

# *Local Public Services in Slovenia – Legal, Organisational, Economic and Financial Aspects*

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The paper addresses the legal, organisational, economic, and financial aspects of local public services development in Slovenia in the last two decades. Since both economic and social local public services are taken into account, the research question focuses on main variations in the development and current status of those two categories. The evidence indicates that public services at the local level have undergone substantial changes during the last two decades, and it is clear that legal provisions, although not

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without problems, are better tailored for economic public services than for social public services, which are also subject to larger variation in the sources of financing. Nevertheless, current development also suggests that ongoing changes in local public service delivery mechanisms and organisational forms are occurring, which favours additional service- and sector-specific research.

*Keywords:* local self-government, economic and social public services, provision and financing of local public services, Slovenia

## 1. Introduction

Modern local self-government is based on the concept of political decentralization, alongside with the important role of the principle of subsidiarity (Koprić et al., 2014: 249). From the developmental point of view, roles of local self-government have changed, but in a way, they are now present in almost all local self-government systems in Europe, although not in the same proportion. In the course of the 20th century, and especially after WWII, local units took over an important part of public services (so-called social role of local self-government) (Koprić et al., 2014: 255–257).

Public services, both social and economic,<sup>1</sup> have been under severe market pressure in the past years, which has changed both the scope and manner of service delivery.

Nevertheless, experiences with »marketization« have raised several important questions and a trend of re-municipalisation has been observed since 2008 (Busshardt, 2014; Wollmann, 2014; Rakar et al., 2015). After democratization and independence in 1991, Slovenia's local self-government was subject of a major reform, when a shift from the Marxist concept of the commune back to classical European understanding of local self-government took place (Šmidovnik, 1995: 152–153; Vljaj, 2011: 146–

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<sup>1</sup> We use the term social service as an equivalent for Slovenian term *negospodarske javne službe*, and the term economic services as an equivalent for Slovenian term *gospodarske javne službe*. In the EU law context, we can subsume both social and economic public services under the concept of services of general interest – non-economic services of general interest and services of general economic interest (cf. Wollmann, Marcou, 2010: 1–4; Koprić, 2014: 557–559; Nikolić, 2015: 51–54).

147).<sup>2</sup> The second “critical juncture point” (Pierson, 2000) was joining the EU in 2004. Both cases included addressing the functional dimension of local self-government. As far as public services are concerned, the term was introduced by the Institutes Act of 1991 (IA), which introduced a new organizational form for provision of social public services – public institute (*javni zavod*; hrv. *javna ustanova*).<sup>3</sup>

The main aim of this paper is to present the development of local public services in Slovenia in the last two decades, by addressing legal, economic, financial, and organisational issues. Specifically, the main hypothesis of the paper relates to the question whether the development of economic and social local public services differentiated in any manner. The paper uses the descriptive method, combined with the presentation of selected relevant data to outline contemporary developments and issues.

## 2. Scope of Local Public Services in Slovenia

### 2.1. An Overview of the Local Government System

Slovenia is a unitary state with single tier local self-government units, municipalities (slov. *občina*).<sup>4</sup> Until 1994 municipalities as so-called socio-political communities (slov. *družbenopolitična skupnost*) performed mainly the state administrative tasks<sup>5</sup> and played a very important role in the economy, while local self-government in a European sense of the word took place in their narrower parts, so-called local communities (*krajevne skupnosti*) (Vlaj, 2011: 146; Grafenauer, Brezovnik, 2011: 81).

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<sup>2</sup> For historical development of the Slovenian local self-government, see Brezovšek, 2014.

<sup>3</sup> Institutes Act preceded the adoption of fundamental constitutional legal acts and thus served as an act that formed adequate organizational structures for establishing a new state (Trpin, 2011: 99).

<sup>4</sup> According to the Constitution of the Republic of Slovenia, residents of Slovenia exercise local self-government in municipalities and other local communities – regions (*po-krajina*) (Articles 138 and 143). Nevertheless, regions have not been constituted yet. See Senčur (2012) for detailed discussion on this issue.

<sup>5</sup> These tasks were mainly of administrative nature, e.g. issuing building permits, identity cards etc. According to previous research, these tasks represented more than 80% of all municipal tasks after 1974 (decision of the Constitutional Court of Republic of Slovenia No. U-I-13/94; Vlaj, 2002: 153).

