

**MYKOLO ROMERIO UNIVERSITETO**

**VIEŠOJO SAUGUMO AKADEMIJA**



**VISUOMENĖS SAUGUMAS IR VIEŠOJI TVARKA (25)**

**Mokslinis žurnalas**

**PUBLIC SECURITY AND PUBLIC ORDER (25)**

**Research Journal**

**Kaunas 2020**

## VISUOMENĖS SAUGUMAS IR VIEŠOJI TVARKA (25)

### Mokslinis žurnalas

#### Redaktorių kolegija:

Atsakingasis redaktorius

Prof. dr. Rūta Adamonienė, Mykolo Romerio universitetas, Lietuva

Atsakingojo redaktoriaus pavaduotoja

Doc. Dr. Aurelija Pūraitė, Mykolo Romerio universitetas, Lietuva

Vykdytysis redaktorius

Doc. Dr. Algirdas Muliarčikas, Mykolo Romerio universitetas, Lietuva

Nariai:

Prof. Dr. Snieguolė Matulienė, Mykolo Romerio universitetas, Lietuva

Prof. Dr. Saulius Greičius, Mykolo Romerio universitetas, Lietuva

Prof. Dr. Birutė Pranevičienė, Mykolo Romerio universitetas, Lietuva

Prof. hab. dr. Žaneta Simanavičienė, Mykolo Romerio universitetas, Lietuva

Prof. Dr. Vaiva Zuzevičiūtė, Mykolo Romerio universitetas, Lietuva

Prof. Dr. Orekhova Tatjana Viktorovna, DIA Ekonomikos Akademija, Bulgarija

Prof. Dr. Mihaela Gavrilă, Sapienza universitetas, Italija

Prof. Dr. Ligita Šimanskienė, Klaipėdos universitetas, Lietuva

Prof. Dr. Piotr Bogdalski, Ščyto Policijos Akademija, Lenkija

Prof. Dr. Saulė Petronienė, Kauno Technologijos universitetas, Lietuva

Prof. Dr. Martina Blaškova, Čekijos Policijos Akademija, Čekija

Prof. Dr. Tatjana Polajeva, EuroAcademija, Estija

Prof. Dr. Andrea Fischbach, Munsterio universitetas, Vokietija

Prof. Dr. Nino Abesadze, Ivane Javakishvili Tbilisio Valstybinis universitetas, Gruzija

Prof. Dr. Shaibakova Liudmila Faritovna, Uralo valstybinis ekonomikos universitetas, Rusijos Federacija

Prof. Dr. Violeta Vasiliauskienė, Mykolo Romerio universitetas, Lietuva

Prof. Dr. Larisa Kapranova, Pryazovskyi valstybinis Technikos universitetas, Ukraina

Doc. Dr. Pablo De Diego Angeles, UNED (Nacionalinis nuotolinio mokymo universitetas), Ispanija

Doc. Dr. Andrej Sotlar, Mariboro universitetas, Slovenija

Doc. Dr. Laima Ruibytė, Mykolo Romerio universitetas, Lietuva

Doc. Dr. Jekaterina Kartašova, Middlesex universitetas, Didžioji Britanija

Doc. Dr. Živilė Stankevičiūtė, Kauno Technologijos universitetas, Lietuva

Doc. Dr. Gintaras Žilinskas, Vytauto Didžiojo universitetas, Lietuva

Doc. Dr. Tiina Koivuniemi, Policijos universiteto kolegija, Suomija

Doc. Dr. Cristian-Eduard Stefan, Policijos "Alexandru Ioan Cuza" Akademija, Rumunija

Dr. Laetitia Langlois, Angers universitetas, Prancūzija

Dr. Jonas Jonušas, Kauno technologijos universitetas, Lietuva

Dr. Rasa Dobrzinskienė, Mykolo Romerio universitetas, Lietuva

Dr. Lienite Litavniece, Rezeknes Technologiju Akademija, Latvija

Dr. Andrzej Wawrzusiszyn, Pasieniečių mokymo centras, Lenkija

Dr. Paulo Fernando Violante de Oliveira, Lusofona humanitarinių mokslų ir technologijų universitetas, Portugalija

Lekt. Chiok Phaik Fern, Jalan universitetas, Malaizija

Lekt. Uno Traat, Estijos Saugumo mokslų akademija, Estija

Redaktorių kolegija patvirtinta Mykolo Romerio universiteto Viešojo saugumo akademijos Tarybos posėdyje 2018-12-10. Mokslinis žurnalas leidžiamas Mykolo Romerio universiteto Viešojo saugumo akademijoje nuo 2008 m. Kiekvieną straipsnį recenzavo 2 atitinkamos srities mokslininkai vadovaujantis anonimiškumo principu. Autorių straipsnių kalba netaisyta.

Mokslinio žurnalo VISUOMENĖS SAUGUMAS IR VIEŠOJI TVARKA

Redaktorių kolegijos 2020 m. gruodžio 10 d. posėdžio nutarimu leidinys rekomenduotas spausdinti.

Visos leidinio leidybos teisės saugomos. Šis leidinys arba kuri nors jo dalis negali būti dauginami, taisomi ar kitu būdu platinami be leidėjo sutikimo. Žurnalas referuojamas EBSCO Publishing, Index Copernicus tarptautinėse duomenų bazėse

Adresas: Mykolo Romerio universiteto Viešojo saugumo akademija Maironio g. 27, LT- 44211 Kaunas

El. paštas [vs@mruni.eu](mailto:vs@mruni.eu)

## **PUBLIC SECURITY AND PUBLIC ORDER (25)**

### **Research Journal**

#### **Editorial Board Editor-in-Chief**

Prof. Ph.D. Rūta Adamonienė, Mykolas Romeris University, Lithuania

#### **Deputy Editor-in-Chief**

Assoc. Prof. Ph. D. Aurelija Pūraitė, Mykolas Romeris University, Lithuania

#### **Executive Editor**

Assoc. Prof. Ph. D. Algirdas Muliarčikas, Mykolas Romeris University, Lithuania

#### **Members:**

Prof. Ph. D. Snieguolė Matulienė, Mykolas Romeris University, Lithuania

Prof. Ph. D. Saulius Greičius, Mykolas Romeris University, Lithuania

Prof. Ph. D. Birutė Pranevičienė, Mykolas Romeris University, Lithuania

Prof. hab. Ph. D. Žaneta Simanavičienė, Mykolas Romeris University, Lithuania

Prof. Ph. D. Vaiva Zuzevičiūtė, Mykolas Romeris University, Lithuania

Prof. Ph. D. Orekhova Tatjana Viktorovna, DIA Academy of Economics, Bulgaria

Prof. Ph. D. Mihaela Gavrilă, Sapienza University, Italy

Prof. Ph. D. Ligita Šimanskienė, Klaipėda University, Lithuania

Prof. Ph. D. Piotr Bogdalski, Police Academy in Szczytno, Poland

Prof. Ph. D. Saulė Petronienė, Kaunas University of Technology, Lithuania

Prof. Ph. D. Martina Blaškova, Police Academy of the Czech Republic, Czech Republic

Prof. Ph. D. Tatjana Polajeva, EuroAcademy, Estonia

Prof. Ph. D. Andrea Fischbach, Munster university, Germany

Prof. Ph. D. Nino Abesadze, Ivane Javakishvili Tbilisi State University, Georgia

Prof. Ph. D. Shaibakova Liudmila Faritovna, Ural State University of Economics, Russian Federation

Prof. Ph. D. Violeta Vasiliauskienė, Mykolas Romeris University, Lithuania

Prof. Ph. D. Larisa Kapranova, Pryazovskyi State Technical University, Ukraine

Assoc. Prof. Ph. D. Pablo De Diego Angeles, UNED (National Distance Learning University), Spain

Assoc. Prof. Ph. D. Andrej Sotlar, University of Maribor, Slovenia

Assoc. Prof. Ph. D. Laima Ruibytė, Mykolas Romeris University, Lithuania

Assoc. Prof. Ph. D. Jekaterina Kartašova, Middlesex University, London, Great Britain

Assoc. Prof. Ph. D. Živilė Stankevičiūtė, Kaunas University of Technology, Lithuania

Assoc. Prof. Ph. D. Gintaras Žilinskas, Vytautas Magnus University, Lithuania

Assoc. Prof. Ph. D. Tiina Koivuniemi, Police University College, Finland

Assoc. Prof. Ph. D. Cristian-Eduard Stefan, Police Academy “Alexandru Ioan Cuza”, Romania Assoc.

Ph. D. Laetitia Langlois, Angers University, France

Ph. D. Jonas Jonušas, Kaunas University of Technology, Lithuania

Ph. D. Rasa Dobržinskienė, Mykolas Romeris University, Lithuania

Ph. D. Lienite Litavniece, Rezekne Academy of Technologies, Latvia

Ph. D. Andrzej Wawrzusiszyn, Border Guard Training Center, Poland

Ph. D. Paulo Fernando Violante de Oliveira, NOVA University of Lisbon Portugal

Lect. Chiok Phaik Fern, Jalan University, Malaysia

Lect. Uno Traat, Estonian Academy of Security Sciences, Estonia

Each article is reviewed by 2 scientists, following the principle of blind reviewing.

Research Journal has been published since 2008. The research journal is listed in the EBSCO Publishing [International Security & Counter-Terrorism Reference Center], Index Copernicus International Database.

© Mykolas Romeris University Academy of Public Security, 2020

Address: Mykolas Romeris University Academy of Public Security Maironio st. 27, LT- 44211 Kaunas  
E-mail [ysa@mruni.eu](mailto:ysa@mruni.eu)

## TURINYS / CONTENT

1.	<b>Svetlana Belous-Sergeeva.</b> RESEARCH OF PHARMACEUTICAL SECURITY AS A COMPONENT OF ECONOMIC SECURITY OF THE STATE .....	5
2.	<b>Gediminas Bučiūnas, Vilius Velička.</b> PAREIGŪNŲ KOMPETENCIJOS UŽKARDANT PREKYBĄ ŽMONĖMIS UKRAINOJE IR LIETUVOJE .....	17
3.	<b>Alona Buriak, Daria Ovcharenko.</b> CONCEPTUAL MODEL OF ATTRACTING FOREIGN DIRECT INVESTMENTS IN TERMS OF INTERNATIONAL ECONOMIC INTEGRATION .....	35
4.	<b>Ksenija Butorac, Kristijan Miličević, Davor Solomun.</b> ANALYSIS OF THE OPENNESS OF INTELLIGENCE SERVICES TOWARDS PUBLIC.....	49
5.	<b>Greta Česnaitytė.</b> ĮSPĖJIMAS APIE GALIMĄ IŠBRAUKIMĄ IŠ TURINČIŲ TEISĘ IŠRAŠYTI GAMINIŲ IR (AR) PAKUOČIŲ ATLIEKŲ SUTVARKYMĄ ĮRODANČIUS DOKUMENTUS ATLIEKŲ TVARKYTOJŲ SĄRAŠO KAIP POVEIKIO PRIEMONĖ .....	74
6.	<b>Ieva Deviatnikovaitė.</b> NAUJOSIOS VIEŠOJO ADMINISTRAVIMO TEISINIO REGULIAVIMO NUOSTATOS .....	95
7.	<b>Rasa Dobržinskienė.</b> THE ASSESMENT OF THE ROLE OF POLICE OFFICERS IN LITHUANIAN NEWS PORTALS DURING THE CORONAVIRUS PANDEMIC .	108
8.	<b>Irena Figurska, Aneta Sokół.</b> ECONOMIC KNOWLEDGE AND METHODS OF ITS ACQUISITION IN THE PROCESS OF BUILDING STUDENTS' ECONOMIC SECURITY .....	118
9.	<b>Lýdia Gábrišová.</b> DECISION-MAKING IN STRATEGIC MANAGEMENT OF THE PUBLIC SERVICE SYSTEM.....	128
10.	<b>Fernando Val Garijo.</b> DRONES, BORDER SURVEILLANCE AND THE PROTECTION OF HUMAN RIGHTS IN THE EUROPEAN UNION.....	136
11.	<b>Lionela Gelmanienė, Aistė Jungaitytė.</b> ADMINISTRACINIŲ GINČŲ KOMISIJA: RAIDA IR PERSPEKTYVOS .....	151
12.	<b>Dalia Jasevičienė.</b> KARFENTANILIS – NAUJOS NARKOTINIŲ IR PSICHOTROPINIŲ MEDŽIAGŲ VARTOJIMO TENDENCIJOS .....	172
13.	<b>Janina Juškevičiūtė, Marek Jakab.</b> HONOUR KILLINGS: A SOCIAL AND LEGAL APPROACH .....	185
14.	<b>Gintaras Kavarskas.</b> VALSTYBEI STIPRINTI VIETINIŲ IR TARPTAUTINIŲ PROJEKTŲ VALDYMO KRYPTIS .....	200

15.	<b>Rūta Klimaitienė, Eva Derengovska, Kristina Rudžionienė.</b> APPLICATION OF KEY PERFORMANCE INDICATORS TO IMPROVE THE EFFICIENCY OF MONITORING OF THE ORGANISATION'S ACTIVITIES: THEORETICAL APPROACH .....	218
16.	<b>Justyna Majchrzak-Lepczyk.</b> VALUE FOR THE CONSUMER DURING THE PANDEMIC.....	234
17.	<b>Jurij Matyskevic, Zaneta Simanaviciene.</b> AGILE IN COMMERCIAL SETUP – MISSION IMPOSSIBLE? .....	246
18.	<b>Kristina Mikalauskaitė – Šostakienė.</b> RESTRICTIONS ON THE PROTECTION OF PUBLIC INTEREST IN THE FIELD OF CONSTRUCTION AND TERRITORIAL PLANNING .....	260
19.	<b>Žaneta Navickienė, Laura Andrijauskaitė.</b> IŠŠŪKIAI LYDERYSTEI VIEŠOJO SAUGUMO INSTITUCIJOSE: LIETUVOS POLICIJOS ATVEJIS.....	274
20.	<b>Ejiroghene Augustine Oghuvbu.</b> ARMS TRADING AND WEAPONS PROLIFERATION IN AFRICA: IMPLICATIONS FOR NIGERIA.....	292
21.	<b>Birutė Pranevičienė, Eglė Bilevičiūtė.</b> ADMINISTRATIVE JUSTICE SYSTEM IN LITHUANIA: GENESIS, DEVELOPMENT AND TENDENCIES .....	304
22.	<b>Laima Ruibytė, Vilius Velička.</b> POLICE OFFICERS ATTITUDES TO DOMESTIC VIOLENCE: IS IT CHANGING? .....	319
23.	<b>Harald Christian Scheu, Bohumil Peterka.</b> THE STATUS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WITHIN THE HUMAN RIGHTS ARCHITECTURE OF THE EUROPEAN UNION .....	336
24.	<b>Danguolė Seniutienė.</b> MIGRATION PROCESSES AS A PACKAGE OF CHALLENGES AND THREATS FOR PUBLIC SECURITY .....	351
25.	<b>Zaneta Simanaviciene, Jurij Matyskevic.</b> BLOCKCHAIN AS SUSTAINABILITY DRIVER.....	362
26.	<b>Aušra Stepanovienė.</b> DEVELOPING INTERCULTURAL COMPETENCES TO DIMINISH THE THREAT OF INTERCULTURAL CONFLICT RISE .....	377
27.	<b>Aurimas Šidlauskas, Svajūnė Ungurytė-Ragauskienė.</b> IŠŠŪKIAI KIBERNETINIAM SAUGUMUI: SOCIALINĖ INŽINERIJA INSTITUCINIO IZOMORFIZMO KONTEKSTE.....	389
28.	<b>Violeta Vasiliauskienė.</b> PROHIBITION OF TERRORISM DURING ARMED CONFLICTS.....	406
29.	<b>Vyacheslav Voloshyn, Viktoriya Saravas.</b> EVENT RISKS FROM THE STANDPOINT OF ENTROPY SYSTEMS.....	422

---

## RESEARCH OF PHARMACEUTICAL SECURITY AS A COMPONENT OF ECONOMIC SECURITY OF THE STATE

**Svetlana Belous-Sergeeva**

*Pryazovskyi State Technical University  
Universytetska St 7, 87555 Mariupol  
Telephone: +380676239107  
E-mail: [beloussergeeva.75@gmail.com](mailto:beloussergeeva.75@gmail.com)*

DOI: 10.13165/PSPO-20-25-01

---

**Annotation.** Today, socio-economic, political, environmental prerequisites have been formed for the formation of the pharmaceutical safety system of Ukraine, the institutionalization of which provides for the implementation of the relevant state policy, which will determine state priorities in certain areas of pharmaceutical safety in Ukraine.

The work is devoted to the study of approaches to the definition of "pharmaceutical safety" of the state, the description of the theoretical foundations, the gist and its components, as well as the assessment of the current state of the level of economic security of the pharmaceutical industry and the development of recommendations for ensuring the economic security of the pharmaceutical industry of Ukraine. Attention is paid to the role and place of pharmaceutical safety in the economic system of the state, the identification of threats and ways to achieve an appropriate level of pharmaceutical safety. It is concluded that the requirements for the economic security of the pharmaceutical industry do not correspond to the actions actually taken in this direction, the lack of a systematic approach to raising the level of domestic production for import substitution of medicines and solving many other problems in this area.

**Keywords:** pharmaceutical security, economic security, economic security problems, national security, medicines, economic security of pharmaceutical enterprises; E20, P23.

### INTRODUCTION

The pharmaceutical industry is strategic for each country, taking into account not only the economic potential, priorities for the implementation of social policy, but also taking into account the country's vital functions in case of force majeure (natural disasters, man-made disasters, military operations).

The development of the health care system has a direct impact on the basic indicators of life in any country, and access to modern medicines leads to a reduction in health care costs by preventing disease and avoiding the need for hospitalization. Innovative medicines not only increase average life expectancy but also have a positive effect on increasing productivity and increasing labor force, business operations and jobs, training for doctors and patients, transfer of know-how, a general increase in the level of medical knowledge in the country, an influx of additional tax revenues, etc. Therefore, the pharmaceutical healthcare industry should be

---

considered as strategic for Ukraine, taking into account not only the economic potential, priorities for implementing social policies, but also taking into account the sustainable development and functioning of the state. Considering the social significance of safety problems in the pharmaceutical industry itself (safety of the use of medicines, economic safety of pharmaceutical industries), it seems appropriate to formulate the concept of pharmaceutical safety at the national level to ensure a comprehensive approach and a comprehensive solution to health issues. The multidimensional nature of security problems in the pharmaceutical industry should determine the formation of the state pharmaceutical safety policy today and systematically cover all these issues.

The analysis of publications devoted to the issue of pharmaceutical safety demonstrates the absence of a unified approach among scientists both to the definition of the term “pharmaceutical safety” and to comparison with other elements of economic security. Domestic researchers (A. Viktorova, L. Kovtun, K. Kosyachenko, O. Lebeda, V. Maltsev, A. Stefanova and others), addressing the issues of pharmaceutical safety, mainly focus on issues of quality, sufficient assortment and price drug policies [6, 9]. But systematic comprehensive research that would cover the development of mechanisms to counter threats associated with the improper and inefficient functioning of the pharmaceutical industry (taking into account foreign economic security, the safety of the domestic pharmaceutical market, pharmaceutical enterprises, intermediaries, consumers, environmental and military aspects) in domestic pharmaceutical and economic science up to still not. Emerging is the institutional provision of the pharmaceutical safety of Ukraine. General theoretical aspects of the economic security of the state are considered and highlighted in the works of E. Belousov, D. Zadykhailo, V. Pashkov, A. Sukhorukov, L. Shevchenko, and others. The works of A. Datsko, A. Datsko, V. Shapovalova, V. Chernykh is devoted to the definition of theoretical and methodological principles and criterias the formation of the state pharmaceutical safety, the analysis of indicators of pharmaceutical safety in the context of trends in the domestic pharmaceutical market, the development of conceptual approaches to the formation of the pharmaceutical safety system of Ukraine. Domestic researchers I. Gerasimenko, V. Golub, G. Olasyuk, and foreign scientists S. Golant, D. Kuznetsov, E. Korzhavomu, V. Moshkova are engaged in the economic security of the pharmaceutical industry and the improvement of terminology [4, 7].

**The aim of the article** is to study approaches to determining the pharmaceutical safety of the state, characterize the theoretical foundations, the gist and its components, as well as

---

assess the current state of the level of economic security of the pharmaceutical industry and develop recommendations to ensure the economic security of the pharmaceutical industry of Ukraine.

**Methodology of the research** – the theoretical and methodological foundation of the work based on the main theoretical references in the area of economic security in the pharmaceutical industry.

The economic security of the state is one of the most important components of a holistic system of national security as a complex of protection of national interests, as well as the basic, decisive condition for observing and realizing national interests. Although in many policy documents on the development of Ukraine the tasks of leveling the risks associated with threats to pharmaceutical safety are recognized as one of the priorities, it is stated that the dangers associated with inadequate regulation and development of the pharmaceutical market are significantly exacerbated. The components of economic security are:

- industrial safety;
- demographic security;
- energy security;
- external economic security;
- investment and innovation security;
- macroeconomic security;
- food security;
- social security;
- financial security [2, 8].

For the formulation of the conceptual apparatus of the pharmaceutical safety of the state and the identification of the relationships between the concepts, we consider it appropriate to consider the pharmaceutical safety of the state in a broad and (narrow) applied sense. In a narrow sense, the pharmaceutical safety of the state covers the safety of pharmaceutical development, preclinical and clinical trials of a drug, production safety (including the safety of substances used for the manufacture of medicines), drug safety during handling (transportation, storage, disposal, medical use, pharmacovigilance), etc.

Pharmaceutical safety in the broad sense provides for the creation of an appropriate regulatory framework necessary for the effective functioning of the pharmaceutical safety system:

- 
- improvement of its organizational structure;
  - prediction of changes occurring in them, and potential threats to pharmaceutical safety;
  - development of scientifically based proposals and recommendations for creating a strategy of pharmaceutical safety of the state;
  - assessment of the effectiveness of actions to ensure pharmaceutical safety and determine the costs for these purposes;
  - participation in bilateral and multilateral cooperation in the field of pharmaceutical safety.

In most cases, the term «pharmaceutical safety» by domestic scientists is used in an applied sense, as a synonym for the term «drug safety». Researchers who limit the interpretation of «pharmaceutical safety» to the safety of their pharmacological action, determine that it is formed at the stage of pharmaceutical development, during industrial production, preclinical and clinical studies, at the stage of registration and monitoring of drug safety, is carried out throughout their life cycle and should be ensured by observing the appropriate standards of pharmaceutical practice [7].

In a several works the term «vital security» is introduced and it is considered as a component of national security, that is, the safety of life and health of citizens. It is emphasized that the problem of determining, qualifying and economic and legal regulation of ensuring vital security as an object of legal economic order can be the key to the effective functioning of the health system. Moreover, it is important to proceed from the fact that at a certain stage the issue of vital security as a component of national security goes beyond the boundaries of the economic and legal context and acquires constitutional and legal political significance [10].

Z. Golant defines the concept of economic security of the pharmaceutical industry as the state of the financial, scientific, research, technological, industrial and human potential of the industry, institutional, legal, organizational and economic relations of government bodies and manufacturers, ensures its ability to operate on an innovative basis and guarantees accessibility for the population and high medical effectiveness of vital and important medicines. The researcher identifies two main systemic threats to the economic security of the country's pharmaceutical industry:

- 1) immediate threat (inability to provide the population with the basic range of medicines, the entire production cycle of which is located in the country);

---

2) strategic threat (low level of innovation and technology used in the development and production of medicines).

The author focuses on four principles of ensuring the economic security of the pharmaceutical industry:

- 1) the principle of dominance of the innovation model of industry development;
- 2) the principle of the rule of quality, efficacy and safety of medicines;
- 3) the principle of priority of the national pharmaceutical industry in implementing state programs in the field of providing the population with medicines;
- 4) the principle of import substitution of domestic drugs, the full production cycle of which is located in the country [4].

In connection with the objective need to expand the facilities and entities that are involved in pharmaceutical safety in certain countries, international organizations in the field of healthcare and pharmacy have developed several regulatory documents and introduced organizational and economic mechanisms to ensure it, not only for the quality of medicines.

This problem is being actualized due to the lack of a clear legislative definition of the term «pharmaceutical security of the state» in Ukraine, which creates uncertainty in the actions of the state administrative apparatus and leads to errors in the formation of regional and state economic development and health programs. Accordingly, the formation of the development policy of the pharmaceutical industry should take into account the dualistic interests of the subjects of this market:

- firstly, the pharmaceutical market should most effectively meet the needs of the population in medicinal products, determining the priority of consumer protection about the range, prices of pharmaceutical products;
- secondly, manufacturers and distributors of pharmaceutical products seek to maximize profits and therefore form pricing, assortment policy according to the business attractiveness of the market segment, often ensuring the implementation of social policy priorities [3].

Summing up, we note that the pharmaceutical security of the state comprehensively takes into account the need to mitigate the risks associated with the development, production, promotion, consumption and disposal of pharmaceutical products in the context of the safety of the population, state pharmaceutical enterprises, the environment, as well as the country's defense and economic independence. Therefore, the pharmaceutical security of the state is defined as the socio-economic and environmental status of the state in which:

- 
- all its citizens are stably and guaranteed provided with medicines and medical supplies in the required quantity, assortment, and appropriate quality, at affordable prices;
  - at which the guaranteed necessary stock of medicines and medical devices in case of emergency is formed;
  - the pharmaceutical market has a low level of import dependence (the total share of domestic pharmaceutical supply with domestic production needs meets the pharmaceutical safety criterion set by the World Health Organization at least 70%);
  - domestic pharmaceutical industry enterprises systematically and economically soundly introduce the production of innovative products;
  - guaranteed political, economic and physical security, as well as transparent competition and access to markets for all operators of the pharmaceutical market;
  - the development, production, use and disposal of pharmaceutical products meet international environmental safety standards;
  - domestic pharmaceutical enterprises and intermediaries are competitive in the global pharmaceutical market, and the state occupies a leading position among the leading exporters of pharmaceutical products.

The pharmaceutical market in Ukraine is one of the fastest-growing (about 20% per year) and dynamically developing. The production of pharmaceuticals, compared to the same period in 2017, increased in 2018 by 22.5% in monetary terms and by 4% in commodity terms. Ukraine is one of the largest drug manufacturers in Eastern Europe. To date, the pharmaceutical industry of Ukraine, according to the State Service of Ukraine on Medicines and Drugs Control, is represented by 120 enterprises that have licenses for the production of medicines [5].

According to PharmaBoardroom, the TOP-10 manufacturing companies leading in terms of sales in the commercial pharmaceuticals market of Ukraine included four Ukrainian enterprises – JSC Farmak with a market share of 5.6%, Arterium Corporation with a market share of 3, 7%, CJSC Pharmaceutical Firm Darnitsa with a market share of 3.4%, LLC Pharmaceutical Company Zdorovie with a market share of 3.2% in value.

The export of Ukrainian pharmaceuticals is quite developed, Ukraine exports medicines to 50 countries. The main importers are the CIS countries. The three leaders include Uzbekistan, Kazakhstan, and Russia – in 2018 they purchased products for a total of 94.6 million \$ – these are mainly dosed drugs. The only major buyer in Southeast Asia is Vietnam – 4.9 million \$ (antibiotics and cardiac drugs). The largest importer in South America is Brazil (insulin) [5].

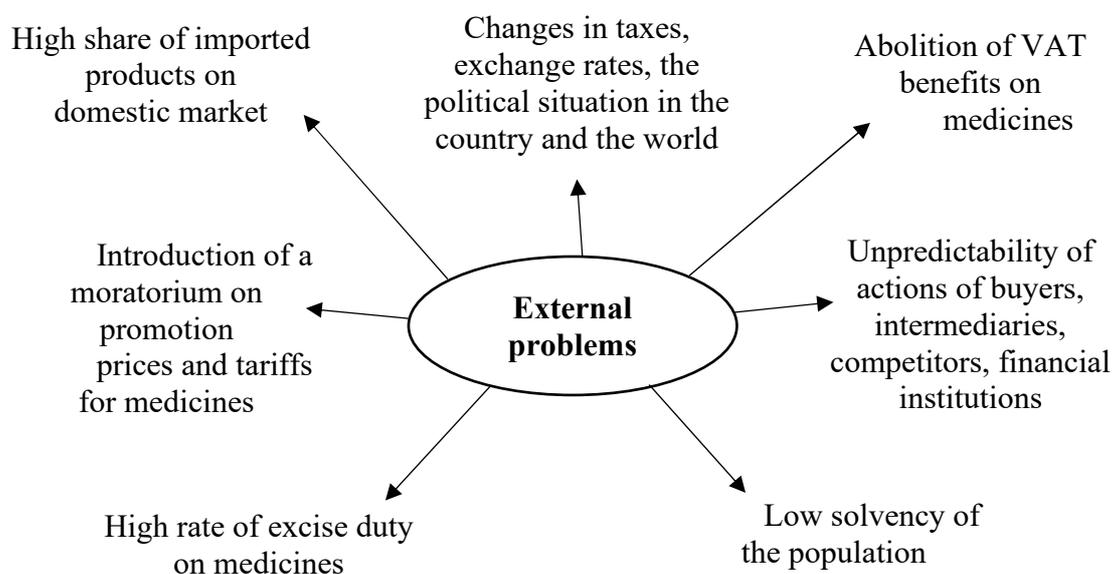
Now in Ukraine, a significant reserve of import substitution of drugs of cardiology, anesthesiology, rheumatology, antimicrobial agents is being formed, which allows abandoning 63% of imported analogues. The domestic pharmaceutical industry provides jobs for more than 25 thousand citizens of Ukraine, excluding pharmacists.

The current situation at the level of the ukrainian pharmaceutical industry indicates the presence of threats to the development of the economic security of the pharmaceutical industry.

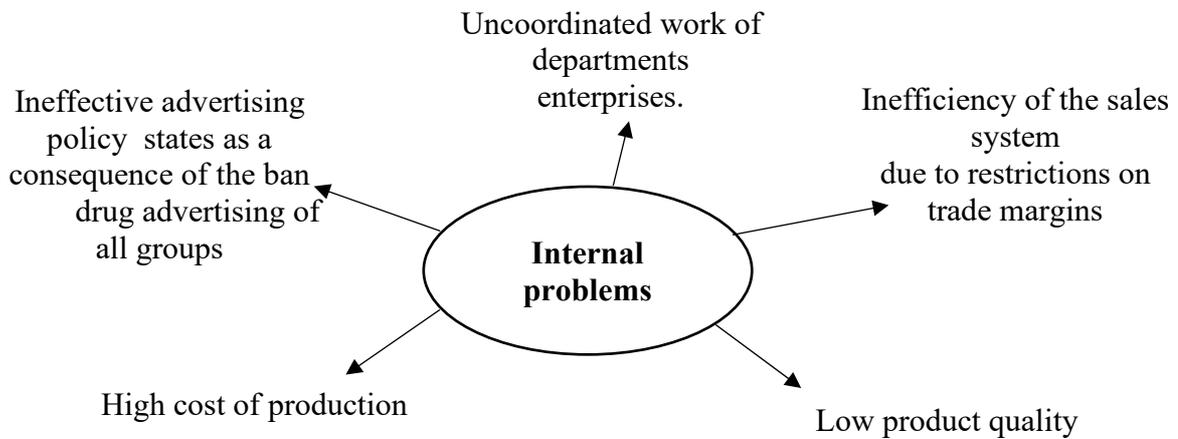
The author has investigated the external (Fig. 1) and internal (Fig. 2) threats to the economic security of the pharmaceutical industry.

Common problems include the conditions of the activity of enterprises in Ukraine, namely, financial-economic changes, instability of price and economic policies of the state, the low purchasing power of the population, insufficient working capital of the main customers.

Domestic pharmaceutical production is in most cases an integrated interaction of foreign manufacturers and domestic enterprises. A characteristic feature of the pharmaceutical market of Ukraine is its high dependence on imports of basic raw materials and supplies, which links both the cost structure and the level of selling prices to fluctuations in the national currency against the euro and the dollar. The raw materials and materials of Ukrainian production are mostly represented by auxiliary materials, while at the same time, low price segment products occupy part of the Ukrainian pharmaceutical market. Therefore, the pharmaceutical industry of Ukraine is not yet able to provide the domestic market with the main range of modern medicines, the entire production cycle of which would be located in Ukraine.



**Figure 1.** External problems of the economic security of the pharmaceutical industry



**Figure 2.** Internal problems of the economic security of the pharmaceutical industry

A threat to the market component of the economic security of the pharmaceutical industry is a very low solvency of the population. That is, in practice, the main goal of any industry is not fulfilled – to bring products to the consumer. To eliminate this threat, it is necessary to solve the problem of pricing and the accrual of interest on medicines of both domestic production and imported funds.

It should also be noted the inconsistency of many Ukrainian pharmaceutical manufacturings with the international GMP standard and other international standards. That is why the industry needs investment income for the introduction of modern technologies for the production of medicines at all pharmaceutical enterprises of Ukraine in to bring it closer to international standards and increase the volume of domestic products in the domestic and foreign markets. In particular, to ensure the level of economic security of the pharmaceutical industry, it remains possible to conclude direct agreements between pharmaceutical companies and the state [1].

There are specific problems in pharmaceutical production, such as the introduction of a moratorium on increasing prices and tariffs for medicines and medical products, the establishment of restrictions on the trade margin for distributors of domestic drugs, the high excise tax rate on drugs, the low technical level of production in the country, and the high cost of production, a drop in demand for OTC drugs, a shortage of raw materials from domestic producers and fluctuations in prices for imported raw materials. Under these conditions, achieving an adequate level of providing the population with medicines depends largely on the realization of the economic security of the pharmaceutical industry.

---

Another problem in ensuring the economic security of the pharmaceutical industry in Ukraine is the falsification of pharmaceutical products. The counterfeit market volume is just over 150 items that belong to the middle price category and are most popular with buyers. About a third of the total volume of counterfeit medicines enters the domestic market from India, China and Poland. The main reasons are the imperfection of the legal framework and the lack of a mechanism to hold accountable for the sale of counterfeit goods [9].

These specific problems, as well as increased competition in the Ukrainian pharmaceutical market and competition with cheaper products of manufacturers certified according to GMP (India, Russia, Belarus), indicate that the success of the pharmaceutical industry depends on the correctness of the chosen model of market behavior, sales policy, pricing and the like.

The considered problems in the field of economic security of the pharmaceutical industry in Ukraine allow us to highlight a some areas for ensuring economic security:

- formation and state support for the production of high-tech innovative drugs, chemical and biotechnological substances;
- providing the pharmaceutical industry with highly qualified personnel;
- stimulation of domestic production of cheap analogues of imported generic and innovative medicines and their inclusion in the list of vital and most important medicines;
- improvement of state regulation of prices for medicines;
- improvement of regulation in the field of state registration of medicines and certification of manufacturing companies for GMP compliance;
- development of a cluster approach in the localization of pharmaceutical production.

## CONCLUSIONS

Analysis of approaches to determining the pharmaceutical security of the state, as well as an assessment of the current state of the level of economic security of the pharmaceutical industry in Ukraine, allows us to conclude that further theoretical and practical developments in this area are necessary.

This problem is actualized due to the lack of a clear legislative definition of the concept of «pharmaceutical security of the state», which creates uncertainty in the actions of the state administrative apparatus and leads to errors in the formation of regional and national economic development programs and health programs.

---

The theoretical and methodological foundation of the work based on the main theoretical references in the area of economic security in the pharmaceutical industry.

For the formulation of the conceptual apparatus of the pharmaceutical safety of the state and the identification of the relationships between the concepts, we consider it appropriate to consider the pharmaceutical safety of the state in a broad and narrow (applied) sense. We define the pharmaceutical safety of the state as the socio-economic and environmental status of the state in which: all its citizens are stably and guaranteed provided with medicines and medical supplies in the required quantity, assortment and appropriate quality, at affordable prices; at which the guaranteed necessary reserve for emergency situations is formed; the pharmaceutical market has a low level of import dependence; domestic pharmaceutical companies are systematically and economically soundly introducing the production of innovative products; guaranteed political, economic and physical security, as well as transparent competition and access to markets for all pharmaceutical market operators; development, production, use and disposal of pharmaceutical products meets international environmental safety standards. Domestic pharmaceutical enterprises and intermediaries are competitive in the global pharmaceutical market, and the state holds leading positions among the leading exporters of pharmaceutical products.

The author has investigated the external (high share of imported products on domestic market; changes in taxes, exchange rates, the political situation in the country and the world; abolition of VAT benefits on medicines; introduction of a moratorium on promotion prices and tariffs for medicines; unpredictability of actions of buyers, intermediaries, competitors, financial institutions; low solvency of the population; high rate of excise duty on medicines) and internal (uncoordinated work of departments enterprises; inefficiency of the sales system due to restrictions on trade margins; low product quality; high cost of production; ineffective advertising policy states as a consequence of the ban drug advertising of all groups) threats to the economic security of the pharmaceutical industry.

At the present stage, the pharmaceutical market cannot guarantee the appropriate level of pharmaceutical safety only through self-regulatory mechanisms, therefore, it is necessary to protect the strategic interests of the state according to certain criteria of pharmaceutical safety of Ukraine and introduce appropriate legal, organizational, economic, informational mechanisms to ensure it.

Based on the study, it can be concluded that the requirements for the economic security of the pharmaceutical industry do not correspond to the actions actually taken in this direction, and there is no systematic approach to increasing the level of domestic production for the purpose of import substitution of medicines. The prospects for the sustainability of the economic security of the pharmaceutical industry are directly related to the effectiveness of government regulation, which must be implemented in two interrelated areas – organizational, administrative and economic.

The considered problems in the field of economic security of the pharmaceutical industry in Ukraine allow us to highlight a some areas for ensuring economic security: formation and state support for the production of high-tech innovative drugs, chemical and biotechnological substances; providing the pharmaceutical industry with highly qualified personnel; stimulation of domestic production of cheap analogues of imported generic and innovative medicines and their inclusion in the list of vital and most important medicines; improvement of state regulation of prices for medicines; improvement of regulation in the field of state registration of medicines and certification of manufacturing companies for GMP compliance;

Further development of research in the field of pharmaceutical safety (both theoretical and applied aspects) will contribute to the effective functioning of the pharmaceutical industry not only as one of the components of the country's economy, but will also help to build an effective system to neutralize threats of the health of the population of Ukraine.

## REFERENCES

1. Ahmetov A. E. (2012). World experience in pharmaceutical price regulation (for example, European countries). Vestnik RUDN. № 2, pp 39–46.
2. Esaulov S.V (2012). Sovremennyye instrumenty` obespecheniya e`konomicheskoy bezopasnosti na ry`nke farmatsevticheskikh uslug [Modern tools for ensuring economic security in the pharmaceutical services market]. Retrieved from <http://economy-lib.com/sovremennye-instrumenty-obespecheniya-ekonomicheskoy-bezopasnosti-na-rynke-farmatsevticheskikh-uslug> [in Russian].
3. Filipkovs`ka L.O., Savchenko G.S. (2017). Zabezpechennya ry`nkovogo aspektu ekonomichnoyi bezpeky` farmacevty`chny`x pidpry`yemstv [Ensuring the market aspect of economic security pharmaceutical companies]. Economy and society. №13, pp. 747-753.
4. Golant Z. M. (2010). Strategicheskiye napravleniya obespecheniya ekonomicheskoy bezopasnosti farmatsevticheskoy otrasli Rossii [Zakhar Golant M. Strategic directions of economic security of the pharmaceutical industry in Russia]. Vestnik ChGU – Herald CSU. 2. cyberleninka.ru. Retrieved from <http://cyberleninka.ru/article/n/strategicheskienapravleniya-obespecheniya-ekonomicheskoy-bezopasnosti-farmatsevticheskoy-otrasli-rossii> [in Russian].

5. Infographic atlas "Pharmaceuticals of Ukraine" (2018). Retrieved from [https://businessviews.com.ua/ru/get\\_file/id/the-infographics-report-pharmaceutical-industry-of-ukraine-2017\\_2.pdf](https://businessviews.com.ua/ru/get_file/id/the-infographics-report-pharmaceutical-industry-of-ukraine-2017_2.pdf).
6. Kosyachenko K. L. (2012). Methodology of the social security of the pharmaceutical care population and the assessment of the regions of Ukraine. *News Pharmacy*. 1(69), pp. 14-20.
7. Kuznetsov D. A., Korzhavykh E. A. (2015) Kontseptualnaya model upravleniya ekonomicheskoy bezopasnostyu farmatsevticheskoy organizatsii [Conceptual model of management of the economic security of the pharmaceutical organization]. *Farmatsiya i farmakologiya – Pharmacy and Pharmacology*. 4 (11).47-51 [in Ukrainian].
8. Pro zatverdzhennia Metodychnykh rekomendatsii shchodo rozrakhunku rivnia ekonomichnoi bezpeky Ukrainy [On approval of guidelines for the calculation of economic security of Ukraine]. Nakaz Ministerstva ekonomichnoho rozvytku i torhivli Ukrainy vid 29.10.2013 № 1277 – Order of the Ministry of Economic Development and Trade of Ukraine of 29.10.2013 № 1277. me.gov.ua. Retrieved from <http://www.me.gov.ua/Documents/List?lang=ukUA&tag=MetodichniRekomendatsii> [in Ukrainian].
9. Stefanov O.V., Viktorov O.P., Malcev V.I., Kovtun L.I., Logvina I.O. (2002). Problema bezpeky` likars`ky`x zasobiv v Ukrayini [The problem of drug safety in Ukraine] Retrieved from [http://www.medved.kiev.ua/arhiv\\_mg/st\\_2002/02\\_3\\_1.htm](http://www.medved.kiev.ua/arhiv_mg/st_2002/02_3_1.htm) [in Ukrainian].
10. Voronina I. S. (2016) Farmacevty`chna bezpeka yak skladova ekonomichnoyi bezpeky` derzhavy` v umovax innovacijnoyi modeli social`no-ekonomichnogo rozvy`tku [Pharmaceutical safety as a component economic security of the country in the conditions innovative model of social and economic development] Retrieved from <http://apir.org.ua/wp-content/uploads/2016/12/Voronina7.pdf> [in Ukrainian].

---

## PAREIGŪNŲ KOMPETENCIJOS UŽKARDANT PREKYBĄ ŽMONĖMIS UKRAINOJE IR LIETUVOJE

**Gediminas Bučiūnas<sup>1</sup>**

<sup>1</sup>Vytauto Didžiojo Universitetas  
Jonavos g. 66, LT-44318 Kaunas,  
tel. +370 37 751044

<sup>1</sup>Mykolo Romerio universitetas  
Maironio g. 27, LT-44211 Kaunas,  
tel. +370 37 281409

El. paštas: [gediminas1967@gmail.com](mailto:gediminas1967@gmail.com)

**Vilius Velička<sup>2</sup>**

<sup>2</sup>Lietuvos policijos mokykla  
Mokslo g. 2, Mastaičių k., Alšėnų sen., Kauno rajonas  
tel. +370 700 60034

El. paštas: [vilius.velicka@policija.lt](mailto:vilius.velicka@policija.lt)

10.13165/PSPO-20-25-28

---

**Anotacija.** Vykstantys globalizacijos procesai Europoje, pasaulyje paskatino nemažą dalį gyventojų dėl vienokių ar kitokių priežasčių pakeisti sau įprastą gyvenamąją vietą ir vykti į kitas šalis dirbti. Susidariusia darbo rinkoje situacija, dalies žmonių socialiniu, ekonominiu pažeidžiamumu netruko pasinaudoti ir organizuoto nusikalstamumo atstovai. Finansinių veiksmų kovai su pinigų plovimu ir teroristų finansavimu (toliau – FATF) darbo grupės, sudarytos Didžiojo septyneto sprendimu 1989 m. Paryžiaus susitikime, pateiktoje 2018 m. ataskaitoje apie finansines įplaukas iš prekybos žmonėmis nurodoma, kad 24.9 mln. žmonių 2016 m. buvo išnaudojami seksualiai ir priverstiniuose darbuose.<sup>1</sup>

Prekyba žmonėmis – šiuolaikinė vergijos apraiška. Neretai jos aukos užverbuojamos, vežamos arba apgyvendinamos jėga, prievarta ar apgaule, yra išnaudojamos (taip pat ir seksualiai), verčiamos dirbti, teikti paslaugas, elgetauti, nusikalsti ar atiduoti organus. Tai šurkštus individo laisvės ir orumo pažeidimas, sunkios formos nusikaltimas.<sup>2</sup> Prekyba žmonėmis yra vienas iš pagrindinių organizuoto nusikalstamumo finansinių įplaukų šaltinių. Gautas pelnas naudojamas kitiems nusikalstamiems tikslams pasiekti.<sup>3</sup> Todėl kova su prekyba žmonėmis jau seniai yra vienas iš Lietuvos ir Ukrainos vyriausybių veiklos prioritetų. Vienas iš svarbių elementų sėkmingai užkardant prekybą žmonėmis ir atskleidžiant prekybos žmonėmis atvejus yra policijos, valstybės sienos apsaugos ir kitų teisėsaugos institucijų pareigūnų kompetencija šioje srityje. Peržvelgus Lietuvoje ir Ukrainoje publikuotus mokslo darbus dėl prekybos žmonėmis, nebuvo aptinka tyrimo dėl teisėsaugos pareigūnų kompetencijos veiksnio prekybos žmonėmis tyrimuose, įskaitant ir lyginamuoju aspektu. Tai paskatino šio straipsnio autorius atlikti lyginamąjį mokslinį tyrimą dėl pareigūnų kompetencijos kovojant su prekyba žmonėmis ir palyginti šių šalių pastangas kovojant su prekyba žmonėmis.

---

<sup>1</sup> FATF report on Financial flows from human trafficking July 2018, P. 9. [interaktyvus] [žiūrėta 2020 m. liepos 20 d.] prieiga per internetą <https://www.fatf-gafi.org/media/fatf/content/images/Human-Trafficking-2018.pdf>

<sup>2</sup> Komisijos komunikatas Europos Parlamentui, Tarybai, Europos Ekonomikos Ir socialinių reikalų komitetui ir Regionų komitetui. Prekybos žmonėmis panaikinimo ES strategija 2012–2016 m./\* COM/2012/0286 final \*/. P. 2 [interaktyvus] [žiūrėta 2020 m. liepos 20 d.] prieiga per internetą

<sup>3</sup> Sirgedienė R. Kovos su prekyba žmonėmis koordinavimo problemos administracinėje teisėje. Daktaro disertacija. Socialiniai mokslai, teisė (01 S) Vilnius. 2014. P. 10.

Siekiant pasiekti tyrimo tikslą, buvo atlikta policijos pareigūnų Lietuvoje ir policijos / pasienio apsaugos tarnybos / muitinės pareigūnų Ukrainoje struktūrizuota apklausa pagal parengtą klausimų sąrašą dėl prekybos žmonėmis problematikos. Šiuo tyrimu siekta palyginti dviejų šalių pareigūnų žinias, poreikius prekybos žmonėmis srityje, identifikuoti problemines sritis, su kuriomis susiduria policijos / kitų teisėsaugos institucijų pareigūnai, atlikdami tiek prekybos žmonėmis prevenciją, tiek ikiteisminį tyrimą dėl prekybos žmonėmis atvejų. Analizuojant apklausų metodu gautus rezultatus, buvo įvertintas ir palygintas tiek Ukrainos, tiek Lietuvos teisėsaugos institucijų pareigūnų (daugiausiai policijos) pasirengimas laiku ir efektyviai užkardyti prekybos žmonėmis užuomazgas ir išsamiai per kuo trumpesnę laikotarpį ištirti jau įvykusius prekybos žmonėmis atvejus. Taip pat siekiant įvertinti prekybos žmonėmis Lietuvoje ir Ukrainoje situaciją, buvo nagrinėjami moksliniai straipsniai, Jungtinių Amerikos Valstijų parengtos ataskaitos dėl prekybos žmonėmis padėties pasaulyje ir kitų tarptautinių institucijų bei organizacijų dokumentai, susiję su prekyba žmonėmis.

Atsižvelgiant į tyrimo metu gautus ir apibendrintus rezultatus, identifikuojamos probleminės sritys kovoje su prekyba žmonėmis teisėsaugos institucijų pareigūnų kompetencijų kontekste, pateikiami pasiūlymai, kaip pakelti teisėsaugos pareigūnų pasirengimo lygį kovojant su minėtu socialiniu reiškiniu.

**Pagrindinės sąvokos:** prekyba žmonėmis, prevencija, ikiteisminis tyrimas, teisėsaugos institucijų pareigūnas.

## ĮVADAS

Kiekvieno žmogaus gyvybė reikalauja besąlygiškos pagarbos. Žmogaus gyvybės nelygstama vertė akcentuojama daugelio pasaulio šalių pagrindiniame įstatyme – Konstitucijoje, kurioje atskiru straipsniu reglamentuojama žmogaus gyvybės, kaip vienos didžiausių vertybių Visatoje, apsauga. Pavyzdžiui, Lietuvos Respublikos Konstitucijos 19 str. skelbia, kad „žmogaus teisę į gyvybę saugo įstatymas“<sup>4</sup>. Taip pat ne mažiau svarbi nagrinėjamame kontekste yra žmogaus socialinių, ekonominių teisių apsauga, nes pažeidus vienos rūšies žmogaus teises, pvz., į saugias darbo sąlygas, į sveikatą, iškyla reali grėsmė ir kitoms žmogaus teisėms, pvz., žmogaus teisei į sveikatą ir gyvybę. Prekyba žmonėmis gali būti pačių įvairiausių formų ir, kintant socialinėms bei ekonominėms aplinkybėms, keičiasi pati<sup>5</sup>. Lietuvos Respublika ir Ukraina<sup>6</sup> yra pasirašiusios ir ratifikavusios pagrindinius tarptautinius teisės aktus, skirtus apsaugoti įvairias žmogaus teises. Vienas iš fundamentalių tarptautinių teisės aktų, skirtų žmogaus socialinių, ekonominių teisių apsaugai, yra tarptautinis ekonominių, socialinių ir kultūrinių teisių paktas. Minėto pakto 6 str. nurodoma, kad „1. Valstybės, šio Pakto Šalys, pripažįsta teisę į darbą, apimančią kiekvieno žmogaus teisę gauti galimybę užsidirbti

<sup>4</sup> Lietuvos Respublikos Konstitucija. Lietuvos aidas, 1992-11-10, Nr. 220-0.

<sup>5</sup> Komisijos komunikatas Europos Parlamentui, Tarybai, Europos Ekonomikos ir Socialinių reikalų komitetui ir Regionų komitetui. Prekybos žmonėmis panaikinimo ES strategija 2012–2016 m./ \* COM/2012/0286 final \*/. P. 2. [interaktyvus] [žiūrėta 2020 m. liepos 20 d.] prieiga per internetą <https://eur-lex.europa.eu/legal-content/LT/ALL/?uri=CELEX%3A52012DC0286>

<sup>6</sup> Melnyk A. Trafficking in Human Beings in Ukraine. DCAF. Migration and Security Sector Paper Series. 2014. P. 16.

pragyvenimui darbu, kurių jis laisvai pasirenka arba kurių dirbti jis laisvai sutinka, ir imasi reikiamų priemonių šiai teisei apsaugoti. 2. Priemonės, kurių kiekviena valstybė, šio Pakto Šalis, imasi šiai teisei visiškai įgyvendinti, apima techninį ir profesinį orientavimą ir mokymo programas, strategiją ir metodus, taikomus siekiant tolygios ekonominės, socialinės ir kultūrinės plėtros ir visiško bei produktyvaus užimtumo, kad būtų apsaugotos asmens pagrindinės politinės ir ekonominės laisvės.“<sup>7</sup>

Valstybė, siekdama apsaugoti svarbiausius teisinius gėrius, įsteigia atitinkamas institucijas. Viena iš tokių institucijų tiek Lietuvos Respublikoje, tiek Ukrainoje yra policija, kurios veiklą reglamentuojančiame įstatyme rasime nuostatas, įpareigojančias policiją užtikrinti asmens, visuomenės saugumą. Pvz., Lietuvos Respublikos policijos įstatymo (toliau – Policijos įstatymas) 5 str. 1 d. 2 p. įtvirtintas vienas iš policijos uždavinių – asmens, visuomenės saugumo ir viešosios tvarkos užtikrinimas<sup>8</sup>. Analogiška nuostata yra įtvirtinta ir Ukrainos nacionalinės policijos veiklą reglamentuojančiame įstatyme. Siekiant įvykdyti išskeltus uždavinius, policijos pareigūnams, kitų teisės saugos institucijų pareigūnams suteikiami įgaliojimai, kurie be atitinkamos pareigūnų (toliau – pareigūnų) kompetencijos, jų paruošimo vykdyti specifines užduotis (šiuo atveju – prekybos žmonėmis srityje) yra tik žodžiai.

Šio tyrimo autoriai atlikdami struktūruotą interviu, pasitelkę mokslinius tyrimo metodus, atskleidė faktorius, turėjusius įtakos pareigūnų kompetencijoms užkardant ir tiriant prekybos žmonėmis atvejus. Šio lyginamojo tyrimo metu gautos išvados galės pasitarnauti geresniam pareigūnų pasirengimui kovai su minėtu socialiniu reiškiniu ir dvidešimt pirmojo amžiaus gėda – žmonių vergove.

#### **Tyrimo tikslai:**

- išanalizuoti bendrą situaciją dėl prekybos žmonėmis Lietuvoje ir Ukrainoje;
- atlikti Lietuvos ir Ukrainos teisės saugos pareigūnų kompetencijos pakankamumą tiriant prekybos žmonėmis atvejus lyginamąjį tyrimą apklausų būdu;

**Tyrimo objektas** – Lietuvos Respublikos ir Ukrainos veiksmų dėl prekybos žmonėmis įvertinimas, šių šalių institucijų vykdyti mokymai ir pareigūnų kompetencijos užkardant bei tiriant prekybos žmonėmis atvejus.

#### **Tyrimo sprendžiami uždaviniai:**

<sup>7</sup> Tarptautinis ekonominių, socialinių ir kultūrinių teisių paktas. Valstybės žinios, 2002-08-02, Nr. 77-3290.

<sup>8</sup> Lietuvos Respublikos Policijos įstatymas. [interaktyvus] [žiūrėta 2020 m. liepos 28 d.] prieiga per internetą <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111665/asr>

- 
- apžvelgti tarptautinių institucijų parengtas ataskaitas dėl prekybos žmonėmis padėties ir vykdytų mokymų Lietuvoje ir Ukrainoje;
  - išanalizuoti pareigūnų kompetencijas užkardant bei tiriant prekybos žmonėmis atvejus;
  - išanalizuoti pareigūnų pasirengimą identifikuoti galimas prekybos žmonėmis užuomazgas, jas efektyviai užkardyti ir, esant teisiniam pagrindui, išsamiai ir laiku ištirti prekybos žmonėmis atvejus;
  - atskleisti problemas, turinčias įtakos pareigūnų kompetencijai prekybos žmonėmis kontekste;
  - identifikuoti problemas, turinčias įtakos pareigūnų pasirengimui kovoje su prekyba žmonėmis
  - pateikti pasiūlymus, kaip ir kokiais būdais tobulintinas pareigūnų rengimas siekiant užkirsti kelią prekybai žmonėmis;

**Tyrimo metodai.** Dokumentų analizė, struktūruota apklausa, loginis, dedukcinis, indukcinis, lyginamasis, gramatinis.

Tyrimo metu buvo analizuojamos Jungtinių Amerikos Valstijų Valstybės Departamento parengtos ataskaitos apie prekybos žmonėmis situaciją šalyse ir ekspertų parengtos ataskaitos dėl Europos Tarybos Konvencijos veiksmų prieš prekybą žmonėmis įgyvendinimo Lietuvoje ir Ukrainoje. Taip pat šio tyrimo metu 2019 m. vasario–kovo mėn. buvo atlikta struktūruota apklausa raštu pagal parengtą klausimų sąrašą. Apklausoms atlikti atsitiktine tvarka buvo pasirinkta 30 Lietuvos Respublikos pareigūnų ir 30 Ukrainos pareigūnų (toliau – respondentai), vienokia ar kitokia forma dalyvavusių užkardant ir tiriant prekybos žmonėmis atvejus. Prieš atliekant apklausas, respondentams buvo atskleistas šio tyrimo tikslas, iškelti uždaviniai, respondentai supažindinti su klausimynu. Respondentams sutikus dalyvauti apklausoje, jiems buvo išdalintas klausimynas, kurį sudarė devyni klausimai. Respondentai pateikė atsakymus į klausimus.

Kiti šiame tyrime minimi moksliniai tyrimo metodai buvo naudojami pareigūnų apklausos klausymo parengimui, išanalizuoti apklausos metu gautus atsakymus, apibendrinti kartu su kita informacija gauta iš mokslinės literatūros, teisės aktų analizės bei suformuluoti tyrimo išvadas.

## **TYRIMAS IR JO REZULTATŲ ANALIZĖ**

Lietuvos Respublikos baudžiamojo proceso kodekso 1 straipsnyje įtvirtinta nuostata, kad „baudžiamojo proceso paskirtis yra ginant žmogaus ir piliečio teises bei laisves, visuomenės ir valstybės interesus greitai, išsamiai atskleisti nusikalstamas veikas ir tinkamai pritaikyti įstatymą, kad nusikalstamą veiką padaręs asmuo būtų teisingai nubaustas ir niekas nekaltas nebūtų nuteistas.“<sup>9</sup> Baudžiamojo proceso teisės normos yra pagrindas įgyvendinti materialinę teisę, šiuo atveju baudžiamosios teisės normos ir abi šios teisės šakos negali egzistuoti viena be kitos. Baudžiamoji atsakomybė už prekybą žmonėmis tiek Ukrainoje, tiek Lietuvos Respublikoje numatyta baudžiamajame kodekse. Tiriant prekybą žmonėmis susiduriama su daugeliu veiksnių, turinčių įtakos baudžiamojo proceso paskirties realizavimui, pvz., tarptautinio bendradarbiavimo baudžiamosiose bylose efektyvumas, nukentėjusiųjų noras bendradarbiauti su teisėsaugos institucijomis, bendradarbiavimas tarp nevyriausybinų organizacijų ir teisėsaugos institucijų ir daugelis kitų aspektų, lemiančių sėkmingą ikiteisminio tyrimo atlikimą. Ne ką mažiau svarbi yra ir nusikalstamų veikų prevencija, kuriai ne visada skiriama pakankamai dėmesio. Juk prekyba žmonėmis, pagal Organizuoto nusikalstamumo apžvalgos ataskaitą, yra viena iš pelningiausių organizuotų grupių veiklos sričių, atnešanti milijardus JAV dolerių pelno<sup>10</sup>, kurio dalis taip pat patenka į teroristinių organizacijų rankas.

Autoriai, atlikdami tyrimą, savo dėmesį sutelkia į pareigūnų kompetencijas tiek prekybos žmonėmis prevencijoje, tiek jau atliekant ikiteisminį tyrimą. Tai vienas iš svarbiausių veiksnių efektyviai kovoti su prekyba žmonėmis greta tinkamų teisinių instrumentų. Juk pareigūnai, atlikdami savo tiesiogines pareigas, vieni iš pirmųjų gali identifikuoti galimus rizikos faktorius prekybai žmonėmis kilti, o atlikdami ikiteisminį tyrimą – surinkti patikimus, abejonių nekeliančius duomenis, kurie leistų patraukti baudžiamojon atsakomybėn prekybos žmonėmis kaltininkus ir perduoti juos teismui.

Sutinkamai su Jungtinių Tautų Organizacijos agentūros parengta ataskaita apie prekybą žmonėmis, galima sąlyginai išskirti šalis donores, iš kurių prekybos žmonėmis aukos yra kilusios / atvyko, ir šalis recipientes, į kurias prekybos žmonėmis aukos pateko ir buvo išnaudojamos. Tiek Lietuvos Respublika, tiek Ukraina yra priskiriamos prie šalių, iš kurių

<sup>9</sup> Lietuvos Respublikos baudžiamojo proceso kodeksas. Valstybės žinios, 2002-04-09, Nr. 37-1341.

<sup>10</sup> Final report of OCP Organized crime portfolio. From illegal markets to legitimate businesses: the portfolio of organized crime in Europe. [interaktyvus] [žiūrėta 2020 m. liepos 28 d.] prieiga per internetą [https://reliefweb.int/sites/reliefweb.int/files/resources/GLOTIP\\_2018\\_BOOK\\_web\\_small%20%281%29.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/GLOTIP_2018_BOOK_web_small%20%281%29.pdf) Komisijos komunikatas Europos Parlamentui, Tarybai, Europos Ekonomikos ir Socialinių reikalų komitetui ir Regionų komitetui. Prekybos žmonėmis panaikinimo ES strategija 2012–2016 m./\* COM/2012/0286 final \*/P. 2. [interaktyvus] [žiūrėta 2020 m. liepos 28 d.] prieiga per internetą <https://eur-lex.europa.eu/legal-content/LT/ALL/?uri=CELEX%3A52012DC0286>.

prekybos žmonėmis aukos yra kilusios / atvyko.<sup>11</sup> Tai ir yra atsakymas, kodėl šiame tyrime buvo pasirinktos būtent minėtos šalys (nepaisant daugelio kitų panašumų tarp šalių).

Siekiant nustatyti, ar Lietuvos ir Ukrainos teisėsaugos pareigūnai yra tinkamai pasirengę kovoti su prekyba žmonėmis, analizuosime Jungtinių Amerikos Valstijų Valstybės Departamento parengtas ataskaitas apie prekybos žmonėmis situaciją šalyse<sup>12</sup>. Šiose ataskaitose valstybės klasifikuojamos į keletą grupių<sup>13</sup>:

1 grupė – valstybės, kuriose laikomasi minimalių prekybos žmonėmis aukų apsaugos standartų;

2 grupė – valstybės, kuriose nėra tinkamai laikomasi minimalių prekybos žmonėmis aukų apsaugos standartų, tačiau Vyriausybės stengiasi gerinti situaciją.

2 grupės stebėjimo sąrašas – valstybės, kuriose nėra laikomasi minimalių prekybos žmonėmis aukų apsaugos standartų ir Vyriausybės stengiasi gerinti situaciją, tačiau prekybos mastai dideli arba žymiai didėja, nėra pakankamai aiškių duomenų, kurie rodytų, kad valstybės pastangos gerinti situaciją yra nukreiptos į ateitį, priemonės suplanuotos kitam laikotarpiui.

3 grupė – valstybės, kuriose nesilaikoma minimalių prekybos žmonėmis aukų apsaugos standartų.

Analizuojant 10 metų laikotarpio duomenis, Lietuva 2010 ir 2011 m. buvo priskiriama 1 grupei, tačiau nuo 2012 m. situacija pablogėjo ir Lietuva iki 2015 m. buvo priskiriama 2 grupei, nuo 2016 m. iki dabar Lietuva vėl priskiriama 1 grupei.

Ukraina nuo 2010 iki 2012 m. buvo priskiriama 2 grupei, 2013 m. situacija pablogėjo ir Ukraina iki 2017 m. jau buvo priskiriama prie valstybių, esančių 2 grupės stebėjimo sąraše, nuo 2018 m. situacija pagerėjo ir Ukraina vėl priskiriama 2 grupei.

Apžvelgus valstybių reitingus matyti, kad 2020 m. Lietuva priskiriama 1 grupei, o Ukraina – 2 grupei. 2012 m. abi šalys turėjo vienodus reitingus ir buvo toje pačioje 2 grupėje. Stebimas valstybių reitingų svyravimas dešimties metų laikotarpiu. Lietuva iš 1 grupės nusileido į 2 grupę ir po trejų metų vėl pakilo į 1 grupę. Ukraina iš 2 grupės nusileido į 2 stebėjimo sąrašo grupę ir po ketverių metų vėl pakilo į 2 grupę.

---

<sup>11</sup> UNODC Global report on trafficking in persons 2018. P. 44. [interaktyvus] [žiūrėta 2020 m. liepos 28 d.] prieiga per internetą

[https://reliefweb.int/sites/reliefweb.int/files/resources/GLOTiP\\_2018\\_BOOK\\_web\\_small%20%281%29.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/GLOTiP_2018_BOOK_web_small%20%281%29.pdf)

<sup>12</sup> Trafficking in persons report 18 th edition. June 2018., Trafficking in persons report 19 th edition. June 2019., Trafficking in persons report 20 th edition. June 2020

<sup>13</sup> Bazylevas I., Pajaujis V. Prekyba žmonėmis ir sisteminis požiūris kaip problemos sprendimas. Mokslo studija. Vilnius. 2015. P. 4.

Apžvelgus Lietuvos ir Ukrainos valstybių reitingus prekybos žmonėmis sferoje, toliau nagrinėsime pareigūnų mokymų ir jų turimų kompetencijų situaciją. Jungtinių Amerikos Valstijų Valstybės Departamento parengtose ataskaitose didelis dėmesys skiriamas pareigūnų mokymui ir jų kvalifikacijai. Pavyzdžiui, dar 2012 m. ataskaitoje<sup>14</sup> apie situaciją Lietuvoje be kitų trūkumų buvo nurodyti ir šie: „nevisiškai buvo užtikrinti teisėsaugos pareigūnų, prokurorų, teisėjų veiksmingų mokymų principai“. 2013 m. ataskaitoje<sup>15</sup> pateiktos panašios rekomendacijos dėl mokymų: „užtikrinti, kad teisėsaugos pareigūnai, prokurorai, teisėjai būtų veiksmingai mokomi kovos su prekyba žmonėmis principų ir kad kovos su prekyba žmonėmis modulis būtų integruotas į pagrindinį policijos pareigūnų mokymą“. Panašūs trūkumai nustatyti ir kitų metų ataskaitose. Peržiūrėję Ukrainai skirtas rekomendacijas matome panašias kaip ir Lietuvoje tendencijas dėl mokymų.

