
Privatne (nekotirane) kompanije	39,3% od svih istraženih prevara. Srednja vrednost gubitka 200000 dolara
Javne kompanije (kompanije na berzi)	28.0% od svih istraženih prevara. Srednja vrednost gubitak: 127000 dolara
Kompanije u vlasništvu država	16,8% od svih istraženih prevara. Srednja vrednost gubitka je 100000 dolara
Neprofitni entiteti	10,4% od svih istraženih prevara. Srednja vrednost gubitka 109000 dolara
Ostali tipovi entiteta	5,5% od svih istraženih prevara. Srednja vrednost gubitka 75000 dolara

Izvor: www.acfe.com./uplodedfiles/ACFE_website/Contedt/ethn/2012-report-to-nationals.pdf, pristupio 24.09.2020.(preuzeo od Dimitrijević 2016. Uloga i odgovornost eksterne revizije u otkrivanju i sprečavanju prevara u finansijskim izveštajima preduzeća, Ekonomski pogledi).

Organizacije različitih veličina imaju i različite stepene rizika od prevara. Korupcija je bila češća u velikim organizacijama, dok su prevare u vezi sa čekovima, obračunatom zaradom i krađom gotovine duplo češće u malim organizacijama(Đekić et.al. 2016). KPMG je u periodu od marta 2013 do avgusta 2015 godine, sprovela istraživanje koje obuhvata 750 izvršilaca. Ona nam pokazuje čak 62% prevara izvrše zapošljena lica u organizaciji, 38% izvršilaca prevara su bivši zaposleni. Među zaposlenima koji su izvršioci prevara su 69% starosti od 36-55 godina i radio je više od 6 godina u organizaciji. Slaba interna kontola donosi prevaru čak u 61% slučajeva (Đekić et.al 2016.). Stepen korupcije je daloko viši u manje razvijenim zemljama, nego u razvijenim zemljamagde postoji čvrsta zakonska regulativa i efikasno zakonodavstvo. Prema nivou zastupljenosti korupcije u javnom sektoru, Srbija se od 189 zemalja nalazi na 98 mestu. U najboljoj poziciji nalaze se Nemačka, Skandinavske zemlje, Švajcarska i druge razvijene države (Đekić et.al. 2016).

Tabela 2. Zastupljenost korupcije u javnom sektoru u zemljama u okruženju

Zemlja	Rang	2019	2018	2017	2016
Mađarska	70	44	46	45	48
Hrvatska	63	47	48	49	49
Rumunija	70	44	47	48	48
Crna Gora	66	45	46	45	45
Makedonija	106	35	37	35	37
Bugarska	74	43	42	43	41

Srbija	91	39	39	41	42
Bosna i Hercegovina	101	36	38	38	39
Albanija	106	35	36	38	39

Izvor: preuzeo sa sajta: http://www.transarency.org/en/cpi/2019/index/nzi

Prema podacima Ministarstva unutrašnjih poslova Srbije (MUP) u 2013 godini, otkriveno je ukupno 2071 krivična dela sa elementima korupcije. Najveći broj koruptivnih dela činile su zloupotreba službenog položaja, dok su otkrivena krivična dela primanja i davanja mita. U 2016 godini, otkriveno je 178 krivična, od toga 94 krivična dela su za zloupotrebu službenog položaja, što je za čak 70% manje nego u 2013 godini.

Tabela 3. Prikaz najznačajnijih vrsta kriminalnih radnji i profesija prema izveštaju MUP

Kriminalne radnje	Opšte kriminalne radnje	Pribavljena korist/Procenjena materijalna šteta
Prisvajanje sredstva	Organizovani finansijski kriminal.	200 miliona dinara
Korupcija	Organizovana kriminalana grupa.	Više od 500000 evra
Privredni kriminal	Složenija krivična dela privrednog priminala	Više od 204 milijardi dinara
Visokotehnološki kriminal	Falsifikovanje i zloupotreba platnih kartica zarad kupovine računarske i bankomata	23 miliona dinara i 45 hiljada evra

Izvor: http://arhiva.mup.gov.rs/cms_lat/sadrzaj.nsf/izvestaji.h pristupio 20.11.2021

Diskusija

Da bi identifikovao prevaru, ovlašćeno lice mora da upotrebi smo svoje nagomilano znanje, iskustvo umeće, jer otkriti prevaru nije lak posao. Instrumenti, koje ovlašćenom licu može da koristi kao smernicu da bi identifikovao poslovne procese koje su u najvećoj meri podložne prevarama su:

- aktivno učestvovanje interne revizije u praćenju poslovne aktivnosti radi sprečavanja kriminalnih radnji,
- Menadžent preduzeća mora da u svojoj kompaniji koristi najnoviji evropski standard SAS br.99
- Primena evropskog zakona 404 Serbanes – Oxley koji otkriva nedostatke internim kontrolama
- Menadžement mora da analizira finansijske izveštaje i horizontalno i vertikano,
- Nenajavljena revizija ili vanredni popis novca i imovine.
- Napraviti sistem za dojave i prigovore koji će biti jednostavan, prost i jasan;
- Dati veća ovčašćenja internoj kontroli, a naročito ona ovlašćenja koja su usmerana kako bi otkrili kriminalnu radnju .

- Korišćenjem savremenih i unapređenih softverski alatki (CAATs)(Eremič Đođić et.al 2017).

Da bi sprečili kriminalnu radnju, neophodne je da kompanija preduzme i neke preventivne mere kako bi prdupredila nežaljena dejstva što su: nadzor, anonimne dojave, nenajavljena revizija, sprovođene politika u vezi etike i kriminalnih radnji i dr. Pored ovoga, za sprečavanje kriminalnih radnji koriste se sledeći klasični pristupi:

- Kompanija mora da ima direktan pristup ukoliko se izvrši kriminalna radnja u kompaniji. Menadžment treba da pokre krivčni postupak u nadležnom sudu protiv počinioca krivičnog dela .
- Kompanija mora da ima preventivan pristup, gde prilikom zapošljavanja radnika, mora se detaljno proverti psiho fizičko stanje, da radnik nije bio krivično gonjem i dr.
- Kompanija mora da ima ispitivački pristup gde menadžment uspostavlja računovodstvene kontrole u funkciji interne kontrole.
- Kompanija mora da ima posmatrački pristup gde menadžment putem fizičkog nadzora i putem kamere prati aktivnost zapošljenih.
- Kompanija mora da ima istraživački pristup gde se kompanija prati odstupanja u zalihama, sirovinama, nabavnoj vrednosti proizvoda, utvrđivanje krivice;
- Pristup koji se bavi aspektima osiguranja – osiguranja uspeva da pokrije odgovarajuće pokriće usled nastanka kriminalnih radnji (Eremič Đođić et.al 2017).

Kompanije u najvećoj meri mogu da stave pod kontolu kriminalne radnje. Potrebno je sačiniti program za njihovo sprečavane i proceduru za izveštavanje o njihovim incidentima tj. analizu dokaza.(Eremič Đođić et.al 2017). Postojanje i najmanji pokazatelj kriminalne radnje, mora se hitno reagovati i urgetno rešavati, kako bi pokušaji kriminalnih radnji imaju manju verovatnoću za uspeh (Turner, 2009).

Zaključak

Motivi za počinjanje prevare u finansijskim izveštajima nastaju radi sticanja materijalne i finansijske koristi. Štetu od prevara trpe svi a najviše investitori i kreditori. Posledice od sačinjenih prevara u kompanijama mere se u bilijardama dolara. Prevare u finansijskim izveštajima se dele na: korupciju, protiv pravno prisvajanje imovine i lažiranja finansijskih izveštaja. Analizom prevara u finansijskim izveštajima najčešće korišćene tehnike manipulacije u bilansu uspeha vezane su za prihode i rashode. Skoro sve pozicije u bilansu stanja mogu biti predmet prevare. Zalihe, gotovina i obaveze su najčešća meta

manipulacije u bilansu stanja. Najčešće tehnike manipulacije u novčanom toku su povećanje priliva i smanjenje odliva. Korupcija je većinom zastupljena u manje razvijenim privredama i srednje razvijenim privredama. Korupcija se podelili na: podmićivanje, sukob interesa nelegalne nagrade i ekonomske ucene. Interni, ekterni i državni revizori su odgovorni za pronalaženje prevara u finansijskim izveštajima. Za sastavljanje i prezentaciju finansijskih izveštaja najveću odgovornost snose menadžeri i računovođe. Da se ove prevare ne bi dešavale potrebno je da računovodstvo i menadžment maju visok etički princip. Računovođe i menadžeri, moraju biti svesni posledica usled primene i prezentiranja finansijskih izveštaja.

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FRAUD IN FINANCIAL STATEMENTS

Nemanja Gogić[2]

Original scientific paper

Abstract

It is a well-known fact in the scientific and professional public that there is no perfect financial reporting. The complexity of the company's operations on the one hand and the impossibility of monitoring the development of accounting rules to record every business situation that occurs during the business year on the other hand, open room for maneuver for the occurrence of fraud in financial statements. Managers, accountants, internal and external audit are responsible for fraud in the financial statements. Certain positions in the financial statements are a frequent target of fraudsters. In this paper, we will analyze which are the items that are a frequent target of fraudsters. The aim of the research in this paper is to point out the manipulation techniques and instruments for fraud prevention in financial statements. The research methods used in this paper are: analytical method, statistical method, induction method and deduction method. The results of this research are a systematic presentation of the identification of individual items in the financial statements and instruments for their prevention. Based on the conducted research, we conclude that the most important thing for those responsible for compiling and examining items in the financial statements is ethics.

***Key words**: fraud, falsification of financial statements, corruption, alienation of property*

Introduction

Every company is obliged to create regular financial reports in addition to periodic ones. By creating these reports, we provide the necessary information about the current financial condition of a company. Users of this information can be: investors, bankers, stakeholders, state institutions, etc. Based on information provided, users of this information can make very important and significant decisions. It is often the case that in the past period, certain financial reports had to go to additional checks. Reporting significant material errors in financial statements with a tendency to intentionally distort the image of the material and financial position of the company is called fraud. Fraud is not only present in less developed and middle-developed economies, but also in developed economies. Identifying and

[2] Nemanja Gogić, Master of Economics, "Elektroprivreda Srbije", Balkanska no. 13, Belgrade, Republic of Serbia, Phone: +381 61 108 22 02, E-mail: gogicn89@gmail.com

preventing fraud in financial statements is very difficult. In order to identify and prevent fraud in the financial statements, it is necessary that the responsible person has the knowledge and specialized methodology because the consequences of fraud are immeasurable. The aim of the research is to point out the technique of manipulating positions in financial statements, as well as the necessary instruments to prevent them. Manipulations of information necessary for presentation in financial statements can occur at all levels, from concealing and falsifying documents necessary for recording business changes through inflating income, reducing liabilities, reducing income, to inflating salaries. Fraud detection tools can be different, we will list some of them: active participation of internal and external audit, application of new software solutions, analysis of financial statements. However, none of the offered methods can be reliable if the participants in the business documentation and control of the same do not have a professional and ethical code.

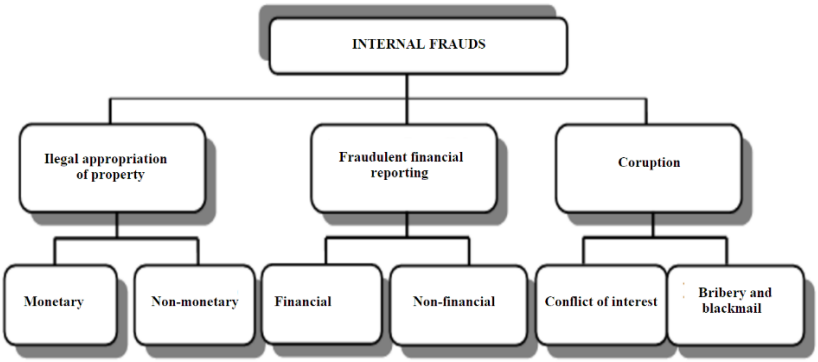
Literature overview

Misrepresentation and counterfeiting have existed since the beginning of the world. First written law on fraud was drafted in 1800 in the Hammurabi Code, which states: „If a shepherd to whom the owner has entrusted sheep for care, misrepresents the natural increase of sheep or sells them for money, he will be found guilty and will be obliged to pay the owner ten times more than the determined loss“ (Stančić et al., 2013). In parallel with the development of humanity, the way of doing business also developed. With the development of business, the way of manipulation and fraud also developed. Scientific and professional public did not pay much attention to the importance and prevention in financial reports, until the great accounting scandal of 2001, which included off-balance sheet liabilities, fictitious income and unregulated cash flow in the Enron company (Dimitrijević, 2016). Then in June 2002, a new financial fraud WordCom was discovered. In the period from 1999 to 2002, WordCom made an irregularity, by incorrectly capitalizing costs, overestimating its profit, which it reported in the financial statements by approximately 10 million dollars more (Bešlić, 2016). The financial scandal related to Lincoln Saving and Loan is characterized by the fact that the liquidation and closure of both previous companies resulted in a lawsuit against three of the six largest auditing companies at the time. On which the audit firms agreed with the judge on the payment of compensation in the amount of 15 million dollars (Mayer et al.2000). In addition to those mentioned in Europe, there were two other cases of manipulation of financial reports in Parliament and Vivendi, in Asia, those were Saty and Computer Ervis Sino Fest. All these frauds would not have happened if they had not been accompanied by the failure of the auditor. There is no unified definition of fraud. We call any unfair and illegal

exploitation of another person for the purpose of appropriating material gain a fraud. Fraud is through illegal, criminal acts, which include theft, bribery, embezzlement, etc. Fraud and unauthorized activities cover the area of illegal and unauthorized actions characterized by intentional fraud or deception (Milačić et.al., 2014; Koler, 2010).

All participants in the preparation and presentation of financial statements are subject to criminal and material liability. According to Kata Škarić Jovanović, fraud includes the following actions: manipulations, falsification of accounting bases, illegal appropriation of funds, intentional prevention or failure to record business events, bookkeeping of events that occurred without adequate background (Škarić Jovanović, 2011). The classification of fraud is done in three groups, namely: corruption, against legal alienation of property and falsification of financial reports (Dimitrijević, 2018).

Figure 1. Types of internal frauds



Source: Gulian Lees,2012

Consequences of misrepresented financial statements are incalculable and are measured in billions of dollars. Negative consequences of incorrectly presented items in financial statements have (Dimitrijević, 2015):

1. Loss of confidence in the authenticity and reliability of financial reporting;
2. Loss of credibility of the accounting and auditing profession;
3. Reduced or completely degraded corporate governance efficiencies;
4. Can lead to bankruptcy and large financial losses;
5. Shaken efficiency of the financial market and the economy as a whole (Bešlić, 2016).

Managers, auditors and accountants have the greatest responsibility for presenting false financial reporting. Managers in a modern business environment can „hairdress“, i.e. improve financial statements, all with the aim of obtaining a favorable loan, attracting potential investors, rising stock prices on stock exchanges (Dmitrović and Milutinović, 2009). With a false financial report, the management may state:

- The amount of reported profit in the income statement;
- The amount of reported net assets in the balance sheet;
- Amount of reported net assets from operating activities (Škarić, Jovanović, 2007);

With a false financial report, the management wants to realize the following strategies:

- ✓ By assuming higher profit in relation to realized profit, increasing income and profit or reducing expenses and loss in the current period;
- ✓ By presenting lower profit in relation to realized profit, reducing income and profit or increasing expenses and loss on current accounts (Đorđević i Mitić, 2020).

Research methods

By falsely increasing the financial result, it leads to an increase in equity, and in connection with that, to a better financial position of the company. By increasing its own capital, it will deceive the largest users of financial information, namely investors and creditors i.e. banks. Revenue manipulations can be performed by falsely increasing revenues or falsely reducing expenditures (Dimitrijević, 2013). The reasons why the income is increasing are that the companies are trying to increase the profit because the management bonuses are higher and in order to hide the losses. Procedures for falsely increasing revenue are as follows: double-entry of the same accounts and customer accounts, posting of fictitious accounts, showing future revenues, inflating revenues, converting reserves into revenues (CFA Level, 2004). Reduction of expenditures is done with the intention that revenues in the financial report do not exceed the revenues from the previous year, and especially not the following year. Revenue reduction is carried out by various allowed techniques, but also illegal ones, such as: non-invoicing of continuous deliveries at the end of the period, deferral of revenues in various ways, „black“ sales, non-invoicing of partially realized services, transfer of revenues to next year. The reason for false increase in expenses is most often the effort to reduce profit and thus income tax for the current period, burdened with expenses from the next period, in order to relieve the next period. False expenditure accounting procedures are:

1. Posting accounts for private management expenses at the expense of the company;
2. Posting fictitious expenditure amounts;
3. Aggressive description of assets (so-called „Big - Bath accouting“),
4. Omission of costs that need to be accrued,
5. Receiving invoices for non-performance of services from companies that at the same time correspond to the recognition of higher revenues in their business books,
6. Increase in depreciation costs;
7. Burdening reservation costs beyond normal limits and for non-existent differences (CFA Level, 2004).

Avoid showing losses, hiding losses or increasing profits to get bonuses or other compensations. Accounting data of false reduction of expenses are: reduction of depreciation costs, removal of current expenses from profit and loss accounts and their compensation, removal of current expenses on accruals, termination of posting suppliers to expense accounts, deferral of expenses from the current business year (Dimitrijević, 2013). The American author in detecting fraud and manipulating financial statements, Howard Schilt, grouped fraud into seven groups (Vukoja, 2012):

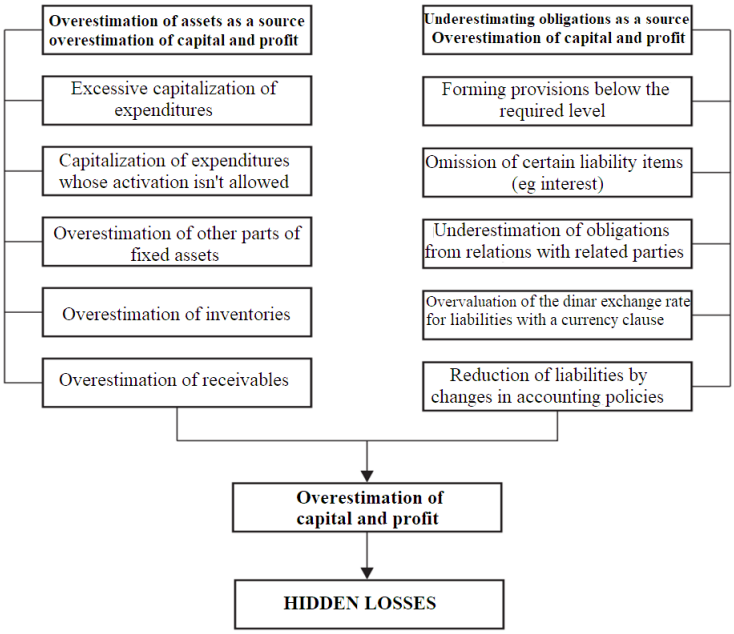
I. Recognition of future income;
II. Recognition of fictitious income. It arises from the recognition of an approved rebate by a supplier, the sale of a company or after a merger with another company;
III. Transferring current expenses to a later accounting period. It arises due to transfer of current expenses to the previous accounting period with the help of a changed accounting policy, due to non-write-off of assets or write-offs in a reduced amount, recognition of impairment losses, extension of the life of fixed assets;
IV. Inflating earnings through extraordinary losses. It arises from sale of previously written off assets, sale of real estate to settle current liabilities, income from the sale of real estate and its inclusion as income from sales;
V. Frauds are caused by incorrect entries.
VI. Transferring current revenues to future accounting periods (Vukoja 2012);
VII. Transferring future expenses to the current accounting period as special liabilities (they arise due to an unjustified increase in the amount included in

special loans, non-documented write-off of research and development costs related to activation, shortening the life of fixed assets) (Belšić, Belšić 2013).

The possibility of misuse in the field of inventory valuation is different. We will list some of them:

- Overestimating or underestimating the value of inventories. They are caused by the manipulation of quantities, which is a reckless practice of creative reporting, which, unfortunately, is practiced;
- Overestimation (underestimation) of the value of inventories by postponing (or, conversely, accelerating) the write-off of insufficient quality material, non-current inventories of finished products and goods;
- Overestimating the value of inventories by waiving the application of net realizable value for inventory valuation when it is lower than the cost or purchase price;
- Overestimation (underestimation) of the value of inventories by opting for the appropriate method of inventory valuation (LIFO, FIFO, etc.) and
- Overestimation (underestimation) of the value of inventories by manipulating the content of the cost price, which raises the problem of subdividing product costs from period costs (Malinić 2009a).

Figure 2. Overestimation of assets and underestimation of liabilities



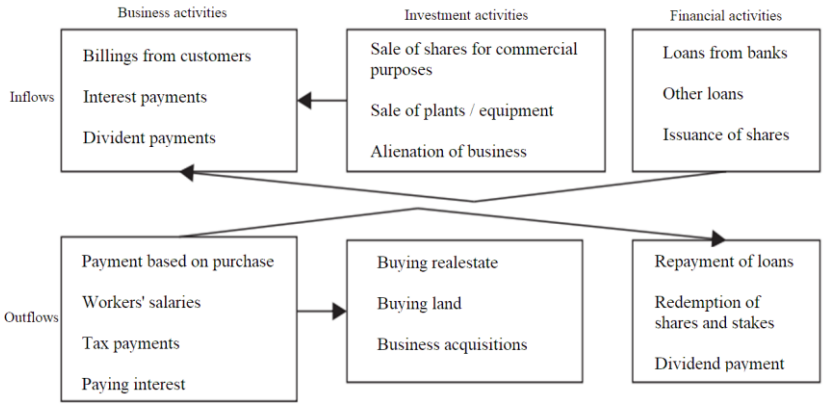
Source: Malinić (2009b)

Obligations are an integral and indispensable part of every company. Liabilities are subject to fraud and manipulation and their susceptibility can be transferred to the balance sheet and income statement. Various obligations provide an opportunity for fraud (Milojević, 2010). By this we mean: hiding and not showing actual current liabilities, recording liabilities that do not exist, overestimating or underestimating the value of liabilities (Dimitrijević, 2015). Detecting fraud when forming an obligation is very difficult, even impossible. Manipulations of obligations can occur in the following cases:

1. When purchasing inventories, arising from the purchase of various types of goods, and presented as if previously paid.
2. Expenses that are delimited in time and calculated, arising from: calculation for payment of salaries, payment of taxes and fees, taxes and contributions on salaries, rents, utilities, interest.
3. Underestimation of liabilities, incurred on the basis of accrued expenses, liabilities to the state that will be presented in a smaller amount and thus there will be no recognition of them with their related expenses (Dimitrijević 2015).

Concealment of obligations most often occurs when the obligation is intentionally omitted. This simply happens by destroying or hiding the documentation on the incurred liabilities and their associated costs. With this procedure, the accounting bases cannot be booked because it is considered that the business obligation has not occurred (Dimitrijević, 2015). Cash fraud occurs if there is a theft of cash from the cash register, cash payments from the cash register without valid documentation in order to appropriate part of the cash for their own benefit. Cash flow statement is one of the regular annual financial statements. Cash flow provides different and more detailed information about cash inflows and outflows within the company. A cash flow statement is a valuable and reliable information resource for a company. It is more difficult to manipulate cash flow than the balance sheet and income statement (Dimitrijević, 2015; Jones, 2011).

Figure 3. Cash flow fraud



Source: Dimitrijević D. 2015.The detection and prevention of manipulations in the balance sheet and the cash flow statement, Ekonomski fakultet Kragujevac, Ekonomski horizonti,17(2):137-153

Research and results

It can be seen from the attached that the basic principles, i.e. the principles of balancing and proper bookkeeping, are missing. For example, one of the major political scandals related to bribery is the Tepot Dome scandal that destroyed the administration of US President Waren Harding. The main actor in this scandal was Secretary of the Interior Albert Falls. Taking bribes to allow drilling on state oil fields, and several other similar schemes related to bribery were found. Bribery in the business world is quite widespread and according to a report (ACFE) conducted a survey where in 2004, corruption as a form of fraud accounted for 30.1% of all criminal acts (ACFE, 2004). Fraud in financial statements arises from conflicts of interest. They arise when the responsible person in the company has economic or personal interests in carrying out the transaction (Albert, Albert, 2004). In order for a certain action to be considered a conflict of interest, the interest of the authorized person in the transaction must not be disclosed. If the employer knows that the employee has a personal interest in a job or negotiation, then it is not a conflict of interest, no matter how favorable the contract is for the employee. Conflicts of interest most often arise when procuring goods or services. The most common techniques are overestimating or „inflating“ bills (Dimitrijević, 2018). A conflict of interest arises when selling goods or services below cost, in which the perpetrator reduces the amount of the invoice sent to the buyer. By this procedure, the company sells its goods or services below market value, and thus inflicts a loss on its company (Dimitrijević, 2018). In addition to this technique, the buyer may be allowed to delay or be late on his payments, improper write-off of receivables as well as various book authorizations that affect the privileged status of the buyer. An

influential person can be given an expensive gift, free vacation, etc. for the influence that person has made in negotiations or in a business agreement, provided that the gift is delivered after the termination of these agreements (Dimitrijevic, 2018). Given that it happens after a business deal, this scam is hard to prove. There is also economic blackmail as a form of manipulation. In economic blackmail, the responsible person of the company blackmails the business partner that he will be excluded from a certain job if he is not given a certain amount of money personally to them. (Dimitrijević, 2018). The Anti-legal misappropriation of funds includes: theft, payment for criminal purposes, manipulation of invoices, calculation of salaries, compensation of expenses, embezzlement with checks, payment of cash from the cash register, skimming, receivables. The simplest method for detecting criminal acts are reports and objections (Eremič Đođić et al. 2017). Employees report fraudulent acts as much as 50%, customers 22%, suppliers 11%, followed by control by management 12%, 15% by internal control, while 15% of fraud is detected by accident. In 2020, an analysis of 2504 cases of professional fraud in 125 countries around the world was presented. In this study, embezzlement occurs in 86% of cases and the average loss is $100,000. Corruption occurs in 43% of cases with an average loss of $200,000 (available at: https://acfepublic.s3-us-west-2.amazonaws.com/2020-Report-to-the-Nations.pdf). Fraud in financial statements occurs in 10% of cases, and the average loss is 954 thousand dollars (Đekić et.al 2016). The total losses of the analyzed frauds amounted to 3.6 trillion dollars. Out of the total number of cases, as many as 21% sample losses in the amount of one million and more dollars. The research shows us that the organization loses 5% of its annual income on financial fraud and embezzlement (Đekić et.al 2016; Spasić and Tanović 2017).

Table 1. Percentage incidence and average value of fraud damage by U.S. company type

Company type	Percentage of fraud / average value of loss
Private (unlisted) companies	39.3% of all frauds investigated. The average loss is $200,000
Public companies (listed companies)	28.0% of all frauds investigated. Mean loss: $127,000
State-owned companies	16.8% of all frauds investigated. The average loss is $100,000
Non-profit entities	10.4% of all frauds investigated. The average loss was $109,000
Other entity types	5.5% of all frauds investigated. The average loss is $75,000

Source: www.acfe.com./uplodedfiles/ACFE_website/Contedt/ethn/2012-report-to-nationals.pdf, accessed: 24 September 2020 (taken from Dimitrijević 2016. The role and responsibility of external audit in detecting and preventing fraud in a company's financial statements, Ekonomski pogledi).

Organizations of different sizes also have different degrees of risk of fraud. Corruption was more common in large organizations, while fraud related to checks, accrued earnings and theft of cash was twice as common in small

organizations (Đekić et.al. 2016). In the period from March 2013 to August 2015, KPMG conducted a survey of 750 executors. It shows us as many as 62% of fraudsters are committed by employees of the organization, 38% of fraudsters are former employees. Among the employees who are perpetrators of fraud 69% are aged between 36-55 and worked for more than 6 years in the organization. Weak internal control brings fraud in as many as 61% of cases (Đekić et.al 2016). The level of corruption is far higher in less developed countries than in developed countries, where there is strong and efficient legislation. According to the level of corruption in the public sector, Serbia ranks 98th out of 189 countries. Germany, Scandinavian countries, Switzerland and other developed countries are in the best position (Đekić et.al. 2016).

Table 2. Prevalence of corruption in the public sector in the surrounding countries

Country	Rank	2019	2018	2017	2016
Hungary	70	44	46	45	48
Croatia	63	47	48	49	49
Romaina	70	44	47	48	48
Montenegro	66	45	46	45	45
Macedonia	106	35	37	35	37
Bulgaria	74	43	42	43	41
Serbia	91	39	39	41	42
Bosnia and Herzegovina	101	36	38	38	39
Albania	106	35	36	38	39

Source: http://www.transarency.org/en/cpi/2019/index/nzi

According to the data of the Ministry of Internal Affairs of Serbia, in 2013, a total of 2,071 criminal acts with elements of corruption were discovered. The largest number of corrupt acts was the abuse of official position, while the criminal acts of receiving and giving bribes were discovered. In 2016, 178 criminal offenses were detected, of which 94 criminal offenses were for abuse of official position, which is as much as 70% less than in 2013.

Table 3. Review of the most significant types of criminal acts and professions according to the report of the Ministry of the Interior

Criminal acts	General criminal acts	Obtained benefit / Estimated material damage
Appropriation of funds	Organized financial crime	200 million dinars
Corruption	Organized crime group	More than 500,000 euros
Economic crime	Complex economic crimes	More than 204 billion dinars
High-tech crime	Forgery and misuse of payment cards for the purchase of computers and ATMs	23 million dinars and 45 thousand euros

Source: http://arhiva.mup.gov.rs/cms_lat/sadrzaj.nsf/izvestaji.h accessed on 20 November 2021

Discussion

In order to identify fraud, the authorized person must use his accumulated knowledge and experience, because detecting fraud is not an easy task. The instruments that can be used by an authorized person as a guideline to identify the business processes that are most susceptible to fraud are:

- Active participation of internal audit in monitoring business activities in order to prevent criminal acts,
- Manager of the company must use the latest European standard SAS No. 99 in his company
- Application of European law 404 Serbanes - Oxley which reveals deficiencies in internal controls
- Management must analyze the financial statements both horizontally and vertically,
- Unannounced audit or extraordinary inventory of money and assets.
- Create a system for notifications and complaints that will be simple, straightforward and clear;
- Give greater powers to internal control, and especially those powers that are aimed at detecting criminal activity.
- Using modern and advanced software tools (CAATs)(Eremič Đođić et.al 2017).

In order to prevent criminal activity, it is necessary for the company to take some preventive measures in order to prevent unwanted actions, such as: surveillance, anonymous reports, unannounced audits, implemented policies related to ethics and criminal activities, etc. In addition, the following classical approaches are used to prevent criminal acts:

- The company must have direct access if a criminal act is committed in the company. Management should initiate criminal proceedings in the competent court against the perpetrator.
- The company must have a preventive approach, where when hiring workers, the psychological and physical condition must be checked in detail, that the worker was not prosecuted, etc.
- The company must have a testing approach where management establishes accounting controls in the function of internal control.
- The company must have an observational approach where management monitors the activity of employees through physical surveillance and cameras.

- The company must have a research approach where the company monitors discrepancies in inventories, raw materials, purchase value of products, determining guilt;
- The approach dealing with aspects of insurance - insurance manages to cover adequate coverage due to the occurrence of criminal acts (Eremič Đođić et.al 2017).

Companies can mostly put criminal activity under control. It is necessary to create a program for their prevention and a procedure for reporting on their incidents, i.e. analysis of evidence. (Eremič Đođić et.al 2017). The existence and the smallest indicator of a criminal act must be reacted to and resolved urgently, so that attempts at criminal acts are less likely to succeed (Turner, 2009).

Conclusion

Motives for committing fraud in financial statements arise in order to obtain material and financial benefits. Everyone suffers from fraud, especially investors and creditors. The consequences of fraud in companies are measured in billions of dollars. Fraud in financial statements is divided into: corruption, against misappropriation of property and falsification of financial statements. By analyzing fraud in the financial statements, the most commonly used manipulation techniques in the income statement are related to income and expenses. Almost all balance sheet items can be subject to fraud. Inventories, cash and liabilities are the most common targets of balance sheet manipulation. Most common cash flow manipulation techniques are increasing inflows and decreasing outflows. Corruption is mostly prevalent in less developed and middle-developed economies. Corruption is divided into: bribery, conflict of interest, illegal rewards and economic blackmail. Internal, external and state auditors are responsible for detecting fraud in the financial statements. Managers and accountants have the greatest responsibility for compiling and presenting financial statements. In order for these frauds not to happen, it is necessary that accounting and management have a high ethical principle. Accountants and managers must be aware of the consequences of applying and presenting financial statements.

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DRUŠTVENA ODGOVORNOST U SAVREMENIM TRGOVINSKIM PREDUZEĆIMA SA OSVRTOM NA TRGOVINSKI LANAC WALMART

Radmila Micić [1], Maja Staletović[2], Nenad Kojić[3]

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Apstrakt

U uslovima dinamičnih promena preduzeća se na različite načine trude da sačuvaju svoju poziciju i time obezbede opstanak na tržištu. Jedna od mogućnosti koja im stoji na raspolaganju, je pravilna primena koncepta društvene odgovornosti. U savremenim uslovima privređivanja trgovina ima veoma značajnu ulogu u funkcionisanju svake privrede jer, između ostalog, može adekvatno da premosti nesklad između veće ponude robe i nedostatka platežne tražnje. Međutim, ne treba zanemariti činjenicu da se danas i od trgovinskih preduzeća očekuje da prate i da se prilagođavaju društveno odgovornim zahtevima. Cilj ovog rada je da ukaže na značaj društvene odgovornosti kao i na pojedine aspekte društveno odgovornog poslovanja u trgovinskim preduzećima, sa osvrtom na najveći maloprodajni trgovinski lanac u svetu. Walmart kao najveća američka kompanija koja se bavi maloprodajom robe na domaćem i internacionalnom tržištu ima vrlo razvijen osećaj za društvo i životnu sredinu, što znači da je menadžment ove kompanije svestan činjenice da je ekonomski razvoj moguće postići samo ako ide paralelno sa razvojem društvene zajednice.

Ključne reči: *Društvena odgovrnost, promene, trgovinska preduzeća, potrošači, životna sredina*

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[1] Vanredni profesor, dr Radmila Micić, Univerzitet u Prištini sa privremenim sedištem u Kosovskoj Mitrovici, Ekonomski fakultet, Kolašinska 156, Kosovska Mitrovica, Srbija, Telefon: +381 60 388 44 14, E-mail: radmila.micic@pr.ac.rs

[2] Asistent, mast.ekon. Maja Staletović, Visoka poslovna škola strukovnih studija „Prof. dr Radomir Bojković“, Kruševac, Topličina 12, Kruševac, Srbija, Telefon: +381 64 543 84 15, E-mail: dajicmaja5@gmail.com

[3] Docent, dr Nenad Kojić, Akademija strukovni studija kosovsko metohijska, E-mail:nenadkojic111@gmail.com

Uvod

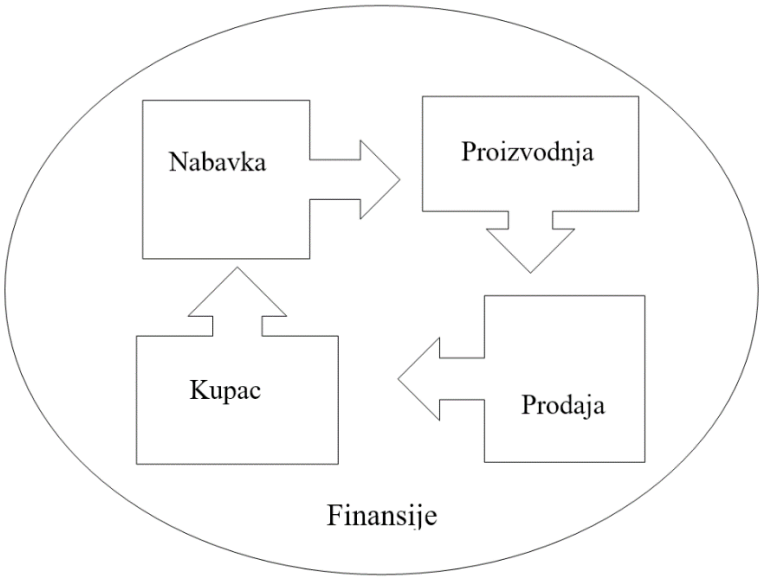
Pored proizvodnih, u vremenu velikih neizvesnosti, i trgovinska preduzeća su podložna brojnim promenama. U prošlosti je, recimo, proces odlučivanja o kupovini određene robe bio jednostavniji, dok danas na ovaj proces utiču brojni faktori, među kojima posebno mesto pripada i društveno odgovornom poslovanju trgovinskih preduzeća. Savremeni potrošač nije u velikoj meri pod uticajem promotivno-propagandnih aktivnosti društveno neodgovornih trgovnskih preduzeća. Iz tog razloga menadžeri moraju da uzmu u obzir činjenicu da postoje potrošači koji su spremniji da plate više za proizvod nekog trgovinskog preduzeća koje se u potpunosti ponaša u skladu sa pravilima društveno odgovornog poslovanja. Ovakvo ponašanje potrošača zahteva poštovanje koncepta društvene odgovornosti ne samo od strane menadžmenta i ostalih zaposlenih u trgovinskom preduzeću već i od strane njihovih poslovnih partnera, a naročito od strane dobavljača. Na taj način će potrošači biti zadovoljniji, što se može pozitivno odraziti na poslovne performanse trgovinskih preduzeća. U svetu postoje različiti pokreti za borbu protiv degradacije životne sredine, organizovani od strane određenih društvenih skupina, kao i pokreti koji se zalažu za poštovanje ljudskih prava zaposlenih. Sve ove promene zahtevaju od trgovinskih preduzeća da prilikom funkcionisanja uvaže značaj društveno odgovornog poslovanja. Ovo naročito važi za velika i uspešna trgovinska preduzeća koja posluju i van granica svoje zemlje. Jedan od takvih primera je i najveći maloprodajni trgovinski lanac *Walmart*. Cilj ovog rada je da ukaže na značaj društvene odgovornosti kao i na pojedine aspekte društveno odgovornog poslovanja u trgovinskim preduzećima, sa osvrtom na najveći maloprodajni trgovinski lanac u svetu. U tom smislu ćemo, najpre, ukazati na potrebu za društveno odgovornim promenama u trgovini. Zatim ćemo analizirati neke od aspekata društveno odgovornog poslovanja trgovinskih preduzeća. Posebna pažnja u radu biće posvećena prikazu društveno odgovornog poslovanja *Walmarta*. Rezultati analize istraživanja nam ukazuju da menadžment ove kompanije pridaje veliki značaj društveno odgovornom poslovanju. Svojim društveno odgovornim ponašanjem, kroz različite projekte usmerene na zaštitu životne sredine i društvene zajednice, poštovanje svojih potrošača i uvažavanje zaposlenih, daje primer i ostalim trgovinskim preduzećima kako bi trebalo da se ponašaju.

