

Human Rights and Public Services: Towards a More Effective Approach

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The implementation of public administration reform in contemporary conditions focuses on the way public services are designed and delivered, such as the emphasis on service users and improvement of public service delivery standards that are relevant to human rights. Once these common links are identified, the question arises how the human rights approach can give a special contribution to achieving improvements in public services. The paper analyzes the international standards for providing human rights approach in the performance of public services, corporate social responsibility, established by the United Nations, the European Union and the OECD, in order to determine their links more precisely and to identify priorities that countries within the public administration reform should undertake for achieving more effective implemen-

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tation of the principles of protection of human rights in improving the of public service performance.

Key words: *public services, services of general economic interest, services of general non-economic interest, human rights, user*

1. Introduction

When we discuss the implementation of public administration reform in contemporary conditions, it is especially important to focus on public service users and in general on the process of modernization and improvement of services that are complemented by human rights values. These are those aspects of the reform that deal with the way public services are designed and delivered, such as the emphasis on service users and improvement of public service delivery standards, that are relevant to human rights. Once these common links are identified, the question arises how the human rights approach can give a special contribution to achieving improvements in public services.

In this context, the European Convention on Human Rights (ECHR) provides a framework for considering policy and practice and potentially affects all aspects of public services. The aim, that should be achieved with this approach of delivering public services, is the adoption of legislation that should prohibit actions by public authorities, which are incompatible with the ECHR and to avoid breaches of people's human rights. Firstly, the »positive obligations« doctrine, which is based on Article 1 of the Convention, requires public authorities to adopt a proactive approach to implementation of Convention rights. The effect of that is that the legislation provides a rights-based framework for designing policy and delivering services in accordance with Convention requirements. Secondly, the articles of the Convention are based on the principles of fairness, equality, dignity and respect and these values are well recognized as fundamental to ensuring the delivery of high quality public services.

There is a big interest about public services in the European Union (EU), which are mainly called services of general interest (SGI). In the reinforced activities of the Union in this field, the starting point is that the SGI are the main pillar of the European society model, that they contribute to a better quality of life and that they represent an assumption for the overall achievement of many fundamental rights. Namely, access to SGI in all its Member States is one of the joint values of all European societies.

Moreover, the SGI contribute to the competitiveness of the European industry, as well as to the strengthening of the social and territorial cohesion in the EU. They are considered to be a vital component of the Union's policy in protecting consumers. For the countries accessing the EU, SGI are essential for their smooth integration in the Union. Considering that the public service concept does not exist in all legal systems or does not always include the same positions (Rec, 1984), the importance given by the European citizens and companies to operating and development of such services or service providing, derives from the EU policy.

Recognizing the crucial meaning of well-functioning, available and high quality SGI for the quality life of the European citizens, the environment and the competitiveness of the European enterprises, the European Commission (EC) has increased its activities in this area in the last few years. It has, therefore, started broad consultations about how to best promote norms for high-quality SGI in the EU. These services represent one of the values held by all European communities and are the basic element of the European society model. Their role is essential for attaining a certain quality of life for all citizens, as well as for overcoming social exclusiveness and isolation.

Human rights are characterized by universality and their approach helps to put the public service user into the heart of their design and delivery. When services are designed having user in mind, it shows recognition that people are entitled to be treated fairly and with dignity and respect. The principles of public service reform, particularly the focus on service users and the drive to improve standards, are underpinned by human rights values (Butler, 2005).

2. Public Services – Services of General Interest

The interest for studying public services has been significant from long ago, with the aim of organizing them better, so that they could meet the needs of as many citizens as possible. It was even Leon Duguit who represented the concept that the basic task of the state in the beginning of the 20th century has changed (transformed) and that instead of performing public authorities, the state's task is to perform public services (Lilic et al., 2004: 12, 31). Public service for Duguit is every activity, whose performance should be regulated, secured and controlled by those who govern, because the performance of these activities is necessary for the achievement and development of the social interdependence (Digi,

1929). In terms of the apprehension of the legal theory on public services, a theoretical concept of public services may be determined, according to which they represent activities performed by the state in order to satisfy certain needs of the citizens (education, science, culture, social care, health care, etc.), that are not characterized by giving orders. In case of their interruption, serious problems occur in normal functioning of the society (Akimovska Maletić, 2006).

