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IZKUŠNJE MWS PRI PRIPRAVI ZAKONA O TNP

Povzetek Avtor v prispevku navaja izkušnje članov nevladnih organizacij v Sloveniji, uporabljeno zakonodajo, postopke in odzive vladne strani ob pripravljanju predloga zakona o Triglavskem narodnem parku. Ob tem se ne more izogniti vtisu, da:

- je odnos vladnega sektorja v Sloveniji do večine nevladnih organizacij precej slabši, kot je v razvitem delu Evropske unije, kjer vlade aktivnosti nevladnih organizacij ne le tolerirajo, ampak celo spodbujajo in delujejo tudi v partnerskih projektih z vladnimi organizacijami;
- je okoljska in naravovarstvena politika v Sloveniji že nekaj mandatov odrinjena na rob, namesto da bi določala osnovne robne pogoje za razvojno strategijo države;
- je enako sporen odnos do mednarodno sprejetih obveznosti od kjotskega protokola, Evropske konvencije o krajini do Konvencije o biotski raznovrstnosti. Slovenija preveč nalahko sprejme obveznosti in preslabo poskrbi, da bi jih tudi spoštovala;
- je rezultat shizofren odnos državne oblasti do izvajanja Aarhuške konvencije, ki ima za cilj bolj transparentno in kakovostno odločanje o okoljskih zadevah. MOP in organom v sestavi tako zaradi zamud pri izvajanju ukrepov in neizpolnjevanja drugih obveznosti ta konvencija povzroča pogoste nenavadne vzorce obnašanja ali krče v delovanju.

Ključne besede Triglavski narodni park, Aarhuška konvencija, Konvencija o biotski raznovrstnosti, Natura 2000, Evropska konvencija o krajini, IUCN, WCPA

Zakonska orodja za varovanje narave

Ob uveljavljanju osnovnih pravic državljanov v okoljskih in naravovarstvenih zadevah se je nujno intelektualno in zakonsko pripraviti pred vsako komunikacijo s slovenskimi birokrati, saj mnogi primeri kažejo na to, da od njih pogosto ni pričakovati naklonjenosti ali pomoči. Pri tem je najbolje začeti z Ustavo RS, sprejeto decembra 1991. Naj navedem nekaj najpomembnejših členov ustave, ki so uporabni v okoljevarstvenih sporih: 2., 8., 39., 44., 59., 71., 72. in 73. člen. Posebej so pomembni členi od 71 do 73; 71. člen opredeljuje varstvo zemljišč, še posebej kmetijskih in še posebej na gorskih območjih, 72. člen opredeljuje pravico do zdravega življenjskega okolja, 73. člen pa varovanje naravne in kulturne dediščine.

Naslednji sklop pravnih orožij so mednarodni sporazumi, pri čemer je Aarhuška konvencija iz leta 2001 ena od najpomembnejših. Cilj te konvencije je varstvo pravic sedanjih in prihodnjih generacij za življenje v primernem okolju, kar zagotavlja s tremi pravicami, in sicer s pravico 1) do dostopa do okoljskih informacij, 2) do udeležbe javnosti in 3) do pravnega varstva. Slovenija je konvencijo

ratificirala (MKDIOZ) leta 2004, 2. in 8. člen ustave pa avtomatično zagotavljata njeno veljavnost. Drugi člen ustave določa, da je Slovenija pravna in socialna država, 8. člen pa, da se ratificirane in objavljene mednarodne pogodbe uporabljajo neposredno.