Potreba za društveno odgovornim promenama u trgovini

Još od svog nastanka trgovina je prošla kroz različite izmene. U početku su dominirali primarni proizvodi, odnosno sirovine, koje su zemlje uvozile radi potrošnje ili dalje prerade, a sa jačanjem industrijske, tj. serijske proizvodnje i smanjivanja jediničnih troškova, a samim tim i pojeftinjenja finalnih proizvoda, industrijski proizvodi su preuzeli primat, dok je u međuvremenu poraslo učešće

usluga i intelektualne svojine, ali još uvek nedovoljno da ugrozi primat međunarodne trgovine industrijskim proizvodima (Jelisavac-Trošić, 2016). Države trguju različitim robama, uslugama, idejama, što doprinosi većoj povezanosti, jedinstvenosti i smanjenju siromaštva na globalnom nivou. Shodno tome, trgovina danas postaje veoma atraktivna privredna delatnost koja briše i prevazilazi prepreke koje postoje na nivou pojedinih država i time spaja različite privrede. *Golijanin* (2009) smatra da okosnicu trgovine čine četiri „sveta“ koja su međusobno povezana finansijama (slika 1.).

Slika 1. Svet trgovine



Izvor: Goljanin, 2009.

U svemu tome, danas je jako bitno uzeti u obzir i karakteristike savremenog okruženja jer se, poput svake druge delatnosti, i funkcionisanje trgovine odvija pod snažnim uticajem istog. Savremeno okruženje karakterišu česte i intenzivne promene koje u značajnijoj meri otežavaju opstanak i rad svakog preduzeća. Promene su takvog karaktera i obima da se njihov uticaj ne može izbeći ni u sferi trgovine. Promenili su se proizvođači, kupci, potrošači, cene i odnos prema cenama, okruženje u kome se proizvodi, prodaje, kupuje i troši (Župljanin, 2013). Sve ove oscilacje od trgovinskih preduzeća traže da se konstantno razvijaju i prate trendovi i šanse koje postoje na tržištu. Imajuću u vidu brojnost i karakter promena, trgovinska preduzeća moraju da pronađu model poslovanja koji će uvažiti kompleksnost savremenog okruženja, što nameće potrebu za promenom njihovog tradicionalnog načina funkcionisanja. Usled svih tih promena nastala je i potreba za uvažavanjem određenih pravila koje nameće koncept društveno odgovornog poslovanja. Društvena odgovornost preduzeća jedan je od koncepata savremenog

poslovanja koji još nije doživeo svoj maksimum, ali značajno utiče na preduzeća i na njihove partnere, potrošače, državu, konkurenciju (Boljević, Radovanović, Strugar, 2015). Društveno odgovorno poslovanje proističe iz potrebe da se umanje negativne posledice po društvo i životnu sredinu, nastale usled nemoralnog ponašanja različitih preduzeća. Brojna pitanja, od potrebe za zaštitom životne sredine, brige o potrebama i zadovoljstvu zaposlenih, brige o društvenoj zajednici i tome slično, predstavljaju velike izazove sa kojima se danas susreću trgovinska preduzeća. Uspešni menadžeri ovim izazovima prilaze na strateški način. Društvena odgovornost podstiče promene u načinu razmišljanja i delovanja savremenih menadžera, stvarajući potrebu za razvojem održivijeg modela poslovanja preduzeća. Primenom DOP, preduzeća obezbeđuju održivo poslovanje, jer: jačaju poslovni imidž, obezbeđuju kvalitetnu radnu snagu, efikasno koriste resurse čime snižavaju troškove i podižu produktivnost, adekvatno upravljaju rizicima, ostvaruju rast, uvode inovacije i postaju konkurentnija na tržištu (Micić, Vujović, Ranđelović, 2016). Veća je verovatnoća da će dobro vođena preduzeća biti društveno odgovorna (Ferrell, Liang, Renneboog, 2016), jer uspešni menadžeri svojim odgovornim ponašanjem daju primer ostalim zaposlenima kako treba da se ponašaju.

Potreba za društveno odgovornim promenama u trgovini zasniva se na težnji da se realizuje cilj društvene odgovornosti. Ultimativni cilj društvene odgovornosti polazi od stava da preduzeća prilikom obavljanja svojih aktivnosti maksimiziraju pozitivne a minimiziraju negativne uticaje na društvo i okruženje, ne narušavajući pritom svoju profitabilnost. Pošto savremeno tržište prvenstveno garantuje opstanak društveno odgovornim preduzećima, trgovinska preduzeća moraju adekvatno da se posvete ovom cilju. Društveno odgovorno poslovanje se odnosi na celokupnu sferu uticaja i raspon delovanja jedne kompanije kao i na odnose koje ona pri tome uspostavlja: kako kupuje i prodaje, na koji način zapošljava, osposobljava i utiče na razvoj ljudskih resursa, koliko ulaže u lokalnu zajednicu i poštovanje ljudskih i radnih prava, kao i na koji način doprinosi očuvanju životne sredine (Jovanović, Ilić, Pavlović-Dimitrijević, 2017). Dakle, pored ključnih stejkholdera, vlasnika kapitala i potrošača, trgovinska preduzeća u dinamičnim uslovima privređivanja moraju da zadovolje i interese različith interesnih grupa ali i da, pritom, vode računa o zaštiti životne sredine. Treba imati u vidu da se društveno odgovorno poslovanje sporovodi sa ciljem stvaranja socijalnih i ekoloških koristi (Ronald, Suwandi, Daromes, 2019). Ovo je za trgovinska preduzeća posebno značajno zato što predstavljaju posrednike između prozvođača i potrošača, te shodno tome imaju značajniju ulogu u promovisanju koncepta društvene odgovornosti. Nemoralno ponašanje preduzeća može da stvori značajno veće socijalne probleme u poređenju sa indivdualnom neodgovornošću. Netačan tekst na etiketama (naročito kada je reč o privatnoj robnoj marki), nelegalno prisvajanje poslovnih tajni, lažno oglašavanje, nezapošljavanje osoba sa indvaliditetom, nedovoljna briga o zadovoljstvu

zaposlenih kroz neadekvatno plaćanje ili nametanje prekovremenog rada su samo neki od primera neodgovornog ponašanja trgovinskih preduzeća. Ovakvo ponašanje može da predstavlja osnovu nastajanja i širenja širokog spektra socijalnih problema ne samo za postojeće već i za buduće generacije. Neka od ključnih pitanja društveno odgovornog poslovanja, koja su vezana za moralna načela i etičko ponašanje trgovinskih preduzeća, tiču se sigurnosti i kvaliteta robe, iskrenosti u reklamiranju, boljeg informisanja i edukacije kroz podizanje nivoa svesti o značaju društvene odgovornosti, poštovanju prava zaposlenih, ravnopravnosti polova, zaštiti životne sredine, uvođenja ekoloških oznaka, i tome slično. Trgovinska preduzeća mogu na različite načine da podstiču društvenu odgovornost. Mogu se, recimo, aktivno uključivati u rešavanju aktuelnih društvenih, ekoloških i ekonomskih problema, poštovati ljudska prava, organizovati različite humanitarne akcije sa ciljem borbe protiv siromaštva i bolesti, ulagati u obazovanje i poboljšanje uslova za život ljudi, itd. Uvažavajući takvu vrstu ponašanja trgovinska preduzeća mogu u velikoj meri doprineti razvoju socijalne i ekološke sredine.

Veoma je važno da se trgovinska preduzeća trude da koncept društvene odgovornosti primenjuju na adekvatan način, uvažavajući sve oblasti društvene odgovornosti (Slika 2.). Nemoguće je, recimo, smatrati odgovornim poslovanje pri kome neko trgovinsko preduzeće daje određena sredstva u dobrotvorne svrhe i time doprinosi razvoju društva, a sa druge strane nezakonito daje otkaze, ne poštuje ugovore o radu, uvodi neplaćen prekovremeni rad često duži od zakonom dozvoljenog, ne prijavljuje radnike ili zapostavlja prava i potrebe poslovnih partnera. Briga o zaposlenima je od izuzenog značaja, jer su ljudski resursi danas najznačajnija komponenta svake organzacije (Micić, Arsić, 2017). Da bi postiglo uspeh svako preduzeće mora biti odgovorno za socijalno blagostanje zaposlenih, šire društvene zajednice i životne sredine (Zorzini, Hendry, Huq, Stevenson, 2015). Poslovanje koje je u skladu samo sa pojedinim aspektima društvene odgovornosti, ne može se smatrati izvrsnim poslovanjem. Shodno tome, ukoliko neko trgovinsko preduzeće želi da unapredi svoje poslovanje i time poboljša konkurentsku poziciju na tržištu, mora da uvaži određene zahteve društvene odgovornosti.

Slika 2. Oblasti društvene odgovornosti

Izvor: Krivokapić, Vujović, Jovanović, 2014.

Povećanje tržišnog učešća, jačanje reputacije preduzeća, privlačenje novih i stvaranje baze lojalnih potrošača, smanjivanje troškova poslovanja, povećanje prihoda od prodaje robe, jačanje pozicije privatne robne marke, veća satisfakcija zaposlenih koja stvara pozitivnu radnu klimu, su samo neki od razloga za primenu i razvoj koncepta društvene odgovornosti u trgovinskim preduzećima.

Aspekti društveno odgovornog poslovanja trgovinskih preduzeća

Trgovinska preduzeća su sastavni deo društva i kao takva pored sopstvenih ciljeva zasnovanih na težnji za maksimalnim profitom, moraju voditi računa i o interesima društvene zajednice ali i o svom uticaju na životnu sredinu. Zato je potrebno da svoje poslovanje organizuju u skladu sa pravilima koja nalaže koncept društvene odgovornosti, a koja su zasnovana na potrebi da se svi poslovi u preduzeću izvršavaju uz poštovanje zakonskih, ekonomskih i moralnih principa. Organizacija zasnovana na odgovornosti predstavlja jedan od najzanačajnijih principa savremenog poslovanja (Bogetić, Đorđević, Ćoćkalo, Vorkapić, 2018). Ukoliko trgovinska preduzeća pored ekonomskih ne uvaže i socijalne i ekološke ciljeve, doći će do pojave velikog broja društvenih problema koji se, nakon izvesnog vremena, povratno mogu negativno odraziti na poslovne performanse ovih preduzeća. To je jedan od razloga zašto koncept društvene odgovornosti postaje u značajnijoj meri prihvaćen od strane trgovinskih preduzeća na globalnom nivou. Uspešna trgovinska preduzeća širom sveta pažljivo su posvećena različitim segmentima društvene odgovornosti. Postoji stav da se koncept održivog razvoja i društvene odgovornosti u trgovini može sagledati kroz sledeće atribute: „zeleni“ robni asortiman, „zeleni“ prodajni objekti, „zeleni“ transport, „zeleni“ procesi, bolji uslovi rada za zaposlene, kontinuirano poboljšanje znanja zaposlenih, smanjenje troškova okruženja (voda, vazduh, energija), razvoj brenda organskih proizvoda (Sokolov Mladenović i Ćuzović, 2014), i tome slično. Polazeći od osnovnih oblasti drušvene odgovorosti, u *Tabeli 1* prikazani su samo neki od aspekata na kojima se može zasnivati društveno odgovorno poslovanje trgovinskih preduzeća.

U uslovima sve veće degradacije ekološke sredine, zaštita životne sredine treba da predstavlja sastavni deo i osnovni prioritet strategije svakog trgovinskog preduzeća. Postoje dokazi da trgovina može da doprinese povećanju propadanja životne sredine putem zagađivanja ugljen-dioksidom (Vučić, 2016). Potrebno je pronaći različita rešenja kako bi se zagađenje svelo na minimum i sačuvala životna sredina. To je moguće postići poštovanjem određenih ekoloških principa društvene odgovornosti i primenom mera i aktivnosti kroz uspostavljanje sistema upravljanja ekološkim aspektima društvene odgovornosti. Da bi se izbegla negativna delovanja koja dovode do uništavanja prirodnih ekoloških sistema potrebno je da zaštita životne sredine bude planska, sveobuhvatna i sistemska. Na taj način se mogu postići adekvatni efekti u očuvanju i zaštiti ekološke sredine. Neophodno je, takođe,

i u kontiniuitetu analizirati rezultate sprovedenih ekoloških aktivnosti, jer bi na taj način menadžeri trgovinskih preduzeća imali uvid u to koliko se preduzeće ponaša odgovorno na ovom polju. Mnoga preduzeća se danas trude da doprinesu zaštiti životne sredine adekvatnim obavljanjem svojih aktivnosti, i time iskazuju spremnost da se ponašaju u skladu sa potrebama zdrave životne sredine. Ona tako postupaju u skladu sa sve strožijim zakonodavstvom, razvojem ekonomskih i drugih mera koje zahtevaju zaštitu životne sredine i sve izraženijom brigom zainteresovanih strana za pitanja zaštite životne sredine i održivog razvoja (Biočanin, Hamidović, 2017). Odgovorno poslovanje trgovinskih preduzeća prema životnoj sredini može da se ogleda kroz primenu načela efikasnog trošenja i uštede energije, promovisanja potrebe za zaštitom životne sredine, razvoj ekoloških inovacija, održivije upravljanje otpadom, i tome slično.

Tabela 1. Neki od aspekata na kojima se zasniva društveno odgovorno poslovanje trgovinskih preduzeća

Oblasti društvene odgovornosti	Aspekti društvene odgovornosti trgovinskih preduzeća
Životna sredina	Obnovljiva energija, Zelene zgrade, Reciklaža i redukcja otpada, Zelena transportna sredstva, Smanjenje potrošnje papira potrebnih za flajere i kataloge reklamiranjem na ekološki način, Razvrstavanje smeća po vrstama otpada, Uvažavanje ostalih ekoloških principa u poslovanju
Fer poslovna praksa	Uvažavanje principa fer trgovine i fer potrošnje
Zahtevi korisnika	Kvalitet robe Ispravan tekst na etiketama Organski proizvodi Ljubaznost i stručnost prodajnog osoblja Poštovanje kupca Urednost i čistoća prodajnog objekta
Društveni razvoj	Podrška lokalnoj zajednici Sigurnost i zaštita društva Filantropske aktivnosti Promovisanje značaja društvene odgovornosti
Menadžment organizacije	Poznavanje moralnih standarda i principa Promovisanje odgovornog ponašanja kroz lični primer Potenciranje i razvoj partnerstva sa društveno odgovornim dobavljačima
Ljudska prava	Pravo na privatnost, slobodu govora, izražavanja Zapošljavanje osoba sa invaliditetom Ravnopravnost polova Poštovanje ugovora o radu Plaćeni prekovremeni rad
Praksa rada	Podsticanje i razvoj pozitivne klime u preduzeću Promovisanje značaja društveno odgovornog poslovanja kroz različite propagandne aktivnosti

Izvor: Autori

Etičke oznake proizvoda i marketinške poruke su sve češća pojava u maloprodaji (Hainmueller, Hiscox, Sequeira, 2015), a jedna od takvih je i oznaka pravične, odnosno fer trgovine. Da bi primena koncepta društvene odgovornosti bila kvalitetna, trgovinska preduzeća moraju da vode računa i o poštovanju standarda fer trgovine i potrošnje koji imaju za cilj da smanje siromaštvo, poboljšaju položaj proizvođača i podrže društvenu odgovornost. Takođe, trgovinska preduzeća moraju da razvijaju i strateška partnerstva sa društvenom zajednicom kroz različite filantropske aktivnosti i da na taj način doprinose njenom razvoju i sigurnosti. Strateškim pristupom temama koje su značajne za društvo moguće je postići dobre rezultate u ovoj oblasti društvene odgovornosti. Odgovorno upravljanje viškovima hrane, doniranje namirnica, pokretanje različitih humanitrnih akcija, povećanje svesti o važnosti zdravije ishrane, predstavljaju određene aspekte na kojima se može zasnivati društveno odgovorno poslovanje trgovinskih preduzeća u oblasti društvenog razvoja.

Društveno odgovorno poslovanje trgovinskim preduzećima nameće i potrebu za uvažavanjem različitih zahteva potrošača. Savremeni potrošači drugačije reaguju na brojne aktivnosti koje preduzeća obavljaju, a koje se prevashodno tiču društvene zajednice i životne sredine. U poslednje vreme, društvena odgovornost predstavlja jedan od faktora koji utiče na odluku potrošača o kupovini određenog proizvoda. Pošto se ponašanje potrošača promenilo, pojedini autori (Anderson, 2018), za savremenog potrošača koriste termin „etički potrošač“. Različiti su aspekti društvene odgovrnosti koje trgovinska preduzeća u ovom slučaju mogu uvažiti. Neka trgovinska preduzeća se trude da edukuju svoje potrošače o značaju izbora zdravijih namirnica, te posebno izdvajaju i promovišu organske proizvode ili, ukoliko poseduju privatnu robnu marku, trude se da na prednjoj strani pakovanja prehrambenog proizvoda istaknu dodatna nutritivna obeležja. Zatim, veliki broj trgovinskih preduzeća veliku pažnju pridaje urednosti, izgledu i čistoći prodajnog objekta. Savremeni potrošač očekuje punu pažnju od strane prodajnog osoblja, te zato akcenat treba staviti i na ljubaznost i stručnost ovih radnika. Kupci se danas sve više odlučuju za kupovinu u velikim prodajnim formatima, gde mogu da kupe sve što im je potrebno, gde je roba vidno izložena, gde se svakodnevno odvijaju događaji poput različitih promocija, prezentacija, degustacija, akcijskih prodaja i tome slično, gde je jednostavan pristup prodajnom mestu, lako i sigurno parkiranje, gde je, jednom rečju, moguće obezbediti dobru kompletnu kupoprodajnu uslugu (Župljanin, 2013). Na taj način trgovinsko preduzeće iskazuje poštovanje prema svojim potrošačima. Takođe, ne treba zanemariti ni kvalitet robe i rok trajanja, koji moraju biti svakodnevna preokupacija trgovinskih preduzeća. Stvaranje lojalnih kupaca u vreme kada je tržište postalo globalno i kada je kupcima skoro svaki proivod udaljen nekoliko klikova, zaista predstavlja izazov (Gostović, 2021).

Ukoliko se trgovinsko preduzeće potrudi da u velkoj meri ispuni očekivanja potrošača, zauzvrat može da očekuje i zadobijanje njihovog poverenja.

Pored potrošača, trgovinska preduzeća moraju uzeti u obzir potrebe i prava svojih zaposlenih, koja moraju biti u fokusu strateškog opredeljenja menadžmenta trgovinskih preduzeća. U novoj ekonomiji u kojoj se na zaposlene gleda kao na primarni razvojni resurs, motivacija se izdvaja kao pouzdan mehanizam za rešavanje organizacionih problema i sredstvo koje u značajnoj meri može doprineti poboljšanju radnog morala, samopouzdanja i zadovoljstva zaposlenih (Staletović, Milačić, Kojić, 2020). Kada su motivisani za rad zaposleni ostvaruju bolji učinak i doprinose ostvarenju pozitivnog poslovnog rezultata, ali i razvoju pozitivne radne klime. Trgovinsko preduzeće može da se okarakteriše kao odgovoran poslodavac ukoliko primenjuje odgovornu praksu zapošljavanja, stvara dobre uslove za rad, obezbeđuje sigurnost i zaštitu zdravlja na radu, poštuje osnovna ljudska prava, ugovor o radu, plaća prekovremeni rad, vodi računa o rodnoj ravnopravnosti, zapošljava osobe sa invaliditetom, i tome slično. Značajnu ulogu u svemu ovome imaju menadžeri trgovinskih preduzeća jer moraju da se trude da sa svojim zaposlenima uspostavljaju korektan odnos koji će im omogućiti efikasniju realizaciju ključnih ciljeva. Pored toga, menadžeri moraju naročito da vode računa i o uspostavljanju poslovnih partnerstava sa dobavljačima koji u svom radu poštuju principe društvene odgovornosti.

S obzirom da primena etičkih principa postaje suštinska poslovna filozofija i osnova sticanja konkurentske prednosti, snažna društvena odgovornost treba da predstavlja jedan od najvažnijih elemenata strategije poslovanja trgovinskih preduzeća.

Osvrt na društveno odgovorne aktivnosti Walmart-a

Walmart kao jedna od najuspešnijih trgovinskih kompanija u svetu, prošla je veliki razvojni put od jedne jednostavne ideje i male prodavnice do trgovačkog giganta, najpre na tržištu SAD, a potom i na međunarodnom tržištu. Rukovodioci *Walmart-a* su još u početku usvojili strategiju koja potrošačima tokom cele godne, a ne samo prilikom rasprodaje, nudi niske cene, te je odmah nakon osnivanja postao poznat po trajno niskim cenama. Bez obzira što se strategija poslovanja zasniva na određivanju manjih marži, ovaj trgovinski lanac ostvaruje veliki profit kroz ogromnu količinu prodate robe. Prema izveštajima pod nazivom *Globalna snaga maloprodaje*, koje je sačinila kosultantska kuća *Deloitte,* ova kompanija se po prihodima od prodaje već nekoliko godina unazad nalazi na samom vrhu u odnosu na druga trgovinska preduzeća (*Tabela 2*). *Walmart* je lider u održivosti, korporativnoj filantropiji i mogućnostima zapošljavanja (corporate.walmart.com).

Tabela 2. Pozicija Walmart-a prema prihodu od prodaje u izveštaju *Globalna snaga maloprodaje*

Pozicija u 2018.god.	**Naziv trgovinskog preduze ća**	**Prihodi od prodaje (u milijardama dolara) u 2018. godini**
1	Wal-Mart Stores, Inc.	514,405
2	Costco Wholesale Corporation	141,576
3	Amazon.com, Inc.	140,211
4	Schwarz Group	121,581
5	The Kroger Co	117,527
Pozicija u 2017. god.	**Naziv trgovinskog preduzeća**	**Prihod od prodaje (u milijardama dolara) u 2017. godini**
1	Wal-Mart Stores, Inc.	500,343
2	Costco Wholesale Corporation	129,025
3	The Kroger Co	118,982
4	Amazon.com, Inc	118,573
5	Schwarz Group	111,766
Pozicija u 2016.god.	**Naziv trgovinskog preduzeća**	**Prihod od prodaje (u milijardama dolara) u 2016. godini**
1	Wal-Mart Stores, Inc.	485,873
2	Costco Wholesale Corporation	118,719
3	The Kroger Co	115,337
4	Schwarz Group	99,256
5	Walgreens Boots Alliance, Inc	97,058

Izvor: Global Powers of Retailing 2020, Global Powers of Retailing 2019, Global Powers of Retailing 2018, www2.deloitte.com

Ovaj trgovinski lanac na pvom mestu stavlja potrebe i želje svojih potrošača i trudi se da kvalitetnim ali jeftinim proizvodima nadmaši njihova očekivanja. Njegovu ciljnu grupu predstavljaju potrošači koji spadaju u socijalnu kategoriju sa nižim primanjima. Zato se može reći da je u velikoj meri posvećen stvaranju vrednosti za potrošače. U *Waltmart-ovim* maloprodajnim objektima može se pronaći širok asortiman različite robe i usluga. Kupcima stoje na raspolaganju tri formata kupovine: putem interneta, prodavnice ili mobilne aplikacije. Evidencije ove kompanije pokazuju da svake nedelje skoro 230 miliona kupaca poseti približno 10.800 prodajnih objekata kao i web sajt ovog poslovnog subjekta (corporate.walmart.com). *Waltmart-ovi* prodajni objekti se ističu po čistoći, dobrom osvetljenju, urednim policama i kvalitetu robe. Filantopske aktivnosti *Walmart-a* usredsređene su na dve oblasti, i to: a) poboljšanje pristupa i dostupnosti zdravije ishrane, b) podsticanje pojedinaca na odabir i pripremu zdravije hrane (corporate.walmart.com). U skladu sa tim, jedan je od najvećih prodavaca organskog mleka u svetu. Veliki značaj pridaje organizovanju različitih vidova edukacije potrošača o prednostima zdrave ishrane. Pored toga, ovo preduzeće brine i o društvenoj zajednici širom sveta. Poznati su brojni projekti donacije hrane i pružanja pomoći nakon prirodnih katastrofa u lokalnim zajednicama u kojima žive saradnici i potrošači *Walmart-a*.

Walmart je posvećen i drugim aspektima društvene odgovornosti. Kada je reč o ekološkoj sredini, ovaj trgovinski lanac je u značajnoj meri fokusiran na smanjenje emisije štetnih gasova koji izazivaju efekat staklene bašte. U skladu sa tim, stalno promoviše važnost potrebe za obnavljanjem prirodnih resursa, podržava brojne akcije vezane za zaštitu životne sredine i podstiče svoje dobavljače da vode računa o ovim pitanjima. Ovo trgovinsko preduzeće je na takvoj poziciji da može da pokreće pozitivne promene u čitavom lancu snabdevanja i podržava program poštene trgovine. Menadžment *Walmart-a* polazi od činjenice da je efikasno upravljanje od suštinske važnosti za dugoročno stvaranje vrednosti i u velikoj meri se trudi da ličnim primerom promoviše odgovorno ponašanje.

U potpunosti je posvećen i svojim radnicima. U *Walmart-u* je zaposleno 2.2 miliona radnika širom sveta. Samo u aprilu 2020. godine (u periodu postojanja korona virusa) ovo trgovinsko preduzeće je zaposlilo oko 150.000 novih ljudi. U velikoj meri se vodi računa o poštovanju ljudskih prava, što pokazuje i prva *Izjava o ljudskim pravima* objavljena u 2018. godini (corporate.walmart.com). Ovo preduzeće se rukovodi strategijom razvoja radne snage koja je u velikoj meri usredsređena na stvaranje pristupa zapošljavanju, obezbeđivanju stabilnosti posla i stvaranju mogućnosti za kontinuirano profesionalno usavršavanje (corporate.walmart.com). Ključni aspekti u ovoj oblasti, na kojima *Walmart* naročito stavlja akcenat, se odnose na: radno vreme, bezbednost i sigurnost na radu, pravo da se izrazi mišljenje, ravnopravnost polova, poštovanje različitosti. Na osnovu svega navedenog može se zaključiti da je ovaj maloprodajni trgovinski lanac u velikoj meri posvećen brojnim aktivnostima na kojima bi trebalo da se zasniva društvena odgovornost trgovinskog preduzeća.

Zaključak

Specifičnost razvoja savremenih trgovinskih preduzeća zasniva se na težnji da se u kontinuitetu prilagođavaju promenama u okruženju i da maksimalno iskoriste mogućnosti koje im one pružaju. Neke od tih promena su nametnule potrebu da i ova preduzeća svoje postojanje opravdaju ne samo u ekonomskom već i u socijalnom i ekološkom smislu. Iz tog razloga je veliki broj trgovinskih preduzeća širom sveta već uključen u rešavanje različitih društvenih i ekoloških problema (uvažavanje principa fer trgovine, ispunjavanje različitih zahteva potrošača, negovanje ljudskih prava, borba protiv siromaštva i bolesti, edukacija o važnosti zaštite životne sredine, itd). Organzovani napori društvene zajednice stvorili su pritisak prevashodno na velika trgovinska preduzeća da umanje štetne uticaje svog poslovanja na društvo i životnu sredinu, jer se se smatra da ove organizacije mogu najviše doprineti promovisanju društvene odgovornosti, naročito kada posluju na širem poslovnom području. Kao najveći maloprodajni trgovinski lanac, koji posluje u međunarodnim okvirima, *Walmart* je u velikoj meri posvećen mnogim aspektima

društveno odgovornog poslovanja. U značajnoj meri vodi računa o zadovoljstvu svojih potrošača, odabiru društveno odgovornih dobavljača, poštovanju i uvažavanju svojih zaposlenih ali i o pitanjima zaštite životne sredine.

S obzirom da je poznato da nepoštovanje društveno odgovornih principa može negativno da se odrazi na reputaciju preduzeća, veoma je važno da se menadžeri trgovinskih preduzeća upoznaju sa ovim principima, ali i da rade na jačanju svesti svojih stejkholdera o značaju društveno odgovornog ponašanja. Može se zaključiti da društveno odgovorno poslovanje u sve većoj meri postaje suštinska komponenta poslovnih aktivnosti trgovinskih preduzeća i jedan od osnovnih uslova za uspeh savremene trgovine.

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SOCIAL RESPONSIBILITY IN MODERN TRADE COMPANIES WITH REFERENCE TO THE WALMART TRADE CHAIN

Radmila Micić [4], Maja Staletović[5], Nenad Kojić[6]

Review paper

Abstract

In conditions of dynamic changes, companies try to preserve their position in various ways and thus ensure their survival on the market. One of the possibilities available to them is quality application of the concept of social responsibility. It can be said that in modern business conditions, trade has a very important role in functioning of any economy because, among other things, it can adequately bridge the discrepancy between greater supply of goods and lack of payment demand. However, regardless of that, one should not ignore the fact that today trade companies are also expected to monitor and adapt to socially responsible requirements. The aim of this paper is to point out the importance of social responsibility as well as certain aspects of socially responsible business in trade companies with reference to the largest retail chain in the world. Walmart, as the largest American company engaged in retail sale of goods in the domestic and international markets, has a very developed sense of society and the environment. Management of this company is aware of the fact that economic development can be achieved only if it goes hand in hand with development of the social community.

Key words: *Social responsibility, change, trade companies, consumers, environment*

JEL: M14, Q56

Introduction

In addition to manufacturing, in times of great uncertainty, trade companies are also subject to numerous changes. In the past, for example, the process of deciding on

[4] Associate Professor Radmila Micić PhD, University of Pristina, with temporary seat in Kosovska Mitrovica, Faculty of Economics, Kolašinska 156, Kosovska Mitrovica, Republic of Serbia, Phone: +381 60 388 44 14, E-mail: radmila.micic@pr.ac.rs

[5] Assistant, Maja Staletović Master of Economics, Business School of Vocational Studies „Prof. dr Radomir Bojković“, Kruševac, Topličina 12, Kruševac, Republic of Serbia, Phone: +381 64 543 84 15, E-mail: dajicmaja5@gmail.com

[6] Assistant Professor, Nenad KojiĆ PhD, Kosovo and Metohija Academy of Applied Studes, E-mail: nenadkojic111@gmail.com

the purchase of certain goods was simpler, while today this process is influenced by numerous factors, among which a special place belongs to the socially responsible business of trade companies. The modern consumer is not largely influenced by promotional activities of socially irresponsible trade companies. For this reason, managers must take into account the fact that there are consumers who are more willing to pay more for the product of a trading company that behaves fully in accordance with the rules of socially responsible business. This behavior of consumers requires respect for the concept of social responsibility not only by management and other employees of a trading company but also by their business partners, and especially suppliers. In that way, consumers will be more satisfied, which can have a positive effect on business performance of trade companies.

There are various movements in the world to combat environmental degradation, organized by certain social groups, as well as movements that advocate respect for human rights of employees. All these changes require trade companies to respect the importance of socially responsible business when operating. This is especially true for large and successful trading companies that operate outside the borders of their country. One such example is Walmart, the largest retail chain.

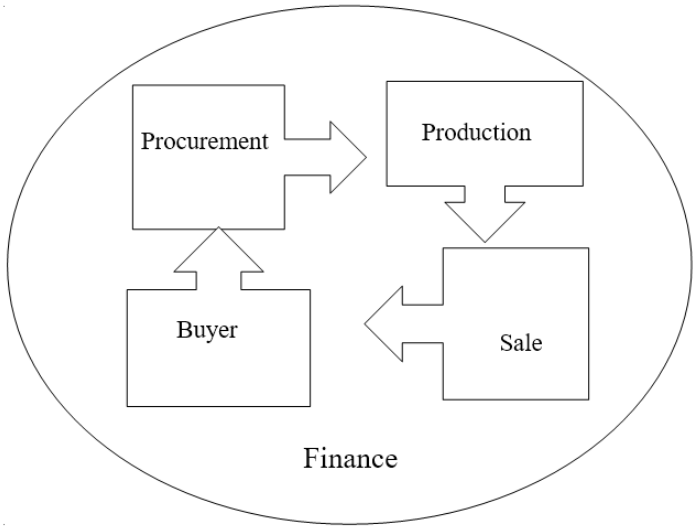
The aim of this paper is to point out the importance of social responsibility as well as certain aspects of socially responsible business in trade companies, with reference to the largest retail chain in the world. In that sense, we will, first of all, point out the need for socially responsible changes in trade. We will then analyze some of the aspects of corporate social responsibility. Special attention in the paper will be paid to the presentation of Walmart's socially responsible business. The results of the research analysis show that the management of this company attaches great importance to socially responsible business. Through its socially responsible behavior, various projects aimed at protecting the environment and the community, respecting its consumers and respecting employees, it sets an example to other commercial companies as to how they should behave.

The need for socially responsible changes in trade

Since its inception, trade has undergone various changes. In the beginning, it was dominated by primary products, i.e. raw materials, which countries imported for consumption or further processing, and with strengthening of industrial, i.e. serial production and reduction of unit costs, and thus cheaper final products, industrial products have taken precedence, while in the meantime share of services and intellectual property has increased, but still insufficient to threaten the primacy of international trade in industrial products (Jelisavac-Trošić, 2016) . States trade in a variety of goods, services, ideas, which contributes to greater cohesion, uniqueness and poverty reduction globally. Consequently, trade today is becoming a very

attractive economic activity that erases and overcomes the barriers that exist at the level of individual countries and thus connects different economies. Golianin (2009) believes that the backbone of trade consists of four „worlds“ that are interconnected by finance (Figure 1).

Figure 1. The world of trade



Source: Goljanin, 2009.

In all this, today it is very important to take into account the characteristics of the modern environment because, like any other activity, the functioning of trade takes place under the strong influence of the same. The modern environment is characterized by frequent and intense changes that make the survival and work of every company more difficult. The changes are of such a character and scope that their impact cannot be avoided even in the sphere of trade. Producers, buyers, consumers, prices and the attitude towards prices, the environment in which it is produced, sold, bought and consumed have changed (Župljanin, 2013). All these oscillations require trade companies to constantly develop and follow the trends and opportunities that exist in the market. Having in mind the number and character of changes, trade companies must find a business model that will take into account the complexity of the modern environment, which imposes the need to change their traditional way of functioning. As a result of all these changes, there is a need to respect certain rules imposed by the concept of socially responsible business. Corporate social responsibility is one of the concepts of modern business that has not yet reached its maximum, but significantly affects companies and their partners, consumers, the state and competition (Boljević, Radovanović, Strugar, 2015). Corporate social responsibility stems from the need to reduce the negative

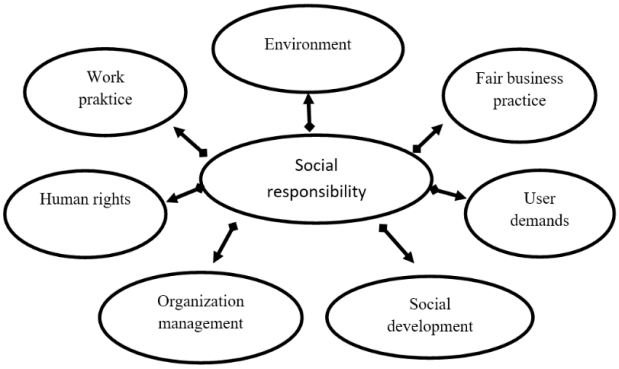
consequences for society and the environment, caused by the immoral behavior of various companies. Numerous issues, from the need to protect the environment, care for the needs and satisfaction of employees, care for the community and the like, are the great challenges that trade companies face today. Successful managers approach these challenges in a strategic way. Social responsibility encourages changes in the way of thinking and acting of modern managers, creating the need to develop a more sustainable business model of the company. By applying DOP, companies ensure sustainable business, because: they strengthen the business image, provide quality workforce, efficiently use resources which reduce costs and increase productivity, adequately manage risks, achieve growth, introduce innovations and become more competitive in the market (Micic, Vujovic, Randjelovic, 2016). Well-run companies are more likely to be socially responsible (Ferrell, Liang, Renneboog, 2016), because successful managers set an example to other employees in their responsible behavior on how to behave.

The need for socially responsible changes in trade is based on the pursuit of the goal of social responsibility. The ultimate goal of social responsibility is based on the view that companies in performing their activities maximize the positive and minimize the negative impact on society and the environment, without compromising their profitability. Since the modern market primarily guarantees the survival of socially responsible companies, trade companies must adequately commit to this goal. Corporate social responsibility refers to the entire sphere of influence and range of activities of a company as well as the relationships it establishes: how it buys and sells, how it employs, trains and influences human resources development, how much it invests in the local community and respects human and labor rights, as well as in what way it contributes to the preservation of the environment (Jovanović, Ilić, Pavlović-Dimitrijević, 2017). Therefore, in addition to key stakeholders, capital owners and consumers, trading companies in dynamic business conditions must satisfy the interests of various interest groups, but also take care of environmental protection. It should be borne in mind that socially responsible business is conducted with the aim of creating social and environmental benefits (Ronald, Suwandi, Daromes, 2019). This is especially important for trade companies because they represent intermediaries between producers and consumers, and therefore have a more significant role in promoting the concept of social responsibility. Immoral behavior of a company can create significantly greater social problems compared to individual irresponsibility. Incorrect text on labels (especially when it comes to private labels), illegal appropriation of trade secrets, false advertising, non-employment of people with disabilities, insufficient care for employee satisfaction through inadequate payment or imposition of overtime work are just some examples of irresponsible behavior of trade companies. Such behavior can be the basis for the emergence and spread of a

wide range of social problems not only for existing but also for future generations. Some key issues of socially responsible business, which are related to moral principles and ethical behavior of trade companies, concern the safety and quality of goods, honesty in advertising, better information and education by raising awareness of the importance of social responsibility, respect for employee rights, gender equality, environmental protection, introduction of eco-labels, and the like. Trade companies can promote social responsibility in different ways. They can, for example, be actively involved in solving current social, environmental and economic problems, respect human rights, organize various humanitarian actions aimed at combating poverty and disease, invest in educating and improving living conditions, etc. By respecting this type of behavior, trade companies can greatly contribute to the development of the social and environmental environment.

It is very important that trade companies strive to apply the concept of social responsibility in an adequate way, respecting all areas of social responsibility (Figure 2). It is impossible, for example, to consider a business responsible, where a trading company gives certain funds to charity and thus contributes to the development of society, and on the other hand illegally fires, does not respect employment contracts, introduces unpaid overtime often longer than allowed by law, doesn't registers workers or neglects the rights and needs of business partners. Caring for employees is of exceptional importance, because human resources are today the most important component of any organization (Micić, Arsić, 2017). To succeed, every company must be responsible for the social well-being of employees, the wider community and the environment (Zorzini, Hendry, Huq, Stevenson, 2015). A business that is in line only with certain aspects of social responsibility cannot be considered an excellent business. Accordingly, if a trading company wants to improve its business and thus improve its competitive position in the market, it must respect certain requirements of social responsibility.

Figure 2. Areas of social responsibility



Source: Krivokapić, Vujović, Jovanović, 2014.

Increasing market share, strengthening the company's reputation, attracting new and creating a loyal customer base, reducing business costs, increasing sales revenue, strengthening the position of the private brand, greater employee satisfaction that creates a positive work climate, are just some of the reasons for implementing and developing the concept of social responsibility in commercial enterprises.