Even the Court of Justice developed the concept of public service for the needs of the EU, which in functional terms means service that has as a result direct or indirect interest in the exercise of power based on public law and duty to protect the interests of the state or other public authorities (Borković, 1995: 14).

In contemporary terms, apart from providing high quality public services in the best interest of the citizens on the national level, the focus is more and more on reaching the standard of the EU. For a long time, the shaping of the future of public services (or as they are called – services of general interest) has been in the center of the debate about the European model of society. There is a differentiation between services of general economic interest and services of general non-economic interest. The EU describes SGI as »market and non-market services which the public authorities class as being of general interest and subject to specific public service obligations«. This broadly covers water, energy supply, communication, transport, health and social services, education and postal services. According to Article 14 of the Treaty on the Functioning of the European Union (TFEU), SGI should »operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfill their missions«. The provision and funding of these services is left to national governments. The freedom to provide services, according to Article 49 (ex 52) of the Treaty Establishing the European Community seems to apply horizontally and vertically. Thus, Article 49 effects public bodies as well as legally recognized professional bodies, and now it seems it will be applied against private parties (Steiner et al., 2006: 469).

Within the frames of the recent reinforced interest on more specific regulation and definition of the SGI in the EU, the EC has established principles and goals of its policies in the area of the two complementary Communication from 1996 and 2000 (EC, 1996, 2000; Leaken Report, 2001). The significance of the Report may be seen in the perception of the need of passing a Framework Directive about the SGI, but also in the given definitions of the terminology on this subject. Therefore, the con-

cept of SGI covers both market and non-market services, which the public authorities have qualified to be of public interest, as well as the subject of specific obligations of the public service. Having in mind that the concept of public services is an ambitious term, since it can only refer to a current body providing services or a role of general public interest granted by a competent body, it may be determined that there is often confusion between the terms of public service and public sector. Namely, the term *public service* is linked to the profession of providing services to the public, having a reference to which service would be provided, while the term *public sector* (including state service) is connected to the legal status of those providing the service, with the reference to who owns the service. When speaking about SGI in the EU countries, it should be pointed out that a generally accepted rule is that the Union leaves up to the Member States to decide whether they would provide public service by themselves, directly or indirectly (through other public bodies) or they would determine a third person to perform them. When there is an economic activity on the Community's level, which is in accordance with the rules and principles of the Treaty, and it secures equal treatment and fair competition between public and private, it is necessary for the operators to fulfill defined guarantees, so that these services may be provided in the best way economically available on the market (Akimovska Maletić, 2006: 32).

Starting from the view that all the SGI which do not constitute an economic activity, are not subject of competitive and internal market rules, it was suggested to the Commission to comprise a list of services that are of non-economic nature. In that aspect the Court of Justice has determined that »any activity comprised of supply of goods and services on their market is an economic activity«. ¹ Also, the scope of services that must be provided on the market is subject of technological, economic and social changes that have increased in time. It is therefore considered that while the list of examples may be composed, it would not be feasible to provide a definite *a priori* list of all SGI that would be considered »non-economic« (Laeken Report, 2001: 11).

The member states are free to decide how they would provide the service, whereas they may decide on their own to provide the service directly or indirectly (through some other public body). However, when they decide to entrust the services to a third party, they have to follow certain proce-

¹ Joint cases C- 180 to C-184/98, Judgment of the Court of Justice of 12 september 2000, Pavel Pavlov and Others v Stichting Pensioenfonds Medische Specialisten [2000] ECR I-6451.

dural rules and principles. These rules and principles emanate from the Treaty and are applied to all agreements concluded by the member states for performing economic activities within the framework of the meaning of the Treaty, irrespective of their qualification in the national legislation. Nevertheless, there are many exceptions in the Treaty, such as the activities linked to the performance of public authority, where derogations are allowed, if they are justified for some reason, like public order, public safety and public health. The activities of »non-economic nature« within the meaning of the Treaty are also excluded from the application of these rules and principles (Laeken Report, 2001).

