

Legal Dilemmas in the Field of Granting Concessions in Slovenian Law and Some Solutions in Comparative Law

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<https://doi.org/10.31297/hkju.22.1.5>

UDK: 35.078.6:340.5
35.078.6(497.4:497.5)

Original scientific paper / izvorni znanstveni rad

Received / primljeno: 6. 12. 2021.

Accepted / prihvaćeno: 16. 3. 2022.

The paper discusses the key legal dilemmas introduced by the Certain Concession Contracts Act (CCCA) in the field of concession granting in Slovenia. Due to inconsistencies in legal solutions with regulations in sectoral laws applicable in addition to the CCCA, and other inconsistencies in the CCCA, the CCCA has raised several legal issues, including the scope of its use, the manner of granting a concession, implementation of concession, and legal protection in these proceedings. In the first part, the paper presents the concept of concession and public concession and the concession award procedure in selected comparative legal regimes. The second part is devoted to a brief presentation of the CCCA and a discussion of key dilem-

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mas in current legal regulation. The paper is concluded with the author's views on the subject and some proposals of *de lege ferenda* regulation.

Keywords: concession, granting of concessions, Directive 2014/23/EU, Certain Concession Contract Act, legal dilemmas

1. Introduction

Concessions are granted in a highly unsystematic and opaque manner under Slovenian law. The Certain Concession Contracts Act (*Zakon o nekaterih koncesijskih pogodbah*, CCCA) from 2019 is the basic regulation governing this area, and it transposed¹ the Directive 2014/23/EU of the European Parliament and the Council of 26/2/2014 on the award of concession contracts in the Slovenian law (Directive 2014/23/EU). The goal of the act was to unify the rules for granting concessions in Slovenia for construction and service above the value threshold set by the Directive 2014/23/EU.² However, this goal has not been achieved. As it will be demonstrated below, the CCCA does not apply to all cases of concessions, but only to those that meet statutory criteria. The rules set out in a number of sectoral regulations³ and the provisions of the Public-Private Partnership Act (*Zakon o javno-zasebnem partnerstvu*, PPPA) from 2006, which is a systemic legislation for the award of concession to public private partnerships, apply for concessions outside its scope. Furthermore, the CCCA did not (completely) deviate from other regulations governing the procedure for granting concessions, but instead stated that concessions governed by this Act, as well as special laws, are subject to this Act and the provisions of special laws, as long as they do not conflict with this Act. The complexity of granting concessions is thus reflected in the need to combine the application of

¹ The directive was implemented into Slovenian law after a nearly three-year delay (the law was adopted on 31 January 2019, entered into force on 12 February 2019, and the deadline for implementation expired on 18 April 2016). Because of the delay, the European Commission filed a lawsuit for violation of the EU law, which the Republic of Slovenia (RS) avoided by adopting the CCCA under urgent procedure.

² Government of the Republic of Slovenia, Proposal on CCCA (Proposal on CCCA), (2018, p. 3).

³ E.g. Services of General Economic Interest Act (*Zakon o gospodarskih javnih službah*, SGEIA), Health Services Act (*Zakon o zdravstveni dejavnosti*, HSA), Pharmacy Practice Act (*Zakon o lekarniški dejavnosti*, PPA), Mining Act (*Zakon o rudarstvu*, MA).

different regulations (CCCA and sectoral), which are frequently in conflict with each other, thus introducing confusion into the legal order.

The purpose of this paper is to present some open issues in Slovenian law regarding the procedure for granting concessions and to make certain proposals for the regulation of this area *de lege ferenda* by analysing selected comparative law regimes. The paper begins with terminological explanations of the concepts of concession and public concession, followed by a presentation of selected comparative legal regimes. The second and most important part of the paper is devoted to the presentation of the CCCA and a discussion of key dilemmas in current legal regulation. The paper concludes with the author's views on the subject and some proposals of *de lege ferenda* regulation.

The paper aims to answer the following research questions: Is the process of awarding public concessions in the CCCA compliant with the requirements of the Directive 2014/23/EU? Under which conditions does the CCCA apply to the award of concessions in Slovenian legal order? What is the legal relationship between the CCCA and the sectoral regulations governing the concession award process? What is the legal nature of the act on concessionaire selection under the CCCA and the sectoral regulations? What legal protection is provided against decisions in the concessionaire selection procedure in the Slovenian legal order?

The methodological approach is based on established methods of legal science – dogmatic, axiological, comparative, as well as other research methods such as induction, deduction, analysis, synthesis, case studies and the logical method. The first part of the paper focuses mainly on the comparative law method, both in terms of legal regime and legal literature. In the second part of the paper, the dogmatic and axiological method is used to critically analyse the current legal regulation of the procedure for granting public concessions in Slovenian law. The axiological method is particularly useful in researching and identifying legal problems of the current regime and in formulating possible solutions or proposals for the future, also taking into account selected comparative law solutions.

2. Terminological Explanations: Concession, Public Concession

Slovenian jurisprudence has already gone into detail about the definition of the term “concession” (see: Mužina, 2003, pp. 14–26; Pirnat, 2003,

p. 1607; Ahlin, 2008, p. 248). Given the broad scope of the concept of concession, it can be concluded that a uniform definition of concession cannot be provided because it would never be complete (Mužina, 2003, p. 14). In general, a concession is a grant or transfer of the right to carry out an activity or use a resource under special conditions from a person governed by public law to a person governed by private law (Pirnat, 2003, p. 1607). It is thus a special public-law institute, through which a specific public law task, which would otherwise be performed by the public authority in the public interest is transferred to a person governed by private law (Dekleva, 2014, p. 133). The grantor is a person who grants concession, and the concessionaire is the person or organization to whom the concession is granted. Concessions are classified into four types based on the subject of the transfer: public-private partnerships concessions, public services concessions, concessions on natural assets or natural public goods, and concessions on built public goods (Pirnat, 2003, p. 1609).⁴ Furthermore, Slovenian law regulates a large number of concessions that do not fall within this framework because they are not a special use of a public good or a public service, but a special law stipulates that these activities can only be carried out with the prior acquisition of a concession (these are the so-called *sui generis* concessions⁵). In most cases, the concession relationship is established by signing a concession contract between the grantor and the concessionaire, which is one of the most common types of administrative contracts.⁶ As a result, Slovenian law separates the concession and the concession relationship from the concession contract.