Aspects of socially responsible business of trade companies

Trade companies are an integral part of society and as such, in addition to their own goals based on the pursuit of maximum profit, they must take into account the interests of the community and their impact on the environment. Therefore, they need to organize their business in accordance with the rules imposed by the concept of social responsibility, which are based on the need for all business in the company to be performed in compliance with legal, economic and moral principles. One of the most important principles of modern business is an organization based on responsibility (Bogetić, Đorđević, Ćoćkalo, Vorkapić, 2018). If trade companies, do not respect social and environmental goals, in addition to economic goals, there will be a large number of social problems that can have a negative impact on the business performance of these companies after some time. This is one of the reasons why the concept of social responsibility is becoming increasingly accepted by trade companies on a global level. Successful trading companies around the world are carefully committed to different segments of social responsibility.

There is an opinion that the concept of sustainable development and social responsibility in trade can be seen through the following attributes: „green" product range, „green" sales facilities, „green" transport, „green" processes, better working conditions for employees, continuous improvement of employee knowledge, reduction of environmental costs (water, air, energy), development of a brand of organic products (Sokolov, Mladenović, Ćuzović, 2014), and the like. Starting from the basic areas of social responsibility, Table 1 shows only some of the aspects on which socially responsible business of trade companies can be based.

In conditions of increasing degradation of the ecological environment, environmental protection should be an integral part of the strategy of every trade company. There is evidence that trade can contribute to increasing environmental degradation through carbon dioxide pollution (Vučić, 2016). It is necessary to find different solutions in order to minimize pollution and preserve the environment. This can be achieved by respecting certain environmental principles of social responsibility and applying measures and activities through the establishment of a management system for environmental aspects of social responsibility. In order to avoid negative actions that lead to the destruction of natural ecological systems, it is

necessary that the protection of the environment be planned, comprehensive and systemic. In this way, adequate effects in preserving and protecting the ecological environment can be achieved. It is also necessary to continuously analyze the results of the implemented environmental activities, because in that way the managers of trade companies would have an insight into how responsibly the company behaves in this field. Many companies today strive to contribute to the protection of the environment by adequately performing their activities, and thus show a willingness to act in accordance with the needs of a healthy environment. They are thus acting in accordance with increasingly stringent legislation, the development of economic and other measures that require environmental protection and the growing concern of stakeholders for environmental protection and sustainable development (Biočanin, Hamidović, 2017). Environmental responsibility of trade companies can be reflected through the application of the principles of efficient consumption and energy saving, promoting the need for environmental protection, development of environmental innovations, more sustainable waste management, and the like.

Table 1. Some aspects on which trade companies base socially responsible business

Areas of social responsibility	Aspects of social responsibility of trade companies
Environment	Renewable energy, Green buildings, Recycling and waste reduction, Green means of transport, Reducing the consumption of paper needed for flyers and catalogs by advertising in an environmentally friendly way, Sorting garbage by type of waste, Respecting other environmental principles in business
Fair business practice	Respecting the principles of fair trade and fair consumption
User demands	Quality of goods Correct text on labels Organic products Courtesy and expertise of sales staff Respecting customers Neatness and cleanliness of the sales facility
Social development	Support to the local community Security and protection of society Philanthropic activities Promoting the importance of social responsibility
Organization's management	Knowledge of moral standards and principles Promoting responsible behavior through personal example Emphasizing and developing partnerships with socially responsible suppliers
Human rights	Right to privacy, freedom of speech, expression Employment of persons with disabilities Gender equality Compliance with employment contracts Paid overtime

Working practice	Encouraging and developing a positive climate in the company Promoting the importance of socially responsible business through various propaganda activities

Source: Work of authors

Ethical product labels and marketing messages are increasingly common in retail (Hainmueller, Hiscox, Sequeira, 2015), and one of these is the label of fair trade. In order for the application of the concept of social responsibility to be of high quality, trade companies must also take into account the observance of fair trade and consumption standards, which aim to reduce poverty, improve the position of producers and support social responsibility. Also, trade companies must develop strategic partnerships with the community through various philanthropic activities and thus contribute to its development and security. With a strategic approach to topics that are important for society, it is possible to achieve good results in this area of social responsibility. Responsible management of food surpluses, food donations, initiating various humanitarian actions, raising awareness of the importance of a healthier diet, are certain aspects on which socially responsible business of trade companies in the field of social development can be based.

Corporate social responsibility in trade companies also imposes the need to respect different requirements of consumers. Modern consumers react differently to numerous activities that companies perform, which primarily concern the social community and the environment. Lately, social responsibility has been one of the factors influencing consumer decisions to buy a particular product. As consumer behavior has changed, some authors (Anderson, 2018) use the term „ethical consumer“ for the modern consumer. There are different aspects of social responsibility that trade companies can take into account in this case. Some retailers try to educate their consumers about the importance of choosing healthier foods, and especially highlight and promote organic products or, if they have a private label, try to highlight additional nutritional features on the front of food packaging. Then, a large number of trade companies pay great attention to tidiness, appearance and cleanliness of the sales facility. The modern consumer expects full attention from the sales staff, and therefore the emphasis should be placed on the kindness and expertise of these workers. Today, customers are increasingly choosing to buy in large sales formats, where they can buy everything they need, where the goods are clearly displayed, where events occur every day such as: various promotions, presentations, tastings, promotional sales and the like, where there is easy access to the point of sale, easy and safe parking, where, in one word, it is possible to provide a good complete sales service (Zupljanin, 2013). In this way, a trading company shows respect for its

consumers. Also, the quality of goods and shelf life should not be neglected, which must be a daily preoccupation of trade companies. Creating loyal customers at a time when the market has become global and when almost every product is a few clicks away from customers, is really a challenge (Gostović, 2021). If a trading company makes an effort to largely meet consumer expectations, it can in turn expect to gain their trust.

In addition to consumers, trade companies must take into account the needs and rights of their employees, which must be the focus of the strategic commitment of trade companies' management. In the new economy in which employees are seen as the primary development resource, motivation stands out as a reliable mechanism for solving organizational problems and a tool that can significantly contribute to improving work ethic, self-confidence and employee satisfaction (Staletović, Milačić, Kojić, 2020). When they are motivated to work, employees achieve better performance and contribute to achieving a positive business result, which also develops a positive work climate. A trading company can be characterized as a responsible employer if it applies responsible employment practices, creates good working conditions, ensures safety and health at work, respects basic human rights, employment contract, pays overtime work, takes care of gender equality, employs people with disabilities, and the like. Managers of trade companies have a significant role in all this because they must try to establish a correct relationship with their employees that will enable them to achieve their key goals more efficiently. In addition, managers must pay special attention to establishment of business partnerships with suppliers who respect the principles of social responsibility in their work. Given that the application of ethical principles is becoming an essential business philosophy and the basis for gaining a competitive advantage, strong social responsibility should be one of the most important elements of the business strategy of commercial companies.

A review of Walmart's socially responsible activities

As one of the most successful trading companies in the world, *Walmart* has gone through a great development path from a simple idea and a small store to a trading giant, first in the US market and then in the international market. Walmart executives initially adopted a strategy that offered consumers low prices throughout the year, not just on sale, and became known for their persistently low prices immediately after its inception. Regardless of the fact that the business strategy is based on determining lower margins, this retail chain makes big profits through a huge amount of goods sold. According to reports named *Global Retail Power*, compiled by a consulting company *Deloitte*, the company has been at the top of other retail companies in terms of

sales revenue for several years now (Table 2). *Walmart* is a leader in sustainability, corporate philanthropy and employment opportunities (corporate.walmart.com).

Table 2. Walmart's position in terms of sales revenue in the *Global Retail Power* report

Position in 2018	**Name of the trading company**	**Sales revenue (in billions of dollars) in 2018**
1	Wal-Mart Stores, Inc.	514.405
2	Costco Wholesale Corporation	141.576
3	Amazon.com, Inc.	140.211
4	Schwarz Group	121.581
5	The Kroger Co	117.527
Position in 2017	**Name of the trading company**	**Sales revenue (in billions of dollars) in 2017**
1	Wal-Mart Stores, Inc.	500.343
2	Costco Wholesale Corporation	129.025
3	The Kroger Co	118.982
4	Amazon.com, Inc	118.573
5	Schwarz Group	111.766
Position in 2016	**Name of the trading company**	**Sales revenue (in billions of dollars) in 2016**
1	Wal-Mart Stores, Inc.	485.873
2	Costco Wholesale Corporation	118.719
3	The Kroger Co	115.337
4	Schwarz Group	99.256
5	Walgreens Boots Alliance, Inc	97.058

Source: Global Powers of Retailing 2020, Global Powers of Retailing 2019, Global Powers of Retailing 2018, www2.deloitte.com

This retail chain puts the needs and desires of its consumers first and strives to exceed their expectations with quality but cheap products. Its target group are consumers who fall into the social category with lower incomes. That is why it can be said that it is largely committed to creating value for consumers. A wide range of different goods and services can be found in Waltmart’s retail outlets. There are three shopping formats available to customers: online, in-store or mobile. Records of this company show that every week almost 230 million customers visit approximately 10,800 stores as well as the website of this business entity (corporate.walmart.com). Walmart’s outlets stand out for their cleanliness, good lighting, neat shelves and quality goods. Walmart’s philanthropic activities focus on two areas, namely: a) improving access to and availability of healthier food, b) encouraging individuals to choose and prepare healthier food

(corporate.walmart.com). Accordingly, it is one of the largest sellers of organic milk in the world. Walmart attaches great importance to organizing various types of consumer education on the benefits of healthy eating. In addition, this company cares about the community around the world. Numerous food donation and disaster relief projects are known in local communities inhabited by Walmart associates and consumers.

Walmart is also committed to other aspects of social responsibility. When it comes to the environment, this retail chain is significantly focused on reducing greenhouse gas emissions. Accordingly, it constantly promotes the importance of the need to renew natural resources, supports a number of actions related to environmental protection and encourages its suppliers to take care of these issues. This trading company is in such a position that it can initiate positive changes in the entire supply chain and support the fair trade program. Walmart's management is based on the fact that effective management is essential for long-term value creation and strives to promote responsible behavior by personal example. Walmart is completely dedicated to its workers as well. Walmart employs 2.2 million workers worldwide. In April 2020 alone (during the period of the corona virus), this trading company employed about 150,000 new people. Respect for human rights is largely taken into account, as shown by the first Human Rights Statement published in 2018 (corporate.walmart.com). This company is guided by a workforce development strategy that is largely focused on creating access to employment, ensuring job stability and creating opportunities for continuous professional development (corporate.walmart.com). The key aspects in this area, which Walmart emphasizes in particular, are: working hours, safety and security at work, the right to express one's opinion, gender equality, respect for diversity. Based on all the above, it can be concluded that this retail chain is largely dedicated to a number of activities on which the social responsibility of the trade company should be based.

Conclusion

Specificity of the development of modern trade companies is based on the tendency to continuously adapt to changes in the environment and to make the most of the opportunities they provide. Some of these changes have imposed the need for these companies to justify their existence not only in economic but also in social and environmental terms. For this reason, a large number of trade companies around the world are already involved in solving various social and environmental problems (respecting the principles of fair trade, meeting different consumer demands, nurturing human rights, fighting poverty and disease, educating about the importance of environmental protection, etc.). Organized efforts of the social community have created pressure primarily on large trading companies to reduce the harmful effects of their business on society and the environment, because it is

believed that these organizations can contribute the most to promote social responsibility, especially when operating in the wider business area. As the largest retailer, operating internationally, Walmart is largely committed to many aspects of corporate social responsibility. To a significant extent, it takes into account the satisfaction of its consumers, the selection of socially responsible suppliers, respect and esteem of its employees, but also on environmental issues.

Given that it is known that non-compliance with socially responsible principles can negatively affect a company's reputation, it is very important that managers of commercial companies become familiar with these principles, but also work on raising awareness of their stakeholders about the importance of socially responsible behavior. It can be concluded that socially responsible business is increasingly becoming an essential component of business activities of trade companies and one of the basic conditions for the success of modern trade.

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ULOGA TIMSKOG MENADŽMENTA U SAVREMENIM USLOVIMA POSLOVANJA

Slobodan Adžić[7], Radan Kostić[8], Marijana Milunović[9], Tijana Savić Tot[10], Dejan Jeremić[11], Slobodan Stanojević[12]

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Apstrakt

Timski rad zahteva kvalitetno dvosmerno komuniciranje u timu, formalno i neformalno, koje se može ostvariti samo pojačanim angažovanjem pošiljaoca i primaoca informacija u procesu komuniciranja. Kvalitetnim komuniciranjem uklanjaju se, ili svode na najmanju meru, psihološke, semantičke, fizičke i tehničke smetnje procesa komuniciranja.

Uspešno funkcionisanje tima zahteva stalnu razmenu informacija između članova tima, stvaranje povoljne organizacijske klime (timske atmosfere), motivaciju članova tima, podsticanje članova tima na stvaralački rad i inicijativu i suptilno vođenje članova tima ka cilju.

Ključne reči: menadžment, timski rad, organizacija rada.

Uvod

Ponašanje članova tima je uzrokovano (potrebom, očekivanjem, pobudom iz sistema ili okruženja), usmereno (ciljno orijentisano) i motivisano, a na njega u

[7] Redovni profesor, dr Slobodan Adžić, Fakultet za menadzment, Univerzitet Union - Nikola Tesla, Sremski Karlovci, Republika Srbija, Email: s.adzic@famns.edu.rs

[8] Docent, dr Radan Kostić, Vojna akademija, Univerzitet odbrane, Beograd, Republika Srbija, Email: kostic.radan1976@gmail.com

[9] Vanredni profesor, dr Marijana Milunović, vanredni profesor, Fakultet za menadzment, Univerzitet Union - Nikola Tesla, Sremski Karlovci, Srbija, Email: milunovic@famns.edu.rs

[10] Vanredni profesor, dr Tijana Savić Tot, Fakultet za menadzment, Univerzitet Union - Nikola Tesla, Sremski Karlovci, Srbija, Email: savic@famns.edu.rs

[11] Vanredni profesor, dr Dejan Jeremić, Sequester Employment, Đušina 9, Beograd, Republika Srbija, E-mail: office@sequesteremployment.com

[12] Vanredni profesor, dr Slobodan Stanojević, Fakultet za primenjeni menadžment, ekonomiju i finansije, Jevrejska 24, 11000 Beograd, Srbija, E-mail: slobodan.stanojevic@mef.edu.rs

velikoj meri utiču nasleđe (genetske fizičke i mentalne osobine, iskustvo i učenje), sredina (sa njom je čovek u interakciji a ona se dinamično menja u vremenu) i trenutni motivi (nastaju kao rezultat unutrašnjih procesa ili kao reakcija čoveka na organizaciono okruženje). Ponašanje čanova tima se može predvideti, kontrolisati, usmeravati, prilagođvati i menjti adekvatnim postupcima rukovodioca tima(Mićović & Miletić, 2019).

Organizacija posla u grupi (tim) mora da bude osmišljena tako da budu zadovoljne potrebe pojedinaca i grupe i da ljudi dobiju satisfakciju iz samog rada(Tešić i dr., 2021). Preduslovi da čanovi tima efikasno obavljju zadatke jesu: da čanovi tima prihvate ciljve koje treba slediti; izbor adekvatnog načna, odnosno stila rukovođenja (demokratski), i postojanje određenog sistema stimulacije, odnosno priznanja i nagrada za rad, koji su unapred poznati članovima tima.

Članovi tima učestvuju u pripremi i donošenju odluka o radu tima. Oni moraju da znaju svoje uloge i odgovornost da imaju široko razumevanje, koje je iznad tehničkih potreba ostalih članova organizacije, jer su oni animatori i protagonisti novih načina rada i stremljenja u organizaciji(Nabih et. Al., 2016).

Timski rad se zasniva na punoj saradnji i stalnom međusobnom informisanju, pa je oslobođen klasičnog rivalstva i prestiža, jer nema takozvani primat ideja koji donosi "slavu". U timskom radu se neposredno komunicira i informacije dele, a ideje iznose odmah da bi se što pre rešio problem. Naravno, autorstvo se, ako je bitno, nikome ne osporava, ali se ideja odmah koristi.

Timski rad karakteriše neograničeno kretanje informacija relevantnih za zadatak. Svaki član tima, dakle, mora da bude odmah obavešten o svim pojavama i promenama.

U timskom radu se ne toleriše izolovan (odvojen) rad kako ne bi došlo do toga da neko u poodmakloj fazi shvati da je "na pogrešnom putu" ili da ono što radi nije uopšte potrebno. Zato su u timskom radu neophodi permanentno međusobno informisanje, konfrontacija stavova, puna saradnja i stalna konsultacija ostalih članova tima(Ivanova & Ristić, 2020).

Svaki predlog, deo ili aspekt zadatka u timu postaje predmet otvorene i konstruktivne diskusije (rasprave), a zauzeti stavovi su stavovi tima u celini. Zbog konstruktivnosti diskusije (rasprave) ne smeju doći do izražaja funkcije, članovi, činovi, titule i dr. Naime, to su obeležja članova tima u situacijama kada su "van tima", a u timu ne smeju imati uticaja, s obzirom na to da su svi članovi tima izjednačeni.

Proces stalne komunikacije u timu je jedna od bitnih karakteristika timskog rada, a omogućava držanje svih članova tima u kursu događaja i pruža mogućnost da članovi tima utiču jedni na druge(Dabke, 2016).

Kritika je značajan faktor u radu tima, jer članovi iznose svoja stručna mišljenja, koja ostali opovrgavaju ili ne opovrgavaju, ali ih uglavnom podvrgavaju kritici. Ona je konstruktivna i predstavlja sastavni deo pomoći svih članova tima svakom njegovom članu radi toga da se nađe najbolje rešenje.

Pripreme za uvođenje timskog rada

Organizovanje timskog rada zahteva novu podelu zadataka, odgovornosti i kompetencija u grupi i posebno novi rukovodeći status rukovodioca tima što izaziva poremećaje u odnosu na dotadašnje navike i funkcionisanje sistema.

Velika smetnja timskom radu je hijerarhijska pozicija rukovodećih ličnosti i postojeća shvatanja u postojećim stalnim organizacionim strukturama.

Timski rad je vrlo teško sprovoditi u organizaciji gde ni moć naređivanja, ni ovlaštenja ni troškovi nisu pod ingerencijom jedne organizacione strukture ili jednog čoveka(Hair et al., 2019).

Za realizaciju projekta angažovanjem stručnog radnog tima, neophodno je obezbediti pravilno shvatanje značaja projekta a time i pozitivan odnos saradnika što se postiže odgovarajućim usklađivanjem funkcija stručnih organa i njihovih rukovodilaca sa timskom funkcijom.

Članovi stalne organizacije moraju shvatiti i osetiti da se timskim radom i promenama koje uvodi postiže bolja pomoć i podrška saradnika i jača organizacija odnosno da je timski rad dobitak a ne gubitak za organizaciju.

Organizacija posla u grupi (timu) mora biti tako osmišljena da potrebe pojedinaca i grupe budu zadovoljene i da ljudi dobijaju satisfakciju iz samog rada.

Da bi članovi tima efikasno izvršavali zadatke moraju biti ispunjeni određeni preduslovi(Stanković & Milenković, 2018):

- prihvatanje ciljeva, od strane članova tima, koje treba slediti;
- izbor adekvatnog načina odnosno stila rukovođenja (demokratski) i
- postojanje određenog sistema stimulacije odnosno priznanja i nagrada za rad.

Članovi tima moraju biti zastupljeni i u pripremi i u donošenju odluka. Oni moraju biti poznavaoci svoje uloge i odgovornosti i imati široko razumevanje koje je iznad tehničkih potreba ostalih članova organizacije jer su oni animatori i protagonisti novih načina rada i stremljenja u organizaciji.

Upravljanje timom

Rukovodioc tima je centralna figura u upravljanju timom. On organizuje, usmerava, koordinira, integriše rad članova tima, rešava probleme i konflikte, i daje zadatke, sve u cilju efikasnog odvijanja timskog rada.

Od rukovodioca tima se zahteva da zna, da ume i da može da stvara i vodi tim pri rešavanju problema zbog kojih je tim formiran. Od njega se ne zahteva da bude veliki poznavaoc jedne oblasti odnosno discipline već da poseduje određena primenjena znanja iz više oblasti (znati šta čime može da se reši i uz čije angažovanje).

Posedovanje ovlaštenja i moći pruža rukovodiocu tima veću mogućnost izbora resursa svih vrsta i komuniciranje sa subjektima koji mogu znatno uticati na realizaciju projekta(Vukotić i dr., 2019).

Da bi rukovodilac tima uticao na članove tima i konsultante (a i određene linijske rukovodioce) da se ponašaju u skladu sa njegovim zahtevima mora posedovati određenu moć, poznavati prirodu čoveka i motivisati ljude za rad.

Rukovodilac tima treba posedovati sledeće moći: moć legitimiteta, moć prinude, moć nagrade, moć stručnosti i moć ugledanja(Fapohunda, 2013).

Prva tri izvora moći su formalne prirode i potiču iz mesta i uloge koju pojedinac ima u organizacionoj strukturi i ovlaštenja koja poseduje u skladu sa time odnosno po osnovu privremenog delegiranja ovlaštenja.

Moć stručnosti i moć ugledanja su vezani za individualne osobine rukovodioca tima i ne mogu se formalno dobiti već se stiču na osnovu znanja, iskustva, veština, navika i upravljačkog stila.

Rukovodilac tima može uticati na različite načine na članove projektnog tima(Avakumović i dr., 2021(c)):

- autoritetom (povezan je sa moći legitimiteta);
- uveravanjem (povezano je sa moći stručnosti i ugledanja) i
- kontrolom (povezana je sa moći nagrade i moći prinude).

Daljom operacionalizacijom navedenih uticaja na upravljanje timom i njihovim povezivanjem sa određenim izvorima moći, mogu se identifikovati sledeće veze između pojedinih oblika moći sa pojedinim metodama uticaja(Kuka i dr., 2018):

- moć legitimiteta omogućava uticaj preko autoriteta;
- moć prinude omogućava uticaj putem prinude;

- moć nagrade omogućava uticaj preko radnog izazova, obezbeđenja budućeg rada, plate i unapređenja;
- moć stručnosti obezbeđuje uticaj preko davanja stručnog mišljenja (ekspertize);
- moć ugledanja omogućava uticaj preko prijateljstva.

S obzirom na specifičnu prirodu projekata i na činjenicu da projektni timovi imaju nestabilnu organizacionu formu (uglavnom su privremenog karaktera) mnogo je bolje kada rukovodioc projekta koristi moć stečenu putem poverenja nego moć stečenu putem ovlaštenja (legitimnu moć).

Iskustva iz prakse pokazuju da su bolji rezultati postignuti u upravljanju projektima kad je primenjivana moć nagrade i moć stručnosti nego kod upotrebe moći legimiteta i moći prinude.

Određene pretpostavke u vezi efikasnog rada radnih timova najčešće nemaju adekvatan odraz u realnim situacijama jer nije dovoljno uvažena ljudska priroda odnosno shvatanje o ljudima je dosta idealizovano što dovodi do pojave konflikata u okviru tima.

Mora se uvažavati činjenica da je ponašanje članova tima uzrokovano, motivisano i ciljno usmereno a na njega utiču sredina, nasleđe i trenutni motivi. LJudi se mogu motivisati da deluju u pravcu željenog ponašanja (dostizanja ciljeva) ako se ciljevi projekta usklade sa ciljevima pojedinaca. U timovima gde to nije rešeno motivacija članova tima je slaba, češće dolazi do konflikata a radni moral je slabiji.

Nezaobilazna pojava pri timskom rešavanju problema projektne prirode jeste konflikt. Konflikti mogu uticati pozitivno i negativno na članove tima. NJima se može upravljati odnosno na njih se može uticati. Umešnost rukovodioca tima upravo dolazi do izražaja u stvaranju uslova za ispoljavanje pozitivnih učinaka konflikata (podsticanje ljudi na razmišljanje i donošenje racionalnih odluka) i u smanjenju i neutralisanju negativnih uticaja konflikata na rad tima.

Postoje određeni ograničavajući faktori (psihološke prirode) koji članove tima odvraćaju od glavnih zadataka(Panić i dr., 2018):

- unutrašnji konflikt članova tima nastao kao rezultat težnje za nezavisnošću od članova grupe (i rukovodioca projekta) i objektivne zavisnosti od grupe - tima (i posebno od rukovodioca tima);
- stvaranje neformalnih grupa u okviru tima;
- pojava konflikata između članova tima.

Rukovodilac tima može i treba da utiče na: ulogu i funkciju pojedinih članova tima; ciljeve tima; grupne procese; interpersonalne odnose u timu (grupi); pojedinačno

ponašanje članova tima i pravednu raspodelu "zarađene vrednosti - ostvarene dobiti" i javne promocije članova tima.

Praksa pokazuje da rukovodioci timova više rade na prva dva objekta uticaja a da realna situacija nalaže veće angažovanje i uticaj na zadnja tri objekta uticaja.

Izvori konflikata u radu tima mogu biti(Avakumović i dr., 2021(a)):

- konflikt zbog prioriteta aktivnosti (različita mišljenja o prioritetima aktivnosti);
- konflikt zbog administartivne procedure (različita mišljenja u vezi s administrativnim prioritetima, odgovornostima i izveštavanjem);
- konflikt zbog tehničkih pitanja (različita mišljenja oko specifikacije tehničkih postupaka i drugih tehničkih pitanja);
- konflikti zbog ljudskih resursa (ograničenost resursa i dualnost u naređivanju - izdavanju zadataka);
- konflikt zbog troškova - gubitaka (različita procena troškova i mišljenja u vezi toga);
- konflikt zbog programa (sadržaj programa i redosled događaja);
- lični konflikt (različita mišljenja i gledanja kao posledica razlike među ljudima).

Iskustva iz prakse pokazuju da su prioriteti projekta, tehnička pitanja, ljudski resursi i programi najčešći izvori konflikata kod realizacije projekta.

Osnovni načini rešavanja konflikata su konfrotacija, kompromis, izglađivanje (popravljanje - poravnavanje), prisiljavanje i povlačenje.

Konfrontacija je način rešavanja konflikta kroz direktno sučeljavanje mišljenja i ideja različitih učesnika(Radovanović i dr., 2021).

Kompromis je način rešavanja konflikta gde svaki učesnik konflikta nešto gubi i dobija odnosno svaki član umešan u konflikt odstupa delimično od svog mišljenja i svojih stavova kako bi se našlo zajedničko rešenje kroz usaglašavanje stavova.

Izglađivanje je način rešavanja konflikta kroz postepeno smanjivanje razlika u mišljenjima i kroz sporazumevanje(Janovac & Virijević-Jovanović, 2020).

Metod prisiljavanja predstavlja način rešavanja konflikta kroz nametanje svog mišljenja drugoj strani i vršenje pritiska da ga druga strana prihvati.

Povlačenje je metod rešavanja konflikta kod koga se jedna strana povlači iz konflikta. Ovaj način rešavanja konflikta nije poželjan kod timskog rada i upravljanja projektima.

Organizacija timskog rada

Tim kao pojam nije ni nov ni nepoznat, ali je nedovoljno i površno razrađen sa organiizacionog stanovišta. Tim nije bilo kakav skup ljudi. To je skup ljudi raznovrsnih struka, sa tačno određenim ulogama, čiji je zadatak da na adekvatan način, svestrano priđu rešavanju kompleksnih problema(Berber i dr., 2019). Danas je sve više složenih problema, posebno iz područja organiizacije i rukovođenja i zato je neophodno da se na jedan dobro osmišljen način uključe u njihovo rešavanje stručnjaci različitih specijalnosti, radi svestranog zahvatanja kompleksnih problema.

To nije stalno organizaciono telo, već radna struktura za izvršenje konkretnog zadatka(Cvjetković i dr., 2021). Tim se formira za svaki zadatak posebno i po izvršenju takvog zadatka prestaje njegova funkcija. Dakle, tim ne predstavlja posebni tip organizacije, mada je za izvršenje zadatka primenom metoda timskog rada potrebno da organizaciona struktura bude tako podešena da omogućava formiranje timova i primenu timskog rada.

Članovi tima ne moraju da budu istog organizacionog položaja, ali moraju da budu kompetentni u ekspertnom smislu. Ali, za vreme rada svi članovi tima su ravnopravni i nijedan član nema privilegije zbog položaja. Tako član tima sa manjom funkcijom ili bez funkcije, sa manjim činom ili bez čina, sa ili bez titule, ulazi u tim ravnopravno s drugim članovima. A za vreme rada presudan je stručan prilaz zasnovan na činjenicama, kako bi se određeni problem najoptimalnije rešio(Dakić i dr., 2021).

Članovi tima se biraju po specijalnosti i području delovanja i na taj način se pokrivaju svi aspekti problema ili zadatka. Tako se dobija ukupni radni i stručni potencijal koji je idealan za rešavanje problema, a inače nedostižan za pojedinca.

Međutim, mora se posebno naglasiti da je tim jedno, a timska koncepcija organizovanja nešto sasvim drugo. Polazeći od toga, treba istaći da se sve bitne i značajne aktivnosti obuhvataju adekvatnim timski organizovanim stručnim kadrom. Timovi se, zavisno od faze u odvijanju aktivnosti, menjaju i pregrupišu. Bulat razlikuje tri vrste timova: osnovne timove, koordinacione timove i kompleksne timove na nivou celine.

Sa stanovišta postupnog prihvatanja i uvođenja ovog koncepta, suštinsko obeležje timskog koncepta organizacije rada moglo bi se u kondenzovanom obliku izložiti na sledeći način:

Timski koncept organizacije ne zahteva ukidanje organizacione strukture u tradicionalnom - klasičnom smislu, ali je potrebna njena modifikacija radi pružanja veće mogućnosti za formiranje timova i primenu timskog rada(Avakumović i dr., 2021)(b)).

U današnjim uslovima rada, sve je više složenih problema koji zahtevaju specijalnu radnu strukturu za svoje rešenje, što može da obezbedi samo timska organizacija rada.

Zatvoreni oblici krute hijerarhijske strukture, sa strogo podeljenim resorskim nadležnostima, više nisu u stanju da pruže zadovoljavajuće, svestrano razmotreno rešenje nekog kompleksnog problema, što dovodi do daljeg usložavanja situacije i usporavanja razvojnog hoda.

Kada govori o organizaciji timskog rada, dr Branislav Jovanović kaže: "Za pravilno postavljanje timske organizcije rada neophodno je: definisati problem; shvatiti zadatak; raščlaniti zadatak; iznaći količinu potrebnog rada i vrstu (profil) znanja za rešavanje problema; obezbediti (predvideti materijalne, prostorne i vremenske činioce za rešavanje problema; odabrati ljude za rešavanje problema; odrediti (postaviti) organizacijsku strukturu; svakom članu u timu dati konkretan zadatak; obezbediti uvid organizatora nad radom tima."(Mayer et al., 2016)

Baker i njegova grupa su nastojali da utvrde odnos između struktura grupe i prirode zadatka. Došli su do zaključka da se centralizovane strukture podesne za jednostavne zadatke, dok se za složene zadatke koji traže kreativnost, elastičnost i sveobuhvatnost u svom rešavanju podesnije decentralizovane strukture podesnije, kako u pogledu kvaliteta tako i u pogledu brzine rešavanja zadatka.

Zaključak

Previše autoritativno i dominantno nastupanje pojedinih linijskih i funkcionlanih rukovodioca u ulozi članova tima; Status u timu nije određen samo ličnim karakteristikama članova i aktivnošću u timu, nego i time koji status pojedinac ima van tima u organima hijerarhijskog ustrojstva. Više se pažnje posvećuje idejama koje iznosi član tima sa višim nego onaj sa nižim hijerarhijskim statusom. Rasprava o problemu je otvorena među jednakim po statusu, dok je suzdržana ili sasvim odsutna među onima čiji je status znatno različit. Istraživanja pokazuju da se članovi tima sa nižim statusom, retko suprotsavljaju onim članovima tima od kojih im zavisi napredovanje, bez obzira na to koliko im se razlikuju mišljenja.

Jake ličnosti i linijski rukovodioci prvi iznose svoja gledanja i stavove po pitanju rešavanja problema koji se rešavaju timski; U timu se može pojaviti ličnost koja je poznata po svom uticaju u teoriji i praksi. Takva ličnost, sa visokim autoritetom, predstavlja jaku ličnost. Za mišljenjem takve ličnosti se često povode i ostali članovi tima, jer je ta ličnost već ranije dokazala svoje sposobnosti u rešavanju sličnih problema. Međutim, zaključci te ličnosti ne moraju uvek biti bolji od mišljenja ostalih. U timskom radu postoji potreba da svi razmišljaju i nude svoja rešenja. Članovi tima treba slobodno da iznose svoje stavove i onda kada se ti stavovi razlikuju od stavova jakih ličnosti.

Previše autoritativno i dominantno nastupanje rukovodioca tima; Zbog svog položaja, rukovodilac u štabnoj organizaciji može na više načina da utiče na rešenje. Nekada rukovodilac do te mere utiče na rešenje da timu ostane jedina uloga da izvršiocima i pretpostavljenom stavi do znanja da se problemi u toj organizaciji rešavaju timski. Čest je slučaj da se manje rešava problem zbog kojeg postoji tim, a više traži obrazloženje za donetu odluku. Ovakav odnos rukovodioca prema timu i timskom radu omalovažava tismki rad, a formalno ostavlja utisak njegove primene. Uticaj rukovodioca dolazi posebno do izražaja ako on poseduje karakterne crte dominantnosti i autoritarnosti. Težnja za dominacijom, kao crta ličnosti, dolazi do izražaja u čestom uzimanju reči u raspravi, prekidanju drugih u govoru, ispoljavanju otpora prema kritičkim primedbama i odbijanju da se, makar postojali za to argumenti, menjaju vlastite ocene. Sve ovo dovodi do pasiviziranja i odsutnosti svake kreativnosti članova tima. Autoritarnost, kao osobina, razlikuje se od dominantnosti po tome što autoritarna osoba teži za dominacijom nad nižima po rangu a pokazuje pokornost prema višima. Ima isti efekat na rad tima kao i dominantnost.

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ROLE OF TEAM MANAGEMENT IN MODERN BUSINESS CONDITIONS

Slobodan Adžić[13], Radan Kostić[14], Marijana Milunović[15], Tijana Savić Tot[16], Dejan Jeremić[17], Slobodan Stanojević[18]

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Abstract

Teamwork requires quality two-way communication in a team, both formal and informal, which can only be achieved by increased engagement of senders and recipients of information in the communication process. Quality communication removes, or minimizes, psychological, semantic, physical and technical obstacles to the communication process.

Successful functioning of a team requires constant exchange of information between team members, creating a favorable organizational climate (team atmosphere), motivating team members, encouraging team members to creative work and initiative and subtly guiding team members towards the goal.

Key words: *management, team work, organization of work.*

Introduction

Behavior of team members is caused (need, expectation, motivation from the system or environment), directed (goal-oriented) and motivated, and it is greatly influenced by heritage (genetic physical and mental traits, experience and learning), the environment (man interacts with it and it changes dynamically in time) and

[13] Full Professor Slobodan Adžić PhD, University Union Nikola Tesla, Faculty of Management, Njegoševa 1a, 21205 Sremski Karlovci, Republic of Serbia, E-mail: s.adzic@famns.edu.rs

[14] Asisstent Professor Radan Kostić PhD, Military Academy, University of Defense, Belgrade, Republic of Serbia, E-mail: kostic.radan1976@gmail.com

[15] Associate Professor Marijana Milunović PhD, University Union Nikola Tesla, Faculty of Management, Njegoševa 1a, 21205 Sremski Karlovci, Republic of Serbia, E-mail: milunovic@famns.edu.rs

[16] Associate Professor Tijana Savić Tot PhD, University Union Nikola Tesla, Faculty of Management, Njegoševa 1a, 21205 Sremski Karlovci, Republic of Serbia, E-mail: savic@famns.edu.rs

[17] Associate Professor Dejan Jremić PhD, Sequester Employment, Đušina 9, Belgrade, Republic of Serbia, E-mail: office@sequesteremployment.com

[18] Associate Professor Slobodan Stanojević PhD, Faculty of Applied Management, Economics and Finance, Jevrejska 24, 11000 Belgrade, Republic of Serbia, E-mail: slobodan.stanojevic@mef.edu.rs

current motives (arise as a result of internal processes or as a reaction of man to the organizational environment). The behavior of team members can be predicted, controlled, directed, adjusted and changed by adequate actions of the team leader (Mićović & Miletić, 2019).

Organization of work in a group (team) must be designed so that the needs of individuals and groups are met and that people get satisfaction from the work itself (Tešić et al., 2021). Prerequisites for team members to perform tasks efficiently are: for team members to accept the goals to be pursued; choice of an adequate way, i.e. leadership style (democratic), and the existence of a certain system of incentives, i.e. recognition and rewards for work, which are known in advance to team members.

Team members participate in the preparation and decision-making of the team's work. They must know their roles and responsibilities, to have a broad understanding, which is beyond the technical needs of other members of the organization, because they are animators and protagonists of new ways of working and striving in the organization (Nabih et. Al., 2016).

Teamwork is based on full cooperation and constant mutual information, so it is free of classic rivalry and prestige, because there is no so-called primacy of ideas that bring "glory". In team work, they communicate directly and share information, present ideas immediately in order to solve the problem as soon as possible. Of course, authorship, if it matters, is not disputed by anyone, but the idea is used immediately.

Teamwork is characterized by unlimited movement of information relevant to the task. Every member of the team, therefore, must be immediately informed of all occurrences and changes.

Isolated (separate) work is not tolerated in team work, so that someone in an advanced stage does not realize that he is "on the wrong path" or that, what he is doing is not necessary at all. That is why permanent mutual information, confrontation of views, full cooperation and constant consultation of other team members are necessary in team work (Ivanova & Ristić, 2020).

Every proposal, part or aspect of the task in a team becomes the subject of open and constructive discussion (debate), and the positions taken are the views of the team as a whole. Due to the constructiveness of the discussion (discussion), functions, members, ranks, titles, etc. must not be expressed. Namely, these are characteristics of team members in situations when they are "out of the team", and they must not have an influence in the team, considering that all team members are equal.

The process of constant communication in a team is one of the more important characteristics of teamwork, and it enables keeping all team members up to date and provides the opportunity for team members to influence each other (Dabke, 2016).

Criticism is also an important factor in the work of a team, because members express their expert opinions, which others refute or do not refute, but they are mostly criticized. It is constructive and is an integral part of the help of all team members to each of its members in order to find the best solution.

Preparations for introducing teamwork

Organizing teamwork requires a new division of tasks, responsibilities and competencies in the group and especially a new managerial status of the team leader, which causes disruptions in relation to previous habits and functioning of the system.

A major obstacle to teamwork is the hierarchical position of managers and existing understandings in existing permanent organizational structures.

Teamwork is very difficult to carry out in an organization where neither the power of order, nor the authority nor the costs are under the jurisdiction of one organizational structure or one person (Hair et al., 2019).

For the realization of a project by hiring an expert working team, it is necessary to ensure a proper understanding of the importance of the project and thus a positive attitude of associates, which is achieved by appropriate harmonization of professional bodies and their leaders with the team function.

Members of a permanent organization must understand and feel that teamwork and the changes it introduces achieve better help and support from associates and a stronger organization, that is, that teamwork is a gain and not a loss for the organization.

Organization of work in a group (team) must be designed so that the needs of individuals and the group are met and that people get satisfaction from the work itself.

In order for team members to efficiently perform tasks, certain preconditions must be met (Stanković & Milenković, 2018):

- acceptance of goals to be followed by team members;
- selection of an adequate way or style of leadership (democratic) and
- existence of a certain system of incentives or recognition and rewards for work.