When defining the public interest goals performed with these services, as well as the way they are organized, funded and assessed, the starting point is that the reality of the SGI in the EU is complex and is constantly evolving, and thus entails:

- a broad circle of different types of activities, from huge network activities (energy, mail, transportation and communications) to health, education and social services;
- the level of providing these services is also very different, from European or even global to purely local;
- the services differ by nature, some are market services, while others are non-market;
- the organization of these services differs depending on their historical, geographical and cultural tradition and characteristics of the specific activities (Green Paper, 2003).

Confirming the importance of the SGI, the European Parliament adopted the Resolution of 13 January 2004 on the Green Paper on services of general interest. It has expressed assurance that certain SGI would be excluded from the scope of rules on competition, such as health care and education, social accommodation and SGI that try to lead or increase pluralism of information and cultural diversities. It is believed that it is either not possible or relevant to have joint definitions on SGI or duties originating thereof, but that the EU must determine joint principles such as universality and equality of access, continuity, safety, adaptability, quality, efficiency, availability, transparency, protection of users, consumers and the environment and participation of citizens, taking into consideration the specifics of each individual sector (Green Paper, 2003).

In reference to the request of the European Parliament on the Green Paper of 14 January 2004, the EC has brought conclusions from the debates

that were implemented in the White Paper. While the SGI may be organized in cooperation with the private sector, or to be entrusted to private or public enterprises, the definition of the obligations and activities of the public services remains a task of the public authorities on the relevant level. They are also responsible for market regulation and ensuring that the operators perform the activities of the public services entrusted to them. Even in the White Paper there is a definition of the terminology,² which refers to the SGI as an attempt to overcome many mistakes that have appeared, having in mind the discussions on the European level as a result of the terminological differences, semantic confusions and different traditions of the member states.

Bearing in mind that the terms »services of general interest« and »services of general economic interest« have not been identified with the term »public service«, the White Paper highlights the opinion that this term may have different meaning and this might lead to confusion. The term sometimes refers to the fact that the services are offered to the general public, sometimes it is underlined that the service is ascribed a specific role of public interest, and sometimes it refers to the ownership or status of the entity providing the service.

The existence of a joint concept on SGI influences the values and goals of the EU and it has been based upon a set of joint elements, including universal services, continuity, affordability, as well as user and consumer protection. The Directive 2006/123/EC of 12 December 2006 on services in the internal market is of great importance.³ The Directive mentions only the services that suit the economic activities, but it also implies to the non-economic activities. An intention is being noticed in Europe to consider as many services as »economic« as possible and accordingly, if the public authorities provide these services guided by social motives and not by profit, it should be defined as services of general economic interest, and not as services of general interest. This development of »economic« services exists only due to the parallel growth of numerous companies from the private sector that offer services from the domain

² These definitions are based on the Green Paper, 2003.

³ The Directive 2006/123/EC of the European parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27. 12. 2006, needed to be fully implemented by the member states by 28 December 2009. Most member states failed to implement the Directive by a 2009 deadline. <http://www.euractiv.com/sustainability/services-general-interest-eu-links dossier-500147>

of public entities.⁴ It should still be pointed out that although the public services mostly become »economic«, it is not understood as »commercial« or as »doing business on the market«. Also, the Court of Justice imposes indications that the Treaty on the European Union gives freedom to the member states to define the providing of SGI and to establish organizational principles for the services they intend to provide. In any case, this freedom must be achieved transparently and flawlessly in terms of general or public interest, and the member states must have in mind the law of the Community when establishing arrangements for implementation of the outlined goals or principles. For example, they have to respect the non-discrimination principle and Community legislation on administrative agreements and concessions when organizing a public service. Moreover, when dealing with services of economic nature, the compatibility of their organizational order with other areas of the Community law must be secured (especially the freedom to provide services and the freedom to establish). The universal service as a concept allows joint principles to be defined on Community level and the application of these principles is left to the member states, thus creating an opportunity for the specific situation in every country to be taken into consideration.