According to the EU law (Directive 2014/23/EU and CCCA), a concession is a written contract for consideration, in which one or more grantors entrust the execution of works (construction concession) or the provision or management of services (service concession) to one or more economic operators, where compensation represents only the right to use the works or services that are the subject of the contract, or this right together with the payment, and the operational risk in the concession's implementation is transferred to the concessionaire. As a result, the EU law equates a concession with the concept of a contractual relationship for pecuniary interest, and its subject matter is narrower than in national conceptions of a concession, being limited to the execution of works and the provision or

⁴ A similar division is also cited by Ahlin, 2008, p. 250.

⁵ E.g., Art. 3/2 of the Gaming Act (*Zakon o igrah na srečo*).

⁶ See the Judgment of the Supreme Court of the Republic of Slovenia (the Supreme Court of the RS), III Ips 20/2019-7.

management of services.⁷ It is therefore a concession as a form of a public contract. The term “public” concession is frequently used in literature to refer to concessions made in terms of the provisions of the EU law (Pirnat, 2008, p. 54–56).

3. Comparative Legal Review of the Concession Award Procedure

3.1. Croatian Regulation

The Concessions Act (*Zakon o koncesijama*) (CA), which transposed Directive the 2014/23/EU into the Croatian law, governs the procedure for granting public concessions in Croatia as an umbrella law (*lex generalis*). Specific issues of granting concessions which also fall within the scope of the CA are regulated as *lex specialis* by the so-called “sectoral” laws (Art. 8/3), which are consistent with the provisions of the CA (Croatian Ministry of Finance, 2020), except for the Maritime Property and Seaports Act (MPSA). In the CA, the uniform procedure for granting concessions is thus regulated, and special regulations determine only the specifics in a given area (depending on the subject of the concession). Sectoral regulations, as well as regulations governing public procurement, are also applied appropriately (in Croatian: *odgovarajuće*) to issues not covered by the CA (Art. 1/2). Therefore, there is a relationship of speciality and subsidiarity between the CA and sectoral regulations.

The CA has a broader scope than the CCCA. In addition to concessions for services and concessions for works (which, from the standpoint of the Slovenian law, could be equated with construction concessions), the CA also applies to concessions for the economic use of public or other good, and in all cases, unless one of the explicitly stated legal exceptions that exclude the concession from the scope of the law is given (Art. 8/2, 9 and 10). Furthermore, the provisions of the CA show that, in addition to the types of concessions mentioned above, the CA also governs the following subtypes of concessions: “mixed concessions” (Art. 27) and “concessions for works or services with elements of public-private partnership” (Medvedović, 2013, p. 85, Art 26). In the case of concessions with elements of

⁷ The concept of concession in the Slovenian legal system is, therefore, broader than the scope of the Directive 2014/23/EU.

public-private partnership, the grantor must also follow the law governing public-private partnerships during the concession award procedure (Medvedović, 2013, p. 87; Art 26/3).

The scope of regulation in the CA is broader than in the Directive 2014/23/EU, because the CA includes rules for awarding concessions below the threshold for the application of the Directive 2014/23/EU (currently 5.350,000 EUR),⁸ which differ slightly from the rules applicable to concessions above the threshold, which is defined in detail in Art. 4 of the CA. The law therefore combines the rules for granting all concessions that are not excluded from its scope of application, and the value of the concession determines which provisions of the CA will apply in a particular case.

The procedure for awarding a concession begins with preparatory actions. They are carried out in accordance with the CA, special laws, public procurement regulations and other regulations, depending on the type and subject of the concession. Preparatory actions include the following activities: appointment of an expert commission for the concession, preparation of a study of the justification for the concession's granting or the analysis of the concession's award, the assessment of the concession's value, and the preparation of tender documentation (Art. 14).

The grantor must then publish a notice of intent to grant a concession. However, the location of the notice is determined by the value and type of concession. In the case of service concessions and concessions for the economic use of public or other goods that do not reach the limit value, the notice must be published in the Electronic Public Procurement Gazette of the Republic of Croatia; if they reach (or exceed) this value, and in the case of works concessions, they must also be published in the Official Journal of the EU, first at the EU level and then at national level, with the same content (rule on sequence and equality of publications). By announcing the intention to grant a concession in the aforementioned forums, the concession award procedure also formally begins and lasts until the decision on the enforceability of the concession award, or the decision to cancel the concession award procedure (Art. 30/2 and 40/2). Because the notice of intent to award a concession serves as the foundation for economic operators to prepare tenders, it must include all of the information required for proper and timely tender preparation.

⁸ In accordance with Art. 9 of the Directive 2014/23/EU, the European Commission has the power to revise the limit value every 2 years.

The bids that are received within the deadline are opened, reviewed, and evaluated by the expert commission for concessions, which draws up minutes and submits a proposal for a decision, and the grantor makes the final decision on the concessionaire's selection (Art. 49/1-2 of the CA). Regardless of the value and type of concession, the decision on the selection of the concessionaire is an administrative act (Đerđa, 2006, pp. 63–91), and legal protection in the concessionaire selection procedures is in all cases provided before the National Commission for Supervision of Public Procurement Procedures (Croatian State Commission). In the case of concessions governed by Chapter III of the Act's first section, legal protection is provided in accordance with the provisions of the Croatian Public Procurement Act (*Zakon o javnoj nabavi*) (CPPA), which refers to open proceedings (Art 96/2 of the CA); legal protection is provided in the case of concessions under Chapter IV of the first section of the Act in accordance with the provisions of the regulations governing public procurement, except for the provisions on the negotiated procedure without prior publication of a public tender and the Innovation Partnership (Art. 96/3 of the CA). Legal protection is provided in the appeal procedure conducted before the Croatian State Commission in accordance with public procurement and administrative procedure rules (Art. 399 of the CPPA), as well as in court proceedings in which the injured party can seek compensation for damages incurred as a result of a violation of public procurement rules (Art. 435). The decision of the Croatian State Commission cannot be appealed, but a party may file an administrative dispute with the High Administrative Court (Art. 434).

On the other hand, the administrative court at the seat of the grantor is competent to resolve disputes arising from the execution of the concession contract (Art. 97 of the CA). Specifically, the law classifies a concession contract as an administrative contract,⁹ and the administrative judiciary has jurisdiction over disputes arising from administrative contracts.¹⁰ The grantor must then publish the concession notice in the Electronic Public Procurement Gazette. For service concessions and concessions for the economic exploitation of natural or other goods that reach (or exceed) the limit value, and for construction concessions, the concession notice must also be published in the Official Journal of the EU (Art 36/6 and 44).