Team members must be represented in both preparation and decision-making. They must be familiar with their role and responsibilities and have a broad understanding that is beyond the technical needs of other members of the organization because they are animators and protagonists of new ways of working and striving in the organization.

Team management

Team leader is a central figure in team management. He organizes, directs, coordinates, integrates the work of team members, solves problems and conflicts, gives tasks, all with the aim of efficient teamwork.

A team leader is required to know, be able to create and lead the team in solving problems due to which the team was formed. He is not required to be a great connoisseur of one area or discipline, but to possess certain applied knowledge from several areas (know what can be solved and with whose engagement).

Possession of authority and power gives the team leader a greater opportunity to choose resources of all kinds and communicate with entities that can significantly affect the implementation of the project (Vukotić et al., 2019).

In order for a team leader to influence team members and consultants (and certain line managers) to act in accordance with his requirements, he must possess a certain power, know human nature and motivate people to work.

A team leader should possess the following powers: power of legitimacy, power of coercion, power of reward, power of expertise and power of imitation (Fapohunda, 2013).

First three sources of power are of a formal nature and originate from the place and role that the individual has in the organizational structure and the authority he possesses in accordance with that, i.e. on the basis of temporary delegation of authority.

Power of expertise and power of reputation are related to the individual characteristics of a team leader and cannot be formally acquired but are acquired on the basis of knowledge, experience, skills, habits and management style.

A team leader can influence the members of the project team in different ways (Avakumović et al., 2021 (c)):

- authority (related to the power of legitimacy);
- persuasion (related to the power of expertise and reputation) and
- control (related to the power of reward and the power of coercion).

By further operationalization of the mentioned influences on team management and their connection with certain sources of power, the following connections between certain forms of power with certain methods of influence can be identified (Kuka et al., 2018):

- power of legitimacy allows for influence through authority;
- power of coercion enables influence through coercion;
- power of reward enables influence through work challenges, securing future work, salaries and promotions;
- power of expertise provides influence through the provision of expert opinion (expertise);
- power of imitation enables influence through friendship.

Given the specific nature of projects and the fact that project teams have an unstable organizational form (mostly temporary), it is much better when a project manager uses power gained through trust than power gained through authority (legitimate power).

Experience from practice shows that better results were achieved in project management when the power of reward and the power of expertise were applied than in the use of the power of legitimacy and the power of coercion.

Certain assumptions regarding efficient work of teams usually do not have an adequate reflection in real situations because human nature is not sufficiently respected, i.e. the understanding of people is quite idealized, which leads to conflicts within the team.

The fact that behavior of team members is caused, motivated and goal-oriented and is influenced by the environment, heritage and current motives must be taken into account. People can be motivated to act in the direction of desired behavior (achieving goals) if the goals of the project are aligned with the goals of individuals. In teams where this is not resolved, motivation of team members is weak, conflicts occur more often and work ethic is weaker.

An unavoidable phenomenon in solving project problems as a team is conflict. Conflicts can positively and negatively affect team members. They can be managed or influenced. The skill of the team leader is expressed in creating conditions for the positive effects of conflict (encouraging people to think and make rational decisions) and in reducing and neutralizing the negative effects of conflict on team work.

There are certain limiting factors (psychological in nature) that distract team members from main tasks (Panić et al., 2018):

- internal conflict of team members arising as a result of the desire for independence from group members (and project manager) and objective dependence on the group - the team (and especially from the team leader);
- creating informal groups within the team;
- the emergence of conflicts between team members.

A team leader can and should influence: the role and function of individual team members; team goals; group processes; interpersonal relationships in a team (group); individual behavior of team members and fair distribution of "earned value - realized profits" and public promotions of team members.

Practice shows that team leaders work more on the first two objects of influence, and that the real situation requires greater engagement and influence on the last three objects of influence.

Sources of conflicts in the work of the team can be (Avakumović et al., 2021 (a)):

- conflict over activity priorities (different opinions on activity priorities);
- conflict due to administrative procedure (different opinions regarding administrative priorities, responsibilities and reporting);
- conflict over technical issues (differing opinions on the specification of technical procedures and other technical issues);
- conflicts over human resources (limited resources and duality in ordering - issuing tasks);
- cost-loss conflict (different cost estimates and opinions);
- conflict due to the program (program content and sequence of events);
- personal conflict (different opinions and views as a consequence of differences between people).

Experience from practice shows that project priorities, technical issues, human resources and programs are the most common sources of conflict in project implementation.

The basic ways of resolving conflicts are confrontation, compromise, smoothing (repair - settlement), coercion and withdrawal.

Confrontation is a way of resolving conflict through direct confrontation of opinions and ideas of different participants (Radovanović et al., 2021).

Compromise is a way of resolving conflict where each participant in the conflict loses and gained something, i.e. each member involved in the conflict deviates partially from his opinion and his views in order to find a common solution through harmonization of views.

Smoothing is a way of resolving conflict through gradual reduction of differences of opinion and through agreement (Janovac & Virijević-Jovanović, 2020).

Method of coercion is a way of resolving conflict by imposing one's opinion on the other party and exerting pressure on the other party to accept it.

Withdrawal is a method of resolving a conflict in which one party withdraws from the conflict. This way of resolving conflict is not desirable in teamwork and project management.

Organization of teamwork

As a concept, a team is neither new nor unknown, but it is insufficiently and superficially elaborated from the organizational point of view. A team is not just any set of people. It is a group of people of various professions, with precisely defined roles, whose task is to approach the solution of complex problems in an adequate way, in a comprehensive way (Berber et al., 2019). Today, there are more and more complex problems, especially in the field of organization and management, and that is why it is necessary to involve experts in various specialties in solving them in a well-designed way, in order to comprehensively address complex problems.

It is not a permanent organizational body, but a working structure for performing a specific task (Cvjetković et al., 2021). A team is formed for each task separately and after performing such a task, its function ceases. Therefore, a team is not a special type of organization, although to perform the task using the method of teamwork, it is necessary that the organizational structure be adjusted to allow the formation of teams and the application of teamwork.

Team members do not have to be of the same organizational position, but they must be expertly competent. But, during work all members of the team are equal and no member has privileges due to their position. Thus, a member of a team with a smaller function or without a function, with a smaller rank or without a rank, with or without a title, enters the team on an equal footing with other members. And during the work, a professional approach based on facts is crucial, in order to solve a certain problem in the most optimal way (Dakić et al., 2021).

Team members are selected by specialty and field of activity and thus cover all aspects of the problem or task. Thus, the total work and professional potential was

obtained, which is ideal for solving problems, otherwise unattainable for an individual.

However, it must be emphasized that the team is one thing, and the team concept of organizing is something completely different. Starting from that, it should be pointed out that all important and significant activities are covered by adequate team-organized professional staff. Depending on the phase of the activity, the teams change and regroup. Bulat distinguishes three types of teams: core teams, coordination teams, and complex teams at the whole level.

From the point of view of gradual acceptance and introduction of this concept, the essential feature of a team concept of work organization could be presented in a condensed form in the following way:

The team concept of an organization does not require the abolition of the organizational structure in the traditional - classical sense, but its modification is needed to provide greater opportunities for team formation and implementation of teamwork (Avakumović et al., 2021 (b)).

In today's working conditions, there are more and more complex problems that require a special working structure for their solution, which can only be provided by a team work organization.

Closed forms of rigid hierarchical structure, with strictly divided departmental competencies, are no longer able to provide a satisfactory, comprehensively considered solution to a complex problem, which leads to further complicating the situation and slowing down the development process.

Speaking about the organization of team work, Dr. Branislav Jovanović says: "For the correct setting of team work organization, it is necessary to: define the problem; understand the task; break down the task; find out the amount of work required and the type (profile) of knowledge to solve the problem; provide (anticipate material, spatial and temporal factors for problem solving; select people for problem solving; determine (set) organizational structure; give each team member a specific task; provide organizers' insight into team work. "(Mayer et al., 2016).

Baker and his group sought to determine the relationship between group structures and the nature of the task. They came to the conclusion that centralized structures are more suitable for simple tasks, while for complex tasks that require creativity, flexibility and comprehensiveness in their solution, decentralized structures are more suitable, both in terms of quality and speed of problem solving.

Conclusion

Too authoritative and dominant performance of certain line and functional managers in the role of team members; Status in the team is determined not only by the personal characteristics of the members and the activity in the team, but also by the status that the individual has outside the team in the bodies of hierarchical organization. More attention is paid to ideas presented by a member of the team with a higher hierarchical status. Discussion of the problem is open among equals by status, while it is restrained or completely absent among those whose status is significantly different. Research shows that team members with lower status rarely oppose those team members on whom their progress depends, no matter how different their opinions are.

Strong personalities and line managers are the first to present their views and attitudes on the issue of solving problems that are solved as a team; A person who is known for his influence in theory and practice can appear in the team. Such a person, with high authority, represents a strong person. Other members of the team often follow the opinion of such a person, because that person has already proven his abilities in solving similar problems. However, the conclusions of that person do not always have to be better than the opinions of others. In teamwork, there is a need for everyone to think and offer their solutions. Team members should be free to express their views even when those views differ from those of strong personalities.

Too authoritative and dominant performance of the team leader; Due to his position, the head of the staff organization can influence the decision in several ways. Sometimes the manager influences the decision to the extent that the team remains the only role to let the executors and the superior know that the problems in that organization are solved as a team. It is often the case that the problem due to which there is a team is solved less, and the reason for the decision is sought more. This attitude of the manager towards the team and team work belittles the team work, and formally leaves the impression of its application. The influence of the leader is especially pronounced if he has the characteristics of dominance and authoritarianism. The aspiration for domination, as a personality trait, is expressed in frequent taking of words in the debate, interrupting others in speech, resisting critical remarks and refusing to change one's own assessments, even if there were arguments for that. All this leads to passivity and the absence of any creativity of team members. Authoritarianism, as a trait, differs from dominance in that an authoritarian person strives for domination over the lower in rank and shows obedience to the higher. It has the same effect on team work as dominance.

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MUNICIPALNE OBVEZNICE KAO INTRUMENT FINANSIRANJA LOKALNIH SAMOUPRAVA

Pavle Jakšić[1]

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Apstrakt

Sve veći zahtevi za poboljšanjem standarda života građana na lokalnom nivou iziskuje značajne potrebe lokalnih vlasti za novim izvorima finansiranja. Iskustva razvijenih zemalja i činjenica da su tradicionalni izvori finansiranja lokalnih samouprava nedovoljni, ukazuju na sve veći značaj municipalnih obveznica. Autor u radu ističe posebne specifičnosti municipalnih obveznica kao hartija od vrednosti. Pored toga, identifikovane su tipične vrste municipalnih obveznica, ukazujući na karakteristike svake od njih. Istaknuti su benefiti od emitovanja municipalnih obveznica, odnosno prednosti investiranja u ovaj tip hartija od vrednosti. Empirijskim istraživanjem pokazano je koje su se opštine i gradovi u Republici Srbiji odlučili za emitovanje municipalnih obveznica, pod kojim uslovima i za koju svrhu je ta emisija izvšena.

Ključne reči: *Municipalne obveznice, lokalna samouprava, kreditni rejting, hartije od vrednosti.*

JEL:*G10,H70,H74*

Uvod

Aktuelni proces urbanizacije i konstantno unapređenje kvaliteta usluga, a sve u cilju zadovoljenja sve većih potreba stanovništva, na lokalnom nivou, predstavlja globalni trend koji ne zaobilazi ni Srbiju. Iz tih razloga, potrebe za investicijama često su značajno veće od raspoložive količine sredstava jedne lokalne samouprave. S tim u vezi, lokalne vlasti su prinuđene da se okrenu i drugim izvorima finansiranja, pored već zastupljenih i popularnih tradicionalnih oblika prikupljanja javnih prihoda. Muncicipalne obveznice, upravo zbog toga, vremenom su dobijale

[1] Pavle Jakšić, Doktorand, Univerzitet u Novom Sadu, Ekonomski fakultet u Subotici, Segedinski put 9-11, Subotica; Saradnik na poslovima interne revizije, Gradska uprava Loznica, Karađorđeva 2, Loznica, telefon: +3810645055833, e-mail: pavlej236@gmail.com

na značaju, te danas predstavljaju česti oblik finansiranja za kojim potežu lokalne samouprave širom sveta. Primer najrazvijenijeg tržišta municipalnih obveznica, svakako su Sjedinjene Američke Države (97,5% svetskog tržišta municipalnog duga) (Fahim, 2012). Upravo Sjedinjene Američke Države kao nosici ovog tržišta, sugerišu zemljama u tranziciji da ovakav vid zaduživanja omogućava lokalnim vladama finansiranje njihovih rastućih potreba. Naravno, treba istaći da razvoj tržišta municipalnih obveznica direktno zavisi od nivoa razvoja tržišta kapitala u određenoj zemlji. Uz razvoj tržišta, neophodan je i razvoj institucija tržita kapitala, kao što su investicioni i penzioni fondovi, koji su faktički glavni nosioci investicionih poduhvata.

Predmet rada jeste analiza uslova pod kojim su gradovi u Srbiji izvršili emisiju municipalnih obveznica, uz osvrt na način na koji su to učinile zemlje u regionu. Pored toga, ukazuje se na specifičnosti pomenutih obveznica kao hartija od vrednosti i kao važnog instrumenta finansiranja lokalnih nivoa vlasti. Ističu se posebnosti prilikom korišćenja različitih vrsta ovih obveznica. Cilj rada jeste ukazivanje na benefite koje mogu da ostvare lokalne samouprave izdavanjem i korišćenjem municipalnih obveznica kao korisnog finansijskog instrumenta.

U radu su korišćene različite metode istraživanja radi sveobuhvatnijeg i realnijeg prikaza stanja posmatranih preduzeća. Korišćen je metod analize sadržaja, komparativni metod i sintetički metod koji je omogućio izvođenje zaključnih stavova. Za potrebe ovog istraživanja korišćeni su naučni radovi, normativni akti i objavljeni izveštaji i prospekti.

Teorijske osnove

Pozajmljivanje, emitovanjem obveznica (Labudović-Stanković, 2015), predstavlja jedan od mogućih i veoma važnih načina finansiranja lokalnih dugoročnih kapitalnih projekata (Bhattacharyay, 2013; Peng et al., 2014). Emitovanjem municipalnih obveznica obezbeđuju se jeftiniji izvori finansiranja, za razliku od klasičnog načina zaduživanja (kreditno zaduženje kod bankarskog sektora) (Dafflon, 2002; Gogova et al., 2017). Jedna od pogodnosti koje nose municipalne obveznice jeste visoki stepen likvidnosti i relativno visoka zarada koja se ostvaruje čak i ako ne postoje izuzeća od operezivanja prihoda od kamata. Kao i svake druge hartije od vrednosti, pa tako i municipalne obveznice, nose sa sobom određeni rizik za investitore. Fabozzi, Fabozzi i Feldstein (1995) ističu nekoliko rizika prilikom kupovine pomenutih obveznica: rizik kamatne stope, rizik reinvestiranja, rizik otkupa, rizik volatilnosti, poreski rizik, rizik inflacije i kreditni rizik. Od navedenih rizika, rizik neplaćanja predstavlja jedan od najozbiljnijih rizika sa kojima se mogu susresti gradske obveznice, i odnosi se na potencijalnu mogućnost izdavača da ne može da isplati po unapred utvrđenoj ceni (Sumers i Noland, 2008).

Poslednih decenija tržišta municipalnih obveznica beleži veliki rast emitovanja, sa tendencijom daljeg povećanja svake godine. Rad se oslanja na literaturu koja se direktno bavi razvijenošću Američkog tržišta hartija od vrednosti (Li i Schurhoff, 2019, Brancaccio et al., 2020; Hungonnier, 2018; Naklydov, 2019). Tržište municipalnih obveznica smatra se manje rizično od drugih tržišta, pre svega upoređujući ga sa tržištem koropracijskih hartija od vrednosti (Peng i Brucato, 2004). Karakterističnо za pomenuto tržište jeste veća pojava asimetričnih informacija, nego što je slučaj sa drugim tržištima hartija od vrednost. Takođe, treba napomenuti da se municipalnim obveznicama trguje na sekundarnom i vanberzanskom tržištu. S tim u vezi, ne postoji organizovano tržište municipalnih obveznica, kao što je slučaj sa korporacijskim hartijama od vrednosti (Daniels i Vijayakumar, 2007; Bejatović, 2008).

Municipalne obveznice kao instrument finansiranja lokalnih samouprava

Najčešći izvor prihoda, koji koristi lokalna samouprava, a po osnovu kojeg se finansiraju lokalni razvojni projekti jeste ostvareni tekući prihodi opštine (tkzv. pay as you go sistem). Drugi oblik finansiranja koji se značajno ređe primenjuje odnosi se na ranije prihode koje je lokalna samouprava ostvarila, odnosno na zaradu ostvarenu većim prilivima u odnosu na rashode u definisanom vremenskom periodu. Izvor prihoda za kojim često posežu lokalne samouprave jeste zaduživanje kod banaka na osnovu svojih budućih prihoda. Naravno, kao još jedan oblik prihoda lokalnih samouprava pojavljuju se i transferi sa drugih nivoa vlasti. Svi pomenuti izvori finansiranja lokalnog ekonomskog razvoja postaju nedovoljni, i u vezi sa tim municipalne obveznice dolaze do izražaja naročito kod zemalja u razvoju (Carić, 2000; Breuer, et al., 2015).

Rast i razvoj tržišta municipanih obveznica u Sjedinjenim Američkim Državama, delom je i zasluga karakterične decentralizovane federalne strukture američke države (SEC, 2021). Veličina ovog tržišta danas iznosi preko 3,7 biliona američkih dolara (veliki deo BDP-a) (Fahim, 2012). Kod zemalja u tranziciji stvaranje aktivnog tržišta municipanih obveznica u velikoj meri zavisi od samog stepena razvijenosti domicilnog tržišta kapitala. Karakterističan nizak nivo kreditnog rizika koji se vezuje za municipane obveznice, odnosno nivo rizika neizvršenja municipanih obveznica prikazan je u tabeli 1.

Tabela 1. Kumulativna istorijska stopa kreditnog rizika

Kreditni rejting	Moody`s		Standars & Poor`s	
	Municipalne	Korporativne	Municipalne	Korporativne
Aaa/AAA	0.00	0.52	0.00	0.60
Aa/AA	0.06	0.52	0.00	1.50
A/A	0.03	1.29	0.23	2.91

Baa/BBB	0.13	4.64	0.32	10.29
Ba/BB	2.65	19.12	1.74	29.93
B/B	11.86	43.34	8.48	53.72
Caa-C/CCC-C	16.58	69.18	44.81	69.19
Investicioni nivo	0.07	2.09	0.20	4.14
Špekulativni nivo	4.29	31.37	7.37	42.35

Izvor: An Investors Guide to Municipal Bonds, (2003) The New York: Bond Market Association

Specifičnosti različitih tipova municipalnih obveznica

Kratkoročne municipalne obveznice su obveznice koje se emituju sa rokom dospeća do 1 godine. Upravo ova karakteristika nije specifična za municipalne obveznice, s obzirom da se radi o finansijskom instrumentu koji se koristi za dugoročno finansiranje. Razlog izdavanja municipalnih obveznica na duži rok jeste činjenica da se one koriste prvenstveno radi finansiranja infrastrukturnih projekata, te se shodno tome postavlja pitanje koje je ekonomsko stanovište emitenta prilikom emisije ove vrste obveznica (Worlington, 2010). Razlog zbog kojeg se jedan emitent opredeljuje na izdavanje pomenutih obveznica na tako kratak vremenski period, jeste obezbeđenje finansijskih sredstava kojima se može pokriti eventualni budžetski deficit (Boričić, 1998). Ono što je karakteristično za kratkoročne municipalne obveznice jeste da se one pojavljuju pretežno na razvijenim finansijskim tržištima (Compton, 2009).

Za razliku od kratkoročnih, dugoročne municipalne obveznice se izdaju na duži vremenski period (duže od 1 godine). Jedini aspekt koji se razlikuje u odnosu na kartkoročne jeste period dospeća istih. Ostale razlike pre svega su ekonomske prirode. Veći prihod koji se ostvaruje izdavanjem kratkoročnih municipalnih obveznica sa sobom nosi i veći rizik prilikom plasmana, dok je vrednost plasmana značajno manja (Dorit, 1998).

Sa aspekta sigurnosti otplate duga i novčanog toka koji iz njih proizilazi, u osnovi razlikujemo dve vrste municipanih obveznica (Fabozzi i Fledstein, 2008): 1. Opšte obavezujuće municipalne obveznice; 2. Dohodovne ili prihodne municipalne obveznice. Specifičnost opštih obavezujućih municipalnih obveznica je ta što imaoci ovih obveznica poseduju garanciju da će emitent iste, dugovanja po osnovu glavnice i kamate, izmiriti obaveze iz bilo kog izvora prihoda. Emitent ima obavezu isplate pristiglog duga i iz imovine koja se smatra adekvatnom za pokrivanje pomenutih obaveza. Upravo ovakva vrsta garancije i visoki stepen zaštite interesa, koji se pruža kupcima opštih obavezujućih municipalnih obveznica osnovna je i najvažnija odlika koja izdvaja ovu vrstu municipalnih obveznica. Kod municipalnih obveznica, stepen autonomije emitenta (lokalne samouprave) direktno zavisi od nivoa decentralizacije i fiskalne autonomije emitenta (Labudović-Stanković, 2015).

Za razliku od opšte obavezujućih municipalnih obveznica, za prihodovne municipalne obveznice karakteristično je da isplata po osnovu ovih obveznica zavisi od prihoda koji se ostvari ili koji će biti ostvaren iz određenog, najčešće kapitalnog projekta isfinansiranog sredstvima obezbeđenim po osnovu pomenutih obveznica (Dorit, 1998). Razlika između gore navedenih obveznica vidljiva je i sa pravno-ekonomske prirode, kao i kod položaja emitenata, ali i kupaca ovih obveznica. Obaveza emitenta pre izdavanja prihodnih municipalnih obveznica je da priloži projekat za kojeg će se eventualno obezbediti finansijska sredstva po osnovu prodaje pomenutih obveznica. Ovaj korak značajno utiče na podizanje transparentnosti u toku postupka. Upravo priloženi projekat omogućava emitentu sagledavanje ostvarenja mogućih prihoda. Ukoliko je reč o infrastukturnim projektima koji na neki način ne generišu prihode emitent nema mogućnost emitovanja ovih obveznica. Rizik plasmana sredstava kupca u ovu vrstu municipalnih obveznica je na većem stepenu (Božić i Todorović, 2009).

Namenske municipalne obveznice relativno imaju slične karakteristike kao i prethodno navedene prihodne muncipalne obveznice. Namenske municipalne obveznica možemo okarakterisati kao specifičan vid prihodovnih obveznica. Razlika se može prepoznati u definisanju zaloge, odnosno garancije prilikom isplate pomenute obveznice. Najčešće ova garancija pojavljuje se u prihodu fiskalnog karaktera (porez). Emitent se obavezuje da će se sredstva usmerena prilikom kupovine pomenutih obveznica povratiti po osnovu osnovnog fiskalnog prava emitenta obveznica, koji se direktno vezuje sa poreskom obavezom. Najveće prepreke koje se u praksi pojavljuju kod ove vrste obveznica, vezuju se za stepen fiskalne decentralizacije države. Centralizovan fiskalni sistem jedne zemlje podrazumeva da jedinica loklane samouprave ne može obezbediti fiskalne prihode, i na taj način obezbediti budžetska sredstva za normalno funkcionisanje jedinice. U praksi može se utvrditi da u zemljama u kojima je izvršena decentralizacija fiskalnih prihoda, postoji značajno interesovanje za ovom vrstom obveznica (Carić et al., 2015; Suranji i Jarai, 2014).

Karakterisika hibridnih municipalnih obveznica je što one podrazumevaju kombinovanje specifičnosti različitih vrsta municipalnih obveznica.. U poslednjih 15 godina došlo je do ekspanzije emitovanja hibridnih obveznica, kao gore već pomenut odgovor na potrebe investitora. Jedna od tih obveznica su i osigurane municipalne obveznice, koje su karakteristične po tome što su dodatno osigurane (garancija od strane osiguravajućeg društva) (Fabozzi i Feldstein, 2008). Osiguranje daje mogućnost obveznicma da unaprede nivo sigurnosti naplate onog potraživanja koje je kreirano u skladu sa obveznicama koje su emitovane (Janković, 2012). Evidentno je da postoji rizik od nemogućnosti naplate potraživanja, koja su se odnosila na vrednost obeveznica koje su dospele. Tako emitent definiše ugovor sa osiguravajućom kućom, u cilju obezbeđenja dopunske sigurnosti, a u korist kupca.

Osiguravajuće društvo, shodno tome, u svoje ime preuzima obavezu da reguliše isplatu glavnice i kamate, ako ta obaveza nije realizovana u skladu sa ugovornim uslovima (Liu, 2011). Može se zaključiti, s obzirom na nivo osiguranja, da je i cena ovih obveznica viša u odnosu na prethodno navedene obveznice(Carić et al., 2015).

Korist od emitovanja municipalnih obveznica

Atraktivnost municipalnih obveznica ogleda se u širokoj skali pogodnosti koje nudi ova vrsta hartija od vrednosti. Upravo pomenute obveznice mogu privući veću bazu potencijalnih investitora, a ta šira investiciona baza doprinosi diverzifikaciji izvora finansiranja i jeftinijem finansiranju. Pravna sigurnost je izuzetno važno pitanje u postupku emitovanja municipalnih obveznica(Božić i Todorović, 2009).

Da bi opština ili grad ušla u postupak emisije municipalnih obveznica, i sa uspehom emitovala, odnosno prodala obveznice, neophodno je da grad raspolaže sa administrativnim, kadrovskim i drugim kapacitetima unutar organizacione strukture emitenta. Ističe se potreba da grad pre ulaska u sam proces emitovanja uradi *screening* kapaciteta ljudskih resursa i raspoložive informacione tehnologije. Dobijeni rezultati će pokazati da li postoje kapaciteti ili ne, i koje su potencijalne slabosti koje bi emitent trebao da otkloni u budećem vremenskom periodu (Compton, 2009).

Da bi se sam proces emitovanja otpočeo od strane emitenta, neophodno je da se angažuje finansijski savetnik radi efikasnije pripreme emisije obveznica. Finansijski savetnik može biti fizičko ili pravno lice, sa adekvatnim nivoom znanja i veština koje će posredno ili neposredno uticati na emisiju pomenutih obveznica (Dorit, 1998; Peng i Brucato, 2001). Iako angažovanje finansijskog savetnika predstavlja trošak za grad, njegovo izostavljanje može se pokazati kao izuzetno pogrešna odluka. Praksa je pokazala da veličina, reputacija i iskustvo pokrovitelja, koje se uglavnom meri njegovim tržišnim učešćem, značajno utiče na nivo troškova emineta pri emisije obveznica (Kenneth i Jayaraman, 2006).

Možemo istaći tri moguća načina prodaje obveznica (Fabozzi i Feldstein, 2008): 1. Tenderska prodaja (javna prodaja); 2. Prodaja putem pregovora; 3. Privatni plasman. Ukoliko se opština ili grad odluči za emitovanje obveznica, onda opštini stoji na raspolaganju mogućnost kupovine emitovanih obveznica pre njihovog dospeća kod poverilaca, odnosno kupaca obveznica (Worlington, 2010; Dugalić i Stojković, 2014).

Rezultati rada sa diskusijom

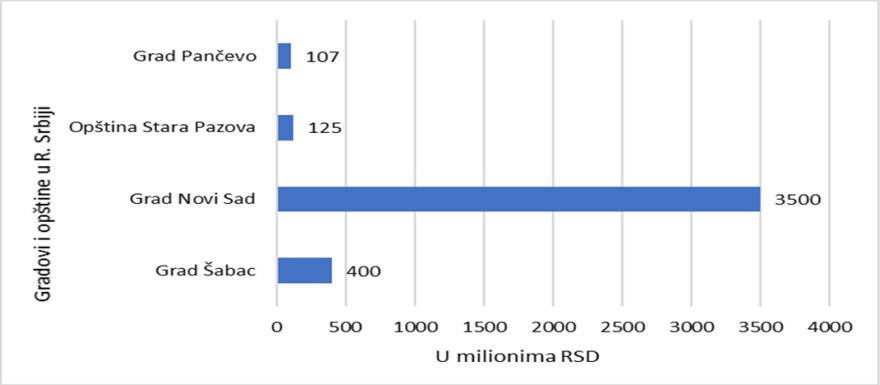
Emitovanje municipalnih obveznica predstavlja novinu na tržištu kredita lokalnih samouprava u Srbiji. Većina zemalja u tranziciji koristile su iskustva i pravne regulative primenjene kod razvijenijih finansijskih tržišta. Međutim, prema

istraživanjima (Momirović) iako je pravna regulativa pre svega bila zasnovana na modelu primenjenim u SAD-u, tržišta municipalnih obveznica u tranzicionim zemljama značajno se razlikuju od američkog modela. Na osnovu rezultata istraživanja, ovakva konstantacija može se potvrditi i kada je slučaj sa našim domicilnim finansijskih tržištem. Ako sagledamo istraživanja (Momirović, 2009; Đurović, J., et al., 2016) koja obuhvataju finansijska tržišta zemalja u regionu, može se zaključiti da su naše komšije značajno pre pristupile ovakvom vidu finansiranja (Hrvatska 2008. godine emitovala municipalne obveznice u vrednosti od 80 miliona evra; Bosna i Hercegovina 2008. godine u vrednosti od 16 KM). Treba istaći da je finansiranje putem municipalnih obveznica više zastupljeno u Republici Srpskoj nego u BiH, i da se prema istraživanju (Kozarević i Božić, 2017), 2014. godine, 92,86% građana BiH izjasnilo da postoji potreba za razvijenošću pomenutog tržišta. Razlog razlike u zastupljenošću obveznica između ova dva entiteta pre svega se može ogledati u ograničavajućem pravnom okviru iz 2010. godine, koji je značajno u tom pogledu ograničio lokalne samouprave u BiH. Takođe, je uviđeno da je procenat realizacije javnih ponuda municipalnih obveznica kao načina finansiranja nešto veći u BiH (82,14%) nego u Republici Srpskoj (69,23%), ali i da bi se taj procenat uvećao ukoliko bi se obezbedili bolji uslovi na tržištu kapitala od uslova koje nude same banke (Kozarević i Božić, 2017). Utisak je da su iskustva zemalja u regionu u upotrebi ovog finansijskog instrumenta nedovoljno uticala na veću upotrebu ovog vida zaduživanja na našem finansijskom tržištu. Naravno treba istaći domaću legislativu, koja nije na adekvatan način regulisala ovaj segment tržišta. Ona je do nedavno bila glavna prepreka u razvoju tržišta municipalnih obveznica. Mogućnost emitovanja municipalnih obveznica od strane lokalne samouprave definisano je u skladu sa Zakonom o tržištu hartija od vrednosti i drugih finansijskih instrumenra i Zakonom o javnom dugu. Problem sa kojim su se nosile lokalne samouprave, a tiču se pravne regulative, jeste Zakon o sredstvima u svojini Republike Srbije koji potiče iz 1995. godine. Novim zakonskim aktivima, definisani su uslovi koji bliže određuju sferu opštinskih obveznica i njihovo mesto u okvirima savremenog finansijskog sistema. Novi zakonski akti pre svega odnose se na dugo očekivani Zakon o javnoj svojini i neophodne izmene koje su učinjene u okviru Zakona o javnom dugu i Zakon o tržištu hartija od vrednosti i drugih finansijskih instrumenata. Izmene su se odnosile na uvođenje mogućnosti prodaje municipalnih obveznica ne samo državi ili finansijskim institucijama, nego i mogućnost prodaje fizičkim licima.

Prvi grad na teritoriji Republike Srbije, koji je u svoj finansijski portofio uključio municipalne obveznice je Grad Novi Sad. Ovaj grad je emitovao dugoročne dužničke hartije od vrednosti do nivoa 3.500.000.000,00 RSD, sa mogućnošću valutne klauzule u evrima. Pokrovitelj emisije je Unicredit Bank Srbija a.d. Beograd, izabrana 2011. godine. Rok dospeća izdatih obveznica određen je na 12

godina, bez mogućnosti uključivanja na regulisano tržište. Definisana kamata se obračunava na godišnjem nivou, korišćenjem nepromenljive kamatne stope od 6%. Namena emisije bila je izgranja kanalizacione mreže u prigradskim naseljima i izgradnja Bulevara Evrope.

Grafikon 1. Nivo emitovanih municipalnih obveznica u okviru Republike Srbije



Izvor: Autor na osnovu: Smernice za izdavanje municipalnih obveznica (2015. godina)

Grad Šabac je emitovao municipalne obveznice i to je realizovano dva dana od primarne prodaje u dematerijalizovanom obliku, na ime i u denominaciji u dinarima – indeksirano u evre. Ukupna vrednost emisije obveznica iznosi 400.000.000,00 RSD, sa rokom dospeća od 7 godina. Grad Šabac omogućio je uključivanje obveznica na regulasino tržište, odnosno na tržište Beogradske berze AD. Definisana je nominalna kamatna stopa od 6,20% i efektivna od 6,25%. Objavljivanjem Prospekta, Grad je sproveo javnu ponudu obveznica samo u Republici Srbiji. Namena emisije jeste prikupljanje finansijskih sredstava koja su namenjena finansiranju rekonstrukcije, obnove i prilagođavanja zatvorenog bazena u Gradu.

Grad Pančevo odlučio je da izvrši emisiju municipalnih obveznica u vrednosti od 107.000.000,00 RSD, sa rokom dospeća 7 godina. Za pokrovitelja emisije određen je Konzorcijum Banka Intesa AD Beograd i Komercijalna Banka AD Beograd, u skladu sa obavezujućom ponudom od 10.02.2012. godine. Definisana je nominalna kamatna stopa 7,45% i efektivna od 9,42%. Prodaja je izvršena putem privatnog plasmana. Namena prikupljenih sredstava jeste izgradnja infrastrukturnih projekata.

Opština Stara Pazova odlučila se za emisiju municipalnih obveznica u vrednosti od 125.000.000,00 RSD, sa rokom dospeća od 5 godina. Obveznice su izdate u visini od 100% vrednosti obveznice. Nominalna vrednost je iznosila 10.000,00 RSD po jednoj obveznici. Opština je postala učesnik na tržištu Beogradske berze AD. Određena fiksna kamatna stopa je iznosila 6%.

Osnovni cilj emitovanih municipalnih obveznica, odnosio se na prikupljanje sredstava koja su namenjena izvođenju investicionih projekata. Jedan od njih je i projekat izgradnje vrtića u naselju Belegiš. Isto tako, sredstva su bila namenjena i investicionom projektu izgradnje sportske dvorane sa kuglanom u Golubincima i projektu obnove i modernizacije centra u Novoj Pazovi.

Dobar kreditni rejting emitenta značajno utiče na uspešnost emisije municipalnih obveznica (Bejatović i Selak, 2016). Međutim, iz prethodno navedenih primera realizovanih emisija na našem tržištu, možemo zaključiti da gradovi Šabac, Novi Sad, Pančevo i opština Stara Pazova nisu imali problema, iako su se suočavali sa lošijim kreditnim retjtingom prilikom realizacije emisije. Loš kreditni rejting sa kojima su se suočavali gradovi nije negativno uticao na potencijalne investitore (sve emisije su uspešno sprovedene). Ako se sagledaju iskustva zemalja na razvijenijim tržištima (Fahim, 2012), može se uvideti da gradovi nakon realizacije emisije povećavaju svoj kreditni rejting.

Zaključak

U radu je naznačeno da su municipalne obveznice hartije od vrednosti koje lokalne samouprave izdaju prvenstveno radi finansiranja infrastukturnih projekata. Pored toga, na primerima emisije municipalnih obveznica gradova i opština u Republici Srbiji, jasno se može zaključiti da se ove obveznice prvenstveno izdaju na period od pet do dvanaest godina. Iako je postupak emitovanja municipalnih obveznica formalnopravno komplikovaniji u odnosu na kreditno zaduživanje, ove obveznice nose sa sobom čitav niz prednosti, kako za građane gradova tako i za same emitente (lokalne samouprave).

Relativno mali broj gradova koji su se do sada odlučili da na terotiriji Republike Srbije izdaju municipalne obveznice, potvrđuje činjenicu da tržište municipalnih obveznica Republike Srbije ima prostora za unapređenje i dalje uređenje, kako bi njegova efikasnost dosegla viši nivo. Ono je direktno povezano sa stepenom razvoja subjekata koji emituju municipalne obveznice. Pozitivna iskustva gradova i opština koja su izdala ove obveznice ogledaju se u izgradnji infrastrukturnih projekata. Činjenica je da na ograničeno izdavanje municipalnih obveznica utiču i nedovoljni administrativni kapaciteti gradova i opština. Gradovi koji su do sada emitovali obveznice poseduju značajne ekonomske i kadrovske kapacitete, pa se može zaključiti da su se do sada na ovaj korak odlučivale prvenstveno opštine koje su značajno razvijenije od ostalih. Zaključak je da se gradovi i opštine moraju dodatno informisati u vezi svih benefita ovakvog oblika zaduživanja. Da bi upotreba municipalnih

obveznica kao oblika finansiranja loklanih samouprava u Srbiji zaživela, kao bitan preduslov ističe se transparetnije vođenje lokalnih javnih finansija.

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MUNICIPAL BONDS AS AN INSTRUMENT FOR FINANCING LOCAL GOVERNMENTS

Pavle Jakšić[2]

Review paper

Abstract

Increasing demands for improving the living standards of citizens at the local level require for local authorities to find new sources of funding. The experiences of developed countries and the fact that traditional sources of financing local governments are insufficient, indicate the growing importance of municipal bonds. The author emphasizes the special specifics of municipal bonds as a security. In addition, typical types of municipal bonds have been identified, indicating the characteristics of each. The benefits of issuing municipal bonds, i.e. the advantages of investing in this type of securities, were highlighted. Empirical research has shown which municipalities and cities in the Republic of Serbia have decided to issue municipal bonds, under what conditions and for what purpose the issue was made.

Key words: *Municipal bonds, local government, credit rating, securities.*

JEL:*G10,H70,H74*

Introduction

Current process of urbanization and constant improvement of the quality of services, all in order to meet the growing needs of the population, at the local level, is a global trend that does not bypass Serbia. For these reasons, investment needs are often significantly higher than the available funds of a local government. In this regard, local authorities are forced to turn to other sources of funding, in addition to the already prevalent and popular traditional forms of public revenue collection. Municipal bonds, precisely because of that, have gained in importance over time, and today they are a common form of financing sought by local governments around the world. An example of the most developed municipal bond market is certainly the United States (97.5% of the global municipal debt market) (Fahim, 2012). United States, as the bearer of this market has suggested transitioning countries this type of borrowing, since it enables local governments to finance their growing needs. Of course, it should be noted that the development of the municipal bond market directly depends on the level of development of the capital market in a

[2] Pavle Jakšić PhD student, University of Novi Sad, Faculty of Economics in Subotica, Segedinski put no. 9-11, Subotica, Republic of Serbia; Associate in internal audit, Loznica City Administration, Karađorđeva 2, Loznica, Republic of Serbia, Phone: +381645055833, E-mail: pavlej236@gmail.com

particular country. In addition to market development, it is necessary to develop capital market institutions, such as investment and pension funds, which are in fact the main bearers of investment ventures.