In 2007, the Protocol on Services of General Interest (Protocol, 2007) was included in the Lisbon Treaty underlining their value and potentially laying the ground for a new legal framework. The Protocol affirmed that EU treaty provisions do not affect member states' control over their non-economic SGIs »in any way«. The Commission has since stated that no new legislative frameworks for SGIs are in the pipeline. In January 2008, the EU executive launched an interactive information service on SGIs and their relation to EU law for the general public, member-state authorities and service providers. Article 14 of the EU Treaty and the Lisbon Treaty Protocol therefore provide the legal basis for Services of General Interest in the EU, while a series of non-legislative measures are being planned – such as a tool-kit for public authorities and a voluntary EU-wide quality framework for social services. (<http://www.euractiv.com/sustainability/services-general-interest-eu-linksdossier-500147>).

⁴ For example, »health« services are considered potentially »economic«, as there is a »market« in some health services. Also, there is a »market« in education services, by paying participation fees in private schools and there are even (in Great Britain) companies that offer to provide education services entirely on local level (CEMR, 2003).

3. Human Rights Approach Toward More Effective Public Services

Many aspects and many concepts, like the concept of fundamental rights and freedoms, mean different things to different people. Rights aplenty have been established and widely accepted, but a precise universal definition is not spelled out anywhere (Alfredsson, 2002: 20). The starting principles of the human rights concept are that the fundamental human rights and freedoms should not be deserved or given, because they are possessed. In that aspect Universal Declaration of Human Rights stipulates that all human beings are born free and equal in dignity and rights (1948, Art. 1). The concept of human rights and freedoms is structured within the framework of the international documents and it covers a large part of international law. The international documents are the main source of the overall promotion, practice and protection of human rights and freedoms. Regarding the protection of human rights in an international context, it can be said that the International Bill of Human Rights consists of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Other nine international agreements⁵ for human rights are considered as basic, some of which are amended with optional protocols that refer to specific fields. The ECHR entered into

⁵ International Convention on the Elimination of All Forms of Racial Discrimination, 1965, International Covenant on Civil and Political Rights, 1966, International Covenant on Economic, Social and Cultural Rights, 1966, The Convention on the Elimination of All Forms of Discrimination against Women, 1979, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Convention on the Rights of the Child, 1989, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, International Convention for the Protection of All Persons from Enforced Disappearance, 2006, Convention on the Rights of Persons with Disabilities, 2006, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 2008, First Optional Protocol to the International Covenant on Civil and Political Rights, 1966, Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 1989, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999, Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000, Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002, Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2006.

force in 1953 and has been ratified by all forty-seven member states of the Council of Europe (O'Boyle, Warbrick, 2009: 2).

States have legal obligation to respect, protect and fulfill the human rights set out in the international human rights conventions they ratify. Their obligation to protect human rights requires them to protect individuals and groups against human rights abuses, including those carried out by business enterprises. Their obligation to fulfill human rights means that states must take positive action to facilitate the enjoyment of basic human rights. International human rights treaties generally do not impose direct legal obligations on business enterprises. Legal liability and enforcement for the infringement by businesses of international human rights standards are therefore defined largely by national law. However, enterprises can affect the human rights of their employees, their customers, workers in their supply chains or communities around their operations. Indeed, experience shows that enterprises can and do infringe human rights where not sufficient attention is paid to this risk and attempts to have it reduced (United Nations, 2012).

The EU is an important player in the world, which greatly contributes to promotion and protection of all human rights, whether civil and political, or economic, social and cultural. The EU is founded on a shared determination to promote peace and stability and to build a world founded on respect for human rights, democracy and the rule of law. Article 21 of the Treaty on European Union has reaffirmed the EU's determination to promote human rights and democracy through all its external actions. The entry into legal force of the EU Charter of Fundamental Rights, and the prospect of the EU's acceptance of the jurisdiction of the European Court of Human Rights through its accession to the ECHR, underline the EU's commitment to human rights in all spheres. The EU is promoting human rights in all areas of its external action without exception. In particular, it is integrating the promotion of human rights into trade, investment, technology and telecommunications, Internet, energy, environmental, corporate social responsibility and development policy as well as into Common Security and Defense Policy and the external dimensions of employment and social policy and the area of freedom, security and justice, including counter-terrorism policy. The EU is aimed to intensify its efforts to promote economic, social and cultural rights; to strengthen its efforts to ensure universal and non-discriminatory access to basic services, with a particular focus on poor and vulnerable groups. Also the EU is encouraging and contributing to implementation of the UN Guiding Principles on Business and Human Rights.