Krovni slovenski zakon za varovanja narave je Zakon o ohranjanju narave (ZON), sprejet leta 1999. V tem sklopu so še drugi sektorski zakoni o varovanju okolja in njihovi podzakonski akti, ki natančneje določajo izvajanje te zakonodaje. Pričakovali bi, da ne morete varovati narave, če ne varujete okolja. Morebitne kršitve pravic in morebitna neskladja med domačo zakonodajo ter ustavo in mednarodnimi pogodbami, postopke objave in veljavnost zakonodaje v času in način rešitev teh neskladij urejajo členi Ustave RS, in sicer od 153. do 159. člena. Zavarovana območja narave na splošno določa tudi 53. člen ZON. Slovenija se je v ZON zavezala, da bo pri določanju zavarovanih območij upoštevala tudi mednarodna merila za zavarovana območja:

53. člen

(zavarovana območja)

(2) Pri določanju vrste zavarovanega območja iz 2. točke prejšnjega odstavka se upoštevajo tudi merila mednarodnih organizacij za ohranjanje narave, katerih članica je Republika Slovenija.

Mednarodna organizacija, ki deluje na področju zavarovanih območij, pa je IUCN s Svetovno komisijo za zavarovana območja (WCPA) v Svetovni zvezi za varstvo narave (IUCN). Na podlagi IUCN-ovega sistema kategorij zavarovanih območij in s smernicami za njihovo upravljanje (Guidelines for applying protected area management categories, IUCN, 2008) je tudi vzpostavljena in se vodi svetovna baza podatkov o zavarovanih območjih. Za kategorijo narodnih parkov obstaja definicija, da »so večja naravna ali skoraj naravna območja, kjer so zavarovani ekološki procesi z vrstami in ekosistemi, značilnimi za območje, in so temelj za zagotavljanje okoljskih in kulturno skladnih pogojev za zadovoljevanje duhovnih, znanstvenih, izobraževalnih potreb ter za rekreacijo.« Primarni cilj narodnega parka je: »Varovanje naravne biotske pestrosti skupaj z ekološko strukturo in okoljskimi procesi območja ter spodbujanje izobraževanja in rekreacije.« Primarni upravljavski cilj se uveljavlja na najmanj 75 odstotkih zavarovanega območja.

Te smernice podpirajo tudi Konvencija o biološki raznovrstnosti, sprejeta leta 1992 v Rio de Janeiru, ki jo je Slovenija ratificirala (MKBR) leta 1996, in novejši dokumenti, npr. Evropska konvencija o krajini, ratificirana (MEKK) v letu 2002, in Evropska resolucija o divjini iz Prage (maj 2009).

Triglavski narodni park (TNP) v trenutno veljavnih mejah se v glavnem prekriva tudi z območji Nature 2000. Področje Natura 2000 je ozemlje, kjer se skladno z evropsko direktivo ščitijo ptice in/ali habitati. Slovenija je z določitvijo območij Nature z Evropsko unijo v bistvu sklenila pogodbo o posebnem varovanju evropsko pomembnih habitatov oz. ptičjih vrst. Kršenje režima Nature je torej kršitev evropske pogodbe z vsemi posledicami za državo, ki krši pogodbo. TNP je leta 2004 dobil diplomu Sveta Evrope s priporočili za izboljšanje stanja.

Saga o pripravi predloga zakona o Triglavskem narodnem parku

Pripravo predloga zakona o TNP lahko razdelimo v tri obdobja, imenovana po pobudnikih zakona ali tedanjih ministrih za okolje:

- Vučkov predlog v času ministra Kopača,
- Podobnikov predlog,

- Erjavčeva kozmetika Podobnikovega predloga.

Podrobnosti o vseh aktivnostih je mogoče prebrati v kronologijah prizadevanj za kakovosten nov Zakon o Triglavskem narodnem parku na spletišču MWS. Civilna družba je zastopala cilje, objavljene v Spomenici za TNP, ki zahteva kakovosten narodni park skladno s priporočili IUCN in Sveta Evrope. Civilna družba je zato poskušala zbrati čim več idej od strokovnjakov, ki vodijo uspešne sorodne projekte iz mednarodnih organizacij, kot so IUCN, Pan Parks, Narodni park Visoke ture, Narodni park Berchtesgaden, in uglednih domačih institucij, npr. SAZU. Predstavniki MOP so se teh posvetovanj sicer udeleževali, a z dokaj očitnim odporom.