The subject of the paper is the analysis of the conditions under which cities in Serbia issued municipal bonds, with reference to the way in which countries in the region have done so. In addition, the specifics of the mentioned bonds as a security and as an important instrument of financing local levels of government are pointed out. The peculiarities of using different types of these bonds stand out. The aim of this paper is to point out the benefits that local governments can achieve by issuing and using municipal bonds as a useful financial instrument.

The paper uses different research methods for a more comprehensive and realistic presentation of the state of the observed companies. The method of content analysis, the comparative method and the synthetic method were used, which enabled the derivation of concluding statements. For the purposes of this research, scientific papers, normative acts and published reports and prospectuses were used.

Theoretical basis

Lending by issuing bonds (Labudović-Stanković, 2015) is one of the possible and very important ways of financing local long-term capital projects (Bhattacharyay, 2013; Peng et al., 2014). Issuing municipal bonds provides cheaper sources of financing, in contrast to the traditional way of borrowing (credit borrowing from the banking sector) (Dafflon, 2002; Gogova et al., 2017). One of the benefits of municipal bonds is high level of liquidity and relatively high earnings that is achieved even if there are no exemptions from interest income. Like any other security, it carries a certain risk for investors. Fabozzi, Fabozzi and Feldstein (1995) highlight several risks when buying these bonds: interest rate risk, reinvestment risk, redemption risk, volatility risk, tax risk, inflation risk and credit risk. Of these risks, default risk is one of the most serious risks that city bonds may face, and refers to the potential possibility of the issuer not being able to pay at a predetermined price (Sumers and Noland, 2008).

In recent decades, the municipal bond market has seen a large increase in issuance, with a tendency to increase further each year. The paper relies on literature that directly deals with the development of the American securities market (Li and Schurhoff, 2019; Brancaccio et al., 2020; Hungonnier, 2018; Naklydov, 2019). The municipal bond market is considered less risky than other markets, primarily comparing it to the corporate securities market (Peng and Brucato, 2004). Characteristic for the mentioned market is the greater occurrence of asymmetric information than is the case with other securities markets. It should also be noted that municipal bonds are traded on the secondary and over-the-counter markets. In

this regard, there is no organized market for municipal bonds, as is the case with corporate securities (Daniels and Vijayakumar, 2007; Bejatović, 2008).

Municipal bonds as an instrument of financing local self-governments

Most common source of income, which is used by local self-government, and based on which local development projects are financed, is municipality's revenue (the so-called pay as you go system). Second form of financing, which is significantly less frequently applied, refers to previous revenues generated by local self-governments, i.e. earnings generated by higher inflows in relation to expenditures in a defined time period. Source of income that local governments often resort to is borrowing from banks based on their future income. Of course, transfers from other levels of government also appear as another form of local government revenue. All the mentioned sources of financing local economic development are becoming insufficient, and in this regard, municipal bonds are particularly pronounced in developing countries (Carić, 2000; Breuer, et al., 2015).

Growth and development of the municipal bond market in the United States is partly due to the characteristic decentralized federal structure of the US (SEC, 2021). The size of this market today is over 3.7 trillion US dollars (a large part of GDP) (Fahim, 2012). In transitioning countries, the creation of an active municipal bond market largely depends on the degree of development of the domicile capital market. Characteristic low level of credit risk associated with municipal bonds, i.e. the level of risk of default of municipal bonds is shown in Table 1.

Table 1. Cumulative historical credit risk rate

Credit raiting	Moody`s		Standars & Poor`s	
	Municipal	Corporate	Municipal	Corporate
Aaa/AAA	0.00	0.52	0.00	0.60
Aa/AA	0.06	0.52	0.00	1.50
A/A	0.03	1.29	0.23	2.91
Baa/BBB	0.13	4.64	0.32	10.29
Ba/BB	2.65	19.12	1.74	29.93
B/B	11.86	43.34	8.48	53.72
Caa-C/CCC-C	16.58	69.18	44.81	69.19
Investment level	0.07	2.09	0.20	4.14
Speculative level	4.29	31.37	7.37	42.35

Source: An Investors Guide to Municipal Bonds, (2003) The New York: Bond Market Association

Specifics of different types of municipal bonds

Short-term municipal bonds are bonds issued with a maturity of up to 1 year. This characteristic is not specific to municipal bonds, as it is a financial instrument used for long-term financing. The reason for issuing municipal bonds in the long run is

the fact that they are used primarily to finance infrastructure projects, and accordingly the question arises what is the economic position of the issuer when issuing this type of bond (Worlington, 2010). The reason why one issuer decides to issue the mentioned bonds for such a short period of time is to provide financial resources that can cover the possible budget deficit (Boričić, 1998). What is characteristic of short-term municipal bonds is that they appear predominantly in developed financial markets (Compton, 2009).

Unlike short-term, long-term municipal bonds are issued for a longer period of time (longer than 1 year). The only aspect that differs from the short-term ones is the period of their maturity. Other differences are primarily economic in nature. Higher income generated by issuing short-term municipal bonds carries with it a higher risk in placements, while the value of placements is significantly lower (Dorit, 1998).

From the aspect of security of debt repayment and cash flow arising from them, we basically distinguish two types of municipal bonds (Fabozzi and Fledstein, 2008): 1. General binding municipal bonds; 2. Income or revenue municipal bonds. The specificity of general binding municipal bonds is that the holders of these bonds have a guarantee that the issuer of the same, will settle its debts on the basis of principal and interest from any source of income. The Issuer has the obligation to pay the received debt from the assets that are considered adequate to cover the mentioned obligations. This type of guarantee and the high degree of protection of interest, which is provided to buyers of general binding municipal bonds, is the basic and most important feature that distinguishes this type of municipal bonds. In the case of municipal bonds, the degree of autonomy of the issuer (local self-government) directly depends on the level of decentralization and fiscal autonomy of the issuer (Labudović-Stanković, 2015).

Unlike generally binding municipal bonds, income municipal bonds are characterized by the fact that the payment on the basis of these bonds depends on the income realized or to be realized from a certain, mostly capital project financed by funds provided on the basis of these bonds (Dorit, 1998). The difference between the above bonds is visible from the legal and economic nature, as well as the position of issuers and buyers of these bonds. The issuer's obligation before issuing income municipal bonds is to submit a project for which financial resources will be provided, based on the sale of the mentioned bonds. This step significantly increases transparency during the procedure. The attached project enables the issuer to consider the realization of possible revenues. If it is about infrastructure projects that do not generate income in some way, the issuer does not have the possibility of issuing these bonds. The risk of placing buyer's funds in this type of municipal bonds is higher (Božić, Todorović, 2009).

Dedicated municipal bonds have relatively similar characteristics as the above-mentioned income municipal bonds. Dedicated municipal bonds can be characterized as a specific type of income bonds. The difference can be recognized in the definition of the pledge, i.e. the guarantee when paying the mentioned bond. Most often, this guarantee appears in income of a fiscal nature (tax). The issuer makes a commitment that the funds directed during the purchase of the mentioned bonds will be returned based on the basic fiscal right of the issuer of bonds, which is directly related to tax liability. Biggest obstacles that appear in practice with this type of bonds are related to the degree of fiscal decentralization of the state. The centralized fiscal system of a country implies that the unit of local self-government cannot provide fiscal revenues, and thus provide budget funds for the normal functioning of the unit. In practice, it can be established that in countries where decentralization of fiscal revenues has taken place, there is significant interest in this type of bond (Carić et al., 2015; Suranji and Jarai, 2014).

The characteristic of hybrid municipal bonds is that they involve combining the specifics of different types of municipal bonds. In the last 15 years, there has been an expansion of issuance of hybrid bonds, as the above-mentioned response to the needs of investors. One of these bonds is also secured municipal bonds, which are characterized by the fact that they are additionally insured (guarantee by the insurance company) (Fabozzi and Feldstein, 2008). Insurance gives bonds the opportunity to improve the level of security of collection of those receivables that are created in accordance with the bonds that were issued (Janković, 2012). It is evident that there is a risk of inability to collect receivables, which related to the value of bonds that have matured. Thus, the issuer defines the contract with the insurance company, in order to provide additional security, and for the benefit of the buyer. Accordingly, the insurance company undertakes in its own name the obligation to regulate the payment of principal and interest, if this obligation is not realized in accordance with the contractual conditions (Liu, 2011). It can be concluded, given the level of insurance, that the price of these bonds is higher than the previously mentioned bonds (Carić et al., 2015).

Benefits of issuing municipal bonds

Attractiveness of municipal bonds is reflected in the wide range of benefits offered by this type of securities. These bonds can attract a larger base of potential investors, and this broader investment base contributes to the diversification of sources of financing and cheaper financing. Legal certainty is an extremely important issue in the process of issuing municipal bonds (Božić and Todorović, 2009).

In order for a municipality or a city to enter in the procedure of issuing municipal bonds and successfully issue or sell bonds, it is necessary for the city to have administrative, personnel and other capacities within the organizational structure of the issuer. The need to screen the capacity of human resources and available information technology before entering the broadcasting process is emphasized. The obtained results will show whether there are capacities or not, and what are the potential weaknesses that the issuer should eliminate in the future (Compton, 2009).

In order for the issuing process to be started by the issuer, it is necessary to hire a financial advisor in order to more efficiently prepare the issue of bonds. A financial advisor can be a natural or legal person, with an adequate level of knowledge and skills that will directly or indirectly affect the issue of these bonds (Dorit, 1998; Peng and Brucato, 2001). Although hiring a financial advisor is a cost to the city, omitting it may prove to be an extremely wrong decision. Practice has shown that the size, reputation and experience of the sponsor, which is mainly measured by its market share, significantly influences the level of eminent costs in bond issues (Kenneth and Jayaraman, 2006).

We can point out three possible ways of selling bonds (Fabozzi and Feldstein, 2008): 1. Tender sale (public sale); 2. Sale by negotiation; 3. Private placement. If a municipality or city decides to issue bonds, then the municipality has the option of purchasing the issued bonds before they mature from creditors or bond buyers (Worlington, 2010; Dugalić and Stojković, 2014).

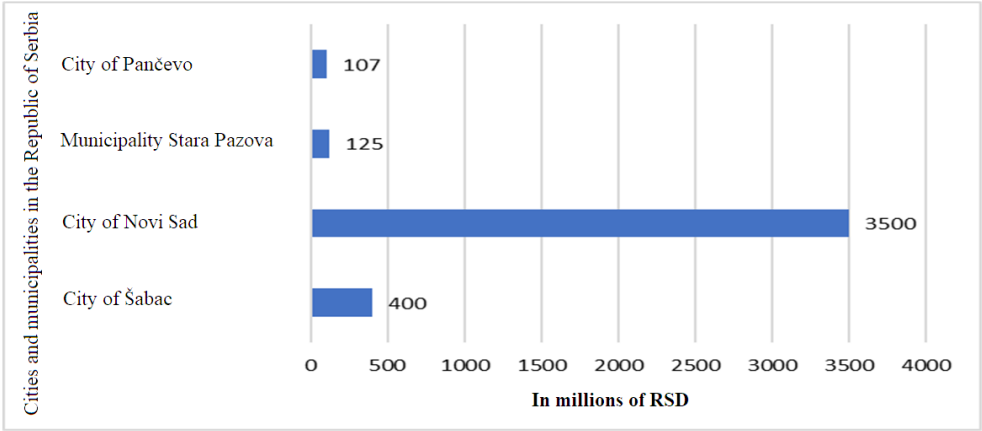
Research results with discussion

The issuance of municipal bonds is a novelty on the credit market of local governments in Serbia. Most countries in transition have used the experience and legal regulations applied in more developed financial markets. However, according to research (Momirović), although the legal regulations were primarily based on the model applied in the USA, the municipal bond markets in transition countries differ significantly from the American model. Based on the results of the research, this statement can be confirmed when it comes to our domicile financial market. If we look at research (Momirović, 2009; Đurović, J., et al., 2016) that covers the financial markets of countries in the region, it can be concluded that our neighbors significantly earlier approached this type of financing (Croatia in 2008 issued municipal bonds worth 80 million euros, Bosnia and Herzegovina in 2008 in the amount of 16 KM). It should be noted that financing through municipal bonds is more represented in

the Republika Srpska than in Bosnia and Herzegovina, and that according to the survey (Kozarević and Božić, 2017), in 2014, 92.86% of Bosnian citizens stated that there is a need for development of the market. The reason for the difference in the representation of bonds between the two entities can be seen primarily in the restrictive legal framework from 2010, which significantly limited local governments in Bosnia in this regard. Also, it was found that the percentage of realization of public offers of municipal bonds as a way of financing is slightly higher in Bosnia (82.14%) than in the Republic of Srpska (69.23%), but that this percentage would increase if better conditions were provided on the capital market from the conditions offered by the banks themselves (Kozarević and Božić, 2017). The impression is that the experience of countries in the region in the use of this financial instrument has insufficiently influenced greater use of this type of borrowing in our financial market. Of course, we should point out the domestic legislation, which did not adequately regulate this market segment. Until recently, it was the main obstacle in the development of the municipal bond market. The possibility of issuing municipal bonds by local self-government is defined in accordance with the Law on Securities Market and Other Financial Instruments and the Law on Public Debt. The problem that local self-governments have been dealing with, and which concern legal regulations, is the Law on Funds Owned by the Republic of Serbia, which originates from 1995. The new legal assets define the conditions that more closely determine the sphere of municipal bonds and their place within the modern financial system. New legal acts primarily refer to the long-awaited Law on Public Property and the necessary changes made within the Law on Public Debt and the Law on the Securities Market and Other Financial Instruments. The changes referred to the introduction of the possibility of selling municipal bonds not only to the state or financial institutions, but also the possibility of selling to individuals.

The first city in the territory of the Republic of Serbia, which included municipal bonds in its financial portfolio, is the City of Novi Sad. This city has issued long-term debt securities up to the level of 3,500,000,000.00 RSD, with the possibility of a currency clause in euros. The sponsor of the emission is Unicredit Bank a.d. Belgrade, chosen in 2011. The maturity of the issued bonds is set to 12 years, without the possibility of entering the regulated market. The defined interest is calculated on an annual basis, using a fixed interest rate of 6%. The purpose of the emission was to build a sewerage network in suburban settlements and to build the Boulevard of Europe.

Graph 1. Level of emitted municipal bonds in the Republic of Serbia



Source: Author based on: Guidelines for issuing municipal bonds (2015)

City of Sabac issued municipal bonds and it was realized two days after the primary sale in dematerialized form, in the name and denomination in dinars - indexed in euros. Total value of issued bonds is RSD 400,000,000.00, with a maturity of 7 years. City of Sabac enabled the inclusion of bonds on the regulated market, i.e. on the market of the Belgrade Stock Exchange AD. A nominal interest rate of 6.20% and an effective interest rate of 6.25% have been defined. By publishing the Prospectus, the City conducted a public offering of bonds only in the Republic of Serbia. The purpose of the emission was to raise funds that were intended for financing the reconstruction, renovation and adaptation of the indoor pool in the City.

City of Pancevo has decided to issue municipal bonds in the amount of 107,000,000.00 RSD, with a maturity of 7 years. The consortium of Banka Intesa AD Belgrade and Komercijalna Banka AD Belgrade have been determined as the sponsors of the emission, in accordance with the binding offer from 10th February 2012. A nominal interest rate of 7.45% and an effective interest rate of 9.42% have been defined. The sale was made through a private placement. The purpose of the collected funds was to build infrastructure projects.

The Municipality of Stara Pazova has decided to issue municipal bonds in the amount of 125,000,000.00 RSD, with a maturity of 5 years. The bonds were issued in the amount of 100% of the value of the bond. The nominal value was RSD 10,000.00 per one bond. The municipality became a participant in the market of the Belgrade Stock Exchange AD. The fixed interest rate was 6%. The main goal of issued municipal bonds was to raise funds intended for the implementation of investment projects. One of them was the project of

building a kindergarten in the settlement of Belegiš. Also, the funds were intended for the investment project of building a sports hall with a bowling alley in Golubinci and a project of renewal and modernization of the center in Nova Pazova.

A good credit rating of the issuer significantly affects the success of the issue of municipal bonds (Bejatović and Selak, 2016). However, from the previously mentioned examples of realized emissions on our market, we can conclude that cities of Sabac, Novi Sad, Pancevo and the municipality of Stara Pazova had no problems, although they faced a worse credit rating during the realization of the emission. Bad credit rating faced by the cities did not negatively affect potential investors (all emissions were successfully implemented). If we look at the experiences of countries in more developed markets (Fahim, 2012), it can be seen that cities increase their credit ratings after the emission.

Conclusion

The paper points out that municipal bonds are securities issued by local self-governments primarily for the purpose of financing infrastructure projects. In addition, on the examples of the issue of municipal bonds of cities and municipalities in the Republic of Serbia, it can be clearly concluded that these bonds are primarily issued for a period of five to twelve years. Although the process of issuing municipal bonds is formally more complicated in relation to credit borrowing, these bonds bring with them a number of advantages, both for citizens of those cities and for the issuers (local self-governments).

Relatively small number of cities that have so far decided to issue municipal bonds on the territory of the Republic of Serbia, confirm the fact that the municipal bond market of the Republic of Serbia has room for improvement and further regulation, so that its efficiency reaches a higher level. It is directly related to the level of development of entities issuing municipal bonds. Positive experiences of cities and municipalities that issued these bonds are reflected in the construction of infrastructure projects. The fact is that the limited issuance of municipal bonds is also affected by insufficient administrative capacity of cities and municipalities. The cities that have issued bonds so far have significant economic and human resources, so it can be concluded that so far, this step has been decided primarily by municipalities that are significantly more developed than others. The conclusion is that cities and municipalities must be additionally informed about all the benefits of this form of borrowing. In order for the use of municipal bonds as a form of

financing local self-governments in Serbia to come to life, a more transparent precondition is the more transparent management of local public finances.

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IZAZOVI SAVREMENOG SPORTSKOG MENADŽMENTA

Jovan Veselinović[3], Aleksandra Perović[4], Violeta Šiljak[5], Srećko Bačevac[6]

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Apstrakt

Skoro dva veka dug tok i razvoj modernog sporta susretao se sa nizom izazova i promena koje su prouzrokovale značajne promene u sportskom menadžmentu na globalnom nivou. Promene u sportskoj industriji utiču na sportiste, vlasnike timova, navijače i društvo u celini. U razvijenim tržišnim ekonomijama, sve veći broj ljudi profesionalno je uključen u oblast sporta i to ne samo kao sportisti, već u upravljanju različitim procesima, aktivnostima, događajima, ljudskim resursima i gotovim proizvodima povezanim sa sportom. Razvoj tehnologije takođe ima konstantan uticaj na razvoj sporta od primene u trenažnoj tehnologiji, preko upotrebe savremenih informacionih tehnologija u procesu treninga, takmičenja, do praćenja sportskih događaja, komunikacije sa navijačima i dr. Izazovi savremenog sportskog menadžmenta su mnogobrojni i zahtevaju relevantne veštine za široku lepezu poslova koje on obuhvata. Potreba za sistematskim upravljanjem svim elementima sporta naglašava značaj sportskog menadžmenta koji je orijentisan ka dugoročnom uspehu i dobrobiti, kako za sportsku industriju, tako i za sportiste i sportske organizacije.

***Ključne reči**: globalni sport, menadžment, međunarodne sportske organizacije*

***JEL**: Z20, Z29*

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[3] Vanredni profesor, dr Jovan Veselinović, Alfa BK Univerzitet, Fakultet za menadžment u sportu, Palmira Toljatija 3, Beograd, Srbija, Telefon: +381 11 26 09 754/lokal 240, E-mail: jovan.veselinovic@alfa.edu.rs

[4] Docent, dr Aleksandra Perović, Alfa BK Univerzitet, Fakultet za menadžment u sportu, Palmira Toljatija 3, Beograd, Srbija, Telefon: +381 11 26 09 754/lokal 243, E-mail: aleksandra.perovic@alfa.edu.rs

[5] Redovni profesor, dr Violeta Šiljak, Univerzitet za mir UN, Evropski centar za mir i tazvoj, Terazije 41, Beograd, Srbija, Telefon: +381 11 32 460 41/lokal 23, E-mail: vsiljak@yahoo.com

[6] Docent, dr Srećko Bačevac, Visoka škola akademskih studija Dositej, Bulevar Vojvode Putnika 7, Beograd, Srbija, Telefon: +381 64 45 64 567 , E-mail: srecko.bacevac@gmail.com

Uvod

Globalni svetski pokret, poslednjih decenija sve više prisutan u svim segmentima života, zauzeo je značajno mesto u sportu i posledično, sportskom menadžmentu. Sport uvek donosi osećaj nacionalnog ponosa koji je neuporediv sa bilo kojim drugim oblikom zabave (Saini, 2020). Tokom godina evoluirao je kao zapažen sektor ekonomije, predstavljajući bezbroj mogućnosti za ostvarenje sportskih i poslovnih karijera. Kao specijalizovana naučna oblast, sportski menadžment intenzivno se razvija u poslednje tri decenije i još uvek pokazuje pozitivan trend rasta(Avakumović i dr., 2021), za koji se očekuje da će se nastaviti istim tempom i u narednim godinama.

Sportski menadžment se odnosi na upravljanje svim poslovnim pitanjima vezanim za sport i to: svim administrativnim aspektima sportskih timova, sportskih klubova, sportista, sportskih objekata i sportskih događaja. Prisutan je na svim nivoima na kojima se sport igra - od škola do fakulteta i od lokalnog, nacionalnog do međunarodnog nivoa(Opaćić i dr., 2021). Postoji mnogo različitih mogućnosti za profesionalni razvoj u oblasti sporta i sportskog menadžmenta(Tešić i dr., 2021). Promocija sporta u svim sferama društva pored toga što osigurava inkluzivnost, stvara i mogućnosti zapošljavanja velikog broja zainteresovanih stručnjaka(Mihajlović i dr., 2020). Savremeni sport, koji je odavno postao inspirativan, privlačan, sveobuhvatan, izaziva emocije i sportska industrija se brzo razvija širom sveta.

Savremeni sport se kroz vek i po svog postojanja suočavao sa mnogim izazovima koji su uticali na delovanje sportskog menadžmenta u pravcu iznalaženja rešenja. Odluke sportskog menadžmenta nekad su dovodile do promena, a bilo je i situacija kada su nailazile na otpor (Ilić, 2006).

Transformacije u sportu u poslednjih pola veka bile su brojne i nametale su transformaciju u sportskom menadžmentu. Broj održanih sportskih događaja koji su bili pod jurisdikcijom međunarodne asocijacije letnjih olimpijskih sportova se sa 90 u 1970. godini povećao na preko 8400 u četvorogodišnjem olimpijskom ciklusu 2013-2016. godine (ASOIF, 2019). Ovaj rapidni porast sportskih događaja podrazumevao je ogromno angažovanje menadžmenta domaćina sportskih dešavanja. Ovako veliki broj održanih sportskih događaja bilo je moguće organizovati zahvaljujući prvenstveno razvoju i posledično podršci IT i komunikacione tehnologije. Koristeći internet, međunarodne granske sportske organizacije su mogle da organizuju mnogo veći broj sportskih događaja. ASOIF definiše 3 perioda razvoja međunarodnog sporta i to:

I period (1880 - 1959) – osnivanje međunarodnih granskih sportskih federacija u cilju definisanja pravila za svaku sportsku granu kako bi se nesmetano odvijala takmičenja između pojedinaca i timova iz različitih država. U ovom periodu putovanja su se izvodila uglavnom kopnenim i vodenim putem što je svakako uticalo na organizaciju održavanja međukontinentalnih ili svetskih sportskih nadmetanja(Vukša i dr., 2020).

II period (1960 - 2000) – dolazi do ubrzanog komercijalnog razvoja sportskih takmičenja vođenih biznis interesom i rapidnog porasta popularnosti sporta zahvaljujući televizijskim prenosima. Ovo je zahtevalo odgovornost Međunarodne sportske federacije u daljem radu, što je rezultiralo postavljanjem temelja savremenom sportu. Ustanovljen je globalni kalendar sportskih događaja, radi se na razvoju omladinskog sporta kao baze za elitni i profesionalni sport i ostvaruju se prvi prihodi. Vrednost i popularnost sportista i timova raste i definišu se međusobne relacije. Kao jedan od značajnih činioca Olimpijskog pokreta[7], međunarodne sportske federacije zazuzimaju svoju poziciju u globalnom sportskom pokretu zadržavajući autonomnost i odgovornost u okviru svog resora. Na Olimpijskim igrama u Barseloni 1992. godine, svaka granska Međunarodna sportska federacija čiji sportisti su učestvovali na Olimpijskim igrama, od Međunarodnog olimpijskog komiteta je dobila po 1,5 miliona $. Od tada međunarodne sportske federacije počinju da ostvaruju prihode sa njihovim konstantnim porastom. Ovaj period takođe definiše relacije pojedinih Međunarodnih sportskih federacija (ATP) ili sportskih liga (NBA, NHL) u globalnom sportskom pokretu, imajući u vidu da su ove sportske organizacije bave profesionalnim sportom gde je profit imperativ.

III period (2001 - 2019) – dolazi do diferencijacije međunarodnih sportskih federacija u zavisnosti od praćenja njihovog sportskog sadržaja bilo direktnim ili digitalnim putem. Zahvaljujući televiziji i globalnim društvenim mrežama, sport je postao dostupan svima širom planete. Masovna zainteresovanost za praćenje sportskih događaja dovela je do toga da prihodi sportista u pojedinim sportskim granama dostižu enormne cifre (ASOIF, 2019).

Imajući u vidu razvoj globalnog sporta postavlja se pitanje koji izazovi se postavljaju pred savremeni sportski menadžment. Najobimniji pregled savremenih izazova u sportu predstavio je Byers u publikaciji koja sadrži radove velikog broja autora (2016). Prvi deo navedene publikacije obuhvata globalna pitanja i odnosi se na: Globalni sport - uticaj na korporacije i institucije; Komercijalizaciju sporta; Tehnologiju i inovacije u sportu;

[7] Olimpijski pokret čine Međunarodni olimpijski komitet (IOC), Međunarodne sportske federacije (IF's) i Nacionalni olimpijski komiteti 203 države članice (NOC's) (IOC, 2020).

Korupciju u sportu; Globalnu ekonomiju sporta; Etičko ponašanje i vrednosti u sportu; Politiku i sportsko upravljanje; Međunarodno sportsko pravo; Medije i komunikacije: Upravljanje ljudskim resursima u sportu; Strateški menadžment; Životinje u sportu. Drugi deo navedene publikacije odnosi se na nacionalna pitanja sporta: Sportsku politiku; Mega sportske događaje; Učešće u sportu; Liderstvo u sportu; Rodnu ravnopravnost; Upravljanje performansama; Doping u sportu; Kockanje i industriju klađenja u sportu; Finansiranje sporta; Dogovaranje utakmica u međunarodnom sportu; Sport za invalide. Treći deo publikacije obuhvata organizaciona pitanja: Vlasništvo; Izazove društvenih medija; Upravljanje društvenim medijima u sportu; Upravljanje markom u sportu; Upravljanje krizama; Seksualnost: Homohisterija i izlazak u sport; Odanost navijača u sportu; Poverenje i kontrolu u sportskim organizacijama; Sponzorstvo u sportu; Transgresije sportista: implikacije za sportske menadžere; Društvenu odgovornost preduzeća kroz sport. Četvrti deo se bavi zaposlenošću u oblasti sportskog menadžmenta (Byers, 2016).

Neizostavno se mora uočiti brojnost izazova koji se stavljaju pred globalni sportski menadžment u cilju iznalaženja najboljih rešenja za sport. Svakako svetska literatura u oblasti sporta pruža bezbroj informacija o mogućim pravcima i tendencijama razvoja kvaliteta u sportu omogućavajući menadžerima ozbiljnu bazu podataka za njihovo dalje istraživanje i analizu.

Prateći savremene trendove u sportskom menadžmentu Marivil univerzitet (Maryvill University) iz SAD na svom blogu ukazuje na značaj kvalitetnog obrazovanja u oblasti sportskog menadžmenta(Ilić & Tasić, 2021). Budući studenti se informišu da kao budući menadžeri sportskog poslovanja moraju biti svesni sledećeg: da je prisutna rastuća popularnost video igara dovela je do e-sporta, čija takmičenja privlače velika ulaganja i obrt novca; da promene u sportskoj industriji utiču na sportiste, vlasnike timova, navijače i društvo u celini; da se profesionalni sportisti mogu više fokusirati na direktno povezivanje sa svojim obožavaocima zahvaljujući platformama društvenih medija i drugim tehnološkim aplikacijama što im omogućava potpuno nov i direktan način angažovanja sa svojim navijačima (fanovima) (Maryvill University Blog, n.d.).

Međutim, pored navedenih, pojavili su se novi, nepredviđeni izazovi sa kojima se sport na globalnom nivou suočavao tokom 2020. i 2021. godine.

Cilj rada i korišćena metodologija

Prikazano istraživanje treba da ukaže da li postoje i koji su izazovi savremenog sportskog menadžmenta. Cilj istraživanja je da se kroz

sveobuhvatno sagledavanje i razumevanje problema i dimenzija izazova sa kojima se savremeni sportski menadžment susreće na globalnom nivou, ukaže na rešenja kojima je pristupljeno u funkciji održivog razvoja sporta. Globalni pristup problemu istraživanja nametnuo je sledeća istraživačka pitanja:

1. Koje organizacije su kreirale dokumenta kojima se utvrđuje položaj i razvoj sporta na globalnom nivou?

2. Da li se globalni sportski menadžment suočava sa izazovima koji nisu obuhvaćeni navedenim strategijama?

3. Da li je prisutna neusaglašenost sportskog menadžmenta u rešavanju izazova koja može da utiče na sportiste i organizaciju sportskih događaja?

U ovom istraživanju primenjen je metod teorijske analize imajući u vidu aktuelnost teme. Sva zvanična dokumenta koja se bave istraživanom problematikom kao i naučni radovi korišćeni u istraživanju dostupni su u elektronskom formatu. Njihovom analizom sadržaja mogao se na jasan i nedvosmislen način ostvariti formulisani cilj istraživanja.

Rezultati rada sa diskusijom

Pojava izazova u globalnom svetu sporta diktirala je izradu velikog broja dokumenata od strane vodećih svetskih organizacija. Kao odgovor na pojavu određenih izazova u segmentu sporta, nastajale su strategije razvoja i održivosti sporta koje su sportska tela od globalnog do lokalnog nivoa objavila.

UN u Agendi 2030 koja se odnosi na transformaciju sveta u kom živimo i njegov održivi razvoj ukazuje da je sport takođe važan oslonac održivog razvoja i da je rastući doprinos sporta prepoznat u ostvarivanju razvoja mira u njegovoj promociji tolerancije i poštovanja kao i doprinosu u osnaživanju žena (https://treaties.un.org/doc/source/ ocs/unesco_res_5_9.2_1-E.pdf, Art 1, 32UN, 2015, 14).

Kancelarija „Sport za mir i razvoj“ UN veoma je aktivna, kako po publikaciji velikog broja dokumenata u svrhu ostvarenja svojih ciljeva, tako i po sprovođenju velikog broja projekata u svetu. Osnovna svrha postojanja ove specifične kancelarije UN je da se kroz plansko korišćenje sporta, fizičke aktivnosti i kroz igru postignu posebni razvojni i mirovni ciljevi, uključujući milenijumske razvojne ciljeve (UNOSDPa, n.d., 3).

U dokumentu koji daje pregled ciljeva za sport i održivi razvoj, pomenuta Kancelarija UN je prikazala 17 ciljeva koji su svaki ponaosob detaljno

raščlanjeni (UNOSDPb, n.d.). Ciljevi ovog globalnog pokreta koji se odnose na sport i njegov održivi razvoj su:

1. Okončati siromaštvo u svim njegovim oblicima u celom svetu,
2. Okončati glad i poboljšati ishranu,
3. Osigurati zdrav život i promociju blagostanja za sve u svim uzrasnim kategorijama,
4. Osigurati inkluzivno i ravnopravno kvalitetno obrazovanje i promovisati mogućnosti doživotnog učenja za sve[8],
5. Postići rodnu ravnopravnost i osnažiti sve žene i devojčice,
6. Osigurati dostupnost i održivo upravljanje vodama i sanitarijama,
7. Osigurati i učiniti pristupačnim, pouzdanim, održivim i modernim energije za sve
8. Promovisati održiv i uključiv ekonomski rast i produktivno zaposlenje i pristojan rad za sve,
9. Izgraditi otpornu infrastrukturu, promovisati inkluzivnu i održivu industrijalizaciju i podsticati inovacije,
10. Smanjiti nejednakost unutar i među zemljama za sve,
11. Učiniti gradove i ljudska naselja inkluzivnim, sigurnim, otpornim i održivim, osigurati održive obrasce potrošnje i proizvodnje,
12. Preduzeti hitne mere u borbi protiv klimatskih promena i njihovih uticaja,
13. Očuvati i održivo koristiti okeane, mora i morske resurse,
14. Zaštititi, obnoviti i promovisati održivo korišćenje kopnenih ekosistema, održivo upravljanje šumama i zaustaviti gubitak biodiverziteta,
15. Promovisati mirna i inkluzivna društva za održivi razvoj,
16. Omogućiti pristup jednakim pravima za sve i izgraditi efikasne, odgovorne i inkluzivne institucije na svim nivoima,
17. Ojačati načine implementacije i revitalizovati globalno partnerstvo za održivi razvoj (UNOSDPb, n.d.).

[8] Izraz „za sve“ podrazumeva celokupnu populaciju na planeti bez obzira na uzrast, pol ili neke druge odrednice. Preuzet je iz pokreta „Sport za sve“ (Sport for all).

Navedeni ciljevi sami po sebi ne ukazuju da je reč o sportu, i upravo ovde veštine sportskih menadžera mogu doći do izražaja, s obzirom da ih treba ostvariti kroz sportske projekte(Reperger, 2007)..

Savet Evrope je bila najstarija međunarodna organizacija u Evropi, a i danas je međunarodna organizacija sa najvećim brojem država članica iz Evrope. U periodu 1967. do 1989. godine Savet Evrope doneo je jedan broj rezolucija o sportu. Među najpoznatijima je svakako Evropska povelja o sportu, a možda jedna od najvažnijih je Konvencija protiv dopinga u sportu, koja je doneta 1989. godine u sedištu Saveta Evrope, u Strazburu. Stupila je na snagu 1990. godine, u trenutku kada je Konvenciju ratifikovalo pet država, što je ujedno bio trenutak kada su ispunjeni uslovi za njeno stupanje na snagu predviđeni samom Konvencijom. Dopunjavana je više puta, i trenutno važeća je iz 2005. godine (Council of Europe. n.d.)(Mihajlović i dr., 2018).

Sportska privreda je možda najznačajniji činilac u vezi između Evropske unije (EU) i sporta. Sport je u žiži interesovanja EU uvek kada se unutar sporta vrši privredna delatnost. U kontekstu ove tvrdnje, Evropski komitet je izdao 1991. godine saopštenje pod naslovom „Evropska zajednica i sport". Ovo je bio prvi dokument koji se bavio isključivo temom sporta. Početkom 90 - tih godina prošlog veka Evropski komitet je osnovao instituciju pod nazivom Evropski sportski forum sa zadatkom savetnika. Prvi forum je organizovan 1991. godine, a od tada zainteresovane sportske organizacije se sastaju svake jeseni (Evropska komisija 2011).

Lisabonski ugovor (Reformski ugovor) je međunarodni sporazum potpisan 2007. godine i predstavlja značajno poboljšanje u odnosu na ranije EU ugovore. U glavi XII, čl. 165-2 u stavu 7 dat je stav o sportu u EU: „*razvijanje evropske dimenzije u sportu, promocijom nepristranosti i otvorenosti na sportskim takmičenjima i saradnje među telima nadležnim za sport kao i zaštitom telesnoga i moralnoga integriteta sportista i sportiskinja, naročito najmlađih*“.

Najznačajnija planetarna sportska organizacija je Međunarodni olimpijski komitet (MOK). Pod njegovim rukovodstvom funkcioniše Olimpijski pokret, koji obuhvata organizacije, sportiste i druga lica koja pristaju da se ponašaju u skladu sa Olimpijskom Poveljom. Olimpijska Povelja je dokument kojim su definisani ciljevi, misija, prava i obaveze članova i dr. Na snazi je dokument iz 2020. godine, a značajno je napomenuti da je odgovarajući na izazove sa kojima se suočavao sport, MOK dopunjavao ili revidirao ovaj dokument oko 70 puta od 1984. godine, kako bi ispratio svaki novonastali izazov. Tako su nastajali brojni dokumenti koji su pored Olimpijske povelje podržavali održivi razvoj sporta (Agende, strategije, preporuke). Kako su preko članstva u MOK

u Pokret uključene i Međunarodne sportske federacije, Nacionalni olimpijski komiteti, Organizacioni Komiteti Olimpijskih Igara, nacionalne asocijacije, klubovi i lica koja im pripadaju, to podrazumeva da pripadnošću Olimpijskom pokretu svi navedeni entiteti su u obavezi da se ponašaju u skladu sa Olimpijskom Poveljom i da se pridržavaju odluka MOK.

Broj izazova koji se postavlja pred sportski menadžment je sve veći. Samo u protekle dve godine (2020. i 2021.) globalna sportska javnost je mogla da uoči izazove i promene koje su nastupile na polju sporta o kojima nije bilo pomena u velikom broju prediktivnih istraživanja u oblasti sporta.

Tokom 2020. godine pandemija COVID-19 je svojom pojavom uticala na sve segmente života na celoj planeti, a time i na segment sporta. Brojna istraživanja na temu uticaja pandemije COVID-19 na sport su se bavila održivim razvojem sporta, zdravljem sportista, mogućnošću bavljenja školskim, rekreativnim i vrhunskim sportom uz primenu preporučenih mera (Šiljak et al, 2021). MOK je u cilju očuvanja zdravlja sportista i smanjenja širenja uticaja COVID-19 ostvario partnerstvo sa Svetskom zdravstvenom organizacijom (WHO, 2020). Pored toga, osnovao je „Medicinsku COVID-19 bazu“ u kojoj su angažovani međunarodni stručnjaci za respiratorne bolesti kako bi se u pojavi infodemije podataka o pandemiji COVID-19 izdvojili oni podaci koji su tačni (IOC, 2021; Šiljak et al, 2021).