Strategic Framework on Human Rights and Democracy with an Action Plan (Council, 2012)⁶ sets out principles, objectives and priorities, all designed to improve the effectiveness and consistency of EU policy as a whole in the next ten years. They are involving the EC and EU member states, which are jointly responsible for the implementation. In order to contribute to the implementation of the Strategic Framework and the Action Plan, EU Special Representative on Human Rights was appointed, whose job is to with the aim to enhance the effectiveness and visibility of EU human rights policy.

An important issue related with the human rights and the entities that are performing public services is the issue of corporate social responsibility (CSR). The term corporate social responsibility is often used interchangeably with corporate citizenship, social enterprise, sustainability, sustainable development, triple-bottom line, and corporate ethics and in some cases corporate governance (HKS, 2008). The EC has previously defined CSR as »a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis« (EC, 2011). It is in the interest of the enterprises and in the interest of society as a whole. CSR concerns actions by companies over and above their legal obligations towards society and the environment. Certain regulatory measures create an environment more conducive to enterprises voluntarily meeting their social responsibility. A strategic approach to CSR is increasingly important to the competitiveness of enterprises but also it can bring benefits in terms of customer relationships. By addressing their social responsibility, enterprises can build long-term employee, consumer and citizen trust as a basis for sustainable business models.

Responsible business conduct is especially important when private sector operators provide public services. Also, companies are facing new demands to be engaged in public-private partnerships and are under growing pressure to be accountable not only as stakeholders, but also to stakeholders such as employees, consumers, suppliers, local communities, policy-makers and society at large (HKS, 2008). In the Europe 2020 Strategy, the Commission made a commitment to renew the EU strategy to promote CSR. Commission has played a pioneering role in the development of public policy to promote CSR ever since its 2001 Green Paper (EC,

⁶ The Framework builds on the joint Communication entitled *Human rights and democracy at the heart of EU external action – towards a more effective approach* adopted by the EC on 12 December 2011.

2001) and the establishment of the European Multistake holder Forum on CSR. In 2006 the EC published a new policy whose centre piece was strong support for a business-lead initiative called the European Alliance for CSR (EC, 2001). The policy identified 8 priority areas for EU action: awareness-raising and best practice exchange; support to multi stakeholder initiatives; cooperation with member states; consumer information and transparency; research; education; small and medium-sized enterprises; and the international dimension of CSR. The Commission has identified a number of factors that will help further to increase the impact of its CSR policy, including among others:

- The need to better clarify what is expected of enterprises, and to make the EU definition of CSR consistent with new and updated international principles and guidelines.
- The need to address company transparency on social and environmental issues from the point of view of all stakeholders, including enterprises themselves.
- The need to give greater attention to human rights, which have become a significantly more prominent aspect of CSR (EC, 2011).

The modern understanding of corporate social responsibility can be seen in Commission's new definition of CSR as »the responsibility of enterprises for their impacts on society«. To fully meet their corporate social responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders. To maximize the creation of shared value, enterprises are encouraged to adopt a long-term, strategic approach to CSR. Although is clear that the development of CSR should be led by enterprises themselves, the role of public authorities is also very important. Public authorities should play a supporting role through a smart mix of voluntary policy measures and, where necessary, complementary regulation (for example to promote transparency), they should create market incentives for responsible business conduct, and ensure corporate accountability (EC, 2011).

For the public services delivery, it is very important to improve company disclosure of social and environmental information. The Fourth Directive on annual accounts 2003/51/EC requires enterprises to disclose in their annual reports environmental and employee-related information to

the extent necessary for an understanding of the company's development, performance or position. It is also an important element of accountability and can contribute to building public trust in enterprises. It is concluded that a growing number of companies disclose social and environmental information. Some sources estimate that about 2,500 European companies publish CSR or sustainability reports, which puts the EU in a position of the global leader (CorporateRegister.com, according to EC, 2011). However this is still only a small fraction of the 42,000 large companies operating in the EU (COM(2001)366, according to EC, 2011).