⁹ This was only prescribed by the 2017 CA (Art. 3/3-5 of the CA).

¹⁰ See Art. 3/1, 3/4 of the Administrative Dispute Act from 2010.

The conclusion of a concession contract between a grantor and a selected bidder or applicants for a concession, following the expiry of the standstill period, is the final act in the procedure of granting a concession. The concession contract establishes the rights and obligations of the grantor and concessionaire, based on the decision to award the concession in accordance with the CA and speciality laws. The provisions of the General Tax Act (*Opći porezni zakon*), the General Administrative Procedure Act (*Zakon o općem upravnom postupku*, CGAPA), and the Act governing contractual relations apply to issues relating to the concession contract that are not governed by the CA (Art. 56/2). The reference to the CGAPA provisions means, in particular, the application of the administrative contract provisions (Art. 150–154), which supplement the special provisions of the CA, particularly in regard to the special entitlements belonging to the concession contract parties as administrative contracts (right of a public law party to unilaterally change the contractual relationship or to terminate it, and the right of the other party to compensation for unilateral interventions) (Aviani & Đerđa, 2011, pp. 481–484).

3.2. Italian Regulation

In Italy, concession and procurement procedures are governed by a single law (Pardi, 2017, p. 57),¹¹ Legislative Decree 50/2016: Code of Public Contracts (*Decreto legislativo 18 aprile 2016, no. 50, Codice dei contratti pubblici*), which transposed into Italian law the Directives 2014/23/EU, Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (Directive 2014/24/EU), and the Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors (Directive 2014/25/EU). The law governs public works projects, contracts for goods and services, and concessions granted by contracting authorities and other entities (Pardi, 2017, p. 58). Concessions for works or services (the so-called public works and service concessions) are defined as contracts between a contracting authority and a private economic operator whose object is the provision

¹¹ A similar regulation is known in Spain, where public procurement and concessions are governed by the Public Sector Contracts Act from 2017 (*Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público*).

of works or services, and the operational risk associated with the construction or service is assumed by the concessionaire.¹²

The scope of legislative decree, as in Croatia, is broader than the Directive 2014/23/EU, as it regulates the procedures for awarding concessions above and below the threshold set for the application of the Directive, and it contains additional rules not provided for in the Directive, despite being guided by the same principles. Italian law also contains some exceptions to its application.

In Italy too, the selection of a concessionaire is governed by an administrative act, and any interested party may challenge any decision made during the concession award procedure (including the selection of a concessionaire) before administrative courts with sole jurisdiction to resolve such disputes (i.e., administrative appeals). An administrative appeal aims to have the contested decisions annulled, but if this is not possible (e.g., because a contract has already been signed with the selected economic operator), the injured party may seek compensation for the costs incurred. During the same procedure, the plaintiff may also request an interim injunction to suspend the validity of a decision challenged by an administrative appeal. The party has a legal remedy against the decisions of the regional administrative court, which is decided by the National Council (in Italian: *Consiglio di Stato*), a second instance court, and the decision of the National Council can be appealed to the Italian Supreme Court in exceptional cases. On the other hand, disputes arising from the performance of a concession contract that are not related to the concession award procedure are resolved by Italian civil courts.

3.3. Czech Regulation

Public procurement and public concessions are also governed by a single law in the Czech Republic, the Public Procurement Act (Czech Public Procurement Act, CZPPA),¹³ which entered into force on 1 October, 2016. This law transposes the Directives 2014/23/EU, 2014/24/EU, and 2014/25/EU into the Czech law. As a result, the basic legal framework for public procurement and public concessions is determined by the EU law and adheres to the principles of competition, transparency, and non-dis-

¹² Taken from the Proposal on the CCCA (2018, pp. 6–7).

¹³ In Czech: *Zákon o zadávání veřejných zakázek (ZZVZ)*, Act No. 134/2016.

crimination. In addition to the umbrella law (CZPPA), which is considered a basic regulation in the field of granting concessions, this field is also regulated by sectoral laws (Romih, 2017, p. 19).

Part 8 of the CZPPA (Art. 174–184) governs the procedure for granting concessions. The contracting authority (“grantor”) proceeds under this section of the law in the case of public contracts that are construction concessions or service concessions, according to the first paragraph of Art. 174. Under the law, concessions are therefore classified as a type of public procurement (a concession is defined as a public procurement obtained through a contract) (Podešova et al., 2016, p. 674). As a result, the concession award procedure is governed by similar rules as public procurement. Concessions differ from public procurement in the manner in which they are paid (the concessionaire’s payment is linked to the concessionaire’s right of exploitation, under which the concessionaire may obtain a substantial payment from third parties for the provision of services or the use of public infrastructure, also in conjunction with payment. However, the contractor in public procurement receives payment in monetary form from the contracting authority and takes over the operational risk, which must be on the concessionaire’s part. Otherwise, these are treated as public contracts or quasi-concession relationships under the Czech law (Podešova et al., 2016, p. 674, 676).

The application of the CZPPA rules also depends on the value of the concession. Specifically, if the value of the concession is equal to or less than 20,000.00 CZK, the contracting authority is not required to follow the CZPPA rules (the so-called small value concession). For concessions whose value is greater than 20,000.00 CZK, but less than the threshold for applying the Directive 2014/23/EU, slightly less stringent rules apply, particularly in terms of notification and publication of notices. As a result, the grantor must perform a value assessment prior to the start of the concession award procedure in accordance with Art. 175 of the CZPPA. The contracting authority is also not required to act in accordance with the CZPPA, if it involves any of the legal exceptions to the application of the law (e.g. concessions granted to an economic entity based on an exclusive right, service concessions for air transport, service concessions for lottery services, etc.).¹⁴

The concession award procedure starts with the publication of a concession notice inviting interested parties to submit a request for participa-

¹⁴ Exceptions are defined in Art. 177 of the CZPPA.

tion, indicative tenders, tenders, by sending an invitation to negotiate, or by opening negotiations with the economic operator if the invitation to negotiate has not been sent in advance, and if the conditions for using the negotiated procedure have not been met. The contracting authority must publish the concession notice in the Official Journal of the EU. The contracting authority determines the detailed conditions for the implementation of the concession award procedure, which must be defined in the tender documentation. The law provides that the contracting authority may publish notices in the Official Journal of the EU, even if not required by the law.