Prisustvo pandemije COVID-19 je između ostalog uticalo i na finansijski segment sporta. Nemogućnost slobodnog prisustva gledaoca, slabija zainteresovanost medija za posledicu imaju enormna smanjenja zarade (Horky, 2020). Takođe, organizacija i održavanje velikih sportskih događaja su doživeli brojna ograničenja i transformacije. Ovu tvrdnju smo mogli da pratimo preko odlaganja održavanja najvećeg sportskog događaja na svetu – Olimpijskih igara u Tokiju. Činjenica je da su se Olimpijske igre Tokio 2020 održale u 2021. kalendarskoj godini uz veliki broj mera koje su se odnosile na zaštitu svih lica koja učestvuju na Olimpijskim igrama: sportista, pratnje, zvaničnika, dobrovoljaca, sponzora, medija, gledaoca domaćina. Organizacioni komitet Tokio 2020 je objavio uputstva za svaku od navedenih grupa (IOC, 2021). Najbolji primer da su finansije bile značajnije od zdravlja sportista su termini održavanja teniskih mečeva koji su usklađeni prema terminima prenosa sponzora. Višestruke žalbe tenisera su ignorisane, pa čak ni fizički kolaps Paule Badose koja je predala meč i u kolicima izedena sa borilišta nije uticao na organizatore da izađu u susret teniserima (https://nova.rs/sport/tokio-2020/potresne-scene-iz-tokija-teniserku-na-kolicima-izveli-sa-terena-foto/). Tek kada je istog dana u toku svog meča teniski igrač Danil Medvedev, takođe pokazujući znakove iscrpljenosti zbog

nehumanih uslova odigravanja mečeva, na pitanje sudije da li je u redu, odgovorio da može da završi meč, ali ako umre ko će da preuzme odgovornost, došlo je do pomeranja termina odigravanja mečeva (https://sport.blic.rs/tokio-2020/tokio-2020-teniski-turnir-vrucina-ako-umrem-ko-ce-biti-kriv-spanska-teniserka/l591 qnq). Ovo pitanje ponašanja organizatora kasnije nije razmatrano i komentarisano javno upravo iz finansijskog razloga.

Još jedan neočekivani izazov sa kojom se suočio evropski sportski menadžment a ima dimenzije globalnog zbog uloge američke banke se dogodio pre Olimpijskih igara. Svedoci smo pokušaja vodećih fudbalskih timova iz Engleske, Španije i Italije da u aprilu 2021. godine osnuju Superligu Evrope, što bi dovelo do automatskog gašenja Lige šampiona. Koncept Superlige je zamišljen da bude takmičenje bogatih klubova uz finansijsku podršku J. P. Morgan Chase & Co. banke u iznosu od oko 4 milijarde evra (Nelson, 2021). Klubovi uključeni u „propali pokušaj“ osnivanja Superlige nisu želeli da igraju sa klubovima iz slabije razvijenih zemalja (Mančester junajted, Čelsi, Liverpul, Totenhem, Arsenal, Real Madrid, Barselona, Atletiko Madrid, Juventus, Milan). Smatrali su da bi mogli da dele zaradu među sobom u novoformiranoj Superligi. Iako je Superligu trebalo da čini 12 klubova, Mančester siti se nije izjasnio do samog kraja o svom opredelenju.

Ugledan portal u oblasti finansija u fudbalu, Svis Rambl (The Swiss Ramble), utvrdio je razlog osnivanja Superlige. Na osnovu finansijskih izveštaja pomenutih 12 klubova ustanovljeno je da imaju dug od preko 8,5 milijardi evra (Kurir, 2021).

Izazov postavljen pred UEFA, Aleksandra Čeferina kao predsednika ove prestižne evropske fudbalske organizacije i njegove saradnike, rezultirao je efikasnom odlukom celog menadžment tima UEFA. Svih 12 klubova i Fudbalski savezi Engleske, Španije i Italije su obavešteni da u slučaju osnivanja Superlige, UEFA uz podršku FIFA, neće dozvoliti da igraju ni na jednom takmičenju na domaćoj, evropskoj ili svetskoj sceni, a igračima bi bilo uskraćeno da igraju za svoje nacionalne timove (Blic, 2021).

Zaključak

Analizom rezultata istraživanja može se zaključiti da su vodeće svetske organizacije prepoznale značaj sporta još polovinom prošlog veka, na taj način što su ga uključile u veliki broj svojih dokumenata. Strategije, Agende, Povelje, Rezolucije, Preporuke i druga dokumenta objavili su: Ujedinjene nacije, UNESCO, Kancelarija „Sport za mir i razvoj“, Savet Evrope, Evropska unija, Međunarodni olimpijski komitet. Dokumenta prate savremeni sport u

svim njegovim fazama. U najvećem broju slučajeva sportski menadžment je delovao pravovremeno a objavljene su strategije održivog razvoja sporta do 2030. godine. Međutim, poslednje dve godine svedoci smo izazova koji su bili iznenadni i kao takvi nisu mogli biti obuhvaćeni strategijama razvoja održivog sporta. Na izazov pokušaja osnivanja Superlige menadžent UEFA je brzo i efikasno delovao. Takođe, zbog pojave i prisustva globalne pandemije COVID-19, sportski menadžment je izradio brojna dokumenta i preporuke kako bi uz pridržavanje preporučenih mera sport mogao dalje da funkcioniše. Iako se zdravlje sportista ističe kao imperativ, događaji sa Olimpijskih igara u Tokiju su pokazali da je finansijski momenat značajniji od zdravlja sportista i tek u momentu javnog pozivanja na odgovornost zbog nehumanih uslova održavanja teniskih mečeva menadžment Olimpijskih igara je izašao u susret sportistima. Ovo ukazuje da su odstupili od jednog od važnijih načela, zdravlja sportista, zbog sportske industrije.

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CHALENGES OF MODERN SPORT MANAGEMENT

Jovan Veselinović[9], Aleksandra Perović[10], Violeta Šiljak[11], Srećko Bačevac[12]

Original scientific paper

Abstract

The two centuries long course and development of modern sport has faced a number of challenges and changes, casing significant changes in sports management globally. Changes in the sports industry are affecting athletes, team owners, fans and society as a whole. In developed market economies, an increasing number of people are professionally involved in the field of sports, not only as athletes, but also in management of various processes, activities, events, human resources and finished products related to sports. The development of technology also has a constant impact on the development of sports in training technology, from the use of modern information technologies in the process of training, competition, to monitoring sports events, communication with fans, etc. The challenges of modern sports management are numerous and require relevant skills for the wide range of jobs it encompasses. The need for systematic management of all elements of sport emphasizes the importance of sports management that is oriented towards long-term success and well-being, both for the sports industry and for athletes and sports organizations.

Keywords*: global sports, management, international sports organizations*

JEL*: Z20, Z29*

Introduction

The global movement, which has been increasingly present in all segments of life in recent decades, has taken a significant place in sports and, consequently, in sports management. Sports always bring a sense of national pride that is incomparable to any other form of entertainment (Saini, 2020). Over the years, it

[9] Associate Professor Jovan Veselinović PhD, Alfa BK University, Faculty of Sports Management, Palmira Toljatija 3, Belgrade, Republic of Serbia, Phone: +381 11 26 09 754, E-mail: jovan.veselinovic@alfa.edu.rs

[10] Assistant Professor Aleksandra Perović PhD, Alfa BK University, Faculty of Sports Management, Palmira Toljatija 3, Belgrade, Republic of Serbia, E-mail: aleksandra.perovic@alfa.edu.rs

[11] Full Professor Violeta Šiljak PhD, UN University for Peach, European Center for Peace and Development, Terazije no. 41, Belgrade, Republic of Serbia, E-mail: vsiljak@yahoo.com

[12] Assistant Professor Srećko Bačevac PhD, The Colledge of Academic Studies "Dositej", Vojvode Putnika Boulevard 7, Belgrade, Republic of Serbia, E-mail: srecko.bacevac@gmail.com

has evolved as a notable sector of the economy, presenting countless opportunities for sports and business careers. As a specialized scientific field, sports management has been developing intensively in the last three decades and still shows a positive growth trend (Avakumović et al., 2021), which is expected to continue at the same pace in the coming years.

Sports management refers to the management of all business issues related to sports, namely: all administrative aspects of sports teams, sports clubs, athletes, sports facilities and sports events. It is present at all levels where sports are played - from schools to colleges and from local, national to international levels (Opaćić et al., 2021). There are many different opportunities for professional development in the field of sports and sports management (Tešić et al., 2021). The promotion of sports in all spheres of society, in addition to ensuring inclusiveness, also creates employment opportunities for a large number of interested experts (Mihajlović et al., 2020). Modern sport, which has long since become inspiring, attractive, all-inclusive, provokes emotions and the sports industry is developing rapidly around the world.

Throughout the century and a half of its existence, modern sport has faced many challenges that have influenced the actions of sports management in the direction of finding solutions. Decisions of sports management sometimes led to changes, and there were situations when they were met with resistance (Ilić, 2006).

Transformations in sports in the last half century have been numerous and imposed a transformation in sports management. The number of sporting events held under the jurisdiction of the International Summer Olympic Sports Association increased from 90 in 1970 to over 8,400 in the 2013-2016 four-year Olympic cycle (ASOIF, 2019). This rapid increase in sporting events has meant a huge commitment from the management of the host of sporting events. Such a large number of sporting events could be organized primarily thanks to the development and consequent support of IT and communication technology. Using the Internet, international branch sports organizations were able to organize a much larger number of sports events. ASOIF defines 3 periods of development of international sports, as follows:

I period (1880 - 1959) - the establishment of international branch sports federations in order to define the rules for each branch of sports in order to smoothly compete between individuals and teams from different countries. During this period, the trips were performed mainly by land and water, which certainly influenced the organization of intercontinental or world sports competitions (Vukša et al., 2020).

II period (1960 - 2000) - there is an accelerated commercial development of sports competitions driven by business interest and a rapid increase in the popularity of sports thanks to television broadcasts. This required the responsibility of the International Sports Federation in its further work, which resulted in laying the foundations for modern sport. A global calendar of sports events has been established, youth sports are being developed as a base for elite and professional sports, and first revenues are being generated. The value and popularity of athletes and teams is growing and mutual relations are being defined. As one of the important factors of the Olympic Movement[13], international sports federations are taking their position in the global sports movement, retaining autonomy and responsibility within their department. At the 1992 Olympic Games in Barcelona, each branch of the International Sports Federation whose athletes participated in the Olympic Games received $1.5 million from the International Olympic Committee. Since then, international sports federations have begun to generate revenue with their constant growth. This period also defines the relations of individual International Sports Federations (ATP) or sports leagues (NBA, NHL) in the global sports movement, bearing in mind that these sports organizations are engaged in professional sports where profit is imperative.

III period (2001 - 2019) - there is a differentiation of international sports federations depending on the monitoring of their sports content either directly or digitally. Thanks to television and global social networks, sports are becoming available to everyone around the planet. Mass interest in following sports events has led to the fact that the income of athletes in certain sports branches reaches enormous figures (ASOIF, 2019).

Having in mind the development of global sports, the question arises as to what challenges are posed to modern sports management. The most comprehensive overview of contemporary challenges in sports was presented by Byers in a publication containing the works of a large number of authors (2016). The first part of this publication covers global issues and relates to: Global sport - impact on corporations and institutions; Commercialization of sports; Technology and innovation in sport; Corruption in sports; Global Economics of Sport; Ethical behavior and values in sports; Politics and sports management; International sports law; Media and communications: Human resource management in sport; Strategic Management; Animals in sports. The second part of this publication deals with national sports issues: Sports policy; Mega sporting events; Participation in sports; Leadership in sports; Gender equality; Performance

[13] The Olympic Movement consists of the International Olympic Committee (IOC), the International Sports Federations (IF's) and the National Olympic Committees of 203 member states (NOC's) (IOC, 2020).

management; Doping in sport; Gambling and the sports betting industry; Sports financing; Arranging matches in international sports; Sports for the disabled. The third part of the publication covers organizational issues: Ownership; Social media challenges; Social media management in sport; Brand management in sports; Crisis management; Sexuality: Homohysteria and going out in sports; Loyalty of fans in sports; Trust and control in sports organizations; Sponsorship in sports; Athlete transgressions: implications for sports managers; Corporate social responsibility through sports. The fourth part deals with employment in the field of sports management (Byers, 2016).

The number of challenges facing global sports management in order to find the best solutions for sports must be taken into account. Certainly, the world literature in the field of sports provides countless information about possible directions and trends in the development of quality in sports, providing managers with a serious database for their further research and analysis.

Following the modern trends in sports management, Maryville University from the USA points out on its blog the importance of quality education in the field of sports management (Ilić & Tasić, 2021). Prospective students are informed that, as future managers of sports business, they must be aware of the following: growing popularity of video games has led to e-sports, whose competitions attract large investments and money turnover; changes in the sports industry affect athletes, team owners, fans and society as a whole; professional athletes can focus more on connecting directly with their fans thanks to social media platforms and other technology applications, which allows them a completely new and direct way of engaging with their fans (Maryville University Blog, n.d.).

However, in addition to the above, new, unforeseen challenges have emerged that sport has faced globally during 2020 and 2021.

Aim of the paper and used methodology

Presented research should indicate whether there are challenges and what they are in modern sports management. The aim of the research is to point out the options that have been chosen in the function of sustainable development of sports through a comprehensive view and understanding of the problems and dimensions of the challenges that modern sports management faces on a global level. The global approach to the problem of research has imposed the following research questions:

1. Which organizations have created documents that determine the position and development of sports at the global level?

2. Is global sports management facing challenges that are not covered by these strategies?

3. Is there a mismatch of sports management in solving challenges that may affect athletes and the organization of sports events?

The method of theoretical analysis was applied in this research, having in mind the relevance of the topic. All official documents dealing with the researched issues as well as scientific papers used in the research are available in electronic format. Their content analysis could achieve the formulated goal of the research in a clear and unambiguous way.

Research results and discussion

The emergence of challenges in the global world of sports has dictated the production of a large number of documents by leading world organizations. In response to the emergence of certain challenges in the sports segment, strategies for the development and sustainability of sports have emerged and have been published by sports bodies from the global to the local level.

In the "Agenda 2030" on the transformation of the world we live in and its sustainable development, the UN indicates that sports are also an important pillar of sustainable development and that the growing contribution of sports is recognized in achieving development of peace, by promoting tolerance and respect and empowering women (https://treaties.un.org/doc/source/ocs/unesco_res_5_9.2_1-E.pdf, Art 1, 32UN, 2015, 14).

The UN Office for "Sport for Development and Peace" is very active, both in publishing a large number of documents in order to achieve its goals, and in implementing a large number of projects around the world. The main purpose for the existence of this specific UN office is to achieve special development and peace goals, including the Millennium Development Goals (UNOSDP, n.d., 3), through the planned use of sports, physical activities and play.

In the document that provides an overview of the goals for sports and sustainable development, the mentioned UN Office presented 17 goals, each of which is analyzed in detail (UNOSDPb, n.d.). The goals of this global movement related to sport and its sustainable development are:

1. End poverty in all its forms throughout the world,
2. End hunger and improve nutrition,
3. Ensure healthy living and promotion of well-being for all in all age categories,

4. Ensure inclusive and equal quality education and promote lifelong learning opportunities for all,[14],
5. Achieve gender equality and empower all women and girls,
6. Ensure the availability and sustainable management of water and sanitation,
7. Provide and make affordable, reliable, sustainable and modern energy for all,
8. Promote sustainable and inclusive economic growth and productive employment and decent work for all,
9. Build resilient infrastructure, promote inclusive and sustainable industrialization and encourage innovation,
10. Reduce inequalities within and between countries for all,
11. Make cities and human settlements inclusive, safe, resilient and sustainable, ensure sustainable patterns of consumption and production,
12. Take urgent measures to combat climate change and its impacts,
13. Preserve and sustainably use the oceans, seas and marine resources,
14. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainable forest management and stop the loss of biodiversity,
15. Promote peaceful and inclusive societies for sustainable development,
16. Provide access to equal rights for all and build efficient, accountable and inclusive institutions at all levels,
17. Strengthen implementation methods and revitalize the Global Partnership for Sustainable Development (UNOSDPb, n.d.).

These goals do not in themselves indicate that it is about sports, and this is where the skills of sports managers can come to the fore, given that they need to be achieved through sports projects (Reperger, 2007).

Council of Europe was the oldest international organization in Europe, and even today it is the international organization with the largest number of member states from Europe. Between 1967 and 1989, the Council of Europe passed a number of resolutions on sports. Among the most famous is certainly the European Charter on Sports, and perhaps one of the most important is the Convention against Doping in Sports, which was adopted in 1989 at the headquarters of the Council of Europe, in Strasbourg. It entered into force in 1990, at the time when the

[14] The term "for all" means the entire population of the planet, regardless of age, gender or other determinants. Taken from the „Sports for all" movement.

Convention was ratified by five countries, which was also the moment when the conditions were met for its entry into force provided by the Convention itself. It has been amended several times, and is currently valid from 2005 (Council of Europe. N.d.) (Mihajlović et al., 2018)

The sports economy is perhaps the most important factor in the relationship between the European Union (EU) and sports. Sports are the focus of EU interest whenever economic activity is carried out within sports. In the context of this claim, the European Committee issued a statement in 1991 entitled "The European Community and Sports". This was the first document to deal exclusively with sports. In the early 1990s, the European Committee established an institution called the EU Sport Forum with the task of an adviser. The first forum was organized in 1991, and since then interested sports organizations have met every autumn (European Commission 2011).

The Lisbon Treaty (Reform Treaty) is an international agreement signed in 2007 and represents a significant improvement over previous EU treaties. In Chapter XII, Art. 165-2 in paragraph 7, it gives a position on sports in the EU: "developing the European dimension in sports, promoting impartiality and openness in sports competitions and cooperation between bodies responsible for sports and protecting the physical and moral integrity of athletes, especially the youngest."

The most important planetary sports organization is the International Olympic Committee (IOC). The Olympic Movement functions under its leadership, including organizations, athletes and other persons who agree to act in accordance with the Olympic Charter. The Olympic Charter is a document that defines the goals, mission, rights and obligations of members, etc. The 2020 document is in force, and it is important to note that in response to the challenges faced by sports, the IOC has supplemented or revised this document about 70 times since 1984, in order to follow each new challenge. Thus, numerous documents were created that, in addition to the Olympic Charter, supported the sustainable development of sports (Agendas, strategies, recommendations). As the International Sports Federations, National Olympic Committees, Organizing Committees of the Olympic Games, national associations, clubs and persons belonging to them are included in the Movement through the IOC membership, this means that belonging to the Olympic Movement all these entities are obliged to act in accordance with with the Olympic Charter and to abide by IOC decisions.

The number of challenges facing sports management is growing. Only in the past two years (2020 and 2021), the global sports public was able to see the challenges and changes that have occurred in the field of sports, which were not mentioned in a large number of predictive research in the field of sports.

During 2020, the COVID-19 pandemic affected all segments of life on the entire planet, and thus the sports segment. Numerous researches on the impact of the COVID-19 pandemic on sports have dealt with the sustainable development of sports, health of athletes, the possibility of engaging in school, recreational and top sports with the application of recommended measures (Šiljak et al, 2021). The IOC has partnered with the World Health Organization (WHO, 2020) to preserve the health of athletes and reduce the spread of influence. In addition, they founded the "Medical COVID-19 Database", which employs international experts in respiratory diseases in order to extract accurate data in the event of an infodemia of data on the COVID-19 pandemic (IOC, 2021; Šiljak et al, 2021)

The presence of the COVID-19 pandemic, among other things, affected the financial segment of sports. Impossibility of free viewer presence and weaker media interest resulted in enormous earnings reductions (Horky, 2020). Also, the organization and holding of major sporting events has undergone numerous limitations and transformations. We were able to follow this claim by postponing the largest sporting event in the world - the Olympic Games in Tokyo. The fact is that the Tokyo 2020 Olympic Games were held in 2021 with a large number of measures related to the protection of all persons participating in the Olympic Games: athletes, escorts, officials, volunteers, sponsors, media and spectators. The Tokyo 2020 Organizing Committee has published guidelines for each of these groups (IOC, 2021). The best example that finances were more important than the health of athletes are the dates of tennis matches, which were harmonized according to the terms of transfer of sponsors. Multiple complaints from tennis players were ignored, and even the physical collapse of Paula Badosa, who surrendered the match and was removed from the arena in a wheelchair, did not influence the organizers to meet the tennis players' demands (https://nova.rs/sport/tokio-2020/potresne-scene-iz-tokija-teniserku-na-kolicima-izveli-sa-terena-foto/). Only when Danil Medvedev was also showing signs of exhaustion due to inhumane conditions on the same day during his match, when asked by the referee if he was OK, he answered that he could finish the match, but if he dies, who will take responsibility, is when the matches were postponed (https://sport.blic.rs/tokio-2020/tokio-2020-teniski-turnir-vrucina-ako-umrem-ko-ce-biti-kriv-spanska-teniserka/l591 qnq). This issue of the organizers' behavior was not discussed and commented publicly due to financial reasons.

Another unexpected challenge faced by European sports management, which has global dimensions due to the role of the American bank, happened before the Olympic Games. We are witnessing the attempts of the leading football teams from England, Spain and Italy to establish the European Super League in April 2021, which would lead to the automatic shutdown of the Champions League.

The concept of the Super League is designed to be a competition of rich clubs with the financial support of J. P. Morgan Chase & Co. banks in the amount of about 4 billion euros (Nelson, 2021). Clubs involved in the "failed attempt" to establish the Super League did not want to play with clubs from less developed countries (Manchester United, Chelsea, Liverpool, Tottenham, Arsenal, Real Madrid, Barcelona, Atletico Madrid, Juventus, Milan). They thought that they could share the earnings among themselves in the newly formed Super League. Although the Super League was supposed to consist of 12 clubs, Manchester City did not declare its commitment until the very end.

Reputable portal in the field of football finance, The Swiss Ramble, has determined the reason for founding the Super League. Based on the financial reports of the mentioned 12 clubs, it was established that they have a debt of over 8.5 billion euros (Kurir, 2021).

The challenge set before UEFA and Alexander Cheferinas as the president of this prestigious European football organization and his associates, resulted in an efficient decision of the entire UEFA management team. All 12 clubs and the Football Associations of England, Spain and Italy have been informed that in the event of the establishment of the Super League, UEFA with FIFAs support will not allow them to play in any competition on the domestic, European or world stage, and players would be denied the right to play for their national teams (Blic, 2021).

Conclusion

By analyzing the research results, it can be concluded that the world's leading organizations recognized the importance of sports in the middle of the last century, by including it in a large number of their documents. Strategies, Agendas, Charters, Resolutions, Recommendations and other documents have been published by the United Nations, UNESCO, the Office for Sport for Development and Peace, the Council of Europe, the European Union, and the International Olympic Committee. The documents follow modern sports in all its phases. In most cases, sports management acted in a timely manner and strategies were published for sustainable sports development until 2030. However, in the last two years, we have witnessed challenges that were sudden and as such could not be covered by strategies for the development of sustainable sports. The UEFA manager acted quickly and efficiently on the challenge of trying to establish the Super League. Also, due to the appearance and presence of the global pandemic COVID-19, the sports management has prepared numerous documents and recommendations so that sports can continue to function in compliance with the recommended measures. Although the health of athletes stands out as an

imperative, the events from the Olympic Games in Tokyo showed that the financial moment is more important than the health of athletes. This indicates that they have deviated from one of the most important principles, the health of athletes, due to the sports industry.

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JESU LI KAUZA UGOVORNE OBAVEZE I SVRHA UGOVORA ISTO?

Milan Ječmenić[15]

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Apstrakt

U radu se ispituje odnos kauze ugovorne obaveze i svrhe ugovora. Naime, pokušava se dati odgovor na pitanje, da li se radi o dva različita pravna instituta, ili među njima, osim terminološke, druge razlike ne postoje. Problem se analizira na temelju ugovora o sponzorstvu. Izabran je upravo ovaj ugovor usled jedne njegove osobenosti. Ekonomski cilj sponzora je toliko očigledan i vidljiv, tako da se, bez imalo ustručavanja, može razmišljati o primeni ekonomske koncepcije kauze ugovorne obaveze na ovaj ugovor. Ako uzmemo u obzir da za tako nešto imamo oslonac u sudskoj praksi (naime, ima odluka u kojima je primenjena ekonomska koncepcija kauze ugovorne obaveze), kao i to, da u domaćoj pravnoj doktrini pojedini autori svrhu ugovora definišu kao ekonomski cilj, problematika postaje više nego očigledna.

Ključne reči: *kauza ugovorne obaveze, svrha ugovora, ekonomski cilj, ugovor o sponzorstvu, transfer imidža.*

JEL*: K12.*

Uvod

U ovom članku, autor analizira odnos između kauze ugovorne obaveze, sa jedne strane, i svrhe ugovora koja se pominje u članu 133 Zakona o obligacionim odnosima (u daljem tekstu ZOO) sa druge strane. Cilj je, ustanoviti da li se radi o jednom te istom institutu, ili među njima ipak ima razlike. Što se kauze ugovorne obaveze tiče, na raspolaganju su nam mešovita, objektivna (ekonomska) i subjektivna koncepcija. Mešovita koncepcija kauze ugovorne obaveze prihvaćena je u ZOO, većem delu domaće pravne teorije, kao i u sudskoj praksi. Objektivna (ekonomska) koncepcija kauze ugovorne

[15] Docent, dr Milan Ječmenić, Poslovni i pravni fakultet, Univerzitet MB, Kneza Mihaila 33, Beograd, Srbija, E-mail: milanjecmenic@yahoo.com.

obaveze prihvaćena je u jednom delu domaće pravne teorije, a u praksi naših sudova, nalazi se odluka u kojoj je kauza ugovorne obaveze tumačena na način, da se radi o ekonomskom cilju ugovarača. Subjektivna koncepcija kauze ugovorne obaveze niti ima pristalice u našoj pravnoj doktrini, niti u našoj sudskoj praksi. Sa druge strane, u našoj pravnoj doktrini, ima stavova koji poistovećuju svrhu ugovora sa kauzom ugovorne obaveze. Ipak, s obzirom na specifično poimanje kauze ugovorne obaveze koje zauzimaju zastupnici takvog stava, autori u pogledu shvatanja o tome, šta se konkretno podrazumeva pod svrhom ugovora mogu se grupisati na one koji pod svrhom ugovora vide motive ugovarača i one koji pod svrhom ugovora vide ekonomski cilj ugovarača.

Razmatraćemo postavljeno pitanje na primeru ugovora o sponzorstvu usled jedne specifičnosti ovog ugovora. Naime, za sponzora, kao jedne ugovorne strane ugovora o sponzorstvu, je toliko očigledno i jasno izražen ekonomski cilj obavezivanja, terminologijom ekonomske literature označen kao „transfer imidža“. Usled toga, čini se posve lako i primamljivo, u slučaju ugovora o sponzorstvu, posegnuti za objektivnom (ekonomskom) koncepcijom kauze ugovorne obaveze, naročito, usled toga, što se uporište za tako nešto, kako smo naveli, osim u domaćoj pravnoj teoriji, može naći i u domaćoj sudskoj praksi. Da li je to opravdano, videćemo u nastavku. Prikazaćemo kako domaći sudovi u praksi primenjuju objektivnu (ekonomsku) koncepciju kauze ugovorne obaveze, kao i kako bi to izgledalo na primeru ugovora o sponzorstvu. Kako se u slučaju ugovora o sponzorstvu radi o dvostranoobaveznom i teretnom ugovoru, to će se sve ono što u nastavku budemo napisali odnositi upravo na dvostranoobavezne i teretne ugovore.

Ukratko o ugovoru o sponzorstvu

Ugovorom o sponzorstvu, obavezuje se sponzor da u cilju podrške aktivnostima sponzorisanog, sponzorisanom isplati ugovorenu sumu novca, ili preda ugovorom predviđene stvari (u svojinu, ili na korišćenje), ili pruži ugovorene usluge (s tim da se ove obaveze mogu i kombinovati), a sponzorisani prepušta sponzoru pravo upotrebe njegovog imidža u marketinške svrhe i preuzima obavezu promocije sponzora i učešća u njegovim marketinškim aktivnostima (Ječmenić 2018, 190). Po pravilu, sponzori su uspešne kompanije, a sponzorisani uspešni pojedinci u sportu, umetnosti, kulturi, ili pak sportske organizacije i savezi, olimpijski komiteti, sportski, ili kulturno-umetnički događaji... Suštinske odlike ugovora o sponzorstvu predstavljaju činidba podrške sponzora, komunikacijska kontračinidba sponzorisanog, kao i karakteristični ekonomski cilj koji ovim ugovorom želi da postigne sponzor, i koji se u knjigama o ekonomiji naziva

transferom imidža. Radi se naime o objektivnom ekonomskom cilju svakog sponzorskog ugovora za sponzora, bez obzira ko bio sponzor, ko je spozorisani, ili u kojoj se oblasti sponzorstvo javlja. Ovaj specifični ekonomski cilj sponzora je toliko imanentan ovom ugovoru, da se u njegovom odsustvu, prema našem mišljenju, uopšte ne bi moglo govoriti o ugovoru o sponzorstvu.

Dva se pitanja sama po sebi odmah mogu postaviti. Prvo, šta transfer imidža zapravo predstavlja? Drugo, kako transfer imidža može biti ekonomski cilj? Krajnje pojednostavljeno, moglo bi se reći da transfer imidža predstavlja pokušaj da se sponzorstvom u javnosti stvori utisak o povezanosti sponzora i sponzorisanog, kako bi se na osnovu te veze pozitivni imidž koji sponzorisani uživa u javnosti prelio (transferisao) na sponzora, njegove proizvode, ili usluge, pri čemu sponzor može ojačati, ili poboljšati postojeći, ili dobiti potpuno novi imidž. Što se tiče pitanja kako transfer imidža može biti ekonomski cilj, nešto drugačije rečeno, trebalo bi ustanoviti kakav pozitivan ekonomski efekat u imovini sponzora može imati transfer imidža. U presudi nemačkog Saveznog vrhovnog suda u slučaju Marlen Ditrih, navodi se da slika, ime, kao i drugi elementi ličnosti mogu imati znatnu ekonomsku vrednost, koja je zasnovana na poznatosti i ugledu ličnosti u javnosti, a stečena kroz posebna dostignuća, uglavnom na sportskom, ili umetničkom planu. Ovu popularnost, kao i sa njom povezan imidž, mogu poznate ličnosti ekonomski eksploatisati, na taj način, da drugima uz naknadu dozvole korišćenje njihove slike, imena, ili drugih elemenata ličnosti (na osnovu kojih se oni naravno mogu prepoznati u javnosti) u reklamiranju robe, ili usluga. U reklamiranju, značajnu ulogu igra tzv. transfer imidža, pri čemu se zapravo radi o tome, da se pozitivne asocijacije koje potrošači povezuju sa nekom poznatom ličnošću, na reklamirane produkte prenose. Na taj način, poznate ličnosti, u značajnoj meri doprinose stvaranju dodate vrednosti.[16]

Sponzor ne stupa u ugovorni odnos samo radi sticanja prava iskorišćavanja imidža sponzorisanog u skladu sa svojim marketing ciljevima, nego upravo radi transfera imidža, pri čemu se sticanje prava upotrebe imidža sponzorisanog u marketinške svrhe, posmatra samo i isključivo kao sredstvo koje treba da omogući ostvarenje transfera imidža. Koliko je transfer imidža važan sponzoru, vidi se iz toga, da su sve obaveze koje ovim ugovorom preuzima sponzorisani, oblikovane tako da se što lakše realizuje transfer imidža. Ipak, kako se ne radi o obavezi rezultata, to on ne garantuje sponzoru

[16] BGH, Urt. v. 1. Dezember 1999 - I ZR 49/97 - Kammergericht, LG Berlin, dostupno na: http://lorenz.userweb.mwn.de/urteile/njw00_2195.htm. Predmet spora bila ja postmortalna zaštita prava ličnosti Marlen Ditrih od neovlašćene komercijalne upotrebe.

ostvarenje željenog transfera imidža. Ipak, obavezan je na uzdržavanje od svih postupaka koji bi mogli osujetiti transfer imidža. Tako se u inostranoj sudskoj praksi mogu pronaći brojni sporovi nastali povodom zahteva sponzora za raskid ugovora o sponzorstvu usled toga što je sponzorisani svojim postupcima osujetio ostvarenje željenog transfera imidža.[17]

Obaveze koje ugovorom o sponzorstvu preuzima sponzor, u svojoj ukupnosti, mogu se podvesti pod opšti pojam činidbe podrške, iz jednostavnog razloga, što sponzor isplatom novca, predajom stvari, ili pružanjem ugovorenih usluga, daje podršku aktivnostima sponzorisanog. Već smo napomenuli da su sve ugovorne obaveze sponzorisanog koncipirane tako da se željeni transfer imidža ostvari, te da bi to dokazali, ukratko ćemo ih skicirati. Generalno se ugovorne obaveze sponzorisanog jedinstveno mogu nazvati komunikacijskom kontračinidbom, budući da on obavlja komunikativne zadatke za sponzora, te tako javnom mnjenju saopštava njegovu poruku. Sponzorisani ugovorom o sponzorstvu ustupa sponzoru pravo upotrebe njegovog imidža u marketinške svrhe. Konkretnije, sponzorisani dozvoljava sponzoru upotrebu njegovog imena i lika (ukoliko se sponzoriše fizičko lice), ili znakova razlikovanja (ukoliko se sponzoriše pravno lice, ili događaj) u marketinške svrhe. Nadalje, preuzima obavezu promocije sponzora i učešća u njegovim marketinškim aktivnostima. Konkretnije, sponzorisani treba da na način vidljiv javnosti istakne znakove razlikovanja sponzora. Primera radi, na sportskoj opremi, sportskom terenu, prevoznim sredstvima, ulaznicama, katalozima i drugom promotivnom materijalu koji prati sponzorisani događaj... Zatim se obavezuje na aktivno učešće u reklamnim kampanjama sponzora... Ugovorom o sponzorstvu često se sponzorisani obavezuje na dobro ponašanje, odnosno preuzima tzv. obaveze dobrog ponašanja. Konkretnije, sponzorisani treba da se uzdrži svih postupaka koji bi mogli oštetiti imidž sponzora (npr. da u javnosti pominje sponzora u negativnom kontekstu), kao i postupaka koji mogu oštetiti njegov imidž (npr. da se dopinguje).[18] Takvi postupci, ne samo

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[17] Arbitražni sud iz Milana, Odluka od 7.7.1990., u sporu između kompanije sponzora Manjifiko Irge i sponzorisanog sportskog kluba Aurora Desio, dostupno u: (Mormando 1998, 60), Sud iz Rieta, Odluka od 19.3.1994., u sporu između kompanije sponzora Emeceta i sponzorisanog sportskog kluba Basket Rieti, dostupno u: (Mormando 1998, 62), Arbitražni sud iz Milana, Odluka od 25.5.1990., u sporu između kompanije sponzora Sintek Ponola i sponzorisanog sportskog kluba Virtus Palakanestro Roma, dostupno u: (Capri, Tocci 2007, 99), spor koji je nastao 2006. godine između kompanije sponzora Adidas i sponzorisanog Nemačkog plivačkog saveza, koji doduše nije dospeo pred sud, ali u javnost svakako jeste, dostupno u: (Rudiger 2010/2011, 30-35).

[18] Inače, obaveze dobrog ponašanja čak i kada nisu ugovorene, za sponzorisanog nastaju na temelju načela savesnosti i poštenja. Naime, Zakonom o obligacionim odnosima propisano je da se strane prilikom zasnivanja obligacionih odnosa, kao i prilikom realizacije prava i obaveza iz obligacionih odnosa moraju pridržavati načela savesnosti i poštenja (Zakon o obligacionim odnosima Republike

što bi mogli osujetiti ostvarenje očekivanog transfera pozitivnog imidža sa sponzorisanog na sponzora, nego bi mogli takođe prouzrokovati transfer negativnog imidža na sponzora. Takođe, sponzori vrlo često ugovaraju za sebe eksluzivnost, s obzirom da bi u slučaju da sponzorisani ima više različitih sponzora, to moglo uticati na ostvarenje željenog transfera imidža, u smislu da bi ga ako ne u potpunosti osujetilo, ono bar ublažilo.

Kauza ugovornih obaveza ugovarača iz ugovora o sponzorstvu

Opšti pojam kauza ugovorne obaveze podrazumeva razlog za preuzimanje ugovorne obaveze (Antić 2008, 223). Međutim, bliže određenje ovog pojma, to jest, preciziranje šta je konkretno razlog za preuzimanje ugovorne obaveze, nailazi na suprotstavljene stavove, kako među pravnim teoretičarima, tako i donekle u sudskoj praksi. U nastavku ćemo ukratko izložiti osnovne stavove mešovite, objektivne i subjektivne koncepcije kauze ugovorne obaveze i ustanoviti šta bi prema svakoj od njih bila kauza ugovornih obaveza ugovarača iz ugovora o sponzorstvu.

Primena mešovite koncepcije kauze ugovorne obaveze na ugovor o sponzorstvu

Pobornici mešovite koncepcije, prilikom definisanja kauze ugovorne obaveze, ukazuju na značaj kako objektivnog elementa, koji određuju kao pravni cilj obavezivanja, na osnovu koga se inače utvrđuje postojanje kauze ugovorne obaveze, i koji u dvostranoobaveznim ugovorima predstavlja ispunjenje ugovorne obaveze drugog ugovarača, tako i subjektivnog elementa, pobuda (motiva), koji su merodavni za proveru da li je kauza ugovorne obaveze dopuštena, pa se kod teretnih ugovora uzimaju u obzir samo ako su nedopušteni i ukoliko su oba ugovarača nesavesna (Perović 1981, 330-331).

Prema stanovištu mešovite koncepcije kauze ugovorne obaveze, postojanje kauze ugovorne obaveze, osim što je uslov punovažnog nastanka ugovora,

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Srbije („Sl. list SFRJ“, br. 29/78, 39/85, 45/89-odluka USJ i 57/89, „Sl. list SRJ“, br. 31/93 i „ Sl. list SCG“, br. 1/2003-Ustavna povelja), čl. 12, u daljem tekstu ZOO). Obaveze dobrog ponašanja za sponzorisanog, ali i za sponzora takođe, nalaže Zakon o oglašavanju Republike Srbije. Tako, sponzor ne sme ugrožavati integritet aktivnosti koju sponzoriše, niti sme da ošteti ugled sponzorisanog. Sa druge strane, važi za sponzorisanog zabrana izmena u imenu, ili znakovima razlikovanja sponzora, kao i zabrana oštećenja ugleda sponzora. (Zakon o oglašavanju, („Sl. glasnik RS“, br. 6/2016), čl. 6., st. 3. i st. 4). Slično je predviđeno i Međunarodnim pravilima o sponzorstvu Komisije za marketing i reklamu Međunarodne trgovačke komore iz 2003. godine. Ova pravila bi trebalo da predstavljaju smernice i standarde etičkog ponašanja sponzora i sponzorisanog, pa tako sponzor ima obavezu zaštite ugleda sponzorisanog, dok sponzorisani ima obavezu da ne ošteti ugled sponzora (ICC International Code on Sponsorship, September 2003., Commission on Marketing and Advertising, čl. 5., dostupno na: www.iccwbo.org/home/marketing).

istovremeno je i uslov njegovog održanja (Grujić 2014, 106). Zato, kauza ugovorne obaveze mora postojati ne samo u trenutku zaključenja ugovora, već i tokom dejstva ugovora, sve do trenutka izvršenja ugovornih obaveza (Dudaš 2011, 143). Tako je moguće, da u ugovoru koji je punovažno nastao, naknadno otpadne kauza ugovorne obaveze (Nikšić 2006, 1068), recimo kao posledica toga da jedan ugovarač ne izvrši ugovornu obavezu, usled čega, drugi ugovarač može jednostrano raskinuti ugovor. Dakle, nepostojanje kauze ugovorne obaveze u trenutku zaključenja ugovora rezultira ništavošću ugovora, a ako ona kasnije otpadne, ugovarač odan ugovoru isti može raskinuti.