Apžvelgus Jungtinių Amerikos Valstijų Valstybės Departamento parengtas ataskaitas apie prekybos žmonėmis situaciją, toliau analizuojamos GRETA (anglų kalba – Group of Experts on Action Against Trafficking in Human Beings, toliau GRETA)<sup>16</sup> ekspertų parengtos ataskaitos, susijusios su Europos Tarybos Konvencija dėl veiksmų prieš prekybos žmonėmis įgyvendinimą Lietuvoje ir Ukrainoje.

Šiose ataskaitose didelis dėmesys skiriamas ir specialistų mokymams. Pirmojo vertinimo etapo 2015 m. ataskaitoje<sup>17</sup> kalbama apie Europos Tarybos Konvencijos dėl veiksmų prieš prekybą žmonėmis įgyvendinimą Lietuvoje ir rekomenduojama: „GRETA mano, kad Lietuvos institucijos turėtų dėti daugiau pastangų užtikrinant periodinius atsakingų specialistų (ypač policijos pareigūnų, prokurorų, teisėjų, darbo inspektorių, vaikų teisių specialistų, socialinių darbuotojų, medikų, kurie gali teikti pagalbą aukoms) mokymus siekiant prekybos žmonėmis užkardymo. Atsakingos institucijos, bendradarbiaudamos su nevyriausybinėmis organizacijomis (NVO), turėtų parengti mokymų programas, kurios padėtų gilinti atsakingų

<sup>14</sup> Bazylevas I., Pajaujis V. Prekyba žmonėmis ir sisteminis požiūris kaip problemos sprendimas. Mokslo studija. Vilnius. 2015. P. 42.

<sup>15</sup> Ten pat.

<sup>16</sup> GRETA sudaro 15 nepriklausomų ir nešališkų ekspertų, kurie yra renkami dėl savo kompetencijos žmogaus teisių srityje, pagalbos ir apsaugos aukoms bei veiksmų, nukreiptų prieš prekybą žmonėmis, srityje ir dėl savo profesinės patirties Europos Tarybos Konvencijos dėl veiksmų prieš prekybą žmonėmis (toliau Konvencija) srityse. GRETA vertina, kaip valstybės įgyvendina Konvenciją, vadovaudamasi nustatyta procedūra. GRETA vertinimo ataskaitos yra informacijos, surinktos iš įvairių šaltinių, rezultatas. Jose yra kiekvienos valstybės situacijos analizė dėl veiksmų, kurių buvo imtasi siekiant kovoti su prekyba žmonėmis bei pasiūlymai dėl to, kaip konkreiti valstybė galėtų sustiprinti Konvencijos įgyvendinimą bei spręsti nustatytas problemas.

<sup>17</sup> Ataskaita Europos Tarybos Konvencijos dėl veiksmų prieš prekybą žmonėmis įgyvendinimą Lietuvoje. Pirmasis vertinimo etapas Patvirtinta 2015 m. kovo 20 d. Paskelbta 2015 m. birželio 5 d. P. 40. [interaktyvus] [žiūrėta 2020 m. liepos 28 d.] prieiga per internetą <https://rm.coe.int/168070d6c7>.

specialistų žinias ir tobulinti įgūdžius, kaip nustatyti prekybos žmonėmis aukas, kaip joms padėti ir jas apsaugoti (taip pat ir baudžiamojo proceso metu), padėti joms gauti kompensaciją ir užtikrinti prekeivių žmonėmis baudžiamumą. Antrojo vertinimo etapo 2019 m. ataskaitoje<sup>18</sup> apie Europos Tarybos Konvencijos dėl veiksmų prieš prekybą žmonėmis įgyvendinimą Lietuvoje GRETA jau palankiai vertina įvairių sričių specialistų mokymus, susijusius su skirtingais prekybos žmonėmis aspektais. GRETA mano, kad Lietuvos institucijos turi integruoti mokymus dėl prekybos žmonėmis užkardymo į pareigūnų rengimo programas, tęsti periodinius mokymus policijos pareigūnams, prokurorams, teisėjams, teisininkams, prieglobstį organizuojantiems pareigūnams, darbo inspektoriams, socialiniams darbuotojams, vaikų apsaugos specialistams, mokytojams ir sveikatos priežiūros specialistams. Mokymuose turėtų būti atsižvelgiama į naujas tendencijas ir teisėkūros pokyčius, o jų tikslas – sustiprinti prekybos žmonėmis prevenciją, palengvinti aukų identifikavimą, pagerinti jų apsaugą ir gauti kompensaciją bei didinti prekybos žmonėmis tyrimų ir baudžiamojo persekiojimo veiksmingumą.

Apžvelgus situaciją Lietuvoje, toliau bus nagrinėjama Ukrainos situacija. Pirmojo vertinimo etapo 2014 m. ataskaitoje<sup>19</sup> apie Europos Tarybos Konvencijos dėl veiksmų prieš prekybą žmonėmis įgyvendinimą Ukrainoje rekomenduojama imtis veiksmų, kad specialistai būtų periodiškai mokomi, kaip užkardinti prekybą žmonėmis. Tarp tokių specialistų buvo paminėti teisėsaugos pareigūnai, prokurorai, teisėjai, darbo inspektoriai, vaikų teisių apsaugos specialistai, socialiniai ir medicinos darbuotojai. Antrojo vertinimo 2018 m. ataskaitoje apie Europos Tarybos Konvencijos dėl veiksmų prieš prekybą žmonėmis įgyvendinimą Ukrainoje<sup>20</sup> GRETA jau palankiai vertina Ukrainos valdžios institucijų, NVO ir tarptautinių organizacijų pastangas mokyti atitinkamus specialistus Ukrainoje. GRETA mano, kad valdžios institucijos turėtų išplėsti specialistų, kuriems turėtų būti taikomas tokio pobūdžio mokymas, ratą. Mokymai turėtų būti skirti darbo inspektoriams, sveikatos priežiūros specialistams ir socialiniams darbuotojams bei užtikrinama, kad su žmonėmis susiję mokymai būtų įtraukti į

<sup>18</sup> Ataskaita Europos Tarybos Konvencijos dėl veiksmų prieš prekybą žmonėmis įgyvendinimą Lietuvoje. Antrasis vertinimo etapas Patvirtinta 2019 m. kovo 22 d. Paskelbta 2019 m. birželio 21 d. P. 11. [interaktyvus] [žiūrėta 2020 m. rugpjūčio 12 d.] prieiga per internetą <https://rm.coe.int/greta-2019-08-fgr-lithuania-en/1680950076>.

<sup>19</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine. First evaluation round. Adopted 4 July 2014. Published 19 November 2014.. P. 24.

<sup>20</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine. Second evaluation round. Adopted 13 July 2018. Published 22 November 2018.. P. 14. [interaktyvus] [žiūrėta 2020 m. rugpjūčio 12 d.] prieiga per internetą <https://rm.coe.int/greta-2018-20-fgr-ukr-en/16808f0b82>.

pagrindines policijos pareigūnų, sienos apsaugos tarnybos, prokurorų, teisėjų, teisininkų, valstybinės migracijos tarnybos darbuotojų ir vietos valstybės administracijų bei socialinės pagalbos centrų darbuotojų mokymo programas. Mokymų tikslas – sustiprinti aukų identifikavimą ir apsaugą, pagerinti baudžiamojo persekiojimo ir apkaltinamųjų nuosprendžių veiksmingumą ir garantuoti aukoms teisę į veiksmingą kompensaciją.

Kaip matome, GRETOS pateiktos rekomendacijos dėl mokymų Lietuvai ir Ukrainai labai panašios.

Toliau bus nagrinėjami Lietuvoje ir Ukrainoje vykdyti kvalifikacijos kėlimo mokymai valstybės pareigūnams, dirbantiems prekybos žmonėmis srityje.

Pradžioje apžvelgsime Lietuvos pareigūnų mokymų situacija. 2018 m. ataskaitoje<sup>21</sup> nurodyta, kad policija 2017 m. organizavo 3 prekybos žmonėmis nusikaltimų tyrimui skirtus seminarus, kuriuose dalyvavo 55 policijos pareigūnai. Valstybės sienos apsaugos tarnyba organizavo 2 prekybos žmonėmis skirtus seminarus, kuriuose dalyvavo 43 pasienio pareigūnai. Nacionalinė teismų administracija organizavo 2 mokymus 82 teisėjams ir teismo asistentams. 2019 m. ataskaitoje<sup>22</sup> nurodyta, kad Lietuvos policija organizavo mokymus, kuriuose dalyvavo 30 policijos pareigūnų. Minėti pareigūnai buvo mokomi, kaip atlikti ikiteisminius tyrimus dėl prekybos žmonėmis. Taip pat buvo organizuota konferencija ir mokymai, kuriuose dalyvavo 72 teisėjai ir 33 specializuoti prokurorai. Valstybės sienos apsaugos tarnyba organizavo mokymus 36 pareigūnams. Be to, Vidaus reikalų ministerija organizavo seminarus penkiose savivaldybėse dėl prekybos žmonėmis užkardymo ir juose dalyvavo 220 vietinių savivaldybių darbuotojų ir teisėsaugos pareigūnų. Naujovė buvo ta, kad mokymuose vietos savivaldybių darbuotojai dalyvavo kartu su policijos pareigūnais ir kartu sprendė problemas, iškylančias dėl prekybos žmonėmis.

2020 m. ataskaitoje<sup>23</sup> nurodyta, kad generalinė prokuratūra surengė 4 kovos su prekyba žmonėmis mokymus, kuriuose dalyvavo 30 specializuotų prokurorų, o teismų administracija surengė kovos su prekyba žmonėmis mokymus 27 teisėjams. Valstybės sienos apsaugos tarnyba surengė mokymus 53 valstybės sienos apsaugos tarnybos pareigūnams. Vidaus reikalų

<sup>21</sup> Trafficking in persons report. June 2018, P. 277. [interaktyvus] [žiūrėta 2020 m. rugpjūčio 12 d.] prieiga per internetą <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>.

<sup>22</sup> Trafficking in persons report. June 2019, P. 298. [interaktyvus] [žiūrėta 2020 m. rugpjūčio 12 d.] prieiga per internetą <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>.

<sup>23</sup> Trafficking in persons report 20 th edition. June 2020. P. 506. [interaktyvus] [žiūrėta 2020 m. rugpjūčio 12 d.] prieiga per internetą <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>.

ministerija surengė kovos su prekyba žmonėmis mokymus daugiau nei 200 teisėsaugos pareigūnų penkiuose miestuose. Minėtoje ataskaitoje pateiktos rekomendacijos susijusios su mokymais ir kvalifikacijos tobulinimu, labai panašios į GRETA pateiktas rekomendacijas, būtent organizuoti tyrėjams ir prokurorams mokymus dėl prekybos žmonėmis atvejų, suteikti žinių, kaip surinkti įkalčius, kaip veiksmingiau ištirti tokio pobūdžio bylas, kaip geriau apsaugoti nukentėjusius asmenis tiek ikiteisminio tyrimo, tiek ir teismo nagrinėjimo metu. Taip pat ataskaitoje pateiktos rekomendacijos padidinti pastangas efektyviai ištirti ir veiksmingai patraukti baudžiamojon atsakomybėn nusikaltimus padariusius asmenis, atkreipiant ypatingą dėmesį į prekybą žmonėmis dėl seksualinio išnaudojimo ir išnaudojimo priverstiniam darbui.

Toliau gilinsimės į Ukrainos pareigūnų mokymų situaciją. 2018 m. ataskaitoje<sup>24</sup> nurodyta 2017 m. Ukrainos Vyriausybė padidino mokymų, kuriuose dalyvavo teisėjai, prokurorai, teisėsaugos pareigūnai ir kiti pareigūnai, skaičių. Didinant mokymų skaičių ženkliai prisidėjo Socialinės politikos ministerija (JTP), kuri, bendradarbiaudama su tarptautine organizacija, sukūrė interaktyvų e. mokymosi modulį, skirtą prekybos žmonėmis aukoms atpažinti ir suteikti pagalbą<sup>25</sup>. GRETA ataskaitoje<sup>26</sup> nurodyta, kad 2014–2017 m. nevyriausybinė organizacija „La Strada – Ukraina“ ir Nacionalinis instruktorių tinklas vedė 1 242 teminius mokymus, kuriuose dalyvavo 43 390 specialistų: socialiniai darbuotojai, pedagogai, teisinės pagalbos centrų ir įdarbinimo centrų darbuotojai. 2015–2017 m. nevyriausybinė organizacija „La Strada – Ukraina“, bendradarbiaudama su Nacionaline policija, vedė 33 paskaitas kovos su prekyba žmonėmis ir smurto šeimoje prevencijos temomis. Šiose paskaitose dalyvavo 670 Kovos su prekyba žmonėmis departamento pareigūnų. Vidaus reikalų ministerijos Nacionalinėje akademijoje buvo organizuoti mokymai, kuriuose dalyvavo 100 Kovos su prekyba žmonėmis departamento teritorinių padalinių pareigūnų. Šie mokymai buvo remiami Europos saugumo ir bendradarbiavimo organizacijos (toliau ESBO). Taip pat buvo organizuoti mokymai kovos su prekyba žmonėmis padalinių pareigūnams, kuriuose dalyvavo 30 tyrėjų, 30 prokurorų, 20 teismo pareigūnų ir 30 pasieniečių. Socialinės politikos ministerija, Nacionalinė policija ir

<sup>24</sup> Trafficking in persons report. June 2018, P. 434-437. [interaktyvus] [žiūrėta 2020 m. rugpjūčio 14 d.] prieiga per internetą <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>.

<sup>25</sup> Trafficking in persons report. June 2018, P.435-436. [interaktyvus] [žiūrėta 2020 m. rugpjūčio 14 d.] prieiga per internetą <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>.

<sup>26</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine. Second evaluation round. Adopted 13 July 2018. Published 22 November 2018.. P. 11-14. [interaktyvus] [žiūrėta 2020 m. rugpjūčio 12 d.] prieiga per internetą <https://rm.coe.int/greta-2018-20-fgr-ukr-en/16808f0b82>.

Aukštasis specializuotas civilinių ir baudžiamųjų bylų teismas, bendradarbiaudami su generaline prokuratūra, vykdė mokymus pagal projektą „Baudžiamojo persekiojimo už prekybą žmonėmis stiprinimas“. Šis projektas buvo remiamas ESBO. Socialinės politikos ministerija, bendradarbiaudama su Tarptautine migracijos organizacijos tarnyba (toliau – TMO), surengė mokymo sesiją „Prekybos žmonėmis aukų nustatymas“ 25 vyriausybinių kontaktinio centro darbuotojams. Buvo surengti 8 seminarai, kurių temos: „Ukrainos teisėsaugos institucijų gebėjimų stiprinimas kovojant su prekyba žmonėmis stiprinant nacionalinį sąveikos mechanizmą, teikiant pagalbą aukoms“ ir „Praktiniai teisės aktų taikymo kovojant su prekyba žmonėmis aspektai“. Šiuose seminaruose dalyvavo teisėjai iš 8 regionų. Socialinės politikos ministerija, bendradarbiaudama su Europos Taryba, surengė mokymus, susijusius su finansiniais tyrimais dėl prekybos žmonėmis atvejų. Šiuose mokymuose dalyvavo 50 teisėsaugos pareigūnų, prokurorų, teisėjų ir vidaus reikalų ministerijos pareigūnų. Socialinės politikos ministerija organizavo mokymo sesiją „Kova su prekyba vaikais ir aukų teisių gynimas“ 25 tarnybų vadovams. Profesinio mokytojų rengimo švietimo programos apima teminius kursus, susijusius su prekybos žmonėmis prevencija, komerciniu seksualiniu vaikų išnaudojimu ir prievarta prieš vaikus bei vaiko saugumo internete klausimais. 2019 m. ataskaitoje<sup>27</sup> nurodyta, kad į Ukrainos Nacionalinės teisėjų mokyklos programą buvo įtrauktos mokymų temos apie prekybos žmonėmis bylų nagrinėjimo ypatumus. Ukrainos Vyriausybė, gavusi tarptautinį finansavimą, aktyviai tęsė mokymus teisėjams, prokurorams ir teisėsaugos pareigūnams. GRETA ataskaitoje<sup>28</sup> nurodyta, kad mokymai teisėjams, be kita ko, apima nusikaltimų kvalifikavimą pagal Ukrainos BK 149 straipsnį ir jų atskyrimą nuo kitų nusikaltimų, teismų praktinius BK 149 straipsnio taikymo aspektus, įrodymų teikimą baudžiamajame procese prekybos žmonėmis bylose, etinius aspektus, teismo procesą, užtikrinant baudžiamojo proceso dalyvių saugumą, kompensacijas ir žalos atlyginimą bei civilinius ieškinius baudžiamajame procese. 2018 m. buvo tęsiami mokymai teisėsaugos pareigūnams pagal projektą „Kova su prekyba žmonėmis: interaktyvus mokymo kursas teisėsaugos pareigūnams Ukrainoje“. Šiuos mokymus organizavo tarptautinės organizacijos ir Jungtinių Amerikos Valstijų ambasada Ukrainoje. Mokymai vyko Charkove, Lvove, Lucke,

<sup>27</sup> Trafficking in persons report. June 2019, P.475-478. [interaktyvus] [žiūrėta 2020 m. rugpjūčio 17 d.] prieiga per internetą <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>.

<sup>28</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine. Second evaluation round. Adopted 13 July 2018. Published 22 November 2018.. P. 11-14. [interaktyvus] [žiūrėta 2020 m. rugpjūčio 17 d.] prieiga per internetą <https://rm.coe.int/greta-2018-20-fgr-ukr-en/16808f0b82>.

taip pat Stokholme ir Budapešte. 2020 m. ataskaitoje<sup>29</sup> nurodyta, kad Ukrainos Vyriausybė, gavusi tarptautinį finansavimą, su partneriais tęsė teisėjų, prokurorų, teisėsaugos pareigūnų mokymus. Generalinė prokuratūra ir Nacionalinė policija įtraukė kovos su prekyba žmonėmis temas į savo profesinio mokymo programas, o Valstybės sienos apsaugos tarnyba savo darbuotojams sukūrė naują internetinį nuotolinio mokymo kursą. Ukrainos pareigūnai taip pat visus metus dalyvavo tarptautiniuose mokymuose ir kovos su prekyba žmonėmis forumuose. Nacionalinė prokurorų akademija organizavo mokymus tema „Procedūrinė BPK priežiūra ikiteisminiame tyrime dėl prekybos žmonėmis nusikaltimų“. GRETA ataskaitoje<sup>30</sup> pažymima, kad darbo inspektoriai iš prekybos žmonėmis užkardymo mokymo negavo reikiamų žinių, kurias galėtų panaudoti nustatant prekybos žmonėmis dėl darbo išnaudojimo aukas. Be to, Luhansko regiono (regiono dalyje, kontroliuojamoje Ukrainos vyriausybės) vaikų socialinės ir psichologinės rehabilitacijos centro atstovai GRETA informavo, kad atitinkamų institucijų darbuotojams nėra mokymų apie prekybą žmonėmis, nes tokie mokymai buvo daugiausia organizuojami Kijeve ir buvo prieinami tik ribotam skaičiui darbuotojų.

Jungtinių Amerikos Valstijų Valstybės Departamento parengtose ataskaitose pateiktos rekomendacijos, susijusios su mokymais ir kvalifikacijos tobulinimu, labai panašios į GRETA pateiktas rekomendacijas Ukrainai: tobulinti teisėsaugos, prokurorų ir teisėjų mokymus tiriant ir patraukiant baudžiamojon atsakomybėn už prekybą žmonėmis. Mokymų metu didesnis dėmesys turi būti skiriamas išnaudojimo priverstiniam darbui atvejams, įrodymų surinkimui, kurie patvirtintų nukentėjusiųjų parodymus. Taip pat turi būti labiau atsižvelgiama į nukentėjusių asmenų ir liudytojų apsaugą, kad būtų išvengta bauginimo teisinių procedūrų metu, bei kokybės požiūriu gerinami pareigūnų mokymai, kurie suteiktų žinių, kaip geriau identifikuoti prekybos žmonėmis aukas.

Apibendrinant informaciją apie mokymus, vykdytus su tikslu užkardyti prekybą žmonėmis Lietuvoje ir Ukrainoje, matyti, kad juos organizuoja ir juose dalyvauja teisėsaugos institucijos, valstybinės institucijos bei nevyriausybinės organizacijos. Ekspertai pažymi, kad Ukrainoje mokymai yra netolygiai paskirstyti šalyje, dažnai koncentruojami sostinėje. Be to,

<sup>29</sup> Trafficking in persons report 20 th edition. June 2020. P. 319. [interaktyvus] [žiūrėta 2020 m. rugpjūčio 17 d.] prieiga per internetą <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>.

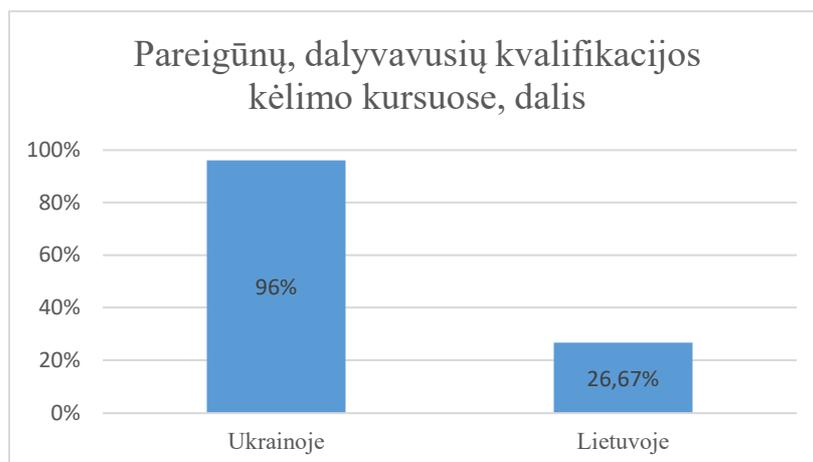
<sup>30</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine. Second evaluation round. Adopted 13 July 2018. Published 22 November 2018.. P. 14. [interaktyvus] [žiūrėta 2020 m. rugpjūčio 17 d.] prieiga per internetą <https://rm.coe.int/greta-2018-20-fgr-ukr-en/16808f0b82>.

kai kurie mokymai nėra tinkamai organizuojami. Atkreiptinas dėmesys, kad Ukrainoje dėl ekonominės situacijos, didelio pabėgėlių skaičiaus iš Donecko ir Luhansko regionų susiformavo palanki terpė prekybai žmonėmis. Mokymuose didesnis dėmesys turėtų būti skiriamas prevencijai, o dabar didžioji dalis mokymų nukreipta į ikiteisminio tyrimo stadiją. Svarbu identifikuoti galimus prekiautojų gyvąją prekę – žmonėmis – taikinius: socialiai pažeidžiamas šeimas, vietas, kur dėl aukšto nedarbo lygio, regiono ekonominio neišsivystymo, korupcijos indekso ir kt. faktorių padidėja tikimybė, kad žmogus ieškodamas darbo užkibs ant sumaniai pateiktos prekybos žmonėmis organizatorių, vykdytojų informacijos. Socialiniai darbuotojai, vaikų teisių apsaugos tarnybos, vietinių valdymo organų valstybės tarnautojai turėtų būti įtraukiami į mokymus ir kartu su policijos pareigūnais keistis patirtimi, informacija.

Šio mokslinio tyrimo autoriai, siekdami tyrimo tikslų, 2019 m. kovo mėn. pagal iš anksto parengtą klausimų sąrašą atliko 30 policijos / valstybės sienos apsaugos / muitinės pareigūnų Ukrainoje ir 30 Lietuvos policijos pareigūnų struktūruotas apklausas.

Apklausose dalyvavusių pareigūnų darbo stažas teisėsaugos institucijose toks: Ukrainoje – 30 pareigūnų nuo 5 iki 15 m., Lietuvos Respublikoje – 6 pareigūnai iki 5 metų, 13 pareigūnų nuo 5 iki 15 m. ir 11 pareigūnų 15 m. ir didesnis darbo stažas.

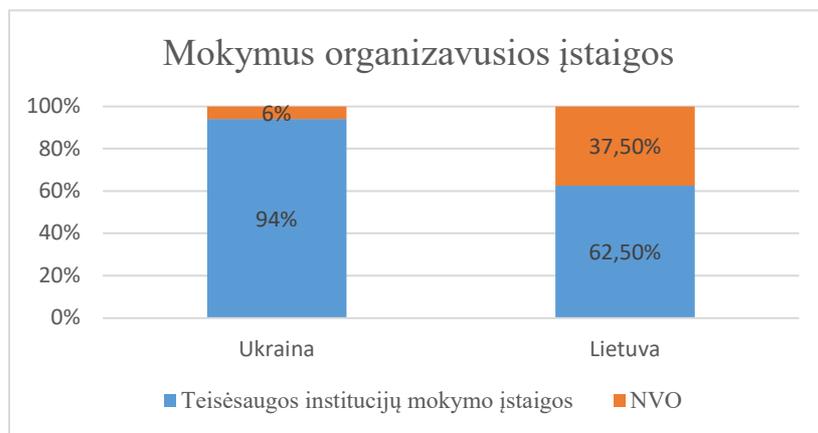
Į klausimą, ar per paskutiniuosius trejus metus (2016–2018) pareigūnai dalyvavo kvalifikacijos kėlimo kursuose, seminaruose, 96 proc. Ukrainos pareigūnų atsakė, kad dalyvavo daugiau kaip vieną kartą, tuo tarpu tik 26,67 proc. Lietuvos Respublikos pareigūnų atsakė, kad dalyvavo daugiau kaip vieną kartą.



**1 pav.** Pareigūnų dalyvavimo prekybos žmonėmis užkardymo mokymuose dažnumas.

Iš pateiktų atsakymų matyti, kad Ukrainos pareigūnai ženkliai dažniau kėlė savo kvalifikaciją per 2016–2018 metus.

Į klausimą, kas organizavo mokymus, 94 proc. Ukrainos pareigūnų nurodė, kad mokymus organizavo jų atstovaujamos institucijos arba Vidaus reikalų ministerijos universitetas ir tik 6 proc. teigė, kad mokymus vedė nevyriausybinių organizacijų atstovai. 62,5 proc. Lietuvos Respublikos pareigūnų nurodė, kad mokymus organizavo policija ar jos mokymo institucija ir 37,5 proc. teigė, kad mokymus organizavo nevyriausybinių organizacijų.

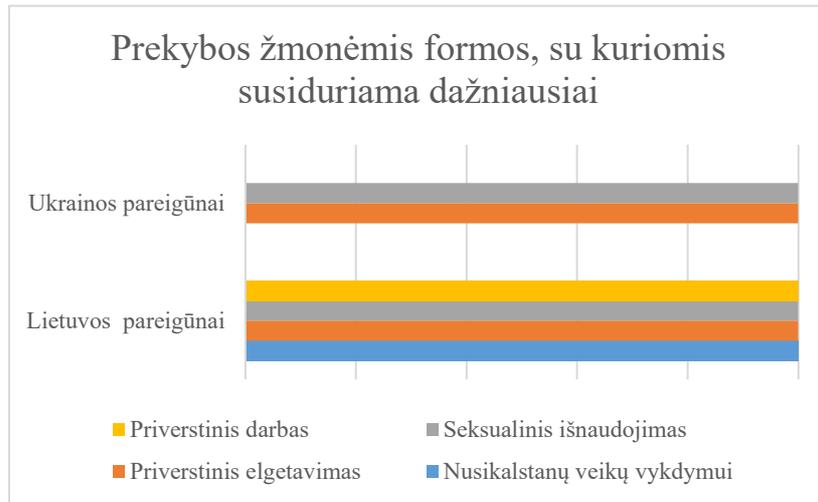


**2 pav.** Mokymus organizavusios įstaigos.

Iš pateiktų atsakymų matyti, kad Ukrainos pareigūnams mokymus dažniausiai organizuoja jų atstovaujamos institucijos arba Vidaus reikalų ministerijos universitetas ir tik nedidelę dalį mokymų organizuoja NVO. Tuo tarpu Lietuvoje 2/3 mokymų pareigūnams organizuoja policija ir jos institucijos ir 1/3 organizuoja NVO. Nors šiame tyrime pateiktose ataskaitose<sup>31</sup> matyti, kad ir Ukrainoje organizuojant mokymus aktyviai dalyvauja Ukrainos nevyriausybinių organizacijų, tačiau, matyt, nepakankamai, lyginant su valstybinėmis institucijomis.

Ukrainos pareigūnai atsakydami į klausimą, su kokiomis prekybos žmonėmis formomis dažniausiai susidūrė vykdydami tarnybą, nurodė, kad tai – priverstinis darbas, seksualinis išnaudojimas. Lietuvos pareigūnai atsakydami į šį klausimą teigė, kad dažniausiai susiduria su priverstiniu darbu, seksualiniu išnaudojimu, išnaudojimu nusikalstamų veikų vykdymui ir priverstiniam elgetavimui.

<sup>31</sup> Trafficking in persons report 18 th edition. June 2018., Trafficking in persons report 19 th edition. June 2019., Trafficking in persons report 20 th edition. June 2020., Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine. Second evaluation round. Adopted 13 July 2018. Published 22 November 2018..



**3 pav.** Prekybos žmonėmis formos, su kuriomis susiduriama dažniausiai.

Iš pateiktų atsakymų matyti, kad Ukrainos pareigūnai dažniausiai susiduria su priverstiniu darbu ir seksualiniu išnaudojimu. Lietuvos pareigūnai dažniausiai susiduria su priverstiniu darbu, seksualiniu išnaudojimu, priverstiniu elgetavimu ir priverstiniu nusikalstančių veikų vykdymu. Prekiautojai žmonėmis ieško naujų prekybos žmonėmis ir išnaudojimo formų, nors priverstinis elgetavimas ir priverstinis nusikaltimų vykdymas nėra naujos prekybos žmonėmis išnaudojimo formos, bet pastaruoju metu Lietuvoje dažnai padaromos.

Į klausimą, kokių žinių pareigūnai stokoja tirdami prekybą žmonėmis, dauguma Ukrainos ir Lietuvos pareigūnų nurodė, kad stokoja psichologijos žinių ir praktinių žinių, kaip atlikti apklausas. Tai patvirtina tiek Jungtinių Amerikos Valstijų Valstybės Departamento parengtose ataskaitose pateiktos rekomendacijos, susijusios su mokymais ir kvalifikacijos tobulinimu, tiek GRETA ekspertų pateiktos rekomendacijos Lietuvai ir Ukrainai.

Į klausimą, kokios efektyviausios prevencinės priemonės (nurodytos buvo 4 – gyventojų švietimas, tinkami įstatymai, socialinės-psichologinės pagalbos tarnybos, pareigūnų kvalifikacijos kėlimo sistemos tobulinimas, kovojant su prekyba žmonėmis), Ukrainos ir Lietuvos pareigūnai daugiausiai minėjo, kad efektyviausios priemonės yra gyventojų švietimas apie prekybą žmonėmis, socialinės-psichologinės pagalbos tarnybų efektyvus darbas, išskyrė tinkamos įstatymų bazės sukūrimą ir pareigūnų kvalifikacijos kėlimo sistemos tobulinimą.

Apibendrinant šio tyrimo rezultatus galima teigti, kad pareigūnai stokoja psichologinių žinių ir praktinių įgūdžių apklausdami nukentėjusiuosius nuo prekybos žmonėmis. Ukrainos ir Lietuvos teisėsaugos pareigūnų nepakankamos žinios psichologijos srityje ir praktinių įgūdžių stoka atliekant įtariamųjų dėl prekybos žmonėmis apklausas sąlygoja nepakankamai

---

kokybiškas apklausas ir tai sumažina galimybę patraukti įtariamuosius baudžiamajon atsakomybėn, be to, neturint pakankamai žinių, kaip tinkami bendrauti su nukentėjusiais asmenimis, galima jų antrinė viktimizacija.

## IŠVADOS

Iš Jungtinių Amerikos Valstijų Valstybės Departamento parengtų ataskaitų apie prekybos žmonėmis situacijas šalyse pastebima, kad 2020 m. Lietuva priskiriama 1 grupei, o Ukraina priskiriama 2 grupei. 2012 m. abi šalys turėjo vienodus reitingus ir buvo toje pačioje 2 grupėje. Taip pat matomas Lietuvos ir Ukrainos reitingų panašus svyravimas dešimties metų laikotarpiu.

Ataskaitų apie prekybos žmonėmis situaciją šalyse rekomendacijos, parengtos Jungtinių Amerikos Valstijų Valstybės Departamento, ir GRETA ekspertų pateiktos pastabos bei rekomendacijos dėl Europos Tarybos Konvencijos apie veiksmus prieš prekybą žmonėmis įgyvendinimo ir specialistų mokymo Ukrainoje ir Lietuvoje labai panašios, tačiau pastebima, kad Lietuvoje dėmesys koncentruojamas į seksualinį išnaudojimą ir išnaudojimą priverstiniam darbui, o Ukrainoje – į išnaudojimą priverstiniam darbui.

Iš mokymų, vykdytų su tikslu užkardyti prekybą žmonėmis Lietuvoje ir Ukrainoje, matyti, kad juos organizuoja ir juose dalyvauja teisėsaugos institucijos, valstybinės institucijos bei nevyriausybinės organizacijos. Ekspertai pažymi, kad Ukrainoje mokymai yra netolygiai paskirstyti šalyje, dažnai koncentruojami sostinėje. Be to, kai kurie mokymai nėra tinkamai organizuojami.

Ukrainos ir Lietuvos teisėsaugos pareigūnų nepakankamos žinios psichologijos srityje ir praktinių įgūdžių stoka atliekant įtariamųjų dėl prekybos žmonėmis apklausas sąlygoja nepakankamai kokybiškas apklausas ir tai sumažina galimybę patraukti įtariamuosius baudžiamajon atsakomybėn. Be to, neturint pakankamai žinių, kaip tinkamai bendrauti su nukentėjusiais asmenimis, galima jų antrinė viktimizacija.

Ukrainos ir Lietuvos pareigūnai nurodė šias efektyviausias prevencines priemones kovojant su prekyba žmonėmis: gyventojų švietimas apie prekybos žmonėmis grėsmes ir pavojus, socialinės-psichologinės pagalbos tarnybų efektyvus darbas, išskyrė tinkamos įstatymų bazės sukūrimą ir pareigūnų kvalifikacijos kėlimo sistemos tobulinimą.

---

## PASIŪLYMAI

1. Į teisėsaugos pareigūnų rengimo programas įtraukti modulį/dalyką apie prekybos žmonėmis užkardymą.
2. Dažniau organizuoti kvalifikacijos tobulinimo mokymus policijos pareigūnams dėl prekybos žmonėmis prevencijos ir ikiteisminio tyrimo atlikimo.

## LITERATŪRA

1. Bazylevas I., Pajaujis V. Prekyba žmonėmis ir sisteminis požiūris kaip problemos sprendimas. Mokslo studija. Vilnius. 2015.
2. Melnyk A. Trafficking in Human Beings in Ukraine. DCAF. Migration and Security Sector Paper Series. 2014.
3. Sirgedienė R. Kovos su prekyba žmonėmis koordinavimo problemos administracinėje teisėje. Daktaro disertacija. Socialiniai mokslai, teisė (01 S). Vilnius. 2014.
4. Tarptautinis ekonominių, socialinių ir kultūrinių teisių paktas. Valstybės žinios, 2002-08-02, Nr. 77-3290.
5. Lietuvos Respublikos Konstitucija. Valstybės žinios, 1992, Nr. 33-1014.
6. Lietuvos Respublikos baudžiamojo proceso kodeksas. Valstybės žinios, 2002-04-09, Nr. 37-1341.
7. Lietuvos Respublikos baudžiamasis kodeksas. Valstybės žinios, 2000-10-25, Nr. 89-2741.
8. Lietuvos Respublikos policijos įstatymas. TAR, 2015-07-03, Nr. 10818.

## Šaltiniai

9. Ataskaita Europos Tarybos Konvencijos dėl veiksmų prieš prekybą žmonėmis įgyvendinimą Lietuvoje. Pirmasis vertinimo etapas. Patvirtinta 2015 m. kovo 20 d. Paskelbta 2015 m. birželio 5 d. P. 40. <https://rm.coe.int/168070d6c7>
10. Ataskaita Europos Tarybos Konvencijos dėl veiksmų prieš prekybą žmonėmis įgyvendinimą Lietuvoje. Antrasis vertinimo etapas. Patvirtinta 2019 m. kovo 22 d. Paskelbta 2019 m. birželio 21 d. <https://rm.coe.int/greta-2019-08-fgr-lithuania-en/1680950076>
11. Komisijos komunikatas Europos Parlamentui, Tarybai, Europos Ekonomikos Ir socialinių reikalų komitetui ir Regionų komitetui. Prekybos žmonėmis panaikinimo ES strategija 2012–2016 m./\* COM/2012/0286 final \*/.
12. Final report of OCP Organized crime portfolio. From illegal markets to legitimate businesses: the portfolio of organized crime in Europe. [https://reliefweb.int/sites/reliefweb.int/files/resources/GLOTiP\\_2018\\_BOOK\\_web\\_small%20%281%29.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/GLOTiP_2018_BOOK_web_small%20%281%29.pdf)
13. Trafficking in persons report 18 th edition. June 2018. <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>
14. Trafficking in persons report 19 th edition. June 2019. <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>

15. Trafficking in persons report 20 th edition. June 2020 <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>
16. Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine. First evaluation round. Adopted 4 July 2014. Published 19 November 2014..
17. Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine. Second evaluation round. Adopted 13 July 2018. Published 22 November 2018. <https://rm.coe.int/greta-2018-20-fgr-ukr-en/16808f0b82>
18. UNODC Global report on trafficking in persons 2018. [https://reliefweb.int/sites/reliefweb.int/files/resources/GLOTiP\\_2018\\_BOOK\\_web\\_small%20%281%29.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/GLOTiP_2018_BOOK_web_small%20%281%29.pdf)
19. IOM Ukraine counter-trafficking programme at a glance. 2019. <https://eur-lex.europa.eu/legal-content/LT/ALL/?uri=CELEX%3A52012DC0286>

## COMPETENCIES OF OFFICIALS OF LAW ENFORCEMENT AGENCIES IN PREVENTION OF HUMAN TRAFFICKING IN UKRAINE AND LITHUANIA

Gediminas Bučiūnas<sup>1</sup>, Vilius Velička<sup>2</sup>

Mykolas Romeris University<sup>1</sup>, Vytautas Magnus University<sup>1</sup>, Lithuanian Police School<sup>2</sup>

### Summary

Processes of globalization in the modern world, military conflicts, high rate of jobless in some countries push some part of population move out from their permanent living space to another countries, continents and look for job. This situation has been masterly used by organized crime groups to pull socially vulnerable persons into traps of modern slavery. The International Labour Organization's the report on "Global estimates of modern slavery: forced labour and forced marriage" states that "*at any given time in 2016, an estimated 40.3 million people are in modern slavery, including 24.9 million in forced labour and 15.4 million in forced marriage.*"<sup>32</sup> Many countries signed and ratified conventions targeting this phenomenon, issued new or amended existed laws on tackling human being trafficking.

Main instrument in dealing with human being trafficking is police who works in close cooperation with other state institutions, non-governmental organizations. Knowledge and skills of state officials, representatives of civil society is one of the key for successful fight against human being trafficking.

The authors of this paper conducted comparative analysis on training courses for updating of skills amongst officials from the Republic of Lithuania and Ukraine law enforcement agencies. The results of analysis lead to conclude that state officials from both countries lack knowledge, skills in the human being psychology, interview technique of the victims and suspects.

**Keywords:** human being trafficking, prevention, pre-trial investigation, official of law enforcement agencies.

---

<sup>32</sup> Report Global estimates of modern slavery: forced labour and forced marriage. [interaktyvus] [žiūrėta 2020 m. rugsėjo 2 d.] prieiga per internetą [https://www.ilo.org/global/publications/books/WCMS\\_575479/lang-en/index.htm](https://www.ilo.org/global/publications/books/WCMS_575479/lang-en/index.htm).

## CONCEPTUAL MODEL OF ATTRACTING FOREIGN DIRECT INVESTMENTS IN TERMS OF INTERNATIONAL ECONOMIC INTEGRATION

**Alona Buriak<sup>1</sup>**

*<sup>1</sup>National University "Yuri Kondratyuk Poltava Polytechnic"  
36011, Pershotravnevyi Avenue24, Poltava, Ukraine  
Telephone: +380 664167428  
Email: [a\\_buriak@ukr.net](mailto:a_buriak@ukr.net)*

**Daria Ovcharenko<sup>2</sup>**

*<sup>2</sup>National University "Yuri Kondratyuk Poltava Polytechnic"  
36011, Pershotravnevyi Avenue24, Poltava, Ukraine  
Telephone: +380 664167428  
Email: [dashuta.ovcharenko@gmail.com](mailto:dashuta.ovcharenko@gmail.com)*

DOI: 10.13165/PSPO-20-25-02

---

**Annotation.** Based on the positions of taking into account geoeconomic factors and processes of international economic integration, a conceptual model of attracting foreign direct investment (FDI) in the industry of the regions of Ukraine has been developed, which target is to ensure consistency of interests between a recipient region and foreign investors in investing. **Goals.** The goal of the article is to substantiate theoretical provisions and develop practical recommendations for improving conceptual model of attracting foreign direct investment in the industry of Ukrainian regions. **Methods.** Methodological basis of the article are fundamental provisions of economics, economic theory, the theory of foreign investment, as well as scientific results of leading domestic and foreign scientists and economists on foreign investment issues. **Main results.** A system of principles for the implementation of such model has been proposed, which includes general and specific principles, particular sectoral orientation, adaptability, complexity, efficiency, coherence and publicity. A system of coordinated goals and measures of regional investment policy within the conceptual model has been formed, which is structured in the following areas: creation of an effective system of FDI incentives in terms of technological modernization of industry, formation of attractive investment image of regional industries taking into account best international practice and setting up intensive and effective cooperation between local governments and FDI donor countries.

**Keywords:** international economic integration, foreign direct investments, organizational and economic foundations for foreign direct investments attraction, investment process participants', strategic priorities and directions for foreign direct investments.

**JEL Classification:** E20, F21, G31.

### INTRODUCTION

Ukraine's integration into global financial space, comprehensive application of free trade conditions and decentralization processes require high-quality new approach from public authorities, local governments and civil society in order to attract foreign direct investment,

---

which is a key indicator of region's industries capacity for modernization transformations through introduction and practical application of advanced technologies, innovative management methods and organization of industrial production. Hence, strategic direction for generating necessary changes in real sector of the economy of Ukrainian regions, namely in industry, is intensification of investment activities and introduction of incentive mechanisms in order to attract foreign direct investment.

Main theoretical concepts of foreign investment are given in scientific papers of Dunning J.[6], Vernon R. [14], Hymer S. [8], Iversen C. [9], Gitman L. [7], Sharpe W. [11] and others. However, the issue of attracting foreign direct investment in the industry of Ukrainian regions context of international economic integration and transnationalization of industrial production requires additional attention and in-depth research. Regarding this, there is a need to improve and substantiate conceptual model of attracting foreign direct investment in the industry of Ukrainian regions, which led to the choice of research topic, purpose, formulation and solution of main objectives of the article.

The purpose of the article is to substantiate theoretical provisions and develop practical recommendations for improving conceptual model of attracting foreign direct investment in the industry of Ukrainian regions.

## **METHODOLOGY**

Methodological basis of the article were fundamental provisions of economics, economic theory, the theory of foreign investment, as well as scientific results of leading domestic and foreign scientists and economists on foreign investment issues.

## **RESULTS OF RESEARCH**

Decentralization processes, increasing attention to the impact of foreign direct investment on the economy in the context of Ukraine's integration into international economic space, especially through the creation of a free trade zone with EU countries, require improvement of existing models of FDI.

In world practice, there are three main models of attracting of foreign investment:

1. Liberalization of capital movement rules, or "open window" principle, when rules of control over capital transactions are extremely simplified, which should attract foreign investors by simplicity of such transactions [2].

---

2. Ensuring foreign capital movements monitoring in order to mix simplicity of capital operations and tracking of major trends in capital movements in order to be capable of taking appropriate measures in case of serious threats to economic security of a country [3].

3. Foreign investment targeting, when a state creates not only conditions attractive to foreign investors, but also sets specific goals for the volume, geographical and sectoral directions of foreign capital in national economy [1].

However, decentralization, increasing attention to investment factors of influence on national economy in the context of Ukraine's integration into international economic space and urgent need to attract investment for technical re-equipment and industrial production reconstruction, from our prospective, require a transition to a new model of FDI. That is why we propose a conceptual model of attracting FDI in the industry of Ukrainian regions in the context of its international economic integration with justification of relevant conceptual provisions, principles, functions, structural-functional and content-practical components to harmonize interests and goals in foreign direct investment for regions of Ukraine, and for a foreign investor. This is the only way to ensure mutual benefit for a region and a foreign investor in direct investment.

The main purpose of the model is to promote the attraction of FDI in the industry of a region by creating an attractive and stable investment climate, a positive investment image. Some of the highest priority and necessary which have to be implemented in order to achieve the above goal are following:

- deepening of integration relations in a region, particularly through the creation of free trade zones with trading partner countries;
- establishment in the region of local self-government advisory commissions to promote pre-trial settlement of disputes with foreign investors;
- establishing close cooperation between local governments and FDI donor countries in a region;
- improvement of regional infrastructure, especially through the creation of industrial parks;
- ensuring the quality of labor resources in a region according to the industry needs;
- providing main places in a region in the ratings of investment attractiveness.

Main criteria for the effective implementation of a set of measures within the conceptual model are [4]:

- 
- 1) positive dynamics of GRP growth;
  - 2) increasing profitability of regional industrial enterprises;
  - 3) increasing growth of employment rate in a region at industrial enterprises and training and retraining of top managers and specialists;
  - 4) intensification of innovative activity of regional industrial enterprises;
  - 5) intensification of international cooperation.

Main conceptual provisions of the model are:

- intensification of industrial production in a region on an innovative basis;
- creation of new production capacities, renovation of material and technical base, rise of technological level of industrial production in a region;
- promoting the export of industrial products in a region;
- preservation and creation of new or additional jobs in the industry of a region, training of a labor force;
- development of ecologically safe industrial production in a region;
- international integration relations development.

Conceptual model that has been developed includes structural-functional and content-practical components. Structural and functional components within the conceptual model of attracting FDI in the industry of a region are manifested in the coordination of interests of a recipient region of FDI and foreign investors in direct investment, decomposition of investment process risks with their subsequent leveling, ensuring free movement of FDI and capital payments and repatriation according to provisions of the FTA with the EU and FDI incentives introduction, based on world best practice.

Content-practical components are reduced to the decision to implement FDI in the industry of Ukrainian regions. Provided that the decision of a foreign investor is positive – the tasks are implemented and the endgame is achieved (attracting FDI in the industry of a region), if negative – the identification of errors in the organization of the investment process with their subsequent elimination.

In order to reconcile the interests between FDI recipient region and a foreign investor, investment projects in industry, for the implementation of which foreign investors apply for additional benefits and guarantees, should belong to the priority areas of socio-economic development established by regional strategy, in particular:

- 1) have a long-term direction, aim to a high level reinvestment profits;

---

2) promote creation of new production facilities, upgrade material and technical base, increase technological level of industrial production;

3) foresee use of equipment, components of Ukrainian production;

4) focus on rational use of raw materials in regions of Ukraine and reduce import dependence;

5) promote introduction of modern resource-saving and environmentally friendly technologies;

6) promote creation of new jobs in industrial enterprises that carry out FDI, and in the economy of a region in general;

7) promote development of Ukrainian brands and technologies.

In turn, regional economic policy should be aimed at taking into account interests of foreign investors, especially:

1) reducing the level of taxation of industrial enterprises with foreign investment in excess of a certain level of FDI, increasing employment rate;

2) free movement of FDI and payment or repatriation of invested capital and profits;

3) provision of guarantees for foreign loans, minimization and insurance of risks by commercial banks and their associations in a way to create appropriate infrastructure, etc.

Based on the analysis of scientific sources and own research, following principles of the conceptual model of attracting FDI in the industry of a region are proposed:

1. General principles – principles that provide necessary axiological dimension to processes of attracting FDI at regional level. These include:

– the principle of balancing – assumes that actions and decisions of local governments related to foreign investors are based on proportionality, which primarily reflects that among all possible legitimate forms of foreign investment should be chosen that does not restrict rights of a particular foreign investor; as well as potential harm and loss of a foreign investor must be proportional to their benefit;

– the principle of good faith. According to this principle, local governments have to be honest in complying with contractual and non-contractual obligations to a foreign investor;

– the principle of reasonableness – reflects the validity of local governments' behavior and their rationality concerning foreign investors.

---

2. Special principles – principles used for the formation of regional investment policy in the context of balancing interests of FDI recipient region and a foreign investor in the implementation of direct investment:

– the principle of sectoral orientation – is a strategically conscious activity of local governments, aimed to attract FDI in industrial activities that are strategically important to a regional economy;

– the principle of adaptability – reflects the ability of participants of the investment process to respond quickly to changes in economic, political and social nature in a region;

– the principle of complexity – reflects the implementation of systemic, interconnected measures of local governments aimed to analyze, plan, forecast and manage investment activities in the industry of a region;

– the principle of effectiveness – the ratio between raw materials, economic, labor, production, infrastructure resources used in a region to attract FDI and expected results from their implementation;

– the principle of coherence – reflects the achievement of a positive effect of both recipient region of FDI and foreign investors, considering their divergent goals;

– the principle of publicity – is to provide local governments with a broad discussion at regional level of investment projects in industry.

The conceptual model provides for the performance of the following main functions by subjects of the investment process at regional level:

– analysis and forecasting – is to study regional investment market, identify possible forms and legal conditions for the sale of FDI, identify the impact of factors on FDI, and on this basis – the formation of a forecast for the implementation of FDI;

– evaluation – annual evaluation and reliable information on the investment attractiveness of the industry;

– current planning and operational management of investment projects in industry – development of calendar plans for FDI implementation with specific deadlines, targeted funding, expected results of attracting FDI and responsible people among local governments, which provides effective management of investment activities at regional level;

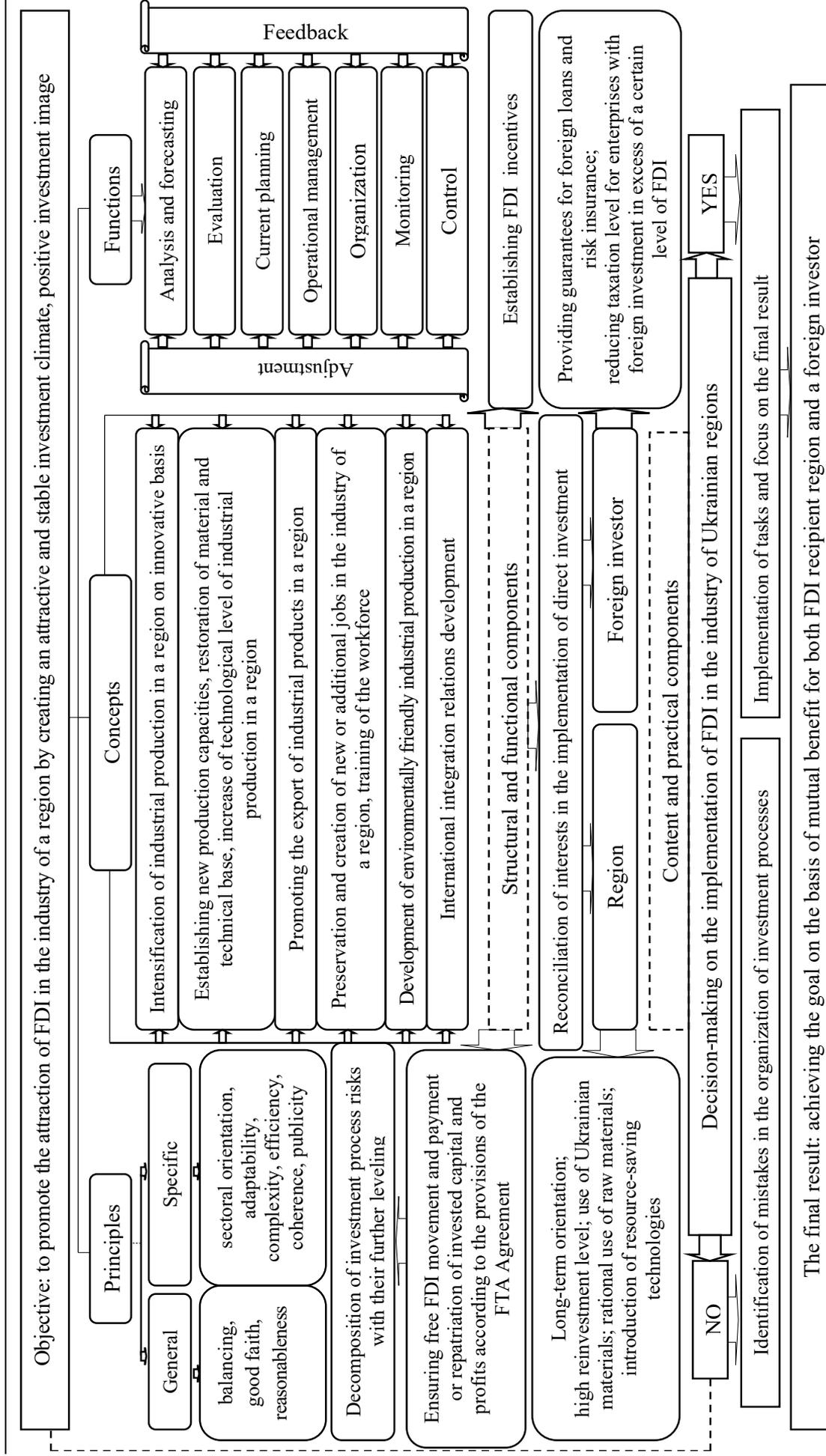
– organization – a function within which the division of labor between local governments and the executive related to creating a favorable investment climate in a region;

---

– monitoring of FDI involvement in industry – provides an opportunity to respond quickly and eliminate barriers to effective FDI attraction at regional level;

– control of implementation of investment projects in industry, as well as consequences of attracting FDI and compliance with investment commitments. In this context, it is worth noting the need to apply personal responsibility of local governments for FDI invested on preferential terms.

According to these conceptual provisions, principles and functions, the proposed conceptual model of attracting FDI in the industry of a region takes the form shown in Fig. 1.



**Figure 1.** Conceptual model of attracting FDI in the industry of Ukrainian regions (compiled by the authors)

---

Conducted own researches of investment attractiveness potential of the industry of regions, the analysis of international experience and generalization of domestic scientists offers have allowed to form system of actions within the conceptual model structured on the following directions:

1. Comprehensive harmonization of legal framework for FDI in the industry of regions with European standards:

– reducing of existing restrictions on free FDI movement in regions according to the Association Agreement between Ukraine and the European Union [12];

– involvement of local government specialists to create a system of certified translations of EU legislation and Ukrainian regulations provided for in the implementation of the Association Agreement between Ukraine and the EU in order to ensure comprehensive implementation of investment commitments, according to regional needs;

– development and adoption of regulatory guarantees to further ensure the free attraction of FDI, including in industry, existing in the EU member states;

– gradual easing of temporary currency restrictions for foreign investors operating in priority areas of a region's industry. Especially this applies to the requirement for mandatory sale on the interbank foreign exchange market of Ukraine of 75% of foreign exchange earnings in accordance with the NBU Resolution “On Amendments to Certain Legal Acts of the National Bank of Ukraine” of September 22, 2014 № 591 [10], which makes a foreign investor sell funds that are proceeds from export operations, and then buy them in order to ensure further current operating activities (for instance, to purchase raw materials or components for an industrial enterprise abroad). Considering the volatile situation in Ukraine in recent years, foreign investors have been in a position where, due to the prevailing demand for foreign currency in the domestic market, they have been unable to buy it, even in part;

– transformation of financial reporting principles according to European requirements for unprecedented preparation of industrial enterprises in regions for privatization processes;

– reduction of the role of the National Bank of Ukraine regional offices as market makers, particularly due to further abolition of requirements for transfer abroad of funds received by foreign investors due to sale of shares, corporate rights and currency acquisition, which was introduced by the National Bank of Ukraine Board Resolution “On Amendments to Certain Regulations Of the National Bank of Ukraine” dated September 22, 2014 № 591 [10];

---

– ending the practice of banning FDI repatriation to securities and corporate rights of industrial enterprises, as well as profits, income and other funds received from foreign investment activities at regional level.

2. Establishing active and effective cooperation of regional authorities with FDI donor countries:

– maintaining diplomatic relations with FDI donor countries and following generally accepted norms and principles of international law, as well as ensuring the fulfillment of obligations under international economic agreements on the principle of “pacta sunt servanda” in order to guarantee rights of foreign investors working in the industry of a region;

– implementation of existing in regions and active preparation and conclusion of new bilateral agreements on cooperation and mutual encouragement and protection of FDI, especially with such EU countries (their counties, provinces) as Ireland, Luxembourg, Malta, Romania, Slovakia; with EU candidate countries, namely Turkey, Iceland, Serbia and Montenegro, which is quite important and relevant in the context of the establishment of a deep and comprehensive free trade area with the EU, as well as with China, the Netherlands, Japan, Canada, Luxembourg and other countries;

– increasing the level of professional competence of local governments in the area of investment activities according to international standards, particularly by developing and implementing targeted training courses, creating a system of distance learning and internships abroad, as well as personal commitments and responsibilities for quality support of investment projects industry;

– promoting the involvement of FDI in the production of export-oriented industrial products of countries that have already confirmed their fundamental interest in direct investment, in particular: the United States, Germany, Denmark, France, Great Britain, Switzerland, Bulgaria, Finland, Norway and Canada, using components for industrial equipment and machines of Ukrainian production;

– expanding opportunities for direct investment in industry at regional level by intensifying international cooperation through cross-border cooperation projects that follow the State Strategy for Regional Development for 2021 – 2027 [5];

– improving the use of EU external assistance under the European Neighborhood Instrument and other industrial support programs available to local authorities;

---

– establishing a dialogue with the IMF and other international institutions, including the International Bank for Reconstruction and Development, the International Finance Corporation to combine grants and loans, which can be effective while encouraging FDI by international financial institutions in the region's industry;

– ensuring the initiative of local communities to take part in international grants, projects and programs, as well as comprehensive support for existing and relevant projects aimed at attracting additional investment in the development of industry in the regions, namely:

2.1. European Investment Bank Municipal Infrastructure Development Program of Ukraine for 2016 – 2030, approved by the Law of Ukraine “On Ratification of the Financial Agreement (Project “Municipal Infrastructure Development Program of Ukraine”) between Ukraine and the European Investment Bank” dated 03.02.2016 № 975-VIII [13], which provides for the attraction of 400 million Euros for modernization of housing infrastructure, especially in the areas of water supply and sewerage, ultimate beneficiaries of which can be local executive bodies, local governments and businesses.

2.2. Eastern European Partnership for Energy Efficiency and the Environment Fund, which grants are targeted at interested municipalities and provided by financial institutions to support energy efficiency investments.

2.3. Swedish Agency for International Development’s Energy Efficiency Project is co-financed by investment projects proposed by international financial institutions through the EBRD’s Multilateral Trust Fund to increase energy efficiency.

2.4. The International Bank for Reconstruction and Development’s Urban Infrastructure Development-2 program is the largest investment project in the field of water supply and sewerage implemented at 11 industrial enterprises in Kyiv, Kharkiv, Donetsk, Kirovohrad, Zhytomyr, Ternopil, Ivano-Frankivsk and Cherkasy regions.

3. Creating an effective system of incentives for direct investment at regional level in terms of technological modernization of industry:

– involvement and implementation of advanced technologies of multinational and transnational corporations in the industry of a region, using both externalized and internalized channels of their transfer;

– identification at local governments level (taking into account decentralization reform) of priority areas of economic activity those types of industrial activities that are aimed to meet the needs of a region in high-tech, competitive, environmentally friendly products and offering

---

tax benefits or lease terms for foreign investors long-term orientation, according to these areas, and also contribute to increasing of employment rate in a region;

- certification of industrial products by regional chambers of commerce and industry in accordance with the requirements of regulatory and technical documentation in the «CERTEX» system;

- further improvement of regional investment and innovation infrastructure, particularly creation of regional networks of technology and industrial parks, taking into account existing industrial enterprises that meet environmental safety standards, as well as the system of personnel and information support for their activities.

4. Formation of attractive investment image of the industry of regions taking into account the best international practice:

- involvement of foreign investors and members of the Council of Exporters and Investors in preparation of presentation materials in terms of investment potential of the industry with coverage of positive business practices in a region;

- organization and holding international investment business forums in regions in a modern way, as well as participation of local governments in similar forums abroad to inform foreign investors about current investment proposals in the industrial sector, including projects, industrial sites and land in this way participation of a potential foreign investor;

- creation of a system for finding foreign investors for priority investment projects and ensuring constructive cooperation between local governments and foreign investors interested in the implementation of priority investment projects in industry;

- development of the practice of providing infrastructural preparation of potentially attractive investment industrial sites and introduction of a support system for investment projects in industry;

- assisting in the establishment of local structures for servicing foreign investors and ensuring their compliance with the best corporate ethics standards developed on the basis of OECD recommendations;

- ensuring orientation of local budgets to stimulate foreign investment activity and promote the development of regional brands for the production of industrial products;

- cooperation of local authorities with mass media and regional news agencies, as well as active participation in the most widespread international B2B online platforms, business portals

---

and business social media in order to create a favorable investment image of the industry of a region;

– increase the efficiency of industrial facilities sales, as well as privatization processes at regional level.

## CONCLUSIONS

Implementation of the tasks and measures of the conceptual model of attracting FDI in the industry of a region mentioned above will allow to:

- increase the level of investment activity of industrial enterprises in a region;
- improve technical and technological condition of domestic industrial enterprises;
- increase revenues to local budgets;
- create new jobs at industrial enterprises in a region, increase incomes;
- increase the volume of export industrial products;
- expand and strengthen bilateral international economic ties between regional industrial enterprises and foreign investors;
- reduce disparities in economic and social development of regions;
- improve existing and establish new business contacts with potential foreign investors;
- improve the awareness level in the international business community regarding the investment potential of Ukrainian regions;
- increase self-sufficiency of territorial communities in the conditions of decentralization, etc.

Practical implementation of the proposed conceptual model of attracting FDI in the region's industry will ensure the formation of a favorable investment climate, positive investment image, realization of investment potential in the foreign market and promote incentives for investment activities based on world best practice.

## REFERENCES

1. Bevan A.A., & Estrin S. (2000). The determinants of foreign direct investment in transition economies. *Working Paper No 342*. William Davidson Institute, University of Michigan, Michigan, USA.
2. Borensztein E., De Gregorio J., & Lee J.-W. (1998). How Does Foreign Direct Investment Affect Economic Growth? *Journal of International Economics*, 45, 115-135.
3. Brada J., Kutan A.M., & Yigit T.M. (2004). The effects of transition and political instability on foreign direct investment inflows: Central Europe and the Balkans. *Working Paper No 729*. William Davidson Institute, University of Michigan, Michigan, USA.

4. Buriak A.A., & Chychkalo-Kondratska I.B. (2014). Factors of attracting foreign direct investment into economy of Ukraine's regions. *Economic Annals – XXI, 11 – 12 (2)*, 88 – 92.
5. Cabinet of Ministers of Ukraine (2020). *On approval the 2021-2027 State Strategy of Regional Development* (Resolution of the Cabinet of Ministers of Ukraine). Retrieved from <https://zakon.rada.gov.ua/laws/show/695-2020-%D0%BF#Text>
6. Dunning J.H. (1993). *Multinational Enterprises and the Global Economy*. Wokingham: Addison-Wesley.
7. Gitman L.J. (2011). *Fundamentals of Investing*. Boston, Mass: Prentice Hall.
8. Hymer S.H. (1976). *The international operations of National Firms: A Study of Direct Foreign Investment*. Cambridge: The MIT Press.
9. Iversen C. (1935). *Aspects of the Theory of International Capital Movements*. London: Oxford University Press.
10. National Bank of Ukraine (2014). *About modification of some regulatory legal acts of National Bank of Ukraine* (Resolution of the National Bank of Ukraine). Retrieved from [http://search.ligazakon.ua/l\\_doc2.nsf/link1/PB14067.html](http://search.ligazakon.ua/l_doc2.nsf/link1/PB14067.html)
11. Sharpe W. (1998). *Investments* (6th ed.). United States: Pearson.
12. Verkhovna Rada of Ukraine (2015). *Association Agreement between the European Union and Ukraine* (Association Agreement). Retrieved from [https://zakon.rada.gov.ua/laws/show/984\\_011#Text](https://zakon.rada.gov.ua/laws/show/984_011#Text)
13. Verkhovna Rada of Ukraine (2016). *On ratification of Financial Agreement «Municipal Infrastructure Development Program of Ukraine» between Ukraine and the European Investment Bank»* (Law of Ukraine). Retrieved from <https://zakon.rada.gov.ua/laws/show/975-19#Text>
14. Vernon R. (1966). International investment and international trade in the product lifecycle. *Quarterly Journal of Economics*, 2, 190–207.