Local self-government reform was one of the most important and most difficult tasks after gaining independence in 1991. The reform started with the adoption of the new Constitution and had several goals, for example, enhancing the quality of people's lives in local communities, balanced development of the whole community through implementation of the principles of subsidiarity and decentralization, and establishing a rational and efficient local administration (Vlaj, 2006: 13).<sup>6</sup>

The implementation of the new constitutional design of local self-government began with the 1993 Local Self-Government Act (LSGA) and continued in 1994 with the establishment of the first network of new municipalities.<sup>7</sup> The European Charter of Local Self-Government was ratified in 1996 and several constitutional provisions were amended in 2006.<sup>8</sup> Along with legal regulation, several strategic political documents related to local self-government were adopted, the last being the 2015 Strategy for the Development of Local Self-Government in Slovenia.<sup>9</sup>

According to the Constitution, the municipality is competent for local affairs that can be regulated autonomously, and which affect only the residents of the municipality (general competence clause).<sup>10</sup> By law, the state may transfer its specific tasks to municipalities in case it also provides the financial resources (Article 140).<sup>11</sup> A town may attain the status of urban municipality in the procedure and under conditions prescribed by law. An urban municipality performs, as part of its competences, particular tasks relating to urban development delegated from the state competence (Article 141).

The Local Self-Government Act (LSGA) stipulates that the original municipal competences are, *inter alia*, regulating, managing, and providing

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<sup>6</sup> According to Vlaj (2011: 148) decentralization has not started yet.

<sup>7</sup> The number of municipalities grew from 62 in 1991 to 147 in 1994 and to 212 in 2011. LSGA has been amended more than 30 times.

<sup>8</sup> These changes refer to the establishment of regions (Article 143) and delegation of state tasks to municipalities (Article 140).

<sup>9</sup> In 2015 several discussions with interested parties and general public took place.

<sup>10</sup> These are local matters of public interest (Article 21 of the LSGA). For the interpretation of substance and boundaries of this term by the Constitutional Court of the Republic of Slovenia see decisions No. U-I-215/96 and U-I-97/05). General competence clause enables municipalities to determine their competences by their own legal acts (Vlaj, 2006: 158). Critically on this issue, see Mlinar, 2008: 388–395.

<sup>11</sup> In practice, this transfer is almost non-existent. As of 2006, the prior consent of municipalities for the transfer is no longer required.

for local public services within municipal jurisdiction (Article 21).<sup>12</sup> The municipality provides public services determined by its statute in accordance with the law and public services, which are prescribed by law.

According to Vljaj (2012: 675, 689), Slovenia is one of the most centralized countries in Europe. Its centralisation is strengthened further by the large number of inefficient municipalities. The point at which municipalities are able to ensure the provision of public services is to be determined (see Pevcin, 2013) and is still one of the basic challenges for the future development of local self-government.

## 2.2. Types and Scope of Public Services

According to Slovenian theory and legislation, (local) there are two categories of public services – economic and social. (Local) economic public services are further divided into two sub-categories, obligatory and elective (Article 3, Services of General Economic Interest Act, SGEIA). Elective services are subdivided into those whose electiveness has been stipulated by law and those whose electiveness has been stipulated by the municipality (Grafenauer, 2009: 213). Economic public services are regulated by sector specific laws in the field of energy, transport and communications, public utilities, water management and management of other types of natural resources, environmental protection, and the laws regulating other areas of economic infrastructure (Article 2 of SGEIA). Social public services are regulated by sector specific laws in the field of education, science, culture, sports, health, social care, childcare, disability care, and social security (Article 1 of IA).

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<sup>12</sup> The list of duties and functions in the LSGA is exemplary. Concrete competences are determined by sector specific laws (currently more than 100), whose number grows (Government of the Republic of Slovenia, 2013: 3). Municipal competences are listed in the catalogue of local competences (available via Lex Localis Portal, <http://www.lex-localis.info>).