The contracting authority selects the concessionaire, and the notice of concession award must be sent to the Official Journal of the EU for publication no later than 48 days after the contract is signed with the selected economic operator (Art. 183, 184 and 185 of the CZPPA). The concession contract is not defined in the CZPPA, because the Czech law only considers it to be a contract for the performance of a public contract, which is a service concession or a construction concession. It governs the relationship between the parties in the same way the EU law does. In most cases, a concession contract also includes the reasons why the contractual relationship may be terminated prematurely, as well as the legal position of the concession subject in cases where the concession relationship is terminated prematurely (Jurčik & Krutakova, 2008, p. 29). The CZPPA also intervenes in the contracting and executing phases with its provisions (e.g., regarding the permissible duration of a contract). The provisions of the general contract law (Czech Civil Code) apply *mutatis mutandis* in the remaining sections (Romih, 2017, p. 21). When a concession contract contains elements of an administrative contract (depending on the specific content of the contract), the provisions of the Czech Administrative Procedure Act (CAPA)¹⁵ on administrative contracts, also apply (Romih, 2017, pp. 22–23).

An objection is a fundamental legal remedy for challenging the decisions of the contracting authority in the concession award procedure. All decisions of the contracting authority are subject to an objection, which must be submitted to the contracting authority within the legally prescribed time limit. Within 15 days of receiving the objection, the contracting authority must examine it and send a written decision to the applicant, stating whether it agrees with it, along with the reasons for the decision. If

¹⁵ In Czech: *Zákon správní řád* (ZSR), Act No. 500/2004.

the contracting authority does not uphold the objection, it must notify the applicant that within 10 days of receiving the decision of the contracting authority, who may submit a proposal to the Office for the Protection of Competition to initiate proceedings to review the decision of the contracting authority. If the applicant does not agree with the decision of the Office, they have 15 days from the date of notification of the decision to file an appeal with the President of the Office. The only possible remedy against decisions of the Office (as an administrative body) is to file a lawsuit with the relevant regional court.¹⁶

4. Granting Concessions in Slovenian Law

4.1. Scope of the CCCA

As stated in the introduction, the CCCA rules do not apply to all cases of concession granting, but only to those concessions where the following criteria are met:

1. it is a concession of works or a concession of services in the sense of Art. 2/2–3 of the CCCA, i.e. for a written contract for consideration in which one or more grantors entrust the execution of works (construction concession) or the provision or management of services (service concession) to one or more economic operators, where the compensation represents only the right to use the works or services that are the subject of the contract, or this right together with the payment, and the operational risk in the concession's implementation is transferred to the concessionaire;
2. the concession threshold is equal to or greater than the threshold referred to in the first paragraph of Art. 8 of the Directive 2014/23/EU, and
3. there are no legal exceptions to the application of the law (the so-called exclusions).

The parties to the contract (grantor and economic entity), the subject of the contract (construction and/or services), the repayable nature of the contract, and the operational risk on the concessionaire are thus defining elements of concession in the sense of the CCCA provisions. Regarding

¹⁶ Taken from the Proposal on CCCA (2018, p. 9).

the contract's parties, it can be stated that the CCCA has not retained the terminology from the Directive 2014/23/EU and thus does not differentiate between the terms "contracting authority"¹⁷ and "contracting entity",¹⁸ but instead uses a single term "grantor" for the obligors in the general and infrastructure fields, which is not entirely appropriate and consistent. Since individual provisions or restrictions of the Directive 2014/23/EU and the CCCA are linked to a range of activities, the distinction between public contracting authorities and contracting authorities is intended to increase transparency in the demarcation between infrastructure and other activities. The law's thoughtless structure also contributes to non-transparency, as the essential terms ("grantor", "economic entity") are defined only in Art. 21, but not in the law's initial provisions.¹⁹ Furthermore, a substantial part of the law refers to the annexes to the Directive 2014/23/EU, which have thus become an integral part of the law, making the matter of the law more difficult to manage (Mužina et al, 2020, p. 24).

The economic operational risk criterion (Art 2) is critical in defining the concept of concession, because it is a defining criterion that distinguishes concession contracts from public procurement contracts. If the concessionaire does not bear operational risk in the implementation of the concession contract, e.g. because payments for its services are based on regulated prices that cover all investments and costs, or because the grantor otherwise guarantees them minimum revenues to cover the concessionaire's investment and operating costs, such a contract is not considered a concession according to the CCCA and therefore, the CCCA does not apply to them (Zuljan, 2019, pp. 63–64).

Because the CCCA does not interfere with the regulation of concessions below the threshold value, sectoral regulations continue to apply to concessions that do not meet the threshold value for the application of this Act. This is in accordance with the requirements of the Directive 2014/23/

¹⁷ This includes state bodies, self-governing local community bodies, and persons of public law who meet the legally defined criteria (Art. 21 of the CCCA). The definition is the same as that of a "contracting authority" in the context of public procurement in general.

¹⁸ This includes public contracting authorities, public companies that meet the statutory characteristics (Art. 21/5 of the CCCA), and entities that perform infrastructure-related activities on the basis of an exclusive or special right granted to them by the Republic of Slovenia's competent authority, but only if such a right was granted to them through a non-competitive procedure.

¹⁹ Compare with the regulation in the Public Procurement Act (*Zakon o javnem naročanju*, PPA).

EU,²⁰ which require the Member States to limit national harmonization of national concession award procedures to concessions equal to or greater than the threshold. However, Member States may apply these rules to other concessions (below the threshold), as long as they do not go beyond what is required to open up concessions to competition and provide some flexibility. The threshold is quite high in order to attract economic operators from the Member States other than the Member State of the contracting authority or entity.²¹

Exceptions to the application of the law are governed by Art. 11 to 13, and are largely the same as in the case of public procurement.²² Among them is the exception for non-economic services of general interest, which is determined in the first paragraph of Art. 11 of the CCCA. The Health services Act (HSA), which is a sectoral regulation in the field of granting concessions for the provision of public health service in health care, classifies public health services financed by compulsory health insurance as non-economic services of general interest (Art 3/2). As Zuljan explains, the legal classification of public health service as a non-economic service of general interest is incorrect and contradicts the case law of the Court of Justice of the European Union (CJEU), so it should be noted that the CCCA is also used for granting such concessions. However, because of the relationship between the CCCA and sectoral regulations (see below), such an otherwise explanatory provision of the HSA may cause confusion about the scope of the application of the CCCA in practice (Zuljan, 2019, pp. 65–67).