## ANALYSIS OF THE OPENNESS OF INTELLIGENCE SERVICES TOWARDS PUBLIC

**Ksenija Butorac<sup>1</sup>**

*<sup>1</sup>Police University College, Ministry of the Interior,  
Zagreb 10000, Croatia  
Tel.: +38512426340  
[ksenija.butorac@gmail.com](mailto:ksenija.butorac@gmail.com)*

**Kristijan Miličević<sup>2</sup>**

*<sup>2</sup>Vukovarsko-srijemska County Police Directorate, Ministry of the Interior,  
Vinkovci 32100, Croatia  
Tel: +385989502200  
[kmilicevic@windowslive.com](mailto:kmilicevic@windowslive.com)*

**Davor Solomun<sup>3</sup>**

*<sup>3</sup>Police University College, Ministry of the Interior,  
Zagreb 10000, Croatia  
Tel: +38512426343  
[dsolomun1202@gmail.com](mailto:dsolomun1202@gmail.com)*

DOI: 10.13165/PSPO-20-25-03

---

**Abstract.** This paper analyses the openness of intelligence services to the public, as a sensitive social and security area of their existence and activities. By selecting intelligence services from significantly different systems, respectively the countries of Switzerland, Germany, Montenegro and Croatia, as the subject of research, this paper comparatively analyses the content of certain forms of communication between the services and the public, and in particular the Annual Reports on the work and structure of the related Internet (web) pages, the aim is to judge and assess the openness, or the closedness of the intelligence services to the public. By extracting and analysing nine elements (characteristics) as variables of openness of services to the public, the relationship between secrecy and transparency is problematized. From the budget transparency, organizational structure and ways of communicating with the public through public procurement and employment systems to annual reports and forms of civic control, a form for evaluation and comparison is structured as a kind of standardization of characteristics that allows comparability. Despite the limitations due to the nature and structure of the analysed documents and data, and methodological imperfection, it can be assessed that the Swiss Federal Intelligence Service - FIS and the German Federal Office for the Protection of the Constitution – BfV (Bundesamt für Verfassungsschutz) are more open to the public than the Croatian Security Intelligence Agency - SOA (Sigurnosno-obavještajna agencija) and German Federal Intelligence Service – BND (Bundesnachrichtendienst). It can also be assessed that the Montenegrin National Security Agency – ANB (Agencija za nacionalnu bezbjednost) is more closed to the public compared to other analysed services.

**Keywords:** Intelligence services, NDB, BfV, BND, SOA, ANB, openness, public.

---

## 1. INTRODUCTION

Intelligence services, as state administration bodies and unavoidable mechanisms for achieving the national security of each state, are in the focus of the general public. Historically, this public interest has not always been so developed, and the intelligence services, with their superior status in security systems and importance for the constitutional order and national security (Taylor, 2010), have successfully and effortlessly resisted external influences and maintained their integrity. The momentum of democratic processes, the evolution of human rights and civil liberties, especially in transition countries, as a *conditio sine qua non* have raised questions of the social role and monopoly of intelligence services on the legitimate use of force (Gill, 2012; Chappuis, 2016), which are recognized as certain danger to democracy. Their transformation should guarantee that they no longer represent instruments of political violence (Akrap, 2009; Kričkić, 2009), and responsibility towards the community and trust of citizens should be balanced according to secrecy and other peculiarities of their activities, both domestically and in terms of international intelligence cooperation (Born, Leigh & Wills, 2015).

With the development of increasingly complex contemporary security challenges and threats such as terrorism, transnational organized crime, cyber threats, illegal migration and similar threats, the social and security role of intelligence as a certain production process (Badžim, 2013; Herman, 1996) is becoming even more relevant. However, despite their unquestionable security significance, intelligence services in modern times retain the attention of the public and the media (Babitsky, 2014; Tomić, 2008), especially because of their organizational and functional relationship with the highest political and governing bodies of the state. This relationship between leading, respectively ruling, positional political bodies and intelligence structures is the reason for the emphasized and legitimate interest of the public and the media (Lashmar, 2014). From this relationship, as a legacy of previous major abuses of intelligence and security services, arose today's dysfunction or contradiction of the role of intelligence services, which paradoxically, contrary to their fundamental purpose and aim to protect the constitutional order and national interests and achieve national security, they are often ignoring and violating precisely these constitutional values and principles. Thus, it is a question of the responsibility of intelligence services (Hastedt, 2010; Aldrich, & Richter, 2018) because they can also pose a threat to their own order and national security.

Of course, the problem lies in understanding and defining national security (Tatalović & Bilandžić, 2005; Miller, 2009; Johnson, 2010), which today, in a wide range from guaranteeing

---

national viability, territory, sovereignty and independence, through population security to social welfare and of all prosperity, inevitably includes the achieved, enviable level of human and civil rights and freedoms.

In the name of national security, as a legitimate goal of intelligence, the privacy of citizens is most often endangered, but also state secrets in relations between states, where ethical and legal issues of intelligence are imposed (Taylor, 2010). Numerous cases at the European Court of Human Rights have spawned a better understanding and definition of threats to national security. Espionage, terrorism, subversion of parliamentary democracy, separatist extremist organization, incitement to dissatisfaction in military service, etc., are accepted forms of threats as a basis for legitimate action of intelligence services (Born & Leigh, 2005; ECtHR, 2013, as cited in FRA, 2017).

Human and civic recognition as a category of national and international values, embodied a new, global, human - centric approach, or the concept of human security. With individual freedoms and man as the reference object of security philosophy and policy, security theory and practice, the concept significantly expands the field of security analysis, from territorial to human security (United Nations, 1994). This global shift in the understanding of national security has been a particular challenge for intelligence services (Bjeličić & Solomun, 2011). In practice, this meant accepting restrictions and reducing powers in dealing with citizens as objects of intelligence interest, in particular it meant accepting obligation and responsibility towards public, not only to the political vertical, but also the obligation to publicly present their activities. Understandably, this is a significant contrast to the secrecy and confidentiality that typically characterizes these services. Schedler (1999, as cited in Caparini, 2016) identifies that the mechanism of responsibility of intelligence services includes three levels, vertical and horizontal, and external influences of partner countries and international organizations (NATO, EU, European Court of Human Rights, etc.) as the so-called "third dimension" of managerial, controlling and other competencies over intelligence services. Thereat, the horizontal level means relations between equal institutions and public agencies of the system towards all levels of political power (legislative, executive and judicial), while the vertical level means hierarchical relations within organizations between directors and agents, characterized by unequal levels of power and subordination. Diamond et al. (1999) add citizens, media and civil society organizations to the vertical structure as a kind of guarantor of responsible action of institutions. This multitude of actors and levels requires precise and effective legal

---

regulation, which is extremely important, but Lustgarten (as cited in Caparini, 2016) emphasizes that legislation is a secondary mechanism while more important is a system of fundamental political values such as respect for different ideas, human rights and privacy, the concept of national security in line with social interests, strict conditions for justifying interference with the rights and freedoms of citizens or withholding information from parliament and the public.

Since accountability does not come by itself, in the process of opening up intelligence, introducing transparency and civilization, supervision of intelligence services has become extremely important. Wills (2010) recognizes several types of oversight, from the internal management of the intelligence service, the executive authority, the judiciary, and parliament to expert supervision bodies. The usual forms and almost standardized three or four levels of institutionalized and precisely regulated supervision today are: parliamentary, expert (internal), civil and judicial supervision of intelligence services. So this, Born, Leg, & Wills (2015), and Born & Geisler Mesevage (2012) distinguish supervision from control for which they believe that represents ability of the executive authority or senior management of the intelligence service to manage, direct, and prioritize the services. As a separate dimension, it is important to highlight the role of judicial bodies which are not regularly recognized in the nomenclature of supervision. Although, special, highest judicial bodies, for example in the Republic of Croatia a certain judge of the Supreme Court, (as cited in the Law on Security - Intelligence System, 2006) must approve the application of certain secret data collection measures by its order in real time, respectively before and as a condition for service, and yet the Law does not recognize it. It can be said that the achieved levels of operationalization and efficiency of these forms of supervision are a reflection and an important measure of the democracy of a certain society.

Thus, the transparency and openness of intelligence services is recognized in their willingness and organization in communicating with the public. Approaches are different, but it can be said that most intelligence services use the technologies of the modern information age and achieve their transparency through Internet (web) sites where they present different information. It is clear that this communication is not balanced and two-way and that the public and citizens are more recipients than providers of information. However, since modern intelligence services are security institutions without repressive tools, forced to materialize their purpose with the skill and ability to gather important information relevant to political decision-

---

making at the highest levels, the question arises whether these institutions by strengthening the channel and direction of information from citizens, still have some benefits from the imposed transparency.

By selecting intelligence services from significantly different countries of Switzerland, Germany, Montenegro and Croatia, as the subject of research, this paper, comparatively, by analysing the content of certain forms of communication services with the public, and in particular the Report on the work and structure of related Internet sites, aims to judge and evaluate the openness or closedness of intelligence services to the public.

## 2. PUBLIC VS. SECRECY

Different interpretations of the term public indicate that there is no explicit agreement in its definition. As cited in Posavec (2004: 5), the public means something open, familiar, accessible to everyone, or at least something that everyone can get acquainted with. The word denotes a state or fact of openness. In the Romance and Anglo-Saxon language areas, the words *publicité* and *publicity* were used in the 18th century. In a state governed by the rule of law, the principle of publicity is ensured, and its goal is to make the activities of state bodies transparent. Power comes from the people, and it passes into public services that are subject to public control and they must always remain transparent. All services of a democratic constitutional state, as well as their holders, are under constant scrutiny by the public and public opinion because, ultimately, it is the only guarantor and control of the exercise of power that serves the public good (Posavec, 2004).

The existence and operation of intelligence services that we commonly call “secret services” is often criticized or even questioned in the media public precisely because of their secrecy. There seems to be more to this in the age of the global networked world than before. When the intelligence service of our country acts covertly in search of dangers to the constitutional order, then for our security we consider it justified. Doubt arises only when such services come into possession of our legitimate secrets (Pöttker, 2014). This raises a key question regarding the operation of intelligence services and secrecy. The greater the secrecy, the more difficult it is to determine the purpose, conditions and operation of such services. This issue contains conflicting interests, in order to successfully conduct covert operations, certain activities must be secret as well as intelligence agents and their sources. On the other hand, secrecy for democratic government is a fertile ground for abuse of power and illegal work. It

---

should be noted that excessive secrecy in the intelligence services leads to suspicion and fear, which also reduces public support for them (Nathan, 2012).

Nathan (2012:51) specifies how the intelligence services deal with conventional and unconventional threats to national security, terrorist and criminal organizations, and the protection of classified state information. The nature of their function embodies secrecy as one of the basic characteristics, which gives them a certain advantage in dealing with the above issues while transparency would probably put them at a disadvantage. In doing so, secrecy should be considered *mutatis mutandis* as an exception, which in each case requires justification. Of course, this is in conflict with the perspective of the intelligence community, which consumes secrecy as a standard and a fact, with possible, certain exceptions. Powers are more likely to be abused and human rights violated in secrecy than in an open environment. Openness allows effective supervision by parliament and close monitoring by the media and the public, providing a basis for detecting illegalities and abuses (Nathan, 2012).

The only basis on which intelligence services operate in secret is the protection of national security. If state security is interpreted so broadly as to encompass all aspects of human security, then secrecy based on such broad grounds can lead to excessive and unjustified declarations of information as confidential. Even if it is slightly narrower defined, the state would often refer to it when it wanted to justify the introduction of new special measures that significantly violate human rights (Nathan, 2012). The public needs to know what the roles of the intelligence services are and what powers they have in carrying out their tasks. The public must also know when and under what conditions intelligence services have the right to restrict an individual's rights for national security purposes. However, by-laws that are not available to the public may be issued when it is believed that the provision of specific information to the public could jeopardize the work of intelligence services or national security in general. Acts that are not made public typically contain information about the operational methods of intelligence work, such as the use of certain devices or technologies (Wills, 2010).

Thus, from the perspective of intelligence services, we mostly find arguments on the side of secrecy, but facts in favour of the public are clear and justified, whose role is multiple but crucial in democratic disciplining of the service, respectively prevention of possible illegalities or abuses. In other words, the revealing interest of the media and the public often collides with the interest of the state (Nieter, 2015).

---

### 3. COMPARATIVE ANALYSIS OF THE OPENNESS OF THE INTELLIGENCE SERVICES OF GERMANY, SWITZERLAND, MONTENEGRO AND CROATIA

In this part, based on the outlined criteria, the civil intelligence services of Germany, Switzerland, Montenegro and Croatia are comparatively analysed in order to find similarities and differences as features and elements based on which one could conclude about their communication particularities, respectively the degree of openness of intelligence services to the public.

In addition to the elementary description and interpretation of the schematic structure of the intelligence system, the method of qualitative content analysis explores the content and information about these institutions as structured on their Internet (web) pages, or web addresses (World Wide Web). In particular, annual reports and similar documents (announcements, periodic reports, etc.) are analysed, which can be used to assess the level of openness or closedness of these intelligence services.

The subject of the analysis includes the German Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz - BfV), as an internal security service defined by the Law on the Protection of the Constitutional Order (*Bundesverfassungsschutzgesetz*)<sup>1</sup>, with the web address [www.verfassungsschutz.de](http://www.verfassungsschutz.de) and the corresponding annual report (*Verfassungsschutzbericht*), as well as the German Federal Intelligence Service (*Bundesnachrichtendienst - BND*) as a foreign intelligence service defined by the Federal Intelligence Service Act (*Gesetz über den Bundesnachrichtendienst*)<sup>2</sup>, with the web address [www.bnd.bund.de](http://www.bnd.bund.de). and an analysis of their brochure because the BND has no publicly published annual reports. Swiss Federal Intelligence Service, as a civilian intelligence service (*Nachrichtendienst des Bundes - NDB*) defined by the Intelligence Service Act (*Nachrichtendienstgesetz*)<sup>3</sup>, with the web address [www.vbs.admin.ch/de/home.html](http://www.vbs.admin.ch/de/home.html) and annual report (*Sicherheit Schweiz*). Montenegrin Service called the National Security Agency (*Agencija za nacionalnu bezbednost - ANB*), as a civilian intelligence service regulated by the National Security Agency Act (*Zakon o agenciji za nacionalnu bezbjednost*)<sup>4</sup>, with the web address [www.anb.me](http://www.anb.me), without analyzed annual reports because they are marked as secret. Croatian intelligence service called the security intelligence agency (Sigurnosno-obavještajna

---

<sup>1</sup> Retrieved from: <https://www.gesetze-im-internet.de/bverfschg/> (12.03.2020.)

<sup>2</sup> Retrieved from: <https://www.gesetze-im-internet.de/bndg/> (12.03.2020.)

<sup>3</sup> Retrieved from: <https://www.admin.ch/opc/de/classified-compilation/20120872/index.html> (12.03.2020.)

<sup>4</sup> Retrieved from: <http://www.anb.gov.me/biblioteka> (12.03.2020.)

---

agencija - SOA) which is defined by the Law on Security and Intelligence System of the Republic of Croatia<sup>5</sup>, with the web address [www.soa.hr](http://www.soa.hr) and an annual report called the Public Report.

### **3.1. SECURITY INTELLIGENCE SYSTEM OF THE FEDERAL REPUBLIC OF GERMANY**

The German intelligence system is defined by the Law on the Protection of the Constitutional Order (*Bundesverfassungsschutzgesetz*), and the Federal Intelligence Service Act (*Gesetz über den Bundesnachrichtendienst*), which includes three intelligence services and these are: Federal intelligence service (*Bundesnachrichtendienst - BND*), as a foreign intelligence service, Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz - BfV*), as an internal security service, that in every state has offices for the protection of the constitution (*Landesämter für Verfassungsschutz - LfV*), and Military Counterintelligence Service (*Militärischer Abschirmdienst - MAD*).

#### **3.1.1. FEDERAL OFFICE FOR THE PROTECTION OF THE CONSTITUTION (BUNDESAMT FÜR VERFASSUNGSSCHUTZ -BFV)**

BfV is an internal intelligence service operating in the country and whose main task is to protect the constitutional order. In addition to the Cologne-based BfV and a department in Berlin, there are also state offices for constitutional protection (*Landesämter für Verfassungsschutz, LfV*), located in each state. The organization within the BfV is shown in Figure 1. Some of the main departments of this service are the department *Abteilung Z* which represents the headquarters, then the department *Abteilung IT*, which performs IT support, the department *Abteilung C* is in charge of cyber security, then the newly formed *Abteilung 2*, which deals with right-wing extremism, and the *Abteilung 6*, which is in charge of Islamism and Islamist terrorism. BfV is supervised by various institutions and they range from administrative supervision, parliamentary, judicial and public, i.e. civil supervision.

---

<sup>5</sup> Retrieved from: [https://narodne-novine.nn.hr/clanci/sluzbeni/2006\\_07\\_79\\_1912.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2006_07_79_1912.html) (12.03.2020.)

Senior Management Chief Technology Officer Support Staff of the Senior Management	
Department Z	Central Services
Department TA	Technical Analysis (support)
Department TX	Technical Infrastructure
Department S	Internal Security, Protective Security and Counter-sabotage, Supervisory and Advisory Quality Management, Internal Audit
Department O	Surveillance
Department C	Cyber Defence
Department 1	Specialized Support
Department 2	Right-wing Extremism/Terrorism
Department 3	Measures Pursuant to Article 10 of the Basic Law, Technical Information Collection
Department 4	Counterintelligence, Economic Security
Department 5	Extremism of Foreigners and Left-wing Extremism/Terrorism
Department 6	Islamist Extremism and Terrorism
AfV	Academy of the German Domestic Intelligence Services
ZNAF	Education and Training

Figure No. 1 – BfV organization<sup>6</sup>

### 3.1.2. ANALYSIS OF THE WEBSITE AND ANNUAL REPORTS OF THE FEDERAL OFFICE FOR THE PROTECTION OF THE CONSTITUTION (*BUNDESAMT FÜR VERFASSUNGSSCHUTZ, BFV*)

Analysing website [www.verfassungsschutz.de](http://www.verfassungsschutz.de) it was found that the organizational structure of the service is divided into 12 departments and described all the forms of control over the service, and who enforces them. All forms of violence are listed in detail, and statistics on their size and number of members are offered for each radical organization that emerges in the Federal Republic of Germany. Annual reports from 2014 to 2017 are available, as well as numerous other publications that talk about security threats and menaces, such as the publication entitled "Our work with the public" (*Unsere Öffentlichkeitsarbeit*). Contact information about the spokesperson of the service is presented, as well as the dates of participation in various fairs, of which in 2018 there were 24 distributed throughout the country. The website offers various opportunities for education and training of staff and citizens, at various academic levels, and opportunities to apply for certain jobs. The most important is the possibility of direct contact with the public relations service and their spokesperson, which is generally a step towards opening the service to the public. Through public relations, information collected by the service about certain persons can be requested.

<sup>6</sup> Retrieved from: <https://www.verfassungsschutz.de/en/about-the-bfv/tasks/the-organisation-of-the-bfv-is-not-a-secret> (28.11.2020.)

---

Analysis of the annual reports shows that since 2014 the BfV has been publishing annual reports (*Verfassungsschutzbericht*) containing between 260 and 360 pages, and summary reports for each year are also available. The content of the report mostly talks about security topics such as left and right extremism, Islamism, Islamist terrorism, espionage and other intelligence activities, Scientology organization and the like. For all this BfV gives opinion of the security situation and future forecasts which also represents their product. Although they seem to talk very little about themselves, it is clear from the reports what jobs the service does and how it gets its information. The report states that working with the public includes the publication of BfV and LfV annual reports as well as other publications. The report shows that BfV has 3,207 employees in 2017 and their total budget is 306,918,024 Euros. At the beginning of 2018, 2,135,800 safety inspections were performed, of which 1,734,321 due to inspections in accordance with the provisions of the Aviation Safety Act or the Atomic Energy Act.

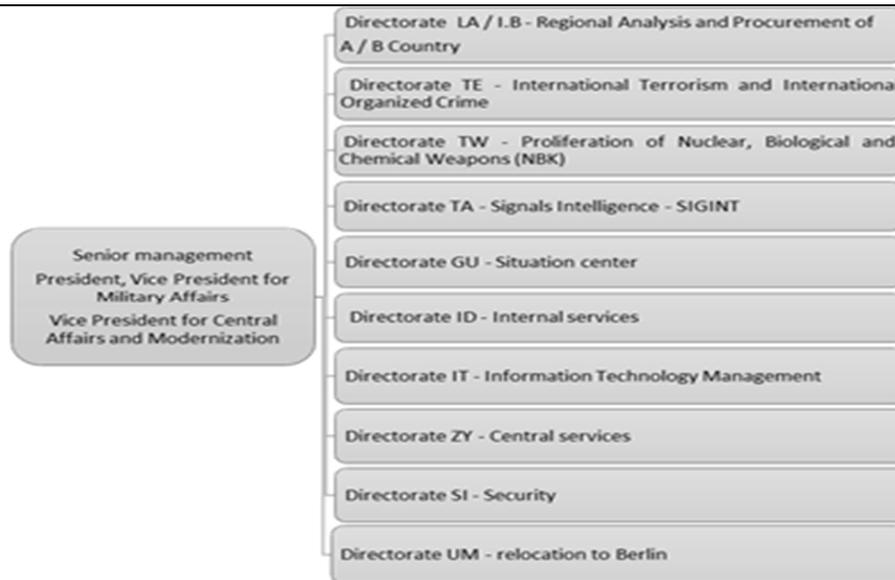
### **3.1.3. FEDERAL INTELLIGENCE SERVICE (*BUNDESNACHRICHTENDIENST, BND*)**

BND is a foreign intelligence service operating abroad and is defined by the Federal Intelligence Service Act (*Gesetz über den Bundesnachrichtendienst*). BND is headquartered in Pullach near Munich and has two other headquarters in Berlin-Mitte and Berlin-Lichterfelde. It has a president and three vice presidents. The BND is directly subordinate to the head of the Office of the Federal Chancellor.<sup>7</sup> They are organizationally divided into departments shown in Figure 2. The *Länder Region A* and *B* regional departments prepare country, economic and military policy reports for specific countries, which are submitted to the federal government. The *Proliferation Department, ABC-Waffen* takes care of the international arms trade, ABC weapons and defense technology. The *Technische aufklärung* department is the technical service responsible for technical reconnaissance. The *Gesamtlage/FIZ und Unterstützende Fachdienste* department controls and coordinates production processes. The *Informationstechnik* department ensures the reliable communication required for the operation of the service. The *Innerer Dienst* department is the central headquarters of the BND. The *Zentralabteilung* department is a service of legal material and human resources.<sup>8</sup>

---

<sup>7</sup> Retrieved from: [https://www.bnd.bund.de/DE/Der\\_BND/Standorte/standorte\\_node.html](https://www.bnd.bund.de/DE/Der_BND/Standorte/standorte_node.html) (10.03.2020.)

<sup>8</sup> Retrieved from: [https://www.bnd.bund.de/DE/Der\\_BND/Abteilungen/abteilungen\\_node.html](https://www.bnd.bund.de/DE/Der_BND/Abteilungen/abteilungen_node.html) (12.03.2020.)



**Figure No. 2.** Organization and departments within BND. Translated and adjusted<sup>9</sup>

### 3.1.4. ANALYSIS OF THE WEBSITE AND ANNUAL REPORTS OF THE FEDERAL INTELLIGENCE SERVICE (*BUNDESNACHRICHTENDIENST, BND*)

An analysis of the website [www.bnd.bund.de](http://www.bnd.bund.de) found that the service has 11 departments and that around 6,500 people work for the BND. While the headquarters in Berlin-Mitte employs about 3,200 people, which is 60% of the total staff. It is stated that from April 2019, citizens can apply for sightseeing at the Visitor Centre located in Berlin-Mitte. The BND produces about 400 reports per month and responds to about 750 Government inquiries. In addition, BND employees meet about 150 times a month for briefings. The BND website offers the possibility of direct contact with the public relations service and their spokespersons, which proves that this service does not fail to respond to public inquiries. It is also possible to request access to information collected by the service about a particular person. BND is controlled by various institutions and they range from administrative supervision, parliamentary, G10 commission and annual budget review, but there is no established form of civilian supervision, so the budget of the service is secret information. Vacancies for open jobs are available on the website and are available to citizens. BND, as a foreign intelligence service, does not publish annual reports or any publication on its work, but a brochure<sup>10</sup>, was published in 2016, to inform the public. The analysis of the brochure shows that it contains 64 pages describing the legal

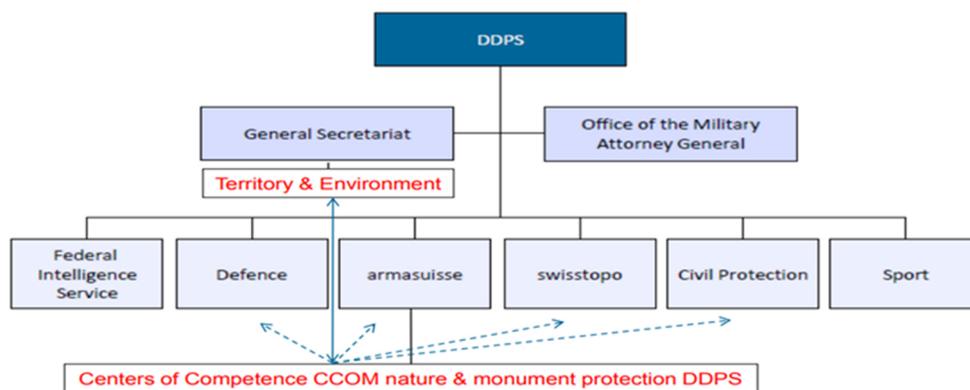
<sup>9</sup> Retrieved from: [https://www.bnd.bund.de/DE/Der\\_BND/Abteilungen/abteilungen\\_node.html](https://www.bnd.bund.de/DE/Der_BND/Abteilungen/abteilungen_node.html) (28.11.2020.)

<sup>10</sup> Retrieved from: [https://www.dienstzeitende.de/site/dze/files/anbieter\\_dateien/701/bnd-broschuere.pdf](https://www.dienstzeitende.de/site/dze/files/anbieter_dateien/701/bnd-broschuere.pdf) (10.03.2020.)

tasks, tasks of the service, their products in the form of reports and recommendations, organizational structure, supervision and control of the service, and a brief history of this service. The brochure also announces that they employ about 6,500 people, of which 4,200 are men and 2,300 are women. They state that their employment structure is about 200 people in the simple service, about 2,750 people in the middle service, about 2,250 people in the higher service and about 1,250 people in the high service. They also have about 90 people in training, and their average age of employees in the service is about 45 years.

### 3.2. SECURITY INTELLIGENCE SYSTEM OF THE SWISS CONFEDERATION

The Swiss intelligence system is defined by the Intelligence Service Act (*Nachrichtendienstgesetz*), which includes two intelligence services: The Federal Intelligence Service, as the civilian intelligence service (*Nachrichtendienst des Bundes - NDB*), and the military intelligence service (*Militärischer Nachrichtendienst - MND*). The NDB is part of the Ministry of Defense, Civil Protection and Sports (*Eidgenössisches Departement für Verteidigung, Bevölkerungsschutz und Sport, VBS*) based in Bern and reports directly to their minister, as shown in Figure 3.



**Figure No. 3.** Organizational structure of the Swiss Ministry of Defense, Civil Protection and Sports, which includes the FIS (NDB)<sup>11</sup>

<sup>11</sup> Retrieved from: [http://putniadazos.lv/sites/default/files/kcfinder/files/David\\_Four\\_strategies\\_of\\_habitat%26species\\_management\\_in\\_Swiss\\_military\\_training\\_aereas.pdf](http://putniadazos.lv/sites/default/files/kcfinder/files/David_Four_strategies_of_habitat%26species_management_in_Swiss_military_training_aereas.pdf) (28.11.2020.)

### 3.2.1. THE FEDERAL INTELLIGENCE SERVICE (*NACHRICHTENDIENST DES BUNDES, NDB*)

The NDB is a civilian integrated intelligence service that has an external and internal determinant, which means that it operates on its own territory and abroad. The service is supervised from parliamentary, independent, financial to civilian supervision. The organization, ie the departments of the NDB are shown in Figure 4. The *Stab* Department conducts political affairs, coordinates international relations with partner services abroad, is responsible for cooperative management and conducts internal and external communication. The *Beschaffung* department collects information. The *Informationsmanagement* department is responsible for incoming processing, archiving and forwarding of incoming data. The *Auswertung* department analyses the collected data and converts it into intelligence reports.<sup>12</sup>

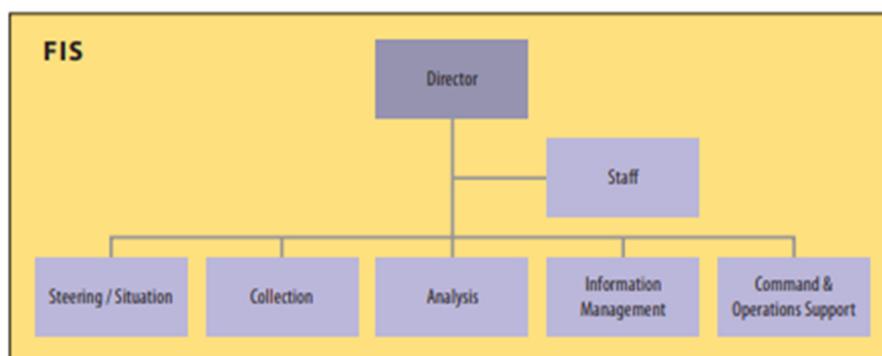


Figure No. 4. FIS (NDB) review<sup>13</sup>

### 3.2.2. ANALYSIS OF THE WEBSITE AND ANNUAL REPORTS OF THE FEDERAL INTELLIGENCE SERVICE (*NACHRICHTENDIENST DES BUNDES, NDB*)

The NDB does not have its own website but is part of the website of the Ministry of Defense, Civil Protection and Sports ([www.vbs.admin.ch/de/home.html](http://www.vbs.admin.ch/de/home.html)). The NDB on the site offers a brief description of their jobs and tasks, legal basis, supervision of the service, and access to vacancies in the service. Contact details of the public relations service and their spokesperson are provided, as well as numerous publications on topics such as economic espionage, jihadist movements, violent extremism. Annual reports (*Sicherheit Schweiz*) from

<sup>12</sup> Retrieved from: [https://ub.unibas.ch/digi/a125/sachdok/2014/BAU\\_1\\_6208714.pdf](https://ub.unibas.ch/digi/a125/sachdok/2014/BAU_1_6208714.pdf) (14.03.2020.)

<sup>13</sup> Retrieved from: [https://www.bundespublikationen.admin.ch/cshop\\_mimes\\_bbl/00/0024817F68691EE29FE65419866EA197.pdf](https://www.bundespublikationen.admin.ch/cshop_mimes_bbl/00/0024817F68691EE29FE65419866EA197.pdf) (28.11.2020.)

---

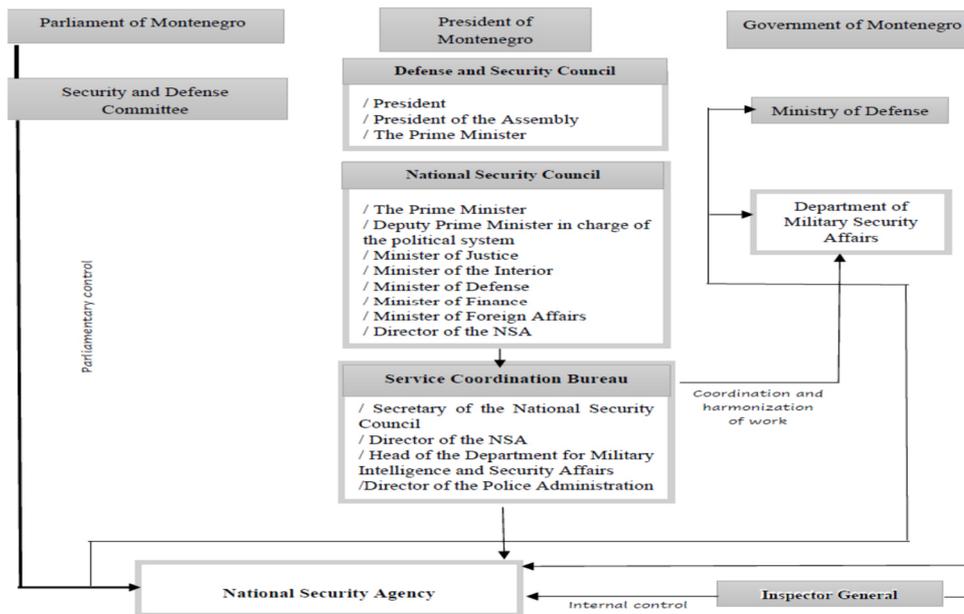
2014 to 2019 are available on the website, as well as data on the average number of employees and the total budget of the service. It is shown that in 2017, a new Intelligence Service Act came into force in Switzerland with its new provisions giving greater powers to the intelligence service. The new law makes it possible to monitor the telephone, mail and Internet activities of individuals, if necessary, it is possible to use monitoring equipment or monitor the Internet network. It is also stated that the new Act established the "Independent Supervision Body for Intelligence Activities" (*Unabhängige Aufsichtsbehörde über die nachrichtendienstlichen Tätigkeiten*), which annually publishes a report on its work to the public. The said Act with new extended measures and powers was passed by referendum (Geiser, 2016) which means that the people of Switzerland directly approved such a Act. This is an interesting and rare example where the public has great confidence in its intelligence service and control mechanisms, especially in the newly established independent supervision body.

The analysis of annual reports shows that since 2014 the NDB has been publishing annual reports (*Sicherheit Schweiz*) containing 80 to 90 pages of text. The report mainly analyses the security situation in Switzerland and the security forecasts of the NDB. Topics covered in the report relate to threats such as right and left extremism, terrorism, proliferation, illicit intelligence activities and the like. At the end of 2018, the NDB employed 343 people. They state that their costs for services in the cantons were 12.4 million Swiss francs, staff costs amounted to 53,178,643 Swiss francs and 19,392,156 Swiss francs for material and operational costs. The report states that the NDB receives about 12,500 reports from foreign partner services each year, while the NDB sends 6,000 reports a year to foreign partner services. In 2017, the NDB published a publication entitled „The Federal Intelligence Service of the NDB, briefly explained“ (*Der Nachrichtendienst des Bundes NDB kurz erklärt*) on two pages, in which they briefly described themselves and their work. Although this short publication says nothing more about what jobs the NDB does, how they collect information, who supervises it, and what their legal powers are, it says enough that the service intends to be more open to the public.

### **3.3. SECURITY INTELLIGENCE SYSTEM OF THE REPUBLIC OF MONTENEGRO**

The security intelligence system of Montenegro is regulated by the Law on the National Security Agency (*Zakon o agenciji za nacionalnu bezbjednost*) and is shown in Figure 5, where there is one service called the National Security Agency (*Agencija za nacionalnu bezbednost*,

abbreviation ANB), as a civilian intelligence service that performs security intelligence. There is no military intelligence service in Montenegro, but an organizational unit of the Ministry of Defense, which deals with intelligence activities within the scope of defense work called the "Department for Military Security Affairs" („*Odeljenje za vojno bezbednosne poslove*“) (Stefanović, 2016).



**Figure No. 5.** Overview of the security intelligence system of Montenegro and the types of supervision (control). Translated and adjusted<sup>14</sup>

### 3.3.1. NATIONAL SECURITY AGENCY (*AGENCIJA ZA NACIONALNU BEZBJEDNOST, ANB*)

The work of the service is managed by the director, and he is responsible to the Government. The headquarters of the ANB is in Podgorica. Given that the organizational structure of this service is marked as classified information, it is not possible to analyse in more detail the organization of this service.

<sup>14</sup>Retrieved from:  
[https://www.academia.edu/26653988/ZAKONSKA\\_URE%C4%90ENOST\\_SLU%C5%BDBI\\_BEZBEDNOSTI\\_NA\\_ZAPADNOM\\_BALKANU\\_BOSNA\\_I\\_HERCEGOVINA\\_CRNA\\_GORA\\_ALBANIJA\\_MAKEDONIJA\\_I\\_KOSOVO](https://www.academia.edu/26653988/ZAKONSKA_URE%C4%90ENOST_SLU%C5%BDBI_BEZBEDNOSTI_NA_ZAPADNOM_BALKANU_BOSNA_I_HERCEGOVINA_CRNA_GORA_ALBANIJA_MAKEDONIJA_I_KOSOVO) (10.03.2020.)

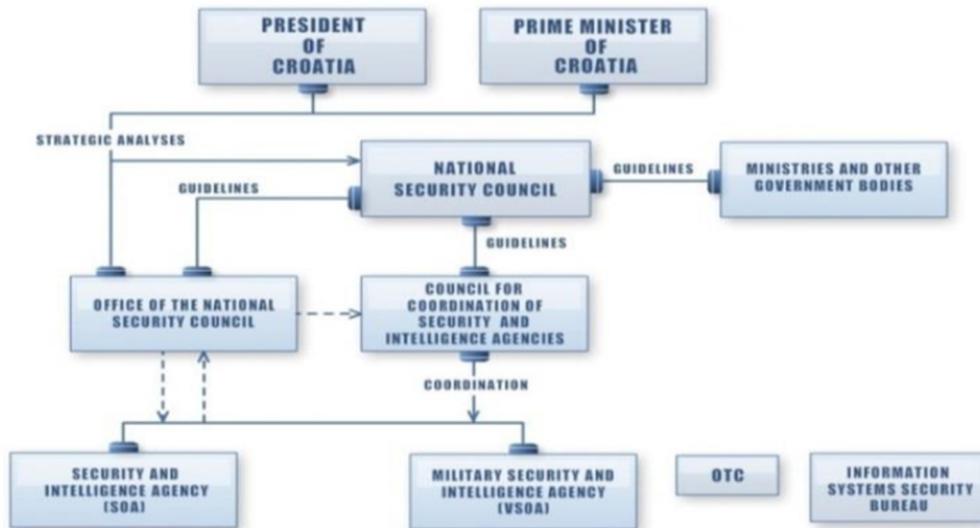
---

### **3.3.2. ANALYSIS OF THE WEBSITE AND ANNUAL REPORTS OF THE NATIONAL SECURITY AGENCY (*AGENCIJA ZA NACIONALNU BEZBJEDNOST, ANB*)**

An analysis of the website [www.anb.me](http://www.anb.me) found that three charts are offered providing information on the structure of employees, educational structure and gender structure. Information about the director of the service and his predecessors is available, as well as a brief history of the service. The site contains contracts for the procurement of various equipment, vehicles, office supplies, information on the outcome of public procurement, requests for submission of bids and the like, thus showing that certain public procurement and tenders for various goods and services are public and available to the public. There is also an information access guide that can be used to request access to the requested information, but there is no information on the number of approved requests. Although the website appears to provide a wealth of information, the fact is that this information is copied from the available ANB Act and other general information. Even the news and tidings about the ANB have not been updated, but the latest news is from February 5, 2018. It is possible to discuss whether the service deliberately neglects the public about its work or whether it is political will to label all information related to the work of the service as classified information. If we analyze the information available to the public on the basis of this website as well as the documents available in it, it is noticeable that the ANB does not have an established public relations service, and annual reports are classified as secret, which would represent a minimum of openness to the public. Also hiring is done non-public and this service does not have any form of civil supervision over the service.

### **3.4. SECURITY INTELLIGENCE SYSTEM OF THE REPUBLIC OF CROATIA**

The security intelligence system in the Republic of Croatia, shown in Figure 6, is defined by the Security Intelligence System Act of the Republic of Croatia. The law established two security intelligence services, a civilian intelligence service called the Security Intelligence Agency (*Sigurnosno-obavještajna agencija, SOA*) and a military intelligence service called the Military Security Intelligence Agency (*Vojna sigurnosno-obavještajna agencija, VSOA*).



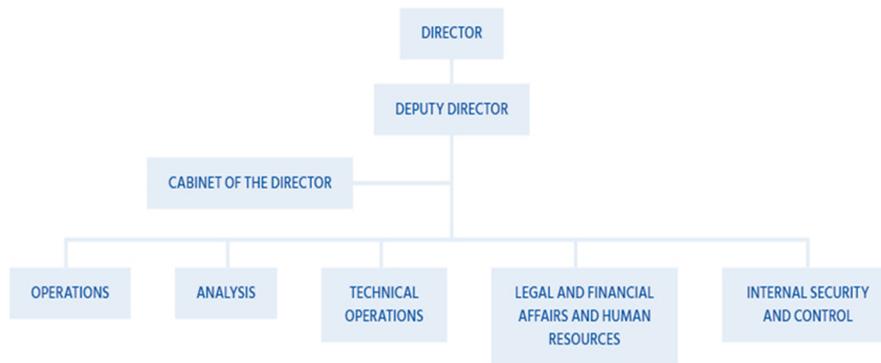
**Figure No. 6.** Schematic representation of the security intelligence system of the RoC<sup>15</sup>

### 3.4.1. SECURITY INTELLIGENCE AGENCY, SOA

SOA is a civil intelligence service that operates abroad and at home, ie it is an integrated intelligence service with internal and external determinants. SOA is headed by a director, and the structure of the headquarters in Zagreb is shown in Figure 7. The organization is divided into the Operations department, which deals with data collection, the Analytics department deals with data processing and analysis and documentation, and the Technology department deals with special technology, informatics and communication.<sup>16</sup> In the Republic of Croatia, there are three levels of supervision of intelligence services, namely parliamentary, professional and civilian supervision of the work of the service.

<sup>15</sup> Retrieved from: <https://www.soa.hr/files/file/Public-Report-2018.pdf> (28.11.2020.)

<sup>16</sup> Retrieved from: <https://www.soa.hr/hr/o-nama/ustroj/> (14.03.2020.)



**Figure No. 7.** Structure of SOA<sup>17</sup>

### 3.4.2. ANALYSIS OF THE WEBSITE AND ANNUAL REPORTS OF THE SECURITY INTELLIGENCE AGENCY, SOA

The analysis of the website [www.soa.hr](http://www.soa.hr) established that information is provided on the structure with a schematic draft, who and how supervises the service, and the powers that the service has with individual measures of secret data collection and who approves them. The service also offers citizens the opportunity to apply for work in the intelligence service via a web form, but at the same time the question arises why there is no public tender. Among other things, the website provides annual reports from 2014 to 2018 entitled "Public document" as well as information on sessions and conferences in which SOA participates. It also states who and how can access certain information, as well as a request form for access to information. The analysis of annual reports shows that for four years in a row, from 2014 to 2018, SOA has been publishing annual reports entitled "Public Report". The reports contain between 40 and 50 pages, mostly analysing topics on the security environment, terrorism, extremism, organized crime, corruption, foreign intelligence, energy and cyber security. The total SOA budget by years is presented, but Bosanac (2014) states that public procurement procedures in the security intelligence system are still closed, ie secret. Although the overall budget is public, the budget structure and public procurement are still secret, giving the impression of a completely closed intelligence service. The exact number of SOA employees is a secret, while three quarters of SOA employees have some level of higher education. In the total number of employees, about 40% are women who equally perform all tasks within the scope of SOA. According to the

<sup>17</sup> Retrieved from: <https://www.soa.hr/en/about-us/structure/> (28.11.2020.)

---

report, the SOA has appointed an information officer, but does not own a public relations department. Nowhere in the report is the contact information of the said information officer nor is it in any way stated how to contact him.

#### **4. OVERVIEW OF ANALYZED VARIABLES OF OPENNESS OF THE INTELLIGENCE SERVICES OF CROATIA, GERMANY, SWITZERLAND AND MONTENEGRO**

The synthesis of the compared elements of the intelligence services of different countries, for better clarity and as a certain focus of this paper, is shown in the table below (Table 1). The openness of the analysed and compared services is estimated through 9 dimensions (variables) expressed in vertical (columns) in relation to the services expressed in the horizontal structure (rows) of the table.

The variables on the basis of which the relationship of openness of certain intelligence services to the public is assessed are:

- Budget of the intelligence system
- Organizational structure of the intelligence service
- Structure of intelligence employees
- Access to information collected by intelligence services from citizens
- Public procurement of the intelligence service
- Annual reports
- Public relations service
- Employment in the intelligence service
- A form of civilian supervision of the intelligence service.

**Table No. 1.** Variables of the intelligence services of Croatia, Germany, Switzerland and Montenegro

Country/ variable	Budget	Organizational structure	Employee structure	Access to information	Public procurement	Annual reports	Public Relations Department	Employment	Form of civil supervision
<b>Croatia, SOA</b>	Total budget	Public	Limited employee structure	By request	Secret	Public	Not exist	Via a web form	Exist
<b>Germany, BfV</b>	Total budget	Public	Total number of employees	By request	Secret	Public	Exist	Vacancy / open jobs	Exist
<b>Germany, BND</b>	Secret	Public	Total number and structure of employees	By request	Secret	Secret	Exist	Vacancy / open jobs	Not exist
<b>Switzerland, NDB</b>	Total budget	Public	Total number of employees	By request	Secret	Public	Exist	Vacancy / open jobs	Exist
<b>Montenegro, ANB</b>	Secret	Secret	Limited structure of employees	By request	Partly public	Secret	Not exist	Via a web form	Not exist

By evaluating 9 variables as common denominators, ie characteristics of the intelligence services in question, it is concluded about their openness to the public. This tabular structure is a sequence and a reflection of the previous descriptive analysis of services in order to highlight and emphasize their universality and enable better comparability. In this sense, the analysis indicates the similarity and significant congruence of the observed elements, but significant differences were also found. In relation to the category "access to information", all analysed services emphasize this possibility to the public, but through a special request so that this area of analysis represents the highest degree of congruence, as is the case with the category "public procurement" which is only partially public in the Montenegrin ANB while with others it is a secret and the public is completely excluded.

Assessing the category "budget", which is often a good indirect indicator of the activities and ambitions of a particular service, it is noted that it is relatively accessible to the public, with the exception of the Montenegrin ANB and German Federal Intelligence BND, while the BfV budget is public. The organizational structure and the number of employees in the category are mostly available to the public, again with the exception of the restrictions imposed by the ANB, but also the Croatian SOA. In the "annual reports" category, confidentiality is reassessed only in the German BND and the Montenegrin case, while in others these reports are a relatively comprehensive and regular way of communicating with the public. The Croatian and Montenegrin intelligence services do not have a public relations service, as a special organizational form, just as they do not have public tenders or vacancies for employment, which distinguishes them from others where vacancies are advertised in public. Civil supervision, as

---

a special category of supervision and an indicator of the openness of services, does not have GNI and BND, while others have this supervision.

## CONCLUSION

By analysing the elements of openness of services to the public, this paper problematizes the relationship between secrecy and transparency in relatively different systems of Switzerland, Germany, Montenegro and Croatia. By extracting nine characteristics as variables, from budget publicity, organizational structure and ways of communicating with the public through public procurement and employment systems to annual reports and forms of civic supervision, an evaluation and comparison form is structured. This standardization of features enables comparability where it is noticed that the category "access to information" in the observed systems is most similarly regulated. At the same time, the area of "structure and number of employees" is the only category in which secrecy is not emphasized in any country, but, nevertheless, the limitation of the public is emphasized.

Although the services in question are regulated by law, the Swiss example of a referendum on the extension of powers for the most serious forms of encroachment on human rights and privacy should be singled out, whereby the influence of the general public is manifested and materialized *sui generis*.

By comparing the elements and features of the analysis, it can be assessed that the Swiss Federal Intelligence Service - NDB and the German Federal Office for the Protection of the Constitution - BfV are more open to the public compared to the Croatian Security Intelligence Agency SOA and the German Federal Intelligence Service - BND. It can also be assessed that the Montenegrin National Security Agency - ANB is more closed to the public compared to other analysed services.

The most important but also the most controversial issue in the operation of intelligence services is their secrecy. The importance of secrecy is manifested in the fact that intelligence services, in order to achieve national security, have, among other things, the authority of legal, secret data collection, which is able to violate the privacy of citizens. In addition, covert operations, which seek to gather confidential information, can also influence the political processes of the associated society. In order to prevent these features of secrecy from developing into threats of abuse, democratic systems care about the transparency and publicity of intelligence services, ie the development and improvement of standards that would minimize

these threats and impose accountability, but still guarantee intelligence purpose and effectiveness. A publicly accepted, competitive, and vital legislative framework for intelligence services is crucial to making the services accountable to the public. The multidimensional system of effective surveillance of intelligence services is of crucial importance as a guarantee of legality, but also the necessary dimensions of the publicity of these so-called secret institutions. But even more than that, as Lustgarten realizes (according to Caparini, 2016), more important is the system of adopted political values of a particular society and culture of respect for democratic principles, diversity, human rights and privacy. The public's desire for greater openness of intelligence services is in a causal relationship with surveillance and a precondition for its effectiveness, ie prevention or detection of intelligence illegalities and abuses.

## LITERATURE

### Books and articles

1. Aldrich R. J. & Richterova, D. (2018). Ambient accountability: intelligence services in Europe and the decline of state secrecy, *West European Politics*, 41(4), 1003-1024.
2. Akrap, G. (2009). Informacijske strategije i oblikovanje javnoga znanja (Information strategies and shaping of public knowledge). *National security and the future*, 10 (2), 77-151.
3. Badžim, J. (2013). Obavještajne i represivne službe u suprotstavljanju kriminalitetu koji predstavlja prijetnju nacionalnoj sigurnosti (Intelligence and repressive services in combating crime that poses a threat to national security), (18 May 2020) *National security and the future*, 14(1), 23-53. Retrieved from: <https://hrcak.srce.hr/125623>
4. Bjeličić, I. & Solomun, D. (2010). Elementi sustavne analize atentata i sigurnosti štićenih osoba (Elements of systematic analysis of assassinations and security of protected persons). *Policija i sigurnost (Police and security)*, 20(1), 14-31.
5. Born, H. & Geisler Mesevage, B. (2012). *Introducing Intelligence Oversight, A Toolkit*. In Born H. and Wills A., eds. Geneve: DCAF.
6. Born, H. & Leigh, I. (2005). *Making intelligence accountable: Legal standards and best practice for oversight of intelligence agencies*, Oslo: Publishing House of the Parliament of Norway.
7. Born, H., Leigh I., Wills, A. (2015). *Making International Intelligence Cooperation Accountable*. Oslo: Printing Office of the Parliament of Norway.
8. Bosanac, G. (2014). Unaprjeđenje transparentnosti sigurnosno-obavještajnog sustava u RH, analiza javne politike (Improving the transparency of the security intelligence system in the Republic of Croatia, public policy analysis), (18 May 2020) Zagreb: Centar za mirovne studije. Retrieved from: [https://www.cms.hr/system/article\\_document/doc/74/Policy\\_brief\\_SOA\\_final.pdf](https://www.cms.hr/system/article_document/doc/74/Policy_brief_SOA_final.pdf)
9. Caparini, M. (2016). Controlling and Overseeing Intelligence Services in Democratic States. In: Born, H., Caparini, M. eds., *Democratic control of intelligence services: containing rogue elephants* (3-24). London, New York: Routledge.
10. Caparini, M., Cole E. (2008). *Public oversight of the security sector, The case for public oversight of the security sector: concepts and strategies*. (17 March 2020) Retrieved from [https://issuu.com/undp\\_in\\_europe\\_cis/docs/public\\_oversight\\_of\\_the\\_security\\_secotr](https://issuu.com/undp_in_europe_cis/docs/public_oversight_of_the_security_secotr). (15.03.2020.)

11. Chappuis, F. (2016). *The Place of Intelligence in the State's Monopoly on the Legitimate Use of Force*. (15 March 2020) Retrieved from: <https://library.fes.de/pdf-files/iez/12968.pdf>  
<https://library.fes.de/pdf-files/iez/12968.pdf>
12. FRA (2017). *Monthly data collection on the current reform of intelligence legislation in Belgium, Finland, France, Germany, the Netherlands, Sweden and the United Kingdom – Guidelines for FRANET*, Vienna, 25 November 2016.
13. Geiser, U. (2016). *Secret service agents have licence to hack computers*. (20 March 2020) Retrieved from: <http://www.swissinfo.ch/eng/secret-service/42465282>  
<http://www.swissinfo.ch/eng/secret-service/42465282>
14. Gill, P. (2012). Intelligence, Threat, Risk and the Challenge of Oversight. *Intelligence and National Security*, 27(2), 206-222.
15. Hastedt, G. (2010). The Politics of Intelligence Accountability. In: Johnson, L. K., ed. *The Oxford Handbook of National Security Intelligence*. (21 March 2020) New York: Oxford University Press, Inc. Retrieved from: <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780195375886.001.0001/oxfordhb-9780195375886-e-0001>
16. Herman, M. (1996). *Intelligence Power in Peace and War*. Cambridge: Cambridge University Press.
17. Johnson, L. K. (2010). *National Security Intelligence*. In Johnson, L. K., ed., *The Oxford Handbook of National Security Intelligence*. (20 March 2020) New York: Oxford University Press, Inc. Retrieved from: <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780195375886.001.0001/oxfordhb-9780195375886-e-0001>
18. Kričkić, D. (2009). Tajne službe kao represivna oruđa totalitarnih režima 20. stoljeća (Secret services as repressive tools of 20th century totalitarian regimes). *Essehist*, 1(1), 52.-59.
19. Lashmar, P. (2014). *The intelligence agencies and their relations with the media, Contributing Authors*. (19 March 2020) Retrieved from: <https://reutersinstitute.politics.ox.ac.uk/risj-review/intelligence-agencies-and-their-relations-media>
20. Miller, R. A. (2009). *US national security, intelligence and democracy: From the Church Committee to the war on terror*. London: Routledge, Taylor & Francis Group.
21. Nathan, L. (2012). Transparentnost, tajnost i nadzor nad obavještajnim službama (Transparency, secrecy and oversight of intelligence services). In Born, H. i Wills, A., Ed., *Nadzor nad obavještajnim službama (The supervision of intelligence services), Handbook* (49-65). Geneva: DCAF.
22. Nieter, W. (2015). *Wozu unser Land Nachrichtendienste braucht*, Bundesakademie für Sicherheitspolitik. (16 March 2020) Retrieved from: [https://www.baks.bund.de/sites/baks010/files/analyse\\_nachrichtendienste\\_2015-07-07\\_0.pdf](https://www.baks.bund.de/sites/baks010/files/analyse_nachrichtendienste_2015-07-07_0.pdf)
23. Posavec, Z. (2004). Javnost i demokracija (Publicity and democracy). *Politička misao*, 41(1), 5-10.
24. Pöttker, H. (2014). *Geheim, verdrängt, unbekannt, Lücken von Öffentlichkeit: Worüber Medien gern schweigen – und warum sie das tun*, (20 March 2020) Dortmund: m&z. Retrieved from: <https://docplayer.org/78307373-Geheim-verdraengt-unbekannt.html>,
25. Schedler, A. (1999). *Conceptualizing Accountability, in The Self-Restraining State: Power and Accountability in New Democracies*. In A. Schedler, L. Diamond and Mart F. Plattner (ed.), 13-28, Lynne Rienner Publishers, Inc., London,
26. Stefanović, A. (2016). *Zakonska uređenost službi bezbednosti na Zapadnom Balkanu: Bosna i Hercegovina, Crna Gora, Albanija, Makedonija i Kosovo (Legislation of Security Services in the Western Balkans: Bosnia and Herzegovina, Montenegro, Albania, Macedonia and Kosovo)*, (15 March 2020) Beograd: Beogradski centar za bezbednosnu politiku. Retrieved from:

- [http://www.bezbednost.org/upload/document/zakonska\\_uredjenost\\_sluzbi\\_bezbednosti\\_na\\_zapadnom.pdf](http://www.bezbednost.org/upload/document/zakonska_uredjenost_sluzbi_bezbednosti_na_zapadnom.pdf).
27. Tatalović, S., Bilandžić, M. (2005). *Osnove nacionalne sigurnosti (Fundamentals of national security)*. Zagreb: MUP.
  28. Taylor, S. (2010). Uloga obavještajne djelatnosti u nacionalnoj sigurnosti (The role of intelligence in national security). In Collins, A. ur. *Suvremene sigurnosne studije (Contemporary security studies)*, 284-308, Zagreb: Politička kultura.
  29. Tomić, Z. (2008). *Odnosi s javnošću, teorija i praksa (Public relations, theory and practice)*. Zagreb: Synopsis.
  30. United Nations (1994). *UNDP Human Development Report 1994*. New York: UNDP.

### Internet sources

31. BfV Annual Report, Retrieved from: <https://www.verfassungsschutz.de/en/about-the-bfv/tasks/the-organisation-of-the-bfv-is-not-a-secret> (12.03.2020.).
32. NDB Annual Report, Retrieved from: <https://www.vbs.admin.ch/de/vbs/organisation/verwaltungseinheiten/nachrichtendienst.html#ui-tab-958> (12.03.2020.).
33. SOA Annual Report 2018, Retrieved from: <https://www.soa.hr/files/file/Public-Report-2018.pdf> (28.11.2020.)
34. [https://www.bnd.bund.de/DE/Der\\_BND/Abteilungen/abteilungen\\_node.html](https://www.bnd.bund.de/DE/Der_BND/Abteilungen/abteilungen_node.html) (12.03.2020.)
35. [http://putniadazos.lv/sites/default/files/kcfinder/files/David\\_Four\\_strategies\\_of\\_habitat%26species\\_management\\_in\\_Swiss\\_military\\_training\\_aereas.pdf](http://putniadazos.lv/sites/default/files/kcfinder/files/David_Four_strategies_of_habitat%26species_management_in_Swiss_military_training_aereas.pdf)
36. [https://ub.unibas.ch/digi/a125/sachdok/2014/BAU\\_1\\_6208714.pdf](https://ub.unibas.ch/digi/a125/sachdok/2014/BAU_1_6208714.pdf) Retrieved from: (14.03.2020.)
37. [https://www.bundespublikationen.admin.ch/cshop\\_mimes\\_bbl/00/0024817F68691EE29FE65419866EA197.pdf](https://www.bundespublikationen.admin.ch/cshop_mimes_bbl/00/0024817F68691EE29FE65419866EA197.pdf) (28.11.2020.)
38. [https://www.academia.edu/26653988/ZAKONSKA\\_URE%C4%90ENOST\\_SLU%C5%BDBI\\_BEZBEDNOSTI\\_NA\\_ZAPADNOM\\_BALKANU\\_BOSNA\\_I\\_HERCEGOVINA\\_CRNA\\_GORA\\_ALBANIJA\\_MAKEDONIJA\\_I\\_KOSOVO\\_](https://www.academia.edu/26653988/ZAKONSKA_URE%C4%90ENOST_SLU%C5%BDBI_BEZBEDNOSTI_NA_ZAPADNOM_BALKANU_BOSNA_I_HERCEGOVINA_CRNA_GORA_ALBANIJA_MAKEDONIJA_I_KOSOVO_) (10.03.2020.)
39. [https://www.bnd.bund.de/DE/Der\\_BND/Standorte/standorte\\_node.html](https://www.bnd.bund.de/DE/Der_BND/Standorte/standorte_node.html) (10.03.2020.)
40. [https://www.dienstzeitende.de/site/dze/files/anbieter\\_dateien/701/bnd-broschuere.pdf](https://www.dienstzeitende.de/site/dze/files/anbieter_dateien/701/bnd-broschuere.pdf) (10.03.2020.)
41. <https://www.soa.hr/hr/o-nama/ustroj/> (14. 03. 2020.)
42. ANB Official web site, Retrieved from: <http://www.anb.gov.me/naslovna> (12.03.2020.).
43. BfV Official web site, Retrieved from: <https://www.verfassungsschutz.de/de/startseite> (13.03.2020.).
44. BND Official web site, Retrieved from: [https://www.bnd.bund.de/DE/Startseite/startseite\\_node.html](https://www.bnd.bund.de/DE/Startseite/startseite_node.html) (12.03.2020.).
45. NDB Official web site, Retrieved from: <https://www.vbs.admin.ch/de/vbs/organisation/verwaltungseinheiten/nachrichtendienst.html> (13.03.2020.).
46. SOA Official web site, Retrieved from: <https://www.soa.hr/en/about-us/structure/> (28.11.2020.)

### Regulations

47. Law on the Security and Intelligence System of the Republic of Croatia, Official Gazette 79/06. Retrieved from: [https://www.soa.hr/UserFiles/File/Zakon\\_o\\_sig-obav\\_sustavu\\_RH.pdf](https://www.soa.hr/UserFiles/File/Zakon_o_sig-obav_sustavu_RH.pdf). (13. 3. 2020.)

- 
48. Law on the National Security Agency Official Gazette of the Republic of Montenegro, no. 28/05 dated 05.05.2005, 86/09 dated 25.12.2009, 73/10 dated 10.12.2010, 20/11 od 15.04.2011, 08/15 od 27.02.2015. Retrieved from: <http://www.anb.gov.me/biblioteka>. (12.03.2020.).
  49. Swiss Intelligence Act (*Nachrichtendienstgesetz*). Retrieved from: <https://www.admin.ch/opc/de/classified-compilation/20120872/index.html>. (12.03.2020.).
  50. German Federal Intelligence Service Act (*Bundesnachrichtendienstgesetz*). Retrieved from: <https://www.gesetze-im-internet.de/bndg/>. (12.03.2020.).
  51. Law on Cooperation between the Federal and State Governments on Constitutional Protection Issues and on the Federal Office for the Protection of the Constitution.

---

## ĮSPĖJIMAS APIE GALIMĄ IŠBRAUKIMĄ IŠ TURINČIŲ TEISĘ IŠRAŠYTI GAMINIŲ IR (AR) PAKUOČIŲ ATLIEKŲ SUTVARKYMĄ ĮRODANČIUS DOKUMENTUS ATLIEKŲ TVARKYTOJŲ SĄRAŠO KAIP POVEIKIO PRIEMONĖ

Greta Česnaitytė

*Mykolo Romerio universiteto Teisės mokyklos  
Viešosios teisės institutas  
Ateities g. 20, LT-08303, Vilnius  
Telefonas (8 5) 271 4625  
El. paštas: [greta.cesnaityte@gmail.com](mailto:greta.cesnaityte@gmail.com)*

DOI: 10.13165/PSPO-20-25-04

---

**Anotacija.** Straipsnyje, daugiausiai remiantis duomenų ir dokumentų analizės metodu, bei kitais, tokiais kaip lyginamasis, lingvistinis, loginis ir apibendrinamasis, nagrinėjama Lietuvos Respublikos atliekų tvarkymo įstatyme ir poįstatyminiuose teisės aktuose numatyti atvejai, kuomet atliekų tvarkytojas gali būti įspėjamas apie galimą jo išbraukimą iš Turinčių teisę išrašyti gaminių ir (ar) pakuočių atliekų tvarkytojų sąrašo (toliau-Atliekų tvarkytojų sąrašo), apžvelgiama aktuali teisminė praktika dėl įspėjimo apie galimą atliekų tvarkytojo išbraukimą iš Atliekų tvarkytojų sąrašo pateikiamų kontroliuojančios institucijos reikalavimų turinio ir galimo įgyvendinimo, taip pat akcentuojamas Lietuvos Respublikos Konstitucinio Teismo nutarimas, kuriame buvo prieita išvados, kad įspėjimas apie galimą gamintojų ir importuotojų organizacijos licencijos sustabdymą taip pat yra savarankiška poveikio priemonė, kuri gali būti skundžiama teisme ir negali būti skiriama už mažareikšmius pažeidimus, pateikiamos išvados ir pasiūlymai dėl teisinio reglamentavimo tobulinimo.

**Pagrindinės sąvokos:** Turinčių teisę išrašyti gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančius dokumentus atliekų tvarkytojų sąrašas (Atliekų tvarkytojų sąrašas), Įspėjimas apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo, pakuočių atliekos, atliekų tvarkytojai, poveikio priemonė.

### ĮVADAS

Lietuvos Respublikos mokesčio už aplinkos teršimą įstatymo 5 straipsnio 6 dalyje nustatyta, kad „gamintojai ir importuotojai atleidžiami nuo mokesčio už aplinkos teršimą gaminių ir (ar) pakuotės atliekomis už tą gaminių ir (ar) pakuotės kiekį, kuris proporcingas įvykdytos Vyriausybės nustatytos gaminių ir (ar) pakuotės atliekų naudojimo ir (ar) perdirbimo užduoties daliai. Norėdami pasinaudoti šia mokesčio lengvata, gamintojai ir importuotojai Vyriausybės ar jos įgaliotos institucijos nustatyta tvarka turi pateikti dokumentus, patvirtinančius šių gaminių ar pakuotės atliekų perdirbtą ar panaudotą energijai gauti kiekį“ [1].

---

[1] „Lietuvos Respublikos mokesčio už aplinkos teršimą įstatymas, Nr.VIII-1183“, TAR, žiūrėta 2020 m. rugsėjo 4 d., <https://www.e-tar.lt/portal/lt/legalAct/TAR.FFF9AE9162EE/wURCGnshVm>.