Table 1: Examples of Present Local Economic and Social Public Services

Economic public service			Social public service		
Field	Law	Service	Field	Law	Service
Energy	Energy Act (2014)	Distribution system operator Distribution of heat and other energy gases	Education and sport	Adult Education Act (1996)	Education, training, and learning
Transport and communications	Maritime Code (2001)	Regular maintenance of port infrastructure used for public transport; Regular waste collection from vessels		Organization and Financing of Education Act (1996)	Programs for preschool children, educational programmes, special education programmes for children and youth with special needs
	Roads Act (2010)	Maintenance of local public roads			
	Inland Waterways Navigation Act (2002)	Management of ports			
	Cableway Installations for Carrying Persons Act (2003)	Passenger transportation on the ski lifts			
Agriculture, forestry, fishing and hunting	Animal Protection Act (1999)	Providing shelters			
Nature and environment	Nature Conservation Act (1999)	Management of Protected Local Areas			
	Environmental Protection Act (2004)	Drinking water supply Collection and treatment of urban and drainage waste water Collecting and processing certain kinds of municipal waste Disposal of processing residues or disposal of municipal waste Cleaning of public areas			

	Waters Act (2002)	Operation, maintenance, and monitoring of water infrastructure designed to protect against adverse effects of water			
Spatial Planning	Cemetery and Funeral Services Act (1984)	Cemetery and funeral services			
	Land Survey Service Act (2010)	Local Geodetic Service			

Source: Adapted from Lex Localis Portal ([www.lex-localis.info](http://www.lex-localis.info)) with additions by the authors

### 2.3. Development of Public Services

The first public services reform in Slovenia occurred together with the transition to the new constitutional and political system in the 1990s. Before 1991<sup>13</sup> public services were known as services of special societal importance (*dejavnosti posebnega družbenega pomena*)<sup>14</sup> and performed by the so-called self-governed interest communities (*samoupravne interesne skupnosti*) and so-called organizations of joint work (*organizacije združenega dela*). The competences of the former later passed to the executive bodies of the national and local assemblies. The latter were substituted with new organizational forms – for social public services, the Institutes Act of 1991 introduced the public institute (*javni zavod*), and for economic public services the Services of General Economic Interest Act of 1993 (SGEIA) introduced the so-called overhead plant (*režijski obrat*), economic public institute (*javni gospodarski zavod*), public enterprise (*javno podjetje*), concession (*koncesija*), and public investment in private law organizations (*vlaganje javnega kapitala v dejavnost oseb zasebnega prava*). Both laws determined which activities were public services before their explicit regulation in sector specific laws and thus enabled a unified transition from the previous to the present legal arrangement. Special attention was paid

<sup>13</sup> The old Yugoslav legal regulation used the term public services until the mid-1960s when changes of the constitutional system took place (Trpin, 2011: 98).

<sup>14</sup> Social public services were known as social services of special societal importance (*družbene dejavnosti posebnega družbenega pomena*) and economic public services as services of special societal importance of economic infrastructure (*dejavnosti posebnega družbenega pomena gospodarske infrastrukture*) (Trpin, 2011: 100). Cf. Services of General Economic Interest Act of 1993 (Article 68) and Institutes Act of 1991 (Article 64).

to objects and devices required to perform public services, which mainly became state or municipal property (Trpin, 2011: 101–102).<sup>15</sup>

Despite positive effects of these two laws, several shortcomings and uncertainties remained and further uncertainties occurred when the new Companies Act of 2006 (CA-1) and Public-Private-Partnership Act of 2006 (PPPA) were adopted (Brezovnik, 2008: 1–6, 252). As a result, the development of social public services is marked by several problems that have still not been resolved satisfactorily, for example, concession,<sup>16</sup> legal status and financing of public institutes, possibility of their legal transformation, and their market activity and assets (Trpin, 2011: 103; Brezovnik, 2008: 249–250; Brezovnik, Oplotnik, 2011). The development of economic public services was slightly less problematic as a result of better legal regulation in the SGEIA (Trpin, 2011: 112). This act, contrary to the Institutes Act of 1991 as a primarily legal status act, regulated economic services systematically and comprehensively and was (is) extremely stable. Nevertheless, it had its own shortcomings, e.g. regulation of public holding, economic public institute, public company, and concession (Trpin, 2011: 112–115; Brezovnik, 2008: 251–252).

### 3. Forms of Local Public Service Provision

Forms of local public services provision in Slovenia are stipulated in the Local Self-Government Act (LSGA), Institutes Act (IA), Services of General Economic Interest Act (SGEIA) and Public-Private Partnership Act (PPPA). All forms can be divided into two types – public and privatized (Virant, 2009: 142).