The global framework for CSR consists of core set of internationally recognized principles and guidelines, in particular the OECD Guidelines for Multinational Enterprises, OECD Guidelines on Corporate Governance of State-Owned Enterprises, the ten principles of the UN Global Compact, the ISO 26000 Guidance Standard on Social Responsibility, the ILO Tri-partite Declaration of Principles Concerning Multinational Enterprises and Social Policy, and the UN Guiding Principles on Business and Human Rights. According to these principles and guidelines, CSR has multidimensional nature that at least covers human rights, labor and employment practices (such as training, diversity, gender equality and employee health and well-being), environmental issues (such as biodiversity, climate change, resource efficiency, life-cycle assessment and pollution prevention), and combating bribery and corruption. Community involvement and development, the integration of disabled persons, and consumer interests, including privacy, are also part of the CSR agenda (EC, 2011).

One of the most important international tools in this aspect are UN Guiding Principles on Business and Human Rights, as the global standard of practice that is now expected of all states and businesses with regard to business and human rights. They elaborate on the implications of existing standards and practices for states and businesses, and include points covered variously in international and domestic law (UN, 2012). UN Guiding Principles cover three pillars: the state duty to respect human rights; the corporate responsibility to respect human rights; and the need for access to effective remedy.

According to established principles, the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. That means that business enterprises should respect human rights by avoiding infringing the human rights of others and should address adverse human rights impacts, with which they are in-

volved. It exists over and above compliance with national laws and regulations protecting human rights. Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation (UN, 2011: 18). The corporate responsibility to respect human rights applies to all internationally recognized human rights, because business enterprises can have an impact, directly or indirectly, on virtually the entire spectrum of these rights. Even rights such as the right to a fair trial, which is clearly directed at states, can be adversely affected if, for example, an enterprise obstructs evidence or interferes with witnesses (UN, 2012).

According to Guiding Principle 14 of the UN Guiding Principles, the responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- A policy commitment to meet their responsibility to respect human rights;
- A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

According to Guiding Principle 16 of the UN Guiding Principles, as the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

- Is approved at the most senior level of the business enterprise;
- Is informed by relevant internal and/or external expertise;
- Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
- Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
- Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise. For instance, one of the most typical risks for a toy or footwear company will be

involvement in labor rights abuses through its supply chain. For a beverage or food company, typical risks are both labor rights and impact on water and/or land use and consumer health. For a pharmaceutical company, the right to health will be particularly salient, as will freedom of expression and the right to privacy for an information and communications technology enterprise (UN, 2012: 28).

According to Guiding Principle 17 of the UN Guiding Principles, in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence is necessary for any enterprise to know and show that it is respecting human rights in practice. It will need to include all the elements set out in the Guiding Principle: assessing actual and potential human rights impact, integrating and acting upon the findings, tracking responses, and communicating how impact is addressed. However, the scale and complexity of these processes will vary according to the size of the enterprise, as well as its sector, operational context, ownership and structure. The single most important factor, however, in determining the processes needed will be the severity of its human rights impact.

As prescribed in Guiding Principle 18 of the UN Guiding Principles, in order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should: (a) draw on internal and/or independent external human rights expertise; (b) involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

According to Guiding Principle 23 of the UN Guiding Principles, in all contexts, business enterprises should: (a) comply with all applicable laws and respect internationally recognized human rights, wherever they operate; (b) seek ways to honor the principles of internationally recognized human rights when faced with conflicting requirements; (c) treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

4. Users in the Center of Public Service Performance

It is known that public service delivery in the countries (most OECD countries) has lately been more within the competence of the local self government, where responsibilities and resources have been transferred, and empowered to set up their own administration and public services that are going to be closer to the citizens. With an intention to achieve better quality of life, better public service delivery and better economic prospects the redistribution of competences is then a suitable tool for:

1. having public service delivery at the most appropriate level for citizens and businesses, with the central level guaranteeing homogeneous quality across the national territory
2. ensuring citizens equal access to services and providing the same standards of quality;
3. strengthening the legitimacy of local /regional/ sub national and national authorities and being perceived as such by the citizens;
4. promoting a healthy process of competition and comparison between local governments in the provision of services and investment activities;
5. setting up co-ordination and co-operation mechanisms between and across the different levels of government (Vermeulen, 2009).