Tokiais dokumentais, patvirtinančiais gaminių ar pakuotės atliekų perdirtbtą ar panaudotą kiekį yra gaminių ir (ar) pakuotės atliekų sutvarkymą įrodantys dokumentai, kurie yra išrašomi turinčių teisę išrašyti tokius dokumentus atliekų tvarkytojų. Taigi būtent „atliekų tvarkytojų išrašytų gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų pagrindu, pagrindžiančiu nustatytų gaminių ir (ar) pakuočių atliekų tvarkymo užduočių įvykdymą, gamintojai ir importuotojai gali pasinaudoti mokesčio už aplinkos teršimą gaminių ir (ar) pakuočių atliekomis lengvata ir nemokėti Mokesčio už aplinkos teršimo įstatyme nustatytų mokesčių už aplinkos teršimą gaminių ir (ar) pakuočių atliekomis“ [2].

Lietuvos Respublikos atliekų tvarkymo įstatymo (toliau – „Atliekų tvarkymo įstatymas“) 34<sup>31</sup> straipsnio 1 dalyje yra skelbiama, kad „gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančius dokumentus **turi teisę išrašyti** tie gaminių ir (ar) pakuočių atliekų naudotojai (perdirbėjai), gaminių ir (ar) pakuočių atliekų eksportuotojai, gaminių ir (ar) pakuočių atliekų surinkėjai ir (ar) atliekų tvarkytojai, apdorojantys surinktas mišrias komunalines atliekas, atskiriant gaminių ir (ar) pakuotės atliekas su tikslu jas perdirbti ir (arba) kitaip panaudoti, **kurie atitinka šiame straipsnyje nustatytus reikalavimus ir** Vyriausybės ar jos įgaliotos institucijos nustatyta tvarka **yra įrašyti** į Gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančius dokumentus turinčių teisę išrašyti atliekų tvarkytojų sąrašą (toliau šiame straipsnyje – Atliekų tvarkytojų sąrašas)“ [3].

Būtent dėl to, kad tik turinčių teisę ir įrašytų į Turinčių teisę išrašyti gaminių ir (ar) pakuočių atliekų tvarkytojų sąrašą (toliau – „Atliekų tvarkytojų sąrašas“) atliekų tvarkytojų išrašytų gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų pagrindu, pagrindžiančiu nustatytų gaminių ir (ar) pakuočių atliekų tvarkymo užduočių įvykdymą, gamintojai ir importuotojai gali pasinaudoti mokesčio už aplinkos teršimą gaminių ir (ar) pakuočių atliekomis lengvata ir nemokėti Mokesčio už aplinkos teršimo įstatyme nustatytų mokesčių už aplinkos teršimą gaminių ir (ar) pakuočių atliekomis, svarbu išanalizuoti Atliekų tvarkytojų sąrašo ypatumus, o būtent teisinį reglamentavimą ir teisminę praktiką dėl įspėjimo apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo, kaip poveikio priemonės, taikomos atliekų tvarkytojams.

[2] Greta Česnaitytė, „Gaminių ir (ar) pakuočių atliekų sutvarkymo įrodančių dokumentų išrašymo teisinio reglamentavimo ypatumai ir probleminiai aspektai“, *Public Security and Public Order*, 23 (2019): 35. <https://www3.mruni.eu/ojs/vsvt/article/view/5251>

[3] „Lietuvos Respublikos atliekų tvarkymo įstatymas, Nr.VIII-787“, TAR, žiūrėta 2020 m. rugsėjo 10 d., <https://www.e-tar.lt/portal/lt/legalActEditions/TAR.8D38517814F1>.

G. Česnaitytė straipsnyje „Gaminių ir (ar) pakuočių atliekų sutvarkymo įrodančių dokumentų išrašymo teisinio reglamentavimo ypatumai ir probleminiai aspektai“ nagrinėjo gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų išrašymo tvarką ir gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų rūšis [4]. Tačiau pasirinktu teisinio reglamentavimo aspektu nėra jokios lietuvių autorių analizės, todėl straipsnio tema yra aktuali tiek teoriniame, tiek praktiniame lygmenyje.

**Straipsnio tikslas** – pateikti teisinio reglamentavimo analizę ir teismų praktikos apžvalgą dėl įspėjimo apie galimą išbraukimą iš turinčių teisę išrašyti gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų atliekų tvarkytojų sąrašo.

**Straipsnio objektas** – įspėjimas apie galimą išbraukimą iš turinčių teisę išrašyti gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų atliekų tvarkytojų sąrašo, kaip poveikio priemonė, skiriama atliekų tvarkytojui.

**Straipsnio metodai:** rengiant straipsnį naudoti sisteminis, kuris svarbus nustatant tiriamo objekto ryšį su kitomis atliekų tvarkymo sritimis, duomenų ir dokumentų analizės, lyginamasis ir lingvistinis, padedantys išnagrinėti teisės aktus, jų projektus ir teismų praktiką, bei loginis ir apibendrinamasis, leidžiantys pateikti išvadas ir rekomendacijas, metodai.

## 1. ATVEJŲ, KUOMET ATLIEKŲ TVARKYTOJAI GALI BŪTI ĮSPĖJAMI APIE GALIMĄ JŲ IŠBRAUKIMĄ IŠ TURINČIŲ TEISĘ IŠRAŠYTI GAMINIŲ IR (AR) PAKUOČIŲ ATLIEKŲ SUTVARKYMĄ ĮRODANČIUS DOKUMENTUS ATLIEKŲ TVARKYTOJŲ SĄRAŠO, ĮTVIRTINTŲ ATLIEKŲ TVARKYMO ĮSTATYME IR POĮSTATYMINIUOSE TEISĖS AKTUOSE, PALYGINIMAS

Atliekų tvarkytojai (naudotojai (perdirbėjai), eksportuotojai, surinkėjai ar atliekų tvarkytojai, apdorojantys surinktas mišrias komunalines atliekas ir atskiriantys gaminių ir (ar) pakuočių atliekas su tikslu jas perdirbti ir (ar) kitaip panaudoti (toliau – „Mišrių komunalinių atliekų apdorotojai“), kurie pagal nustatytą tvarką buvo įrašyti į Atliekų tvarkytojų sąrašą, remiantis Atliekų tvarkymo įstatymo 34<sup>31</sup> straipsnio 13 dalimi, gali būti „įspėjami apie galimą jų išbraukimą iš Atliekų tvarkytojų sąrašo, jeigu nustatoma, kad jie: 1) nebeatitinka (nebesilaiko) šiame straipsnyje (Atliekų tvarkymo įstatymo 34<sup>31</sup> str.-aut.pastaba) nustatytų reikalavimų; 2) aplinkos apsaugos valstybinę kontrolę atliekančiai institucijai nepateikė

[4] Česnaitytė, „Gaminių ir (ar) pakuočių atliekų sutvarkymo įrodančių dokumentų išrašymo teisinio reglamentavimo ypatumai ir probleminiai aspektai“, *supra note*, 2: 33–50.

dokumentų, patvirtinančių, kad gaminių ir (ar) pakuočių atliekos gautos ir sutvarkytos laikantis atliekų tvarkymą reglamentuojančių teisės aktų reikalavimų, arba pateikė klaidingus duomenis ir (ar) dokumentus“ [5].

Beje, paminėtina, ir tai, kad iki 2019 m. birželio 27 dienos galiojęs Atliekų tvarkymo įstatymo 34<sup>31</sup> straipsnio 13 dalies 2 punktą buvo siauresnio pobūdžio, nes jame buvo numatyta tik tai, kad atliekų tvarkytojai gali būti išspėjami apie galimą jų išbraukimą iš Atliekų tvarkytojų sąrašo, jeigu nustatoma, kad jie „2) pateikė klaidingus duomenis ir (ar) dokumentus“ [6].

Atliekų tvarkymo įstatymo 34<sup>31</sup> straipsnyje nors ir nesant įtvirtintų nuorodų į poįstatyminius teisės aktus dėl išspėjimo apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo davimo, Lietuvos Respublikos aplinkos ministro įsakymu „Dėl Turinčių teisę išrašyti gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančius dokumentus atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo patvirtinimo“ Nr. 184 patvirtintame Turinčių teisę išrašyti gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančius dokumentus atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo (toliau – „Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašas“) III skyriuje yra numatyta tvarka dėl išspėjimų apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo davimo atliekų tvarkytojams.

Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 17 punkte skelbiama, kad „apie Tvarkytoją, kuris **išrašė** gaminių ir (ar) pakuočių atliekų sutvarkymą **įrodantį dokumentą (-us)** (toliau – Įrodantis dokumentas) **pažeisdamas Gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų išrašymo tvarkos aprašo**, patvirtinto Lietuvos Respublikos aplinkos ministro 2013 m. gegužės 20 d. įsakymu Nr. D1-359 „Dėl Gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų išrašymo tvarkos aprašo patvirtinimo“, **reikalavimus** arba **nebeatitinka Atliekų tvarkymo įstatymo reikalavimų**, arba **pateikė klaidingus ir (ar) melagingus duomenis ir (ar) dokumentus**, AAD (Aplinkos apsaugos departamentą prie Aplinkos ministerijos (aut. pastaba) per 3 darbo dienas nuo minėtų aplinkybių nustatymo dienos raštu informuoja Agentūrą (Aplinkos apsaugos agentūrą- aut. pastaba)“ [7].

[5] „Lietuvos Respublikos atliekų tvarkymo įstatymas, Nr.VIII-787“. *supra note*, 3.

[6] „Lietuvos Respublikos atliekų tvarkymo įstatymas, Nr.VIII-787 (suvestinė redakcija 2019.03.01-2019.06.27)“, LRS, žiūrėta 2020 m. spalio 3 d., <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.59267/STROGYnXNS>.

[7] „Įsakymas „Dėl Turinčių teisę išrašyti gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančius dokumentus atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo patvirtinimo“, Nr.184“, LRS, žiūrėta 2019 m. rugsėjo 2 d., <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.210281/MkKGifwTuG>.

Lyginant Atliekų tvarkymo įstatymo 34<sup>31</sup> straipsnio 13 dalyje numatytus atvejus, kuomet atliekų tvarkytojai gali būti išpėjami apie jų išbraukimą iš Atliekų tvarkytojų sąrašo, su Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 17 punkte įtvirtintais [8], galima matyti, kad minimuose teisės aktuose **įtvirtinti atvejai, dėl kurių atliekų tvarkytojai gali būti išpėjami apie galimą jų išbraukimą iš Atliekų tvarkytojų sąrašo, nesutampa (1 pav.).**

Visų pirma, pasakytina, kad Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 17 punkte kalbama ne konkrečiai apie Atliekų tvarkymo įstatymo 34<sup>31</sup> str. nustatytus reikalavimus, kurių neatitikimas (ar nesilaikymas) gali sąlygoti išpėjimą apie galimą jų išbraukimą iš Atliekų tvarkytojų sąrašo, kaip kad yra skelbiama Atliekų tvarkymo įstatymo 34<sup>31</sup> str. 13 dalies 1 punkte, bet apskritai apie Atliekų tvarkymo įstatyme nustatytų reikalavimų nebeatitikimą. Nepaisant tokio, manytina, per daug abstrakčiai išdėstyto punkto (Atliekų tvarkymo įstatyme yra nustatyta daugybė reikalavimų atliekų tvarkytojams, todėl, manytina, yra būtina aiškiai ir nedviprasmiškai nurodyti, kokie Atliekų tvarkymo įstatyme įtvirtinti reikalavimai turimi omenyje, pateikiant arba nuorodą į atitinkamą Atliekų tvarkymo įstatymo skyrių, ar į konkretų straipsnį, arba bent detalizuojant Atliekų tvarkymo įstatymo reikalavimų pobūdį), Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 18 punkte, kuriame yra skelbiama, kad „Agentūra, gavusi informaciją, nurodytą Tvarkos aprašo 17 punkte, arba nustačiusi, kad Tvarkytojas **nebeatitinka Atliekų tvarkymo įstatymo reikalavimų, vadovaudamasi Atliekų tvarkymo**

---

[8] Papildomai akcentuotina, kad Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo III skyriaus, pavadinimu „**Išpėjimas** apie galimą išbraukimą iš Tvarkytojų sąrašo **ir išbraukimas** iš Tvarkytojų sąrašo“ nuostatos išdėstytos neaiškiai, t. y., aiškiai neišskiriant kokiais atvejais atliekų tvarkytojas galėtų gauti išpėjimą, o kokiais atvejais būti išbraukiamas, nes Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 18 punkte yra skelbiama, kad „Agentūra, gavusi informaciją, nurodytą Tvarkos aprašo 17 punkte, arba nustačiusi, kad Tvarkytojas **nebeatitinka Atliekų tvarkymo įstatymo reikalavimų, vadovaudamasi Atliekų tvarkymo įstatymo 34<sup>25</sup> straipsnio nuostatomis, įvertina, ar Tvarkytojas turi būti išpėtas apie galimą išbraukimą, ar turi būti išbrauktas iš Tvarkytojų sąrašo, ar pažeidimas yra mažareikšmis**“. Būtent dėl to, Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 17 punkte nurodyti atvejai galėtų būti siejami nebūtinai su išpėjimu apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo, bet ir su išbraukimu iš Atliekų tvarkytojų sąrašo, ar su mažareikšmiškumu, kurį nustačius atliekų tvarkytojas gali būti neįspėjamas arba neišbraukiamas iš Atliekų tvarkytojų sąrašo. Kita vertus, jeigu Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 17 punkto atvejus reikėtų vertinti ne tik per išpėjimo apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo, bet ir išbraukimo iš Atliekų tvarkytojų sąrašo ar mažareikšmiškumo prizmę, tokiu atveju, manytina, Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 17 punkte turėtų būti nurodyti ir kiti atvejai, išimtinai siejami su išbraukimu iš Atliekų tvarkytojų sąrašo ar mažareikšmiškumu, atvejai, tačiau jų nėra. Dar daugiau, tolesniuose Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo III skyriaus punktuose (21-28 punktai) išskiriamos nuostatos būtent dėl išbraukimo iš Atliekų tvarkytojų sąrašo ir atskirai nurodoma: (i) atvejai, kada atliekų tvarkytojas turėtų būti išbraukiamas iš Atliekų tvarkytojų sąrašo; (ii) taip pat kad Aplinkos apsaugos departamentas, nustatęs tuos konkrečiuose punktuose dėl atliekų tvarkytojo išbraukimo iš Atliekų tvarkytojų sąrašo nurodytus atvejus turi informuoti Aplinkos apsaugos agentūrą, kuri (iii) turi įvertinti atliekų tvarkytojo išbraukimo iš Atliekų tvarkytojų sąrašo pagrindą. Remiantis paminėtu, nepaisant to, kad 18 punkte yra nurodyta, kad 17 punkte nurodyti atvejai galimai vertintini ir per išbraukimo iš Atliekų tvarkytojų sąrašo ir mažareikšmiškumo atvejus, toliau straipsnyje 17 punkte nurodyti atvejai bus siejami tik su išpėjimu apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo ir nevertinami per išbraukimo iš Atliekų tvarkytojų sąrašo ir(ar) mažareikšmiškumo prizmę.

**įstatymo 34<sup>25</sup> straipsnio [9] nuostatomis, įvertina**, ar Tvarkytojas turi būti įspėtas apie galimą išbraukimą, ar turi būti išbrauktas iš Tvarkytojų sąrašo, ar pažeidimas yra mažareikšmis“ [10], jau nurodoma, kad neatitikimas Atliekų tvarkymo įstatyme nustatytiems reikalavimams įvertinamas vadovaujantis 34<sup>31</sup> str. nuostatomis, taigi, manytina, neperžengiant 34<sup>31</sup> straipsnyje suformuotų ribų, tame tarpe ir atvejų, kuomet atliekų tvarkytojams gali būti duodamas įspėjimas apie galimą jų išbraukimą iš Atliekų tvarkytojų sąrašo. Nepaisant to, per daug plataus pobūdžio nuostatos, pvz. „reikalinga atitikti Atliekų tvarkymo įstatyme nustatytus reikalavimus“, kurios nenurodo tikslinančių įstatymo skyrių ar straipsnių, arba bent jau reikalavimų pobūdžio, gali kelti daugybę nesusipratimų ir (ar) neaiškumų.

Atkreiptinas dėmesys ir į tai, kad Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 17 punkte yra išplečiamas ir kitas Atliekų tvarkymo įstatymo 34<sup>31</sup> str. 13 dalies 2 punkte įtvirtintas atvejis, kuomet atliekų tvarkytojus galima įspėti apie jų galimą jų išbraukimą iš Atliekų tvarkytojų sąrašo, t. y. kad Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 17 punkte numatoma, kad atliekų tvarkytojus galima įspėti apie galimą jų išbraukimą iš Atliekų tvarkytojų sąrašo, kai jie „pateikė klaidingus **ir (ar) melagingus** duomenis ir (ar) dokumentus“ [11], kai Atliekų tvarkymo įstatymas numato siauresnę nuostatą – „pateikė klaidingus duomenis ir (ar) dokumentus“ [12].

Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 17 punkte taip pat numatyta, kad atliekų tvarkytojai gali būti įspėjami apie galimą jų išbraukimą iš Atliekų tvarkytojų sąrašo, jeigu jie išrašė gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentus, pažeidžiant reikalavimus, numatytus Gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų išrašymo tvarkos apraše, patvirtintame Lietuvos Respublikos aplinkos ministro 2013 m. gegužės 20 d. įsakymu Nr. D1-359 „Dėl Gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų išrašymo tvarkos aprašo patvirtinimo“ (toliau – „Įrodančių dokumentų išrašymo tvarkos aprašas“). Atliekų tvarkymo įstatymo 34<sup>31</sup> str. 13 dalyje analogiškos nuostatos,

[9] Lietuvos Respublikos atliekų tvarkymo įstatymo redakcijoje, galiojusioje iki 2019 m. sausio 1 d., reikalavimai atliekų tvarkytojams, kurie išrašo gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančius dokumentus, buvo įtvirtinti 34<sup>25</sup> straipsnyje, todėl ankstesnėje nei 2019 m. sausio 1 d. teismų praktikoje ir net kai kuriuose dar nepatikslintuose teisės aktuose vis dar galima matyti nuorodas į 34<sup>25</sup> straipsnį (pvz., Lietuvos Respublikos aplinkos ministro įsakymu „Dėl turinčių teisę išrašyti gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančius dokumentus atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo patvirtinimo“ Nr.184 patvirtintame tvarkos apraše vis dar yra nuoroda į 34<sup>25</sup> straipsnį, o ne į 34<sup>31</sup> straipsnį).

[10] „Įsakymas „Dėl Turinčių teisę išrašyti gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančius dokumentus atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo patvirtinimo“, Nr.184“, *supra note*, 7.

[11] *Ibid*

[12] „Lietuvos Respublikos atliekų tvarkymo įstatymas, Nr.VIII-787“, *supra note*, 3.

numatančios kad atliekų tvarkytojai gali būti įspėjami apie galimą jų išbraukimą, jeigu jie išrašys gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančius dokumentus pažeidžiant Įrodančių dokumentų išrašymo tvarkos aprašą, nėra įtvirtinta. Iki 2019 m. birželio 27 dienos, kuomet, kaip minėta, dar galiojo siauresnio pobūdžio Atliekų tvarkymo įstatymo 34<sup>31</sup> straipsnio 13 dalies 2 punktas, Atliekų tvarkymo įstatyme numatytų atvejų, kuomet atliekų tvarkytojai galėjo būti įspėjami apie galimą jų išbraukimą iš atliekų tvarkytojų sąrašo net gi buvo įtvirtinta mažiau, nei Atliekų tvarkytojų sudarymo tvarkos apraše. Kita vertus, Atliekų tvarkymo įstatymo 34<sup>31</sup> str. 1 d. skelbiama, kad atliekų tvarkytojai (naudotojai (perdirbėjai), eksportuotojai, surinkėjai ar Mišrių komunalinių atliekų apdorotojai „išrašo gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančius dokumentus vadovaudamiesi aplinkos ministro nustatyta tvarka“ [13]. Tad iš esmės, vadovaujantis jau aptarto 34<sup>31</sup> str. 13 dalies 1 punktu, kuris numato, kad atliekų tvarkytojai gali būti įspėjami dėl jų išbraukimo iš Atliekų tvarkytojų sąrašo, jeigu jie nebeatitinka, **arba nebesilaiko** Atliekų tvarkymo įstatymo 34<sup>31</sup> str. reikalavimų, galima būtų teigti, kad Atliekų tvarkymo įstatymas netiesiogiai numato tokį patį aptariamą atvejį, kaip ir Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 17 punkte, t. y. atliekų tvarkytojai gali būti įspėjami apie galimą jų išbraukimą iš Atliekų tvarkytojų sąrašo, jeigu jie išrašė gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančius dokumentus, pažeidžiant reikalavimus, numatytus Įrodančių dokumentų išrašymo tvarkos apraše.

Naujausia iš jau aptartų nuostatų dėl įspėjimo apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo yra įtvirtinta Atliekų tvarkymo įstatymo 34<sup>31</sup> str. 13 dalies 2 punkte. Kaip minėta, atliekų tvarkytojai gali būti įspėjami apie jų išbraukimą iš Atliekų tvarkytojų sąrašo, jeigu „2) aplinkos apsaugos valstybinę kontrolę atliekančiai institucijai **nepateikė dokumentų**, patvirtinančių, kad gaminių ir (ar) pakuočių atliekos gautos ir sutvarkytos laikantis atliekų tvarkymą reglamentuojančių teisės aktų reikalavimų [...]“ [14]. Ši nuostata yra ne tik naujausia, bet ir labiausiai komplikauta iš paminėtų. Visų pirma, neaišku, apie kokių konkrečiai dokumentų nepateikimą aplinkos apsaugos valstybinę kontrolę atliekančiai institucijai turima omenyje, nėra pateikto tokių dokumentų sąrašo ne tik pačiame Atliekų tvarkymo įstatymo 34<sup>31</sup> straipsnyje, bet ir kituose Atliekų tvarkymo įstatymo straipsniuose, nėra tokio sąrašo ir poįstatyminiuose teisės aktuose. Ir nors ir preliminariai nurodoma, kad dokumentai turėtų **patvirtinti**, kad gaminių ir (ar) pakuočių atliekos gautos ir sutvarkytos **laikantis atliekų**

[13] „Lietuvos Respublikos atliekų tvarkymo įstatymas, Nr.VIII-787“, *supra note*, 3.

[14] *Ibid*

**tvarkymą reglamentuojančių teisės aktų**, tai neįveda aiškumo dėl turimų pateikti dokumentų, priešingai, kelia dar daugiau klausimų, kaip pvz. kada ir kokiais terminais dokumentus turėtų pateikti, ar atliekų tvarkytojai tai turėtų padaryti savarankiškai, iniciatyviai, ar gavus reikalavimą/ prašymą iš aplinkos apsaugos valstybinę kontrolę atliekančios institucijos, kada (pvz. vykdant planinį/neplaninį patikrinimą, ar bet kuriuo metu) ir koku būdu (pvz. kreipiantis raštu, ar žodžiu) toks reikalavimas/prašymas atliekų tvarkytojui gali būti pateikiamas. Dar daugiau, gaminių ir (ar) pakuočių atliekų tvarkymo sistemoje veikia ne vienas subjektas, kai kurie iš jų atlieka tik tam tikras ir (ar) dalines atliekų tvarkymo veiklas, kai kurie tas veiklas tik koordinuoja, tad jeigu aplinkos apsaugos valstybinę kontrolę atliekanti institucija reikalautų gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų iš vieno subjekto, kuris tų dokumentų nevaldo, o valdo kitas, dalinį atliekų tvarkymą atlikęs, ar tokiu atveju pirmojo subjekto negalėjimas pateikti reikalaujamų dokumentų, kuriuos valdo antrasis subjektas, bet tarkime pirmajam geranoriškai nepateikia, bus laikoma pagrindu įspėti pirmąjį subjektą apie galimą jo išbraukimą iš Atliekų tvarkytojų sąrašo, nes jis nepateikė dokumentų? Ši teorinė situacija kelia pagrįstą įsitikimą, kad dokumentų nepateikimas turėtų būti susijęs su tyčia taip elgtis. Beje, nesant dokumentų sąrašo, aplinkos apsaugos kontrolę vykdanči institucija subjektyviau jos požiūriu galėtų reikalauti ir tokių dokumentų, kurie galbūt jau būtų pertekliniai, tačiau šios aptariamos nuostatos prasme galimai sąlygotų atliekų tvarkytojų įspėjimą apie galimą jo išbraukimą iš Atliekų tvarkytojų sąrašo.

Kaip buvo minėta aukščiau, per daug plataus pobūdžio nuostatos, kaip pvz. „reikalinga atitikti Atliekų tvarkymo įstatyme nustatytus reikalavimus“, kurios nenurodo tikslinančių įstatymo skyrių ar straipsnių, arba bent jau reikalavimų pobūdžio, gali kelti daugybę nesusipratimų ir (ar) neiškumų. Aptariamoje Atliekų tvarkymo įstatymo 34<sup>31</sup> str. 13 dalies 2 punkto nuostatoje turimų pateikti dokumentų apimtis dar abstraktesnė, nes nurodo būtinybę laikytis net ne Atliekų tvarkymo įstatymo reikalavimų, o atliekų tvarkymą reglamentuojančių teisės aktų reikalavimų. Pažymėtina, kad atliekų tvarkymą reglamentuoja ne tik Lietuvos Respublikos, bet ir Europos Sąjungos teisės aktai, todėl, manytina, tokia nuostata yra ne tik per plačios taikymo apimties, bet ir yra neproporcinga siekiamiems tikslams.

Beje, Atliekų tvarkymo įstatymo 34<sup>31</sup> str. 14 dalyje nustatyta, kad „Atliekų tvarkytojų sąrašą sudaranti institucija (Aplinkos apsaugos agentūra-aut. pastaba), įspėdama [...] apie galimą jų išbraukimą iš Atliekų tvarkytojų sąrašo nurodo galimo išbraukimo iš Atliekų

tvarkytojų sąrašo priežastis ir terminą, per kurį jos turi būti pašalintos“ [15]. Iš Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 19 punkto nuostatų galime matyti, kad toks terminas negali viršyti vienerių metų [16]. Be to, akcentuotina ir tai, kad atliekų tvarkytojui, kuris buvo įspėtas apie galimą jo išbraukimą iš Atliekų tvarkytojų sąrašo dėl Atliekų tvarkymo įstatymo reikalavimų nesilaikymo ar neatitikimo, papildomai įspėjime nurodoma, kad **tokiu atveju jis nebegali išrašyti gaminių (ir) ar pakuočių atliekų sutvarkymą įrodančių dokumentų** [17].

Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 20 punkte taip pat skelbiama, kad „įspėjimas apie galimą išbraukimą iš Tvarkytojų sąrašo panaikinamas, jei per įspėjime nurodytą terminą pašalinami nurodyti pažeidimai ir Agentūrai pateikiami pažeidimų pašalinimą patvirtinantys dokumentai (įmonių, kurioms buvo išrašyti ir pripažinti negaliojančiais Įrodantys dokumentai, informavimą įrodantys dokumentai, dokumentai, įrodantys, kad pažeidimo pasekmės, kilusios dėl neteisėtai išrašytų Įrodančių dokumentų, yra pašalintos, sutartys ir **kiti dokumentai**)“ [18].

Turint omenyje Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 19 punktą, kuriame numatyta, kad nesilaikant Atliekų tvarkymo įstatyme nustatytų reikalavimų, taigi tame tarpe ir aptartos neaiškios 34<sup>31</sup> str. 13 dalies 2 punkto nuostatos, taip pat ir Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 20 punkto, kuriame numatytas preliminarus turimų pateikti dokumentų, patvirtinančių nurodytų pažeidimų pašalinimą, sąrašas, manytina, ateityje 34<sup>31</sup> str. 13 dalies 2 punkto nuostata gali sąlygoti ne vieną teisminį ginčą, kuris yra savaime užprogramuotas aptariamoms nuostatomis neaiškume.

---

[15] „Lietuvos Respublikos atliekų tvarkymo įstatymas, Nr.VIII-787“, *supra note*, 3.

[16] „Įsakymas ‚Dėl Turinčių teisę išrašyti gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančius dokumentus atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo patvirtinimo‘, Nr.184“, *supra note*, 7.

[17] *Ibid*

[18] *Ibid*

	Atliekų tvarkymo įstatyme įtvirtinti atvejai	Atliekų tvarkytojų sąrašo sudarymo tvarkos apraše įtvirtinti atvejai
1.	nebeatitinka ( <b>nebesilaiko</b> ) Atliekų tvarkymo įstatymo <b>34<sup>31</sup> str. nustatytų</b> reikalavimų.	nebeatitinka Atliekų tvarkymo įstatymo reikalavimų.
2.	pateikė klaidingus duomenis ir (ar) dokumentus.	pateikė klaidingus <b>ir (ar) melagingus</b> duomenis ir (ar) dokumentus
3.	Netiesiogiai atitinka pirmo stulpelio 1 eilutės atvejį.	<b>išrašė</b> gaminių ir (ar) pakuočių atliekų sutvarkymą įrodantį dokumentą (-us) (toliau – Įrodantis dokumentas) <b>pažeisdamas</b> Gaminių ir (ar) pakuočių atliekų sutvarkymą <b>įrodančių dokumentų išrašymo tvarkos aprašo</b> , patvirtinto Lietuvos Respublikos aplinkos ministro 2013 m. gegužės 20 d. įsakymu Nr. D1-359 „Dėl Gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų išrašymo tvarkos aprašo patvirtinimo“
4.	aplinkos apsaugos valstybinę kontrolę atliekančiai institucijai <b>nepateikė dokumentų</b> , patvirtinančių, kad gaminių ir (ar) pakuočių atliekos gautos ir <b>sutvarkytos</b> laikantis <b>atliekų tvarkymą reglamentuojančių teisės aktų reikalavimų</b> .	

**1 pav.** Atvejų, kuomet atliekų tvarkytojai gali būti įspėjami apie galimą jų išbraukimą iš Atliekų tvarkytojų sąrašo, įtvirtintų Atliekų tvarkymo įstatyme Atliekų tvarkytojų sąrašo sudarymo tvarkos apraše, palyginimas

(Šaltinis: sudaryta autoriaus, remiantis Atliekų tvarkymo įstatymo ir Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo nuostatomis )

## 2. TEISMŲ PRAKTIKOS DĖL ĮSPĖJIMO APIE GALIMĄ IŠBRAUKIMĄ IŠ TURINČIŲ TEISĘ IŠRAŠYTI GAMINIŲ IR (AR) PAKUOČIŲ ATLIEKŲ SUTVARKYMĄ ĮRODANČIUS DOKUMENTUS ATLIEKŲ TVARKYTOJŲ SĄRAŠO APŽVALGA

Atliekų tvarkytojai, gavę įspėjimą apie galimą jų išbraukimą iš Atliekų tvarkytojų sąrašo, remiantis Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 20 punktu, kuriame skelbiama, kad „įspėjimas apie galimą išbraukimą iš Tvarkytojų sąrašo panaikinamas, jei per įspėjime nurodytą terminą **pašalinami nurodyti pažeidimai** ir Agentūrai **pateikiami pažeidimų pašalinimą patvirtinantys dokumentai** (įmonių, kurioms buvo išrašyti ir pripažinti negaliojančiais Įrodantys dokumentai, informavimą įrodantys dokumentai, dokumentai, įrodantys, kad pažeidimo pasekmės, kilusios dėl neteisėtai išrašytų Įrodančių dokumentų, yra pašalintos, sutartys **ir kiti dokumentai**)“ [19], dar turi teorinę galimybę būti neišbrauktai iš

[19] „Įsakymas ‚Dėl Turinčių teisę išrašyti gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančius dokumentus atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo patvirtinimo‘, Nr.184“, *supra note*, 7.

Atliekų tvarkytojų sąrašo, jeigu per nustatytą terminą, kuris, kaip minėta, negali viršyti vienerių metų, pašalins nurodytus pažeidimus ir pateiks tai patvirtinančius dokumentus.

Atkreiptinas dėmesys ir į tai, kad, iš teismų praktikos galima matyti, kad būtent įspėjime apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo atliekų tvarkytojui detalizuotai nurodoma, kokius veiksmus jis turėtų atlikti, kad nebūtų išbrauktas iš Atliekų tvarkytojų sąrašo, t. y., pati kontroliuojanti institucija nurodo, ką atliekų tvarkytojas turi atlikti (kaip turėtų būti šalinami nurodyti pažeidimai), o ne tik laukia, kol iš atliekų tvarkytojo bus pateikti atitinkami dokumentai, Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 20 punkto prasme, t. y. faktinis kontroliuojančios institucijos veikimas yra aktyvus, nors tvarkos aprašo 20 punktas suformuotas taip, lyg iniciatyvos turėtų imtis pats atliekų tvarkytojas. Be abejo, neatmestina ir tai, kad toks teismų praktikoje matomas kontroliuojančios institucijos aktyvus veikimas, aiškiai nurodant, ką atliekų tvarkytojas turi atlikti, kad pažeidimai būtų pašalinti, gali būti labiau išimtinis, nei įprastinis.

Taigi, remiantis teismų praktika, įspėjime apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo atliekų tvarkytojui yra nurodoma [20]: 1) informuoti gamintojus ir importuotojus, kuriems panaikintų (pripažintų negaliojančiais) atliekų tvarkytojo išrašytų gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų pagrindu buvo išduoti patvirtinimai apie apmokestinamųjų gaminių ir pakuočių atliekų sutvarkymą, apie kontroliuojančios institucijos sprendimą (dėl įrodančių dokumentų panaikinimo), pateikti tai patvirtinančius dokumentus [21] / informuoti gamintojų ir importuotojų organizacijas, pateikti tai patvirtinančius dokumentus [22]; 2) informuoti atliekų tvarkytojus (surinkėjus arba Mišrių komunalinių atliekų apdorotojus), kuriems panaikintų (pripažintų negaliojančiais) atliekų tvarkytojo išrašytų gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų pagrindu buvo patvirtintas pakuočių atliekų panaudojimas (perdirbimas) ir (ar) eksportas perdirbimui, pateikti tai įrodančius dokumentus [23]; 3) imtis priemonių pažeidimo priežastims pašalinti ir pateikti priemones, kurių buvo imtasi

[20] Paminėtina, kad kadangi teismų praktikoje vyrauja administracinės bylos, susijusios su gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų panaikinimu, toliau nurodomi kontroliuojančios institucijos reikalavimai, pateikiami atliekų tvarkytojui įspėjime apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo, yra susiję būtent su neteisėtu gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų išrašymo pažeidimu.

[21] „Lietuvos vyriausiojo administracinio teismo 2016 m. gruodžio 7 d. nutartis administracinėje byloje Nr. eA-2268-525/2016“, Infoplex, žiūrėta 2020 m. rugsėjo 3 d., <https://www.infoplex.lt/tp/1387248>.

[22] „Lietuvos vyriausiojo administracinio teismo 2016 m. rugpjūčio 10 d. nutartis administracinėje byloje Nr. eAS-671-662/2016“, Infoplex, žiūrėta 2020 m. rugsėjo 3 d., <https://www.infoplex.lt/tp/1318887>.

„Panevėžio rūmų (Regionų apygardos administracinis teismas) 2018 m. vasario 12 d. sprendimas Nr. I-124-283/2018“, Infoplex, žiūrėta 2020 m. rugsėjo 6 d., <https://www.infoplex.lt/tp/1585413>.

[23] „Lietuvos vyriausiojo administracinio teismo 2016 m. gruodžio 7 d. nutartis administracinėje byloje Nr. eA-2268-525/2016“, *op cit.*

pažeidimo priežastims ir sąlygoms pašalinti, pateikti tai įrodančius dokumentus <sup>[24]</sup>; 4) pateikti dokumentus, įrodančius, kad pažeidimo pasekmės dėl neteisėtai išrašytų gaminių ir (ar) pakuočių atliekų sutvarkymą patvirtinančių dokumentų, kurių pagrindu gamintojams ir importuotojams buvo išrašyti patvirtinimai apie apmokestinamųjų gaminių ir (ar) pakuočių atliekų sutvarkymo užduočių įvykdymą, pašalintos <sup>[25]</sup>.

Atkreiptinas dėmesys į tai, kad priemonėmis, kurių buvo imtasi pažeidimo priežastims ir sąlygoms bei pažeidimo pasekmėms pašalinti, remiantis teismų praktika, galėtų būti laikoma: (i) padarytų nuostolių atlyginimas gamintojų ir importuotojų organizacijoms, kurios moka atliekų tvarkytojams už gaminių ir (ar) pakuočių atliekų tvarkymą <sup>[26]</sup> (arba dokumento, patvirtinančio, kad gamintojų ir importuotojų organizacijos neturi pretenzijų dėl neteisėtai išrašytų gaminių ir (ar) pakuočių sutvarkymą įrodančių dokumentų, gavimas <sup>[27]</sup>), (ii) darbuotojų su nustatytais pažeidimais supažindinimas ir jų įspėjimas, kad ateityje panašūs atvejai nepasikartotų <sup>[28]</sup>; (iii) taip pat atliekų sutvarkymo ataskaitos patikslinimas <sup>[29]</sup>.

Neįvykdžius įspėjime apie galimą atliekų tvarkytojo išbraukimą iš Atliekų tvarkytojų sąrašo nurodytų reikalavimų, sudaromas pagrindas kontroliuojančiai institucijai (Aplinkos apsaugos agentūrai) priimti sprendimą dėl atliekų tvarkytojo išbraukimo iš Atliekų tvarkytojų sąrašo.

Beje, paminėtina ir tai, kad Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo 20 punkte tarp skliausteliuose nurodomų tikslinančių atliekų tvarkytojų turimų pateikti pažeidimų pašalinimą patvirtinančių dokumentų nurodomi ir „**kiti dokumentai**“, bei tai, kad Lietuvos vyriausiojo administracinio teismo nagrinėtose bylose, kuriose buvo skundžiami gauti įspėjimai apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo, pareiškėjai nurodė, kad (i) „tvarkytojas išbraukiamas iš Sąrašo, kai, įspėjus apie galimą išbraukimą iš Sąrašo, per nustatytą terminą nepašalinami nurodyti pažeidimai, **susiję su atliekų tvarkymą patvirtinančių dokumentų**

<sup>[24]</sup> „Lietuvos vyriausiojo administracinio teismo 2016 m. gruodžio 7 d. nutartis administracinėje byloje Nr. eA-2268-525/2016“, *op cit.* „Lietuvos vyriausiojo administracinio teismo 2016 m. rugpjūčio 10 d. nutartis administracinėje byloje Nr. eAS-671-662/2016“, *op cit.*

<sup>[25]</sup> „Lietuvos vyriausiojo administracinio teismo 2016 m. gruodžio 7 d. nutartis administracinėje byloje Nr. eA-2268-525/2016“, *supra note*, 21. „Lietuvos vyriausiojo administracinio teismo 2016 m. rugpjūčio 10 d. nutartis administracinėje byloje Nr. eAS-671-662/2016“, *supra note*, 22.

<sup>[26]</sup> „Panevėžio rūmų (Regionų apygardos administracinis teismas) 2018 m. vasario 12 d. sprendimas Nr. I-124-283/2018“, *supra note*, 22.

<sup>[27]</sup> „Lietuvos vyriausiojo administracinio teismo 2016 m. rugpjūčio 10 d. nutartis administracinėje byloje Nr. eAS-671-662/2016“, *supra note*, 22.

<sup>[28]</sup> „Panevėžio rūmų (Regionų apygardos administracinis teismas) 2018 m. vasario 12 d. sprendimas Nr. I-124-283/2018“, *op cit.*

<sup>[29]</sup> *Ibid*

**išrašymu**, o ne atsakovo (kontroliuojančios institucijos – aut. pastaba) savo nuožiūra duoti pavedimai“ [30]; (ii) „pareiškėjas nurodytam įpareigojimui įvykdyti pateikė susitarimą, sudarytą su pakuočių tvarkymo organizacijomis, nuorašus. Kitaip įvykdyti nurodytą įpareigojimą nėra galima“ [31]. Tai suponuoja, kad kontroliuojanti institucija, veikdama aktyviai, iš atliekų tvarkytojo išpėjime apie galimą jo išbraukimą iš Atliekų tvarkytojų sąrašo gali pareikalauti ir perteklinių dokumentų, nesusijusių su atliktu (-ais) pažeidimu (-ais). Aktualu ir tai, kad aukščiau aptartų pažeidimo pasekmių pašalinimo priemonių įgyvendinimas, o būtent nuostolių atlyginimas ne visada yra lengvai įgyvendinamas. Štai vienoje Lietuvos vyriausiojo administracinio teismo nagrinėjote byloje pareiškėjas kėlė klausimą, kaip galima įvykdyti reikalavimą atlyginti nuostolius, jeigu jie dar neatsirado [32].

Aptarus teismų praktiką, susijusią būtent su galimais kontroliuojančios institucijos nurodymais (reikalavimais), pateikiamais atliekų tvarkytojui išpėjime apie galimą jo išbraukimą iš Atliekų tvarkytojų sąrašo, būtina pereiti prie teismų praktikos, kurioje buvo nagrinėjama, ar išpėjimas laikytinas savarankiška poveikio priemone.

Akcentuotina, kad iki Lietuvos Respublikos Konstitucinio Teismo 2017 m. gegužės 30 d. nutarimo, teismai administracinėse bylose atliekų tvarkytojų skundus dėl jiems duotų išpėjimų apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo atsisakydavo priimti ir teigdavo, kad Aplinkos apsaugos agentūros sprendimai dėl išpėjimo apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo: (i) yra tik tarpiniai dokumentai (tarpiniai administraciniai aktai), kurie materialinių teisinių pasekmių atliekų tvarkytojams nesukelia, tą gali padaryti tik procedūrą užbaigiantys galutiniai sprendimai dėl atliekų tvarkytojų išbraukimo / neišbraukimo iš Atliekų tvarkytojų sąrašo; (ii) kad pagal savo pobūdį ir paskirtį išpėjimas apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo nėra sankcija, o pranešimas atliekų tvarkytojui apie konkrečius nustatytus nukrypimus nuo privalomų įstatymų reikalavimų, kuriuos atliekų tvarkytojas turi ištaisyti per kontroliuojančios institucijos nurodytą terminą; (iii) priemonės tikslas- informuoti ūkio subjektą apie jo padarytus (daromus) teisės aktų pažeidimus, suteikiant jam galimybę

[30] „Lietuvos vyriausiojo administracinio teismo 2016 m. gruodžio 7 d. nutartis administracinėje byloje Nr. eA-2268-525/2016“, *op cit.*

[31] „Lietuvos vyriausiojo administracinio teismo 2016 m. spalio 25 d. nutartis administracinėje byloje Nr. eAS-659-556/2016“, Infollex, 25, žiūrėta 2020 m. rugsėjo 3 d., <https://www.infollex.lt/tp/1359540>.

[32] „Pareiškėjas taip pat pažymėjo, kad Aplinkos apsaugos agentūros reikalauja pašalinti „pažeidimo pasekmes“ – atlyginti nuostolius, kuriuos VŠĮ Pakuočių tvarkymo organizacija patyrė dėl VRAAD sprendimo, tačiau faktiškai nuostolius gali patirti ne ši organizacija, bet jos nariai – gamintojai ir importuotojai, tačiau nei vienas iš šių narių nėra sumokėjęs mokesčio už aplinkos teršimą pakuočių atliekomis, todėl nėra patyręs išlaidų“. „Lietuvos vyriausiojo administracinio teismo 2016 m. rugpjūčio 10 d. nutartis administracinėje byloje Nr. eAS-671-662/2016“, *supra note*, 22.

pašalinti pažeidimus per kontroliuojančios institucijos nustatytą terminą, įspėti apie pasekmes, kurios atliekų tvarkytojui kils, jei jis nepašalins pažeidimų per kontroliuojančios institucijos nustatytą terminą [33].

Tokia pati situacija buvo ir dėl gamintojų ir importuotojų organizacijų teikiamų skundų dėl įspėjimų apie jų turimų licencijų galiojimo sustabdymą, t. y. teismai administracinėse bylose atsisakydavo priimti gamintojų ir importuotojų skundus dėl tų pačių priežasčių, dėl kurių atsisakydavo priimti iš atliekų tvarkytojų, pvz. įspėjimas apie licencijos galiojimo sustabdymą nėra savarankiška sankcija [34], įspėjimas laikomas tarpiniu dokumentu, nesukeliančiu pareiškėjams teisinių pasekmių, įspėjimas, kaip atskiras dokumentas, pareiškėjo materialinei teisei padėčiai tiesioginės įtakos neturi [35].

Tačiau 2017 m. gegužės 30 d. Lietuvos Respublikos Konstitucinio Teismo nutarimu buvo suformuluota svarbi išimtis iš Lietuvos vyriausiojo administracinio teismo praktikos. Lietuvos Respublikos Konstitucinio Teismo 2017 m. gegužės 30 d. nutarime buvo išaiškinta, kad **įspėjimas yra savarankiška poveikio priemonė, kuri gali būti skundžiama teisme ir negali būti skiriama už mažareikšmius pažeidimus** [36]. Aišku, būtina paminėti ir tai, kad Lietuvos Respublikos Konstitucinio Teismo 2017 m. gegužės 30 d. nutarime buvo nagrinėta konkrečiai ne įspėjimų apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo, bet įspėjimų apie gamintojų ir importuotojų organizacijų licencijų sustabdymą, klausimai. Nepaisant to, po šio Lietuvos Respublikos Konstitucinio Teismo nutarimo atsirado ir tokios teisminės praktikos [37], kurioje skundai būtent dėl priimtų sprendimų įspėti apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo **buvo priimti nagrinėti**, motyvuojant, kad Lietuvos Respublikos Konstitucinio Teismo nutarimai yra privalomi visoms valdžios institucijoms [38], be abejo ir praktikos, kuri konkrečiai

[33] „Lietuvos vyriausiojo administracinio teismo 2016 m. sausio 6 d. nutartis administracinėje byloje Nr. eAS-18-146/2016“, Infoplex, žiūrėta 2019 m. rugsėjo 3 d., <https://www.infolex.lt/tp/1176565>; „Lietuvos vyriausiojo administracinio teismo 2016 m. kovo 9 d. nutartis administracinėje byloje Nr. eAS-238-556/2016“, Infoplex, žiūrėta 2019 m. rugsėjo 3 d., <https://www.infolex.lt/tp/1225656>; „Lietuvos vyriausiojo administracinio teismo 2016 m. spalio 25 d. nutartis administracinėje byloje Nr. eAS-659-556/2016“, *supra note*, 31. „Lietuvos vyriausiojo administracinio teismo 2016 m. rugpjūčio 10 d. nutartis administracinėje byloje Nr. eAS-671-662/2016“, *supra note*, 22.

[34] „Lietuvos vyriausiojo administracinio teismo 2013 m. spalio 16 d. nutartis administracinėje byloje Nr. AS-502-887-13“, Infoplex, žiūrėta 2020 m. rugsėjo 6 d., <https://www.infolex.lt/tp/731471>.

[35] „Lietuvos vyriausiojo administracinio teismo 2016 m. lapkričio 30 d. nutartis administracinėje byloje Nr. eAS-542-756/2016“, Infoplex, žiūrėta 2020 m. rugsėjo 3 d. <https://www.infolex.lt/tp/1383838>.

[36] „Lietuvos Respublikos Konstitucinio Teismo 2017 m. gegužės 30 d. nutarimas „Dėl pagrindo panaikinti atliekų tvarkymo organizavimo licencijos galiojimą“, Infoplex, žiūrėta 2020 m. rugsėjo 3 d., <https://www.infolex.lt/tp/1480719>.

[37] Pvz., „Lietuvos vyriausiojo administracinio teismo 2017 m. spalio 11 d. nutartis administracinėje byloje Nr. eAS-872-525/2017“, Infoplex, žiūrėta 2020 m. rugsėjo 3 d., <https://www.infolex.lt/tp/1530295>.

[38] *Ibid*

susijusi su gamintojų ir importuotojų organizacijoms duodamais įspėjimais dėl galimo jų turimų licencijų sustabdymo [39].

Į paminėtą Lietuvos Respublikos Konstitucinio Teismo nutarimą būtina atkreipti dėmesį ne tik dėl įspėjimo kaip savarankiškos poveikio priemonės pripažinimo, bet ir teisinio reglamentavimo, numatiusio, kad gamintojų ir importuotojų organizacijos „licencijos galiojimas panaikinamas: [...] 6) jeigu licencijos turėtojas **buvo įspėtas** apie galimą licencijos galiojimo sustabdymą **3 kartus per paskutinius dvejus metus**“ [40], būtinumo koreguoti, kad „būtų nustatytas (-i) aiškus (-ūs) licencijos galiojimo panaikinimo pagrindas (-ai)“ [41].

Akcentuotina Lietuvos Respublikos Konstitucinis Teismo 2017 m. gegužės 30 d. nutarime pateikiama pareiškėjo pozicija - „pagal šį ginčijamą teisinį reguliavimą leidžiama panaikinti licenciją ne tik trijų galiojančių įspėjimų, bet ir trijų paskirtų ir panaikintų įspėjimų (t. y. pašalintų pažeidimų) pagrindu“ [42]. Lietuvos Respublikos Konstitucinis Teismas atitinkamai pasisakė, kad: (i) „pagal ginčijamą teisinį reguliavimą licencijos galiojimas gali būti panaikintas **tik tais atvejais, kai prieš tai 2 paskirti įspėjimai buvo teisėti ir pagrįsti**, t. y. jie nebuvo panaikinti teismo sprendimu“ [43], bei nurodė, kad „kita vertus, trečias per dvejus metus gautas įspėjimas apie galimą licencijos galiojimo sustabdymą suponuoja visišką licencijuojamos veiklos nutraukimą (t. y. licencijos galiojimo panaikinimą) ir neatitinka savo paskirties, kuri, kaip minėta, yra įspėti apie galimą licencijos galiojimo sustabdymą, jeigu nebus pašalinti licencijas išduodančios institucijos nurodyti pažeidimai“ [44]. Atsižvelgiant į tai, kaip minėta, Lietuvos Respublikos Teismas konstatavo, kad teisinis reglamentavimas yra koreguotinas.

Būtina pažymėti, kad netrukus po Lietuvos Respublikos Konstitucinio Teismo 2017 m. gegužės 30 d. nutarimo, 2017 m. birželio 22 d. buvo parengtas Atliekų tvarkymo įstatymo Nr. VIII-787 pakeitimo įstatymo projektas, kuriuo, be kita ko, buvo panaikinta nuostata, numatanti, kad gamintojų ir importuotojų organizacijos turimos licencijos galiojimas panaikinamas, „6)

[39] „Lietuvos vyriausiojo administracinio teismo 2017 m. rugpjūčio 30 d. nutartis administracinėje byloje Nr. eAS-673-556/2017“, Infollex, žiūrėta 2020 m. rugsėjo 6 d., <https://www.infollex.lt/tp/1515956>. „Lietuvos vyriausiojo administracinio teismo 2018 m. balandžio 26 d. nutartis administracinėje byloje Nr. eA-510-624/2018“, 26, žiūrėta 2020 m. spalio 6 d., <https://www.infollex.lt/tp/1598619>.

[40] „Lietuvos Respublikos atliekų tvarkymo įstatymas, Nr. VIII-787 (suvestinė redakcija 2018.12.22-2018.12.31)“, LRS, žiūrėta 2020 m. spalio 8 d., <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.59267/SSuDCXJIJa>.

[41] „Lietuvos Respublikos Konstitucinio Teismo 2017 m. gegužės 30 d. nutarimas „Dėl pagrindo panaikinti atliekų tvarkymo organizavimo licencijos galiojimą“, *supra note*, 36.

[42] *Ibid*

[43] *Ibid*

[44] *Ibid*

jeigu licencijos turėtojas buvo įspėtas apie galimą licencijos galiojimo sustabdymą 3 kartus per paskutinius dvejus metus“ [45]. Parengtas projektas buvo priimtas ir įsigaliojo nuo 2019 m. sausio 1 d. [46] Beje, paminėtina ir tai, kad priėmus paminėtą Atliekų tvarkymo įstatymo pakeitimo įstatymo projektą, gaminių ir (ar) pakuočių atliekų tvarkymo organizavimo licencijavimo tvarka buvo įtvirtinta net 7 straipsniuose, nors iki tol licencijavimo tvarka buvo skelbiama tik vieninteliame Atliekų tvarkymo įstatymo 34<sup>23</sup> straipsnyje.

Tačiau akcentuotina ir tai, kad teisinis reglamentavimas būtent dėl įspėjimų apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo nebuvo pakeistas, nors ir, kaip gamintojų ir importuotojų organizacijos gautų 3 įspėjimų apie galimą licencijos sustabdymą per paskutinius dvejus metus atveju, atliekų tvarkytojas (naudotojas (perdirbėjas), eksportuotojas, surinkėjas ar Mišrių komunalinių atliekų apdorotojas) gali būti išbrauktas iš Atliekų tvarkytojų sąrašo, „jeigu [...] buvo įspėtas apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo **3 kartus per dvejus pastaruosius metus**“ [47]. Matyti, kad atliekų tvarkytojams iš esmės galioja analogiškos nuostatos, kurios anksčiau buvo taikomos gamintojų ir importuotojų organizacijoms, bet po Lietuvos Respublikos Konstitucinis Teismo 2017 m. gegužės 30 d. nutarimo buvo panaikintos.

Reikalinga atkreipti dėmesį ir į tai, kad kolektyviai vykdomoje gaminių ir (ar) pakuočių atliekų tvarkymo sistemoje, surinkėjo/mišrių komunalinių atliekų apdorotojo išrašyti gaminių ir (ar) pakuočių atliekų sutvarkymą įrodantys dokumentai gali būti panaikinti net ir nesant šių subjektų kaltės [48], pvz., a) naudotojas (perdirbėjas) neperdirba arba eksportuotojas ne eksportuoja perdirbimui jam surinkėjo/mišrių komunalinių atliekų apdorotojo perduotų atliekų, tačiau surinkėjui/mišrių komunalinių atliekų apdorotojui nurodo, kad tos atliekos buvo perdirbtos tvarkingai, pagal galiojančius teisės aktus, ir išrašo perdirbėjo/eksportuotojo įrodantį dokumentą surinkėjui/mišrių komunalinių atliekų apdorotojui; b) iš tikrųjų surinkėjo/mišrių komunalinių atliekų apdorotojo perduotas atliekas perdirba arba eksportuoja perdirbimui, bet neįvykdo formalių reikalavimų [49]. Abejais nurodytais atvejais, pasitikėdamas tokiu

[45] „Atliekų tvarkymo įstatymo Nr. VIII-787 pakeitimo įstatymo projekto Nr.XIIP-4355(2) lyginamasis variantas“, LRS, žiūrėta 2020 m. spalio 5 d., <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/8dfa5fb0572211e78869ae36ddd5784f?jfwid=-h1kfoo9ai>.

[46] „Lietuvos Respublikos atliekų tvarkymo įstatymo Nr. VIII-787 pakeitimo įstatymas Nr. XIII-615“, LRS, žiūrėta 2020 m. spalio 5 d., <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/6221db63679a11e7aefae747e4b63286>.

[47] „Lietuvos Respublikos atliekų tvarkymo įstatymas, Nr. VIII-787“, *supra note*, 3.

[48] Manytina, tokia atsakomybė gali būti taikoma dėl to, kad 2008 m. lapkričio 19 d. Europos Parlamento ir Tarybos direktyvos 2008/98/EB dėl atliekų ir panaikinanti kai kurias direktyvas 8 straipsnyje įtvirtinta didesnė gamintojo atsakomybė perkeliama ir faktiškai gamintojų ir importuotojų pareigas, kylančias iš didesnės gamintojo atsakomybės principo, įgyvendinantiems atliekų tvarkytojams.

[49] Pvz., Lietuvos vyriausiojo administracinio teismo nagrinėta byla dėl eksportuotojo išrašytų gaminių atliekų sutvarkymą įrodančių dokumentų pripažinimo neteisėtais net ir turint faktinį perdirbimą pagrindžiančius

naudotojo(perdirbėjo)/eksportuotojo išrašytu įrodančiu dokumentu, surinkėjas/ mišrių komunalinių atliekų apdorotojas išrašo gamintojų ir importuotojų organizacijai gaminių ir (ar) pakuočių atliekų sutvarkymą įrodantį dokumentą [50]. Tačiau išaiškėjus, kad naudotojo (perdirbėjo)/eksportuotojo išrašytas gaminių ir (ar) pakuočių atliekų sutvarkymo įrodantis dokumentas išrašytas neteisėtai (net ir tuo atveju, kai faktinis perdirbimas atliktas, tik neįvykdyti formalūs reikalavimai), **jis yra naikinimas, kuo remiantis yra naikinamas ir surinkėjo/mišrių komunalinių atliekų apdorotojo išrašytas įrodantis dokumentas gamintojų ir importuotojų organizacijai**. Būtent Įrodančių dokumentų išrašymo tvarkos aprašo 53 punkte ir skelbiama, kad „jei atliekų surinkėjai, naudotojai (perdirbėjai), eksportuotojai ir (ar) mišrių komunalinių atliekų apdorotojai išrašė dokumentus, rūšiuotojai ar laikytojai išrašė susiejančius paliudijimus pažeisdami bent vieną iš Apraše nurodytų reikalavimų, laikoma, kad dokumentai, susiejantys paliudijimai ir patvirtinimai, įskaitant išrašytus remiantis pažeidžiant minėtus reikalavimus išrašytais dokumentais ir (ar) susiejančias paliudijimais, išrašyti neteisėtai“ [51].

Dėl to, kad įspėjimą apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo atliekų tvarkytojai (minėtieji surinkėjai ir mišrių komunalinių atliekų apdorotojai) gali gauti net ir tuo atveju, kai jie savo veiklą vykdo tinkamai, nepažeidžiant teisės aktuose nustatytų reikalavimų, yra itin svarbu, kad teisinis reglamentavimas dėl įspėjimo apie galimą išbraukimą ir išbraukimo iš Atliekų tvarkytojų sąrašo būtų aiškus.

## IŠVADOS

Atliekų tvarkymo įstatymo ir Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo nuostatos dėl atvejų, kuomet atliekų tvarkytojui gali būti duodamas įspėjimas apie galimą jo išbraukimą iš Atliekų tvarkytojų sąrašo yra ne tik nesutampančios, bet ir keliančios daugybę klausimų. Tame tarpe, nuo 2019 m. birželio 28 dienos įsigaliojusiame Atliekų tvarkymo įstatymo 34<sup>31</sup> straipsnio 13 dalies 2 punkte, numačius, kad atliekų tvarkytojas gali būti įspėtas

---

dokumentus, kadangi teisės aktų nustatyta tvarka eksportuotojas prieš tris dienas nepranešdavo kontroliuojančiai institucijai apie turimus vykdyti tų gaminių atliekų vežimus Latvijos Respublikoje veiklą vykdančiam perdirbėjui. „Lietuvos vyriausiojo administracinio teismo 2018 m. balandžio 12 d. nutartis administracinėje byloje Nr. eA-2845-602/2018“, žiūrėta 2018 m. spalio 3 d., <https://www.infollex.lt/tp/1596715>.

[50] Česnaitytė, „Gaminių ir (ar) pakuočių atliekų sutvarkymo įrodančių dokumentų išrašymo teisinio reglamentavimo ypatumai ir probleminiai aspektai“, *supra note*, 2: 42.

[51] „Dėl Gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų išrašymo tvarkos aprašo patvirtinimo, Nr.D1-359“, TAR, žiūrėta 2020 m. rugsėjo 3 d., <https://www.e-tar.lt/portal/lt/legalAct/TAR.10B40EB12B50/pziVnTovqz>.

apie galimą jo išbraukimą iš Atliekų tvarkytojų sąrašo dėl to, kad aplinkos apsaugos valstybinę kontrolę atliekančiai institucijai nepateikė dokumentų, patvirtinančių, kad gaminių ir (ar) pakuočių atliekos gautos ir sutvarkytos laikantis atliekų tvarkymą reglamentuojančių teisės aktų reikalavimų, nei Atliekų tvarkymo įstatyme, nei poįstatyminiuose aktuose, nebuvo patikslinta, nei kokie dokumentai turėtų būti pateikiami, nei kada (ar patikrinimo, ar bet kuriuo metu), nei koku būdu (kreipiantis raštu ar kitais būdais) jie turėtų būti pateikiami, ypač turint omenyje, kad atliekų tvarkymą reglamentuojančių teisės aktų apibrėžtis yra itin didelė (atliekų tvarkymas reglamentuojamas ne tik Lietuvos Respublikos, bet ir Europos Sąjungos teisės aktais). Atsižvelgiant į tai, siūlytina suvienodinti Atliekų tvarkymo įstatymo ir Atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo nuostatas ir įtvirtinti aiškius pagrindus, kada atliekų tvarkytojai gali būti įspėjami apie galimą jų išbraukimą iš Atliekų tvarkytojų sąrašo, tame tarpe patikslinti Atliekų tvarkymo įstatyme įtvirtintą nuostatą, numatančią, kad atliekų tvarkytojas gali būti įspėjamas apie galimą jo išbraukimą iš Atliekų tvarkytojų sąrašo, jeigu nepateikė dokumentų, patvirtinančių, kad gaminių ir (ar) pakuočių atliekos gautos ir sutvarkytos laikantis atliekų tvarkymą reglamentuojančių teisės aktų.

Įspėjimo apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo nuostatos turi būti aiškios ir proporcingos siekiamiems tikslams, nes įspėjimas yra pripažintinas savarankiška poveikio priemone, kuri gali būti skundžiama teisme ir negali būti skiriama už mažareikšmius pažeidimus.

Atsižvelgiant į tai, kad po 2017 m. gegužės 30 d. Lietuvos Respublikos Konstitucinio Teismo nutarimo, buvo pakeistas teisinis reglamentavimas, panaikinant Atliekų tvarkymo įstatymo nuostatą, numatančią, kad gamintojų ir importuotojų organizacijos licencija gali būti panaikinama, jeigu licencijos turėtojas buvo 3 kartus įspėtas apie galimą licencijos sustabdymą per paskutinius dvejus metus, bei tai, kad kai kuriais atvejais įspėjimas apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo atliekų tvarkytojui gali būti duodamas be jo kaltės, taip pat į tai, kad remiantis 2017 m. gegužės 30 d. nutarime pateikiamu Lietuvos Respublikos Konstitucinio Teismo išaiškinimu, trečiasis įspėjimas apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo nors ir savo esme turėtų įspėti atliekų tvarkytoją, tačiau dėl galiojančių nuostatų, reiškia savaiminį išbraukimą iš Atliekų tvarkytojų sąrašo, siūlytina taip pat panaikinti Atliekų tvarkymo įstatymo nuostatą, numatančią, kad atliekų tvarkytojai gali būti išbraukiami iš Atliekų tvarkytojų sąrašo, gavę 3 įspėjimus apie galimą jų išbraukimą iš Atliekų tvarkytojų sąrašo per dvejus pastaruosius metus. Dar daugiau, siūlytina Atliekų tvarkymo įstatyme numatyti

reikalavimus atliekų tvarkytojams, kurie išrašo gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančius dokumentus numatyti daugiau nei viename Atliekų tvarkymo įstatymo 34<sup>31</sup> straipsnyje, kuriame yra numatyta daugybė nuostatų susijusių su Atliekų tvarkytojų sąrašu, o išskirti pagal nuostatų specifiką ir siekiamus reguliuoti procesus (pvz. viename straipsnyje numatyti įrašymo į Atliekų tvarkytojų sąrašą reikalavimus, kitame įspėjimo apie galimą išbraukimą iš Atliekų tvarkytojų sąrašo atvejus, trečiame išbraukimo iš Atliekų tvarkytojų sąrašo aiškius pagrindus ir t.t.).