<sup>15</sup> In practice, state and municipalities started to invest this infrastructure as an in-kind contribution to public and other companies and thus lost property, which practically nullified the idea of competition in the field of publicly-owned infrastructure (Trpin, 2011: 102–103).

<sup>16</sup> Several legal institutes of concession are not regulated, e.g. transfer of concession.



Table 2: Forms of Local Public Services Provision

Type form	Public		Privatised
1) Body	1.a) Overhead plant ( <i>režijski obrat</i> )		Concession / contractual P-P-P ( <i>koncesija</i> )
2) Legal entity of public law	2.a) Public institute ( <i>javni zavod</i> )		Equity P-P-P ( <i>statusno javno-zasebno partnerstvo</i> )
	2.b) Public economic institute ( <i>javni gospodarski zavod</i> )		
	2.c) Public enterprise ( <i>javno podjetje</i> )		

Source: Adapted from Virant (2009: 141–150) with authors' own additions

According to the LSGA, the municipality may provide public services via the municipal administration body, by establishing public institutes and public enterprises, by granting concessions, and in any other way determined by law (Article 61, Paragraph 1).<sup>17</sup> Overhead plant (*režijski obrat*) is a relatively rare form of local economic public services provision.<sup>18</sup> It may be used when it would be uneconomical or irrational to establish a public enterprise or to give a concession due to the small size or the characteristics of the service (Article 6).<sup>19</sup> Public economic institute (*javni gospodarski zavod*) is a very rare form of local economic public services provision. The SGEIA has stipulated its use when a public service, due to its nature, cannot be provided as a profit activity or if profit is not a goal of such a service (Article 18). Public economic institute may be either a legal entity of public law or an entity without legal personality (Article 19).<sup>20</sup> Co-founders may be legal persons other than municipalities, but their share must not exceed 49%. Public enterprise (*javno podjetje*) is the

<sup>17</sup> Public institutes and public companies may be established jointly and concessions may be granted jointly, too. For exercising the founders's rights, the council of founders and the council of concedents are established by municipal councils respectively. Members of the council are mayors (Article 61/2).

<sup>18</sup> Approximately 20 bodies of this type have been established.

<sup>19</sup> It is mainly used in the area of environment protection (see Table 1).

<sup>20</sup> The cases include, for example, bus passenger transport (city of Maribor between 2011 and 2012), flight centre (municipality of Brežice), etc.

most widespread form of local economic public services provision. It is used for the provision of one or more services of increased volume or when economic public service is a monopoly. In both cases, services are required to be performed profitably (Article 6, SGEIA). Public enterprise is organized as a company with share capital and is commonly regarded as a legal entity of public law (Brezovnik, 2008: 177).<sup>21</sup>

Legal regulation of granting concessions for providing economic public services (so-called contractual P-P-P) is quite complicated as provisions of the SGEIA and PPPA are intertwined (Virant, 2009: 150).<sup>22</sup> According to the PPPA, the public partner should inform the Ministry of Finance about conclusion of P-P-Ps (Article 70). However, in practice municipalities and other public partners do not fulfil this legal obligation. Consequently, there is no database on concessions granted by municipalities. In practice, municipalities grant concessions for public passenger transport, waste management, cemetery services, etc.<sup>23</sup>

Forms of (local) social public services provision are regulated in IA and PPPA. Public institutes are regulated in the IA. They have the same legal characteristics as the institutes of private law, except for some particularities. They are founded by the municipality or the state. Entities of private law may be co-founders. Public institutes can be either legal entities of public law or an organizational part of municipal administration. In practice, former prevails. Concessions for provision of social public services are regulated in the IA, PPPA, and sector specific legislation.<sup>24</sup>

Municipalities determine the form of local public services provision, unless the law has stipulated otherwise (LSGA, Article 62). In practice, local public services are mostly provided by public enterprises and public institutes, and by granting concessions. Other forms of public-private partnerships primarily include some forms of build-operate-transfer project financing (Grafenauer, Klarić, 2011; Grafenauer, 2009).