In addition to the foregoing, it should be noted that the CCCA does not exclude any concessions that are governed by a special law from the scope of its application. This Act specifically defines exceptions to the application of the CCCA, and none of the exceptions refer to any of the existing legal arrangements of concessions. Thus, the scope of the CCCA is quite broad, and it includes both concessions for the provision of economic and non-economic public services that do not constitute non-economic services of general interest, concessions for the use of natural resources if they include works or services, and concessions for the management or use of natural values if they include works or services (Zuljan, 2019, p. 62). Therefore, the statements in the text of the proposal of the CCCA

²⁰ See point 8 of the preamble to the Directive 2014/23/EU.

²¹ Point 23 of the preamble to the Directive 2014/23/EU.

²² Compare Art. 27 to 29 of the PPA.

can be misleading in that the latter does not apply to concessions for the provision of public services or other activities for which the sectoral law expressly requires the issuance of an administrative decision, (that includes many concessions, e.g. for the provision of public utility services, for the provision of health services, in the field of environmental protection, higher education), and that legal protection continues to be provided before the administrative court. Such statements have no basis in the text of the CCCA or the Directive 2014/23/EU,²³ but in practice, they can cause confusion about the scope of their application.

All the criteria for the application of the CCCA must be given cumulatively. On the contrary, if any of the criteria for the application of the CCCA are not met, the concession award procedure is not subject to the rules of the CCCA, but only the provisions of sectoral (national) regulations. However, they regulate the procedure in a very non-uniform and often contradictory manner to the CCCA, which results in reducing transparency and legal certainty.

4.2. Relationship between the CCCA and Sectoral Regulations

The interrelationship of the CCCA and other laws is governed by Art. 10, which states that concessions governed by this Act as well as special laws, are subject to this Act and the provisions of special laws, as long as they do not conflict with this Act. The CCCA is thus applied primarily in relation to sectoral regulations, which is also an expression of the principle of primacy (supremacy) of the EU law²⁴; however, sectoral regulations apply only to those provisions that relate to specific elements of this (concrete) concession, if this does not conflict with the CCCA (Mužina et al., 2020, p. 61). It deviates from the classical rule of *lex specialis* in that the CCCA, as a general regulation, takes precedence over the provisions of special regulations in the event of a conflict, as well as the *lex posterior* rule in that any subsequent (national, CCCA non-compliant) regulations must be subject to the CCCA. According to the theory, the rule on the application of special regulation provisions that are not in conflict with the CCCA is an “inverted *lex specialis* rule” (Mužina et al., 2020, p. 62).

²³ See the Proposal on the CCCA (2018, p. 2).

²⁴ As the CCCA transposes the Directive 2014/23/EU into the national law, its provisions must be applied primarily in the event of a conflict with sectoral rules.

Although the rule on the primary application of the CCCA in relation to sectoral laws *prima facie* appears to resolve all possible conflicts between the CCCA and sectoral laws,²⁵ this impression is incorrect, as will be demonstrated in detail below (Zuljan, 2019, p. 69).

4.3. Key Actions in the CCCA Concession Award Procedure

Preparatory Actions. Preparatory actions are all activities that the grantor must complete prior to the start of the concessionaire selection process. These include the preparation of an eligibility study for the award of a concession, as well as the preparation of the assessment of the concession's value (Art. 24). In the eligibility study of the concession, the grantor analyses the legal, financial, economic, and technical aspects of the concession and describes the subject, purpose, and objectives of the concession, its duration and conditions, among other things (Art. 25). In light of all of the aforementioned factors, the purpose of this phase is to determine whether awarding a service or works concession makes sense and is thus justified.

Concessionaire Selection Process. The Directive 2014/23/EU and the CCCA do not prescribe mandatory procedures for grantors to follow when selecting a concessionaire, but only regulate the obligation to publish a concession notice and restrictions on awarding a concession without first publishing a concession notice (Art. 38/2-3), and the obligation to announce the intention to negotiate (Art. 51). The choice of the procedure is thus left to the grantor, who may organize the concessionaire selection procedure at their discretion, taking into account the provisions of the Directive 2014/23/EU (Arrowsmith, 2018, p. 51), in particular the principles of equal treatment, non-discrimination and transparency, which in practice are generally based on the procedures set out in the PPA, but less formally (Art. 39). As theory points out, transparency takes precedence over formality in public concessions, in contrast to public procurement (Mužina, 2019, pp. 118–122).

Publication of the Concession Notice and Provision of Access to the Concession Documentation. The publication of a concession notice inviting economic

²⁵ This is also the opinion of Čepeljnik, who states that Art. 10 of the CCCA establishes a public relationship between the CCCA and sectoral regulations, and thus there is no possibility of conflict or legal uncertainty if the CCCA provision is correctly understood. (Mužina et al., 2020, p. 63.)

operators to participate is the first step in the concessionaire selection process. In terms of content, this *de facto* means the publication of a call for tenders. The notice must be published not only on the public procurement portal, as is the case for concessions awarded under sectoral rules, but also in the Official Journal of the EU, ensuring transparency and equal treatment of all economic operators from all Member States. The publication of a concession notice is not required exceptionally in cases specified in Art. 34 of the CCCA; however, the grantor must send a notice of prior transparency to the public procurement portal and the Official EU list in such case (Art. 36).

Simultaneously with the publication of the concession notice, the grantor must provide unrestricted, complete, direct, and free access to the concession documentation required for the preparation of the tender in electronic form (i.e. the concession documentation) (Art. 41-42).

In addition to the concession notice, the CCCA governs the duty to publish other types of notices pertaining to individual actions in the procedure, or the concession execution phase (e.g., notification of additional information and correction, notification of the award of the concession, notification of the amendment of the concession contract) (Art. 35-40).

Decision on Concessionaire Selection and Legal Protection against Decisions in the Procedures for Concessionaire Selection under the CCCA and Sectoral Regulations. The decision on the selection of a concessionaire under the provisions of the CCCA is an act of business, and legal protection is provided against decisions in the procedures of selecting a concessionaire under the provisions of the Legal Protection in Public Procurement Procedures Act (*Zakon o pravnem varstvu v postopkih javnega naročanja*, LPPPPA), according to Art. 54 of the CCCA. The LPPPPA provides legal protection in pre-audit proceedings before the contracting authority, audit proceedings before the National Review Commission for Reviewing Public Procurement Procedures (hereinafter: National Review Commission, NRC), and court proceedings (contract voidability, contracting authority liability for damages) before the District Court in Ljubljana as the only territorially competent court in Slovenia (Art. 2 of the LPPPPA). Judicial protection before the Administrative Court (administrative dispute) is provided against NRC decisions, but it is limited to enforcing a declaratory claim, and is excluded in cases envisaged by law (Art. 39a of the LPPPPA).