## LITERATŪRA

1. TAR. „Lietuvos Respublikos mokesčio už aplinkos teršimą įstatymas, Nr.VIII-1183“. Žiūrėta 2020 m. rugsėjo 4 d. <https://www.e-tar.lt/portal/lt/legalAct/TAR.FFF9AE9162EE/wURCGnshVm>.
2. TAR. „Lietuvos Respublikos atliekų tvarkymo įstatymas, Nr.VIII-787“. Žiūrėta 2020 m. rugsėjo 10 d. <https://www.e-tar.lt/portal/lt/legalActEditions/TAR.8D38517814F1>.
3. LRS. „Lietuvos Respublikos atliekų tvarkymo įstatymas, Nr.VIII-787 (suvestinė redakcija 2018.12.22-2018.12.31)“. Žiūrėta 2020 m. spalio 8 d. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.59267/SSuDCXJIJa>.
4. LRS. „Lietuvos Respublikos atliekų tvarkymo įstatymas, Nr.VIII-787 (suvestinė redakcija 2019.03.01-2019.06.27)“. Žiūrėta 2020 m. spalio 3 d. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.59267/STROGYnXNS>.
5. LRS. „Atliekų tvarkymo įstatymo Nr. VIII-787 pakeitimo įstatymo projekto Nr.XIIP-4355(2) lyginamasis variantas“. Žiūrėta 2020 m. spalio 5 d. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/8dfa5fb0572211e78869ae36ddd5784f?jfwid=-h1kfoo9ai>.
6. LRS. „Lietuvos Respublikos atliekų tvarkymo įstatymo Nr. VIII-787 pakeitimo įstatymas Nr. XIII-615“. Žiūrėta 2020 m. spalio 5 d. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/6221db63679a11e7aefae747e4b63286>.
7. LRS. „Įsakymas „Dėl Turinčių teisę išrašyti gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančius dokumentus atliekų tvarkytojų sąrašo sudarymo tvarkos aprašo patvirtinimo“, Nr.184“. Žiūrėta 2019 m. rugsėjo 2 d. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.210281/MkKGifwTuG>.
8. TAR. „Dėl Gaminių ir (ar) pakuočių atliekų sutvarkymą įrodančių dokumentų išrašymo tvarkos aprašo patvirtinimo, Nr.D1-359“. Žiūrėta 2020 m. rugsėjo 3 d. <https://www.e-tar.lt/portal/lt/legalAct/TAR.10B40EB12B50/pziVnTovqz>.
9. Infolex. „Lietuvos Respublikos Konstitucinio Teismo 2017 m. gegužės 30 d. nutarimas „Dėl pagrindo panaikinti atliekų tvarkymo organizavimo licencijos galiojimą“. Žiūrėta 2020 m. rugsėjo 3 d. <https://www.infolex.lt/tp/1480719>.
10. Infolex. „Lietuvos vyriausiojo administracinio teismo 2013 m. spalio 16 d. nutartis administracinėje byloje Nr. AS-502-887-13“. Žiūrėta 2020 m. rugsėjo 6 d. <https://www.infolex.lt/tp/731471>.
11. Infolex. „Lietuvos vyriausiojo administracinio teismo 2016 m. gruodžio 7 d. nutartis administracinėje byloje Nr. eA-2268-525/2016“. Žiūrėta 2020 m. rugsėjo 3 d. <https://www.infolex.lt/tp/1387248>.
12. Infolex. „Lietuvos vyriausiojo administracinio teismo 2016 m. kovo 9 d. nutartis administracinėje byloje Nr. eAS-238-556/2016“. Žiūrėta 2020 m. rugsėjo 3 d. <https://www.infolex.lt/tp/1225656>.

13. Infolex. „Lietuvos vyriausiojo administracinio teismo 2016 m. lapkričio 30 d. nutartis administracinėje byloje Nr. eAS-542-756/2016“. Žiūrėta 2020 m. rugsėjo 3 d. <https://www.infolex.lt/tp/1383838>.
14. Infolex. „Lietuvos vyriausiojo administracinio teismo 2016 m. rugpjūčio 10 d. nutartis administracinėje byloje Nr. eAS-671-662/2016“. Žiūrėta 2020 m. rugsėjo 3 d. <https://www.infolex.lt/tp/1318887>.
15. Infolex. „Lietuvos vyriausiojo administracinio teismo 2016 m. sausio 6 d. nutartis administracinėje byloje Nr. eAS-18-146/2016“. Žiūrėta 2020 m. rugsėjo 3 d. <https://www.infolex.lt/tp/1176565>.
16. Infolex. „Lietuvos vyriausiojo administracinio teismo 2016 m. spalio 25 d. nutartis administracinėje byloje Nr. eAS-659-556/2016“. Žiūrėta 2020 m. rugsėjo 3 d. <https://www.infolex.lt/tp/1359540>.
17. Infolex. „Lietuvos vyriausiojo administracinio teismo 2017 m. rugpjūčio 30 d. nutartis administracinėje byloje Nr. eAS-673-556/2017“. Žiūrėta 2020 m. rugsėjo 6 d. <https://www.infolex.lt/tp/1515956>.
18. Infolex. „Lietuvos vyriausiojo administracinio teismo 2017 m. spalio 11 d. nutartis administracinėje byloje Nr. eAS-872-525/2017“. Žiūrėta 2020 m. rugsėjo 3 d. <https://www.infolex.lt/tp/1530295>.
19. „Lietuvos vyriausiojo administracinio teismo 2018 m. balandžio 12 d. nutartis administracinėje byloje Nr. eA-2845-602/2018“. Žiūrėta 2018 m. spalio 3 d. <https://www.infolex.lt/tp/1596715>.
20. Infolex. „Lietuvos vyriausiojo administracinio teismo 2018 m. balandžio 26 d. nutartis administracinėje byloje Nr. eA-510-624/2018“. Žiūrėta 2020 m. rugsėjo 6 d. <https://www.infolex.lt/tp/1598619>.
21. Infolex. „Panevėžio rūmų (Regionų apygardos administracinis teismas) 2018 m. vasario 12 d. sprendimas Nr. I-124-283/2018“. Žiūrėta 2020 m. rugsėjo 6 d. <https://www.infolex.lt/tp/1585413>.
22. Česnaitytė, Greta. „Gaminių ir (ar) pakuočių atliekų sutvarkymo įrodančių dokumentų išrašymo teisinio reglamentavimo ypatumai ir probleminiai aspektai“. *Public Security and Public Order*, 23 (2019): 33–50.

**WARNING ABOUT POSSIBLE EXCLUSION FROM THE LIST OF WASTE MANAGERS ENTITLED TO ISSUE DOCUMENTS PROVING THE MANAGEMENT OF PRODUCT AND/OR PACKAGING WASTE AS AN INDEPENDENT SANCTION**

**Greta Česnaitytė**

Mykolas Romeris University Law School, Public Law Institute

**Summary**

The article, mainly based on the method of data and document analysis, and other, e.g. comparative, linguistic, logical and summative approaches, examines the cases provided for in the Law on Waste Management of the Republic of Lithuania and the secondary legislation in which the waste manager may be warned of its possible exclusion from the list of waste managers entitled to issue documents proving the management of product and/or packaging waste (hereinafter - the List of waste managers), reviews the case law on the content and possible implementation of the requirements of the controlling authority in the warning on the possible exclusion of waste managers from the List of waste managers, also emphasizes the ruling of the Constitutional Court of the Republic of Lithuania, which concluded that a warning

---

about possible suspension of a producer and importer organization license is also an independent sanction that can be challenged in court and cannot be imposed for minor violations.

Taking into account the ruling of the Constitutional Court of the Republic of Lithuania and the subsequent amendment to the Law on Waste Management of the Republic of Lithuania, repealing the provision that producers' and importers' licenses may be revoked if the licensee has been warned 3 times of a possible suspension of the license in the last two years, it was concluded that the still applied substantially analogous provisions providing for the exclusion of waste managers from the List of waste managers after receiving 3 warnings of their possible exclusion from the List of waste managers in the last two years should also be abolished by providing for a clear legal framework on the grounds for exclusion from the List of waste managers (cases where waste managers may be excluded from the List of waste managers). Other proposals for the improvement of legal regulation have been submitted.

**Keywords:** list of waste managers entitled to issue documents proving the management of product and/or packaging waste (List of waste managers), warning of possible exclusion from the List of waste managers, packaging waste, waste managers, sanction

---

## NAUJOSIOS VIEŠOJO ADMINISTRAVIMO TEISINIO REGULIAVIMO NUOSTATOS

Ieva Deviatnikovaitė

*Mykolo Romerio universitetas  
Ateities g. 20, LT-08303 Vilnius  
Telefonas 8605 21988  
El. paštas [ieva@mruni.eu](mailto:ieva@mruni.eu)*

DOI: 10.13165/PSPO-20-25-05

---

**Anotacija.** Pirmąkart Lietuvoje Viešojo administravimo įstatymas buvo priimtas 1999 m. Iki tol tokio teisės akto Lietuvos teisės sistemoje nebuvo. Tiesa, tarpukario Lietuvoje buvo ruošiami Administracijos santvarkos įstatymo projektai, tačiau tokio teisės akto nespėta priimti<sup>1</sup>. 1999 m. birželio 27 d. priimtas Viešojo administravimo įstatymas buvo ne kartą keistas, tikslintos viešojo administravimo sritys, viešojo administravimo subjektų sistema, viešojo administravimo, administracinio sprendimo sampratos ir t.t. Praėjus dvidešimčiai metų buvo apsispręsta priimti naują Viešojo administravimo įstatymo redakciją. Tokį apsisprendimą nulėmė praktikoje kylantys nesusipratimai, vertinant atliekamų valstybės ir savivaldybių institucijų, įmonių, viešųjų įstaigų funkcijų pobūdį, noras išgryninti viešojo administravimo turinį, viešojo administravimo, administracinio reglamentavimo, viešųjų paslaugų bei kitas sąvokas, taip pat siekis atsisakyti perteklinio teisinio reglamentavimo.

**Pagrindinės sąvokos:** Viešojo administravimo įstatymas, viešojo administravimo subjektai, viešojo administravimo sritys.

### ĮVADAS

2020 m. lapkričio 1 d. įsigaliojo nauja Lietuvos Respublikos viešojo administravimo įstatymo (toliau – Viešojo administravimo įstatymas arba Įstatymas) redakcija<sup>2</sup>. Remiantis Viešojo administravimo įstatymo Nr. VIII-1234 pakeitimo įstatymo aiškinamuoju raštu<sup>3</sup> (toliau – Aiškinamasis raštas), parengti naująją Įstatymo redakciją nulėmusios priežastys buvo Valstybės kontrolės 2017 – 2018 metais atliktas valstybinis auditas su ataskaitomis, kuriose buvo rekomenduojama parengti Viešojo administravimo įstatymo pakeitimo projektą. Šios ataskaitos buvo susijusios su valstybės ir savivaldybių dalyvavimu valdant viešąsias įstaigas, su sprendimais dėl administracinių ir viešųjų paslaugų teikimo pertvarka, su žmoniškųjų

---

<sup>1</sup> Apie tai plačiau: Deviatnikovaitė, I. (2020). Vyriausybės darbo reglamentas tarpukario Lietuvoje: ar toks teisės aktas galiojo? *Jurisprudencija*, 27 1 (2020), 6-30.

<sup>2</sup> Lietuvos Respublikos viešojo administravimo įstatymas, TAR (2020-06-11, Nr. 12819).

<sup>3</sup> Lietuvos Respublikos viešojo administravimo įstatymo Nr. VIII-1234 pakeitimo įstatymo, Lietuvos Respublikos teisės gauti informaciją iš valstybės ir savivaldybių institucijų ir įstaigų įstatymo Nr. VIII-1524 12 ir 18 straipsnių pakeitimo, 13, 14 ir 15 straipsnių pripažinimo netekusiais galios įstatymo ir Lietuvos Respublikos valstybės tarnybos įstatymo Nr. VIII-1316 2 straipsnio pakeitimo įstatymo projektų aiškinamasis raštas, TAR (2019-11-06, Nr. 17762).

išteklų valdymu viešojo administravimo institucijose, su Lietuvos verslo priežiūros sistemos efektyvinimu, nustatant Lietuvos Respublikos ekonomikos ir inovacijų ministerijai platesnius įgaliojimus verslo priežiūros politikos srityje.

Naująją Viešojo administravimo įstatymo redakcija buvo siekiama tobulinti viešojo sektoriaus įstaigų valdymą, išgryninti viešojo administravimo turinį ir mastą, patikslinti viešojo administravimo, administracinio reglamentavimo, viešųjų paslaugų sąvokas, nustatyti viešąsias paslaugas teikiančių institucijų kompetenciją (pareigas), iškristalizuoti reikalavimus administraciniams sprendimams, atsisakyti perteklinio prašymų pateikimo ir nagrinėjimo reglamentavimo, atnaujinti ūkio subjektų veiklos priežiūros teisinį reglamentavimą.

Mokslinio tyrimo tikslas – išnagrinėti naujas teisinio reguliavimo nuostatas, lyginant jas su iki 2020 m. lapkričio 1 d. galiojusia Viešojo administravimo įstatymo redakcija. Tikslui pasiekti keliami tyrimo uždaviniai – išanalizuoti naujai jame suformuluotas sąvokas, viešojo administravimo subjektų sistemą, pristatyti viešojo administravimo įgaliojimų suteikimo naujoves, viešojo administravimo sričių turinį, administraciniam sprendimui keliamus reikalavimus, įvardyti esminius ūkio subjektų veiklos priežiūros pakeitimus.

Atliekant tyrimą buvo taikomi dokumentų analizės, deskriptyvus, loginis, apibendrinimo ir kiti mokslinių tyrimų metodai.

## **VIEŠOJO ADMINISTRAVIMO ĮSTATYMO DEFINICINĖS NORMOS IR JŲ KAITA**

Viešojo administravimo įstatyme atsisakyta kai kurių definicinių normų, kurios buvo įtvirtintos Viešojo administravimo įstatymo redakcijoje, galiojusioje iki 2020 m. lapkričio 1 d., pavyzdžiui, “viešojo administravimo institucija”, “viešojo administravimo įstaiga” (vartojant vieną terminą „viešojo administravimo subjektas“), “administracinis aktas”, “individualus administracinis aktas“, „pareigūnas“, “asmuo” ir kitų. Taip buvo padaryta, nes praktika parodė, kad viešojo administravimo subjektų skirstymas į viešojo administravimo institucijas ir įstaigas yra beprasmis, sąvokos „administracinis aktas“, „individualus administracinis aktas“ yra administracinės teisės doktrinos sąvokos, sąvoka „pareigūnas“ yra apibrėžiama Lietuvos valstybės tarnybą reglamentuojančiuose teisės aktuose, o sąvoka „asmuo“ nustatyta Lietuvos Respublikos administracinių bylų teisenos įstatyme<sup>4</sup> ir t.t.

Naujos redakcijos įstatyme įtvirtintos ir naujos sąvokos, pavyzdžiui, „licencija“, „poveikio priemonė“. Kai kurios sąvokos buvo suformuluotos kitaip nei anksčiau galiojusioje

<sup>4</sup> Lietuvos Respublikos administracinių bylų teisenos įstatymas, Valstybės žinios (1999-02-03, Nr. 13-308).

Įstatymo redakcijoje, pavyzdžiui, „administracinis reglamentavimas“, kuris reiškia įstatymų ir kitų norminių teisės aktų projektų rengimą bei norminių administracinių aktų priėmimą, „administracinis sprendimas“, kuris nuo šiolei siejamas tik su individualiais administraciniais aktais, įskaitant ir administracinės procedūros sprendimą, „administracinės paslaugos“, atsisakant į jų sampratą įtraukti asmenų konsultavimą viešojo administravimo subjekto kompetencijos klausimais, viešojo administravimo subjekto informacijos teikimą asmenims, administracinės procedūros vykdymą. Norminio administracinio akto samprata taip pat buvo patobulinta, įtraukiant į ją oficialioje administracinėje doktrinoje iškristalizuotus norminiams administraciniams aktams būdingus bruožus ir įvardijant šį aktą daugkartinio taikymo aktu.

Definicinėse normose buvo atsisakyta perteklinių žodžių, pavyzdžiui, ūkio subjektų veiklos patikrinimas apibrėžtas, nedetalizuojant ūkio subjektų veiklos patikrinimo veiksmų (ūkio subjekto dokumentų, darbų patikrinimas, tyrimas, inspektavimas, dokumentų poėmis), ūkio subjekto veiklos priežiūra apibūdinta, neįvardijant konkrečios priežiūros veiklos (teikti metodinę pagalbą ūkio subjektams, prižiūrėti, kaip ūkio subjektai laikosi įstatymuose ir kituose teisės aktuose nustatytų reikalavimų, kontroliuoti, ar tinkamai tuos reikalavimus vykdo, ir įgyvendinti kitas priemones). Definicinės normos buvo sutrumpintos, nes jos yra detalizuojamos atitinkamuose Viešojo administravimo įstatymo skyriuose.

Kai kuriose Viešojo administravimo įstatymo sąvokose išvelgtinos naujovės, pavyzdžiui, viešoji paslauga įvardyta tokia veikla, kuria sukuriama valstybės ar savivaldybių garantuojama ir visuomenės nariams vienodai prieinama nauda, atsisakant konkretizuoti šių paslaugų teikimo sritis (socialines, švietimo, mokslo, kultūros, sporto). Į viešojo administravimo subjekto sąvoką įtrauktas specialų statusą turintis fizinis asmuo, įgaliotas atlikti viešąjį administravimą ir t.t.

## **VIEŠOJO ADMINISTRAVIMO SUBJEKTŲ SISTEMA**

Naujos redakcijos įstatyme viešojo administravimo subjektai yra suprantami kaip kolegialios institucijos, valstybės, savivaldybės biudžetinės įstaigos, asociacijos, valstybės, savivaldybių įmonės, viešosios įstaigos, kurių savininkas ar dalininkas yra valstybė ar savivaldybė, valstybės politikai, pareigūnai, valstybės tarnautojai, įstatymų nustatytas specialų statusą turintys fiziniai ar juridiniai asmenys, įstatymų nustatyta tvarka įgalioti atlikti viešąjį administravimą.

Pagal Viešojo administravimo įstatymo 4 straipsnį, viešojo administravimo subjektų sistemą sudaro valstybinio, regioninio ir savivaldybių administravimo subjektai. Iki 2020 m.

lapkričio 1 d. viešojo administravimo subjektų sistemą sudarė valstybinio ir savivaldybių administravimo subjektai.

Taigi, viešojo administravimo subjektų sistema buvo papildyta dar vienu viešojo administravimo subjektų lygmeniu – regionų plėtros tarybomis kaip atskirą juridinio asmens statusą turinčiais subjektais. Atskirą juridinio asmens statusą turinčius regioninio administravimo subjektų steigimą paskatino, pasak šios idėjos autorių<sup>5</sup>, noras padidinti regionų plėtros tarybų vaidmenį, veiklos efektyvumą įgyvendinant nacionalinę regioninę politiką, padidinti nacionalinę regioninę politiką įgyvendinančių subjektų veiklos efektyvumą administruojant ir panaudojant Europos Sąjungos finansinę paramą šios paramos 2014-2020 metų programavimo laikotarpiu. Regionų plėtros tarybos – pelno nesiekiantis ribotos civilinės atsakomybės viešasis juridinis asmuo, steigiamas ne mažiau kaip  $\frac{3}{4}$  savivaldybių, priklausančių vienos apskrities teritorijai.

Viešojo administravimo įstatyme, apibrėžiant valstybinio administravimo subjektus, jiems priskirti ir Lietuvos bankas, ir Lietuvos kariuomenė. Anksčiau galiojusioje redakcijoje tokių nuostatų nebuvo.

## VIEŠOJO ADMINISTRAVIMO ĮGALIOJIMŲ SUTEIKIMAS

Naujos redakcijos Viešojo administravimo įstatyme buvo patikslintos viešojo administravimo įgaliojimų suteikimo nuostatos, įtvirtintos Įstatymo 5 straipsnyje. Tuo norėta apriboti valstybės ar savivaldybių įmonėms suteikiamus viešojo administravimo įgaliojimus, t. y. jos gali priimti administracinius sprendimus ir teikti administracines paslaugas, tačiau negali priimti norminių administracinių aktų, rengti įstatymų, kitų norminių teisės aktų projektų, administruoti viešųjų paslaugų teikimo bei atlikti teisės aktų ir administracinių sprendimų įgyvendinimo ir laikymosi priežiūros.

Aiškinamajame rašte akcentuota, kad valstybės ar savivaldybių įmonių darbuotojams, atliekantiems viešojo administravimo veiklą ir dirbantiems pagal darbo sutartis, turi būti taikomi Lietuvos Respublikos valstybės tarnybos įstatyme nepriekaištingos reputacijos ir vadovo nustatyti kvalifikaciniai reikalavimai.

Įdomu ir tai, kad nuo 2020 m. lapkričio 1 d. asociacijoms yra suteikti įgaliojimai atlikti funkcijas visose viešojo administravimo srityse. Tačiau tai galima daryti tik esant dviem

---

<sup>5</sup> Lietuvos Respublikos regioninės plėtros įstatymo VIII-1889 pakeitimo įstatymo projekto aiškinamasis raštas. [Interaktyvus]. [žiūrėta 2020-10-11] <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/ca74f630d02f11e39b2ab5bbcc4f49fb?jfwid=181171j686>>.

---

sąlygoms: pirma, asociacijų veiklą turi reglamentuoti atskiri įstatymai, antra, asociacijų viešojo administravimo įgaliojimai turi būti tiesiogiai susiję su tokių asociacijų veiklos tikslais.

## VIEŠOJO ADMINISTRAVIMO SRITYS

Viešojo administravimo įstatymo 6 straipsnyje yra nustatytos viešojo administravimo sritys. Lyginant su iki 2020 m. lapkričio 1 d. galiojusia Įstatymo redakcija, iš viešojo administravimo sričių spektro panaikintas vidaus administravimas, kaip viešojo administravimo sritis, bei pavaldžių subjektų kontrolė. Pastebėtina, kad naujos redakcijos Viešojo administravimo įstatyme buvo pakoreguota administracinių paslaugų apimtis, į kurią nebeįtrauktas asmenų konsultavimas, informacijos teikimas ir administracinės procedūros vykdymas.

Tačiau Įstatymas papildytas 7 straipsniu, nustatantis veiklą, kuri privalomai vykdoma visuose viešojo administravimo subjektuose, t. y. teikti asmenims įstatymų nustatytą viešojo administravimo subjekto turimą informaciją, konsultuoti asmenis viešojo administravimo subjekto kompetencijos klausimais, vykdyti administracinę procedūrą (tai, kas anksčiau buvo priskirta prie administracinių paslaugų, kaip viešojo administravimo srities), atlikti viešojo administravimo subjekto vidaus administravimą.

Taigi, Įstatyme yra išgrynintos viešojo administravimo sritys, atsisakant vidaus administravimo bei kai kurių anksčiau galiojusioje redakcijoje funkcijų, laikytų administracinėmis paslaugomis.

Aiškinamajame rašte pabrėžta, kad tikslą išgryninti viešojo administravimo sritis ir veiklas nulėmė praktikoje kylantys nesusipratimai vertinant, ar tam tikros teisinės formos subjektas pagal savo veiklos pobūdį laikytinas viešojo administravimo subjektu. Taigi, Įstatymo 7 straipsnyje įtvirtintos veiklos pačios savaime nėra laikytinos viešuoju administravimu. Tai reiškia, kad jas gali atlikti ne valstybės tarnautojai, o darbuotojai, netgi privataus sektoriaus subjektai. Tai taip pat reiškia, kad nuo 2020 m. lapkričio 1 d. asmenys, priimami į pareigas atlikti vidaus administravimo, informacijos teikimo, konsultavimo, administracinės procedūros vykdymo funkcijų, nebeturės valstybės tarnautojo statuso, nebent jiems, pagal pareigybės aprašymą, bus priskirti ir viešojo administravimo įgaliojimai.

---

## ADMINISTRACINIS SPRENDIMAS

Minėta, kad Viešojo administravimo įstatyme nebevertojama sąvoka „individualus administracinis aktas“, vietoje jos – „administracinis sprendimas“. Aiškinamajame rašte pabrėžiama, kad administraciniai sprendimai (t. y. teisės normų taikymo aktai) gali būti priimami asmens prašymo, skundo pagrindu arba paties viešojo administravimo subjekto iniciatyva. Pabrėžtina, kad nuo 2020 m. lapkričio 1 d. sąvoka „administracinis sprendimas“ apima ir administracinės procedūros sprendimo institutą.

Kaip ir anksčiau galiojusioje, taip ir naujai įsigaliojusioje Viešojo administravimo įstatymo redakcijoje yra reglamentuojami reikalavimai administraciniam sprendimui. Tačiau tai daroma išskiriant administracinio sprendimo dalis – įžanginę (administracinio sprendimo data, administraciniam sprendimui suteiktas registracijos numeris), aprašomąją (atliekamas tvarkomasis veiksmas arba asmenims nustatytos teisės, pareigos, nurodomas administracinio sprendimo teisinis, faktinis pagrindas), motyvuojamąją (pateikiami administracinio sprendimo motyvai, kuriais viešojo administravimo subjektas grindžia savo sprendimą), rezoliucinę (formuluojamas viešojo administravimo sprendimas). Taip pat Įstatymo 6 straipsnyje įtvirtinta, kad turi būti nustatyta administracinio sprendimo apskundimo tvarka, sprendimą priėmusio asmens vardas, pavardė, pareigos. Administracinis sprendimas turi būti pasirašytas jį priėmusio asmens.

Iš esmės visi šie reikalavimai nesiskiria nuo anksčiau galiojusio Viešojo administravimo įstatymo 8 straipsnio, įtvirtinusio reikalavimus individualiems administraciniam aktams, išskyrus tai, kad nebeliko normos, reglamentuojančios tai, kad individualiame administraciniame akte turi būti aiškiai suformuluotos nustatytos arba suteikiamos teisės ir pareigos. Manytina, kad šios normos atsisakymas nėra geras sprendimas, nes praktikoje kyla nemažai ginčų dėl to, kad administracinio sprendimo turinys nėra pakankamai aiškus jo adresatui. Antai ir oficialioje administracinėje doktrinoje pabrėžiama, kad administraciniai aktai, sukeltys teisines pasekmes, turi būti pagrįsti, teisėti, aiškūs ir suprantami<sup>6</sup>.

Naujoje Viešojo administravimo įstatymo redakcijoje palikti tie patys administracinio sprendimo priėmimo terminai – administracinis sprendimas turi būti priimamas per dvidešimt darbo dienų nuo prašymo ar skundo gavimo, iškilus reikalui pratęsiant šį terminą ne ilgiau kaip dešimčiai darbo dienų. Tačiau yra prailgintas asmeniui pranešimo apie termino pratęsimą dienų

---

<sup>6</sup> Pavyzdžiui, Lietuvos vyriausiojo administracinio teismo 2015 m. kovo 9 d. sprendimas administracinėje byloje Nr. A-650-556/2015.

skaičius – vietoje dviejų darbo dienų asmeniui apie administracinio sprendimo priėmimo termino pratęsimą turi būti pranešta per penkias darbo dienas. Kaip ir anksčiau galiojusioje, taip ir naujai įsigaliojusioje Įstatymo redakcijoje yra paliktas tas pats administracinio sprendimo įteikimo (paskelbimo) terminas – asmeniui, pateikusiam prašymą ar skundą, apie priimtą sprendimą turi būti pranešama ne vėliau kaip per tris darbo dienas nuo administracinio sprendimo priėmimo dienos.

Viešojo administravimo įstatymo 14 straipsnyje, skirtingai nuo anksčiau galiojusios šio įstatymo redakcijos, įtvirtinta, kad administracinis sprendimas gali būti apskųstas viešojo administravimo subjektui arba aukštesniam pagal pavaldumą viešojo administravimo subjektui, išankstinio ginčų nagrinėjimo ne teismo tvarka institucijai, administraciniam teismui.

Viešojo administravimo įstatymo 15 straipsnyje kiek kitaip nei anksčiau galiojusioje Įstatymo redakcijoje yra įvardytos administracinio sprendimo klaidos – rašymo apsirikimai, aiškios aritmetinės klaidos. Anksčiau galiojusios Įstatymo redakcijos 35 straipsnyje klaidomis buvo įvardytos skaičiavimo, spausdinimo, faktinių duomenų neatitikimo ar kitos techninės klaidos.

Viešojo administravimo įstatymo 16 straipsnyje reglamentuojamas administracinio sprendimo pripažinimo netekusiu galios institutas, kai viešojo administravimo subjektas gali pripažinti netekusiu galios savo arba žemesnio pagal pavaldumą viešojo administravimo subjekto priimtą administracinį sprendimą. Toks veiksmas gali būti atliktas priėmus neteisėtą administracinį sprendimą, taip pat teisėtą administracinį sprendimą, jeigu jo pripažinimas netekusiu galios yra leidžiamas pagal kitus įstatymus arba jeigu administracinis sprendimas yra sąlyginis ir per nustatytą laikotarpį asmuo nustatytų sąlygų neįvykdo, pavyzdžiui, sprendimas sustabdyti licencijos galiojimą. Norma dėl administracinio sprendimo pripažinimo netekusiu galios iš viešojo administravimo subjektų pareikalaus aukštos teisinės kvalifikacijos, nes nuo šiolei valstybės tarnautojai turės labai aiškiai identifikuoti akto teisėtumo reikšmę, t. y. administracinio sprendimo teisinio, faktinio pagrindų, motyvų, piktnaudžiavimo valdžia, diskrecijos aspektus.

## **PRAŠYMAI IR SKUNDAI**

Naująja Viešojo administravimo įstatymo redakcija atsisakyta perteklinio prašymų pateikimo ir nagrinėjimo reglamentavimo. Asmenų prašymus ir skundus viešojo administravimo subjektai nagrinėja, remdamiesi Vyriausybės patvirtintomis taisyklėmis.

Aiškinamajame rašte akcentuojama, kad Viešojo administravimo įstatyme reglamentuojamos tik materialinės normos, susijusios su dokumentų pateikimo būdais ir prašymų ar skundų nenagrinėjimo pagrindais, o Lietuvos Respublikos teisės gauti informaciją iš valstybės ir savivaldybių institucijų ir įstaigų įstatyme<sup>7</sup> įtvirtinti blanketinę normą, nurodančią į Viešojo administravimo įstatymą.

Paminėsime keletą naujovių, remdamiesi Vyriausybės nutarimo projektu (toliau – projektas), registruotu 2020 m. rugsėjo 29 d.<sup>8</sup> Pagal projektą, prašymas ar skundas nebeprivalo būti asmens pasirašytas, tačiau prašyme ar skunde turi būti fizinio asmens vardas, pavardė, gimimo data, kontaktiniai ir kiti duomenys, jeigu kreipiasi juridiniai asmenys, tuomet turi būti nurodyta informacija, numatyta Lietuvos Respublikos civilinio kodekso 2.44 straipsnio 1 dalyje.

Asmenų aptarnavimas, pagal projektą, turėtų būti vykdomas laikantis vidaus reikalų ministro patvirtintu pavyzdinio klientų aptarnavimo standartu.

Pagal projektą, asmuo prašymą ar skundą teikiantis institucijai elektroninėje erdvėje, galės jį teikti oficialiose institucijos naudojamose elektroninėse priemonėse, kurios nurodytos institucijos interneto svetainės pradžios tinklalapyje. Tai gali reikšti, kad ilgainiui prašymai ar skundai gali būti teikiami per, pavyzdžiui, facebook ar kitus socialinius tinklus.

Pagal Vyriausybės nutarimo projektą, oficialiuose duomenyse apie viešojo administravimo subjektą turi būti nurodomos ir kitos kalbos, kuriomis ši institucija gali aptarnauti asmenis, nemokančius valstybinės kalbos.

## **TEISĖS AKTŲ IR ADMINISTRACINIŲ SPRENDIMŲ ĮGYVENDINIMO IR LAIKYMO SI PRIEŽIŪRA**

Viešojo administravimo įstatymo 18 straipsnio 1 dalyje plačiau atskleidžiamas teisės aktų ir administracinių sprendimų įgyvendinimo ir laikymosi priežiūros turinys, apimantis teisės aktų reglamentuotos veiklos ir administracinių sprendimų įgyvendinimo ir laikymosi stebėseną, patikrinimus, vertinimą bei viešojo administravimo subjektų vykdomą poveikio priemonių

<sup>7</sup> Lietuvos Respublikos teisės gauti informaciją iš valstybės ir savivaldybių institucijų ir įstaigų įstatymas, Valstybės žinios (2000-02-02, Nr. 10-236). Blanketinė norma įtvirtinta šio įstatymo 1 straipsnio 4 dalyje.

<sup>8</sup> Dėl Lietuvos Respublikos Vyriausybės 2007 m. rugpjūčio 22 d. nutarimo Nr. 875 „Dėl prašymų ir skundų nagrinėjimo ir asmenų aptarnavimo viešojo administravimo subjektuose taisyklių patvirtinimo“ pakeitimo. Registracijos Nr. 20-9626 (2). Straipsnio rašymo metu projektas nebuvo patvirtintas, buvo rengiamas naujas projektas.

---

taikymą už teisės aktų reglamentuotos veiklos ir administracinių sprendimų įgyvendinimo ir laikymosi pažeidimus.

Įstatymo 18 straipsnio 2 dalyje nustatyta, kad teisės aktų ir administracinių sprendimų įgyvendinimo ir laikymosi priežiūra viešuoju administravimu laikoma tik tada, kai aukščiau nurodytų veiklų vykdymas yra užtikrinamas jas vykdančiam viešojo administravimo subjektui suteiktais įgaliojimais duoti teisės aktų nustatytus privalomus vykdyti nurodymus nepavaldiems asmenims. Aiškinamajame rašte akcentuota, kad sudedamąsias priežiūros dalis (stebėseną, patikrinimus) gali atlikti ir viešojo administravimo įgaliojimų neturintys asmenys, kuriems nesuteiktos sankcijų skyrimo galimybės, nes stebėseną, tikrinimą, pasak Viešojo administravimo įstatymo projektų rengėjų, jokių privalomų nurodymų, keičiančių ar nustatančių asmenims teises ir pareigas, neapima. Tokia Įstatymo projekto rengėjų nuostata kelia abejonių – ar galima atlikti tikrinimą be privalomų nurodymų davimo tikrinimo objektui.

## ADMINISTRACINĖS PASLAUGOS

Lyginant su anksčiau galiojusia Viešojo administravimo įstatymo redakcija, naujai įsigaliojusioje Įstatymo redakcijoje susiaurintas administracinių paslaugų turinys, paliekant keturias administracines paslaugas, galinčias tiesiogiai daryti įtaką asmenų teisėms ir pareigoms ir vykdomos tik viešojo administravimo įgaliojimus turinčių subjektų. Pirma, teisės aktų nustatytų dokumentų, kurių turėjimas patvirtina viešojo administravimo subjekto suteikiamos teisės įgijimą, išdavimas, pavyzdžiui, licencijos, leidimai. Antra, teisės aktų nustatytų dokumentų išdavimas su valstybės registruose, informacinėse sistemose, archyvuose ar paties viešojo administravimo subjekto turima informacija. Trečia, viešojo administravimo subjektams teikiamų dokumentų ar informacijos priėmimas, pavyzdžiui, deklaracijų priėmimas ir tvarkymas. Ketvirta, teisės aktų nustatytos informacijos registravimas valstybės registruose ar valstybės informacinėse sistemose asmens prašymu.

Kaip minėta, informacijos teikimas, asmenų konsultavimas, administracinės procedūros vykdymas nuo šiolei nebėra laikomi administracinėmis paslaugomis, o šias funkcijas gali atlikti nebūtinai viešojo administravimo įgaliojimus turintys subjektai.

Anksčiau galiojusioje Įstatymo redakcijoje buvo įtvirtinta, kad administracinių paslaugų aprašymai turi būti atnaujinami kartą per tris mėnesius, o naujai įsigaliojusioje Įstatymo redakcijoje nustatyta, kad administracinių paslaugų teikimo aprašymai turi būti peržiūrėti ir prireikus atnaujinami ne vėliau kaip per dvidešimt darbo dienų.

---

## VIEŠŪJŲ PASLAUGŲ TEIKIMO ADMINISTRAVIMAS

Aiškinamajame rašte tvirtinama, kad naująja Viešojo administravimo įstatymo redakcija buvo siekiama įtvirtinti tobulesnį viešųjų paslaugų teikimo administravimo modelį. Tai buvo padaryta paskirstant viešųjų paslaugų administravimo kompetenciją tarp centrinių, teritorinių ir savivaldybių viešojo administravimo subjektų (Įstatymo 20 straipsnio 1-3 dalys) ir išsamiau apibrėžiant viešojo administravimo subjekto, kuriam bus pavesta administruoti viešųjų paslaugų teikimą, kompetenciją (Įstatymo 20 straipsnio 4 dalis), t. y. konkrečiai nustatyta, kokius veiksmus turi atlikti viešojo administravimo subjektai, administruojantys viešųjų paslaugų teikimą: norminiais administraciniais aktais nustatyti viešosios paslaugos teikimo tvarką, atlikti asmenų, teikiančių administruojamą viešąją paslaugą, atranką, organizuoti viešosios paslaugos teikėjo priežiūrą, nustatyti viešosios paslaugos kokybės reikalavimus ar rodiklius, numatyti tikslus, orientuotus į administruojamų viešųjų paslaugų teikimo kokybės gerinimą, sudaryti administruojamų viešųjų paslaugų sąrašą ir t.t.

Anksčiau galiojusioje Viešojo administravimo įstatymo redakcijoje tokios detalios viešojo administravimo subjektų kompetencijos nebuvo nustatyta, išskyrus tai, kad administruojantys viešąsias paslaugas viešojo administravimo subjektai buvo įgalioti steigti viešąsias įstaigas arba išduoti leidimus teikti viešąsias paslaugas kitiems asmenims, taip pat prižiūrėti ir kontroliuoti viešųjų paslaugų teikimą.

## ŪKIO SUBJEKTŲ VEIKLOS PRIEŽIŪRA

Viešojo administravimo įstatymo IV skyriuje yra reglamentuojamas licencijavimas ir ūkio subjektų veiklos priežiūra. Šiame skyriuje neįžvelgtinos išskirtinės ar fundamentalios naujovės, išskyrus tai, kad prie ūkio subjektų veiklos neplaninio patikrinimo, kaip viena iš sąlygų, Įstatymo 33 straipsnio 12 dalies 3 punkte įvardijamas anoniminis skundas dėl konkretaus ūkio subjektų veiksmų ar neveikimo. Tačiau tai nereiškia, kad visais atvejais yra nustatyta būtinybė reaguoti į anoniminius skundus. Reaguoti būtina, jei įvertinus turimą informaciją, kyla įtarimų, kad ūkio subjekto veikla gali kelti grėsmę teisės normų saugomoms vertybėms. Be to, Įstatymo 11 straipsnio 3 dalyje yra nustatyti prašymų ir skundų nenagrinėjimo pagrindai, kurie, manytina, taikytini ir anoniminiams skundams dėl konkrečių ūkio subjektų veiksmų ar neveikimo.

---

Remiantis neoficialiomis žiniomis, Lietuvos Respublikos ekonomikos ir inovacijų ministerijai yra iškelta užduotis 2021 metais parengti atskirą įstatymą, reglamentuojantį ūkio subjektų veiklos priežiūrą.

## IŠVADOS

Viešojo administravimo įstatymas, kuris daugelyje valstybių įvardijamas administracinių procedūrų įstatymu arba viešojo administravimo proceso įstatymu, yra vienas svarbiausių teisės aktų viešojo administravimo subjektų veikloje. Nors 2020 m. lapkričio 1 d. įsigaliojo nauja Viešojo administravimo įstatymo redakcija, tačiau esminių pokyčių, lyginant su prieš tai galiojusia Įstatymo redakcija, nėra. Nėra įtvirtintas administracinių sutarčių institutas, nepakankamai detalai reglamentuojamas administracinių sprendimų priėmimo procesas, proceso dalyvių teisės ir pareigos, atstovavimo institutas, apsaugos nuo viešojo administravimo subjektų neveikimo, niekinio sprendimo, tarpinių sprendimų ir kiti institutai. Paprastai Vakarų ir Centrinės Europos valstybėse (Portugalija, Ispanija, Prancūzija, Vokietija, Čekija, Slovakija) viešąjį administravimą reglamentuojantys teisės aktai savo apimtimi primena civilinio ar baudžiamojo proceso kodeksus, ir yra sudaryti iš kelių šimtų straipsnių. Lietuvos Viešojo administravimo įstatymą sudaro lakoniškai suformuluoti keturiasdešimt straipsnių. Tai reiškia, kad daugelis administracinės teisės šakos institutų Lietuvoje apskritai nėra reglamentuojami ir apie juos galima sužinoti tik iš administracinės doktrinos arba administracinių teismų jurisprudencijos.

Vienas ryškiausių naujojo viešojo administravimo teisinio reguliavimo pasikeitimų yra tas, kad buvo išgrynintos viešojo administravimo sritys, atsisakant vidaus administravimo, kaip viešojo administravimo srities, bei susiaurinant administracinių paslaugų apimtį, išskiriant iš jų informacijos teikimą, konsultavimą ir administracinės procedūros vykdymą. Tai taip pat reiškia, kad valstybės tarnautojo statusą turinčių asmenų Lietuvoje gali ilgainiui sumažėti, kadangi asmenys, atliekantys vidaus administravimo funkcijas, teikiantys informaciją, konsultuojantys bei vykdantys administracinę procedūrą, nebebus laikomi viešojo administravimo įgaliojimus turinčiais subjektais, nebent šalia šių funkcijų jiems bus priskirtos administracinio reglamentavimo ar administracinių sprendimų priėmimo, priežiūros, administracinių paslaugų teikimo, ar viešųjų paslaugų teikimo administravimo funkcijos.

Viešojo administravimo įstatyme yra ir tam tikrų prieštaravimų, pavyzdžiui, viena iš administracinių paslaugų (o tai reiškia viešojo administravimo įgaliojimus) yra viešojo

administravimo subjekto veiksmai išduodant teisės aktų nustatytus dokumentus su valstybės registruose, valstybės informacinėse sistemose, archyvuose ar paties viešojo administravimo subjekto turima informacija. Tuo tarpu, remiantis Aiškinamuoju raštu, skundų nagrinėjimas gali būti atliekamas ir viešojo administravimo įgaliojimų neturinčio asmens. Taigi, gali susidaryti paradoksali situacija, kuomet, pavyzdžiui, statybos leidimo kopijos išdavimas bus laikomas viešuoju administravimu, o skundo nagrinėjimas, reikalaujantis aukštos teisinės kvalifikacijos, nustatant teisinį, faktinį pagrindus, juridinių faktų visetą, būtiną teisės normai taikyti, nebus laikomas viešojo administravimo veikla ir galės būti atliekamas ne viešojo administravimo subjekto, bet darbuotojo statusą turinčio asmens.

Viešojo administravimo subjektų sistema buvo papildyta dar vienu viešojo administravimo subjektų lygmeniu – regioninio administravimo subjektais. Tai sprendimas, keliantis diskusijų dėl jo reikalingumo, nes vienas iš tokių subjektų steigimo priežasčių buvo padidinti nacionalinę regioninę politiką įgyvendinančių subjektų veiklos efektyvumą administruojant ir panaudojant Europos Sąjungos finansinę paramą šios paramos 2014-2020 metų programavimo laikotarpiu. Ar dėl tokio laikino tikslo, situacijos buvo prasminga keisti teisinį reguliavimą ir paprastą bei aiškią iki 2020 m. lapkričio 1 d. galiojusią Lietuvoje viešojo administravimo subjektų sistemą, turint omenyje vieną iš teisės doktrinoje vyraujančių teisėkūros principų – norminis teisės aktas turi būti bendrojo pobūdžio, t.y. juo negalima reguliuoti vienintelį įvykį, situaciją.

Ryškėja tendencija viešojo administravimo subjektams aptarnauti asmenis, jei jie nemoka valstybinės kalbos, kitomis kalbomis. Tai kelianti diskusijų tendencija, prieštaraujanti Lietuvos Respublikos valstybinės kalbos įstatymo 7 straipsniui, reglamentuojančiam, kad valstybės ir savivaldos institucijų, įstaigų ir organizacijų, ryšių, transporto, sveikatos ir socialinės apsaugos, policijos ir teisėsaugos tarnybų, prekybos ir kitų gyventojų aptarnavimo įstaigų vadovai turi užtikrinti, kad gyventojai būtų aptarnaujami valstybine kalba.

Viešojo administravimo įstatyme nustatytas teisinis reguliavimas dėl ūkio subjektų veiklos priežiūros nesprenžia šio administracinės teisės instituto komplikotumo, pasižyminčio specialiuju įstatymu, poįstatyminių, „minkštosios“ teisės aktų (gairių, vadovų) gausa. Pats kontrolės procesas, procesinių dokumentų priėmimo procesas nėra iškristalizuotas ir aiškus. Visi šie dalykai yra reglamentuojami skirtinguose teisės aktuose, kuriuos priima skirtingi teisėkūros subjektai. Manytina, atskiro kontrolės įstatymo rengimas yra būtina priemonė, norinti išgryninti ūkio subjektų veiklos priežiūros institutą Lietuvoje.

---

## LITERATŪRA

1. Deviatnikovaitė, I. (2020). Vyriausybės darbo reglamentas tarpukario Lietuvoje: ar toks teisės aktas galiojo? *Jurisprudencija*, 27 1 (2020), 6-30.
2. Lietuvos Respublikos administracinių bylų teisenos įstatymas, *Valstybės žinios* (1999-02-03, Nr. 13-308).
3. Lietuvos Respublikos teisės gauti informaciją iš valstybės ir savivaldybių institucijų ir įstaigų įstatymas, *Valstybės žinios* (2000-02-02, Nr. 10-236).
4. Lietuvos Respublikos viešojo administravimo įstatymas, *TAR* (2020-06-11, Nr. 12819).
5. Lietuvos Respublikos viešojo administravimo įstatymo Nr. VIII-1234 pakeitimo įstatymo, Lietuvos Respublikos teisės gauti informaciją iš valstybės ir savivaldybių institucijų ir įstaigų įstatymo Nr. VIII-1524 12 ir 18 straipsnių pakeitimo, 13, 14 ir 15 straipsnių pripažinimo netekusiais galios įstatymo ir Lietuvos Respublikos valstybės tarnybos įstatymo Nr. VIII-1316 2 straipsnio pakeitimo įstatymo projektų aiškinamasis raštas (*TAR*, 2019-11-06, Nr. 17762).
6. Lietuvos vyriausiojo administracinio teismo 2015 m. kovo 9 d. sprendimas administracinėje byloje Nr. A-650-556/2015.
7. Dėl Lietuvos Respublikos Vyriausybės 2007 m. rugpjūčio 22 d. nutarimo Nr. 875 „Dėl prašymų ir skundų nagrinėjimo ir asmenų aptarnavimo viešojo administravimo subjektuose taisyklių patvirtinimo“ pakeitimo projektas. Registracijos Nr. 20-9626 (2).
8. Lietuvos Respublikos regioninės plėtros įstatymo VIII-1889 pakeitimo įstatymo projekto aiškinamasis raštas. [Interaktyvus]. [žiūrėta 2020-10-11] <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/ca74f630d02f11e39b2ab5bbcc4f49fb?jfwid=18117lj686>>.

## NEW LEGAL REGULATORY PROVISIONS OF PUBLIC ADMINISTRATION

### Summary

For the first time in Lithuania, the Law on Public Administration was adopted in 1999. Until then, there was no such legal act in Lithuanian legal regulation. It is true that during the interwar period in Lithuania the drafts of the Law on the Organization of the Administration were prepared, but such a legal act was not adopted. The Law on Public Administration of 1999 has been amended several times. For instance, the areas of public administration, the system of public administration entities, the concepts of public administration, administrative decision, etc. have been improved. Twenty years later, it was decided to adopt a new version of the Law on Public Administration. This decision was determined by misunderstandings arising in practice, assessing the nature of the functions of state and municipal institutions, enterprises, public institutions, refining the content and scope of public administration, administrative regulation, public services and other concepts, as well as abandoning over-regulation. The drafting of the new law was initiated by the Ministry of the Interior of the Republic of Lithuania.

**Keywords:** Law on Public Administration, Entities of Public Administration, Areas of Public Administration.

---

## THE ASSESMENT OF THE ROLE OF POLICE OFFICERS IN LITHUANIAN NEWS PORTALS DURING THE CORONAVIRUS PANDEMIC

**Rasa Dobržinskienė**

*Mykolas Romeris University  
Maironio str. 27, LT-44211 Kaunas  
Telephone: +370 37 281409  
E-mail: [rasa.dobrzinskiene@mruni.eu](mailto:rasa.dobrzinskiene@mruni.eu)*

DOI: 10.13165/PSPO-20-25-06

---

**Annotation.** In the 21<sup>st</sup> century the role of communications is given more functions and a wider context. The speed of information dissemination inevitably becomes an attendant of consumer society. The exclusive capability of the electronic mass media to provide its audience with info ‘*right here, right now*’ gives the public a prompt access to coverage of the events happening both in Lithuania, and globally. Articles headlines help us navigate through many of news items offered to readers. In order to keep this society constantly involved in this vortex, news portals use compelling headlines that are often either redundant, hyperbolized, or far removed from the article itself. Analyzing the role of police officers during a coronavirus pandemic, the headlines of news portal articles were examined. Articles headlines help us navigate through many of the news items offered to readers.

So the present research aims to explore headlines of news portal articles in the context of their relevance to the content of the article they present when news is about police officers and their role during the coronavirus pandemic. The object of the research is headlines of articles about police officers in Lithuanian news portals. The objective of the research is to analyze the propositional content of headlines of articles about police officers in the Lithuanian news portals. The used methods are qualitative content analysis to analyze the headlines and their context and descriptive methods to analyze scientific publications.

The research had shown that during the new COVID-19 pandemic, electronic mass media seemed to temporarily forget the negativity, and with the aim to maintain general discipline and order in public domain, practically totally refrained from posting any negative information on police officers. However the institution itself was still presented as playing the disciplinary and punishing role, but was changed the assessment of the role of police officers in news portal of Lithuania.

**Keywords:** communication, news portals, headlines, police officers, COVID 19.

### INTRODUCTION

The exclusive capability of the electronic mass media to provide its audience with info ‘*right here, right now*’ gives the public a prompt access to coverage of the events happening both in Lithuania, and globally. It became highly topical in the light of *COVID-19*. Any information on changes in *COVID-19* case numbers, the decisions made by representatives of national authorities, the consequences of respecting or not respecting the introduced rules, the public attitude and societal responses as well as any other issues associated with the virus becomes accessible to the general public in no time when in the public sphere. A modern person

---

engulfed by the fast pace of life and work often cannot afford long-time reading, thus opts to only scan through the published information or run over the headlines. Whatever the media, a headline is the single most important component of any published article that unambiguously serves to capture the reader's attention, and determines his/her willingness to keep reading the article or refrain from it. However, it is important to bear in mind that both the headline and the publicistic-style article itself need also to play their informational role, which became critically important during the coronavirus pandemic. The general public tends to follow the information published in e-periodicals as the decisions made by authorities in response to changing numbers of virus cases are made quickly thus every member of the society rushes to find out the news that is particularly important to him/her.

So the present research aims to explore headlines of news portal articles in the context of their relevance to the content of the article they present when news is about police officers and their role during the coronavirus pandemic. During the coronavirus pandemic, the exchange of information about the rules and changes in the country was very intense. In addition, compliance was monitored by police officers, so their role as a supervisor and punisher was strengthened. In this context the question arises – whether the negative role of the police officer will only intensifies. So the problematic question of whether the coronavirus pandemic will strengthen the inactive role of the police officer on news portals raises in this article. Consequently, the object of the research is headlines of articles about police officers in Lithuanian news portals. The aim of the research is to analyze the propositional content of headlines of articles about police officers in the Lithuanian news portals. The tasks of the research is: 1) to analyze the headlines of articles about police officers of news portal; 2) to disclose an assessment of the role of police officers in Lithuanian news portals during the period of coronavirus pandemic.

The qualitative content analysis and descriptive **methods** were selected for the purpose of research. Qualitative content analysis helps to analyze the headlines and their relevance to the context, descriptive method used to analyze scientific publications. It's need to say that there are many scientific publication about communication, mass media, but there is no research where the role of police officers in news portal is discussed.

Review of the publicistic-style articles found in two the most popular. Lithuanian news portals, namely *delfi.lt* and *lrytas.lt*, revealed certain trends of changing the role of police officers, and even shaping a different image thereof. The role played by the police institution

---

and police officers in e-periodicals during the period of coronavirus pandemic appeared when some rules introduced in the period of pandemic as soft recommendation were changed to being mandatory. The main violations reported were not wearing masks and breaches of self-isolation with only rare cases when police officers had to search for individuals who run away from medical facilities despite they were infected with coronavirus or awaiting for their test results. Accordingly, in the background of such topics, the aspect of cautionary information about the eventual sanctions and penalties appears, as well as the role of the police institution and a police officer as a warden and punisher emerges. Despite the fact that there was some information showing that police officers often only warned those oblivious citizens, while punishing only the most defiant and malignant ones, the headlines of the articles published in news portals foremost posted the information on fines imposed.

### **THE INFLUENCE OF MEDIA IN THE 21<sup>ST</sup> CENTURY**

In the 21<sup>st</sup> century the role of communications is given more functions and a wider context. Especially the great reaches of communication available on the internet that not only offer new opportunities, but also threaten to get lost in spaces of the information spread. That is precisely why modern society is identified as the Informational News Society – a society where resources (Jarockytė, 2003) of news are available to each citizen, where members of the society have access to modern information technologies, information resources and public information. The speed of information dissemination inevitably becomes an attendant of such consumer society. The entire contents of the world is being consumed, entire culture that has been industrially remade into final products, into the system of signs which ceased having any cultural or political value (Baudillard, 2010) or value of events. Media is functioning in a very wide multi-layered space of the socium and influences many different structures and levels. It is being identified as “memory storage” or “maps” guiding us where we are currently present and what our prospects are for the future (McQuail, 1994). Media manages, encodes and concentrates our perception of the reality. However at the same time media inevitably distorts this reality. Within the media, the levelled-out world becomes a product that is supplied to the public. And when the world is in confusion, contradictory and full of conflicts, each media tends to enforce its own logic upon it which is even more abstract however consistent (Baudillard, 2010). Such trends become especially obvious with respect to electronic media. Currently the electronic media turns into a transforming social force that determines a different

---

and novel perception of the reality in the light of globalization, and influences the new attitude towards phenomena of life and mental values (Kavolis, 1996).

The productive interaction between certain media and its audience determines successful and progressive existence of mass media. It depends on the ability of the certain media to persuasively convey the global events, to affect the mindset of the target audience and the understanding of these events. That is precisely why all the media effects' theories are based on the *sender-receiver* structure of the communication process, i.e. they analyze the "spreader", the "affected" and their internal and external interrelations (Fiske, 1998). The interrelation between the sender and receiver of the information is also relevant for the science of pragmatic linguistics. It is especially important when analyzing perception and interpretation of the message sent. In other words, the science of pragmatics covers „researching of human communications with respect to the individual: what is happening inside the individual who sends and receives the message; which is essentially determining the form of communication (in particular situation)” (Ivič, 1973). The speaker emerges in the field of pragmatic linguistics, sayings of whom reveal the intentionality of his/her speech. Whereas speech acts are closely related to speaking, for the purpose of analysis of which not only grammatical expression of the saying is important but also mental status of the addressee and the addresser, the social context, etc. (Dobržinskienė, R., 2012). Consequently, media and audience become the addressee and the addresser, respectively – two participants of the communication act. Indirect communication continuously takes place between them. Accordingly within the *socium*, mass media acts taking into account needs of the audience: prepares info relevant for this particular audience; provides the real-life assistance (audience uses messages of the mass media to find the answers to relevant real-life issues and the options to solve problems faced); disseminates scientific knowledge and educates. (Furst, 1998). In any case needs is also closely related to intentional provision of information which is supposed to intrigue, to raise the interest, to prompt the reader to “consume” the information.

Modern news portals are perfect reflection of the above discussed relation between mass media and the world. They offer ever-changing information that reports on events that take place in a confused world while selectively choosing what consumer society needs to know, to see and to hear. In order to make this society constantly involved in this swirl, the electronic news sites tend to use attention-grabbing headlines that often happen to be redundant, hyperbolized and sometimes even far from the contents of the article itself. Generally, “headline

---

is a text expressed in one sentence which serves to convey the essence, the main contents of the publication” (Koženiauskienė, 2013). Accordingly, the primary function of any headline is to give the main idea of the article it belongs to, and to offer some information, which might be of interest for the reader (Iljina, S. 2016). Authors of electronic periodicals are well aware that this is one of the most effective ways to catch the attention of the reader and to make him/her at least open the article. For this reason headlines are often used as a manipulation to achieve the maximal effect. Manipulation is some “indiscernible deception enabling you to indirectly achieve your own ends” (Juodytė, A., 2008). By way of manipulation author seeks to make other person to willingly do what the author wants him/her to do” (Joule, R. V., Beauvois, J. L., 2005). Creating headlines in this particular manner results in significant deviation from what is reported in the publication. With respect to pragmatic linguistics, headline serves as a primary and critical entanglement that catches the reader. For this reason current research paper focuses primarily on the information conveyed through headlines of the publicist-style articles while analyzing the role of police officers in electronic periodicals.

## **THE ASSESMENT OF THE ROLE OF POLICE OFFICERS IN THE CONTEXT OF COVID-19**

With the aim to grab reader’s attention, news portals strive to post mostly intriguing, sensational information while focusing mainly on headlines. Like any other group of the society, police and police officers receive more attention from news portals only when they happen to take part in positively or negatively exceptional situations. Negative information is undoubtedly more effective and is stored in readers’ memories for longer periods. Consequently, this may give the impression that there is more this type of information in electronic publicistics. However, image of police is usually conveyed in equal portions by posting one half of positive and another half of negative information. This notwithstanding, during the new COVID-19 pandemic, electronic mass media seemed to temporarily forget the negativity, and with the aim to maintain general discipline and order in public domain, practically totally refrained from posting any negative information on police officers. However the institution itself was still presented as playing the disciplinary and punishing role. This is obvious from the following headlines of articles:

---

*Pamanė, kad tai nerimta? Policija nesigaili tų, kurie nepaklūsta reikalavimui dėvėti kaukes (Just thought to be not serious? Police have no mercy for those disobedient to wear face masks)<sup>1</sup>.*

*Grįžtant prie privalomo kaukių dėvėjimo, žinios iš policijos: dirbs intensyviau, primena baudas (Returning to mandatory wearing of face masks, here come news from police: will intensify their work, and reminds of fines).*

*Dėl apsauginių kaukių nedėvėjimo savaitgalį nubausti aštuoni žmonės (Eight persons fined for not wearing face covering masks during weekend).*

*Į nurodymus dėl kaukių numojusiems Druskininkų politikams išsisukti nepavyko – turės patušinti pinigines (No escape for politicians from Druskininkai who shrug off directions to wear face masks – will have to dip into their pockets).*

It is worth noting that headlines are prevailed by the lexis of negative connotation: *nesigaili (no mercy)*, *primena baudas (reminds of fines)*, *nubausti (punish)*, *išsisukti nepavyko (no escape)*. On the other hand, means of language that justify such a punishing role of police officers are found in the same headline, too: *kurie nepaklūsta (those disobedient)*, *privalomo kaukių dėvėjimo (mandatory wearing of face masks)*, *apsauginių kaukių nedėvėjimo (for not wearing face covering masks)*, *į nurodymus dėl kaukių numojusiems politikams (politicians who shrug off obligation to wear face masks)*. Such headlines while being oppositional serve to justify the punishing and controlling role played by police officers, and substantiate its importance as they are simply doing what is legitimate and indicated by the State *privalomo (mandatory)*, *nurodymus (directions)*. Besides headlines, strange to say, articles themselves are not sensational at all. They are mainly articles simply covering general information, that can be attributed the action mode of preparing the information relevant for that specific audience within the socium. Only the article with the headline *Į nurodymus dėl kaukių numojusiems Druskininkų politikams išsisukti nepavyko – turės patušinti pinigines (No escape for politicians from Druskininkai who shrug off directions to wear face masks – will have to dip into their pockets)* introduces some intrigue: despite the fact that it covers decisions made and fines imposed for lawbreakers, it still highlights the delay by police officers to decide upon imposing the fines to well-known politicians from Druskininkai.

---

<sup>1</sup> The translation of headlines is made by author of this article.

---

Probably the only one truly intriguing headline was found, associated with wearing medical face masks and suggesting, that police did somewhat inappropriate, because the man “at least partially won” in this conflict:

*Su policija į kovą dėl kaukės stojusiam vyrui pavyko laimėti bent iš dalies (The man at least partially wins the face mask fight with the police)*

However, reading through the article makes it obvious that the headline was hyperbolized and higher sounding than the situation itself. Police officers did not exceed their powers and arrested the man lawfully. However the District Court of Vilnius city after hearing the case has imposed a fine of EUR 520, and when this decision was appealed at Vilnius Regional court, the fine was reduced to EUR 220.

Police are characterized by epithet *griežta (strict)* which is soothed right away in the headline following the colon by explaining usage of this epithet in headlines:

*Policija griežta: per parą skyrė 122 nuobaudas už karantino pažeidimus (Police are strict: 122 lockdown-breach fines imposed per day).*

Another aspect why police institution is mentioned in news portals – for the sake of control of people self-isolation. Headlines of this type of the articles often use various grammatical forms of the verb *nubausti (to punish)*:

*Per mėnesį policija patikrino apie 1 tūkst. turėjusių izoliuotis, nubaudė – 215 (Police checked approx. 1 thousand of people that must have been in self-isolation, and total 215 were punished).*

*Į saviizoliaciją spjovę lietuviai toliau pildo išdą: nuo rugpjūčio pradžios nubausti 268 pažeidėjai (The Lithuanians heedless of self-isolation keep filling up the treasury: total 268 offenders punished from the beginning of August).*

*Per parą nubausta 70 žmonių už karantino reikalavimų pažeidimą: net pirmą kartą bauda skausminga (Total 70 people punished per day for breaching lock-down requirements: fine painful even if imposed for the first time).*

*Praėjusių parą penki žmonės nubausti dėl saviizoliacijos pažeidimų, dėl kaukių – nė vienas (Five people punished over the last 24 hours for self-isolation breaches, whereas none for face masks).*

*Dėl kaukių nedėvėjimo savaitgalį nubausti du žmonės, dėl saviizoliacijos pažeidimų – 13 (Over the weekend two people punished for not wearing face masks, and another 13 – for self-isolation breaches)*

---

*Izoliacijos reikalavimų laikymąsi nuo šiol tikrins savivaldybės ir policija (From now on, adherence to self-isolation requirements will be checked by the municipalities and the police)*

More strict connotation of such headlines must have been determined by the fact that self-isolation was imposed upon people arriving from the foreign countries affected by the virus, those who contacted with the infected persons, etc. For this reason, breach of the indication to be in self-isolation was considered to be more dangerous for the society than not wearing face masks in public spaces or enclosed facilities. Consequently, the role played by the police, again, seems to be that of a punisher, however despite that, it obtains a positive assessment, because by punishing police keeps protecting the greater portion of the society from disobedient offenders. It might even be seen as the institution having obtained function of trust and assistance. Nonetheless, police had not only to punish and control people, but also search for those who run away from hospitals, kept hiding from medics, or even to still foreigners isolated in medical facilities.

*Policija įspėja: Kaune iš ligoninės pabėgo koronavirusu sergantis vyras (Police warning: a man infected with coronavirus escapes from hospital in Kaunas)*

*Uzbekų grasinimai sulaukė ir policijos dėmesio: ligoninės vadovas atskleidė, kas dedasi viduje (Threatening by Uzbeks attracts police attention: the Head of the hospital reveals what's happening inside of it)*

The word *patikrinimas* (*inspection*) is also often found in the information publicly posted in news portals which also presupposes some sort of a restriction and potential punishment:

*Prasidėjo patikrinimai, kaip kavinėse, baruose ir klubuose žmonės laikosi taisyklių dėl koronaviruso (Inspections were started to check the cafés, bars and nightclubs for abiding rules regarding coronavirus)*

*Pradėtas patikrinimas: pareigūnai stebi, ar kavinės ir barai laikosi koronaviruso prevencijos priemonių (Inspection undertaken: police officers keep monitoring if cafés and bars practice and comply with the coronavirus prevention indications)*

Police even control and stop celebrations:

*Policija nutraukė neteisėtą reiverių vakarėlį: surado miške (Police break up the illegal party of ravers: find it in the woods)*

*Rugsėjo 1-osios šventė Lietuvoje prasideda su naujais apribojimais: daugiau dėmesio skirs ir policija (In Lithuania, the celebration of September 1<sup>st</sup> starts with new restrictions: police shall focus their greater attention, too)*

---

*Policija įspėja dėl savaitgalio: daugiau dėmesio – renginiams ir izoliacijos taisyklėms (Police warn regarding the upcoming weekend: greater focus will be on events and abiding rules of isolation).*

Police control the movement of persons within the country during festive period:

*Kaip per Velykas atrodys Lietuvos miestai: kelius blokuos policijos ekipažai ar betoninės užtvartos (How Lithuanian cities are going to look like during Easter: roads to be blocked by police crews or concrete barriers).*

*Pajūris per Velykas bus kone apjuostas pareigūnų: keli kontrolės postai bus mobilūs (The seaside during Easter will be almost totally surrounded by police officers: several control stations will be mobile).*

Such headlines only prove once again that news portals indeed tend to assign not so much positive roles to the police however their presentation, dissemination of the neutral information in articles that they belong to show that media of electronic websites deliberately provide news, avoid taking advantage of people weakness who are already confused to a significant extent, do not make intrigues and do not hyperbolize events being highlighted. They simply inform about the activities undertaken by the police in order to make people aware of it and prevent any misunderstandings. Accordingly, it can be noted that during the period of COVID-19 spread that significantly shocked Lithuanian society, news portals shifted their position and attributed other features to the role of the police when compared to some other cases. Although the punishing role attributed to the police and police officers was sort of enhanced, and controlling role was assigned, it still had a positive connotation in context of both headlines and articles posted because of the favourable actions performed with respect to the general public.