Eden od izdelkov koalicije NVO za TNP so nevladna izhodišča zakona. Rezultat pritiskov civilne družbe je bila vključitev dveh njenih predstavnikov v komisijo za pripravo zakona o TNP, ki jo je imenoval minister Podobnik. Ta komisija je bila pogosto dveh nasprotujočih si stališč. Ena od kulminacij nasprotovanj pri pripravi predloga v tem obdobju je bila 17. seja komisije z zapisnikom, ki ne zajema stališč nevladnikov. Na ta zapisnik se je nevladna stran odzvala z dopisom ministru, ministrstvo pa se je nanj celo odzvalo – a po mnenju nevladne strani neprimerno. V celoti je iz zbranih dokumentov na temo TNP na spletišču MWS razvidno, da je država odgovorila na manj kot eno desetino danih pobud civilne družbe.

Nevladniki smo v času Pahorjeve vlade očitno brezplodno pričakovali spremembe odnosa do TNP. Medtem so se gradbeni načrti za gradnjo Rudnega polja že začeli izvajati, po tiho pa so se pripravljali tudi projekti za Nordijski center Planica. Na območju parka že poteka strojna sečnja s katastrofalnimi posledicami za naravo in krajino. Predlog zakona, ki je zdaj vložen v državni zbor, vsebuje v primerjavi s Podobnikovim predlogom nekaj kozmetičnih izboljšav in je bil v mandatu Pahorjeve vlade pred vložitvijo v državni zbor ponovno usklajevan na ravni MOP, a temeljne okoljevarstvene in naravovarstvene pripombe so ostale neodgovorjene.

Predlog še vedno ustreza tistim, ki zahtevajo gospodarski razvoj tudi na večjem delu območja, ki je zdaj še osrednje zavarovano območje narodnega parka, je nejasen in nekonzistent ter v neskladju z mednarodnimi priporočili kategorije II po IUCN ter v nasprotju s priporočili Sveta Evrope. Posledica takega zakona bo le narodni park na papirju. Nenavaden sklep te sage so vztrajna prepričevanja vodstvenih uradnikov MOP, TNP in nekaterih poslancev, da je zakon dober prav zato, ker ni nihče zadovoljen z njim. Le kam nas bo še pripeljalo to čudno pojmovanje kakovosti?

Sklep

Omenjeni primer priprave zakona o TNP je torej vse prej kot primer dobre prakse in vse prej zgled za delovanje vladnih organov v duhu Aarhuške konvencije. Na žalost na to ne moremo gledati kot na osamljen pojav, ampak prej kot na sistematično politiko. Očitno je, da vlada slabo financira vladni okoljski resor, ampak tudi destimulira dejavnosti katerega koli društva na področju varovanja okolja s strožimi merili glede na društva drugih dejavnosti. Rezultat opisanega plenilsko-potrošniškega odnosa do slovenske narave, omalovažujočega odnosa do najboljših praks, ki bi jih Slovenija lahko pridobila s članstvom v mednarodnih organizacijah in ignoriranjem naravovarstvenega dela javnosti tako od MOP kot vodstva zavoda TNP in deloma tudi drugih deležnikov, je privedla do stanja, da obstaja resna nevarnost, da bo Slovenija v letu biotske raznovrstnosti de facto ob svoj edini narodni park. Ponekod v javnosti še živ spomin na vizijo, da bi bila Slovenija vrt Evrope, pa so vsi politiki na oblasti že davno pokopali.