Unsuccessful tenderers must therefore be able to challenge any decision made during the concession award procedure in order to benefit from the minimum guarantees set out in the Remedies Directives (e.g. a standstill period, interim injunctions, sanction of invalidity of a concession con-

tract, tort sanctions (Mužina et al., 2020, pp. 33–34)). This is one of the most significant changes in the legal regulation of concessions; the extension of law enforcement directives (the Directives 89/665/EEC and 92/13/EEC, as amended by the Directive 2007/66/EC) to concessions subject to the Directive 2014/23/EU was a significant innovation for the national legal order, resulting in unification or, at the very least, significant approximation of legal protection rules in the field of concessions and public procurement.

The legal nature of the selection decision in sectoral regulations is determined by the subject of the concession. In the case of service concessions, this is an administrative decision (Art. 37/1 of the SGEIA), and the individual has protection in an administrative procedure through appeal (Art. 57 of the CAAA) and/or administrative dispute, whereas in the case of construction concessions, this is an act of business, and legal protection is provided under the LPPPPA (Art 61 and 63 of the PPPA). Taking into account the provision of Art. 10 of the CCCA, in the event of a conflict between the provisions of sectoral laws and the CCCA, the CCCA must be applied primarily, which specifically means that grantors for concessions, which are also subject to the CCCA, must rely directly on CCCA provisions governing the legal nature of selection and legal protection against decisions made during concessionaire selection procedures. This means that the grantor must choose the concessionaire through an act of business, and the provisions of the LPPPPA apply for legal protection (Štemberger, 2019, pp. 133–134, see also Mužina et al., 2020, p. 62). As a result, no administrative decision is issued in these cases. Case law has also taken a similar stance.²⁶

It should be noted that the CCCA refers to the application of the LPPPPA only in terms of legal protection in the procedures of selecting a concessionaire, which means that disputes arising from the execution of concession contracts and not relating to the concession award procedure are (in general) decided by regular courts (e.g. Art. 40 of the SGEIA).

Certain distinctions exist between concessions for social and other special services in terms of the legal nature of the selection act and the legal protection afforded against it.²⁷ The EU legislature has ruled that primarily

²⁶ The application of the new legal protection rules, which are fully extended to the field of concessions, was also possible prior to the adoption of the CCCA, because the provisions of the Directive in this section had a direct effect, as stated by the NRC in Case 018-214/2016-8, 30. 1. 2017.

²⁷ See Annex IV of the Directive 2014/23/EU.

local services have only a limited cross-border interest. As a result, the provisions of the Directive 2014/23/EU and the CCCA apply only to a limited extent to these concessions, allowing the Member States to simplify the procedure for granting a concession for this category of services (Zuljan, 2019, p. 68). According to Art. 15 of the CCCA, the provisions of the CCCA apply to the concession for social and other special services in terms of the obligation to perform preparatory actions (Art. 24–26), the provisions of publishing a preliminary information notice on the planned granting of a concession (Art. 35), the subsequent publication from Art. 40 of the CCCA, and provisions on legal protection in concessionaire selection procedures. On the other hand, this means that concessions for social and other special services are not subject to the provisions of the CCCA on the act of selection of the concessionaire, but must adhere to sectoral regulations, which generally stipulate that the choice of concessionaire is decided by an administrative decision. Thus, for instance HAS (Art. 44e) and PPA (Art. 50) state that the grantor chooses the concessionaire through an (administrative) decision (concession decision).

Because the CCCA applies to these services only to a limited extent, it must be established that the scope of legal protection under the LPPPPA in these proceedings is also limited. This is based on the Art. 4/3 of the LPPPPA, which, in conjunction with Art. 54 of the CCCA, must be interpreted in the sense that legal protection for concessions whose subject are social and other special services from the Annex IV of the Directive 2014/23/EU is provided only in the part regulated by the CCCA for these concessions. This means that legal protection in the review procedure is limited to the enforcement of violations of the rules laid down by the CCCA for concessions for social and other special services, but not to violations regulated by sectoral laws and those which do not constitute transposition of the Directive 2014/23/EU. Control over the legality of the concession award procedure under sectoral laws thus continues to be provided in administrative procedures and administrative disputes. Due to the limited scope of legal protection in the review procedure, the new legal protection regulation does not replace the existing administrative dispute but rather represents an additional legal protection option in this area (Zuljan, 2019, pp. 70–71).

As a result, legal protection in the awarding of concessions is dependent on the legal nature of the specific legal transaction.²⁸ However, it is not

²⁸ See also Decisions of the NRC 018-158/2019-7 and 018-110/2021-9.

possible to fully adhere to the demarcation proposed by the authors of the CCCA commentary (Mužina et al., 2020, p. 245), according to which concessions as defined by the provisions of the CCCA are subject to legal protection under the rules of the LPPPPA, while concessions granted by administrative decision under the provisions of sectoral law are subject to legal protection in administrative procedure and administrative dispute. As previously stated, legal protection is also provided (to a limited extent) in the case of concessions for social and other special services under the provisions of the LPPPPA, even though the act of granting the concession is an administrative decision.

Conclusion of a Concession Contract and Publication of a Concession Award Notice. Following the selection of the concessionaire and the expiration of the standstill period,²⁹ the concession contract is concluded, which establishes the concession relationship between the grantor and the concessionaire regarding the implementation of the concession. According to the CCCA, the granting of a concession is always linked to the moment of concluding the concession contract (Art. 55), rather than the finality of the act on the selection of the concessionaire, as had previously been the case with non-economic public services.³⁰ As a result, we must distinguish between two phases: the concessionaire selection phase by an act of selection, and the concession award phase, which is linked to the conclusion of a concession contract between the grantor and the concessionaire. This is important for the sake of legal protection, which is tailored to each stage of the procedure. The concession contract must be in writing, and it must govern the grantor's and concessionaire's mutual relations in connection with the performance of the concession. It is one of the most common types of administrative contracts (Mužina, 2004, p. 274 & Pirnat, 2000, p. 151). Administrative contracts are not governed by Slovenian law, but this institute has long been accepted in theory and case law.³¹ However, due to the absence of a special public law regulation or insufficient regulation of

²⁹ The concession contract cannot be concluded during the standstill period, i.e. until the decision on the selection of the concessionaire becomes final (Art. 53 of the CCCA).