## CONCLUSIONS

Modern mass media often strives to intrigue, to hyperbolize events, and to manipulate the headlines, but the research results showed that during the COVID-19 pandemic headlines of publications posted to news portals were only of the informative nature, and often provided only the basic information: presented number of persons punished over certain period of time for self-isolation breaches or not wearing face masks, wrote about the checks undertaken by police officers or termination of events. Yet, in this particular case police officers did not receive negative coverage in Lithuanian news portals, and the punishing role attributed to the police did not seem to be blameworthy. Normally it did not give any positive meaning to the

police image however during the period under consideration this aspect received neutral or even positive coverage in electronic periodicals as regards police job. It might appear that electronic publicistic has sort of ‘forgotten’ its functions, aims, consumerism, and got solidary identified itself with one of the society groups, namely police officers, involved in maintaining public order, compliance with instructions to wear face masks, requirements of self-isolation and social distancing in public places over the respective period of time. Consequently, the research under consideration showed that during the period relevant for the society, when maintaining discipline was of huge importance for the sake of everybody’s health, activities of the police in public were presented and assessed merely as the fact, as the necessity, and no attempts to create shocking headlines or introduce extra concern to the confused society were observed. So the role of the supervisor and punisher of police officers got a positive assessments in the Lithuanian news portals during the coronavirus pandemic.

## REFERENCES

1. Baudillard, J. Vartotojų visuomenė: mitai ir struktūros. Kaunas, Kitos knygos, 2010.
2. Dobržinskienė, R. Pragmatinė lingvistinė televizijos reklamų komunikatų analizė. Vilnius, Vilniaus universiteto leidykla, 2012.
3. Fiske, J. Įvadas į komunikacijos studijas, Vilnius, Baltos lankos, 1998.
4. Furst, M. Psichologija, Vilnius, Lumen, 1998.
5. Iljina, S. The analysis of Propositional Content o British and Latvian Newspaper Headlines in the Framework of Grice’s Cooperativ Principle. *Acta Humanitarica Universitatis Saulensis*, Šiauliai, Šiaulių universiteto leidykla, 2016–2017, Vol. 23, pp. 33–40.
6. Ivič, M. Lingvistikos kryptys, Vilnius, Mintis, 1973.
7. Jarockytė, A. Informacinė visuomenė Lietuvoje 1990–2000. Vilnius, Žara, 2003.
8. Joule, R. V., Beauvois, J. L. Manipuliacijos vadovas padoriems piliečiams. Vilnius, Alma littera, 2005.
9. Juodytė, A. *Manipuliacinės įtraukimo į komunikaciją strategijos periodinėje spaudoje. Žurnalistikos tyrimai*, 2008, No. 1, pp. 25–40.
10. Kavolis, V. Kultūros dirbtuvė. Vilnius, Baltos lankos.1996.
11. Koženiauskiene, R. Retorinė ir stilistinė publicistinių tekstų analizė, Vilnius, Vilniaus universiteto leidykla, 2013.
12. McQuail, D. Mass Communication Theory. London, Thousand Oaks, New Delphi: Sage Publication, 2010.

---

## ECONOMIC KNOWLEDGE AND METHODS OF ITS ACQUISITION IN THE PROCESS OF BUILDING STUDENTS' ECONOMIC SECURITY

Irena Figurska<sup>1</sup>

*<sup>1</sup>Pomeranian University in Slupsk, Institute of Pedagogy  
Westerplatte 64, 76-200 Slupsk, Poland  
Email: [irenafigurska@vp.pl](mailto:irenafigurska@vp.pl)*

Aneta Sokół<sup>2</sup>

*<sup>2</sup>University of Szczecin, Faculty of Economics Finance and Management,  
Mickiewicza 64, 71-101 Szczecin, Poland  
Email: [aneta.dorota@wp.pl](mailto:aneta.dorota@wp.pl)*

DOI: 10.13165/PSPO-20-25-07

---

**Abstract.** The issue of the security of an individual has many dimensions, including the economic one. The aim of the article is to examine the ways of acquiring economic knowledge and its impact on the human economic security. The article consists of a theoretical and empirical part. In the theoretical part of the article the essence of economic security was discussed, and factors affecting this security were also analyzed. Economic knowledge was also defined and its influence on human economic security was analyzed.

The results of research on the level of economic knowledge of Poles presented in the literature indicate that their knowledge is fragmentary and not internally coherent. It mainly includes information from the mass media and information that relates directly to specific individuals. To verify these observations, in the empirical part of the article, the results of a study conducted among students, concerning, inter alia, the methods of acquiring economic knowledge and the impact of economic knowledge possessed on the sense of economic security, are presented.

**Keywords:** economic knowledge, knowledge acquisition, economic security

### INTRODUCTION

The natural goal of every human being is to satisfy their own diverse, unlimited needs, among which one of the basic and most important is the broadly understood need for security, including economic security.

Many factors affect the level of human economic security. Some of them are influenced and can be shaped by people through their decisions and actions, while others are beyond their influence. One of the factors with a fundamental impact on the level of human economic security is knowledge, in particular economic knowledge.

Knowledge brings many benefits to people who have it and skillfully use it in practice. Knowledge enables people to make the right decisions and actions, it also allows rational use

---

of other resources at their disposal. Knowledge influences the judgments and opinions of people as well as allows them to interpret the environment, shaping their attitude to the surrounding reality. It also accelerates their reaction to changes in the environment and reduces the level of uncertainty in the process of undertaking risky ventures. In addition, knowledge facilitates communication and building and maintaining professional relationships between people, increases the creativity and innovation of individuals and their attractiveness on the labor market, and also positively influences their self-esteem. Knowledge can also be a source of power and advantage over others (Figurska, 2012; Baruk, 2016; Zack, 1999).

The level of people's knowledge, in particular of economic knowledge, has a fundamental impact on their decisions and economic activities, resulting in an increase or decrease in the level of their economic security.

However, studies conducted by other researchers indicate that the level of economic knowledge of Poles is insufficient to achieve a high level of economic security, and in the process of acquiring economic knowledge few knowledge sources are used (primarily the Internet). Thus, the aim of the article is to examine the ways of acquiring economic knowledge by students and its impact on their economic security.

In this article, the issues related to the economic security of people have been analyzed both on the theoretical (literature studies) and empirical (focused group interviews). In particular, such research methods as: analysis, synthesis, induction and deduction were used

## **ECONOMIC SECURITY AND ITS DETERMINANTS**

Security is one of the most important human needs, as well as a value as important as life, health, tolerance, dignity, respect, justice and truth (Szmyd, 2014). Security improvement is one of the basic goals that people set for themselves.

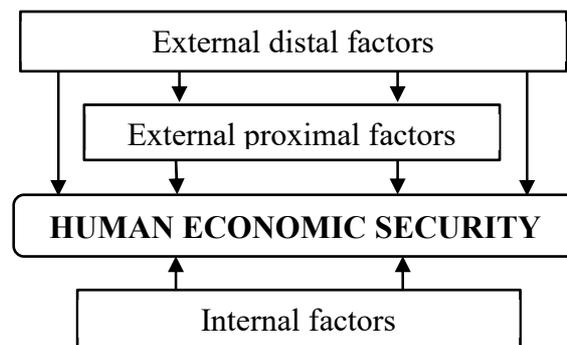
The subject of security can be people, social groups, nations, international communities or the entire humanity. Security can also be considered in various dimensions, such as: social, military, public, ecological, information, economic etc. (Koziej, 2011). The subject of further considerations is human economic security.

Human economic security can be described as an economic activity of the man, aimed at ensuring the individual the possibility of survival (existence) and the freedom to pursue his own interests in the broadly understood environment (including the economic one), in particular by

taking advantage of emerging opportunities, facing challenges, reducing risks and preventing all kinds of threats to man and his interests (Koziej, 2011).

In practice, the feeling of economic security means meeting one's own needs at a level acceptable to a human being, as well as the possibility of maintaining one's standard of living in the near and distant future, covering unexpected expenses and surviving the period of unexpected decline in current income (Piotrowska, 2017). It follows from the above considerations that an appropriate level of permanent income recognized as basic, i.e. ensuring survival, sustainable development and personal dignity, is the condition of economic security (Human Development Report, 1994).

The economic security of a human being is influenced by a number of factors that can be divided into internal, related to a men, and external, related to the proximal and distal environment (fig. 1).



**Figure 1.** Factors of human economic security

External factors determine the framework within which a person is making decisions and activities related to managing households and / or running a business. People have little or no influence on these factors. External factors can be divided into proximal and distal.

Distal external factors include, first of all (Figurska, 2020; Stabryła, 2000):

- economic factors, such as the rate of economic development of the state and/or the region, the state's financial situation, interest rates, level of inflation, level and structure of public expenditure, level of unemployment, etc.
- political and legal factors, such as labor law, regulations on running a business, legislation on consumer protection, stability of state policy, state tax policy etc.
- social factors, such as access to social services and their quality, access to health care and quality of medical services, access to education, degree of marginalization and social exclusion etc.

- 
- security factors such as crime level (including economic crime), sense of physical security, peace or its threat etc.

Proximal external factors influencing the level of human economic security include, among others:

- financial situation of other members of the household,
- unexpected or expected events in the immediate environment (e.g. illness or death of a loved one, receiving an inheritance, loss, change or taking up a job by a family member remaining in the same household, etc.),
- financial situation of the organization in which the individual works,
- employment stability,
- timely payment of remuneration, etc.

Internal factors determining the economic security of an individual are factors related to the man himself, on which he has an influence. These factors include:

- human value system (including work ethic),
- presented attitudes on the labor market (proactive or passive),
- motivation to study and work,
- attitude to risk,
- taking care of health,
- experience and skills,
- knowledge, especially economic, etc.

Internal factors shape the economic resourcefulness of an individual, which is reflected in the individual's state of possession and is manifested by the presentation of specific behaviors regarding saving and borrowing (Piotrowska, 2017).

The level of human economic security may change under the influence of changes in the environment, together with the effect of decisions and actions taken by an individual. For example, simplification of the regulations on running the business, improvement of the situation on the labor market, professional promotion, change of job by a family member to a better paid one, etc. are factors that increase the level of human economic security. On the other hand, the difficult situation of the organization in which the individual works, the loss of a job by a family member, a pandemic reducing job security, high inflation, etc., reduce the level of human economic security.

---

## ECONOMIC KNOWLEDGE AND ITS IMPACT ON HUMAN ECONOMIC SECURITY

Knowledge is of interest to representatives of various sciences, who explain its essence from various perspectives specific to the scientific disciplines presented by them (Figurska, 2012). In this article knowledge is understood as “*a fluid mix of framed experience, values, contextual information and expert insight that provides a framework for evaluating incorporating new experiences and information. It originates and is applied in the minds of knowers*” (Davenport, Prusak, 1998).

Depending on the field or discipline within which knowledge is developed, apart from legal, technical, medical, historical, etc., also economic knowledge is distinguished. This knowledge includes knowledge of basic economic concepts (e.g. money, inflation, demand, etc.), understanding the relationship between these concepts, knowledge of the current economic realities and the ability to apply the acquired knowledge in practice (see: Roland-Lévy, 2004; Zaleskiewicz, 2011; Kołodziej, 2011).

People acquire economic knowledge both in the process of formal and informal education. Formal education means learning through participation in education and training programs, leading to the acquisition of specific qualifications, the achievement of which has been formally confirmed by an authorized institution (e.g. school, university).

Informal education, known as learning by doing, is a lifelong process of acquiring knowledge and skills, based on life-long experience, the educational impact of the environment (family, friends, work environment, market) and the impact of the mass media.

Conscious acquisition of economic knowledge requires the prior localization of knowledge sources (notes, documents, books, experts, etc.), and then making a decision on what sources to use and how. Knowledge acquisition often is connected with the necessity of use modern information and communication technologies in this process. Economic knowledge can be acquired during studies, by attending training courses, reading specialist books and magazines, watching programs dealing with economic issues, attending conferences and seminars where knowledge can be obtained directly from experts, participation in communities of practice, etc.

The possessed economic knowledge, supported by the ability and readiness of an individual to use it and the awareness of the economic consequences of decisions taken, leads

---

to an increase in the economic awareness of an individual, understood as the ability to learn and evaluate the economic environment of human life (Górski, 2016).

In the process of satisfying their needs, people systematically make decisions related to the division of their income between consumption and savings, decisions regarding the choice of savings investment methods, consumption structure, etc. The rationality of these decisions is determined by the possession and skillful application of economic knowledge (Figurska, 2020).

Economic knowledge enables people to actively participate in various markets (financial, real, work), so they can function better in society and economy. This knowledge empowers people to spot market opportunities and seize them skillfully, and helps identify and manage economic risk properly.

The practical use of this knowledge leads to an increase in people's productivity and increased resources, as well as to obtaining better results in the process of managing income, savings and assets. A higher level of economic awareness resulting from the possession of economic knowledge also means a greater range of individual freedom and possibilities (Stigler, 1983; Górski, 2016).

The research carried out in Poland related to the level of economic knowledge of people, however, indicates that their knowledge is fragmented and internally inconsistent. It mainly includes information taken from the mass media and information that relates directly to specific individuals. Moreover, the knowledge of certain facts or concepts is not accompanied by knowledge of the relationships existing between them (Kołodziej, 2011); *Stan wiedzy...*, 2014). A point of concern is that many research participants are not fully convinced about the need to have knowledge in the field of economics (Górski, 2016).

## **KNOWLEDGE AND ECONOMIC SECURITY IN THE LIGHT OF THE RESEARCH RESULTS**

It was decided to verify theoretical considerations regarding economic knowledge and its impact on human economic security through empirical research. As a part of the qualitative research, focus group interview (FGI) was conducted. The interview was focused on obtaining the opinions of study participants on economic knowledge, its sources, methods of its acquisition and its impact on the sense of economic security. Due to the epidemic situation, completing the appropriate group of respondents, enabling the acquisition of research material,

---

posed some difficulties. Therefore, the interview was conducted online (MS Teams) in October, 2020. The authors hope that the results that have been collected during the research process will help to systematize the issues related to security resulting from possessed knowledge. The essence of the study is conducting a group interview in the presence of a moderator who supervises the appropriate course of the study, and establishing a research scenario using previously selected tools. Such research allows to solve a research problem through observation, analysis of the provided answers and conclusions that result from this process.

The participants of the study were students of economics at the University of Szczecin, Poland. It was attended by a group of students consisting of 8 people (including 5 women) aged 23 to 25 years.

The following research question was posed in the study: Does economic knowledge support the sense of security in the opinion of surveyed students? Therefore, the following hypothesis was posed: The higher the level of students' economic knowledge, the higher the level of their economic security.

At the beginning of the research, the discussion participants were asked to define the term: economic knowledge. The answer to this question was not easy. One of the respondents defined economic knowledge as knowledge "which provides information and allows to understand economic phenomena". Another student participating in the discussion said that in her opinion, "economic knowledge is a type of knowledge that covers the area of understanding economics and management".

Then, the respondents were asked if they were interested in economic knowledge even before starting their studies. Half of the discussion participants answered the question positively. These people were asked to specify how their interest in economic knowledge was manifested and how they acquired this knowledge. Two people attended an economic secondary school and deepened their economic knowledge by using materials provided by teachers, using library resources or searching for information on the Internet. On the other hand, three people indicated that they also acquired economic knowledge at home, because other members of their household are economists and economic issues were often discussed in their homes.

In the further part of the discussion students were asked about the reasons for starting economic studies. The vast majority of study participants claimed that their interests as well as curiosity and thirst for knowledge were the most important reasons for starting studies. They

---

were also asked if the knowledge acquired during their studies allowed them to navigate more freely in the economic reality and to better understand economic issues. The vast majority of them confirmed that this is the case.

The respondents were also asked about the areas of economic knowledge most useful in everyday life. In response to such a question, the participants of the discussion most often pointed to the knowledge of finance and the functioning of enterprises. Knowledge about investments, tourism and entrepreneurship was mentioned less frequently.

Students were also asked about the sources of economic knowledge they use. Three respondents replied that the knowledge of lecturers and materials made available during classes, the Internet, press, academic textbooks and handbooks are the basic source of knowledge for them. Other people also indicated training as a source of knowledge they use, including both on-the-job training and self-training. However, the frequency of training indicated by the students was different - two people confirmed participation in training once a year, and one person participates in training at the workplace once a quarter.

Later in the discussion, students were asked whether economic knowledge gives them a sense of economic security. This question posed a problem for the students, as they thought about the answer for some time, and not everyone was able to answer it. People who answered this question indicated that economic knowledge gives them a sense of economic security. They justified it as follows:

- “I have a better understanding of economic processes and I can react to them early”,
- “Thanks to my the interests and knowledge acquired in everyday life and at university, I can avoid threats, e.g. when investing funds”,
- “I can explain economic phenomena to other people and warn them when something disturbing happens, for example in the currency markets”.

At the end of the study, students were asked to assess their level of economic security resulting from economic knowledge on a scale of 1 to 10 points. Four people assessed their level of economic security at 5 points, and another two at 7 points. In the case of other people, their level of economic security is high, as it ranges between 8 and 10 points.

## CONCLUSIONS

People constantly make decisions about managing their own finances and property. Making choices always involves risk, which may be greater if the choice is made intuitively, or

---

less if it is made on the basis of economic knowledge. This article assumes that in order to reduce the aforementioned risk, a person should have access to current economic information, as well as be able to understand this information and use it in the process of making rational decisions. As a result, the sense of economic security of the individual and other members of the household increases (Figurska, 2020).

In order to check whether the possession of economic knowledge really determines the level of economic security of people, a focus group interview was conducted. The study covered a group of students who, due to their studies in economics, not only have greater economic knowledge, but also should be more aware of the role of this knowledge in making rational decisions regarding the management of finances and property. It was assumed that students of economics will be able to determine whether the possession of economic knowledge influences the feeling of economic security.

The discussion showed that the students understand the essence of economic knowledge and are able to describe it. The sources of knowledge they use include not only those related to studies (lecturers' knowledge, textbooks, etc.), but also those not related to the studies (knowledge of other people, including family members, the Internet, trainings). It can be said that students use the sources of knowledge to which they have relatively easy access. Today, the Internet is a huge database of information and knowledge, so using the Internet in the process of acquiring knowledge is not inappropriate as long as verified resources are used.

Referring to the subject of this article, it should be emphasized that students of economics not only confirm that economic knowledge has a positive impact on their sense of economic security, but they are also able to justify this claim.

Summarizing the above considerations, it should be clearly stated that maintaining or increasing economic security should be the subject of continuous human activities and aspirations. Remembering that it is easier to ensure economic security through prevention than through subsequent intervention and elimination of the effects of its violation, the role of investment in economic education should be emphasized.

Referring to the sources of economic knowledge and the methods of its acquisition, it should be emphasized that the credibility of these sources should be verified.

The state plays a large role in the process of building economic security of people by shaping the elements of the widely understood environment of human functioning in such a way that they facilitate making rational economic decisions.

---

The influence of economic knowledge on human economic security is a complex problem, the following article is only a basis for further considerations. The analysis of the survey results was made with full awareness of the limitations resulting from the relatively small number of participants.

## REFERENCES

1. Baruk, J. Rola wiedzy w procesach tworzenia i wdrażania innowacji, *Marketing instytucji naukowych i badawczych MINIB* 2016, Vol. 21, No 3. 79-104.
2. Davenport, T. H., Prusak, L. *Working knowledge: how organizations manage what they know*. Boston: Harvard Business School Press, 1998.
3. Figurska, I. *Zarządzanie wiedzą w organizacji*. Słupsk: Wydawnictwo WHSZ, 2012.
4. Figurska, I., Wiedza jako determinanta bezpieczeństwa ekonomicznego człowieka. In H. Bulińska-Stangrecka, P. Stacewicz (Eds.), *Od informacji do wiedzy. Aspekty teoretyczne i aplikacyjne*. Warszawa: Oficyna Wydawnicza Politechniki Warszawskiej, 2020, 94-103. ISBN 978-83-8156-109-9
5. Górski, J. Alfabetyzacja ekonomiczna, czyli znaczenie świadomości ekonomicznej, *Bezpieczny Bank* 2016, No 3(64), 142-158.
6. Human Development Report 1994, Oxford University Press, New York. Available on: [http://hdr.undp.org/sites/default/files/reports/255/hdr\\_1994\\_en\\_complete\\_nostats.pdf](http://hdr.undp.org/sites/default/files/reports/255/hdr_1994_en_complete_nostats.pdf).
7. Kołodziej, S. Wiedza ekonomiczna i postawy wobec podatków dorosłych Polaków. *Studies & Proceedings of Polish Association for Knowledge Management* 2011, No 40. 192-201.
8. Koziej, S. Bezpieczeństwo: istota, podstawowe kategorie i historyczna ewolucja. *Bezpieczeństwo Narodowe* 2011, No 18. 19-39.
9. Piotrowska, M. Wpływ wykształcenia na bezpieczeństwo ekonomiczne gospodarstw domowych. *Nierówności Społeczne a Wzrost Gospodarczy* 2017, No 51. 9-26.
10. Roland-Lévy, Ch., (2004), W jaki sposób nabywamy pojęcia i wartości ekonomiczne? In: T. Tyszka (Ed.). *Psychologia ekonomiczna*. Gdańsk: GWP, 2004. 277-299.
11. Stabryła, A. *Zarządzanie strategiczne w teorii i praktyce firmy*. Warszawa: PWN, 2000.
12. Stan wiedzy ekonomicznej Polaków. Raport Instytutu Wolności i Raiffeisen Polbank, 2014.
13. Stigler, G. J. The case, if any, for economic literacy. *The Journal of Economic Education* 1983, Vol. 14, No 3. 60-66.
14. Szmyd, J. Poczucie bezpieczeństwa jako wartość społeczna, etyczna i egzystencjalna. Rozważania podstawowe. *Państwo i Społeczeństwo* 2014, (XIV) No 2. 9-20.
15. Zack, M. H. Developing a Knowledge Strategy. *California Management Review* 1999, No 41. 125-145.
16. Zaleśkiewicz T. *Psychologia ekonomiczna*. Warszawa: PWN, 2011.

---

## DECISION-MAKING IN STRATEGIC MANAGEMENT OF THE PUBLIC SERVICE SYSTEM

**Lýdia Gábrišová**

*Faculty of Management Science and Informatics  
Department of Mathematical Methods and Operations Research  
Univerzitiná 8215/1  
010 26 Žilina  
Slovak Republic  
e-mail: [lydia.gabrisova@fri.uniza.sk](mailto:lydia.gabrisova@fri.uniza.sk)*

DOI: 10.13165/PSPO-20-25-08

---

**Abstract.** Let us assume that a certain organization financially supports service centers of public interest, sports, cultural, educational, or other. These centers provide the requirements of customers, who are residents. The organization wants to use its funds efficiently so that the public service system achieves maximum usefulness and fairness to the population. With various possible criteria, we will consider the availability of the inhabitant to the service center and the distance of each inhabitant to the service center to be the main ones.

If the management of the organization had an audit carried out after a few years of operation, it would show that some centers are not sufficiently used, and others not used in terms of capacity. The population of the nearest center is low, and the center is a little used. There would be a possibility to cancel or relocate the service center. On the other hand, some centers do not have sufficient capacity because their services are used by many inhabitants at an acceptable distance. There would be a solution to increase the number of service centers. It is still about using funds efficiently. To resource the unused centers or not to provide services to residents because of the insufficient capacity?

This work deals with the optimization of system by the redistribution of the originally located service centers. I assumed that each center has one or more stations that provide service with a given capacity. Then the service system design task can be modeled as a capacity-limited location task. The XPRESS-IVE optimization setting can be used for its implementation. Numerical experiments were performed by using the real data of the Slovak emergency service.

**Keywords:** public service system, requirements of customers, using funds efficiently, capacity-limited location problem

**Classification JEL:** M12 – Personnel Management

### INTRODUCTION

Our team from Faculty of Informatics at University of Žilina is working in this field for the long time and we have developed several approaches for efficient solution of problems of this type (see e.g. Gábrišová, Janáček, 2014, 2015). There are another group of articles (Kvet, Janáček, 2015, Jánošíková, Gábrišová, Ježek, 2015, Janáček, 2019) devoted to the decomposition strategies for large-scale problems. We developed, implemented and experimentally verified several approximate solution approaches. The part of research of our

---

research group was devoted to different design criteria of public service systems (*Peško, Majer, 2015, Janáček, Gábrišová, 2017, 2019*). Real data was from Benchmarks [online] (*Szendreyova, 2015*).

The solution of the problem is described below.

## DESIGN OF PUBLIC SERVICE SYSTEM

The purpose of public service system is to satisfy the demands of customers by means of several centers, each one of them has one or more service facilities. The geographical locations of centers should be chosen in such way that all services in demand are reachable by general public in acceptable time or at modest distance. Optimal service system should satisfy the "fairness" condition without discrimination of some of customers. When the services provided by service centers are paid by citizens, there is the need of their effective exploitation using the full capacity of all (or almost all) centers.

We do not want to increase the number of existing centers because that involves the additional investment costs (new premises, equipment, service personnel, etc.). We want to increase current effectivity by relocation of existing centers. This is the possibility we will discuss in our work.

Let us assume that the total number of service facilities in centers is known and fixed, and there is the given total number of potential customers. The capacity capability of service facility we will define as the mean number of citizens per facility. The aim of optimization is to relocate centers to geographical locations such that the distance to nearest center for the citizens is as minimal as possible and simultaneously we want to maximally explore the existing capacity of the centers. For the design of improved service system we will use existing informatical tools, as shown in the next sections.

## MATHEMATICAL MODEL OF OPTIMIZATION TASK

Let  $I$  be the set of possible locations of service centers and  $J$  is the set of locations of potential customers. Let us denote by  $d_{ij}$  the known distances between all  $i \in I$  and  $j \in J$ . The services will be realized by chosen centers, each of them having one or more service facilities. The total number of available facilities is  $p$ , we need to locate them at the locations  $i \in I$ . For the purpose of determining the demons of each location from set  $J$  we use the number of

inhabitant's  $b_j$  (potential customers). The mathematical model of such service system can be formulated as follows:

$$\text{Min } \sum_{i \in I} \sum_{j \in J} b_j d_{ij} z_{ij} \quad (1)$$

Subject to:

$$\sum_{i \in I} z_{ij} = 1 \quad \text{for } j \in J \quad (2)$$

$$z_{ij} \leq y_i \quad \text{for } i \in I, j \in J \quad (3)$$

$$\sum_{i \in I} y_i \leq p \quad (4)$$

$$\sum_{i \in I} b_j z_{ij} \leq a y_i \quad \text{for } j \in J \quad (5)$$

$$y_i \in \{0, 1, 2, 3, \dots\} \quad \text{for } i \in I \quad (6)$$

$$z_{ij} \geq 0 \quad \text{for } i \in I, j \in J \quad (7)$$

This is the well-known type of mathematical optimization problem, the capacitated  $p$ -median problem. The objective function (1) describes the criterion for minimizing the sum of distances  $d_{ij}$  for all customers in location  $j$ , serviced from the service center  $i$ . The weight coefficients  $b_j$  allow us to take into account the number of inhabitants of location  $j$ . For each service facility, the maximal possible capacity we will denote by  $a$ . This number  $a$  can be interpreted as the mean value of demands or the number of customers per facility (this can be computed easily because we know the total number of inhabitants and the number  $p$  of available facilities).

Integer variables  $y_i$  are used for the number of facilities, allocated in the chosen center in location  $i$ . Nonnegative variables  $z_{ij}$  determine the relative part of demands  $b_j$  of customers from location  $j$ , which will be serviced by (nearest) chosen center  $i$ .

According to conditions (2) each customer will be serviced by exactly one center in location  $i$  and the conditions (3) ensure that this center will be chosen at location  $i$ , i.e.  $y_i \neq 0$ . The condition (4) is here to ascertain that the number of chosen facilities will not exceed the number  $p$  of available facilities. The conditions (5) are the capacity constraints. Outputs of solution of the problem are variables  $z_{ij}$  and  $y_i$ .

This type of problems is combinatorial difficult (NP-hard), which means that for big sets  $I, J$  the computational time can be very long. Problematic with respect to computational time

---

are the constraints with many integer variables. Unfortunately, working with real-world data leads typically to big problem instances. In the next section we will describe the solution approach for the design of our service system.

## SOLUTION OF OPTIMIZATION PROBLEM

The analysis of problem shows that we can solve it by using algorithms for well-known transportation problem. For the initial solution we omitted the capacity constraints (5) and choose the centers in all possible locations from set  $I$ . Our strategy is to sequentially remove some of the centers, namely such one where the summary value of demands is "substantially" lower than the demand values of other centers. The summary demand of the center  $j$  is determined by the sum of customer demands  $b_j$  for all customers assigned to that center. The algorithm, after determining the initial solution, can be described in two steps as follows:

1. Compute the summary demands for all service centers. Remove the center with minimal summary demand. Solve the problem with new centers. Repeat until the number of centers is the desired number  $p$ .

2. For the center with maximal demand we assign one more facility. Remove the center with minimal summary demand. Solve the problem with new centers as in step 1. We repeat this process until there are no more than  $p$  facilities.

This algorithm appeared to be very effective and its result is to harmonize available capacities  $a$  of each facility assigned to chosen center and the summary demands for that center.

## REAL-WORLD DATA INSTANCE

For our computational experiments we will use publicly available real data for inhabited places (cities, towns and villages) of Slovak republic (SR). We know the geographical locations, number of inhabitants, distances between inhabited places. In our case we initially choose both the set  $J$  of possible customers and the set of possible locations  $I$  as the set of all inhabited places of SR. The number of such places is 2916, so the problem is really big and difficult to solve. We choose the decomposition of input data by present regional division of SR to eight self-governing regions, which shows to be the effective measure for solution of the sequence of smaller problems. The regions are Bratislava - BA, Banská Bystrica - BB, Košice - KE, Nitra - NR, Prešov - PO, Trenčín - TN, Trnava - TT and Žilina - ZA. The original problem was reduced to the solution of 8 smaller partial problems, which can be solved effectively as shown below.

Input data of problem by regions: summary demand of customer's  $j$  (summary number of inhabitant's  $b_j$  in the hundreds, distances between inhabited places  $z_{ij}$  in kilometers according to Benchmarks [online] (*Szendreyova, 2015*)).

Publicly available are also data about actual locations of service centers and the assigned stations of Slovak emergency service in chosen centers. In (Tab. 1) we bring the relevant data about individual regions of SR. In the last column we can see the mean value of customers per one facility (i.e. the ratio of number of inhabitants to the number of service facilities (rounded to nearest integer)).

**Table 1:** Used input data of problem

Region of SR	$ I $ - number of cities	$p$ - number of actual facilities	number of inhabitants	$a$ - mean value of number of inhabitants per facility
BA	87	25	6063	243
TT	249	22	5552	253
TN	276	26	5942	229
NR	350	36	6896	192
ZA	315	36	6896	192
BB	515	46	6601	144
PO	664	44	8158	186
KE	460	38	7930	209

For the main criterion of quality of our optimized system we take the uniformity of distribution of demands among the service facilities. In this real-world problem for the SR it is very likely that we cannot achieve exact uniform distribution because there are different regions with large or smaller density of inhabitants.

Hence it will be better to assess the solution quality by means of some statistical parameter. We choose that parameter as the standard deviation of summary demands for the individual facility  $B_i = \sum_{j \in J} b_j z_{ij}$  from the mean value of demands given by capacity  $a$ . The

values  $z_{ij}$  determine the relative part of demands  $b_j$  of customers from location  $j$ , which will be serviced by (nearest) chosen center  $i$ .

In the formula for abovementioned standard deviation:

$$\sigma = \sqrt{\frac{1}{p-1} \sum_{i \in I_1} \left( \frac{B_i}{y_i} - a \right)^2} \quad (8)$$

$I_1$  is the set of centers in our problem solution and  $y_i$  is the number of facilities belonging to the chosen center in location  $i$ .

For the complex assessment of new system design we give also the value of objective function denoted by  $\acute{U}F$  according to formula (1) in kilometers per 100 inhabitants. In second column we give the number of chosen centers denoted by  $|I_1|$  and in the third column we give the standard deviation  $\sigma$  according to (8). The computed values for individual regions of SR are given in (Tab. 2) and compared with the actual state of system.

For implementation of designed algorithms of problem solution we used Xpress-IVE (Mosel) development environment. Numerical experiments were carried on the PC with 1.6 GHz Intel Core i7 processor and 8 GB RAM. Computing times of problems for individual regions varied from 0.1 sec. for dimensionally smallest task (BA region) to 5.9 sec. for largest task (PO region).

**Table 2:** Comparison of actual state with the solution of problem according to chosen criteria

Region of SR	Actual system			Designed system		
	$\acute{U}F$	$ I_1 $	$\sigma$	$\acute{U}F$	$ I_1 $	$\sigma$
BA	21842	14	71	17405	17	53
TT	31582	18	116	32434	16	57
TN	26683	21	134	29256	17	45
NR	38831	27	77	36223	26	40
ZA	31955	29	94	36013	22	32
BB	32476	36	76	34906	31	27
PO	42740	32	85	45277	28	40
KE	36363	32	127	39713	27	44

## CONCLUSION

For the solution of problem (1) – (7) we applied the approximate approach, described in previous sections. The aim of optimization was to relocate centers to geographical locations such that the distance to nearest center for the citizens is as minimal as possible and simultaneously we want to maximally explore the existing capacity of the centers. The results shown in (Tab. 2) indicate that there is significant improvement in comparison with actual state of the system. The uniformity of demands for the new facilities characterized by the values of standard deviation  $\sigma$  is smaller (better) for all regions as comrade with the actual state.

The second criterion of quality of system, namely the value of objective function  $\acute{U}F$  was not improved for some of the regions. This is the consequence of total redesign of system.

Several of the locations of the centers are changed and also the number of centers is different. Another factor which influenced the changes in OF values is the no uniformity of inhabitant's density for the individual regions of SR.

On the base of the requirements of operator of public service system we designed the mathematical model of problem, implemented and solved it by means of mathematical optimization tools. There is now the need for analysis of results of optimization from financial point of view. New design of the system implies the relocation of centers, discarding some of old centers and to build several new centers. This is accompanied by investment costs for operator if there is a strategically plan to create the service system accessible to general public.

The results of this paper demonstrated the possibilities of effective solution of NP-hard problem described by mathematical model (1) - (7) for design of diverse service systems.

Because of low computational times there is the possibility of use of designed algorithms in real-time decision making situations, e.g. for the choice of existing facilities for the sport, cultural and other events.

## REFERENCES

1. Gábrišová, L., Janáček, J. (2014). *Dekompozičný prístup k riešeniu kapacitne obmedzenej lokačnej úlohy*. Úlohy diskretní optimalizace v dopravní praxi: SW podpora rozhodování v inteligentních dopravních systémech. Univerzita Pardubice, Česká republika, 28-37. ISBN 978-80-7395-867-1.
2. Gábrišová, L., Janáček, J. (2015). *Férovosť vo verejnom obslužnom systéme*. In: Optimalizační úlohy v dopravních a logistických systémech a SW podpora rozhodování v inteligentních dopravních systémech: sborník příspěvků: Praha, Albertov, Praha: ČVUT, 102-112. ISBN 978-80-01-05853-4.
3. Kvet, M., Janáček, J. (2015). *Two phase approach for large public service system design*. Mathematical Methods in Economics. University of West Bohemia, Plzeň, 455-460. ISBN 978-80-261-0539-8.
4. Jánošíková, E., Gábrišová, L., Ježek, B. (2015). *Load balancing location of emergency medical service stations*. In: Ekonomie a management: vědecký ekonomický časopis. 18(3), 30-40. ISSN 1212-3609 (online s ISSN 2336-5604).
5. Peško, Š., Majer, T. (2015). *Robust p-median problem in changing networks*. In: Transport Problems : international scientific journal. 10(3), 125-130. ISSN 1896-0596.
6. Janáček, J., Gábrišová, L. (2017). *Collective fairness in emergency system designing*. In: SOR'17: proceedings of the 14th international symposium on operational research: Bled, Slovenia, Ljubljana: Slovenian Society Informatika, Section for Operational Research, 135-140. ISBN 978-961-6165-50-1.
7. Gábrišová, L., Janáček, J. (2017). *Návrh a porovnanie kritérií kolektívnej férovosti*. In: Využitie kvantitatívnych metód vo vedecko-výskumnej činnosti a v praxi XII [elektronický zdroj]: Bratislava: EKONÓM, CD-ROM, [6], ISBN 978-80-225-4392-7.
8. Janáček, J. (2019). *Rychlé prohledávání okolí řešení p-lokační úlohy pro zobecněnou disutilitu* [electronic]. In: Využitie kvantitatívnych metód vo vedeckovýskumnej činnosti a v praxi. Zborník príspevkov z medzinárodného vedeckého seminára. Bratislava: Vydavateľstvo EKONÓM, 59-64. [CD-ROM]. ISBN 978-80-225-4617-1.
9. Janáček, J., Gábrišová, L. (2019). *User-fair designing emergency service systems* [electronic]. In: Transport [print]. 34(4), 499-507. ISSN 1648-3480 (online).
10. Spôsob prístupu: <https://journals.vgtu.lt/index.php/Transport/article/view/11312>

- 
11. Jánošíková, Ľ., Kvet, M., Jankovič, P., Gábrišová, L. (2019). *An optimization and simulation approach to emergency stations relocation* [electronic]. In: Central European Journal of Operations Research [print, online]. 27(3), 737-758. ISSN 1435-246X.
  12. Spôsob prístupu: <https://link.springer.com/article/10.1007/s10100-019-00612-5>
  13. Szendreyova, B. (2015). Benchmarks [online] [Accessed May 2016]. Available from: <http://frdsa.fri.uniza.sk/~betka/BenchmarksSR.html>.
  14. FICO™ Xpress Optimization Suite [online]. Available from: <http://www.fico.com>.
  15. XPRESS-Mosel “User guide”, 2005. Dash Associates, Blisworth, UK.

This article is partially sponsored by projekt VEGA 1/0342/18 „Optimal dimensioning of service systems“ and APVV-19-0441 „Allocation of limited resources to public service systems with conflicting quality criteria“.

---

## DRONES, BORDER SURVEILLANCE AND THE PROTECTION OF HUMAN RIGHTS IN THE EUROPEAN UNION

**Fernando Val Garijo**

*National Distance Education University  
Calle Obispo Trejo, 2, 28040, Madrid, Spain  
Telephone: (+34) 91 398 8068  
E-mail: [fval@der.uned.es](mailto:fval@der.uned.es)*

DOI: 10.13165/PSPO-20-25-09

---

**Abstract.** Drones are increasingly used in border management by EU Member States and Frontex. Drones are considered high-performance tools in border surveillance, due to their enhanced capabilities in the area of detection, observation, data collection and information sharing. They are also instrumental in implementing current policies of contention of migration that rely on cooperation with third countries and, at times, on pull-back operations. The use of drones in such operations raises legal problems relating to the observation of the principle of *non-refoulement*, which binds both Member States and Frontex. These problems are explored in the light of the applicable rules of international refugee law and human rights law, EU law, and the case-law of the European Court of Human Rights.

**Keywords:** drones, border surveillance, Frontex, principle of *non-refoulement*, pull-back policies, migration

### INTRODUCTION

During the past decade, managing the external borders of the European Union (EU) has acquired increasing importance for Member States and EU Institutions alike. Article 3.2 of the Treaty of the European Union (TEU) mandates the EU to offer its citizens an area of freedom, security and justice without internal frontiers. Lack of internal frontiers, and the free movement that goes with it, requires that appropriate measures be taken with respect to external border controls, asylum, immigration and the prevention and combating of crime. Moreover, Article 77 of the Treaty on the Functioning of the European Union (TFEU) provides for the gradual introduction of an integrated management system for external borders. As currently understood in the EU, integrated border management (IBM) is a system that goes well beyond mere border checks and monitoring of the crossing of external borders. It includes activities such as prevention of cross-border crime, referral of persons in need of international protection, search

---

and rescue operations for persons in distress at sea, risk analysis for security, cooperation with third countries and the return of third-country nationals who are subject of return decisions<sup>1</sup>.

Some authors contemplate border management as increasingly becoming “an autonomous policy field” (Marin and Krajčíková, 2016). In the EU, it has its own legal framework, established by the EU Treaties. It has its own actors, such as Frontex, the European and Coast Guard Agency, and the national authorities in charge of border management. It has its own material and financial resources. It is based on a preventive approach that encourages the use of the latest technology with various applications to border management, such as biometrics, databases, satellites, sensors, and drones.

The aim of this paper is to highlight the fact that drones are becoming important tools in border management, because drone technology enhances the operational capacity and performance of border surveillance systems. It will then make reference to how border surveillance is currently practiced in the Southern external borders of the EU, with a special focus on migration issues taking place in the Mediterranean Sea. Finally, this contribution will examine some legal issues raised by the migration contention policies embraced by the actors of border surveillance in the Mediterranean. Such policies rely on the cooperation with third countries on the Southern coast of the Mediterranean, which are usually countries of origin or transit of irregular migration. Migration contention policies also rely on the modern technologies of border surveillance, in which drones are playing an ever more prominent role. The current combination of policy, new technologies, and the legal framework, gives rise to problems relating to the protection of human rights and the fulfillment of the legal obligations deriving from the principle of *non-refoulement*. The aim of this study is to address such problems in the light of applicable law, which is EU primary law and secondary legislation, and rules and standards pertaining to international refugee law and human rights law.

This paper is based on a review of the literature on drones as devices used in border surveillance, especially when centered on the use of drones by EU Member States and Frontex. The reviewed literature approaches the issue from different perspectives: security, humanitarian concerns, law, policy, and philosophy. This paper draws on all such approaches. The focus of this work, however, is entirely legal. Rules and principles of international law and EU law, and

---

<sup>1</sup> See “European integrated border management”, European Commission, Migration and Home Affairs, Glossary, [https://ec.europa.eu/home-affairs/content/european-integrated-border-management\\_en](https://ec.europa.eu/home-affairs/content/european-integrated-border-management_en). Last accessed on 8 November 2020.

---

the case-law of the European Court of Human Rights, are its primary materials. Accordingly, the chosen methodology is based on legal analysis, case studies, case-law review and the understanding of court rulings.

## **DRONES IN BORDER SURVEILLANCE**

Unmanned Aerial Vehicle, or drones, are becoming important tools in the area of border surveillance, as they enhance performance in border-guarding operations and increase the operational capacity of the surveillance system. Drones are currently understood as valuable resources in the building and management of the so-called smart borders or technological borders. Several authors have underlined the positive aspects of the use of drones in border surveillance, but the debate on the “dronization” of borders and its effects is still ongoing, and the use of drones has drawn criticism, mostly based on humanitarian grounds.

One of the advantages of using drones is that they can be very effective at performing 3D-tasks, that is, tasks that are considered *dull, dirty and dangerous*. Drones can survey vast and remote areas that would be more difficult to cover with other means, including piloted aircrafts. They can also regularly fly and survey for up to 20 hours, a long period of time if compared with a safe performance by human pilots. The increased safety of border surveillance operations is another argument put forward to defend the deployment of drones, as risk elements such as the weather and natural hazards, along with the fatigue of pilots, are almost entirely removed from the picture. Drones, moreover, can be equipped with high-resolution cameras, thermal sensors and some of the latest technology of detection. As a result, drones are also effective at collecting information and data, and transmitting it to databases and networks operated by border surveillance agencies (Marin, 2016).

Their enhanced capabilities in terms of time of flight, detection, and data collection and sharing, make drones a valuable asset for search and rescue operations carried out at sea. Unmanned aerial vehicles can be very effective in detecting and locating persons who are in distress at sea and can assist ships in the tasks of finding and taking such persons to a safe port. Drones can also be used in the fight against the various forms of cross-border crime.

Other reasons to deploy drones, it has been argued, are economic. Drone technology reduces the cost of border surveillance, especially if compared with piloted aircrafts. In the medium term, drones tend to reduce the need for human and material resources, which can then be directed to other activities. The United States experience, however, questions to some extent

---

this economic argument as some drone acquisition programs have reportedly been cancelled due to unexpected costs in the maintenance of devices (Marin, 2016).

Drone surveillance increases transparency. As some authors have pointed out, this can be an asset in promoting accountability among border guards and border-guarding agencies. Drones can monitor the actual practice of border guards, in particular the use of force and direct means of coercion. Border surveillance agencies can rely on drones to improve the quality of existing accountability mechanisms, which may include the monitoring of border guards by drones operated by other border surveillance agents, and the implementation of video and data reviewing procedures. The transparency provided by drones may also help to protect the security of border guards, as they may provide evidence of attacks against them or images of situations where the use of force was warranted (Kosłowski and Schulzke, 2018).

Some authors, for their part, have argued the case against drones or, at least, against how they are actually being used. Thus, drones can certainly increase the effectiveness of search and rescue operations but this may not result in tangible benefits for the migrants that are in distress at sea. The main problem in recent search and rescue operations has revolved around the issue of disembarkation of migrants in a safe port and its practical and legal implications: humanitarian assistance, health care measures, identification and fingerprinting, processing of asylum applications, among other things. The political logic that often complicates or prevents disembarkation is likely to operate again in the near future, thus counteracting the positive effects that drones and other surveillance technologies may have in search and rescue operations.

From another perspective, it has been claimed that drones introduce a military bias in border management. The dronization of borders reinforces the defensive logic in this policy area, and the dual nature of drone technology tends to blur the limits between the military and non-military realms. These views are accepted and normalized easily since they are part of “the efficiency narrative of drones”, which presents them as highly accurate tools for detection, data collection and security, and as a means to rationalize available resources from a cost/benefit perspective. Drones would thus be one more embodiment of the idea of “technological rationality”, which tends to transform what is morally and socially acceptable with each new technology that is accepted and normalized. Along these lines, drones are seen as a means to radicalize the notion of *panoptic surveillance*, with the potential, when combined with artificial intelligence, to take detection and security to new, unprecedented levels. They favor a

---

verticalization of power and conjure up an “above-the-ground omniscient authority” that can survey, detect, monitor, and target anything and everything. Drones are therefore instrumental in creating systems of permanent vigilance which confer on surveillance authorities some of the features of divinity, such as ubiquity, instantaneity, immediacy, omnimode vision and omnipotence (Csernaton, 2018)<sup>2</sup>. This view no doubt overemphasizes some of the capabilities of unmanned aerial vehicles and, more to the point, overestimates what drones can deliver when used as tools for border surveillance. Nevertheless, it is true that when a system of permanent surveillance is established and normalized for external purposes, it is easier for that system to be accepted for internal surveillance, once the enabling technology on which it relies is perceived as normal and even inevitable.

One of the long-standing traits of borders is that they are visible in some or many of their sectors, depending of the perceived needs of the state managing its own borders. Such visibility, or the need thereof, tends to be reduced by the use of drones. Firstly, because border surveillance authorities may choose to make drones visible and public, in which case they become a physical manifestation of the border. Secondly, because drones, once deployed, may replace other visible signs of the border, such as fences, walls, border guards and vehicles (Koslowski and Schulzke, 2018). In this regard, drones are some of the essential building blocks of the smart, technological borders of today. The visibility of borders, however, is not merely a technical matter. The degree to which borders are visible is also a political issue, which means that drones and other technological resources are not likely to render borders invisible in the near future.

## **ELEMENTS OF BORDER SURVEILLANCE IN THE EUROPEAN UNION**

In the EU, responsibility for the management of external borders lies with Member States. The external borders of the EU are after all state borders, as international organizations are not territorial entities and can have no borders of their own. Nevertheless, in the Area of Freedom, Security and Justice, the management of the external borders is carried out in the interests of all Member States, given the European dimension of these borders. This explains the establishment of an EU policy of border checks in Article 77 TFEU, and the gradual introduction of an integrated management system for external borders based, among other

---

<sup>2</sup> This author offers an interesting survey of the literature on, and especially against, drone surveillance on which this paper draws.

---

things, on cooperation between Member States. Frontex, the European Border and Coast Guard Agency, complements the efforts of Member States by reinforcing, assessing and coordinating the actions of the Member States which implement EU measures relating to border management.

Frontex is currently governed by Regulation (EU) 2019/1896 of 13 November 2019, a piece of legislation that increases the competences of the Agency and confers upon it a reinforced mandate. In this new legal basis Frontex is mandated to implement European integrated border management as a shared responsibility of the Agency and of the national authorities in charge of border management, with Member States retaining the primary responsibility for managing their sections of the external borders<sup>3</sup>. Some of the key roles played by Frontex are overseeing the functioning of border control at the external borders, carrying out risk analysis and vulnerability assessments, providing assistance to Member States and third countries through joint operations and rapid border interventions, supporting search and rescue operations for persons in distress at sea, and coordinating and conducting return operations and interventions. Moreover, Frontex is committed to using state-of-the-art technology, including large-scale information systems. In this regard, Frontex has tested different types of drones, launched tenders for drones and started to use drones in border surveillance activities.

The European Border Surveillance System (EUROSUR) is another significant component of the system of border management in the EU. EUROSUR is an integrated framework for the exchange of information and for operational cooperation between Member States and Frontex. It is meant to improve situational awareness and increase reaction capability in border management against illegal immigration and cross-border crime. Among the key components of EUROSUR are national coordination centers (NCCs), national, European and specific situational pictures and fusion services (tracking and detection capabilities, software capabilities for the location of vessels, or optical and radar satellite technology used to detect vessels engaged in migrant smuggling). In this integrated framework different actors play different roles. NCCs collect local information on national borders, create a national situation picture, and share information with other Member States and Frontex. The Agency, in turn, creates a European situational picture with these and other inputs. Interestingly, the European situational picture covers the external borders, the pre-frontier area and unauthorized secondary

---

<sup>3</sup> Regulation (EU) 2019/1896, Article 7.

---

movements. The *pre-frontier area* is defined as the “geographical area beyond the external borders which is relevant for managing the external borders through risk analysis and situational awareness”<sup>4</sup>. It is a common intelligence picture covering areas beyond the Schengen Area and the EU external borders, including maritime borders.

The definition of a pre-frontier area for border surveillance purposes tends to drive the exercise of jurisdiction by Member States and Frontex beyond territorial and jurisdictional waters and into the high seas, which is a maritime area beyond national jurisdiction. This process results in an extraterritorialization of the exercise of jurisdiction for border surveillance purposes that may even reach the territorial waters of third countries, a situation that has recently been taking place in the Southern coasts of the Mediterranean. In this context, agreements with third countries aimed at containing irregular migration are another key component of EU border management in the Mediterranean region.

Some significant elements of border management have been singled out thus far: a) Cooperation between Member States and Frontex through joint operations; b) The use of advanced drone technology for detection and data collection; c) The possibilities of EUROSUR as a framework for information exchange and operational exchange, and its effects in the extraterritorial projection of jurisdiction; and d) cooperation agreements with third countries. If all these factors are combined and used to the full of their possibilities, the result is that Frontex and Member States have an enhanced, first-rate ability to detect migrants at sea and collect and share data relating to the situation. If this information is shared with third countries on the Southern coast of the Mediterranean Sea, the so-called *pull-back policies* can be more easily implemented.

The term pull-back policy refers to a course of action whereby migrants trying to reach the Northern coasts of the Mediterranean are intercepted by the coast guard authorities of the coastal state, normally before they reach the high seas or the search and rescue zone of other states. Interception is enabled by the border surveillance authorities of the states of destination through cooperation, assistance, data sharing and information exchange. Intercepted migrants are then returned to the territory of the state they intended to depart from, hence the term pull-back policy: migrants in the process of leaving the territory and jurisdiction of the coastal state are finally retained as a result of the combined efforts of the intervening states conducting

---

<sup>4</sup> Regulation (EU) 2019/1896, Article 2 (13).

---

surveillance and search and rescue operations. Pull-back policies ultimately rely on agreements with third countries. The aim of this cooperation is to involve third countries in containing irregular migration towards EU Member States. When implemented with drones and the advanced technology of data collection and sharing, pull-back policies can be very effective. Yet, they also raise serious legal problems from the perspective of the international protection of human rights and the respect of the obligations derived from the principle of *non-refoulement*.

## THE PRINCIPLE OF *NON-REFOULEMENT*

### General considerations

The principle of *non-refoulement* is the fundamental international law rule protecting refugees. Its classical treaty-law formulation in international refugee law can be found in Article 33.1 of the Geneva Convention relating to the Status of Refugees (1951). This core principle protects refugees against being expelled or returned to a country where their life or freedom could be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion. In international human rights law, *non-refoulement* is a key component of the prohibition of torture and cruel, inhuman or degrading treatment or punishment. This prohibition is enshrined in Article 7 of the International Covenant on Civil and Political Rights (1966) and Article 3 of the Convention against Torture (1984). In addition to treaty law, the principle of *non-refoulement* has become a rule of international customary law and, as a result, part of general international law, binding all states regardless of the particular treaties to which they are parties.

In regional international human rights law the principle of *non-refoulement* also figures prominently in treaty law and case law. Thus, Article 3 of the European Convention of Human Rights (1950, hereinafter ECHR) contains an absolute prohibition of torture not allowing any derogation. This provision does not explicitly mention *non-refoulement*, but the European Court of Human Rights (ECtHR) has ruled that the prohibition established in Article 3 includes the principle of *non-refoulement* as part of its content and standards<sup>5</sup>.

With regard to EU law, even if the ECHR is not an EU treaty, and ECtHR is not an EU court or body, pursuant to Article 6.3 TEU, fundamental rights as guaranteed by the ECHR (and

---

<sup>5</sup> Soering v. the United Kingdom, judgement of 7 July 1989, para. 91.

---

interpreted by the ECtHR) constitute general principles of EU law. Therefore, Strasbourg law is relevant to Frontex and to EU Member States when they apply EU law. Moreover, the EU Charter of Fundamental Rights guarantees in Article 18 the right to asylum in conformity with the rules of the Geneva Convention (1951) and the Protocol of 31 January 1967 relating to the status of refugees, which include the principle of *non-refoulement*. Article 19.2 of the Charter proclaims this principle as a protection against the death penalty, torture or other inhuman or degrading treatment or punishment. The EU Charter of Fundamental Rights has the same legal value as the constitutive treaties of the EU and, as such, is part of EU primary law. To these provisions, Article 78.1 TFEU adds that the EU common policy on asylum, subsidiary protection and temporary protection must comply with the principle of *non-refoulement*. In EU secondary law, apart from the Directives regulating asylum, Regulation 2019/1896 (Frontex specific legal basis) refers to *non-refoulement* in various provisions, establishing the need for Frontex to respect this principle as a general rule in the performance of its tasks (Article 80), in its actions at the EU external borders (Article 36), in return operations (Articles 48 and 50), and in the cooperation of Member States and Frontex with third countries (Article 72 and 73).

The principle of *non-refoulement* is therefore well-established in international law and EU law. It binds both Member States and Frontex when they engage in border surveillance activities, and applies to all persons, regardless of their nationality, statelessness or migration status.

### **The principle of *non-refoulement* and the practice of border management at sea**

In the area of international refugee law, it is understood that the principle of *non-refoulement* applies “both within a State's territory and to rejection at its borders. It also applies outside the territory of States. In essence, it is applicable wherever States act”<sup>6</sup>. This means that the principle also applies when EU Member States decide to refuse entrance to persons at their external borders, or when they act in any maritime area, including the high seas.

With regard to international human rights law, the same conclusion can be reached under the ECHR (1950). In *Hirsi Jamaa and Others v. Italy* (2012), the ECtHR ruled that the principle of *non-refoulement* also applies to interceptions of migrants on the high seas. An account of this case in some detail is interesting for the purposes of this study. The facts of the *Hirsi* case

---

<sup>6</sup> UNHCR Note on the Principle of Non-Refoulement, 1997, <https://www.refworld.org/docid/438c6d972.html#:~:text=Since%20the%20purpose%20of%20the,is%20applicable%20wherever%20States%20act>. Last accessed on 8 November 2020.

---

can be summarized as follows. In May 2009 eleven Somali nationals and thirteen European nationals had left Libya aboard three vessels as part of a larger group of people, and were trying to reach the Italian coast. They were intercepted by ships from the *Guardia di Finanza* and the Italian Coastguard, transferred onto Italian military ships and then returned to Tripoli. The intercepted migrants alleged that Italian authorities did not take steps to identify them and did not inform them of their real destination during the voyage. On arrival in Tripoli they were forced to leave the ships and handed over to the Libyan authorities. Some of the returned migrants lodged an application against Italy before the ECtHR. They acted through legal representatives, who had received powers of attorney that the ECtHR considered to be valid.

Italy alleged that the applicants before the ECtHR had been intercepted in the context of a rescue operation of persons in distress in the high seas. Italian authorities had merely fulfilled the obligations deriving from the UN Convention on the Law of the Sea (1982). The rescue had never been a maritime police operation. Italian authorities had ensured the safety of the persons on board, had provided them with medical and humanitarian assistance, had not boarded the migrants' boats and had not used weapons. They had then accompanied the intercepted migrants to Libya, as provided for in bilateral agreements between the two States. Italy had not exercised absolute and exclusive control over the migrants and, as a result, they had not fallen under Italian jurisdiction. The ECtHR, however, understood that the events took place on board of Italian military ships. Since the moment they boarded these ships to the moment they were handed over to Libyan authorities, the migrants had been "under the continuous and exclusive *de jure* and *de facto* control of the Italian authorities". Therefore, the migrants had been under Italian jurisdiction within the meaning of Article 1 ECHR<sup>7</sup>.

With regard to the merits of the case, the ECtHR held that Italy had violated Article 3 ECHR because the returned migrants had been exposed to the risk of ill-treatment in Libya, and also because they had been exposed to the risk of being repatriated to Somalia and Eritrea. The fact that no immigrants had intended to apply for international protection while on board the Italian ships did not exempt Italy from inquiring into the treatment they would receive in Libya, as this was notoriously a country where systematic violations of human rights were taking place, and the risk of suffering such violations was sufficiently real and probable. Compliance with the obligations deriving from the principle of *non-refoulement* does not depend on the actual

---

<sup>7</sup> Hirsi Jamaa and Others v. Italy, judgment of 23 February of 2012, para. 81-82.

---

filing of formal asylum applications by asylum-seekers. The ECtHR ruled that Italy had also violated Article 4 of Protocol No. 4 to the ECHR that prohibits the collective expulsion of aliens (no individual inquiry had been conducted with respect to any migrant), and Article 13 ECHR (right to an effective remedy).

In *Hirsi*, the ECtHR interpreted the principle of *non-refoulement* as applicable under Strasbourg law even when States parties to the ECHR act in the high seas, an area beyond national jurisdiction from the territorial point of view in which, nonetheless, jurisdiction over individuals is actually exercised if certain conditions are met. Yet, according to some authors (Pijnenburg, 2020), the lessons of *Hirsi* inspired EU Member States and third countries to develop pull-back policies, a variety of cooperation which also conflicts with *non-refoulement* obligations.

#### **PULL-BACK POLICIES, DRONES AND THE CONTENTION OF MIGRATION**

One of the key ideas of the ruling of the ECtHR in *Hirsi* is that Italy had exercised continuous and exclusive *de jure* and *de facto* control over migrants taken on board Italian military ships, which amounted to an exercise of state jurisdiction that triggered the application of the ECHR. Conversely, without a control of that nature it could be understood that jurisdiction is not being exercised and the principle of *non-refoulement* and other human rights rules and standards do not apply.

Cooperation between EU Member States and the states of origin or transit of irregular migration seems, to a certain extent, to have learned from the previous ideas. A well-documented case in point is the Memorandum of Understanding signed between Italy and Libya in 2017, which has been extended for another three-year period (Olivito, 2020)<sup>8</sup>. This agreement provides for the Italian financial support of Libyan measures of migration control and of development programs in regions affected by irregular migration. It also provides for technical and technological support to Libyan border and coast guard authorities. The agreement paves the way for Libyan coast guards to intercept migrants who take a maritime route to the Northern coasts of the Mediterranean before they reach the high seas, with Italy contributing to the direction and coordination of these pull-back operations. The policy of support to the contention of migration in Libya is not an Italian, but an EU policy, as can be seen in the *Malta Declaration*

---

<sup>8</sup> A detailed analysis of this agreement can be found in the work of this author.

---

by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route (3 February 2017). The Libyan Coastguard and Navy have also received support in the form of training from the EU CSDP Operation EURONAVFOR MED (Sophia) since at least 2016<sup>9</sup>.

Operational and technological support to pull-back operations can be given in various forms: ships and aircraft can be sent to the area under surveillance, border guards can travel on board Libyan coastguard ships, data can be collected and information exchanged. The current trend is to avoid, or reduce to a minimum, contact with migrants detected at sea. In this context, the use of drones by Member States and Frontex, already a fact, raises new questions. The effective use of drone technology in border surveillance requires minimum contact between the detecting and observing device and the individuals detected and observed.

A situation in which Member States or Frontex use drones in surveillance operations over the territorial sea of a third country in the framework of a common agreement is now perfectly possible. Drones could collect data and information relating to migrants travelling in unsound boats and exchange it with other Member States, Frontex and the authorities of the third country, a State of origin or transit of irregular migration. Using that information, and in coordination with Member States and Frontex, the coastguard of the third country would then intercept and “rescue” the migrants and return them to the coast from which they departed. Would the use of drones by Member States and Frontex constitute an exercise of jurisdiction in this situation? Would detection, observation, data collection and information exchange via drones be an exercise of jurisdiction over the migrants? And, if so, would this type of jurisdiction fall within the meaning of Article 1 ECHR? To answer these questions we must once more turn to the case-law of the ECtHR.

The *Hirsi* test refers to continuous or exclusive control *de jure* and *de facto* as the benchmark or criterion for deciding if state jurisdiction has been set in motion. It seems clear that, when detected and observed by a drone, individuals are not under such form of effective, all-encompassing control. However, the ECtHR has construed other criteria for determining when jurisdiction is being exercised. Also in *Hirsi* the ECtHR<sup>10</sup>, invoking its previous case-

---

<sup>9</sup> <https://www.operationsophia.eu/about-us/>, last accessed on 8 November 2020.

<sup>10</sup> *Hirsi Jamaa and Others v. Italy*, judgment of 23 February of 2012, para. 72. See also *Bankovic and Others v. Belgium and Others, Admissibility*, 12 December 2001, para. 167 and *Al Skeini and Others v. United Kingdom*, judgement of 7 July 2011.

---

law, recalled that even if jurisdiction is essentially a territorial notion, acts performed, or *producing effects*, outside the territory of the State can constitute an exercise of jurisdiction, although only in exceptional cases. This criterion could lead to the conclusion that detection, observation and data transmission by drones implies an actual exercise of jurisdiction, since that activity has the extraterritorial effect of setting in motion the jurisdiction of the State of origin or transit of migrants, which may then proceed to launch an interception and rescue operation in its territorial sea. *Ilaşcu v. Moldavia and Russia* (2004) offers yet another potentially applicable criterion. The ECtHR found that Russia had been exercising its jurisdiction over the Moldavian Republic of Transnistria because the latter had been held under the effective authority, or at least under the *decisive influence*, of the Russian Federation<sup>11</sup>. The decisive influence test could also apply to pull-back operations supported by drones and, more broadly, to the policy of consensual contention of migration, especially when third countries on the Southern Mediterranean coasts cannot perform interception and rescue operations, or fulfill the cooperation agreements, without the technical and financial assistance of Member States and the EU. Admittedly, the forms of control of, and interaction with, the migrants on which these two criteria are based (production of effects and decisive influence) are lighter and less direct than when the exclusive and continuous control criterion is employed. But the use of drones and, more generally, aircraft, pulls legal considerations in this more abstract, impersonal direction. The reason is that the relation between authorities and migrants involves two levels (the air, the sea) and is characterized by distance, one-way contact, and a degree of depersonalization dehumanization unknown in maritime interception and rescue operations.

The other problematic element in pull-back operations revolves around the fact that drones operated by Frontex or Member States may engage in the surveillance of areas belonging to the territorial sea of third countries. The territorial sea, a marine area extending up to 12 nautical miles from the coast, is part of the territory of the coastal State and, as a result, is under the sovereignty of said State, a sovereignty that extends to the air space over the territorial sea. Therefore, drones operated by EU Member States or Frontex fly across this area with the consent of the coastal State. They intervene as a form of cooperating with States that lack the necessary resources to contain migration and fight cross-border crime. It could be argued that the only jurisdiction being exercised is that of the coastal State when its ships finally intercept,

---

<sup>11</sup> *Ilaşcu and Others v. Moldova and Russia*, judgement of 8 July 2004, para. 392.

---

rescue and returned the migrants located by drones. It could also be argued that two state jurisdictions have been exercised, that of the coastal State and that of the Member State or Agency operating the drones. In this context of concurring jurisdictions, that of the coastal State would prevail, as territorial jurisdiction is the rule, and extraterritorial jurisdiction the exception. A counter-argument would be that Member States and Frontex maintain their obligations under international refugee and human rights law even when they act, or deploy drones, in the territory of other States, whether they act under the authority of the third State or under their own authority. These situations could be subject to joint or shared jurisdictions (European Agency of Fundamental Rights, 2016), but not to a system of prevailing jurisdictions preventing the ECtHR from ensuring the observance of Strasbourg law by EU Member States that are parties to the ECHR (all of them at the time of writing). The EU Court of Justice, for its part, could in some cases also review the conduct of Frontex and EU Member States with regard to pull-back operations using drones.