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<sup>21</sup> In 2006 the PPPA provided a time limit for transformation of public enterprises into mixed (i.e. public-private) ownership. They have to be transformed either in a) public enterprises in 100% public ownership or into b) “classic” company (in this case they must be given concession) (Article 141, 142). However, in practice the transformation has not been implemented completely. See Brezovnik (2008: 252–254).

<sup>22</sup> For more details see Ferik, Ferik (2008).

<sup>23</sup> For discussion on remunicipalization in Slovenia, see Rakar et al. (2015).

<sup>24</sup> For discussion on the health care, see Vegel, Pečarič (2014).

## 4. Socio-Economic Role and Financing of Local Public Services

Given the legal provisions, public services tend to be a very important part of local government functions from the economic/financial perspective. The table below indicates that municipalities' functional activities, such as economic utilities, environmental protection, housing and spatial development, which are part of economic local public services, and recreation, culture, education and social security, which are part of social public services, take a substantial part of municipal budgets.

Table 3: Breakdown of Consolidated Municipal Expenditures in Slovenia for 2014

Functional activity	Percentage of total consolidated outlays
Public administration	16.1
Defence	0.2
Public order	1.9
Economic utilities	19.3
Environmental protection	11.9
Housing and spatial development	10.6
Health care	0.9
Recreation, culture and activities of NGO's	9.8
Education	23.6
Social security	5.7

Source: Adapted from the Ministry of Finance (2015), authors' calculations

The system of financing local public services in Slovenia differs for economic and social public services. For the former, the Services of General Economic Interest Act (SGEIA) stipulates that economic public services can be financed through service delivery payments, from budgetary funds or from other resources prescribed by law or local authority's decision. The first mechanism is suggested when the utilization of service benefits can be measured and individualised, even though price differentiation, price discrimination, or price subsidisations are still allowed. It is worth noting that this mechanism prevails in practice. The second mechanism is suggested when the utilisation of service benefits cannot be measured nor individualised, or subsidisation is needed. The third mechanism of financing stipulates additional possibilities to raise resources, such as local taxes,

loans, foreign investments, and vouchers. The service prices are regulated by each municipality, based on the yearly plans of services providers.<sup>25</sup>

The mechanism of financing social public services is regulated by the Institutes Act (IA). Finances can be provided by the founders, by payments for services delivered, by selling other goods and services in the market, or by other resources prescribed by law or founding acts, although the revenue surplus can be used only for the reinvestments in the basic activities of the institute. Unlike the easily determined financing mechanism for the economic public services, it is much more difficult to do so for social public services.<sup>26</sup> The table below indicates relatively large variations in the financing of different types of social public services. For instance, it is evident that nursing homes receive the majority of their revenues from users, whereas primary schools and music schools tend to receive the majority of revenues from municipal budgets.

Table 4: Financing Mechanisms of Social Public Services in Slovenia, in %

	Financing by founders (budget)	Financing by users	Market-based financing
Public Institutes – education and sport	82.6	12.6	4.8
a) Kindergartens	75.5	22.2	2.3
b) Primary schools	87.5	10.6	1.9
c) Music schools	87.5	12.1	0.4
Public Institutes – health care	75.3	16.5	8.1
a) Health centres	78.1	14.1	7.7
b) Pharmacies	48.4	30.9	20.7
c) Institutes of Public Health	20.0	36.4	43.6
Public institutes – social security	45.3	51.5	3.2
a) Nursing homes	20.6	74.7	4.7
b) Work protection centres	91.6	8.1	0.2
Public Institutes – Culture	80.6	14.2	5.2
a) Theatres	83.6	15.6	0.9
b) Cultural centres	53.7	28.4	17.9
c) Libraries	91.5	7.5	0.9

Source: AJPES (2010), Ministry of Public Administration RS (2010)

<sup>25</sup> These plans must include ex-ante as well as ex-post (from the previous periods) summarisations on the quantities of services provided, costs of service provision, comparisons of costs to other providers in comparable municipalities etc.

<sup>26</sup> Only those social public services that have more local nature are presented.