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LEGISLATIVE TOOLS FOR NATURE CONSERVATION

Abstract:

In this paper the author cites the experience of members of non-governmental organisations in Slovenia, legislation applied, the procedures and the reactions of the government side in drafting the proposed law on Triglav National Park. Here it is impossible to escape the impression that:

1. the attitude of the government sector in Slovenia to the majority of non-governmental organisations (NGOs) is significantly worse than in the advanced areas of the European Union, where governments do not just tolerate the activities of NGOs, but even promote and work in partnership projects with them.
2. Environmental and nature protection policy in Slovenia has now under several government terms been pushed to the margins, instead of defining the basic marginal conditions for the country's development strategy.
3. There is an equally problematic attitude to the internationally adopted obligations from the Kyoto Protocol, the European Landscape Convention and the Convention on Biodiversity. Slovenia all too easily takes on obligations but inadequately ensures that these obligations are also observed.
4. This results in a schizophrenic attitude of the national authorities to implementation of the Aarhus Convention, which has the aim of the most transparent and high-quality decision-making possible on environmental matters. For this reason, owing to the delays in implementing measures and owing to non-fulfilment of other obligations, this convention causes frequent unusual patterns of behaviour or convulsions in the operation of the Environment Ministry and its bodies.

Keywords: Triglav National Park, Aarhus Convention, Convention on Biodiversity, Natura 2000, European Landscape Convention, IUCN, WCPA

In exercising basic civic rights in environmental and nature protection matters, it is necessary to arm oneself intellectually and legally prior to any communication with Slovenian bureaucrats, since many cases indicate that frequently neither favour nor assistance can be expected from them.

Here it is best to begin with the Slovenian Constitution, adopted in December 1991. I should point out a few of its most important articles that are applicable in environmental disputes: Articles 2, 8, 39, 44, 59, 71, 72 and 73. Articles 71 to 73 are particularly important. Article 71 talks about the protection of land, especially agricultural land, and especially in mountain areas, while Article 72

addresses the right to a healthy living environment and Article 73 protection of natural and cultural heritage.

The next set of legal tools is international treaties, where the Aarhus Convention of 2001 is one of the most important. The aim of this convention is to protect the rights of current and future generations to live in a suitable environment, which is ensured through three rights, specifically 1) access to environmental information, 2) public participation and 3) justice. Slovenia ratified the convention (MKDIOZ) in 2004, and Articles 2 and 8 of the Constitution automatically guarantee its validity. Article 2 of the constitution provides that Slovenia is a state ruled by law and a social state, while Article 8 provides that ratified and published international treaties are applied directly.

The umbrella Slovenian nature protection law is the Nature Conservation Act (ZON) adopted in 1999. This set of tools also includes other sectoral laws on environmental protection and their implementing regulations, which precisely define the implementation of this legislation. You might expect that you cannot protect nature if you do not protect the environment. Possible infringements of rights and possible discrepancies between domestic legislation and the constitution and international treaties, publication processes and the validity of legislation in time, and the method of resolving these discrepancies, are all regulated by Articles 153 to 159 of the Slovenian Constitution.

Regarding protected areas of nature, general provision is made in Article 53 of the ZON. In the Nature Conservation Act, Slovenia has undertaken to observe international criteria for protected areas in determining protected areas:

Article 53 .

(protected areas)

(2) In determining types of protected area referred to in Point 2 of the preceding paragraph, account shall be taken of the criteria of international nature conservation organisations of which the Republic of Slovenia is a member state.

The international organisation operating in the field of protected areas is the International Union for the Conservation of Nature (IUCN) and its World Commission for Protected Areas (WCPA). Based on the IUCN's Guidelines for Applying Protected Area Management Categories (IUCN, 2008) a world database on protected areas has also been established. For the category of national parks there is the following definition: "large natural or near natural areas set aside to protect large-scale ecological processes, along with the complement of species and ecosystems characteristic of the area, which also provide a foundation for environmentally and culturally compatible spiritual, scientific, educational, recreational and visitor opportunities." The primary objective of a national park is: "To protect natural biodiversity along with its underlying ecological structure and supporting environmental processes, and to promote education and recreation." The primary administrative objective is implemented on at least 75% of the protected area.

These guidelines are also supported by the Convention on Biodiversity, adopted in 1992 in Rio de Janeiro, which was ratified by Slovenia (MKBR) in 1996, and by more recent documents such as the European Landscape Convention ratified (MEKK) in 2002 and the Prague European Wildlife Resolution of May 2009.