## CONCLUSIONS

The use of drones in border surveillance is a reality in the EU, which compels lawyers, scholars and practitioners to explore the legal problems raised, or aggravated, by the introduction of this advanced technology in the field of border management. One of the problems requiring a specific study is the need to fulfill the obligations of the principle of *non-refoulement*, a cornerstone of international refugee law and human rights law. The narrative of effectiveness, technological innovation and high performance surrounding the use of drones in border surveillance is powerful and engaging. But certain features introduced or developed by drones, such as depersonalization, reduction of human contact, distance, and enhanced capabilities to detect, collect, and share information relating to migrants and potential asylum seekers, do not eliminate the refugee and human rights dimension- or tragedy- of many recent search and rescue operations at sea. There is a real risk of contemplating interceptions of irregular migrants that try to flee their State of origin for fear of persecution, torture, or inhuman or degrading treatment or punishment, as mere search and rescue operations, as activities that are human-rights-neutral and tragedy-free. The use of advanced technology in border surveillance should not be allowed to have this numbing effect on the moral conscience and legal awareness of lawyers, scholars and policy-makers. One way to prevent it is to assert the applicability, and adapt our understanding, of the principle of *non-refoulement*.

---

## REFERENCES

1. Csernaton, R.: “Constructing the EU’s high-tech borders: FRONTEX and dual-use drones for border management”, *European Security*, Vol. 27, No. 2, pp. 175-200.
2. EUNAVFOR MED Operation SOPHIA,
3. <https://www.operationsophia.eu/about-us/>
4. European Commission, Migration and Home Affairs, Glossary, “European integrated border management”,
5. [https://ec.europa.eu/home-affairs/content/european-integrated-border-management\\_en](https://ec.europa.eu/home-affairs/content/european-integrated-border-management_en)
6. European Court of Human Rights, *Al Skeini and Others v. United Kingdom*, Application no. 55721/07, judgment of 7 July 2011.
7. European Court of Human Rights, *Bankovic and Others v. Belgium and Others*, Application no. 52207/99, admissibility, 12 December 2001.
8. European Court of Human Rights. *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, judgment of 23 February of 2012.
9. European Court of Human Rights, *Ilascu and Others v. Moldova and Russia*, Application no. 23687/05, judgment of 8 July 2004.
10. European Court of Human Rights, *Soering v. the United Kingdom*, Application no. 14038/88, judgment of 7 July 1989.
11. European Union Agency for Fundamental Rights, *Scope of the principle of non-refoulement in contemporary border management: evolving areas of law*, 2016, p. 29-30.
12. Koslowski, R. and Schulzke, M.: “Drones along Borders; Border Security UAVs in the United States and the European Union“, *International Studies Perspectives*, 19, 2018, pp. 305-324.
13. Marin, L., “The deployment of drone technology in border surveillance, between technosecuritization and challenges to privacy and data protection”, *Special Issue: Crimmigration and Human Rights in Europe: Exclusion, Alternatives and Resistance*, *European Journal of Migration and Law*, 2-2016.
14. Marin, L. and Krajčíková, “Deploying Drones in Policing Southern European Borders: Constraints and Challenges for Data Protection and Human Rights”, *Zavrsnik, A. (ed.) Drones and Unmanned Aerial Systems*, Springer International Publishing Switzerland, 2016, p. 101
15. Olivito: “The Constitutional Fallouts of Border Management through Informal and Deformalized External Action: the Case of Italy and the EU”, *Diritto, Immigrazione e Cittadinanza*, 2, 2020, p. 123 ff.
16. Pijnenburg, A.: “Containment Instead of Refoulement: Shifting State Responsibility in the Age of Cooperative Migration Control?” *Human Rights Law Review*, 20, 2020, pp. 306-332.
17. Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, *OJ L 295/1 14.11.2019*
18. UNHCR Note on the Principle of Non-Refoulement, 1997,  
<https://www.refworld.org/docid/438c6d972.html#:~:text=Since%20the%20purpose%20of%20the,is%20applicable%20wherever%20States%20act>

---

## ADMINISTRACINIŲ GINČŲ KOMISIJA: RAIDA IR PERSPEKTYVOS

Lionela Gelmanienė<sup>1</sup>

<sup>1</sup>Mykolo Romerio universitetas  
Maironio g. 27, LT-44211 Kaunas  
Telefonas (8 37) 28 14 09  
El. paštas: [L\\_gelmaniene@mruni.eu](mailto:L_gelmaniene@mruni.eu)

Aistė Jungaitytė<sup>2</sup>

<sup>2</sup>Mykolo Romerio universitetas  
Maironio g. 27, LT-44211 Kaunas  
Telefonas (8 37) 28 14 09  
El. paštas: [aiste@mruni.eu](mailto:aiste@mruni.eu)

DOI: 10.13165/PSPO-20-25-10

---

**Anotacija.** Straipsnyje pagrindinis dėmesys skiriamas administracinių ginčų komisijos istorinei raidai ir perspektyvoms. Lietuvos teisinėje sistemoje asmenų teisių gynba yra užtikrinama ne tik teismuose, bet ir neteisminėse administracinių ginčų institucijose. Iš esmės ikiteisminis ginčų nagrinėjimo tvarkos įtvirtinimas padeda operatyviau patikrinti individualaus administracinio akto ar veiksmų teisėtumą, tuo pagrindu sumažinant administracinių teismų darbo krūvį, taip atspindint ir pagrindinius administracinės justicijos siekius: asmens teisių apsaugos prioritetą valstybės interesų atžvilgiu bei greitą ir veiksmingą asmens pažeistų teisių gynbą. Straipsnyje siekiama ne tik atskleisti administracinių ginčų komisijų raidą, bet ir šiuo metu veikiančios Lietuvos administracinių ginčų komisijos ir jos teritorinių padalinių perspektyvas nagrinėjant administracinius ginčus. Straipsnyje taip pat aptariamos Apskričių administracinių ginčų komisijos, Savivaldybių visuomeninės administracinių ginčų komisijos, Vyriausioji administracinių ginčų komisija ir šiuo metu veiklą vykdanči Lietuvos administracinių ginčų komisija (toliau – ir Komisija), kuri veikia kaip nepriklausomas kvaziteismas. Komisija savo veikloje vadovaujasi Lietuvos Respublikos ikiteisminio administracinių ginčų nagrinėjimo tvarkos įstatymu<sup>1</sup>, Lietuvos Respublikos administracinių bylų teisenos įstatymu<sup>2</sup>, nagrinėdama administracinius ginčus taiko Lietuvos Respublikos įstatymus, poįstatyminius teisės aktus, taip pat Europos Sąjungos teisinį reglamentavimą atitinkamoje srityje. Galima teigti, jog Komisija, tai neteisminė alternatyva apygardos administracinio teismo atitinkamai kompetencijai. Komisija išnagrinėjusi skundą per itin trumpą terminą, sudaro prielaidas operatyviai atkurti asmenų pažeistas teises ar teisėtus interesus, taigi Komisija priima sprendimus ne tik greitai, bet ir tinkamai apgina asmenų teises. Atsižvelgiant į pastaraisiais metais didėjantį administracinių ginčų kiekį teismuose, Komisijos kompetencijos praplėtimas ne tik leis daug operatyviau išnagrinėti asmenų skundus (prašymus)

---

<sup>1</sup> Lietuvos Respublikos ikiteisminio administracinių ginčų nagrinėjimo tvarkos įstatymas. *Valstybės žinios*, 1999-02-03, Nr. 13-310; TAR, 2016-06-15, Nr. 2016-16850; 2020-06-22, Nr. 2020-13618.

<sup>2</sup> Lietuvos Respublikos administracinių bylų teisenos įstatymas. *Valstybės žinios*. 1999-02-03, Nr. 13-308.

bei veiksmingiau apginti jų teises ir teisėtus interesus, tuo pačiu tai leis sumažinti ir didelį bylų srautą pirmosios instancijos teismuose.

**Pagrindinės sąvokos:** administracinių ginčų komisija, išankstinis administracinių ginčų nagrinėjimas, administracinis procesas, žmogaus teisės.

## ĮVADAS

Šiuolaikinėje visuomenėje socialinių-ekonominių santykių spektras nuolat plečiasi, atitinkamai didėja ir sričių, kurias neišvengiamai reguliuoja valstybė, sąrašas.

Išaugęs viešojo administravimo srityje priimamų sprendimų skaičius suponuoja tai, kad suinteresuotų asmenų pretenzijų dėl galimai neteisėtų ir (ar) nepagrįstų sprendimų skaičius taip pat daugėja. Lietuvos teisinėje sistemoje asmenų subjektinių teisių gynyba užtikrinama ne tik teisme, bet ir neteismine administracinių ginčų nagrinėjimo tvarka. Ikiteisminės ginčų nagrinėjimo tvarkos įtvirtinimas Lietuvos teisėje remiasi europinius standartus iš esmės atitinkančiu mechanizmu, kurio pagalba operatyviau patikrinamas individualių administracinių aktų ir veiksmų teisėtumas bei sumažinamas administracinių teismų darbo krūvis, ir kuris atspindi šiuolaikinės administracinės justicijos siekius: asmens teisių apsaugos prioritetą valstybės interesų atžvilgiu bei greitą ir veiksmingą asmens pažeistų teisių gynybą.

Kreiptis į teismą, ar pasinaudoti alternatyvia asmens pažeistų teisių gynybos priemone ir kreiptis į ikiteisminę administracinių ginčų nagrinėjimo instituciją, kuri greitai ir taip pat veiksmingai teisinėmis priemonėmis sieks apginti galimai pažeistas asmens teises ir laisves? Šis klausimas kyla bene kiekvienam asmeniui, kuris gavo valstybės ar savivaldybės institucijos – viešojo administravimo subjekto – jam pateiktą sprendimą ir mano, jog toks sprendimas (veiksmai ar neveikimas) pažeidžia ar daro neigiamą įtaką jo teisėms ar įstatymų saugomiems interesams.

Teisė kreiptis į teismą teisminės gynybos yra fundamentali asmens teisė, pripažįstama tiek nacionalinių<sup>3</sup>, tiek tarptautinių teisės aktų (Tarptautinio pilietinių ir politinių teisių pakto 2 str. 3 d., Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos 6 str. 1 d., 13 str.). Kaip ne kartą yra konstatavęs Lietuvos Respublikos Konstitucinis Teismas, asmens teisės turi būti ginamos ne formaliai, o realiai ir veiksmingai tiek nuo privačių asmenų, tiek nuo valdžios institucijų ar pareigūnų neteisėtų veiksmų (Lietuvos Respublikos Konstitucinio Teismo 1995

<sup>3</sup> Lietuvos Respublikos Konstitucija. *Valstybės žinios*. 1992, Nr. 33-1014, 30 straipsnio 1 dalis; Lietuvos Respublikos teismų įstatymas. *Valstybės žinios*, 1994-06-17, Nr. 46-851. 4 straipsnio 1 dalis; *Supra* note 2, 5 straipsnio 1 dalis.

m. gruodžio 6 d., 1999 m. vasario 5 d., 2000 m. gegužės 8 d., 2001 m. vasario 12 d., 2002 m. liepos 2 d., 2003 m. kovo 4 d., 2004 m. rugpjūčio 17 d., 2005 m. vasario 7 d., 2006 m. birželio 6 d., 2007 m. sausio 31 d., 2013 m. liepos 5 d. nutarimai ir kt.)<sup>4</sup>. Teisinis reguliavimas, įtvirtinantis asmens teisės į savo teisių ir laisvių teisminę gynybą įgyvendinimo tvarką, turi atitikti iš konstitucinio teisinės valstybės principo kylantį teisinio aiškumo reikalavimą, o tam, kad asmuo iš tikrųjų galėtų įgyvendinti savo teisę kreiptis į teismą dėl savo teisių ir laisvių pažeidimo, įstatymų leidėjas privalo įstatymuose aiškiai nustatyti, kaip ir į kokį teismą asmuo gali kreiptis<sup>5</sup>. Lietuvos Respublikos Konstitucinis Teismas 2002 m. liepos 2 d. nutarime pažymėjo, jog pagal Konstituciją įstatymų leidėjas turi pareigą nustatyti tokį teisinį reguliavimą, kad visus ginčus dėl asmens teisių ir laisvių pažeidimo būtų galima spręsti teisme. Vis dėlto, net ir pabrėždamas iš konstitucinio teisinės valstybės principo bei kitų Konstitucijos nuostatų (*inter alia* Lietuvos Respublikos Konstitucijos 30 str. 1 d.) kylantį teisminės gynybos universalumo principą, Lietuvos Respublikos Konstitucinis Teismas savo jurisprudencijoje ne kartą yra konstatavęs, jog gali būti nustatyta ir ikiteisminė ginčų sprendimo tvarka (Lietuvos Respublikos Konstitucinio Teismo 2002 m. liepos 2 d., 2003 m. kovo 4 d., 2004 m. rugpjūčio 17 d., 2004 m. gruodžio 29 d., 2005 m. vasario 7 d., 2006 m. sausio 16 d. nutarimai, 2006 m. rugpjūčio 8 d. sprendimas)<sup>6</sup>.

Lietuvos teisės mokslininkai yra paskelbę nemažai mokslinių publikacijų, kuriose pateikiami tam tikri ikiteisminio administracinių ginčų nagrinėjimo klausimai. Administracinių ginčų komisijų veiklos tam tikrus aspektus tyrinėjo B. Pranevičienė<sup>7</sup>, L. Paškevičienė<sup>8</sup>, D. Raižys<sup>9</sup>, D. Bereikienė, T. Gagys, J. Ramanauskaitė<sup>10</sup>.

<sup>4</sup>Lietuvos Aukščiausiojo Teismo Civilinių bylų skyriaus 2018 m. gruodžio 12 d. nutartis civilinėje byloje Nr. e3K-7-471-403/2018. *Teismų praktika*. 2018, 50, p. 9-24.

<sup>5</sup> Lietuvos vyriausiojo administracinio teismo 2007 m. spalio 17 d. nutartis administracinėje byloje Nr. AS-143-296-07. *Administracinė jurisprudencija*. 2007, Nr. 13.

<sup>6</sup> Lietuvos vyriausiojo administracinio teismo 2011 m. gegužės 17 d. nutartis administracinėje byloje Nr. AS-62-417-11. *Administracinė jurisprudencija*. 2011, Nr. 21.

<sup>7</sup> Pranevičienė, B. *Kvaziteismai administracijos kontrolės sistemoje: monografija*. Vilnius: Lietuvos teisės universiteto Leidybos centras, 2003.

<sup>8</sup> Paškevičienė, L. Išankstinio administracinių ginčų nagrinėjimo ne teisme institutas Lietuvoje: idėjiniai ir vertybiniai pagrindai. *Teisė*, 108 (2018); Paškevičienė, L. Išankstinio administracinių ginčų nagrinėjimo ne teisme institutas Lietuvoje: bendrosios normatyvinės charakteristikos. *Teisė*, 108 (2018); Paškevičienė, L. Išankstinio administracinių ginčų nagrinėjimo ne teisme institutas Lietuvoje: teisinio reguliavimo aiškinimo problematika. *Teisė*, 111 (2019).

<sup>9</sup> Raižys, D. Administracinių ginčų komisijų statusas: konvencionalumo diskursas. *Visuomenės saugumas ir viešoji tvarka: mokslinių straipsnių rinkinys*, (13) 2015; Raižys, D. Skundų nagrinėjimo administracinių ginčų komisijoje proceso teisinio reguliavimo problemos. *Visuomenės saugumas ir viešoji tvarka: mokslinių straipsnių rinkinys*, (8) 2012.

<sup>10</sup> Bereikienė, D.; Gagys, T.; Ramanauskaitė, J. Greito proceso administracinių ginčų komisijoje koreliacija su asmens teise į teisingą procesą. *Visuomenės saugumas ir viešoji tvarka: mokslinių straipsnių rinkinys*, 2019 (23).

**Tyrimo tikslas** – analizuojant ikiteisminio administracinių ginčų reguliavimo reglamentavimą Lietuvoje ir administracinių bylų nagrinėjimo praktiką aptarti administracinių ginčų nagrinėjimo Lietuvos administracinių ginčų komisijoje raidą ir perspektyvas.

**Tyrimo objektas** – administracinių ginčų komisijos raida ir perspektyvos.

Atliekant mokslinį tyrimą naudoti šie **tyrimo metodai**: mokslinės literatūros analizės metodas taikomas siekiant įvertinti Lietuvos teisės mokslininkų tyrimų, susijusių su ikiteisminio ginčų nagrinėjimo instituto problematikos atskleidimu, išvadas; dokumentų analizės metodu tirti teisės aktai, reglamentuojantys administracinių ginčų komisijų formavimo tvarką, kompetenciją ir veiklos ypatumus; analitiniu – kritiniu metodu vertinami administracinių ginčų komisijų veiklos probleminiai aspektai ir perspektyvos.

## ADMINISTRACINIŲ GINČŲ KOMISIJŲ ISTORINĖ RAIDA

Teisminiai procesai – svarbus žmogaus teisių garantas kiekvienoje valstybėje, tačiau jie yra sudėtingi ir formalūs, ilgai trunka ir reikalauja papildomų kaštų, todėl daliai žmonių teismo procesas yra neprieinamas ir net bauginantis dėl proceso metu patiriamo streso Europos Tarybos Ministrų Komiteto 1981 m. gegužės 14 d. priimtoje rekomendacijoje Nr. R (81)7 dėl priemonių teisminės gynybos prieinamumui palengvinti nurodoma, kad teisės į teismą įgyvendinimo kliūtis iš esmės lemia trys pagrindinės priežastys: bylinėjimosi teisme sudėtingumas ir formalizmas, ilgas teisminis procesas bei dideli bylinėjimosi teisme kaštai. Europos Tarybos Ministrų Komiteto 2001 m. rugsėjo 5 d. rekomendacijoje Nr. Rec (2001)9 dėl alternatyvių ginčų tarp viešojo administravimo institucijų ir privačių asmenų sprendimo priemonių<sup>11</sup> taip pat atkreipiamas dėmesys, kad nuolat didėjantis administracinių bylų skaičius teismuose sudaro kliūtis išnagrinėti bylą per protingą, Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos 6 straipsnio 1 dalies reikalavimus atitinkantį terminą.<sup>12</sup> Minėti veiksniai sąlygoja būtinybę įstatymais įtvirtinti neteisminį administracinių ginčų nagrinėjimą, kad asmuo turėtų galimybę, nepatiriant teismo bylinėjimosi trūkumų, įgyvendinti teisę į veiksmingą, ekonomišką ir operatyvią savo pažeistų teisių gynybą.

<sup>11</sup> Europos Tarybos Ministrų Komiteto 2001 m. rugsėjo 5 d. rekomendacija Nr. Rec (2001)9 dėl alternatyvių ginčų tarp viešojo administravimo institucijų ir privačių asmenų sprendimo priemonių. [žiūrėta 2020-10-20]. <<https://wcd.coe.int/ViewDoc.jsp?Ref=Rec%282001%299&Sector=secCM&Language=lanEnglish&Ver=origin&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6>>

<sup>12</sup> Lietuvos vyriausiojo administracinio teismo praktikos, taikant išankstinio ginčų nagrinėjimo ne per teismą tvarką reglamentuojančias teisės normas, apibendrinimas (I dalis). *Administracinė jurisprudencija*. 2010, Nr. 19.

Europos Tarybos Ministrų Komiteto rekomendacijoje dėl alternatyvių ginčų tarp viešojo administravimo institucijų ir privačių asmenų sprendimo priemonių pažymima, kad neteisminio administracinių ginčų nagrinėjimo mechanizmo privalumai lemia paprastesnes ir lankstesnes ginčo nagrinėjimo procedūras, leidžiančias greičiau ir pigiau išspręsti kilusį ginčą, sąlygoja didesnes galimybes ginčą baigti taikos sutartimi, leidžia ginčą spręsti asmenims, kurie turi specialių žinių, neįpareigoja asmenų, nagrinėjančių ginčą, laikytis griežtų ir formalių procedūrinių taisyklių, o leidžia naudotis didesne diskrecijos teise priimant sprendimą.

Galimybių administracinį ginčą išnagrinėti neteisminėmis priemonėmis nauda, gerinant teisinės gynybos funkcionavimą ir didinant asmenų teisių apsaugos efektyvumą, deklaruojama ir Europos Tarybos Ministrų Komiteto 2004 m. gruodžio 15 d. rekomendacijoje Nr. Rec (2004)20 dėl teisminės administracinių aktų kontrolės. Šioje rekomendacijoje, be kita ko, numatyta, jog tiek iš fizinių, tiek iš juridinių asmenų gali būti reikalaujama prieš kreipiantis į teismą išnaudoti neteismines nacionalinės teisės aktuose numatytas administracinių aktų ginčijimo priemones.<sup>13</sup>

Kadangi teisminis asmens ar viešojo intereso gynimas yra susijęs su ženkliais laiko ir finansų kaštais, todėl vienaip ar kitaip valstybė turi imtis priemonių, sumažinančių asmenų (ar valstybės) sąnaudas siekiant apginti vieną ar kitą interesą. Pasak prof. dr. B. Pranevičienės<sup>14</sup>, administracinės justicijos paskirtis – ginti žmogaus teises nuo netinkamų administracijos veiksmų bei atlikti administracijos veiksmų teisėtumo kontrolę. Administracinė justicija – efektyvi priemonė, padedanti apsaugoti asmenį nuo neteisėtų arba nepagrįstų administracijos veiksmų, suvaržančių jo teises. Daugelyje valstybių administracinės justicijos funkcijos yra įgyvendinamos ne tik teismuose, bet ir kvaziteismuose. Administracinių ginčų nagrinėjimas tokiose institucijose paprastai vadinamas kvaziteisiniu, kadangi įgyvendinant administracinę justiciją kvaziteismuose yra laikomasi panašios procedūros kaip ir administraciniuose teismuose ir yra užtikrinami pagrindiniai teismo proceso principai, t. y. teisėtumo, teisės būti išklausytam principas ir pan.<sup>15</sup> Racionalumo paieškos skatino valstybes kurti alternatyvius administracinių ginčų sprendimo mechanizmus, ieškoti naujų konfliktų tarp administracijos ir piliečių sprendimo būdų, todėl daugelyje valstybių buvo pasirinkti du keliai:

<sup>13</sup> *Supra* note 10. Europos Tarybos Ministrų Komitetas, be kita ko, pripažino, kad teisminių procedūrų pasirinkimas ne visais atvejais yra tinkamiausias būdas išspręsti kilusį administracinį ginčą.

<sup>14</sup> Pranevičienė, B., *supra* note 8, p. 51.

<sup>15</sup> *Ibid*, p. 51.

– pirma, jau veikiančioms administracinėms institucijoms buvo suteikiama teisė nagrinėti ginčus, kitaip sakant, buvo suteikiamos kvaziteisminės galios;

– antra, buvo kuriamos specialios institucijos, kurių paskirtis (dažniausiai vienintelė) – administracinių ginčų nagrinėjimas.<sup>16</sup>

Teisinėje kalboje „kvazi“ terminas vartojamas siekiant parodyti, kad vienas dalykas ar reiškinys tam tikromis savybėmis yra panašus į kitą dalyką ar reiškinį, su kuriuo yra lyginamas, tačiau tarp tų dalykų ar reiškinų taip pat yra esminis ir svarbus skirtumas (-ai). Kvaziteismas turi tam tikrų esminių savybių, būdingų teismui (prisideda prie žmogaus teisių gynimo ir padeda vykdyti teisingumą), tačiau kartu turi ir esminių skirtumų, todėl jos nelaikomos identiškomis institucijomis.<sup>17</sup>

Specialiosios administracinės justicijos modelis Lietuvoje pradėtas įgyvendinti nuo 1999 m gegužės 1 d. įsteigus specializuotus administracinius teismus, priėmus Lietuvos Respublikos administracinių bylų teisenos įstatymą<sup>18</sup> (toliau – ir ABTĮ), kuris, be kita ko, įtvirtino ikiteisminio administracinių ginčų nagrinėjimo ne per teismą institutą ir nustatė privalomą<sup>19</sup> arba neprivalomą išankstinę ginčų nagrinėjimo ne teismo (ikiteisminę) tvarką daugumai viešųjų ginčų kategorijų (išskyrus atvejus, kai į administracinį teismą kreipiamasi tiesiogiai).<sup>20</sup>

Kur gali kreiptis asmuo, būdamas nepatenkintas administraciniu sprendimu (individualiu administraciniu aktu), priimtu konkrečioje viešojo administravimo srityje, nustato specialiųjų teisės aktų, reglamentuojančių atitinkamą administravimo sritį, normos. Įstatymų leidėjas nustatė bendrą ikiteisminę skundų dėl priimtų individualių administracinių aktų ar valstybės bei savivaldybių tarnautojų veiksmų (neveikimo) viešojo administravimo srityje nagrinėjimo tvarką ir numatė asmens diskreciją pasirinkti alternatyvų administracinio ginčo nagrinėjimo būdą, kad jis būtų išnagrinėtas neteisminėmis priemonėmis.<sup>21</sup>

<sup>16</sup> *Ibid.*

<sup>17</sup> Pranevičienė, B., *supra* note 8, p. 72, 80.

<sup>18</sup> *Supra* note 2.

<sup>19</sup> Taikant privalomą ikiteisminį administracinio ginčo išnagrinėjimą, įgyvendinamas principas ir administracinės justicijos sistemos siekiamybė, kad teismas būtų paskutinė priemonė pažeistoms teisėms ginti, ir į jį būtų galima kreiptis tik išnaudojus visas kitas prieinamas teisinės tvarkos atstatymo priemones.

<sup>20</sup> Kai įstatymas tam tikrai bylų kategorijai nenustato privalomos ikiteisminės ginčo nagrinėjimo tvarkos, pareiškėjas turi pasirinkimo teisę: jis gali, prieš kreipdamasis į teismą, pasinaudoti išankstinio ginčų nagrinėjimo ne per teismą tvarka arba tiesiogiai paduoti skundą teismui.

<sup>21</sup> Lietuvos vyriausiojo administracinio teismo 2010 m. vasario 9 d. nutartis administracinėje byloje *G. J. v. valstybės įmonė Registrų centras* (bylos Nr. A-143-191-10). Lietuvos vyriausiojo administracinio teismo jurisprudencijoje pažymima, jog išankstinio administracinių ginčų nagrinėjimo ne per teismą instituto paskirtis suponuoja, kad jis yra skirtas tam, kad ta pati teisinė problema (administracinis ginčas), maksimaliai tokiomis

Pirminės redakcijos ABTĮ buvo tik minimaliai apibrėžta ikiteisminių institucijų (iš esmės – tik administracinių ginčų komisijų) kompetencija, skundo joms pateikimo reikalavimai ir ginčo jose nagrinėjimo terminai. ABTĮ nuostatos tuomet nereguliavo specialių ikiteisminių institucijų veiklos ir nekreipė jos į konkretų administracinės ar teisminės ginčų nagrinėjimo veiklos modelį. Nuo 1999 m. gegužės 1 d. įsigaliojęs Lietuvos Respublikos administracinių ginčų komisijų įstatymas<sup>22</sup> (toliau – ir AGKĮ) nustatė, kad privalomai turi būti steigiamos Apskričių administracinių ginčų komisijos, veikiančios prie Apskričių viršininkų administracijų, ir Vyriausioji administracinių ginčų komisija, sudaromos Lietuvos Respublikos Vyriausybės ir turinčios juridinio asmens statusą. AGKĮ taip pat numatė galimybę savivaldybių taryboms sudaryti savivaldybių visuomenines administracinių ginčų komisijas su sprendžiamąja teise.<sup>23</sup> 1999 m. gegužės 3 d. Lietuvos Respublikos Vyriausybė nutarimu patvirtino Vyriausiosios administracinių ginčų komisijos, nagrinėjančios visų rūšių administracinius ginčus tarp piliečių ir centrinių valstybinio administravimo subjektų (t. y. turinčią bendrąją kompetenciją) sudėtį ir nustatė jos narių bei pagalbinių personalo darbo apmokėjimo dydį.<sup>24</sup> Vyriausiosios administracinių ginčų komisijos darbo tvarkai reglamentuoti Lietuvos Respublikos Vyriausybės nutarimu buvo patvirtinti Administracinių ginčų komisijų darbo nuostatai<sup>25</sup>.

Pastebėtina, kad Apskričių administracinių ginčų komisijų steigimas buvo imperatyviai nurodytas įstatyme, o dėl savivaldybių administracinių ginčų komisijų sudarymo, įstatyme buvo įtvirtinta tik dispozityvi teisės norma, leidžianti savivaldybėms pačioms apsispręsti dėl šių institucijų steigimo būtinybės. Tačiau savivaldybės joms suteikta teise nesinaudojo, remdamosi Lietuvos Respublikos vietos savivaldos įstatyme įtvirtintu savivaldybių savarankiškumo ir veiklos laisvės principu ir argumentais, jog nuolat veikiančių visuomeninių administracinių ginčų komisijų sudaryti nėra poreikio ir jų veiklai užtikrinti nėra numatomas finansavimas (tvarka ir šaltiniai), o jas sudarant (ypatingai mažose savivaldybėse) susiduriama su komisijos primininko ir sekretoriaus, kurie turi turėti aukštąjį teisinį išsilavinimą, parinkimo

---

pačiomis kaip ir administraciniame teisme sąlygomis kompetentingos institucijos būtų išnagrinėta ir išspręsta dar iki teismo. Tai reiškia, kad tokio skundo nagrinėjimo paskirtis yra ne papildomas asmens tariamai pažeistų teisių ar interesų gynimo apsunkinimas, o, priešingai, papildomo mechanizmo, galinčio išspręsti paminėtą teisinę problemą, nustatymas.

<sup>22</sup> Lietuvos Respublikos administracinių ginčų komisijų įstatymas. *Valstybės žinios*. 1999-02-03, Nr. 13-310.

<sup>23</sup> *Ibid*, 2 straipsnio 1 dalis.

<sup>24</sup> Lietuvos Respublikos Vyriausybės nutarimas „Dėl Vyriausiosios administracinių ginčų komisijos sudarymo“. *Valstybės žinios*. 1999. Nr. 40–1266; 2002. Nr. 75–3236.

<sup>25</sup> Lietuvos Respublikos Vyriausybės 1999 m. gegužės 4 d. nutarimas Nr. 533 „Dėl Administracinių ginčų komisijų darbo nuostatų patvirtinimo“. *Valstybės žinios*. 1999. Nr. 41–1288.

problema. Ilgainiui padaugėjo asmenų nusiskundimų, kad vietos savivaldos lygmenyje nėra užtikrinamas veiksmingas asmens teisių realizavimas ir jų gynimas administracine tvarka. Reikėtų pažymėti, kad Apskričių administracinių ginčų komisijos per visą jų veiklos laikotarpį sėkmingai veikė, pakankamai operatyviai ir veiksmingai nagrinėdamos didelę dalį skundų ir tokiu būdu sumažino Apygardų administracinių teismų darbo krūvį, bet buvo panaikintos, Vykdam apskričių reformą, panaikinus Apskričių viršininų administracijas.<sup>26</sup>

Nuo 2011 m. liepos 13 d. įsigaliojo Lietuvos Respublikos administracinių ginčų komisijų įstatymo 2 straipsnio 1 dalies pakeitimas, įtvirtinęs savivaldybių tarybų prievolę sudaryti savivaldybių visuomenines administracinių ginčų komisijas su sprendžiamojo balso teise. Taip iki tol galiojusi šių komisijų sudarymo galimybė tapo imperatyvu. Tokiu būdu buvo siekiama užtikrinti geresnes galimybes vietos gyventojams administracine tvarka apginti galimai pažeistas jų teises, teikiant skundus minėtoms institucijoms, ir taip sudarant geresnes galimybes gyventojams spręsti vietose šių komisijų kompetencijai priskirtus klausimus. Tik po šio pakeitimo, kaip neišvengiama prievolė, palaipsniui buvo pradėtos formuoti savivaldybių visuomeninės administracinių ginčų komisijos, tačiau ir tuomet šis procesas nevyko sklandžiai, dažniausiai jos buvo formuojamos ir tvirtinamos tik po to, kai savivaldybių tarybos buvo paragintos vyriausybės atstovų<sup>27</sup>.

Savivaldybių visuomeninėms administracinių ginčų komisijoms buvo pavesta ikiteismine tvarka nagrinėti skundus dėl savivaldybių viešojo administravimo subjektų priimtų individualių administracinių aktų ir veiksnių teisėtumo, taip pat šių subjektų atsisakymo ar vilkinimo atlikti jų kompetencijai priskirtus veiksmus teisėtumo ir pagrįstumo (išskyrus įstatymų nustatytas išimtis). Savivaldybių visuomenines administracinių ginčų komisijos buvo sudaromos 4

<sup>26</sup> Nuo 2010 m. liepos 1 d. įsigaliojo AGKĮ nuostatos, pagal kurias buvo panaikintos apskrityse veikusios Apskričių administracinių ginčų komisijos.

<sup>27</sup> Vilniaus apygardos administracinio teismas, išnagrinėjęs administracinį ginčą tarp Vyriausybės atstovo Vilniaus apskrityje ir Vilniaus miesto savivaldybės tarybos dėl Vilniaus miesto savivaldybės pareigos sudaryti savivaldybės visuomeninę administracinių ginčų komisiją nevykdymo, 2012 m. vasario 23 d. sprendimu įpareigojo Vilniaus miesto savivaldybės tarybą įgyvendinti Administracinių ginčų komisijų įstatymo 2 str. nuostatas ir tokią komisiją sudaryti. Tačiau, net ir vykdydama paminėtą teismo sprendimą, 2012 m. rugsėjo 12 d. sprendimu nutarusi sudaryti Visuomeninę administracinių ginčų komisiją, Vilniaus miesto savivaldybės taryba papildomai nustatė sąlygą, jog sudarytoji komisija veiklą pradeda tik gavusi finansavimą iš valstybės biudžeto. Ginčas dėl šios sąlygos teisėtumo taip pat buvo nagrinėjamas teismo, kuris konstatavo, jog Administracinių ginčų komisijų įstatymo 2 straipsnio 1 dalies reikalavimas savivaldybių taryboms sudaryti visuomenines administracinių ginčų komisijas yra imperatyvus, todėl atsisakymą vykdyti įstatymo reikalavimą tuo pagrindu, kad nėra skirtas finansavimas, pripažintino nepagrįstu. Lietuvos vyriausiojo administracinio teismo 2012 m. birželio 8 d. nutartis administracinėje byloje *Vyriausybės atstovas Vilniaus apskrityje v. Vilniaus miesto savivaldybės taryba* (bylos Nr. A-520-2320-12); Lietuvos vyriausiojo administracinio teismo 2013 m. lapkričio 13 d. nutartis administracinėje byloje *Vyriausybės atstovas Vilniaus apskrityje v. Vilniaus miesto savivaldybės taryba* (bylos Nr. A-438-1438-13).

metams savivaldybės tarybos sprendimu tarybos kadencijos laikotarpiui iš 5 narių, iš kurių pirmininkui ir sekretoriui buvo nustatytas reikalavimas turėti aukštąjį teisinį išsilavinimą. Šių komisijų narių kandidatūras, iš jų – komisijos pirmininko ir pirmininko pavaduotojo kandidatūras, savivaldybės tarybai teikė savivaldybės meras, o už savo darbą savivaldybės administracinių ginčų komisija kartą per metus atsiskaitė savivaldybės tarybai ir buvo atsakinga savivaldybės merui. Komisijos narių darbas buvo prilygintas visuomeninei veiklai, nors tokia veikla reikalavo ne tik papildomo laiko sąnaudų, bet ir specialių žinių<sup>28</sup>. Įstatymai nenustatė tikslios savivaldybių visuomeninių administracinių ginčų komisijų sudėties formavimo tvarkos, kuri užtikrintų, kad administracinius ginčus pagal suinteresuotų asmenų skundus dėl savivaldybės viešojo administravimo subjektų priimtų sprendimų arba valstybės tarnautojų veiksmų (neveikimo) visuomeninė komisija visais atvejais nagrinėtų kaip nešališkas, nesuinteresuotas ir nuo skundžiamo viešojo administravimo subjekto ar valstybės tarnautojo nepriklausomas arbitras. Siekiant veiksmingo ir skaidraus priskirtų funkcijų įgyvendinimo, šios institucijos turėjo būti nepriklausomos, t. y. kad bylą nagrinėtų kaip nešališkas nesuinteresuotas arbitras.<sup>29</sup> Dažniausiai visuomeninių administracinių ginčų komisijų sudėtis buvo sudaroma iš savivaldybių tarybos narių ir pačių savivaldybių administracijos darbuotojų, ir tai sudarė prielaidas kilti interesų konfliktui.

Pažymėtina ir tai, kad iki 2016 m. liepos 1 d. AGKĮ nereglementavo nei Vyriausiosios administracinių ginčų komisijos, nei savivaldybių visuomeninių administracinių ginčų darbo tvarkos ir administracinių ginčų nagrinėjimo proceso. Įstatymas nenustatė ir nedetalizavo administracinių ginčų komisijų priimamų procesinių sprendimų, kuriais galėtų būtų užbaigiamas ginčo nagrinėjimas šiose komisijose, nenustatė net prielaidų administracinių ginčų komisijų nagrinėjamą ginčą užbaigti patvirtinus taikų šalių sutarimą. Šių institucijų veiklą ir darbo tvarką reglamentavo poįstatyminis teisės aktas – Lietuvos Respublikos Vyriausybės nutarimu patvirtinti Administracinių ginčų komisijų darbo nuostatai<sup>30</sup> (toliau – Nuostatai), tačiau toks reglamentavimas neatitiko konstitucinės jurisprudencijos, aiškinančios, jog žmogaus teisių ir laisvių apsaugos bei gynimo teisinės garantijos turėtų būti reglamentuojamos

<sup>28</sup> Administracinių ginčų komisijų įstatymu komisijoms pavesta spręsti administracinius ginčus dėl savivaldybės viešojo administravimo subjektų priimtų sprendimų ar veiksmų teisėtumo, o šie klausimai neišvengiamai yra susiję su skundžiamų sprendimų ar veiksmų vertinimu dėl jų atitikties teisės aktams, reguliuojantiems įvairius teisinius santykius.

<sup>29</sup> Pranevičienė, B., *supra* note 8, p. 88. „Svarbiausia ne tai, kad kvaziteismas būtų absoliučiai nepriklausomas, bet tai, kad nagrinėtų bylą kaip nešališkas, nesuinteresuotas arbitras.“

<sup>30</sup> *Supra* note 25.

įstatymais<sup>31</sup>. Pastebėtina, kad teisinės valstybės principas suponuoja būtinybę įstatymu, o ne poįstatyminiais teisės aktais, reglamentuoti procedūras, susijusias su asmens teisių gynimu.

Nuolat didėjantis administracinių bylų skaičius ir bylų įvairovė lėmė poreikį tobulinti administracinį procesą. Siekiant sumažinti administracinių teismų darbo krūvį ir skatinti asmenis rinktis ikiteisminį administracinių ginčų nagrinėjimą, kuris yra paprastesnis ir greitesnis, Lietuvos Respublikos Seimas 2016 m. birželio 2 d. priėmė naujos redakcijos Lietuvos Respublikos administracinių bylų teisenos įstatymą<sup>32</sup> ir Lietuvos Respublikos administracinių ginčų komisijų įstatymo Nr. VIII-1031 pakeitimo įstatymą<sup>33</sup>.

Taigi nuo 2016 m. liepos 1 d. įsigaliojo nauja AGKĮ redakcija, pagal kurią ikiteisminio ginčų nagrinėjimo administracinių ginčų komisijose tvarką reglamentuojančios teisės normos, iki tol dėstomos Nuostatuose, buvo perkeltos į įstatymą, jas patobulinant bei papildant galiojantį reglamentavimą:

1) reglamentuota skundo priėmimo administracinių ginčų komisijoje tvarka, reikalavimai, kuriuos turi atitikti skundas, skundo nepriėmimo pagrindai, skundo trūkumų šalinimo institutas, pasirengimo nagrinėti skundą, skundo nagrinėjimo stadijos, sprendimo priėmimo tvarka, nustatytos administracinių ginčų komisijų priimamų sprendimų rūšys, jų išsiuntimo ir apskundimo tvarka;

2) įtvirtintas taikos sutarties sudarymo institutas (nustatytos būtinosios taikos sutarties sudarymo sąlygos, taikos sutarties tvirtinimo tvarka ir pasekmės);

3) įvesta bylos šalių sąvoka, skirta apibrėžti asmenų, dalyvaujančių nagrinėjant bylą administracinių ginčų komisijoje, ratą (analogiškai ABTĮ); nustatyta, kas gali būti atstovais nagrinėjant ginčą administracinių ginčų komisijoje ir kokie reikalavimai keliami jų įgaliojimų įforminimui;

4) papildyti administracinių ginčų komisijų nariams keliami reikalavimai ir nustatyti administracinių ginčų komisijų narių atleidimo prieš terminą pagrindai, kurie iki tol buvo nereglamentuoti.

<sup>31</sup> Lietuvos Respublikos Konstitucinio Teismo 1995 m. spalio 26 d. nutarimas, bylos Nr. 2/95. *Valstybės žinios*, 1995-11-02, Nr. 89-2007; Lietuvos Respublikos Konstitucinio Teismo 1996 m. gruodžio 19 d. nutarimas, bylos Nr. 3/96. *Valstybės žinios*, 1996-12-31, Nr. 126-2962.

<sup>32</sup> Lietuvos Respublikos administracinių bylų teisenos įstatymo Nr. VIII-1029 pakeitimo įstatymas. TAR, 2016-06-15, Nr. 16849.

<sup>33</sup> Lietuvos Respublikos administracinių ginčų komisijų įstatymo Nr. VIII-1031 pakeitimo įstatymas. TAR, 2016-06-15, Nr. 16850. Įstatymo 1 straipsnio 1 dalis galiojo iki 2017-12-31; įstatymo 1 straipsnio 2 dalis įsigaliojo 2018-01-01.

Įgyvendinus administracinių ginčų komisijų reformą, 2018 m. sausio 1 d. įsigaliojo Lietuvos Respublikos ikiteisminio administracinių ginčų nagrinėjimo tvarkos įstatymo<sup>34</sup> (toliau – ir IAGNTĮ) nuostatos ir ABTĮ pakeitimai<sup>35</sup>, kuriais išplėstos ikiteisminio administracinių ginčų nagrinėjimo galimybės:

1) panaikintos neefektyviai veikusios savivaldybių visuomeninės administracinių ginčų komisijos, šių komisijų kompetencija perduota Vyriausiajai administracinių ginčų komisijai, pakeitus jos pavadinimą į Lietuvos administracinių ginčų komisiją;

2) 4 metams sudaroma Lietuvos administracinių ginčų komisija (iš 7 narių) ir jos teritoriniai padaliniai (iš 5 narių) – Kauno, Klaipėdos, Panevėžio ir Šiaulių skyriai (toliau – Komisija); Lietuvos administracinių ginčų komisijos ir jos teritorinių padalinių narius skiria Lietuvos Respublikos Vyriausybė;

3) Lietuvos administracinių ginčų komisijos ir jos teritorinių padalinių nariais gali būti tik Lietuvos Respublikos piliečiai, turintys aukštąjį teisinį išsilavinimą;

4) Lietuvos administracinių ginčų komisijos ir jos teritorinių padalinių nariu negali būti asmuo, kuris įstatymų nustatyta tvarka pripažintas kaltu dėl sunkaus ar labai sunkaus nusikaltimo, nusikaltimo valstybės tarnybai ir viešiesiems interesams, korupcinio pobūdžio nusikaltimo ar nusikaltimo, kuriuo padaryta turtinė žala valstybei, padarymo ir turi neišnykusį ar nepanaikintą teistumą.

Pagal įstatymais numatytą kompetenciją Komisija yra specialusis alternatyvaus ginčų nagrinėjimo subjektas – ikiteisminio administracinių ginčų nagrinėjimo institucija, kuri neturi įgaliojimų atlikti viešąjį administravimą.<sup>36</sup> Išankstinio administracinių ginčų nagrinėjimo institucijos, kurios nagrinėja tik administracinius ginčus, teisinėje doktrinoje nėra priskiriamos prie viešojo administravimo subjektų, tačiau ir nelaikomos teismais. Minėta, kad joms apibūdinti vartojama sąvoka kvaziteizmas<sup>37</sup>.

Šiuo metu Lietuvos administracinių ginčų komisija iš esmės veikia kaip bendrosios kompetencijos ikiteisminio administracinių ginčų nagrinėjimo institucija (kvaziteizmas).

<sup>34</sup> *Ibid.*

<sup>35</sup> *Supra* note 32.

<sup>36</sup> Lietuvos vyriausiojo administracinio teismo 2016 m. balandžio 8 d. nutartis administracinėje byloje I. Ž. v. Klaipėdos miesto savivaldybės administracijai, Klaipėdos miesto savivaldybė ir Klaipėdos miesto savivaldybės visuomeninių administracinių ginčų komisija (bylos Nr. A-987-662/2016). Lietuvos vyriausiojo administracinio teismo praktikoje laikomasi taisyklės, kad speciali, išorinę administracinių aktų teisėtumo kontrolę atliekanti išankstinio ginčo nagrinėjimo ne teismo tvarka institucija negali būti ginčo šalimi administracinėje byloje teisme, į kurį persikėlė ikiteisminė tvarka išnagrinėtas ginčas.

<sup>37</sup> Pranevičienė, B., *supra* note 8, p. 51.

Specialiaisiais įstatymais nustatytos ir kitos, privalomos ar fakultatyvios išankstinio ginčų nagrinėjimo institucijos, sprendžiančios administracinius ginčus specialiose viešojo administravimo srityse. Tačiau šiame straipsnyje jų veikla plačiau nenagrinėjama.

Iki 2018 m. sausio 1 d. Vyriausioji administracinių ginčų komisija, susidedanti iš 5 komisijos narių, nagrinėjo skundus (prašymus) tik dėl centrinių valstybinio administravimo subjektų priimtų individualių administracinių aktų ir veikslių (neveikimo) teisėtumo, taip pat dėl šių subjektų vilkinimo atlikti jų kompetencijai priskirtus veikslus. Po Vyriausiosios administracinių ginčų komisijos reformos ne tik pakeistas šios komisijos pavadinimas, bet ir išplėsta Komisijos ir jos teritorinių padalinių kompetencija: Komisijai ir jos teritoriniams padaliniams yra pavesta nagrinėti skundus dėl visų valstybinio ir savivaldybių administravimo subjektų veikslių ir neveikimo viešojo administravimo srityje.<sup>38</sup>

Tokiu būdu ženkliai išsiplėtė ratas viešojo administravimo sričių, kuriose kylantys administraciniai ginčai gali būti nagrinėjami Komisijoje. Lyginant su 2016 m.<sup>39</sup> ir 2017 m.<sup>40</sup>, skundų, gautų Komisijoje ir jos teritoriniuose padaliniuose kiekis 2018 m.<sup>41</sup> ir 2019 m.<sup>42</sup> augo. Iš 2019 metų veiklos ataskaitos<sup>43</sup> matyti, kad skundai dėl valstybinio administravimo subjektų sudarė: Lietuvos administracinių ginčų komisijoje 91 %, Kauno apygardos skyriuje 36 %, Klaipėdos apygardos skyriuje 32,7 %, Šiaulių apygardos skyriuje 23,4 % ir Panevėžio apygardos skyriuje 38,6 % (žr. 1 pav.).

<sup>38</sup> Pagal IAGNTĮ 5 straipsnio 1 dalį, Komisija nagrinėja skundus (prašymus) dėl centrinių valstybinio administravimo subjektų priimtų individualių administracinių aktų ir veikslių (neveikimo) teisėtumo, taip pat dėl šių subjektų vilkinimo atlikti jų kompetencijai priskirtus veikslus, taip pat nagrinėja skundus (prašymus) dėl teritorinių valstybinio administravimo subjektų ir savivaldybių administravimo subjektų, esančių jos veiklos teritorijoje, priimtų individualių administracinių aktų ir veikslių (neveikimo) teisėtumo, taip pat dėl šių subjektų vilkinimo atlikti jų kompetencijai priskirtus veikslus. Komisijos teritoriniai padaliniai nagrinėja skundus (prašymus) dėl teritorinių valstybinio administravimo subjektų ir savivaldybių administravimo subjektų, esančių jų veiklos teritorijoje, priimtų individualių administracinių aktų ir veikslių (neveikimo) teisėtumo, taip pat dėl šių subjektų vilkinimo atlikti jų kompetencijai priskirtus veikslus

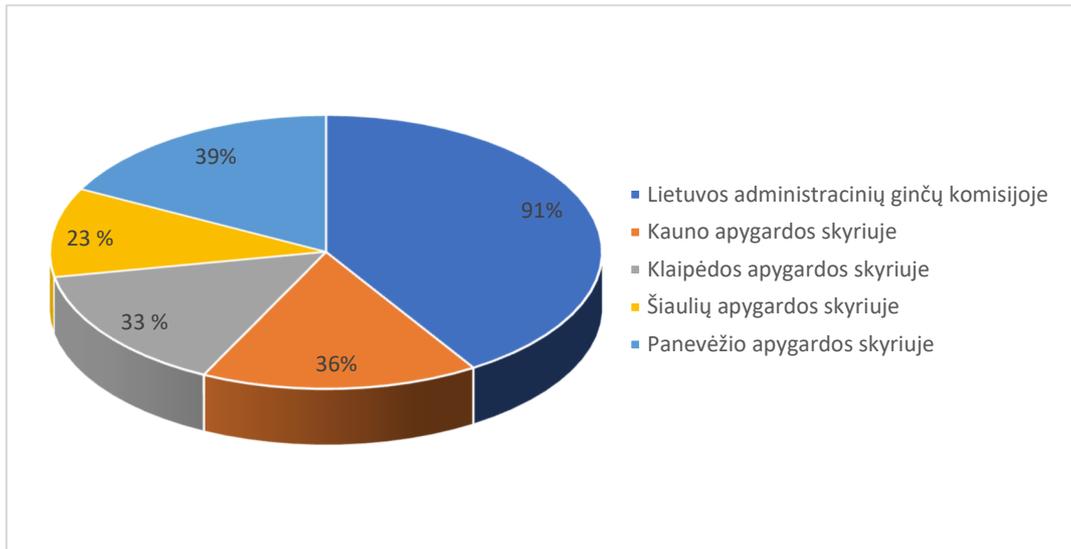
<sup>39</sup> Pagal Vyriausiosios administracinių ginčų komisijos 2016 m. veiklos ataskaitą matyti, jog gauti 879 skundai, priimti 849 sprendimai.

<sup>40</sup> Pagal Vyriausiosios administracinių ginčų komisijos 2017 m. veiklos ataskaitą matyti, jog gauti 794 skundai, priimti 833 sprendimai.

<sup>41</sup> Iš Lietuvos administracinių ginčų komisijos 2018 m. veiklos ataskaitos matyti, jog Komisija (Vilniuje) gavo 847 skundus (62 % nuo visų Komisijoje gautų skundų), Kauno apygardos skyriuje – 179 (13 %), Klaipėdos apygardos skyriuje – 143 (11 %), Šiaulių apygardos skyriuje – 121 (9 %), Panevėžio apygardos skyriuje – 70 skundų (5 %).

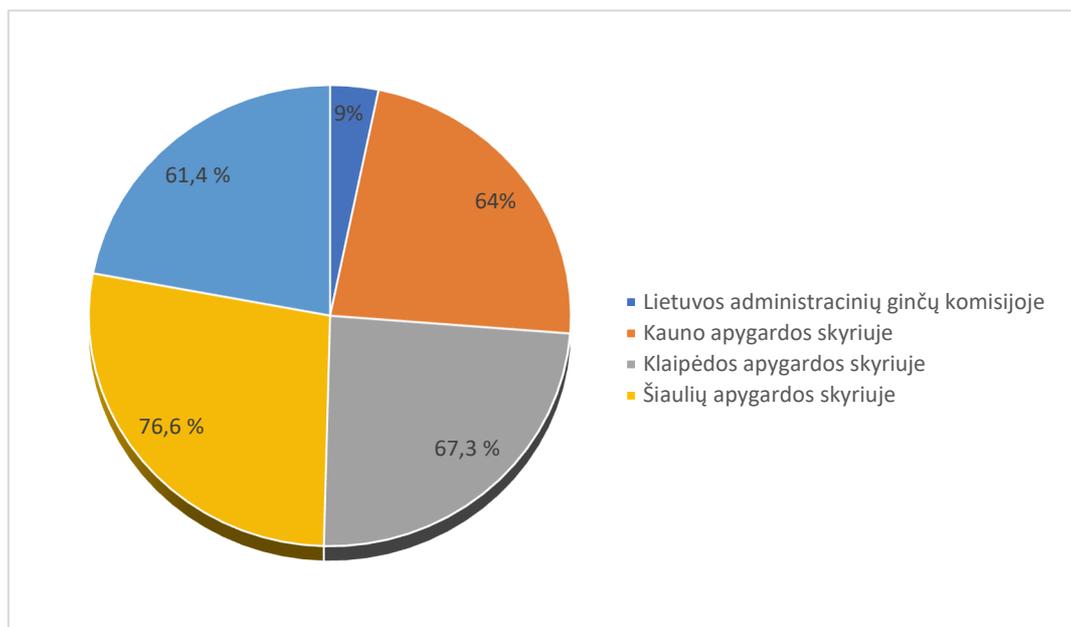
<sup>42</sup> Iš Lietuvos administracinių ginčų komisijos 2019 m. veiklos ataskaitos matyti, jog Komisija (Vilniuje) gavo 902 skundus (64,2 % nuo visų Komisijoje gautų skundų), Kauno apygardos skyriuje – 197 (14 %), Klaipėdos apygardos skyriuje – 159 (11,3 %), Šiaulių apygardos skyriuje – 77 (5,5 %), Panevėžio apygardos skyriuje – 70 skundų (5 %).

<sup>43</sup> Lietuvos administracinių ginčų komisijos 2019 metų veiklos ataskaita. [žiūrėta 2020-10-20]. <[https://lagk.lrv.lt/uploads/lagk/documents/files/Administracine%20informacija/Veiklos%20ataskaitos/2019%20m\\_%20veiklos%20ataskaita.pdf](https://lagk.lrv.lt/uploads/lagk/documents/files/Administracine%20informacija/Veiklos%20ataskaitos/2019%20m_%20veiklos%20ataskaita.pdf)>



**1 pav.** 2019 m. gauti skundai dėl valstybinio administravimo subjektų

Asmenų kreipimasi su skundu dėl savivaldybių administravimo subjektų sudarė: Lietuvos administracinių ginčų komisijoje 9 %, Kauno apygardos skyriuje 64 %, Klaipėdos apygardos skyriuje 67,3 %, Šiaulių apygardos skyriuje 76,6 % ir Panevėžio apygardos skyriuje 61,4 % (žr. 2 pav.).



**2 pav.** 2019 m. gauti skundai dėl savivaldybių administravimo subjektų

2018 metai Komisijai buvo svarbių pokyčių metai: praplėtus Komisijos veiklos teritoriją ir kompetencijos ribas, kasmet didėja ir gaunamų skundų kiekis. Tačiau pastebėtina, kad Komisijai ir jos teritoriniams padaliniam suteikiama kompetencija nagrinėti administracinius

ginčus yra ribojama. Komisija ir jos teritoriniai padaliniai nesprenžia<sup>44</sup>: 1) bylų, nepriskirtų administracinių teismų kompetencijai<sup>45</sup>; 2) bylų, kurias netaikant išankstinio nagrinėjimo ne teismo tvarka procedūros nagrinėja apygardos administracinis teismas<sup>46</sup>; 3) ginčų (bylų) pagal skundus (prašymus) dėl kitų išankstinio ginčų nagrinėjimo ne teismo tvarka institucijų priimtų sprendimų<sup>47</sup>; 4) bylų, kurios pagal įstatymus priskirtos Vilniaus apygardos administracinio teismo išimtinai kompetencijai<sup>48</sup>; 5) administracinių ginčų, kuriems nagrinėti įstatymai nustato kitokią ikiteisminio ginčų nagrinėjimo tvarką<sup>49</sup>; 6) žalos atlyginimo klausimų<sup>50</sup>; 7) bylos šalių turėtų išlaidų atlyginimo klausimų<sup>51</sup>. Net ir įvertinus aukščiau nurodytus ribojimus, autorės pastebi, kad Komisijoje nagrinėjamų administracinių ginčų spektras yra pakankamai platus. Be to, auga asmenų pasitikėjimas Komisija kaip kvaziteismine institucija, kuri pajėgi itin operatyviai atkurti galimai pažeistą asmens teisę ar teisėtą interesą, priimdama privalomojo pobūdžio sprendimą dėl ginčo esmės.

## ADMINISTRACINIŲ GINČŲ KOMISIJOS PERSPEKTYVOS

Tais atvejais, kai administraciniai ginčai pirmiausiai yra išnagrinėti nepriklausomose kolegialiose ikiteisminėse institucijose, pastebima, kad vėliau, nagrinėjant šiuos administracinius ginčus teisme, tokios bylos nagrinėjamos greičiau ir efektyviau, nes esminės bylos faktinės aplinkybės jau būna nustatytos ginčą išnagrinėjus ikiteismine tvarka. Be to, ikiteisminis administracinių ginčų nagrinėjimas yra mažiau formalizuotas, greitesnis ir pigesnis būdas asmenims ginti pažeistas teises ir įstatymų saugomus interesus. Visu pirma, sumažėja teikiamų skundų dėl viešojo administravimo subjektų sprendimų, veiklos (ar neveikimo) skaičius, antra, didėja teismo sprendimų stabilumas.

Atsižvelgiant į tai, šiuo metu yra parengtas IAGNTĮ pakeitimo įstatymo projektas<sup>52</sup>, kuriuo pateikiamas pasiūlymas, kad Komisija ir jos teritoriniai padaliniai privalomai ikiteismine tvarka nagrinėtų:

<sup>44</sup> *Supra* note 1, 5 straipsnio 3 dalies 1 punktą.

<sup>45</sup> *Supra* note 2, 18 straipsnis.

<sup>46</sup> *Supra* note 2, 20 straipsnio 2 dalis.

<sup>47</sup> *Supra* note 2, 20 straipsnio 3 dalis.

<sup>48</sup> *Supra* note 2, 20 straipsnio 4 dalis.

<sup>49</sup> *Supra* note 1, 5 straipsnio 3 dalies 2 punktą.

<sup>50</sup> *Supra* note 1, 5 straipsnio 5 dalis.

<sup>51</sup> *Ibid.*

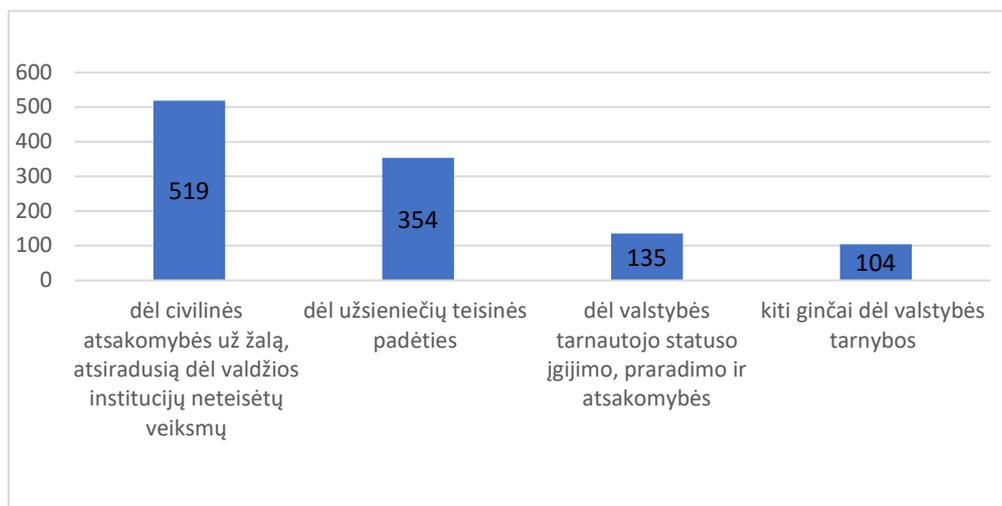
<sup>52</sup> Lietuvos Respublikos ikiteisminio administracinių ginčų nagrinėjimo tvarkos įstatymo Nr. VIII-1031 pakeitimo įstatymo projektas (nauja redakcija). TAR, 2020-05-28, Nr. XIIIIP-4252(2).

1) *skundus dėl žalos*, atsiradusios dėl valstybinio administravimo subjektų ir savivaldybių administravimo subjektų neteisėtų veiksmų, atlyginimo (Lietuvos Respublikos civilinio kodekso 6.271 straipsnis);

2) *tarnybinius ginčus*, kai viena ginčo šalis yra valstybės tarnautojas ar pareigūnas, taip pat skundus dėl asmens, ėjusio valstybės tarnautojo pareigas, pripažinimo padarius tarnybinių nusižengimą ir tarnybinės nuobaudos, kuri turėtų būti jam skirta, nustatymo, jeigu įstatymai nenustato kitokios ikiteisminės šiame punkte nurodytų ginčų (skundų) nagrinėjimo tvarkos;

3) *skundus dėl sprendimo dėl užsieniečio darbo atitikties Lietuvos Respublikos darbo rinkos poreikiams*, dėl sprendimo atsisakyti išduoti, pakeisti ar panaikinti leidimą laikinai gyventi Lietuvos Respublikoje ar Lietuvos Respublikos ilgalaikio gyventojų leidimą gyventi Europos Sąjungoje, taip pat skundus dėl sprendimo atsisakyti išduoti ar panaikinti leidimą dirbti Lietuvos Respublikoje.

Tikėtiną aukščiau išvardintų bylų, kurias siūloma priskirti Komisijos kompetencijai, kiekį iliustruoja Vilniaus apygardos administracinio teismo 2019 metų veiklos apžvalgos duomenys<sup>53</sup>, iš kurių matyti, kad 2019 m. išnagrinėtos 519 bylos dėl civilinės atsakomybės už žalą, atsiradusią dėl valdžios institucijų neteisėtų veiksmų, 354 bylos dėl užsieniečių teisinės padėties; 104 bylos dėl kitų ginčų dėl valstybės tarnybos ir 135 bylos dėl valstybės tarnautojo statuso įgijimo, praradimo ir atsakomybės. (žr. 3 pav.).



**3 pav.** Vilniaus apygardos administracinio teismo 2019 m. išnagrinėti skundai

<sup>53</sup> Vilniaus apygardos administracinio teismo 2019 metų apžvalga. [žiūrėta 2020-10-20]. <<https://vaat.teismas.lt/data/public/uploads/2020/03/vaat-2019-m.-teismo-veiklos-apzvalga.pdf>>

Remiantis Regionų apygardos administracinio teismo 2019 metų veiklos apžvalga<sup>54</sup>: išnagrinėtos 723 bylos dėl civilinės atsakomybės už žalą, atsiradusią dėl valdžios institucijų neteisėtų veiksmų, 10 bylų dėl užsieniečių teisinės padėties, 30 bylų dėl kitų ginčų dėl valstybės tarnybos ir 66 bylos dėl valstybės tarnautojo statuso įgijimo, praradimo ir atsakomybės. (žr. 4 pav.)

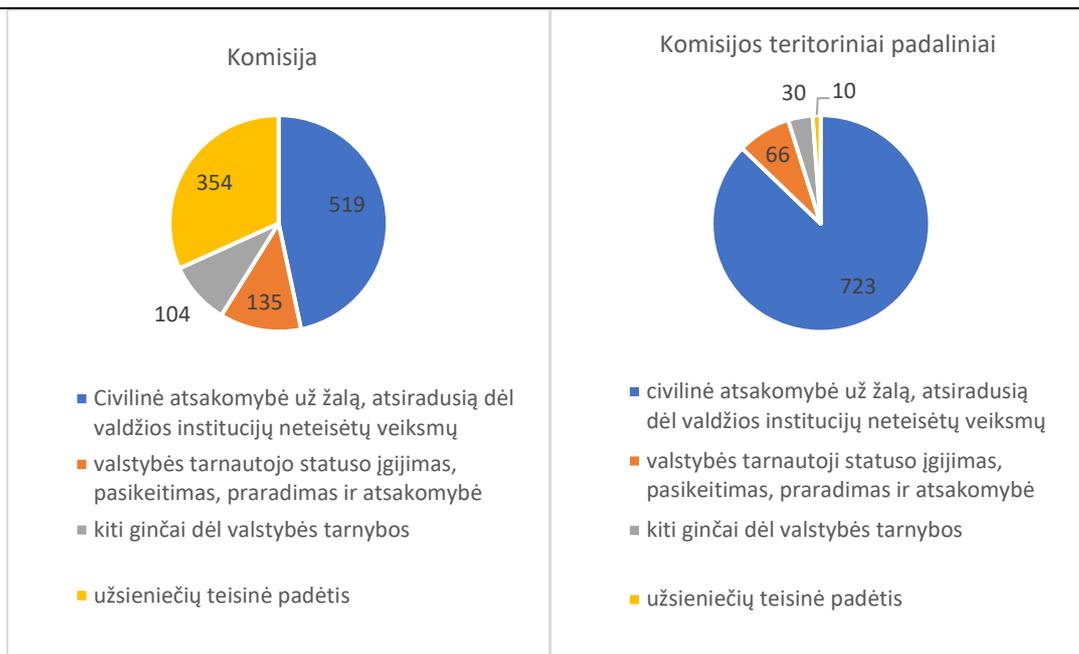


**4 pav.** Regionų apygardos administracinio teismo 2019 m. išnagrinėti skundai

Taigi, tiek pagal Vilniaus apygardos administracinio teismo, tiek ir pagal Regionų apygardos administracinio teismo pateiktus duomenis matyti, kad išplėtus Komisijos kompetenciją šiose administracinių bylų kategorijose (t. y. dėl žalos, atsiradusios dėl valstybinio administravimo subjektų ir savivaldybių administravimo subjektų neteisėtų veiksmų, atlyginimo; tarnybinius ginčus, kai viena ginčo šalis yra valstybės tarnautojas ar pareigūnas; skundus dėl sprendimo dėl užsieniečio darbo atitikties Lietuvos Respublikos darbo rinkos poreikiams), tikėtina, kad Komisijoje išankstine ne teismo tvarka nagrinėjamų administracinių bylų skaičius padidėtų apie 2000 bylų. (žr. 5 pav.).