³⁰ Art. 50 of PPA and Art. 44e of HSA. See also the Decision of the Supreme Court of the RS I Up 119/2016.

³¹ See also the following Judgments of the Supreme Court of the RS: III Ips 80/2018, 12. 2. 2019, III Ips 31/2012, 15. 10. 2013, II Ips 117/2018, 6. 6. 2019 and II Ips 50/2019, 19. 6. 2020. See also Pirnat, 2000, pp. 143-162. For more details on the distinction between administrative contracts and other administrative contracts in Slovenian law (Štemberger, 2020, pp. 17-19).

such contracts, the rules of obligation law (Obligations Code – *Obligacijski zakonik*) apply to them unless the public law elements of a contract require certain OC provisions for such a relationship not to apply.³² Thus, in addition to the CCCA, special rules must be applied in connection with the concession contract, which are determined by the SGEIA, PPPA, and other sectoral regulations, and for issues not covered by these regulations, the provisions of general contract law (OC) apply in all cases, only if this does not contradict the regulation under the CCCA. Thus, even if reasons of public interest require it, a concession contract may not be amended during its validity without the implementation of a new procedure, to ensure the competitiveness and equality of providers outside the reasons set out in Article 60 of the CCCA. On the other hand, a concession contract may be terminated for reasons other than those specified in Art. 61 of the CCCA (e.g. for reasons of public interest), since the provision of the Directive 2014/23/EU on termination of the concession contract must be understood as a minimum requirement and not an impediment to the Member States or the grantor introducing additional grounds for (early) termination of the concession contract (contract law) (SIGMA, 2014).

In accordance with the previously presented rules, the grantor must publish/issue a notice on the award of the concession with the results of the concessionaire selection procedure no later than 48 hours after the conclusion of the concession contract (Art 32-24 of the CCCA). This concludes the concession award process. Nevertheless, the CCCA also intervenes in the execution phase of the concession contract with certain provisions, e.g. on permissible amendments to the concession contract during its performance, termination of the concession contract, duration of the concession contract, transfer of the concession contract, performance of the concession contract with subcontractors. There is also a discrepancy between the CCCA regulation and sectoral regulations (e.g. SGEIA and PPPA) in this section, particularly regarding the amendment of the concession contract (see above), and the duration of the concession (according to the CCCA, it is usually limited to 5 years (Art. 23), whereas the PPPA usually concludes concession public-private partnerships for a period of more than 10 years), and the transfer of the concession (according to the CCCA, it is allowed only in the cases specified in the Art. 60/1, 60/4, while the conditions under the SGEIA are significantly less restrictive, see Art 46 and 47).

³² See the Judgment of the Supreme Court of the RS, II Ips 50/2019.

4.4. Proposals *de lege ferenda*

To avoid the presented dilemmas, the Slovenian legislator should either harmonize sectoral regulations with the CCCA rules or, following the example of foreign regulations (Croatian, Italian, and Czech), adopt a single procedural law that applies to all concessions, and the value of the concession (above the threshold from the Directive 2014/23/EU) would only determine the application of certain specific (stricter) rules, regarding the publicity and the publication of notices (also at the EU level).

In addition to the requirements of the Directive 2014/23/EU, the legislator should include other specifics in this law that apply to the concession contract as a type of administrative contract, specifically the possibility of unilateral modification or termination of the administrative contract by the public body and the rights of the other contracting party in the event of such interference. In the absence of such provisions, concession contracts are evaluated in the same manner as private law contracts, which is not appropriate given the unique characteristics of concession contracts.

5. Conclusion

While complying with the requirements of the Directive 2014/23/EU, it is possible to conclude that the CCCA did not eliminate the pressing inconsistencies and ambiguities in the regulation of concession award procedures, but rather created new legal dilemmas. The name of the law, which refers to “certain” concession contracts, indicates that the law applies only to certain concessions, implying that the law introduces only additional regulations in the field of concession granting and does not replace it. In addition to the CCCA, which is used for granting concessions for services and constructions exceeding a certain value threshold, the field of concessions is also governed by a series of sectoral laws and the PPPA, which serves as a systemic law in the field of granting concessions to public-private partnerships. The complexity of the concession award procedure is thus reflected in the fact that it is necessary to combine different regulations at the same time, which are often inconsistent with each other, leading to confusion in the legal order. Additional confusion is caused by incorrect statements in the introduction of the proposed law regarding the exclusion of certain concessions from its scope, for which there is no basis in the CCCA or the text of the Directive 2014/23/EU, which can mislead grantors and concessionaires.

Although the rule on the primary application of the CCCA is supposed to resolve all possible contradictions between the CCCA and sectoral laws governing the award of concessions, which also fall within the scope of CCCA, it can be concluded that many ambiguities and contradictions exist due to the lack of specific rules that would be adapted to certain specificities applicable to concessions in specific laws. The most significant inconsistency between the regulation of concessions under sectoral laws and the CCCA is the issue of the legal nature of the act on concessionaire selection and, consequently, legal protection against the selection decision. Since sectoral regulations (with a few exceptions) have not been systematically adapted to the new regulation, and because they are based on the concept of concession as a public law institution, the question of direct application of CCCA provisions arises in the section concerning concessionaire selection and legal protection against selection decisions. According to a number of sectoral regulations, the selection of a concessionaire is determined by an administrative decision against which legal protection is provided in administrative proceedings and/or administrative disputes, and the CCCA stipulates that the act of selecting a concessionaire is an act of business, protected under the LPPPPA. In the event of a conflict between sectoral regulations and the CCCA, the latter must be applied, and in general, the grantor must rely directly on the provisions of the CCCA when selecting a concessionaire. In the case of concessions that also fall within the scope of the CCCA, this means that the provisions of sectoral laws regarding the act of selecting a concessionaire and legal protection are no longer applied, taking into account the primacy of the EU law. Case law has also taken a similar stance. As a result, we have two distinct systems for granting concessions, which differ significantly but, in general, are based only on the value of the concession.