A focus on service quality is part of the general direction of public sector management reforms being pursued by OECD member countries. OECD, since the publication *Administration as a Service: Public as a User*, proposes the following components of the service delivery that meets the requirements of citizens: transparency, participation, user satisfaction of users' requirements and availability (OECD, 2003).

In the EU, the starting point is that access of all citizens and enterprises to high-quality SGI, which they could afford on the territory of the member states, is the basic principle for promoting social and territorial cohesion of the EU. Universal service is the key concept that the Community has developed in order to ensure efficient approach to the basic services. By that, every person has a right to access certain services, that are considered as basic and that impose some obligations to the service operators to offer defined services in accordance with specified conditions, including complete territorial coverage and affordable prices. The universal service is a dynamic and flexible concept and it has proven as

an effective protection norm for those who do not buy basic services for themselves in any other way. The concept enables joint principles to be defined on the Community's level, while their application to is left to the member states, which makes it possible to take into consideration the specific situations in each country, according to the principle of subsidiarity (Akimovska Maletić, 2006: 34. The principle of subsidiarity means that in general competencies should be devolved to authorities and public services closest to the citizens. So, there is a need for the SGI to be organized and regulated as close as possible to the citizens and for the principles of subsidiarity to be strictly followed.

Also, the Protocol on Services of General Interest determines that the shared values of the Union in respect of SGI include, in particular:

- the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organizing services of general economic interest as closely as possible to the needs of the users;
- the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;
- a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights (Protocol, Art. 1).

Starting from the fact that it is clear that services should be done in a way that puts the users in the first place, it is confirmed that the principle of transparency is the key concept for the development and implementation of public policies that refer to the SGI.

It is noted that Reid's statements encapsulate the foundation of human rights when it comes to public services. The Universal Declaration of Human Rights expressed a determination to »promote social progress and better standards of life in larger freedom«. These are the goals and human rights principles which provide both a set of values, that guide their achievement, and a safety net for those who need special protection. A human rights approach helps to put the user of public services at the heart of their design and delivery. Users of services will have disparate and individual needs, but in one sense they are uniform in that they are all, without exception, entitled to human rights protection. When services are designed with the user in mind, it encourages recognition that people are

entitled to be treated fairly and with dignity and respect. This entitlement has a legal basis under human rights legislation because if people are not treated in accordance with the principles of fairness, dignity, equality and respect, it is more likely that an unlawful act, such as degrading treatment, discrimination or breach of a protected right, will occur (Butler, 2005).

It is important to understand and to determine the way how to communicate with citizens about human rights in order to enable them to use those human rights effectively to drive up standards in public services. The proposition that a human rights approach can encourage public authorities to provide better services, is not simply theoretical. It is noted that there are enough examples⁷ of changes, that have occurred during this period, to suggest that the proposition can be validated and to support the need to conduct further research. Several case studies are also provided which describe the proactive approach adopted by public authorities to implementing human rights requirements throughout their organizations. Another question is that despite these examples of beneficial results, many public authorities are having difficulties understanding how to implement human rights in their decision-making processes (Butler, 2005).

In order to achieve improvement in public services through human rights approach, the implications for supporting a positive attitude to human rights issues, as a party of guidance for public authorities, should be clear. The entities performing public services should fully appreciate that implementing the Human Rights principles effectively involves leadership from the top and changes in management techniques throughout the organization. It is very important to find evidence of a corporate approach to human rights, that was proactive and related to service improvement.

In order to make the aim of improved public services through respect for human rights more achievable, the introduction of human rights thinking into the wider public sector environment needs to be considered. The focus must go beyond linking human rights, equalities and user participation to the broader context of related »initiatives, frameworks, concepts and standards« which already constitute »such a clamour« around public authority staff involved in service delivery (Butler, 2005)

⁷ Some evidence comes from the Audit Commission's survey among 175 public bodies in 2003. In its report, the inspectorate lists several examples of changes made by public bodies to their policies and practices as a result of assessing them for human rights compliance (Butler, 2005).