Norme ZOO koje se tiču kauze ugovorne obaveze formulisane su u skladu sa mešovitom koncepcijom. Propisano je da svaka ugovorna obaveza mora imati dopušten osnov,[19] onaj koji nije protivan niti prinudnim propisima, niti javnom poretku, niti dobrim običajima.[20] U suprotnom, konsekvenca je ništavost ugovora, a to važi i za slučaj nepostojanja osnova.[21] Pobude (motivi) iz kojih ugovarači sklapaju ugovor, načelno, na punovažnost istog nemaju uticaja.[22] Ali, za teretne ugovore važi, da ako je pobuda (motiv) koja je bitno uticala na odluku jedne ugovorne strane da sklopi ugovor bila nedopuštena, a druga ugovorna strana za nedopuštenost pobude (motiva) znala, ili morala da zna, to rezultira ništavošću ugovora.[23]

Primena objektivne koncepcije kauze ugovorne obaveze na ugovor o sponzorstvu

Pobornici objektivne koncepcije, poznate i kao ekonomska koncepcija, kauzu ugovorne obaveze posmatraju kao ekonomski cilj ugovarača. Kauzu ugovorne obaveze vide u ekonomskom ekvivalentu, odnosno pozitivnom ekonomskom efektu kojem se u svojoj imovini ugovorne strane nadaju na osnovu sklapanja i ispunjenja konkretnog ugovora (Gams 1959, 155-157), pri čemu se željeni ekonomski cilj postiže razmenom dobara i usluga (Vuković 2019, 241). Nama se ipak čini, da je pozitivni ekonomski efekat moguć samo u imovini onog ugovarača koji u transakciji „bolje prođe“.

Međutim, u vreme nastanka ekonomske koncepcije kauze ugovorne obaveze, radilo se prevashodno o ugovorima kojima se razmenjuju materijalna dobra i usluge. Kao što smo videli, ugovorom o sponzorstvu razmenjuju se materijalna dobra, novac i stvari, ili usluge za nematerijalno dobro, imidž. Ipak

[19] ZOO, čl. 51, st. 1.
[20] ZOO, čl. 51, st. 2.
[21] ZOO, čl. 52.
[22] ZOO, čl. 53, st. 1.
[23] ZOO, čl. 53, st. 2.

bi se i ugovor o sponzorstvu mogao upodobiti ovako shvaćenoj ekonomskoj koncepciji kauze ugovorne obaveze. Kada su se u praktičnoj primeni na sponzorstvo Zakona o porezu na dobit pravnih lica[24] i Zakona o porezu na dodatu vrednost[25] javile nedoumice, Ministarstvo finansija i ekonomije je u svojim mišljenjima u cilju razjašnjenja tih nedoumica, ugovor o sponzorstvu odredilo kao ugovor kojim se razmenjuju materijalna dobra (novac i stvari), ili usluge sponzora za uslugu reklamiranja, odnosno propagande sponzorisanog.[26]

U okviru pravne literture u kojoj je zastupljena ekonomska koncepcije kauze ugovorne obaveze, ipak se može naći i daleko preciznija definicija kauze ugovorne obaveze. Tako se navodi, da kauza ugovorne obaveze predstavlja zakonom dozvoljen ekonomski cilj koji ugovarači imaju u vidu prilikom zaključenja ugovora (Kapor 1951, 98). Ova definicija pruža mogućnost njene primene i na ugovore kojima se razmenjuju materijalna dobra i usluge za nematerijalna dobra. Tako, kauzu ugovorne obaveze sponzora možemo odrediti kao željeni transfer imidža, dok bi kauza ugovorne obaveze sponzorisanog bila dobijanje novca, ili stvari kao ekonomskih dobara, ili dobijanje ugovorenih usluga kao podrške njegovim aktivnostima.

Kako smo već napomenuli u uvodnom delu, naša sudska praksa iznedrila je presudu u kojoj je kauza ugovorne obaveze definisana kao ekonomski cilj. Naime, sudski postupak je pokrenut povodom ugovora koji je bio zaključen sa ciljem konsolidovanja jedne banke. Ipak, kako konsolidacija nije ostvarena, podneta je tužba radi utvrđenja ništavosti ugovora iz razloga nepostojanja osnova. Sudovi prvog i drugog stepena konstatuju nepostojanje osnova uz obrazloženje da se nije realizovao ekonomski interes ugovornih strana i utvrđuju ništavost ugovora. Revizijski sud je imao, čini nam se potpuno opravdano, drugačije mišljenje. Smatrao je pobude i motive pravno irelevantnim jer u konkretnom slučaju nisu bili formulisani kao uslov, pa tako nisu ušli u sadržinu ugovora,[27] dok neostvarenje konsolidacije kao svrhe ugovora rezultat je poslovnog rizika koji su ugovarači preuzeli, te ne može imati za posledicu ništavost ugovora. Ipak, Savezni sud ukida ovu presudu i

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[24] Zakon o porezu na dobit pravnih lica ("Sl. glasnik RS", br. 25/2001, 80/2002, 80/2002-dr. zakon, 43/2003, 84/2004, 18/2010, 101/2011, 119/2012, 47/2013, 108/2013, 68/2014-dr. zakon i 142/2014).

[25] Zakon o porezu na dodatu vrednost („Sl. glasnik RS", br. 84/2004, 86/2004-ispr., 61/2005, 61/2007, 93/2012, 108/2013, 68/2014-dr. zakon, 142/2014).

[26] Videti, Mišljenje Ministarstva finansija i ekonomije br. 414-00-94/2003-04 od 24.06.2003., dostupno na: www.propisionline.com., i Mišljenje Ministarstva finansija i ekonomije br. 413-00-1423/2008-04 od7.7.2008., dostupno na: www.propisionline.com.

[27] Ugovarači imaju na raspolaganju mogućnost da motive iz kojih zaključuju ugovor formulišu u vidu uslova, pa bi kao rezultat toga, pravno dejstvo ugovora zavisilo od ostvarenja motiva, na isti način kako uslov utiče na nastupanje, ili prestanak dejstva pravnih poslova. Videti, (Dudaš 2011, 18).

potvrđuje presude suda prvog i drugog stepena, definišući pritom kauzu ugovorne obaveze ugovarača kao direktan razlog koji navodi na sklapanje konkretnog ugovora, a ako ona nije prepoznatljiva iz ugovora, obaveza je suda da je ustanovi uzimajući u obzir motive strana ugovornica za sklapanje dotičnog ugovora, običaje koji važe u prometu, kao i opšta moralna načela.[28]

Mišljenja smo da je stav Revizijskog suda ispravan. Željena konsolidacija čini svrhu ugovora, tako da njeno neostvarenje samo po sebi ne bi moglo imati uticaja na ugovorni odnos. Ipak, ako bi neostvarenje svrhe ugovora nastupilo kao posledica nepredvidivih, neizbežnih i nesavladivih okolnosti, tada bi u skladu sa pravilima ZOO o uticaju promenjenih okolnosti na ugovor, ugovarač na čiju štetu su se okolnosti promenile, mogao sudskim putem zahtevati raskid, ili pravičnu izmenu ugovora. Isto tako, neostvarenje svrhe ugovora za jednog ugovarača moglo bi nastupiti i kao posledica postupaka drugog ugovarača, primera radi, delimičnog neispunjenja ugovorne obaveze, pa bi ugovoru verna strana imala pravo da jednostrano raskine ugovor. Upravo je to bio slučaj, čini nam se, što se može i zaključiti iz obrazloženja presude, u kome se navodi da je tužilac dug preuzeo radi konsolidacije poslovanja banke, pri čemu konsolidacija nije ostvarena usled propusta tužene.[29]

Prvostepeni i drugostepeni sud, kao i Savezni sud su zapravo svrhu ugovora (željenu konsolidaciju kao ekonomski cilj ugovora), najpre poistovetili sa kauzom ugovorne obaveze, a zatim neostvarenje svrhe ugovora tretirali kao nepostojanje kauze ugovorne obaveze i na osnovu toga utvrdili ništavost ugovora. Inače, čak i ukoliko bi prihvatili ekonomsku koncepciju kauze ugovorne obaveze, na način kako je ona interpretirana u ovim presudama, smatramo da se nipošto ne bi moglo govoriti o nepostojanju, već samo i isključivo o naknadnom otpadanju kauze ugovorne obaveze, što bi opet kao posledicu eventualno moglo imati pravo na raskid ugovora, a ne ništavost ugovora.

U suprotnom, prihvatanje ekonomske koncepcije kauze ugovorne obaveze na način na koji su to učinili prvostepeni i drugostepeni sud, kao i Savezni sud, vodilo bi potpunoj pravnoj nesigurnosti. Naime, kauza ugovorne obaveze je uslov punovažnog nastanka ugovora, pa kao takva, mora postojati u trenutku zaključenja ugovora, jer u suprotnom, ugovor je ništav. Ukoliko bismo dosledno pratili stav prvostepenog, drugostepenog i Saveznog suda, to bi značilo da u nekim slučajevima moramo sačekati ispunjenje ugovora radi

[28] Presuda Saveznog suda, br. Gzs 15/2000, od 29.6.2000., navedeno prema: (Dudaš 2011, 18).

[29] Propusti su se ogledali u neobezbeđivanju novih deponenata, ne unošenju novih novčanih sredstava, deponovanju svojih novčanih sredstava sa zakašnjenjem..., dostupno na: Intermex sudska raksa.

ustanovljenja da li kauza ugovorne obaveze postoji, jer neostvarenje kauze ugovorne obaveze, izjednačava se sa njenim nepostojanjem. Na taj bi se način, domen primene instituta kauze ugovorne obaveze proširio i izvan granica koje je postavila mešovita koncepcija kauze ugovorne obaveze, dakle, na period nakon izvršenja ugovora.

Kako bi to izgledalo u praksi, prikazaćemo na primeru sponzorskog ugovora, i karakterističnog ekonomskog cilja sponzora, koji se, kako smo videli, ispoljava u tzv. transferu imidža. Pretpostavimo da je ugovor sklopljen na period od nekoliko godina. Kauza ugovorne obaveze ispoljena u transferu imidža, kao ekonomskom cilju sponzora, svakako postoji u momentu sklapanja ugovora o sponzorstvu, jer ako to ne bi bilo tako, ugovor o sponzorstvu ne bi mogao punovažno nastati. Na sličan način, kako se u skladu sa mešovitom koncepcijom kauze ugovorne obaveze ugovarač obavezuje zato što očekuje izvršenje ugovorne obaveze drugog ugovarača, tako se i u skladu sa ekonomskom koncepcijom kauze ugovorne obaveze sponzor obavezuje zato što očekuje transfer imidža. Za vreme trajanja ugovora moglo bi se desiti da kauza ugovorne obaveze otpadne, pa bi u zavisnosti od okolnosti konkretnog slučaja, trebalo primeniti pravna pravila koja važe za promenjene okolnosti, ili pak ona koja važe za jednostrani raskid ugovora zbog neizvršenja ugovorne obaveze. Domaći sudovi bi, kako smo videli, utvrdili ništavost ugovora zbog nepostojanja osnova.

Ipak, na osnovu stava prvostepenog, drugostepenog i Saveznog suda iznetog u njihovim odlukama, u praksi bi mogla nastati i ovakva situacija. Nakon urednog izvršenja ugovora, sponzor sprovede evaluaciju rezultata,[30] što sponzori u praksi i inače redovno čine kako bi proverili efekte sponzorstva, i ustanovi da se željeni transfer imidža nije ostvario, te po tom osnovu zahteva utvrđenje ništavosti ugovora o sponzorstvu zbog nepostojanja kauze ugovorne obaveze, jer kao što smo već rekli, prema shvatanju prvostepenog, drugostepenog i Saveznog suda, neostvarenje kauze ugovorne obaveze isto je što i njeno nepostojanje, a kauzu ugovorne obaveze sud utrvrđuje uzevši u obzir motive strana ugovornica za sklapanje dotičnog ugovora, običaje koji važe u prometu, kao i opšta moralna načela. Moramo priznati, nastupila bi potpuna pravna nesigurnost.

[30] Efekti sponzorstva mogu se meriti ciljanim istraživanjem tržišta. Drugačije rečeno, može se utvrditi da li je željeni transfer imidža postignut. Videti, (Stjuart 1994, 144-146).

Primena subjektivne koncepcije kauze ugovorne obaveze na ugovor o sponzorstvu

Pobornici subjektivne koncepcije, kauzu ugovorne obaveze traže u motivima ugovarača za zaključenje konkretnog ugovora. Uvidevši ono što je očigledno, da za zaključenje konkretnog ugovora može biti i više različitih motiva, vrši se preciziranje, tako što se kauza ugovorne obaveze vezuje za odlučujući motiv, dakle motiv koji je neposredno uticao na zaključenje konkretnog ugovora. Ipak, subjektivna koncepcija kauze ugovorne obaveze našla se pred kritikom, ponajviše usled toga, da bi njeno prihvatanje i praktična primena vodila pravnoj nesigurnosti, usled teškoća koje bi nastale u vezi utvrđivanja i dokazivanja odlučujućeg motiva (Perović, Stojanović 1980, 240; Antić 2006, 1154). Generalno gledano, ne postoji mogućnost saznanja kako bilo kog, tako i odlučujućeg motiva za zaključenje konkretnog ugovora, osim u slučaju da ga sami ugovarači saopšte.

Ukoliko bi subjektivnu koncepciju kauze ugovorne obaveze primenili na ugovor o sponzorstvu, morali bismo dati odgovor na pitanje motiva koji su odlučujuće uticali na sponzora i sponzorisanog da zaključe ugovor o sponzorstvu. O mogućim motivima sponzora i sponzorisanog mogu se dobiti posredna saznanja, pregledom ekonomske literature o sponzorstvu. Tako, kao mogući motivi sponzora navode se motivi vezani za rast prodaje proizvoda, ili usluga, utvrđenje i ojačanje pozicije na tržištima na kojima je sponzor već prisutan, ili širenje na nova tržišta, konstantno održavanje veze sa potrošačima, kao i konstantno pominjanje i prisustvo u javnosti prevashodno usled globalne medijske pokrivenosti sponzorisanih događaja, ili sa tim u vezi, ušteda troškova, jer kako se pokazalo u praksi, sponzorstvo može biti daleko učinkovitije nego li klasično oglašavanje, a uz manje troškove, mogućnost dobijanja ekskluzivnosti, zaobilaženje zakonskih zabrana vezanih za oglašavanje alkoholnih i duvanskih proizvoda... (Šurbatović 2014, 263; Jobber, Fahy 2006, 254-255). Dakle, ovo su samo neki od mogućih motiva. Koji od njih je bio u datom slučaju odlučujući, može se znati, samo ako ga sam sponzor iznese.

Na drugoj strani, primećujemo vrlo interesantnu situaciju. Naime, radi se o gotovo potpunoj objektivizaciji motiva sponzorisanog, što je opet rezultat posebnosti ovog ugovora. Za sponzorisanog, odlučujući je motiv dobijanje podrške za njegove aktivnosti. Ovo ne samo što je odlučujući, nego je često ujedno i jedini motiv sponzorisanog, koji on po pravilu i saopštava potencijalnim sponzorima prilikom „traženja“ sponzorstva. Ipak, ne radi se o potpunoj objektivizaciji motiva, jer se u literaturi navode i drugi, doduše ređi, mogući motivi. Recimo lična finansijska sigurnost individualnog sportiste, ili

jačanje pregovaračke pozicije za nove ugovore o sponzorstvu (Rohborn 1997, 93).

Svrha ugovora

ZOO-om je propisano da ukoliko se okolnosti koje postoje u momentu sklapanja ugovora, posle toga, a pre nego li istekne rok za ispunjenje ugovorne obaveze, izmene u tom smislu, da izmena bude na štetu jedne ugovorne strane, i ako ta ugovorna strana nije morala da uzme u obzir takvu promenu okolnosti u momentu sklapanja ugovora, niti je izmenjene okolnosti mogla izbeći, ili savladati, onda ona može sudskim putem zahtevati raskid, ili izmenu ugovora. Okolnosti su se promenile na štetu jednog ugovarača ako mu znatno otežavaju izvršenje ugovorne obaveze, ili ga onemogućavaju u ostvarenju svrhe ugovora, tako da ugovor više nije u skladu sa očekivanjima ugovarača i bilo bi nepravično, prema opštem mišljenju ugovor ostaviti na snazi u takvom obliku.[31] Pri odlučivanju suda o raskidu, ili izmeni ugovora zbog toga što su se okolnosti koje su postojale u momentu sklapanja ugovora naknadno promenile, sud mora postupati prema principima poštenog prometa, a posebno mora voditi računa o ugovornom cilju i riziku koji je uobičajen za konkretnu vrstu ugovora, kao i da uzme u obzir, kako opšti, tako i interes ugovornih strana.[32] Mogućnost raskidanja, odnosno izmene ugovora, usled naknadne promene okolnosti, dakle postoji, ako nove okolnosti, niti fizički, niti pravno ne sprečavaju ispunjenje ugovorne obaveze, ali deluju tako da se narušava ekvivalencija uzajamnih davanja, ili tako da sprečavaju ostvarenje od obe strane priznate svrhe ugovora (Đurđević 1994, 176). U nastavku, pokušaćemo da damo odgovor na pitanje šta se pod svrhom ugovora o sponzorstvu, kako za sponzora, tako i za sponzorisanog, podrazumeva. No najpre, moramo ustanoviti šta se uopšte pod svrhom ugovora podrazumeva, naročito iz razloga, što se u domaćoj pravnoj literaturi mogu pronaći stavovi u prilog istovetnosti kauze ugovorne obaveze i svrhe ugovora.

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[31] ZOO, čl. 133.

[32] ZOO, čl. 135. U domaćoj pravnoj doktrini, objašnjenje raskida, ili izmene ugovora zbog promenjenih okolnosti bazira se ili na teoriji ekvivalencije, ili na teoriji kauze. Ipak, postoji shvatanje po kome ZOO primenjuje dvojaki osnov raskidanja, ili izmene ugovora zbog promenjenih okolnosti. Naime, otežano ispunjenje ugovorne obaveze ukazuje na teoriju ekvivalencije. Nemogućnost realizacije svrhe ugovora, ukazuje pak, na delimično prihvatanje Larencove tzv. teorije o otpadanju objektivne osnove posla, prema kojoj dolazi do osujećenja svrhe ugovora, ako objektivna i u sadržini ugovora na neki način ispoljena svrha trajno postane neostvarljiva, a da pritom ispunjenje ugovorne obaveze ne postane nemoguće. Jednostavno, nastupa objektivna nesvrsishodnost ispunjenja.Videti, (Đurđević 1994, 155-158).

I pored toga, što u pravnoj literaturi postoje stavovi koji izjednačavaju kauzu ugovorne obaveze i svrhu ugovora, ipak se, usled specifičnog poimanja kauze ugovorne obaveze koje zauzimaju zastupnici takvog stava, autori u pogledu shvatanja o tome, šta se konkretno podrazumeva pod svrhom ugovora mogu grupisati na one koji pod svrhom ugovora vide motive ugovarača i one koji pod svrhom ugovora vide ekonomski cilj ugovarača. Tako se prema jednom mišljenju iznetom u pravnoj literaturi svrha ugovora posmatra kao vaninstitucionalna kauza, pa se raskidanje, ili izmena ugovora zbog promene okolnosti objašnjava otpadanjem vaninstitucionalne kauze. Inače, prema ovom mišljenju, jedinstveni pojam kauze ugovorne obaveze obuhvata kako institucionalnu, tako i vaninstitucionalnu kauzu. Institucionalna kauza zapravo predstavlja kauzu ugovorne obaveze shvaćenu kao pravni cilj obavezivanja, dok vaninstitucionalna kauza suštinski predstavlja motive ugovarača.[33]

U pravnoj literaturi može se pronaći i mišljenje, da sve odredbe ZOO u kojima se pominje bilo osnov ugovorne obaveze, bilo pobude za sklapanje ugovora, čine prvi nivo manifestacije teorije kauze, dok norme ZOO u kojima se bilo kako ukazuje na pravni značaj cilja ugovora, čine drugi nivo manifestacije teorije kauze. Kako je u ZOO primenjena tzv. mešovita, tj. objektivno-subjektivna koncepcija kauze ugovorne obaveze, smatra ovaj autor da cilj ugovora nekada treba shvatiti objektivno, dakle kao pravni cilj obavezivanja, a nekada subjektivno, dakle kao pobudu za sklapanje ugovora (Dudaš 2011, 172-173). Svrhu ugovora iz člana 133 ZOO tumači on subjektivno, dakle, kao pobudu za sklapanje ugovora (Dudaš 2011, 172-173).[34]

Zastupljeno je u pravnoj literaturi i mišljenje da je svrha ugovora zapravo finalna pobuda koja je odlučujuće uticala na jednog ugovarača da zaključi ugovor, pri čemu se ta pobuda, od drugih pobuda razlikuje po tome što je poznata drugom ugovaraču i kao takva uticala je na sadržinu izjave drugog ugovarača, pa na osnovu toga prestaje da bude isključivo individualna pobuda i postaje zajednički cilj (Đurđević 1994, 210).

Na drugoj su strani autori koji pod svrhom ugovora vide ekonomski cilj ugovarača. Tako se navodi da se ovde ne radi o neposrednoj pravnoj svrsi koju ugovarači hoće da postignu i koja predstavlja kauzu ugovorne obaveze, nego o ekonomskoj svrsi zbog koje se ugovarači obavezuju (Šmalcelj 1966, 91). Ili se navodi da u domenu raskidanja, ili izmene ugovora zbog promenjenih

[33] Stanovište Stojana Cigoja. Navedeno prema: (Đurđević 1994, 145-149).

[34] Sa druge strane, cilj ugovora koji se pominje u članu 135 ZOO, tumači on objektivno, kao pravni cilj obavezivanja.

okolnosti pravnu relevantnost ima kauza u objektivnom smislu, kod koje se zapravo radi o pravno oblikovanoj ekonomskoj svrsi koja se objektivno ostvaruje ispunjenjem ugovornih obaveza (Vedriš 1987, 7).

Takođe, ima mišljenja da svrhu ugovora treba razlikovati kako od objektivno shvaćene kauze ugovorne obaveze (što je pravni cilj obavezivanja), tako i od subjektivno shvaćene kauze ugovorne obaveze (što je pobuda za sklapanje ugovora). Analizirajući termine korišćene u ZOO, zaključuje ovaj autor da ZOO upotrebljava razne termine koji ukazuju na pravni značaj kauze ugovorne obaveze u objektivnom smislu (osnov ugovorne obaveze, cilj ugovora, nema interesa za ugovornu stranu, ne odgovara potrebama ugovorne strane) i kauze ugovorne obaveze u subjektivnom smislu (pobuda za zaključenje ugovora, odlučujuća pobuda). Termin svrha ugovora se među njima ne nalazi. Shodno tome, prema ovom mišljenju, termin svrha ugovora se odnosi na ekonomski cilj koji se sklapanjem konkretnog sinalagmatičkog ugovora nastoji realizovati (Vuković 2019, 290-292).[35] U prilog tome navodi se da je Vrhovni sud Srbije u jednoj odluci bio mišljenja da ima razloga da se, zbog promene okolnosti, ugovor o zakupu poslovnih prostorija raskine, ukoliko zakupnina, koja nije dovoljna ni za podmirivanje izdataka za tekuće održavanje poslovnog prostora, ne omogućuje realizaciju ugovorne svrhe, koja se manifestuje u očekivanju zakupodavca, da od sklopljenog ugovora ostvari određenu ekonomsku korist.[36]

Svrha ugovora o sponzorstvu

Prema našem mišljenju, svrha ugovora može se manifestovati ili kao ekonomski cilj, ili pak, kao odlučujući motiv ugovarača. Predstavićemo to na osnovu ugovora o sponzorstvu. Mišljenja smo, da je svrha ugovora dozvoljeni cilj jednog ugovarača, sa kojim je drugi ugovarač upoznat, i koji se može manifestovati ili kao ekonomski cilj, ili kao odlučujući motiv koji je jednog ugovarača naveo na zaključenje konkretnog ugovora. Kako se tokom izvršenja ugovora, okolnosti mogu promeniti na štetu kako jednog, tako i drugog ugovarača, moramo utvrditi svrhu ugovora oba ugovarača ponaosob. Ne znači da će se u jednom ugovoru svrha ugovora za oba ugovarača ispoljiti isključivo kao ekonomski cilj, ili isključivo kao odlučujući motiv, već se može desiti da svrha ugovora jednog ugovarača bude ekonomski cilj, a drugog ugovarača

[35] Ovaj autor smatra da se cilj ugovora iz člana 135 ZOO odnosi na kauzu ugovorne obaveze u objektivnom smislu (pravni cilj obavezivanja), dok opisna formulacija člana 133 ZOO „da ugovor više ne odgovara očekivanjima ugovornih strana“ ukazuje na kauzu ugovorne obaveze u subjektivnom smislu (pobude za zaključenje ugovora).

[36] Rešenje Vrhovnog suda Srbije, Rev. 959/94 od 23. marta 1994. godine, navedeno prema: (Vuković 2019, 292).

odlučujući motiv, što je čini nam se u ugovoru o sponzorstvu slučaj. Tako, mišljenja smo, da kao svrhu ugovora za sponzora, treba uzeti njegov ekonomski cilj, dakle transfer imidža, dok je u slučaju sponzorisanog svrha ugovora njegov odlučujući motiv, dakle dobijanje podrške za njegove aktivnosti, jer sponzorisanog ne zanima niti sticanje prava svojine na novcu, ili stvarima, niti sticanje prava korišćenja na stvarima koje mu predaje sponzor, niti ga stvari i novac interesuju kao ekonomska dobra, ukoliko ne služe realizaciji njegovog motiva, a to je podrška njegovim aktivnostima.

Zamislivi su praktični slučajevi kada bi se na ugovor o sponzorstvu mogao primeniti institut raskidanja, ili izmene ugovora zbog promenjenih okolnosti. Recimo, ugovor o sponzorstvu koji su zaključili uspešna kompanija i fudbalski klub. Nakon izvesnog vremena, tokom trajanja ugovora o sponzorstvu, prilikom putovanja na utakmicu, u avionskoj nesreći poginu svi članovi prvog tima fubalskog kluba, što se inače i dešavalo u stvarnosti.[37] Sponzorisani i dalje može da izvršava svoje ugovorne obaveze. Na raspolaganju su mu rezervni fudbaleri. Ipak, pitanje je da li se u takvom slučaju za sponzora da realizovati svrha ugovora, željeni transfer imidža, ukoliko sponzora promovišu ne toliko poznati fudbaleri. Naravno, sa druge strane ostaje faktičko pitanje, kako bi se i inače na imidž sponzora odrazilo raskidanje ugovora o sponzorstvu i napuštanje sponzorisanog zbog takvog nesrećnog slučaja.

Isto tako bi se recimo moglo desiti, što se trenutno i dešava, da zbog pandemije korona virusa bude zabranjeno prisustvo gledalaca fudbalskim utakmicama. Sponzorisani može da ispuni ugovorne obaveze, ali za sponzora je onemogućeno ostvarenje svrhe ugovora, transfera imidža, putem stvaranja u očima javnosti utiska o povezanosti sa sponzorisanim, jer gledalaca, to jest javnosti nema. Naravno, neke će se utakmice televizijski prenositi, ali mnoge neće, ili će na televiziji biti prikazane samo u pregledu. Mišljenja smo ipak, da to nije dovoljno za uspešan transfer imidža.

Sa druge strane, pretpostavimo da je ugovor o sponzorstvu zaključen tako da sponzor finansira odlazak sponzorisanog na sportsko takmičenje, a sponzorisani preuzme obavezu učešća u reklamnom spotu sponzora. Usled pandemije korona virusa bude zabranjeno održavanje sportskog takmičenja. Sponzor svoju ugovornu obavezu može izvršiti, ali za sponzorisanog, svrha ugovora, odlučujući motiv koji ga je naveo na zaključenje ugovora o sponzorstvu, a to je odlazak na sportsko takmičenje se ne može ostvariti. Sponzorisanog zapravo ne zanima niti sticanje prava svojine na novcu, niti

[37] Poznat je slučaj iz 2016. godine kada su tokom putovanja na fudbalsku utakmicu u Kolumbiji u avionskoj nesreći poginuli gotovo svi fudbaleri brazilskog fudbalskog kluba Šapekoense.

njegova ekonomska upotreba, ukoliko to nije u cilju odlaska na sportsko takmičenje.

Predzaključna razmatranja

Dok je u ZOO za označenje kauze ugovorne obaveze upotrebljen termin osnov ugovorne obaveze, u članu 133 ZOO reč je o svrsi ugovora. Dakle, ono što je očigledno i što najpre upada u oči, jesu terminološke razlike. Različitost upotrebljenih termina bi svakako mogla upućivati na zaključak da svrha ugovora i kauza ugovorne obaveze nisu isto. Nesporna je činjenica da je kauza ugovorne obaveze uslov punovažnosti ugovora, pa njeno nepostojanje u trenutku zaključenja ugovora rezultira ništavošću ugovora. Svrha ugovora definitivno uslov punovažnosti ugovora nije, jer neostvarenje svrhe ugovora samo po sebi ne prouzrokuje nikakve posledice po ugovor i ulazi u okvire poslovnog rizika. Tek ukoliko bi neostvarenje svrhe ugovora bilo rezultat nepredvidivih, neizbežnih i nesavladivih okolnosti, mogao bi se ugovor raskinuti, ili izmeniti.

Ako su svrha ugovora i kauza ugovorne obaveze isto, samo se po sebi nameće pitanje, kako jedan isti pravni institut istovremeno može pod određenim okolnostima (njegovog nepostojanja) biti uzrok ništavosti ugovora, a pod drugim okolnostima (njegovog neostvarenja) biti uzrok raskida, ili izmene ugovora. Da je tako nešto moguće, možemo zaključiti pozivajući se na pravila ZOO o jednostranom raskidu ugovora zbog neizvršenja ugovorne obaveze, ukoliko naravno kao teorijsku osnovu pravila ZOO o jednostranom raskidu ugovora zbog neizvršenja ugovorne obaveze prihvatimo teoriju kauze. U takvom slučaju, kao što smo već napomenuli, nepostojanje kauze ugovorne obaveze u trenutku zaključenja ugovora uzrokuje ništavost ugovora, dok njeno docnije otpadanje za posledicu ima raskid ugovora. Ipak, argument bi se mogao osporiti time, da teorija kauze svakako nije jedina teorija kojom se objašnjava jednostrano raskidanje ugovora zbog neispunjenja ugovorne obaveze.[38] Inače, najozbiljnija zamerka teoriji kauze, kao terijskoj osnovi objašnjenja jednostranog raskidanja ugovora zbog neispunjenja ugovorne obaveze, tiče se toga, da je u skladu sa mešovitom koncepcijom kauze ugovorne obaveze postojanje kauze ugovorne obaveze, kako uslov punovažnog nastanka ugovora, tako i uslov njegovog održanja, pa ako bi se dosledno toga pridržavali, u slučaju otpadanja kauze ugovorne obaveze trebalo bi da nastupi ništavost, a ne raskid ugovora, dok sa druge strane neizvršenje

[38] Pored teorije kauze, jednostrano raskidanje ugovora zbog neispunjenja ugovorne obaveze u pravnoj literaturi objašnjava se još i teorijom o prećutnom raskidnom uslovu, teorijom pravičnosti, teorijom ekvivalencije i teorijom javnog poretka. Više o tome videti, (Grujić 2014, 97-119).

ugovorne obaveze nikako ne može uzrokovati ništavost ugovora, jer uzroci ništavosti moraju postojati u trenutku zaključenja ugovora, a docnije nastale okolnosti, što podrazumeva i neizvršenje ugovorne obaveze, ne mogu prouzrokovati ništavost ugovora (Grujić 2014, 109-110). Saglasni smo sa mišljenjem iznetim u pravnoj literaturi da bi institut kauze ugovorne obaveze trebalo primenjivati jedino i isključivo na pitanje punovažnog nastanka ugovora. Za njegovom primenom nakon zaključenja ugovora ne postoji nikakva potreba, jer ZOO stavlja na raspolaganje druge institute, između ostalih, institut raskidanja, ili izmene ugovora zbog promenjenih okolnosti, tako da bi se primena instituta kauze ugovorne obaveze u periodu izvršenja ugovora preklopila sa primenom ovog instituta (Nikšić 2006, 1098; Šmalcelj 1980, 13).

Zaključak

Jesu li kauza ugovorne obaveze i svrha ugovora iz člana 133 ZOO isto, odgovor je u direktnoj vezi sa tim za koju koncepciju kauze ugovorne obaveze se odlučimo. Na raspolaganju nam stoje mešovita, objektivna (ekonomska) i subjektivna koncepcija. Subjektivne koncepcije možemo se odmah odreći, jer ona, niti je prihvaćena u ZOO, niti u pravnoj teoriji, niti u sudskoj praksi. Ukoliko se opredelimo za mešovitu koncepciju kauze ugovorne obavezu, čemu smo skloni, različitosti između kauze ugovorne obaveze i svrhe ugovora postaju i više nego jasne. Dakle, na osnovu mišljenja iznetih u pravnoj literaturi, da se zaključiti, da se, baš kao i kauza ugovorne obaveze, isto tako i svrha ugovora može ispoljiti objektivno, ili subjektivno. Ipak, razlike su očigledne. Dok se kauza ugovorne obaveze objektivno ispoljava kao pravni cilj obavezivanja, svrha ugovora se objektivno ispoljava kao ekonomski cilj ugovarača. Na drugoj strani, kako kauza ugovorne obaveze, tako i svrha ugovora, mogu se subjektivno ispoljiti u vidu motiva ugovarača za zaključenje konkretnog ugovora. No, opet, razlike su očigledne. U pojam kauze ugovorne obaveze kod teretnih ugovora ulaze motivi samo ukoliko su nedopušteni i ukoliko su oba ugovarača bila nesavesna. Pravno relevantni kao svrha ugovora mogu biti samo i isključivo dopušteni motivi. Očigledno je dakle, da se kod raskida, ili izmene ugovora zbog promenjenih okolnosti radi o slučajevima u kojima kauza ugovorne obaveze one ugovorne strane na čiji teret je došlo do promene okolnosti i dalje postoji, usled toga što drugi ugovarač može i hoće da izvrši svoju ugovornu obavezu, ali se za prvog ugovarača ne može ostvariti svrha ugovora. Sve izneto, čini nam se dokazuje, da kauza ugovorne obaveze, onako kako nju shvata mešovita koncepcija, i svrha ugovora nisu isto.

Ukoliko bismo se opredelili za objektivnu (ekonomsku) koncepciju kauze ugovorne obaveze, odgovor bi bio drugačiji. Naime, došlo bi do poklapanja

kauze ugovorne obaveze i svrhe ugovora, kod onih ugovora, kod kojih bi se svrha ugovora ispoljila kao ekonomski cilj ugovarača. S obzirom na to, da smo videli kakvu pravnu nesigurnost bi izazvala praktična primena objektivne (ekonomske) koncepcije kauze ugovorne obaveze, onako kako su to učinili domaći sudovi, nikako se ne bismo založili za njeno prihvatanje. Pa makar se radilo o ugovorima kakav je ugovor o sponzorstvu kod kojih je toliko jasno i dominantno izražen i vidljiv ekonomski cilj obavezivanja.

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ARE THE CAUSE OF THE CONTRACTUAL OBLIGATION AND THE PURPOSE OF THE CONTRACT THE SAME?

Milan Ječmenić[39]

Original scientific paper

Abstract

The paper examines the relationship between the cause of the contractual obligation and the purpose of the contract. Namely, an attempt is made to answer the question, whether these are two different legal institutes, or if apart from terminology, there are no other differences between them. The problem is analyzed based on the sponsorship agreement. This contract was chosen due to one of its peculiarities. The economic goal of the sponsor is so obvious and visible, that, without any hesitation, one can think about applying the economic concept of the cause of the contractual obligation to this contract. If we take into account that we have a basis for such a thing in court practice (namely, there are decisions in which the economic concept of the cause of the contractual obligation is applied), as well as the fact that in domestic legal doctrine some authors define the purpose of the contract as an economic goal, the issue becomes obvious.

Key words*: cause of contractual obligation, purpose of contract, economic goal, sponsorship contract, image transfer.*

JEL*: K12.*

Introduction

In this article, the author analyzes the relationship between the cause of a contractual obligation, on one hand, and the purpose of the contract mentioned in Article 133 of the Law on Obligations (hereinafter LOO) on the other hand. The goal is to determine whether it is one and the same institute, or whether there are differences between them. As for the cause of the contractual obligation, we have a mixed, objective (economic) and subjective conception. The mixed conception of the cause of contractual obligation has been accepted in the LOO, most of the domestic legal theory, as well as in court practice. The objective (economic) conception of the contractual obligation cause is accepted in one part of domestic legal theory, but in our courts there is a decision in which the contractual obligation cause is interpreted in such a way

[39] Assistant Professor Milan Ječmenić PhD, „MB“ University, Faculty of Business and Law, Kneza Mihaila 33, Belgrade, Republic of Serbia, E-mail: milanjecmenic@yahoo.com

that it is the economic goal of the contractor. The subjective conception of the cause of contractual obligation has no supporters in our legal doctrine or in our case law. On the other hand, in our legal doctrine, there are attitudes that identify the purpose of the contract with the cause of the contractual obligation. However, given the specific understanding of the contractual clause taken by proponents of such an attitude, in terms of understanding what is specifically meant by the purpose of the contract, the authors can group into those who see the motives of the contractor and those who see the economic the goal of the contractor.

We will consider the posed question on the example of a sponsorship agreement due to one specificity of this agreement. Namely, for the sponsor, as one of the contracting parties to the sponsorship agreement, the economic goal of the commitment is so obvious and clearly expressed, in the terminology of economic literature marked as „image transfer“. Consequently, it seems quite easy and tempting to reach for an objective (economic) conception of the cause of a contractual obligation in the case of a sponsorship agreement, especially since the basis for such a thing can be found in both domestic legal theory and domestic case law. Whether this is justified, we will see below. We will show how domestic courts apply the objective (economic) concept of the contractual obligation cause in practice, as well as what it would look like on a sponsorship agreement. As in the case of the sponsorship agreement, it is a bilateral and freight agreement, everything we will write about below will refer to bilateral and freight agreements.

A brief overview of a sponsorship agreement

A sponsorship agreement obliges the sponsor to pay the agreed amount of money to the sponsored, in order to support the activities of the sponsored, or hand over the stipulated amount (owned or used), or provide the agreed services (provided that these obligations can be combined), and the sponsored leaves to the sponsor the right to use his image for marketing purposes and undertakes the obligation to promote the sponsor and participate in his marketing activities (Ječmenić 2018). As a rule, sponsors are successful companies, and sponsored successful individuals in sports, arts, culture, or sports organizations and federations, Olympic committees, sports, or cultural and artistic events. Essential features of the sponsorship agreement are support of the sponsor, communication counter-action of the sponsored, as well as the characteristic economic goal that the sponsor wants to achieve with this contract, and which in the books on economics is called image transfer. Namely, it is about the objective economic goal of every sponsorship agreement for the sponsor, regardless of who was the sponsor or the

sponsored, or in which area the sponsorship occurs. This specific economic goal of the sponsor is so immanent to this agreement, that in its absence, in our opinion, it would not be possible to talk about a sponsorship agreement at all.