Some specificities apply to concessions for social and other special services, for which the CCCA is only partially applicable. Since the CCCA does not refer to the provisions on concessionaire selection in concessions for social and other special services, it can be concluded that the provisions of sectoral regulations apply in this part, which means that the act of concessionaire selection is an administrative decision; however, no compelling reason can be found for such a distinction in the legal nature of the concession. Due to the limited application of legal protection provisions of the CCCA for social and other special services, legal protection to which the CCCA refers is limited only to the enforcement of violations determined by the CCCA for these concessions, rather than breaches of the rules governed by sectoral laws for these concessions and

do not involve the transposition of the Directive 2014/23/EU. These violations continue to be legally protected in administrative proceedings and disputes. Following the issuance of the selection decision, there are two separate systems of remedies designed to deal with the same grantor's decision, which can lead to grantor confusion and unnecessary prolongation of procedures, as well as the risk of conflicting decisions of different bodies, which may arise in the case of simultaneous decisions on issues common to both the legal regime for concessions under the CCCA and the regime in a sectoral law (Zuljan, 2019, p. 72).

The regulation of public concessions is significantly more transparent and systematic in Croatia, the Czech Republic and Italy, where the procedure for the award of all concessions (below and above the thresholds set out in the Directive 2014/23/EU) is generally regulated in a single regulation, and the individual provisions of the regulation apply according to the threshold of the concession. In contrast to the Slovenian legislation, the legal nature of the act of selecting the concessionaire in the analysed comparative legal regimes does not depend on the type and value of the concession but is the same in all cases. The uniform legal nature of the act on the selection of the concessionaire is also reflected in the uniform legal protection, which is guaranteed before a specialised body or a court, rather than in different proceedings before different authorities, which is a fundamental deficiency of the Slovenian legal order. As in Slovenia, disputes relating to the performance of concession contracts are resolved by civil courts in Italy and not by administrative courts (as is the case in e.g. Croatian regime), which is not most appropriate given the special public law nature of the concession contract. On the other hand, given the complexity of public contracts, the Slovenian and Croatian legal regimes, where public procurement and public concessions are governed by different laws, are more systematic and user-friendly than the Czech and Italian legal regimes, where – on the contrary – public procurement and public concessions are governed by a single law.

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LEGAL DILEMMAS IN THE FIELD OF GRANTING CONCESSIONS IN SLOVENIAN LAW AND SOME SOLUTIONS IN COMPARATIVE LAW

Summary

*In Slovenian law, the granting of concessions is governed by a number of (general and special) laws, which are supplemented by the Public-Private Partnership Act (PPPA) as a systemic law for the granting of concession to public-private partnerships regardless of the value of the concession, as well as the Act on Certain Concession Contracts (CCCA), which is the basic regulation for the award of construction concession and service concession contracts falling within the scope of the Directive 2014/23/EU. The CCCA is primarily used in relation to other regulations. Regardless of special law provisions, the provisions of the CCCA should be applied in the procedure of granting concessions that simultaneously meet the criteria for concession contracts from the scope of the Directive 2014/23/EU, and special law provisions should be applied only if they do not contradict the CCCA (reverse rule *lex specialis*). The complexity of the procedure for granting concessions in Slovenian law is thus reflected in the need to combine the use of different regulations, which frequently regulate the same issues in completely different ways, introducing confusion into the legal order. As an example, the author highlights differences in the legal nature of the act on concessionaire selection and, as a result, legal protection against decisions in concessionaire selection procedures, and discusses some specifics that apply to concessions for social and other special services. In addition to the provisions relating to the concession award procedure, there are other inconsistencies between the CCCA and sectoral regulations concerning the implementation of the concession contract. In view of all the shortcomings, the author implies that the Slovenian legislator should either adjust the sectoral regulations to the CCCA regulations or adopt a single procedural law that would apply to all concessions, with specific (stricter) rules applicable to concessions above the relevant value threshold.*

Keywords: concession, granting of concessions, Directive 2014/23/EU, Certain Concession Contract Act, legal confusion

PRAVNE DILEME U PODRUČJU DAVANJA KONCESIJE U SLOVENSKOM PRAVU I NEKA RJEŠENJA U KOMPATIVNOM PRAVU

Sažetak

Davanje koncesije u slovenskom pravu regulirano je nizom (općih i posebnih) zakona, dopunjenih Zakonom o javno-privatnom partnerstvu (ZJPP) kao sustavnim zakonom za davanje koncesije na području javno-privatnog partnerstva bez obzira na vrijednost koncesije, i Zakonom o određenim ugovorima o koncesijama (ZOUK) koji je temeljni propis za dodjelu koncesije za građenje i koncesije za usluge koje ulaze u područje primjene Direktive 2014/23/EU. U odnosu na druge propise koji se također ubrajaju u djelokrug ZOUK-a, ponajprije se primjenjuje ZOUK. To znači da, neovisno od odredbama posebnih sektorskih zakona, u postupku davanja koncesije koje istodobno ispunjavaju kriterije za ugovore o koncesijama iz djelokruga Direktive 2014/23/EU, treba primjenjivati odredbe ZOUK-a, a odredbe posebnih zakona samo ako nisu u suprotnosti sa ZOUK-om. Složenost postupka davanja koncesije u slovenskom pravu očituje se dakle u činjenici da je potrebno kombinirati primjenu različitih propisa koji često potpuno različito uređuju ista pitanja, što unosi zabunu u pravni poredak. Kao primjer, autorica upozorava na razlike u pravnoj naravi akta o izboru koncesionara i posljedično na pravnu zaštitu odluka u postupcima izbora koncesionara te razmatra neke specifičnosti koje se odnose na koncesije za društvene i druge posebne djelatnosti. Osim odredaba koje se odnose na postupak dodjele koncesije postoje i druge nedosljednosti između ZOUK-a i sektorskih propisa povezanih s provedbom ugovora o koncesiji (npr. u vezi s pitanjem dopuštene promjene ugovora o koncesiji za vrijeme njegovog važenja, trajanja koncesije, prijenosa koncesije). Zbog svih nedostataka, autorica zauzima stajalište da bi slovenski zakonodavac trebao prilagoditi sektorske propise pravilima ZOUK-a ili donijeti nov propis koji bi se primjenjivao na sve koncesije, s posebnim (strožim) pravilima za koncesije iznad odgovarajućeg praga Direktive 2014/23/EU.

Ključne riječi: koncesija, dodjeljivanje koncesije, Direktiva 2014/23/EU, Zakon o određenim ugovorima o koncesijama, pravne dileme