Within the currently valid boundaries, Triglav National Park falls for the most part within the Natura 2000 areas. A Natura 2000 area is one where birds and/or habitats are protected in line with the European directive. With the designation of Natura areas by the European Union, Slovenia has in fact

concluded a treaty on special protection for habitats and bird species that are important in Europe. Breaching the Natura regime is therefore breaching a European treaty, with all the consequences for the state that breaches the treaty.

In 2004 Triglav National Park received a Council of Europe Diploma, with recommendations for improvements.

Saga of drafting the Triglav National Park law

The proposed law on the Triglav National Park (TNP) can be divided into three periods named after those proposing the law or then ministers of the environment:

- the “Vuček bill” during the time of Minister Kopač
- the “Podobnik bill”
- “Erjavec’s cosmetic enhancement of the Podobnik bill”

Details of all the activities can be perused in the Chronology of efforts for a high-quality new Triglav National Park Act on the MWS website.

The civil society made representations for the objectives published in the Memorandum for TNP, which demands a high-quality national park in line with the IUCN and Council of Europe recommendations. The civil society therefore attempted to garner as many ideas as possible from experts heading successful related projects from international organisations such as the IUCN, Pan Parks, the High Tauern National Park, Berchtesgaden National Park and eminent Slovenian institutions such as SAZU (the Academy of Sciences and Arts).

Environment ministry representatives took part in these consultations, but with fairly obvious reluctance.

One thing that the Coalition of NGOs for TNP produced is the non-governmental basis for the law. Pressure from the civil society resulted in the inclusion of two of its representatives in the commission for drafting the TNP law appointed by Minister Podobnik. This commission frequently involved two opposing viewpoints.

One of the culminations of this opposition in drafting the bill during this period was the 17th meeting of the commission and its minutes, which did not include the NGO position. The NGO side reacted to these minutes by writing to the minister, and the ministry even responded to this – but in an inappropriate way, according to the NGO side.

Overall, the collected documents on the subject of TNP on the MWS website clearly indicate that the state responded to less than one tenth of the initiatives given by the civil society.

Under the Pahor government, the NGOs have obviously harboured fruitless expectations of a change in attitudes to TNP. Meanwhile the construction plans for development of Rudno polje have already been set in motion, and designs for a Planica Nordic centre have been drawn up on the sly. Mechanical felling is already under way in the area of the park, with catastrophic consequences for nature and the landscape.

The proposed law now submitted to the National Assembly contains, in comparison with the “Podobnik bill”, some cosmetic improvements, and during the term of the Pahor government, before submission to the National Assembly it was once again harmonised by the Environment Ministry, but the fundamental environmental and nature protection comments remained unanswered. The

proposed law, while still written to suit perfectly those **demanding economic development** across a major part of the area that is now still the central protected area of the national park, is unclear and not concise, and runs counter to the international IUCN recommendations for category II and to the Council of Europe recommendations. The consequence of such a law will be merely a national park on paper.

The unusual conclusion to this saga is the persistent belief among top officials at the Environment Ministry, TNP and certain parliamentary deputies, that the law is good precisely because no one is happy with it. So where will this weird conception of quality lead us?

Conclusion

This case of the drafting of a TNP law is therefore anything but a case of good practice, and anything but a model for the functioning of government bodies in the spirit of the Aarhus Convention. Sadly we cannot regard this as an isolated incident, but more as systematic policy.

It is clear not just that the government is providing poor funding for the environment department, but also that it is disincentivising the activities of any kind of society in the area of environmental protection through stricter criteria relative to societies in other fields.

The result of the described plunder-and-consume approach to Slovenia's natural environment, the dismissive attitude to best practices that Slovenia could acquire through membership of international organisations, and ignoring the nature protection work of the public both on the part of the Environment Ministry and the official TNP management, as well as partly by other stakeholders, have led to a situation where there is a real danger that in the year of biodiversity, Slovenia will be de facto without its only national park. In places the public still has an active memory of the vision that Slovenia might be the garden of Europe, but all the politicians in power buried this vision long ago.