Nonetheless, the static approach to the analysis should be upgraded as local public services are facing numerous challenges. Namely, as fiscal pressures in Slovenia have increased in recent years, austerity management has required reorganisations of all segments of the public sector; including public services at the local level (see Pevcin, 2014). In this context, some emerging issues related to service forms and delivery mechanisms have to be pointed out, as field experience indicates some interesting occurrences. The LSGA stipulates that municipalities can jointly provide local public services, especially if this increases the efficiency and effectiveness of service delivery. It further stipulates that such service provision is performed by joint establishment of a public enterprise or a public institute, and the functioning of these services is supervised by joint municipal bodies. Evidence indicates that joint municipal bodies tend to be rather common these days – there are currently 48 of them, involving 195 municipalities – although they tend to focus mainly on joint delivery of administrative tasks, e.g. inspections. Only five of those bodies perform joint provision of public services (Fonda, Žohar, 2015). Consequently, further potential exists for development of joint public service provision at the local level, especially for smaller municipalities, in order to achieve scale effects and subsequently greater efficiency of service delivery.

In contrast, larger municipalities, particularly those with the so-called urban status, are inclined toward establishing public holdings, which can be created under the SGEIA. For instance, urban municipality of Ljubljana had initially created such a holding, and later also some of the other neighbouring municipalities joined to establish Public holding Ljubljana, a limited liability company for delivering economic public services. A clear advantage of such organisations lies in the accumulation and sharing of knowledge, in joining business processes etc., which leads to greater efficiency of service delivery combined with substantial direct and indirect cost savings (see Grozde, 2011).

## 5. Conclusion

This paper has presented the development of local public services in Slovenia in the last two decades. It is evident that since 1991, legal and organisational forms have changed substantially, and new forms, such as public institute for social public services or public enterprise for economic local public services, have been introduced. However, better legal provi-

sions enabled less problematic development of economic public services in comparison to social public services. Similarly, the prevailing financing mechanism differs. Principal revenue source for economic local public services are their users. Social local public services, however, are primarily financed by their founders and revenue sources are much more diverse. It should be noted that the authors have used predominantly descriptive methodology and tried to portray the general development and status of local public services in Slovenia. Subsequently, further research on the potential directions of the development and transformation of local public services in Slovenia is highly warranted. Given the particularities of different services provided by municipalities, sector- and service-specific approach is needed, addressing the evaluation of organisational forms, delivery mechanisms, and financing sources of services under consideration.

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LOCAL PUBLIC SERVICES IN SLOVENIA –  
LEGAL, ORGANISATIONAL, ECONOMIC AND  
FINANCIAL ASPECTS

*Summary*

*The paper addresses the legal, organisational, economic, and financial aspects of local public services development in Slovenia in the last two decades. Since both economic and social local public services are taken into account, the research question is focused on main variations in the development and current status of those two categories. The evidence indicates that public services at the local level have undergone substantial changes in the past two decades, and it is clear that legal provisions, although not without problems, are better tailored for economic public services than for social public services, which are also subject to larger variation in the sources of financing. Nevertheless, current development also suggests that ongoing changes in local public service delivery mechanisms and organisational forms are occurring, which favours additional service- and sector-specific research.*

*Keywords: local self-government, economic and social public services, provision and financing of local public services, Slovenia*

LOKALNE JAVNE SLUŽBE U SLOVENIJI –  
PRAVNI, ORGANIZACIJSKI, EKONOMSKI I  
FINANCIJSKI ASPEKTI

Sažetak

Rad obrađuje pravne, organizacijske, ekonomske i financijske aspekte razvoja lokalnih javnih službi u Sloveniji tijekom dvaju posljednjih desetljeća. Budući da se analiziraju i ekonomske i socijalne lokalne službe, istraživačko pitanje orijentira se na glavne promjene u razvoju i sadašnje stanje u ta dva sektora. Podaci pokazuju da su lokalne javne službe u tom razdoblju prošle supstanci- jalne promjene. Vidi se da je pravna regulacija, premda nije bez problema, prikladnije razvijena u sektoru ekonomskih nego socijalnih lokalnih službi, s tim da u pogledu potonjih postoje još i brojne razlike u izvorima financiranja. Uočene razvojne linije upućuju na promjene u načinima pružanja i organizaci- jskim formama za lokalne javne službe, što otvara potrebu daljnjih istraživanja usmjerenih na specifičnosti pojedinih sektora i službi.

Ključne riječi: lokalna samouprava, ekonomske i socijalne javne službe, pružanje i financiranje lokalnih javnih službi, Slovenija