Two questions can be asked immediately. First, what does image transfer actually represent? Second, how can image transfer be an economic goal? Extremely simplified, it could be said that the image transfer is an attempt to create the impression of the connection between the sponsor and the sponsored by public sponsorship, so that based on that connection the positive image that the sponsored enjoys in public is transferred to the sponsor, his products, or services, where the sponsor can strengthen, or improve the existing, or gain a completely new image. Regarding the question of how the transfer of the image can be an economic goal, in other words, it should be established what positive economic effect image transfer can have on the sponsor's assets. The verdict of the German Federal Supreme Court in the case of Marlene Dietrich states that the image, name, and other elements of personality can have significant economic value, which is based on public awareness and reputation, and acquired through special achievements, mainly sports, or art. This popularity, as well as the image associated with it, can be exploited economically by celebrities, by allowing others to use their image, name, or other personality elements (based on which they can of course be recognized in public) in advertising goods or services for a fee. In advertising, a significant role is played by the so-called image transfer, where it is actually a matter of positive associations that consumers associate with a famous person being transferred to the advertised products. In this way, celebrities significantly contribute to creation of added value.[40]

The sponsor doesn't enter into a contractual relationship only for the purpose of acquiring the right to use the image sponsored in accordance with its marketing goals, but also for the purpose of image transferring, where acquiring the right to use the image of the sponsored for marketing purposes is considered exclusively as the asset that enables him to perform image transfer. The importance of image transfer to the sponsor can be seen from the fact that all the obligations undertaken by this contract are sponsored, designed so that image transfer is realized as easily as possible. However, as this is not an obligation of results, it does not guarantee the sponsor the realization of the desired image transfer. However, he is obliged to refrain from all actions that could thwart the image transfer. Thus, in foreign court practice, one can find

[40] BGH, Urt. v. 1. Dezember 1999 - I ZR 49/97 - Kammergericht, LG Berlin, dostupno na: http://lorenz.userweb.mwn.de/urteile/njw00_2195.htm. Subject of the dispute was the post-mortem protection of Marlene Dietrich's personal rights from unauthorized commercial use.

numerous disputes arising from the sponsor's request for termination of the sponsorship agreement due to the fact that the sponsored man's actions thwarted the realization of the desired image transfer.[41]

Obligations undertaken by the sponsor under the sponsorship agreement, in their entirety can be subsumed under the general notion of supporting, for the simple reason that the sponsor supports the activities of the sponsored by paying money, handing over things, or providing contracted services. We have already mentioned that all contractual obligations of the sponsored company are conceived in such a way that the desired image transfer is realized, and in order to prove that, we will briefly show them. In general, the contractual obligations of the sponsor can only be called a communication counter-action, since he performs communicative tasks for the sponsor, and thus communicates his message to the public. The sponsored of the sponsorship agreement gives the sponsor the right to use his image for marketing purposes. More specifically, the sponsored allows the sponsor to use his name and character (if the sponsored is a natural person), or insignia (if the sponsored is a legal entity, or an event) for marketing purposes. He then further takes the responsibility of promoting the sponsor and participate in his marketing activities. More specifically, the sponsored should separately highlight the signs of different sponsorsin a way that is visible to the public. For example, on sporting equipment, sports field, means of transport, tickets, catalogs and other promotional material that accompanies the sponsored event etc. He is also obliged to actively participate in the sponsor's advertising campaigns. The sponsorship agreement often commits the sponsored to good behavior, i.e. to take the so-called obligations of good conduct. More specifically, the sponsored should refrain from any action that could damage the sponsor's image (eg. mention the sponsor in public in a negative context), as well as actions that could damage his or her image (eg. doping).[42]

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[41] Arbitration Court of Milan, Decision from 7 July 1990 inthe dispute between the sponsoring company Manjifiko Irge and sponsored football club Aurora Desio, available in: (Mormando 1998, 60), Court of Rieto, Decision from 19 March1994., in a dispute between the sponsor Emecet and the sponsored sports club Basket Rieti, available in: (Mormando 1998, 62), Arbitration Court of Milan, Decision from 25 May 1990, in a dispute between the sponsor Sintek Ponola and the sponsored sports club Virtus Palakanestro Roma, available in: (Capri, Tocci 2007, 99), a dispute that arose in 2006 between Adidas sponsor and the sponsored German Swimming Federation, which did not go to court, but it did go public, available in: (Rudiger 2010/2011, 30-35).

[42] It should also be mentioned that obligations of good behavior, even when not agreed, arise for the sponsored on the basis of the principles of conscientiousness and honesty. Namely, Law on Obligations stipulates that the parties must adhere to the principles of conscientiousness and honesty when establishing obligations, as well as when realizing rights and obligations, Law on Obligations of the Republic of Serbia ("Official Gazette of SFRY", no. 29/78, 39/85, 45/89-decision of the ACY and

Such actions could not only thwart the realization of the expected transfer of a positive image from the sponsored to the sponsor, but could also cause the transfer of the negative image to the sponsor. Also, sponsors often negotiate exclusivity for themselves, considering that if there are several different sponsors, it could affect the realization of the desired image transfer, in the sense that if it does not completely thwart, it would at least mitigate it.

The cause of the contractual obligations of the contractor from the sponsorship contract

The general notion of the cause of a contractual obligation implies a reason for taking over a contractual obligation (Antić 2008, 223). However, a closer definition of this term, that is, specifying what exactly is the reason for taking on a contractual obligation, encounters conflicting views, both among legal theorists and, to some extent, in case law. In the following, we will briefly present the basic views of the mixed, objective and subjective conception of the cause of the contractual obligation and establish what would be the cause of the contractual obligations of the contractors from the sponsorship contract according to each of them.

Application of the mixed concept of the contractual obligation cause to the sponsorship agreement

Proponents of the mixed concept, when defining the cause of the contractual obligation, point out the importance of both, the objective element, which they determine as the legal goal of the obligation, on the basis of which the cause of the contractual obligation is determined, and which represents the fulfillment of contractual obligations in bilateral contracts, as well as the subjective element, motives, which are authoritative for checking whether the cause of the contractual obligation is allowed, so they are takin into account in cargo

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57/89, „Official Gazette of the FRY“, no. 31/93 and „ Official Gazette of Serbia and Montenegro“, no. 1/2003- Constitutional Charter), article 12. Obligations of good behavior for the sponsored, but also for the sponsor, are imposed by the Law on Advertising of the Republic of Serbia. Thus, the sponsor must not compromise the integrity of the activity he sponsors, nor must he damage the reputation of the sponsored. On the other hand, the sponsored is prohibited from changing the name or insignia of the sponsor, as well as prohibited of damaging the reputation of the sponsor. (Law on Advertising, („Official Gazette of the Republic of Serbia“, no. 6/2016), article 6., paragraphs 3 and 4). A similar provision is made in the 2003 International Rules on Sponsorship of the International Chamber of Commerce's Marketing and Advertising Commission. These rules should represent guidelines and standards of ethical conduct of the sponsor and the sponsored, so the sponsor has an obligation to protect the reputation of the sponsored, while the sponsored has an obligation not to damage the reputation of the sponsor (ICC International Code on Sponsorship, September 2003., Commission on Marketing and Advertising, čl. 5., dostupno na: www.iccwbo.org/home/marketing).

contracts only if they are inadmissible and if both contractors are negligent (Perović 1981, 330-331).

According to the position of the mixed conception of the cause of a contractual obligation, the existence of the cause of a contractual obligation, apart from being a condition for valid occurrence of the contract, is also a condition for its maintenance (Grujić 2014). Therefore, the cause of the contractual obligation must exist not only at the time of concluding the contract, but also during the validity of the contract, until the moment of fulfillment of contractual obligations (Dudaš 2011). Thus, it is possible that in a valid contract, the cause of the contractual obligation is subsequently dropped (Nikšić 2006, 1068), for example as a consequence of one contractor failing to perform the contractual obligation, as a result of which the other contractor may unilaterally terminate the contract. Therefore, the non-existence of the cause of the contractual obligation at the time of concluding the contract results in the nullity of the contract, and if it is subsequently terminated, the contractor loyal to the contract may terminate it.

The norms of the LOO concerning the cause of the contractual obligation are formulated in accordance with a mixed concept. It is defined that every contractual obligation must have an admissible basis,[43] one that is not contrary to coercive regulations, public order or good customs.[44] Otherwise, the consequence is the nullity of the contract, and this also applies in the case of non-existence of grounds.[45] Motives for the contractors conclude the contract, in principle do not affect its validity.[46] However, for cargo contracts, if a motive significantly influenced the decision of one contracting party to enter into a contract was inadmissible, and the other contracting party knew, or had to know about the inadmissibility of the motive, it results in nullity of the contract.[47]

Applying the objective concept of the cause of a contractual obligation to the sponsorship contract

Proponents of the objective concept, also known as the economic concept, view the cause of the contractual obligation as the economic goal of the contractor. They see the cause of contractual obligations in the economic equivalent, i.e. positive economic effects that the contracting parties hope for in their assets on the basis of concluding and fulfilling a specific contract

[43] LOO, aritcle 51, paragraph 1.
[44] LOO, aritcle 51, paragraph 2.
[45] LOO, aritcle 52.
[46] LOO, aritcle 53, paragraph 1.
[47] LOO, aritcle 53, paragraph 2.

(Gams 1959), whereby the desired economic goal is achieved by exchanging goods and services (Vuković 2019). However, it seems to us that a positive economic effect is possible only in the property of the contracting party who „passes better“ in the transaction.

However, at the time of the emergence of the economic concept of the cause of a contractual obligation, it was primarily related to contracts that exchange material goods and services. As we have seen, the sponsorship agreement exchanges material goods, money and things, or services for intangible goods, image. However, the sponsorship agreement could be compared to the economic conception of the contractual obligation cause. When there were doubts in the practical application of the Law on Corporate Income Tax[48] and the Law on Value Added Tax[49] on sponsorships, in order to clarify these doubts the Ministry of Finance and Economy in its opinions, defined the sponsorship agreement as a contract for the exchange of material goods (money and things), or services of a sponsor for the service of advertising, i.e. propaganda of the sponsored.[50]

Within legal literature in which the economic conception of the contractual obligation cause is represented, however there is a far more precise definition of the contractual obligation cause. Thus it is stated that the cause of the contractual obligation represents the legally permitted economic goal that the contractors have in mind when concluding the contract (Kapor 1951). This definition provides the possibility of its application in contracts for exchange of tangible goods and services for intangible goods. Thus, the cause of the contractual obligation of the sponsor can be defined as the desired image transfer, while the cause of the contractual obligation of the sponsored would be receiving money or things as economic goods, or obtaining contracted services to support his activities.

As we already mentioned in the introductory part, our case law has produced a judgment that the cause of a contractual obligation is defined as an economic goal. Namely, court proceedings were initiated regarding an agreement that was concluded with the aim of consolidating one bank. However, as the consolidation was not achieved, a lawsuit was filed to determine the nullity of

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[48] Law on Corporate Income Tax (“Official Gazette of the Republic of Serbia“, no. 25/2001, 80/2002, 80/2002-other law, 43/2003, 84/2004, 18/2010, 101/2011, 119/2012, 47/2013, 108/2013, 68/2014-other law and 142/2014).

[49] Law on Value Added Tax („Official Gazette of the Republic of Serbia“, no. 84/2004, 86/2004-correction, 61/2005, 61/2007, 93/2012, 108/2013, 68/2014-other law, 142/2014).

[50] See Opinion of the Ministry of Finance and Economy no. 414-00-94/2003-04 from 24 June 2003, available at: www.propisionline.com., and Opinion of the Ministry of Finance and Economy no. 413-00-1423/2008-04 from 7 July 2008, available at: www.propisionline.com

the contract due to lack of grounds. First and second instance courts state the absence of grounds with the explanation that the economic interest of the contracting parties has not been realized and determined nullity of the contract. Court of Auditors had a completely justified different opinion. It considered the motives legally irrelevant because in this particular case they were not formulated as a condition, so they were not included in content of the contract,[51] while non-consolidation as the purpose of the contract is a result of business risk taken by the contractors. However, the Federal Court quashes this judgment and upholds the judgments of first and second instance courts, defining the cause of the contractual obligation of the contractor as a direct reason for concluding a specific contract, and if it is not recognizable from the contract, it is the court's obligation to establish it, taking into consideration the motives the contracting parties for concluding the contract in question, customs in force, as well as general moral principles.[52]

We are of an opinion that the position of the Court of Auditors is correct. The desired consolidation constitutes the purpose of the contract, so its non-realization by itself could not have an impact on the contractual relationship. However, if the non-fulfillment of the purpose of the contract occurs as a result of unpredictable, unavoidable and insurmountable circumstances, then in accordance with the rules of the LOO on the impact of changed circumstances on the Contract, the contractor to whose detriment the circumstances have changed, could sue to terminate or fairly amend the contract. Also, non-fulfillment of the purpose of the contract for one contractor could occur as a consequence of the actions of the other contractor, for example, partial non-fulfillment of the contractual obligation, so the party faithful to the contract would have the right to terminate the contract unilaterally. It seems to us that this was the case, which can be concluded from the explanation of the verdict, which states that the plaintiff took over the debt in order to consolidate the bank's operations, while consolidation was not achieved due to the defendant's omission.[53]

First and second instance courts, as well as the Federal Court have in fact identified the purpose of the contract (desired consolidation as the economic goal of the contract) with the cause of the contractual obligation, and then

[51] Contractors have the opportunity to formulate the motives to conclude the contract in the form of conditions, and as a result, the legal effect of the contract would depend on the realization of the motive, in the same way as the condition affects the occurrence or termination of legal transactions. See (Dudaš 2011).

[52] Judgment of the Federal Court, no. 15/2000, from 29 June 2000, stated according to: (Dudaš 2011).

[53] The omissions were reflected in the non-provision of new depositors, non-deposit of new funds, deposit of their funds with delay etc., available at: Intermex court practice.

treated the non-fulfillment of the purpose of the contract as non-existence of the contractual obligation. Otherwise, even if we accept the economic concept of the contractual obligation cause, in the way it is interpreted in these judgments, we believe that we could not talk about non-existence, but only about the subsequent elimination of the contractual obligation cause, which could results in the possibility of the right to terminate the contract, not the nullity of the contract.

Otherwise, accepting the economic conception of the cause of the contractual obligation in the way that the first and second instance courts, as well as the Federal Court did, would lead to complete legal uncertainty. Namely, the cause of the contractual obligation is a condition for the valid occurrence of the contract, so as such, it must exist at the time of concluding the contract, because otherwise, the contract is void. If we consistently follow the position of the first instance, second instance and the Federal Court, it would mean that in some cases we have to wait for the fulfillment of the contract to determine whether the cause of the contractual obligation exists, because failure to fulfill the cause of the contractual obligation would be that same as if it didn't exist. In that way, the domain of application of the institute of cause of a contractual obligation would be extended beyond the limits set by the mixed concept of the cause of a contractual obligation, i.e. to the period after the execution of the contract.

We will show how this would look in practice on the example of a sponsorship agreement and a characteristic economic goal of the sponsor, which, as we have seen, is manifested in the so-called image transfer. Suppose a contract is made for a period of several years. The cause of the contractual obligation expressed in the image transfer, as the economic goal of the sponsor, certainly exists at the time of concluding the sponsorship agreement, because if it were not so, the sponsorship agreement could not be valid. In a similar way, as in accordance with the mixed concept of the contractual obligation cause, the contractor undertakes because he expects the performance of the contractual obligation of the other contractor, so in accordance with the economic concept of the contractual obligation cause, the sponsor undertakes because he expects image transfer. During the duration of the contract, the cause of the contractual obligation could be dropped, so depending on the circumstances of the case, the legal rules that apply to changed circumstances or those that apply to unilateral termination of the contract due to non-performance of the contractual obligation should be applied. As we have seen, the domestic courts would determine the nullity of the contract due to lack of grounds.

However, based on the position of the first and second instance and the Federal Court set out in their decisions, such a situation could arise in practice. After proper execution of the contract, the sponsor evaluates the results,[54] which sponsors in practice regularly do to check the effects of sponsorship, and finds that the desired image transfer has not been achieved, and therefore requires the nullity of the sponsorship contract due to lack of contractual obligation because, as we have already said, according to the first-instance, second-instance and federal courts, non-fulfillment of the contractual obligation is the same as its non-existence, and the court determines the cause of the contractual obligation, taking into account the motives of the contracting parties. as well as general moral principles. We have to admit, there would be complete legal uncertainty.

Applying the subjective conception of the cause of a contractual obligation to the sponsorship contract

Proponents of the subjective conception seek the cause of the contractual obligation in the motives of the contractor to conclude a specific contract. Seeing what is obvious, that there can be several different motives for concluding a specific contract, the specification is made, so that the cause of the contractual obligation is tied to the decisive motive, i.e. the motive that directly influenced the conclusion of a specific contract. However, the subjective conception of the cause of a contractual obligation was criticized, mostly due to the fact that its acceptance and practical application would lead to legal uncertainty, due to difficulties that would arise in determining and proving the decisive motive (Perović, Stojanović 1980; Antić 2006). In general, there is no possibility of finding out any or the decisive motive for concluding a specific contract, unless the contractors themselves announce it.

If we were to apply the subjective conception of the cause of a contractual obligation to the sponsorship agreement, we would have to answer the question of the motives that decisively influenced the sponsor and the sponsored person to conclude the sponsorship agreement. Indirect information can be obtained about the possible motives of the sponsor and the sponsored person by reviewing the economic literature on sponsorship. Thus, possible motives of the sponsor are motives related to the growth of sales, products or services, establishing and strengthening the position in markets where the sponsor is already present, or expanding into new markets, constantly maintaining contact with consumers, as well as constant mention and presence in public, primarily due to global media coverage of sponsored events, or

[54] Effects of sponsorship agreements can be measured by targeted market research. In other words, it can be determined whether the desired image transfer has been achieved. See (Stjuart 1994).

related savings, because, as practice has shown, sponsorship can be far more effective than traditional advertising, at lower cost, with possibility of obtaining exclusivity, circumventing legal prohibitions related to advertising alcoholic and tobacco products etc. (Šurbatović 2014; Jobber, Fahy 2006). So, these are just some of the possible motives. Which of them was decisive in the given case, can be known only if the sponsor himself presents it.

On the other hand, we notice a very interesting situation. Namely, it is about almost complete objectification of the sponsored motive, which is again the result of the uniqueness of this contract. For the sponsored, the decisive motive is to get support for his activities. This is not only decisive, but it is often the only motive of the sponsored person, which he, as a rule, communicates to potential sponsors when „seeking“ sponsorship. However, it is not a question of complete objectification of motives, because other, albeit rarer, possible motives are mentioned in literature. For example, the personal financial security of an individual athlete, or strengthening of the negotiating position for new sponsorship agreements (Rohborn 1997).

Purpose of the contract

LOO stipulates that if the circumstances that exist at the time of concluding the contract, after it and before the expiration of the deadline for fulfillment of a contractual obligation, change in that sense, that the change is to the detriment of one party, and if that party didn’t have to take into account such a change of circumstances at the time the contract was concluded, nor could avoid or overcome the changed circumstances, then that party can request the termination or modification of the contract in court. Circumstances have changed to the detriment of one contractor if they significantly impede the performance of a contractual obligation, or prevent him from achieving the purpose of the contract, so that the contract is no longer in line with the contractor's expectations and it would be unfair to leave the contract in force.[55] When the court is deciding to terminate or amend the contract because the circumstances that existed at the time of the contract subsequently changed, the court must follow the principles of fair dealing, and in particular must take into account the contractual purpose and risk that are common for a particular type of contract, as well as to take into account both the general and the interests of either contracting party.[56] The possibility of termination or change of a contract due to subsequent change of circumstances, therefore exists, if new circumstances, neither physically nor legally prevent the fulfillment of the

[55] LOO, article 133.
[56] LOO, article 135.

contractual obligation, but act in such a way as to violate the equivalence of mutual benefits, or to prevent both sides to fulfill their obligations (Đurđević 1994). We will try to answer the question of what is meant by the purpose of the sponsorship agreement, for both the sponsor and the sponsored. Firstly, we must establish what is meant by the purpose of the contract in general, especially for the reason that in domestic legal literature views in favor of the identity of the cause of the contractual obligation and the purpose of the contract can be found.

A closer definition of the term "purpose of the contract" in legal literature

Despite the fact that in the legal literature there are views that equate the cause of a contractual obligation and the purpose of the contract, still due to the specific understanding of the cause of the contractual obligation of the proponents of such a position, in terms of understanding what is specifically meant by the purpose of the contract, the authors group them into those who under the purpose of the contract see the motives of the contractor for the purpose of the contract and those who see the economic goal of the contractor for the purpose of the contract. Thus, according to one opinion expressed in legal literature, the purpose of the contract is considered as a non-institutional cause, so the termination or change of the contract due to a change of circumstances is explained by elimination of the non-institutional cause. Otherwise, according to this opinion, the unique notion of the cause of a contractual obligation encompasses both institutional and non-institutional causes. The institutional cause is in fact the cause of the contractual obligation understood as the legal goal of the obligation, while the non-institutional cause essentially represents the motives of the contractor.[57]

In legal literature one can find the opinion that all provisions of the LOO which mention either the basis of the contractual obligation or the incentive to conclude a contract, constitute the first level of manifestation of the theory of cause, while the norms of the LOO which indicate the legal significance of the contract constitute the second level of manifestation of the theory of cause. How was the so-called mixed, i.e. objective-subjective conception of the cause of the contractual obligation, this author believes that the goal of the contract should sometimes be understood objectively, i.e. as a legal goal of obligation, and sometimes subjectively, i.e. as an incentive to conclude a contract (Dudash 2011). He interprets the purpose of the contract from Article 133 of

[57] The position of Stojan Cigoj. Stated according to: (Đurđević 1994, 145-149).

the LOO subjectively, therefore, as an incentive to conclude a contract (Dudaš 2011).[58]

There is also an opinion in legal literature that the purpose of the contract is actually the final initiative that decisively influenced one contractor to conclude the contract, and that initiative differs from other initiatives in that it is known to the other contractor and as such affected the content of the statement of the other contractor, and on that basis it ceases to be exclusively an individual initiative and becomes a common goal (Đurđević 1994).

On the other side are authors who see the economic goal of the contractor under the purpose of the contract. Thus, it is stated that this is not about the immediate legal purpose that the contractors want to achieve and which is the cause of the contractual obligation, but about the economic purpose for which the contractors commit themselves (Šmalcelj 1966). Either it is stated in the domain of termination or amendment of the contract due to changed circumstances, the cause has a legal relevance in the objective sense, which is actually a legally formed economic purpose that is objectively achieved by fulfilling contractual obligations (Vedriš 1987).

There are also opinions that the purpose of the contract should be distinguished both from the objectively understood cause of the contractual obligation (which is the legal goal of the obligation) and from the subjectively understood cause of the contractual obligation (which is the incentive to enter into a contract). Analyzing the terms used in the LOO, this author concludes that the LOO uses various terms that indicate the legal significance of the contractual obligation in the objective sense (basis of the contractual obligation, purpose of the contract, no interest in the contracting party, does not meet the needs of the contracting party) and cause of the contractual obligation in subjective sense (incentive to conclude a contract, decisive initiative). The term purpose of a contract is not among them. Accordingly, according to this opinion, the term purpose of a contract refers to the economic goal that is sought to be realized by concluding a specific synalagmatic contract (Vuković 2019). In support of this, it is stated that the Supreme Court of Serbia in one decision was of the opinion that, due to changing circumstances, the lease agreement for business premises is terminated if the rent, which is not enough to cover expenses for current maintenance of business premises, does not allow realization of the contractual purpose, which

[58] On the other hand, the purpose of the contract mentioned in Article 135 of the Law on Obligations, he interprets objectively, as the legal goal of the obligation.

is manifested in the expectation of the lessor, to realize a certain economic benefit from the concluded contract.[59]

Purpose of the sponsorship agreement

In our opinion, the purpose of the contract can be manifested either as an economic goal, or as a decisive motive of the contractor. We will present this on the basis of the sponsorship agreement. We are of the opinion that the purpose of the contract is the permitted goal of one contractor, with which the other contractor is familiar, and which can be manifested either as an economic goal or as a decisive motive that led one contractor to conclude a specific contract. During the execution of the contract, circumstances may change to the detriment of either contractors, we must determine the purpose of the contract of both contractors individually. It does not mean that in one contract the purpose of the contract for both contractors will be manifested exclusively as an economic goal, or exclusively as a decisive motive, but it may happen that the purpose of the contract of one contractor is an economic goal and for the other contracting party a decisive motive, which might be the case in a sponsorship agreement.

Practical cases are imaginable when the institute of termination or amendment of the contract due to changed circumstances could be applied to the sponsorship agreement. For example, a sponsorship agreement concluded by a successful company and a football club. After some time, during the duration of the sponsorship agreement, during the trip to a match, all members of the first team of the football club died in a plane crash, which happened in reality.[60] The sponsor can still fulfill his contractual obligations. Reserve football players are at his disposal. However, the question is whether in such a case the purpose of the contract should be realized for the sponsor, the desired image transfer, if the sponsor is promoted by not so well-known football players. Of course, on the other hand, the factual question remains, how the termination of the sponsorship agreement and leaving the sponsored due to such an accident would affect the image of the sponsor.

It could also happen, for example, which is currently happening, that due to the corona virus pandemic, the presence of spectators at football matches will be banned. The sponsored can fulfill the contractual obligations, but the sponsor is prevented from achieving the purpose of the contract, image

[59] Decision of the Supreme Court of Serbia, Rev. 959/94 from 23 March 1994, stated according to: (Vuković 2019).

[60] There is a well-known case from 2016, when almost all the football players of the Brazilian football club Chapecoense were killed in a plane crash while traveling to a football match in Colombia.

transfer, by creating the impression of connection with the sponsored in the eyes of the public, because there are no spectators, i.e. the public. Of course, some matches will be televised, but many will not, or will be shown on television only in the preview. We are of opinion, however, that this is not enough for a successful image transfer.

On the other hand, let's assume that the sponsorship agreement is concluded in such a way that the sponsor finances the sponsored's departure to a sports competition, and the sponsored undertakes to participate in the sponsor's commercial. Due to the corona virus pandemic, sports competitions will be banned. The sponsor can fulfill his contractual obligation, but for the sponsored, the purpose of the contract, the decisive motive that led him to conclude the sponsorship contract, and that is to go to a sports competition can not be realized. The sponsor is not really interested in acquiring the right of ownership over money, nor its economic use, unless it is for the purpose of going to a sports competition.

Pre-concluding considerations

While in LOO the term basis of a contractual obligation is used to denote the cause of the contractual obligation, in article 133 of the LOO it is about the purpose of the contract. So, what is obvious and what catches the eye first are the terminological differences. The variety of terms used could certainly lead to the conclusion that the purpose of the contract and the cause of the contractual obligation are not the same. It is an indisputable fact that the cause of the contractual obligation is a condition for the validity of the contract, so its non-existence at the time of concluding the contract results in the nullity of the contract. The purpose of the contract is definitely not a condition for the validity of the contract, because failure to achieve the purpose of the contract does not in itself cause any consequences for the contract and falls within the scope of business risk. Only if the non-fulfillment of the purpose of the contract were the result of unpredictable, inevitable and insurmountable circumstances, the contract could be terminated or changed.

If the purpose of the contract and the cause of the contractual obligation are the same, the question arises, how one and the same legal institute can under certain circumstances (its non-existence) be the cause of nullity of a contract, and under other circumstances (its non-fulfillment) be the cause of termination or change of a contract. We can conclude that such a thing is possible by referring to the rules of the LOO on unilateral termination of a contract due to non-performance of a contractual obligation, if of course we accept the theory of the cause as the theoretical basis of the LOO rules on unilateral termination

of a contract due to non-performance of a contractual obligation. In such a case, as we have already mentioned, the non-existence of the cause of a contractual obligation at the time of concluding the contract causes the nullity of the contract, while its later termination results in termination of the contract. However, the argument could be challenged by saying that the theory of the cause is certainly not the only theory that explains the unilateral termination of a contract due to non-fulfillment of contractual obligations.[61] By the way, the most serious objection to the theory of the cause, as the theoretical basis for explaining the unilateral termination of the contract due to non-fulfillment of a contractual obligation, is that in accordance with the mixed concept of the cause of the contractual obligation as a condition for the valid occurrence of the contract, as well as the condition for its maintenance, so if you would consistently adhere to it, in case of termination of the cause of the contractual obligation, the nullity should occur, not termination of the contract, while on the other hand, non-performance of the contractual obligation can not cause nullity of the contract because the causes of nullity must exist at the time of concluding the contract, and the subsequent circumstances, which includes non-performance of the contractual obligation, cannot cause the nullity of the contract (Grujić 2014, 109-110). We agree with the opinion expressed in the legal literature that the institute of the cause of the contractual obligation should be applied only and exclusively to the issue of the valid origin of the contract. There is no need for its application after the conclusion of the contract, because the LOO makes other institutes available, including the institute of termination or amendment of the contract due to changed circumstances, so that the application of the institute of contractual obligation in the period of contract overlap (Nikšić 2006; Šmalcelj 1980).

Conclusion

Whether the cause of a contractual obligation and the purpose of the contract from article 133 of the Law on Obligations are the same, the answer is directly related to which concept of the cause of the contractual obligation we decide on. We have a mixed, objective (economic) and subjective conception at our disposal. We can immediately renounce subjective conceptions, because they are neither accepted in the LOO, nor in legal theory, nor in court practice. If we opt for a mixed conception of the contractual obligation cause, which we are prone to, the differences between the contractual obligation cause and the

[61] In addition to the theory of cause, unilateral termination of a contract due to non-fulfillment of a contractual obligation in the legal literature is also explained by the theory of tacit termination condition, the theory of fairness, the theory of equivalence and the theory of public order. See more about that: (Grujić 2014).

purpose of the contract become more than clear. Therefore, based on opinions expressed in legal literature, it can be concluded that, just like the cause of the contractual obligation, the purpose of the contract can also be expressed objectively or subjectively. However, the differences are obvious. While the cause of the contractual obligation is objectively manifested as the legal goal of the obligation, the purpose of the contract is objectively manifested as the economic goal of the contractor. On the other hand, both the cause of the contractual obligation and the purpose of the contract can be subjectively expressed in the form of the contractor's motive for concluding a specific contract. But again, the differences are obvious. The notion of the cause of the contractual obligation in cargo contracts includes motives only if they are inadmissible and if both contractors were negligent. Only permissible motives can be legally relevant as the purpose of the contract. It is therefore obvious that termination or amendment of the contract due to changed circumstances are cases in which the cause of the contractual obligation of the contracting party at whose expense the change of circumstances still exists, due to the fact that the other contractor can and wants to perform his contract obligation, but the purpose of the other party the contract cannot be achieved. All the above, it seems to us, proves that the cause of the contractual obligation, as it is understood by the mixed concept, and the purpose of the contract are not the same.

If we opted for an objective (economic) conception of the cause of the contractual obligation, the answer would be different. Namely, there would be a coincidence of the cause of the contractual obligation and the purpose of the contract, in those contracts where the purpose of the contract would be manifested as the economic goal of the contractor. Given that we have seen what legal uncertainty would be caused by the practical application of the objective (economic) concept of the cause of the contractual obligation, as the domestic courts did, we would not advocate its acceptance. Even if it was about agreements such as the sponsorship agreement, in which the economic goal of commitment is so clearly and dominantly expressed and visible.

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[62] Vanredni profesor, dr Nikola Nikolić, Univerzitet u Beogradu, Ekonomski fakultet, Kamenička 6, Beograd, Srbija, Telefon: +381 11 555 22 33/lokal 28 228, E-mail: nikola.nikolic@iep.bg.ac.rs

[63] Dr Petar Petrović, naučni saradnik, Centar za ekonomska i finansijska istraživanja, Bulevar Mihajla Pupina 10g/Vp 50, Telefon: +381 11 222 222, E-mail: petar.petrovic@gmail.com

[64] Asistent, mr Marko Marković, Univerzitet u Beogradu, Ekonomski fakultet, Kamenička 6, Beograd, Srbija, Telefon: +381 64 111 22 33, E-mail: marko.markovic@gmail.com

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Reference (autori citata) se navode direktno u tekstu rada u sledećem obliku (Nikolić, 2012; ili Nikolić, Petrović, 2012; ili Nikolić et al., 2012). Ne navodite ih kao indekse u četvrtastoj zagradi [3] ili u fusnoti. Trudite se da fusnotu koristite samo u slučaju bližih objašnjenja određenih pojmova, odnosno razjašnjenja realnih ili hipotetičkih situacija. Nemojte vršiti numeraciju stranica.

Tabele moraju biti formirane u tekstu rada, a ne preuzete u formi slika iz drugih materijala. Tabele unositi u sam tekst rada i numerisati ih prema redosledu njihovog pojavljivanja. Nazivi tabela moraju biti dati neposredno iznad tabele na koju se odnose. Koristite dole prikazani stil tokom njihovog formatiranja. Naslov tabela pisati sa razmakom 6 pt – iznad/before i 6pt – ispod/after, u fontu TNR, font size 12, ravnanje Justified. Tekst unutar tabela pisati fontom TNR, font size 9. Tekst u zaglavlju tabela boldirati. Izvor i potencijalne napomene pisati sa razmakom 6 pt ispod tabela (before). Izvore i napomene pisati u fontu TNR, font size 10, ravnanje Justified. Naredni pasus početi na razmaku od 6pt od izvora tabele ili napomene (after). Tokom pisanja rada u originalnom tekstu treba markirati poziv na određenu tabelu (*Table 5*.). Trudite se da se sve tabele u radu veličinom uklapaju u zadati format strane (Table properties – preferred width – max 97% - alignment: center).

Sav tekst u poljima tabele treba unositi u formi (paragraph – spacing: before/after 0pt, line spacing: single). U slučaju da se tabela lomi na narednu stranicu, molimo Vas da prelomljeni deo tabele na narednoj stranici bude propraćen zaglavljem tabele.

Tabela 5. Troškovi distribucije dobara iz Subotice u maloprodajne objekte

Indikatori	**Period**			**Ukupno**
	Mesec 1	**Mesec 2**	**Mesec 3**	
Pređena razdaljina (km)	12.926	11.295	13.208	37.429
Korišćeno gorivo (litar)	3.231	2.823	3.302	9.356
Vrednost korišćenog goriva (RSD)	242.378	211.790	247.653	701.821
Ukupno provedeno vreme u vožnji (sati)	314	266	417	997
Vrednost ukupno provedenog vremena u vožnji (RSD)	47.048	39.890	62.570	149.508
Broj vožnji	98	77	102	277
Ukupna vrednost (RSD)	0	0	0	0
Broj preveženih paleti (komad)	1.179	976	1358	3.513
Ukupna prevežena količina (kg)	602.600	429.225	711.116	1.742.941
Suma (RSD)	974.222	870.864	1.100.813	2.945.899

Izvor*:* Nikolić, 2010;

Napomena: Vrednosti u tabeli ne sadrže porez na dodatu vrednost (PDV)

Grafike, dendrograme, dijagrame, šeme i slike treba unositi u sam tekst rada (ne koristiti opciju Float over text) i numerisati ih prema redosledu njihovog pojavljivanja. Njihovi nazivi se moraju pozicionirati neposredno iznad grafika, dendrograma, dijagrama, šeme ili slike na koju se odnose. Kod navođenja naslova, izvora i napomena koristiti isti stil koji je predhodno prikazan za formiranje tabela. Tokom pisanja rada u originalnom tekstu treba markirati pozive na određeni grafik, dendrogram, dijagram, šemu ili sliku (Graph 2.). Svi grafici, dendrogrami, dijagrami, šeme i slike u radu se svojom veličinom moraju uklapati u zadati format strane, te moraju biti centralno postavljeni. Fotografije nisu poželjne u predmetnom radu, a ukoliko se one ne mogu izbeći molimo Vas da koristite optimalnu rezoluciju (preniska rezolucija dovodi do pikselacije i krzavih ivica, dok previsoka samo povećava veličinu fajla bez doprinosa čitljivosti rada).

Kod pisanja zaključka rada, molimo Vas imajte na umu da iako **Zaključak** može dati sažeti pregled glavnih rezultata rada, nemojte ponavljati apstrakt na ovome mestu. Zaključak može objasniti značaj rada, dati preporuke za dalje delovanje ili predložiti dalji rad na obrađivanoj temi.

Literatura se navodi na kraju rada pre apstrakta na engleskom jeziku, abecednim redom, prema prezimenu autora. ***Molimo Vas da reference navodite u originalu (na jeziku na kome su objavljene) u obimu u kom su korišćene/citirane tokom pisanja rada***. Literaturu navoditi u fontu TNR, font size 12, ravnanje Justified, sa međusobnim razmakom 3pt – iznad/before i 3pt – ispod/after. U svim literaturnim jedinicama koristiti **Čikaški šablon za stil.** Molimo Vas da navodite prezimena svih autora, a ne da koristite stil navođenja Nikolić et al. Nemojte kombinovati literaturne jedinice (pod jednim rednim brojem može biti samo jedna referenca) i uvek pišite pune naslove u radu korišćenih literaturnih jedinica. Ukoliko je korišćena/citirana literatura preuzeta iz internet publikacija, posle pravilno izvršenog imenovanja literaturne jedinice u zagradi se mora navesti kompletan link sa koga je materijal preuzet (dostupno na web sajtu: www.nikolanikolic.pdf). Molimo Vas pridržavajte se dole navedenih primera navođenja različitih tipova literaturnih jedinica i referenci.

Literatura

1. Nikolić N., M. Marković, i P. Petrović. 2016. Poreski bilans. Oditor 2, (1): 13-17.

Prilikom unošenja literaturnih jedinica unosite korišćenjem **Čikaškog šablona za stil,** minimum 10 literaturnih jedinica. Sva korišćena literatura mora biti citirana u radu.

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[65] Nik Holmes Ph.D., Full Professor, Faculty of Economics, Christmas street no. 12, New York, USA, Phone: +xxx xx xxx xxx, E-mail: nik.holmes@gmail.com

[66] John Peters Ph.D., Associate Professor, University of Technology, Napoleon street no. 1, Jassy, Moldavia, Phone: +xxx xx xxx xxx, E-mail: johnpeters@yahoo.com

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Table 5. The distribution cost

Indicators	**Period**			**Total**
	2013	**2014**	**2015**	
Fixed costs	12.926	11.295	13.208	37.429
Variable costs	3.231	2.823	3.302	9.356

Source: Nikolic, 2016;

Graphs, diagrams, schemes and pictures should be entered within the text of article (do not use option Float over text) and numerated according to order of their appearance. Their titles have to be positioned immediately above the graph, diagram, scheme or picture to which they relate. Please, have in mind that all titles, sources and notes have to be written by identical style which was used for tables formatting. During the article writing please mark in the main text all calls to a certain graph, diagram, scheme or picture (*Graph 2.*). All graphs, diagrams, schemes and pictures within the paper have to fit the specified format of the page, as well as they have been centrally positioned.

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Literature

1. Vall J. 2014. Accounting theory. Valid, New York.
2. Parks D., W. Robberts. 2016. Macroeconomic indicators. Finance 23, (4): 462-476.