5. Conclusion

There are numerous international instruments for the protection of human rights as well as numerous international standards that provide better public services. According to the *positive obligations* doctrine, public authorities should adopt a proactive approach for implementation of Convention rights. The legislation should provide a rights-based framework for designing policy and delivering services and should incorporate principles of fairness, equality, dignity and respect. These values are well recognized as fundamental to ensuring the delivery of high quality public services.

The question that arises is whether and to what extent the countries apply international standards in the field of human rights in the public service delivery. The modernization of public services should be priority for every government in the countries. They should set an example by making a more explicit connection between the adoption of a human rights approach and better public services. The authorities should use human rights as a tool for public service improvement by making principles of dignity, respect, fairness, equality and transparency central to their policy agenda. That is possible only if service users are put in the heart of what they do and especially in the center of public services. Several indicators of human rights compliance are pointed as possible: evidence of a corporate approach to human rights, the type and extent of training provided to staff, reviews of procedure and policy, changes in the way that services are delivered, human rights specifications in contracts between public authorities and contractors, information on human rights and equality standards to be provided to the public and effective participation by users (Butler, 2005).

By emphasizing the issue of improvement of public services by using a human rights approach, competent authorities should be encouraged for its more effective implementation. First, they should be directed to investigate the impact of human rights in public services. It is necessary to make empirical research that will confirm in which extent human rights are respected during the public services delivery. For that purpose there is a need to take actions in the direction of researching awareness, attitudes and expectations of public service delivery in the context of human rights principles among public service users. Also, important element here is whether the entities have the competencies to apply human rights approach in the public services. Namely, even if certain entities want to apply a human rights approach in the service delivery, the question is whether they know how to do that. It is important to know how to apply the precise legal principles, but also to know how to develop an entire corporate approach with emphasis on service users.

In order to take some practical measures for achieving better and more efficient public services with human rights approach, first certain conceptual solutions should be taken. Also, in order for corporate social responsibility programs to work, government and the private sector must construct a new understanding of the balance of public and private responsibility and develop new governance and business models for creating social value (HKS, 2008). It is necessary that countries adopt their national strategies.

Quality of service delivery depends on the application of the human rights approach that highlights the importance of the existence of a clear corporate strategy and high-quality training of staff that provide services. Of crucial importance is the existence of a human rights framework for making and reviewing policy decisions, including processes for taking into account the perspective of users.

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HUMAN RIGHTS AND PUBLIC SERVICES: TOWARDS A MORE EFFECTIVE APPROACH

Summary

The implementation of public administration reform in contemporary conditions focuses on the way public services are designed and delivered, such as the emphasis on service users and improvement of public service delivery standards that are relevant to human rights. Once these common links are identified, the question arises how the human rights approach can give a special contribution to achieving improvements in public services. The paper analyzes the international standards for providing human rights approach in the performance of public services, corporate social responsibility, established by the United Nations, the European Union and the OECD, in order to determine their links more precisely and to identify priorities that countries within the public administration reform should undertake for achieving more effective implementation of the principles of protection of human rights in improving the public service performance.

Key words: public services, services of general economic interest, services of general non-economic interest, human rights, user

LJUDSKA PRAVA I JAVNE SLUŽBE: PREMA UČINKOVITIJE PRISTUPU

Sažetak

Reforma javne uprave u suvremenim je uvjetima usmjerena na način oblikovanja i pružanja javnih službi i usluga. Naglasak je na korisnicima javnih usluga i poboljšanju standarda njihova pružanja, što je važno za stanje ljudskih prava. Kada se identificiraju zajedničke poveznice, postavlja se pitanje na koji način inzistiranje na ljudskim pravima može doprinijeti poboljšanju pružanja javnih usluga. U radu se analiziraju međunarodni standardi koji vrijede za pristup povezan s ljudskim pravima pri vršenju javnih službi, uspostavljeni od Ujedinjenih naroda, Europske unije i Organizacije za europsku suradnju i razvoj. Ti standardi upućuju pojedinu zemlju na prioritete i mjere koje bi trebala poduzeti u okviru reforme javne uprave, da bi postigla učinkovitiju primjenu načela zaštite prava građana te istodobno poboljšala javne službe.

Ključne riječi: javne službe, službe od općeg ekonomskog interesa, neekonom-ske službe od općeg interesa, ljudska prava, korisnik