Tikėtina, kad tuo atveju, jeigu bus priimtas IAGNTĮ pakeitimo projektas, kuriuo būtų numatytas minėtų bylų kategorijų priskyrimas Komisijai, administracinių teismų darbo krūvis sumažėtų trečdaliu.

<sup>54</sup> Regionų apygardos administracinio teismo 2019 metų veiklos apžvalga. [žiūrėta 2020-10-20]. <<https://regionu.teismai.lt/naujienos/pristatome-regionu-apygardos-administracinio-teismo-2019-metu-veiklos-apzvalga/295>>



**5 pav.** Prognozuojamas skaičius bylų, perduotinų Komisijai nagrinėti privaloma ikiteismine tvarka

Taigi, aptariamam įstatymo pakeitimui suponuotą galimybę teismuose greičiau, efektyviau ir kokybiškiau išnagrinėti kitas, sudėtingesnes bylas. Be to, jeigu administracinių ginčų komisijos išnagrinėtą bylą apeliacine tvarka toliau nagrinėtų administracinis teismas, tikėtina, kad bylos nagrinėjimas teisme būtų ženkliai greitesnis, nes Komisija būtų jau nustačiusi ginčo faktines aplinkybes.

Atsižvelgiant į tai, straipsnio autorės mano, jog įstatymų leidėjui tikslinga plėsti Komisijos kompetencijos ribas. Visu pirma siekiant ginti pažeistas teises ir įstatymų saugomus interesus, Komisija skundus išnagrinėtų per itin trumpą laiką, procesas taptų greitesnis, antra, administracinių ginčų nagrinėjimas asmenims taptų pigesnis, kadangi asmenims nereikėtų mokėti žyminio mokesčio bei nebūtų privaloma samdytis advokato, trečia, sumažėtų administracinių teismų darbo krūvis, ketvirta, ženkliai sutrumpinami bylų nagrinėjimo administraciniuose teismuose bei Lietuvos vyriausiajame administraciniame teisme terminai, penkta, Komisijoje procesas nėra formalizuotas, lyginant su teismu.

## IŠVADOS

Komisija, kaip ikiteisminio administracinių ginčų nagrinėjimo institucija, nustatytos kompetencijos ribose greičiau ir pigiau sprendžia tam tikrų kategorijų administracinius ginčus neteismine tvarka bei padeda veiksmingai spręsti administravimo institucijų ir visuomenės

atotrūkio problemą. Be to, tais atvejais, kai administraciniai ginčai pirmiausiai yra išnagrinėti nepriklausomoje kolegialioje ikiteisminėje institucijoje – Komisijoje, pastebima, kad vėliau, apeliacine tvarka nagrinėjant tokius administracinius ginčus teisme, tokios bylos nagrinėjamos greičiau ir efektyviau, nes esminės bylos faktinės aplinkybės jau būna nustatytos Komisijos.

Siekiant užtikrinti dar efektyvesnę asmenų skundų dėl viešojo administravimo subjektų sprendimų, veiksmų (ar neveikimo) nagrinėjimą, parengtuose ABTĮ ir IAGNTĮ pakeitimų projektuose numatyta priskirti Komisijai privaloma ikiteisminė ginčo nagrinėjimo tvarka nagrinėti tam tikrų kategorijų administracines bylas. Taigi, iš pateiktų įstatymų projektų matyti įstatymų leidėjo ketinimas dar labiau plėsti Komisijos kompetencijos ribas. Tokiu būdu turėtų būti garantuojama asmens teisių ir teisėtų interesų gynyba, o tuo pačiu turėtų sumažėti administracinių teismų darbo krūvis.

## LITERATŪRA

1. Pranevičienė, B. *Kvaziteismai administracijos kontrolės sistemoje: monografija*. Vilnius: Lietuvos teisės universiteto Leidybos centras, 2003.
2. Bereikienė, D.; Gagys, T.; Ramanauskaitė, J. Greito proceso administracinių ginčų komisijoje koreliacija su asmens teise į teisingą procesą. *Visuomenės saugumas ir viešoji tvarka: mokslinių straipsnių rinkinys*, 2019 (23).
3. Paškevičienė, L. Išankstinio administracinių ginčų nagrinėjimo ne teisme institutas Lietuvoje: idėjiniai ir vertybiniai pagrindai. *Teisė*, 108 (2018).
4. Paškevičienė, L. Išankstinio administracinių ginčų nagrinėjimo ne teisme institutas Lietuvoje: bendrosios normatyvinės charakteristikos. *Teisė*, 108 (2018).
5. Paškevičienė, L. Išankstinio administracinių ginčų nagrinėjimo ne teisme institutas Lietuvoje: teisinio reguliavimo aiškinimo problematika. *Teisė*, 111 (2019).
6. Raižys, D. Skundų nagrinėjimo administracinių ginčų komisijoje proceso teisinio reguliavimo problemos. *Visuomenės saugumas ir viešoji tvarka: mokslinių straipsnių rinkinys*, (8) 2012.
7. Raižys, D. Administracinių ginčų komisijų statusas: konvencionalumo diskursas. *Visuomenės saugumas ir viešoji tvarka: mokslinių straipsnių rinkinys*, (13) 2015.
8. Lietuvos Respublikos Konstitucija. *Valstybės žinios*. 1992, Nr. 33-1014.
9. Lietuvos Respublikos teismų įstatymas. *Valstybės žinios*, 1994-06-17, Nr. 46-851.
10. Lietuvos Respublikos administracinių bylų teisenos įstatymas. *Valstybės žinios*. 1999-02-03, Nr. 13-308.
11. Lietuvos Respublikos administracinių ginčų komisijų įstatymas. *Valstybės žinios*. 1999-02-03, Nr. 13-310.
12. Lietuvos Respublikos ikiteisminio administracinių ginčų nagrinėjimo tvarkos įstatymas. *Valstybės žinios*, 1999-02-03, Nr. 13-310; TAR, 2016-06-15, Nr. 2016-16850; 2020-06-22, Nr. 2020-13618.
13. Lietuvos Respublikos administracinių bylų teisenos įstatymo Nr. VIII-1029 pakeitimo įstatymas. TAR, 2016-06-15, Nr. 16849.
14. Lietuvos Respublikos administracinių ginčų komisijų įstatymo Nr. VIII-1031 pakeitimo įstatymas. TAR, 2016-06-15, Nr. 16850.

15. Lietuvos Respublikos Konstitucinio Teismo 1995 m. spalio 26 d. nutarimas, bylos Nr. 2/95. *Valstybės žinios*, 1995-11-02, Nr. 89-2007;
16. Lietuvos Respublikos Konstitucinio Teismo 1996 m. gruodžio 19 d. nutarimas, bylos Nr. 3/96. *Valstybės žinios*, 1996-12-31, Nr. 126-2962.
17. Lietuvos Respublikos Vyriausybės nutarimas „Dėl Vyriausiosios administracinių ginčų komisijos sudarymo“. *Valstybės žinios*. 1999. Nr. 40–1266; 2002. Nr. 75–3236.
18. Lietuvos Respublikos Vyriausybės 1999 m. gegužės 4 d. nutarimas Nr. 533 „Dėl Administracinių ginčų komisijų darbo nuostatų patvirtinimo“. *Valstybės žinios*. 1999. Nr. 41–1288.
19. Lietuvos Respublikos ikiteisminio administracinių ginčų nagrinėjimo tvarkos įstatymo Nr. VIII-1031 pakeitimo įstatymo projektas (nauja redakcija). TAR, 2020-05-28, Nr. XIIP-4252(2).
20. Lietuvos Respublikos baudžiamojo kodekso 231 straipsnio pakeitimo įstatymo projektas. TAR, 2020-05-19, Nr. 20-2940(3).
21. Mediacijos įstatymo Nr. X-1702 pakeitimo įstatymo projektas (nauja redakcija). TAR, 2020-05-26, Nr. XIIP-3015(2).
22. Lietuvos vyriausiojo administracinio teismo 2007 m. spalio 17 d. nutartis administracinėje byloje Nr. AS-143-296-07. *Administracinė jurisprudencija*. 2007, Nr. 13.
23. Lietuvos vyriausiojo administracinio teismo praktikos, taikant išankstinio ginčų nagrinėjimo ne per teismą tvarką reglamentuojančias teisės normas, apibendrinimas (I dalis). *Administracinė jurisprudencija*. 2010, Nr. 19.
24. Lietuvos vyriausiojo administracinio teismo 2010 m. vasario 9 d. nutartis administracinėje byloje G. J. v. valstybės įmonė Registrų centras (bylos Nr. A-143-191-10).
25. Lietuvos vyriausiojo administracinio teismo 2011 m. gegužės 17 d. nutartis administracinėje byloje Nr. AS-62-417-11. *Administracinė jurisprudencija*. 2011, Nr. 21.
26. Lietuvos vyriausiojo administracinio teismo 2012 m. birželio 8 d. nutartis administracinėje byloje *Vyriausybės atstovas Vilniaus apskrityje v. Vilniaus miesto savivaldybės taryba* (bylos Nr. A-520-2320-12);
27. Lietuvos vyriausiojo administracinio teismo 2013 m. lapkričio 13 d. nutartis administracinėje byloje *Vyriausybės atstovas Vilniaus apskrityje v. Vilniaus miesto savivaldybės taryba* (bylos Nr. A-438-1438-13).
28. Lietuvos vyriausiojo administracinio teismo 2016 m. balandžio 8 d. nutartis administracinėje byloje *I. Ž. v. Klaipėdos miesto savivaldybės administracijai, Klaipėdos miesto savivaldybė ir Klaipėdos miesto savivaldybės visuomeninių administracinių ginčų komisija* (bylos Nr. A-987-662/2016).
29. Lietuvos Aukščiausiojo Teismo Civilinių bylų skyriaus 2018 m. gruodžio 12 d. nutartis civilinėje byloje Nr. e3K-7-471-403/2018. *Teismų praktika*. 2018, 50, p. 9-24.
30. Europos Sąjungos Teisingumo Teismo 2010 m. spalio 21 d. sprendimas byloje *Nidera Handescompagnie BV v. Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos* (bylos Nr. C-385/09).
31. Europos Tarybos Ministrų Komiteto 2001 m. rugsėjo 5 d. rekomendacija Nr. Rec (2001)9 dėl alternatyvių ginčų tarp viešojo administravimo institucijų ir privačių asmenų sprendimo priemonių. [žiūrėta 2020-10-20].  
<<https://wcd.coe.int/ViewDoc.jsp?Ref=Rec%282001%299&Sector=secCM&Language=lanEngl ish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6>>
32. Vyriausiosios Administracinių ginčų komisijos 2016 m. veiklos ataskaita. [žiūrėta 2020-10-22].  
<[https://lagk.lrv.lt/uploads/lagk/documents/files/Administracine%20informacija/Veiklos%20ata skaitos/2016%20m\\_%20VAGK-metinė-ataskaita.pdf](https://lagk.lrv.lt/uploads/lagk/documents/files/Administracine%20informacija/Veiklos%20ata skaitos/2016%20m_%20VAGK-metinė-ataskaita.pdf)>

33. Vyriausiosios administracinių ginčų komisijos 2017 m. veiklos ataskaita. [žiūrėta 2020-10-22]. <<https://lagk.lrv.lt/uploads/lagk/documents/files/Administracine%20informacija/Veiklos%20ataiskaitos/2017%20veiklos%20ataskaita.pdf>>
34. Lietuvos administracinių ginčų komisijos 2018 m. veiklos ataskaita. [žiūrėta 2020-10-22]. <[https://lagk.lrv.lt/uploads/lagk/documents/files/Administracine%20informacija/Veiklos%20ataiskaitos/2018%20veiklos%20ataskaita\(1\).pdf](https://lagk.lrv.lt/uploads/lagk/documents/files/Administracine%20informacija/Veiklos%20ataiskaitos/2018%20veiklos%20ataskaita(1).pdf)>
35. Lietuvos administracinių ginčų komisijos 2019 m. veiklos ataskaita. [žiūrėta 2020-10-22]. <[https://lagk.lrv.lt/uploads/lagk/documents/files/Administracine%20informacija/Veiklos%20ataiskaitos/2019%20m\\_%20veiklos%20ataskaita.pdf](https://lagk.lrv.lt/uploads/lagk/documents/files/Administracine%20informacija/Veiklos%20ataiskaitos/2019%20m_%20veiklos%20ataskaita.pdf)>
36. Lietuvos administracinių ginčų komisijos 2019 metų veiklos ataskaita. [žiūrėta 2020-10-20]. <[https://lagk.lrv.lt/uploads/lagk/documents/files/Administracine%20informacija/Veiklos%20ataiskaitos/2019%20m\\_%20veiklos%20ataskaita.pdf](https://lagk.lrv.lt/uploads/lagk/documents/files/Administracine%20informacija/Veiklos%20ataiskaitos/2019%20m_%20veiklos%20ataskaita.pdf)>
37. Vilniaus apygardos administracinio teismo 2019 metų apžvalga. [žiūrėta 2020-10-20]. <<https://vaat.teismas.lt/data/public/uploads/2020/03/vaat-2019-m.-teismo-veiklos-apzvalga.pdf>>
38. Regionų apygardos administracinio teismo 2019 metų veiklos apžvalga. [žiūrėta 2020-10-20]. <<https://regionu.teismai.lt/naujienos/pristatome-regionu-apygardos-administracinio-teismo-2019-metu-veiklos-apzvalga/295>>

## THE ADMINISTRATIVE DISPUTES COMMISSION: DEVELOPMENT AND PERSPECTIVES

**Lionela Gelmanienė<sup>1</sup>**

Mykolas Romeris University

**Aistė Jungaitytė<sup>2</sup>**

Mykolas Romeris University

### Summary

The article focuses on the development and prospects of the Administrative Disputes Commission. In modern society, the spectrum of socio-economic relations is constantly expanding and changing, on that basis, a list of areas in which the state is involved. In the Lithuanian legal system, the protection of the rights of individuals is ensured not only in courts, but also in out-of-court administrative dispute institutions). In essence, the establishment of a pre-trial dispute resolution procedure facilitates more expeditious verification of the legality of an individual administrative act or action, reducing the workload of administrative courts on that basis, reflecting the main aims of administrative justice as follows: the priority of the protection of individual rights over the interests of the state and quick and effective protection of individual rights. The article not only seeks to reveal the development of the Administrative Disputes Commission, but also the prospects of this Commission in dealing with administrative disputes. The article discusses the Central Commission for Administrative Disputes, County Administrative Disputes Commissions, Municipal Public Administrative Disputes Commissions. In regard to the Administrative Disputes Commission, this Commission acts as an independent quasi-court and is guided in its activities by The Law of the Republic of Lithuania on Pre-Trial Administrative Dispute Resolution, The Law of the Republic of Lithuania on Administrative Proceedings, and applies laws of the Republic of Lithuania post legislative acts as well as legislation of EU in different areas. It can be argued that the Commission is an out-of-court alternative to the respective jurisdiction of the district administrative court. After examining the complaint within a very short period, the Commission, creates preconditions for the prompt restoration of potentially violated rights or legitimate interests of a person, thus, the commission makes decisions promptly but also adequately protects the rights of individuals. The extension of the Commission's competences will not only allow for a much faster processing of complaints (requests) of individuals and more effective protection of

---

their rights and legitimate interests, but it will also reduce the large flow of cases in the courts of first instance.

**Keywords:** Administrative Dispute Commission, pre-trial administrative disputes resolution, out-of-court administrative dispute institutions, administrative process, human rights.

---

## KARFENTANILIS – NAUJOS NARKOTINIŲ IR PSICHOTROPINIŲ MEDŽIAGŲ VARTOJIMO TENDENCIJOS

**Dalia Jasevičienė**

*Mykolo Romerio universitetas  
Maironio g. 27, LT-44211 Kaunas  
Telefonas +37065201451  
El. paštas: [dalytes@gmail.com](mailto:dalytes@gmail.com)*

DOI: 10.13165/PSPO-20-25-11

---

**Anotacija.** Kasdien besikeičiant visuomenei, deja keičiasi ir asmenų svaiginimosi būdai ir priemonės. 2016.09.21 d. Narkotikų, tabako ir alkoholio kontrolės departamentas išplatino pranešimą „Karfentanilis: Europos narkotikų ir narkomanijos stebėsenos centras įspėja apie naują opioidų pavojų“. Pranešime buvo perspėjama apie tai, kad į Lietuvą gali būti įvežta ir imti plisti naujas sintetinis opioidas – fentanilių grupės psichotropinė medžiaga „karfentanilis“. Tuo metu Lietuvos Narkotikų, tabako ir alkoholio kontrolės departamentas dar neturėjo duomenų apie apsinuodijimus šia medžiaga Lietuvoje. Karfentanilis dar 2014m. pradžioje buvo įtrauktas į Narkotinių ir psichotropinių medžiagų sąrašus. Ši medžiaga labai pavojinga tuo, kad stipriai veikia labai mažos dozės. Kai kuriais atvejais galima apsinuodyti net per odą, palietus medžiagą. Todėl būtina gauti kuo tikslesnius duomenis apie šios medžiagos paplitimą tarp asmenų nuolat vartojančių narkotines ir psichotropines medžiagas. Tuomet tinkamai įvertinti, ar šios medžiagos aptikimui skiriamas pakankamas policijos pareigūnų dėmesys. O gal, iš tiesų, tik labai nedidelis procentas visų priklausomybėmis sergančių asmenų ją vartoja ir jos paplitimas yra mažas palyginus su kitomis narkotinėmis ir psichotropinėmis medžiagomis. Taigi šio darbo tikslas yra nustatyti, kiek plačiai per kelerius metus paplito Lietuvoje nauja psichotropinė medžiaga karfentanilis ir išanalizuoti pagrindines problemas, policijos pareigūnams nustatant disponavimą šia medžiaga.

Norint nustatyti, kiek išiktųjų yra paplitusi kokia nors draudžiama psichotropinė medžiaga, tikslinga rinktis du būdus: apklausti asmenis, tarp kurių ši medžiaga platinama, ir peržiūrėti teismo sprendimus dėl nustatyto disponavimo draudžiama medžiaga. Tyrimui buvo pasirinkti abu šie būdai norint kuo tiksliau įvertinti, koks procentas visų narkotines ir psichotropines medžiagas vartojančių asmenų vartoja būtent karfentanilį. Taigi darbe buvo naudojami šie metodai: anketinės apklausos ir lyginamosios dokumentų analizės, bei kiti standartiniai praktinių teisinės problemų tyrimo metodai.

Darbe buvo pasirinkta konkreti vietovė Lietuvoje – Kauno miestas. Atliekant tyrimą buvo peržiūrėti visi 2019 m. Kauno apylinkės teismo Kauno rūmuose priimti sprendimai, 195 bylose pagal LR BK 259 str. ir 260 str. Ir buvo anonimiškai bendraujama su narkotines ir psichotropines medžiagas vartojančiais 87 asmenimis gyvenančiais Kaune. Nustatyta, kad 3% bylų buvo susijusių su fentanilių grupės psichotropinėmis medžiagomis, visos būtent su karfentaniliu. Daugelis ikiteisminių tyrimų buvo pradėti policijos pareigūnams patikrinus asmenis ir transporto priemones. Atkreiptinas dėmesys, kad net 88% asmenų, vartojančių karfentanilį, teigia jį platinantys. Iš to, kad ši medžiaga pasitaiko tik 3% bylų, o net 44% apklaustųjų teigia vartojantys būtent šią medžiagą, darytina išvada, kad yra tam tikrų aplinkybių, dėl kurių policijos pareigūnai neaptinka fentanilių grupės psichotropinių medžiagų darydami asmenų ar automobilių dalines apžiūras.

**Pagrindinės sąvokos:** narkotinės ir psichotropinės medžiagos, opioidai, fentanilis, karfentanilis, narkotinių ir psichotropinių medžiagų vartojimas.

---

## KARFENTANILIS – NUO MEDIKAMENTO IKI CHEMINIO GINKLO

Pirmą kartą karfentanilį (metil 1-(2-feniletil)-4-[fenil(propanoil)amino]piperidin-4-karboksilatą) susintetino Belgijos mokslininkų grupė 1974m.<sup>1</sup> Nuo 1986 m. šis preparatas buvo skirtas stambių gyvūnų anestezijai. Dar tais pačiais metais Jungtinė karalystė įtraukė šį preparatą į kontroliuojamų medžiagų sąrašą. Vėliau, jis buvo panaudotas ir kaip cheminis ginklas. Aerosoliniu karfentanilio mišinių buvo nuodijami kariai<sup>2</sup>, lyderiai<sup>3</sup> ir kai kuriais atvejais net civiliai.<sup>4</sup> Ilgą laiką Kinijoje šios medžiagos buvo galima įsigyti visiškai laisvai iš bet kurio iš 25 gamintojų ir daugybės platintojų (2570 JAV dolerių už karfentanilio kilogramą, vadinasi daugiau nei dvi mirtinos dozės už vieną centą). Todėl Kinija buvo kaltinama sudaranti galimybes laisvai cheminio ginklo rinkai. Kinija tik 2017m. pradėjo kontroliuoti karfentanilį, o iki tol jos rinkoje buvo galima bet kam laisvai nusipirkti šios medžiagos. Todėl 2014 m. JAV gynybos sekretoriaus padėjėjas branduolinės, cheminės ir biologinės gynybos programose Andrew C. Weber, sakė: „Tai ginklas. Kinijos įmonės neturėtų jo siųsti bet kam.“ Pastaruoju metu juo pradėjo svaigintis kaip psichotropine medžiaga. Europoje apie karfentanilio konfiskavimą policijos pirmą kartą pranešta 2012 m. gruodžio mėn. Latvijoje, ir vos po trijų mėnesių Lietuvoje – 2013 m. vasario mėn. Vilniuje<sup>5</sup>.

Praėjus keleriems metams, matyti, kad karfentanilis greitai plinta ne tik Europoje, bet visame pasaulyje, tame tarpe, be abejo, ir Lietuvoje. Be to tarp šios medžiagos vartojančiųjų dažnai registruojami mirtini apsinuodijimai. JAV nustatyta, kad atsitiktinės mirtys nuo fentanilio grupės medžiagų perdozavimo 2014m. iki 2018m. išaugo nuo 3000 iki 31000, t.y. dešimt kartų vos per ketverius metus.<sup>6</sup> Ši medžiaga yra ypatinga tuo, kad jos dozuotės labai mažos.

---

<sup>1</sup> Z. Lipsman „A High Potency Opioid: Carfentanil, Lethal and on the Rise“ American college of emergency physicians, Toxicology, 2020-10-01 <https://www.acep.org/how-we-serve/sections/toxicology/news/april-2017/a-high-potency-opioid-carfentanil-lethal-and-on-the-rise/>

<sup>2</sup> J.R. Riches, Robert W. Read and others „Analysis of Clothing and Urine from Moscow Theatre Siege Casualties Reveals Carfentanil and Remifentanil Use“ *Journal of Analytical Toxicology*, Volume 36, Issue 9, November/December 2012, Pages 647–656, <https://doi.org/10.1093/jat/bks078>

<sup>3</sup> Izraelio slaptosios žvalgybos tarnybos „Mossad“ agentai purškė karfentanilio mišinį į „Hamas“ lyderio Khaledo Mashaalo ausį, eidamas Ammano gatvėje Jordanijoje, bandydamas nužudyti 1997 m.

<sup>4</sup> Pavyzdžiui 2002.10.26d. Rusijos specialieji daliniai panaudojo karfentanilio mišinį aerosolį Dubrovkos teatre prieš čečėnų kovotojus. Ten vykusį įkaitų drama baigėsi tragiškai dėl netinkamo gaivinimo, salėje panaudojus karfentanilio mišinio aerosolį, buvo rasti 33 teroristų ir 129 įkaitų kūnai.

<sup>5</sup> Pasaulio Sveikatos Organizacijos Priklausomybės nuo narkotikų ekspertų komiteto (ECDD) trisdešimt devintojo susirinkimo Kritinės apžvalgos ataskaita „Karfentanilis.“, 2017m. Ženeva. [https://www.who.int/medicines/access/controlled-substances/Critical\\_Review\\_Carfentanil.pdf](https://www.who.int/medicines/access/controlled-substances/Critical_Review_Carfentanil.pdf)

<sup>6</sup> Nacional centre of drug abuse „Overdose Death Rates“ <https://www.drugabuse.gov/drug-topics/trends-statistics/overdose-death-rates>

2017 m. Europos narkotikų ir priklausomų asmenų monitoringo centro (toliau tekste EMCDDA) Mokslo komitetas oficialiai įvertino 9 naujų psichoaktyviųjų medžiagų, įskaitant 5 fentanilio darinių (akriloilfentanilio, furanilfentanilio, 4-fluoroisobutrilfentanilio, tetrahidrofuranilfentanilio ir karfentanilio), keliamą riziką. Nuo tada šios medžiagos kontroliuojamos tarptautiniu lygmeniu pagal 1961 m. Jungtinių Tautų Konvenciją, t.y. jos yra draudžiamos visose šalyse, kurios yra ratifikavusios šią konvenciją.<sup>7</sup>

2020 metų EMCDDA parengtoje ataskaitoje nurodoma, kad ištyrus Europos miestuose randamus panaudotus švirkštus daugiausia buvo randama amfetamino ir kokaino, išskyrus vienintelį miestą Vilnių, kur daugiausiai buvo randamas metadonas ir karfentanilis.<sup>8</sup> Vilniuje buvo vykdomas tarptautinis projektas, kurio esmė buvo kaip galima tiksliau nustatyti kokias intravenines medžiagas vartoja asmenys. Tyrimo būdas buvo iš priklausomybės centro specialios šiukšliadėžės, kuria naudojasi asmenys, prašantys nemokamų švirkštų, surinkti visus panaudotus ir atlikti pėdsakų cheminį tyrimą. Šio tyrimo rezultatai be abejojimo labai priklauso nuo asmenų, kurie sutinka bendradarbiauti su priklausomybių ligų centru, tačiau, nepaisant to, šis tyrimas buvo labai informatyvus, ypač nustatant kokios medžiagos yra maišomos ir kokiomis koncentracijomis.

## KARFENTANILIO PAVEIKTO ASMENS ATPAŽINIMAS

Karfentanilio poveikis žmogui yra ramiantis, migdantis. Jis platinamas miltelių arba skysčio pavidalu. Vartojamas gali būti įvairiai (kaip ir kitos medžiagos, kurių pavidalas yra milteliai, tirpstantys vandenyje, pavyzdžiui kokainas): jis gali būti uostomas, geriamas arba intraveniniu būdu. Priklausomybę ši psichotropinė medžiaga gali sukelti vos po kelių kartų pavartojimo. Priklausomai nuo vartojančiojo kūno masės ir vartojimo būdo, karfentanilio poveikis pasireiškia vos po kelių sekundžių suvartojus ir tęsiasi kelias valandas.<sup>9</sup> Kaip ir kitų opioidų, karfentanilio abstinencinis periodas yra sunkus. Jis prasideda po apytikriai trisdešimties valandų nevartojimo. Asmenis kamuoja stiprus sąnarių ypač rankų pirštų ir kojų skausmas, kuris daro didelę įtaką atkretimui. Karfentanilio mirtina dozė yra vos 2 mg, bet kokio

<sup>7</sup> Europos narkotikų vartojimo paplitimo ataskaita. Tendencijos ir pokyčiai. 2019.

[https://www.emcdda.europa.eu/system/files/publications/11364/20191724\\_TDAT19001LTN\\_PDF.pdf](https://www.emcdda.europa.eu/system/files/publications/11364/20191724_TDAT19001LTN_PDF.pdf)

<sup>8</sup> EMCDDA „European drug report“ 2020.

[https://www.emcdda.europa.eu/system/files/publications/13236/TDAT20001ENN\\_web.pdf](https://www.emcdda.europa.eu/system/files/publications/13236/TDAT20001ENN_web.pdf)

<sup>9</sup> J.O'Donnell, R. M. Gladden, and others „Notes from the Field: Overdose Deaths with Carfentanil and Other Fentanyl Analogs Detected — 10 States, July 2016–June 2017“, MMWR Morb Mortal Wkly Rep. 2018 Jul 13; 67(27): 767–768. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6047470/>

sudėjimo žmogui. Pasišalinimo iš organizmo trukmė 7,7 val. Karfentanilio perdozavimas gali pasireikšti per keliolika sekundžių po pavartojimo. Asmuo staiga nustoja kvėpuoti, arba kvėpavimas sulėtėja iki 1-2 kartų per minutę. Greitai atsiranda cianozės požymių. Sąmonę nekvėpuojantieji praranda per 1-2 minutes, o dar po 5 minučių atsiranda negrįžtami pakitimai smegenyse.<sup>10</sup> Medikamentinis gydymas pagrįstas nolksono intraveninėmis injekcijomis.

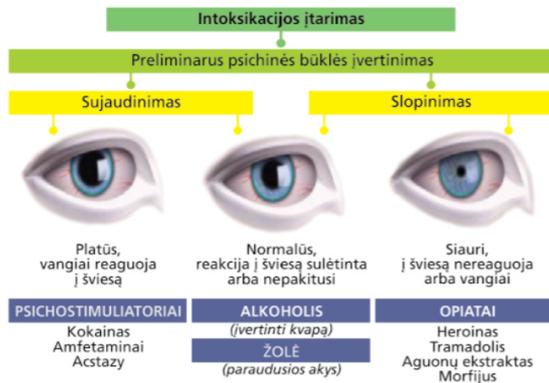
Kaip jau minėta, narkotinės ir psichotropinės medžiagos policijos pareigūnų aptinkamos dažniausiai asmenų ir transporto priemonių apžiūros metu. Daugelis medžiagų retai kada sukelia perdozavimą pasibaigiantį mirtimi, tačiau karfentanilis yra ypatingas tuo, kad juo labai lengva apsinuodyti, perdozuoti ir dar svarbiau atkreipti pareigūnų dėmesį, į tai kad galima apsinuodyti vien pačiupinėjus pirštais šią medžiagą, arba jos dulkių (mikrogranulių) pakliuvus į akis.<sup>11</sup> Todėl karfentanilį yra labai svarbu ne tik aptikti kaip miltelius ar skystį – t.y. pačią medžiagą, bet ir atpažinti ją kaip pavartojusį asmenį, nes net 30 minučių po pavartojimo gali bet kuriuo metu staiga pasireikšti perdozavimo požymiai ir gali tekti asmenį gaivinti. Nepaisant to, kad ši medžiaga sukelia mieguistumą, jas vartoti asmenys linkę ir viešose vietose (gatvėse, stotelėse). Atpažinti, kad asmuo yra pavartojęs narkotinių ar psichotropinių medžiagų galima iš jo elgsenos pakitimų (pasidaro nebepajėgūs stovėti tiesiai bent 20 sekundžių, vis stengiasi atsistoti ir užmigti) ir akių vyzdžių pakitimų. Akių vyzdžiai išsiplečia pavartojus amfetamino, kokaino, o pavartojus opiatų susitraukia (1 Pav.). Karfentanilio pavartoję asmenys pasidaro labai mieguisti, jų akių reakcija (susitraukę vyzdžiai) atsiranda po kelių minučių po pavartojimo ir išlieka kelias valandas (2 Pav.). Susiaurėję, susitraukę vyzdžiai iš esmės nereaguoja į šviesą. Net ir dienos metu neavartojusio asmens vyzdžiai yra siauri, bet pavyzdžiui į akis pašvietus žibintuvėliu, vyzdžio dydis truputį pasikeičia. Tuo tarpu pavartojusio asmens vyzdžiai visiškai nereaguoja į jokių šviesos pokyčius.<sup>12</sup> O pats asmuo pavartojęs tampa akivaizdžiai vangus, mieguistas, labai sulėtėja jo reakcijos.

---

<sup>10</sup>Fatal Fentanyl: Is this Now America's Most Dangerous Drug? *Drugs.com*;  
<https://www.drugs.com/illicit/fentanyl.html>

<sup>11</sup> Officer safety alert „Carfentanil: A Dangerous New Factor in the U.S. Opioid Crisis“, JAV kovos su narkotikais administracija [https://www.dea.gov/sites/default/files/2018-07/hq092216\\_attach.pdf](https://www.dea.gov/sites/default/files/2018-07/hq092216_attach.pdf)

<sup>12</sup> O'Malley, Patricia Anne PhD, ““Gray Death”—The Trojan Horse of the Opioid Epidemic: Historical, Clinical, and Safety Evidence for the Clinical Nurse Specialist“ Lippincott Nursing Center 2018  
[https://www.nursingcenter.com/ce\\_articleprint?an=00002800-201711000-00005](https://www.nursingcenter.com/ce_articleprint?an=00002800-201711000-00005)



**1 pav.** Akies vyzdžių pavyzdžiai, vartojant narkotines medžiagas.<sup>13</sup>

**2 pav.** Asmens, 30 min. laikotarpiu pavartojusio karfentanilį, akies nuotrauka.

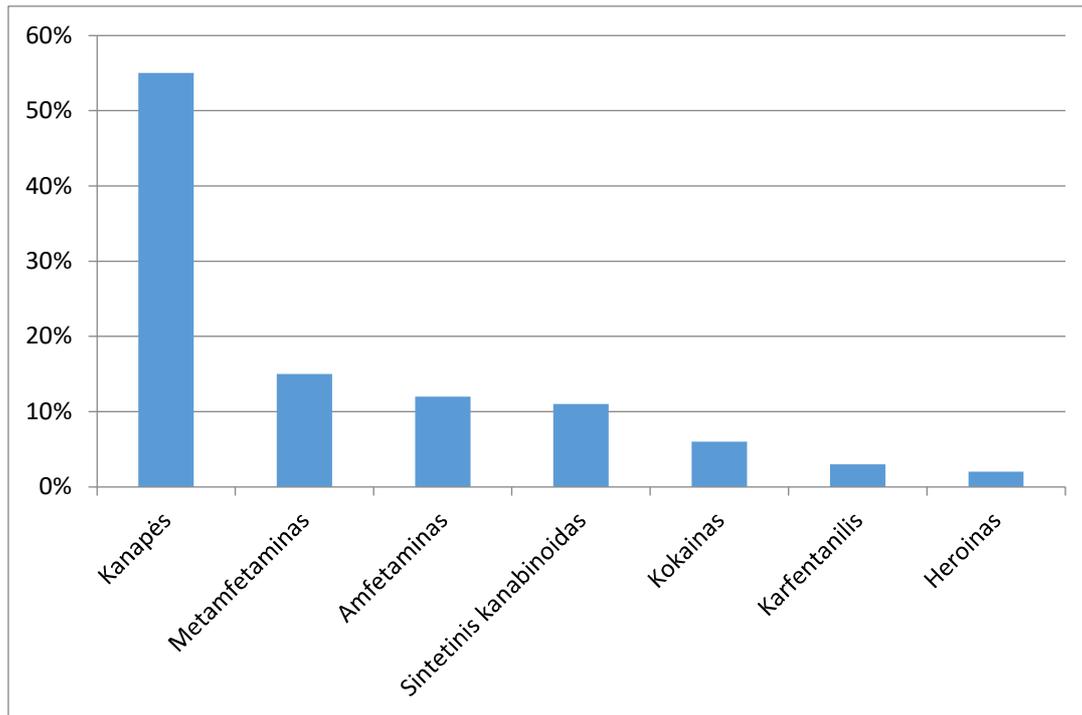
## KAUNO APYLINKĖS TEISMO KAUNO RŪMŲ 2019 M. SPRENDIMŲ ANALIZĖ

Norint sužinoti narkotinių ir psichotropinių medžiagų vartojimo situaciją šalyje, tikslinga išnagrinėti visų Lietuvos teismų sprendimus, ir iš gautų rezultatų būtų galima daryti tam tikras prielaidas. 2019 metais Visuose Lietuvos teismuose iš viso buvo priimta 2042 sprendimai bylose pagal Lietuvos Respublikos baudžiamojo kodekso 259 ir 260 straipsnius (Neteisėtas disponavimas narkotinėmis ar psichotropinėmis medžiagomis be tikslo jas platinti (BK 259 str.); Neteisėtas disponavimas narkotinėmis ar psichotropinėmis medžiagomis turint tikslą jas platinti arba neteisėtas disponavimas labai dideliu narkotinių ar psichotropinių medžiagų kiekiu (BK 260 str.)). Iš jų 184 bylose buvo kalbama apie būtent karfentanilį. Vadinasi, Lietuvoje 2019 metais beveik 9% teismo priimtų sprendimų dėl disponavimo narkotinėmis ir psichotropinėmis medžiagomis buvo susijusių būtent su disponavimu karfentaniliu.

Šiame darbe pasirinkta analizuoti Kauno apylinkės teismo Kauno rūmuose priimtus sprendimus baudžiamosiose bylose pagal BK 259 ir 260 straipsnius. Geografinio regiono pasirinkimui turėjo įtakos tai, kad būtent Kaune buvo atliktas anoniminis narkotines ar psichotropines medžiagas vartojančių asmenų anketavimas. 2019 m. Kauno apylinkės teismo Kauno rūmuose buvo išnagrinėtos 195 bylos, pagal BK 259 str. ir 260 str. 12% bylų buvo tirtos pagal BK 260 str. Ikiteisminiai tyrimai šiose 195 bylose būdavo pradami iš esmės dėl to, kad pareigūnai rasdavo narkotinių ir psichotropinių medžiagų asmens apžiūros metu (45%), transporto priemonių apžiūros metu (36%), kratos metu (14%) kiti atvejai (5%). Bylose nagrinėjamos nusikalstamos veikos, kai buvo disponuojama šiomis narkotinėmis ir

<sup>13</sup> R. Badaras, T.V. Kajokas, T. Jovaiša „Greitieji opioidinės priklausomybės detoksikacijos būdai“, Vilniaus universitetas 2009, 131psl.

psichotropinėmis medžiagomis: kanapės ir jų derva, sintetinis kanabinoidas, metamfetaminas, amfetaminas, kokainas, heroinas ir karfentanilis. Vienas iš tyrimo uždavinių yra nustatyti kaip dažnai teismo nutartyse nagrinėjamas disponavimas šiomis medžiagomis. Analizės duomenys pateikiami stulpelinėje 1 diagramoje. Čia matyti, kad daugiau nei pusę visų bylų sudaro bylos dėl kanapių. Atkreiptinas dėmesys, kad karfentanilis ir heroinas pasitaikė daug rečiau: karfentanilio 3%, o heroino – 2%.

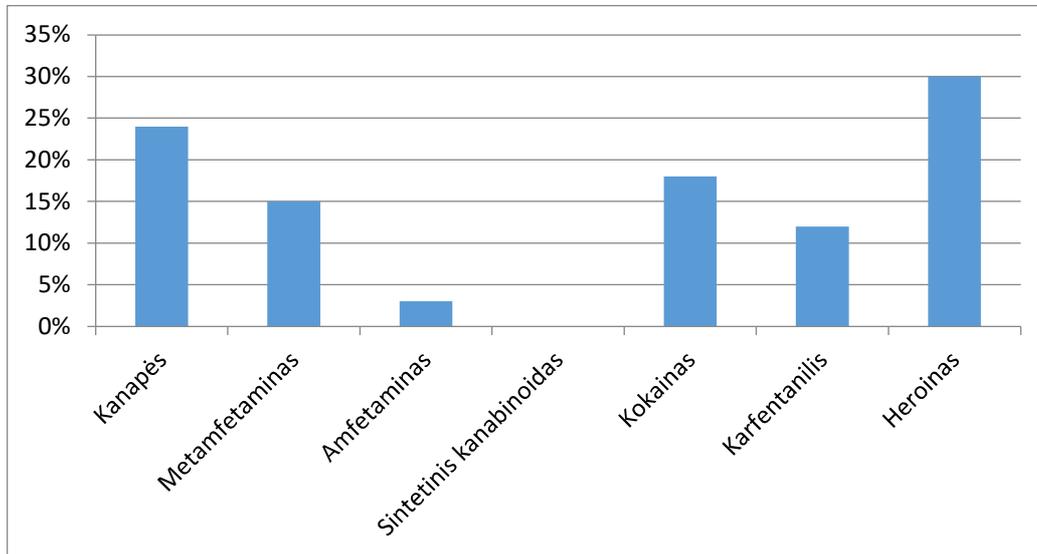


**1 diagrama.** Narkotinių ir psichotropinių medžiagų, dėl kurių buvo pradėti ikiteisminiai tyrimai Kauno mieste, procentinis skirstinys.

2014.02.26 d. karfentanilis buvo įtrauktas į antrąjį narkotinių ir psichotropinių medžiagų sąrašą, kitaip tariant, tapo uždraustu, be gydytojo leidimo, preparatu. Taigi karfentanilis Lietuvoje yra draudžiamas jau šešeri metai. Kalbant apie teismų sprendimus, svarbiausius akcentus bylose sudeda Lietuvos Aukščiausiasis teismas (toliau LAT). Per šį laikotarpį bylos dėl disponavimo būtent karfentaniliu pasiekė ir LAT. 2019 m. LAT išnagrinėjo iš viso 32 bylas<sup>14</sup> dėl disponavimo narkotinėmis ar psichotropinėmis medžiagomis. Tiesa, šioje instancijoje baudžiamosios bylos, dėl disponavimo narkotinėmis ar psichotropinėmis medžiagomis be tikslo jas platinti pasitaikė vos dvi, o tai sudaro 6%. Visos kitos bylos buvo

<sup>14</sup> Liteko Lietuvos teismų informacinė sistema  
<http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2>

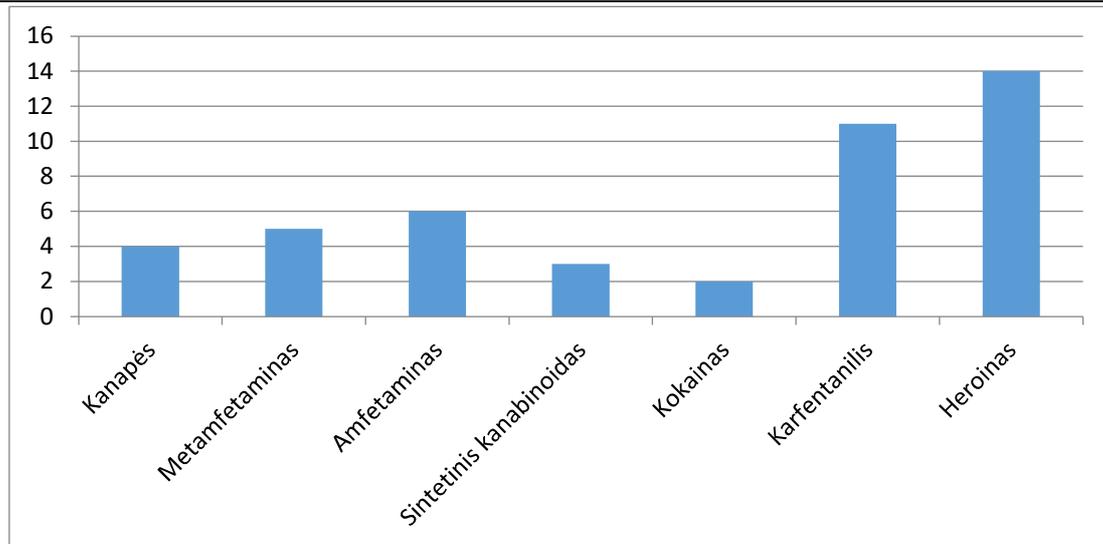
nagrinėjamos pagal LR BK 260 str. Daugiausiai bylų buvo dėl heroino (30%) platinimo ir kanapių (24%). Karfentanilis pasitaikė 12% bylų. Rezultatai pateikti 2 diagramoje.



**2 diagrama.** Narkotinių ir psichotropinių medžiagų, dėl kurių bylos buvo nagrinėjamos kasacine tvarka LAT, procentinis skirstinys.

Tiesa, šioje instancijoje baudžiamosios bylos, dėl disponavimo narkotinėmis psichotropinėmis medžiagomis be tikslo jas platinti pasitaikė vos dvi, o tai sudaro 6%. Visos kitos bylos buvo nagrinėjamos pagal LR BK 260 str.

Teismo sprendimui yra svarbūs ankstesni asmenų teistumai. Kauno apylinkės teismo Kauno rūmų sprendimuose įvardinti ankstesni teistumai buvo už labai įvairias nusikalstamas veikas, tačiau vyravo vagystės - 67%. Vidutiniškai asmenys yra anksčiau teisti po 2,87 karto, nors pirmą kartą buvo teisiami 32% kaltinamųjų. Pastebėtina, kad asmenys disponavę kokainu anksčiau dažniausiai nebuvo teisti (ankstesnių teistumų vidurkis - 2). Kitaip sakant – žemiau pateikta diagrama parodo, kiek kartų buvo vidutiniškai teisti tie asmenys, kurie dabar teisiami dėl Y ašyje pažymėtų medžiagų disponavimo. T. y. koks vidutinis teistumų skaičius priklausomai nuo disponuotos medžiagos pateikiama 3diagramoje.



**3 diagrama.** Vidutinis ankstesnių teistumų skaičius (Y ašis) skirstinys pagal narkotines ir psichotropines medžiagas, kuriomis asmenys disponavo.

Iš trečios diagramos matyti, kad asmenys, vartojantys karfentanilį ir heroiną, yra daug dažniau linkę daryti nusikalstamas veikas nei vartojantys kitas narkotines ar psichotropines medžiagas. Be to atkreiptinas dėmesys, kad visi asmenys, kurie teisiami buvo už disponavimą karfentaniliu ir heroinu, anksčiau buvo teisti. O kalbant apie anksčiau neteistus, pirmą kartą teisiami dažniausiai buvo už kanapės.

### ASMENŲ, PRIKLAUSOMŲ NUO NARKOTINIŲ IR PSICHOTROPINIŲ MEDŽIAGŲ, APKLAUSA

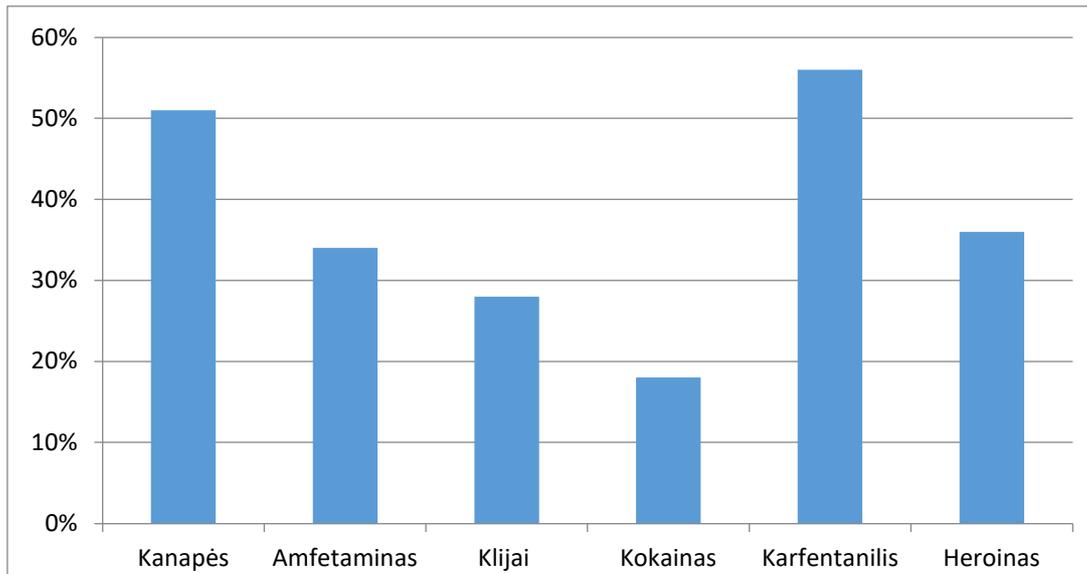
Respublikinis Priklausomybių ligų centras suskaičiavo kiek iš viso Lietuvoje ir kiek Kaune yra tokių asmenų, kurie vartoja opioidines medžiagas. Nustatyta, kad 2018 m. Lietuvoje iš viso tolių asmenų galėjo būti apie 7500, iš jų apie 1000 Kauno gyventojai<sup>15</sup>.

Šio tyrimo tikslais Kauno mieste 2020 m. sausio – vasario mėnesiais buvo atlikta anoniminė apklausa asmenų, priklausomų nuo narkotinių ar psichotropinių medžiagų. Anketa buvo platinama tarp asmenų, kurie 2020 m. sausio – vasario mėnesiais, buvo pristatyti policijos pareigūnų į gydymo įstaigą dėl apsvaigimo galimai narkotinėmis ar psichotropinėmis medžiagomis. Medikai, įvertinę asmenų būklę, nustatę išorinius narkotinių ir psichotropinių medžiagų vartojimo požymius, su jų sutikimu pateikdavo jiems anoniminę anketą. Šios apklausos tikslas buvo nustatyti, kokias konkrečiai narkotines ir psichotropines medžiagas

<sup>15</sup> Respublikinis priklausomybės ligų centras „Ataskaita“ 2018m. <https://www.rplc.lt/apie-mus/kita/atviri-duomenys/>

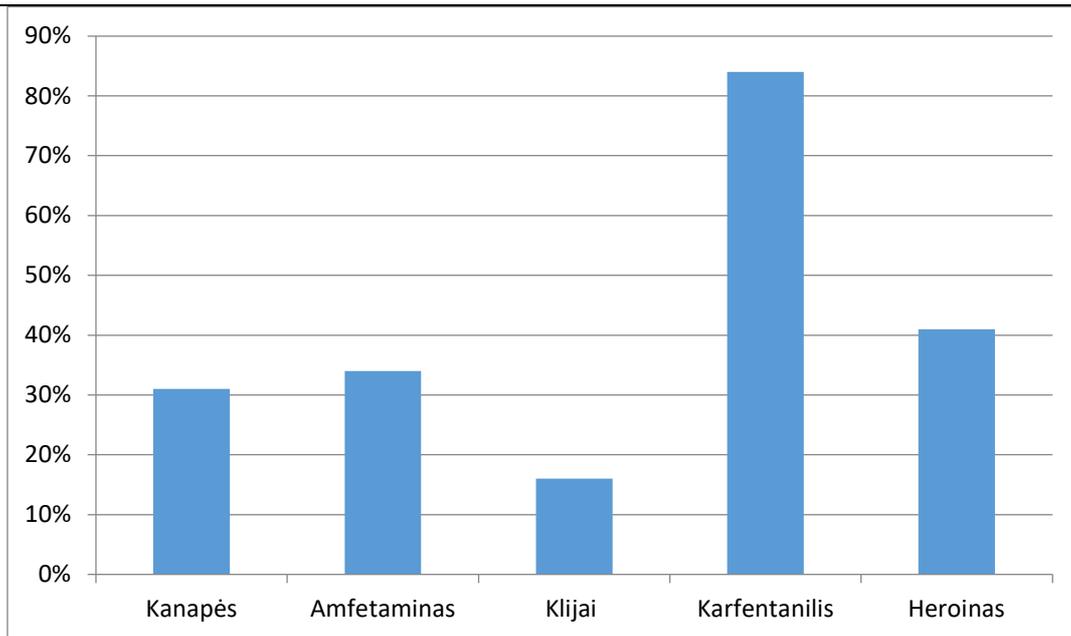
vartoja asmenys, kurie yra priklausomi nuo jų. Iš viso buvo apklausti 87 asmenys. Iš jų 26% buvo moterys ir 74% vyrai. Respondentų amžius buvo suskirstytas į 5 grupes: iki 18 metų – 12%; 18-25 metų – 29%; 26-30 metų – 34%; 31-40 metų – 18% ir daugiau nei 40 metų – 7%.

Vienas aktualiausių klausimų sudarant anketą buvo nustatyti, kokias būtent medžiagas ir kaip dažnai asmenys vartoja. Statistinis skirstinys parodantis, kokias narkotines ir psichotropines medžiagas asmenys vartoja dažniau nei kartą per mėnesį pateiktas 4 diagramoje.



**4 diagrama.** Narkotinių ir psichotropinių medžiagų vartojimo procentinis skirstinys.

Respondentų buvo klausama, kaip dažnai jie vartoja įvairias narkotines ar psichotropines medžiagas. Jų atsakymai buvo skirstomi į grupes „tik bandžiau“, „kartą per mėnesį“, „kartą per savaitę“, „kartą per dieną“ ir „dažniau nei kartą per dieną“. Kartą per dieną ir dažniau vartojančių narkotines ar psichotropines medžiagas respondentų yra 67%. Kartą per dieną ir dažniau vartojamų narkotinių ir psichotropinių medžiagų skirstinys pateiktas 5 diagramoje.



**5 diagrama.** Narkotinių ir psichotropinių medžiagų vartojamų kartą per dieną ir dažniau procentinis skirstinys.

Vis dėlto reiktų įvertinti tai, kad asmenys, kartą per dieną ir dažniau vartojantys narkotines ar psichotropines medžiagas visi nurodė anketoje niekur nedirbantys ir neturintys kitų stabilių pajamų. Anketoje jie nurodė, kad pagrindinis šių asmenų pragyvenimo šaltinis yra vagystės, dažniausiai (72%) iš parduotuvių. Iš apklausos rezultatų matyti, kad karfentanilis pastaruoju metu tapo viena pagrindinių narkotinių ar psichotropinių medžiagų, Kauno mieste, vartojamų kartą per dieną ir dažniau. Tuo tarpu iš Kauno apylinkės teismo Kauno rūmų sprendimų analizės matyti, kad karfentanilis policijos pareigūnų aptinkamas asmenų ar transporto priemonių apžiūros metu vos 3%; iš visos Lietuvos teismų sprendimų analizės matyti, kad karfentanilio randama ir pradedami ikiteisminiai tyrimai 9% palyginus su kitomis narkotinėmis ir psichotropinėmis medžiagomis.

Šis skirtumas, tarp apklausos duomenų, rodančių, kad 84% kartą per dieną ir dažniau vartojamų narkotinių ar psichotropinių medžiagų yra karfentanilis, ir teismų sprendimų, kur matyti, kad karfentanilis sudaro vos 3% Kaune ir 9% Lietuvoje, gali būti paaiškintas keliais aspektais:

- Karfentanilis yra bekvapė psichotropinė medžiaga ir policijos pareigūnas sustabdęs asmenis, turinčius su savimi karfentanilio, neturi pagrindo detalesnei asmenų (transporto priemonių) apžiūrai, kaip tai yra su kitomis narkotinėmis ar psichotropinėmis medžiagomis (kanapėmis, amfetaminu); tokia išvada darytina ir iš

---

kitų apklausos rezultatų, kur respondentai nurodė, kad dažnai pareigūnai netikrina tos vietos asmens (ar transporto priemonės) apžiūros metu, kurioje yra laikoma narkotinės ar psichotropinės medžiagos.

- Karfentanilis dozuojamas labai mažais kiekiais, todėl kartais dozė šios medžiagos gali atrodyti kaip jau suvartotos dozės liekanos maišelyje.

Iš anketinės apklausos rezultatų pastebėta, kad 83% respondentų teigia nuolat narkotikų gaunantys pažįstamiems, draugams. Kitaip sakant – platinantys. Dažniausias narkotinių ir psichotropinių medžiagų plitimo kelias yra per „tarpininkus“, kuriuos pakankamai gerai pažįsta ir pirkėjas, ir pardavėjas. Tačiau patraukti baudžiamojon atsakomybėn už platinimą tokius asmenims akivaizdu, kad yra labai sudėtinga, nes paprastai, pareigūnui atlikę asmens dalinę apžiūrą randa vieną ar kelias dozes narkotinių ar psichotropinių medžiagų. Nesant didesniams kiekiui nėra pagrindo abejoti, kad asmuo laiko medžiagas savo reikmėms.

Apklausoje buvo iškeltas klausimas dėl karfentanilio slėpimo vietų ir aplinkybių dėl kurių jis nebuvo aptiktas policijos pareigūnams atliekant dalinę asmenų ar transporto priemonių apžiūrą. Respondentai nurodė labai įvairias karfentanilio slėpimo vietas. Respondentai teigia karfentanilį laikantys miltelių pavidalu (98%), dažniausiai folijoje (52%) arba vaistų kapsulėse (27%). Slėpiantys medžiagas dažniausiai kojinese (87%), tarp vaistų (vitaminų) (36%), tarp maisto produktų (21%). Dėl atvejų, kai policijos pareigūnai darydami asmens ar transporto priemonės apžiūrą neaptino narkotinių ar psichotropinių medžiagų respondentai nurodė, kad „dažniau neaptinka nei aptinka“ (94%). Neaptikimo priežastis nurodė labai įvairias. Šias priežastis galima sugrupuoti į tam tikras grupes: „spėjau išmesti“ – 59%; „netikrino tos vietos kur laikiau“ – 46%, „patikėjo mano pasakymu, kad čia vaistai“ – 22%, „patys pareigūnai liepė išmesti“ – 21%. Iš šių rezultatų darytina išvada, kadangi daugelis ikiteisminių tyrimų pradedami<sup>16</sup> būtent policijos patruliui atlikus asmenų arba transporto priemonių apžiūrą, tikslinga parengti metodinę priemonę arba rekomenduoti papildomai instruktuoti policijos pareigūnus apie narkotinių ir psichotropinių medžiagų pavidalą, laikymo ir slėpimo būdus, bei priminti kaip turi elgtis pareigūnas radęs daiktų, kurie galimai yra narkotinės ar psichotropinės medžiagos.

---

<sup>16</sup> Nustatyta atlikus Kauno apylinkės teismo Kauno rūmų bylų sprendimų analizę.

---

## IŠVADOS

Karfentanilis, tai psichotropinė medžiaga, kuri buvo 2014 metais įtraukta į narkotinių ir psichotropinių medžiagų sąrašus. 2020 metų pradžioje Kaune atliktos asmenų, priklausomų nuo narkotinių ar psichotropinių medžiagų, apklausos duomenimis (iš apytikriai 1000 Kaune gyvenančių opiatais piktnaudžiaujančių asmenų apklausti 87), šią medžiagą kartą per dieną ir dažniau vartojo 84% respondentų. Iš dalies panašūs rezultatai buvo gauti ir 2019 metų EMCDDA atlikto panaudotų švirkštų tyrimo, kuriuo nustatyta, jog Vilniuje dažniausiai panaudotuose švirkštuose buvo randamas metadono ir karfentanilio mišinys.

2019 metų Kauno apylinkės teismo statistika rodo, kad tik 3% visų bylų dėl disponavimo narkotinėmis ar psichotropinėmis medžiagomis sudaro karfentanilis.

Šios apklausos ir tyrimai leidžia daryti prielaidą, kad nepaisant to jog Lietuvos teismuose retai (9%) kada pasitaiko bylų dėl disponavimo karfentaniliu, vartojančių šią medžiagą procentaliai gali būti daugiau, nei matyti iš teismų sprendimų. Tokį skirtumą gali sąlygoti sudėtingesnis karfentanilio nei kitų narkotinių ar psichotropinių medžiagų aptikimas dėl jo cheminių savybių (pavyzdžiui specifinio kvapo kaip amfetamino, neturėjimas) ir nepakankamas policijos pareigūnų dėmesys šios medžiagos aptikimui, darant asmenų ar transporto priemonių apžiūras.

Todėl siūlytina parengti metodinę priemonę (pavyzdžiui lankstinuką) pareigūnams arba rekomenduoti papildomai instrukuoti policijos pareigūnus apie narkotinių ir psichotropinių medžiagų pavidalą, laikymo ir slėpimo būdus.

## LITERATŪRA

1. Badaras R., T.V. Kajokas, T. Jovaiša „Greitieji opioidinės priklausomybės detoksikacijos būdai“, Vilniaus universitetas 2009, 131psl.
2. Europos narkotikų vartojimo paplitimo ataskaita. Tendencijos ir pokyčiai. 2019. [https://www.emcdda.europa.eu/system/files/publications/11364/20191724\\_TDAT19001LTN\\_PDF.pdf](https://www.emcdda.europa.eu/system/files/publications/11364/20191724_TDAT19001LTN_PDF.pdf)
3. Fatal Fentanyl: Is this Now America's Most Dangerous Drug? *Drugs.com*; <https://www.drugs.com/illicit/fentanyl.html>
4. Lipsman Z. „A High Potency Opioid: Carfentanil, Lethal and on the Rise“ American college of emergency physicians, Toxycology, 2020-10-01 <https://www.acep.org/how-we-serve/sections/toxicology/news/april-2017/a-high-potency-opioid-carfentanil-lethal-and-on-the-rise/>
5. Liteko Lietuvos teismų informacinė sistema <http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2>
6. Nacional centre of drug abuse „Overdose Death Rates“ <https://www.drugabuse.gov/drug-topics/trends-statistics/overdose-death-rates>

7. O'Malley, Patricia Anne PhD, ““Gray Death”—The Trojan Horse of the Opioid Epidemic: Historical, Clinical, and Safety Evidence for the Clinical Nurse Specialist” Lippincott Nursing Center 2018 [https://www.nursingcenter.com/ce\\_articleprint?an=00002800-201711000-00005](https://www.nursingcenter.com/ce_articleprint?an=00002800-201711000-00005)
8. Officer safety alert „Carfentanil: A Dangerous New Factor in the U.S. Opioid Crisis“, JAV kovos su narkotikais administracija [https://www.dea.gov/sites/default/files/2018-07/hq092216\\_attach.pdf](https://www.dea.gov/sites/default/files/2018-07/hq092216_attach.pdf)
9. Pasaulio Sveikatos Organizacijos Priklausomybės nuo narkotikų ekspertų komiteto (ECDD) trisdešimt devintojo susirinkimo Kritinės apžvalgos ataskaita „Karfentanilis.“, 2017m. Ženeva [https://www.who.int/medicines/access/controlled-substances/Critical\\_Review\\_Carfentanil.pdf](https://www.who.int/medicines/access/controlled-substances/Critical_Review_Carfentanil.pdf)
10. Respublikinis priklausomybės ligų centras „Veiklos ataskaita“ 2018m. <https://www.rplc.lt/apie-mus/kita/atviri-duomenys/>
11. Riches J.R., Robert W. Read and others „Analysis of Clothing and Urine from Moscow Theatre Siege Casualties Reveals Carfentanil and Remifentanil Use“ *Journal of Analytical Toxicology*, Volume 36, Issue 9, November/December 2012, Pages 647–656, <https://doi.org/10.1093/jat/bks078>
12. O'Donnell J., R. M. Gladden, and others „Notes from the Field: Overdose Deaths with Carfentanil and Other Fentanyl Analogs Detected — 10 States, July 2016–June 2017“, *MMWR Morb Mortal Wkly Rep.* 2018 Jul 13; 67(27): 767–768. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6047470/>

## TRENDS IN DRUG AND PSYCHOTROPIC SUBSTANCE USE

**Dalia Jasevičienė**

Mykolas Romeris University

### Summary

Drug, tobacco and alcohol control department informed that „Carfentanyl: European Monitoring Center for Drugs and Drug Addiction warns of new opioid danger“ since 2016-09-21. It means, that 2016 yers this drug come to Lithuania. This paper deals with court decisions about dopping of drugs in 2019 year and drug addict questionnaires. There was found, that 3% of all court decisions was about carfentanil (most of decisions was about cannabis – 55%). Drug addicts claims that carfentanil is the most popular drug of constance usage. About 84% carfentanil is using one a day and more often. So, carfentanil is a rare using drug, acording oficial statistics found by courts decisions. But drug addict claimes an oposite whay. This diference may be caused of finding this drug problems. Lithuanian police forces should be teached more about drugs.

**Keywords:** narcotic and psychotropic substances, opioids, carfentanil, drug prevalence and use

---

## HONOUR KILLINGS: A SOCIAL AND LEGAL APPROACH

**Janina Juškevičiūtė<sup>1</sup>**

<sup>1</sup>*Mykolas Romeris University  
Maironio str. 27, LT-44211 Kaunas, Lithuania  
Telephone +370 37 281409  
E-mail: [janina@mruni.eu](mailto:janina@mruni.eu)*

**Marek Jakab<sup>2</sup>**

<sup>2</sup>*Trnava University in Trnava  
Kollarova 10, 918 43 Trnava, Slovak Republic  
Telephone: +421 948 731 734  
E-mail: [jakab.marek@gmail.com](mailto:jakab.marek@gmail.com)*

DOI: 10.13165/PSPO-20-25-12

---

**Abstract.** Honour killings are defined as the most serious subcategory of honour crimes resulting in killing the victim for cleansing family honour. The data of such killings are not collected systematically and thus, the extent of the problem is underestimated in the society. The objective of the article is to approach to honour killings from the perspectives of the criminal etiology<sup>1</sup> and to have a deeper insight into the issue by giving an account of a general attitude towards the problem with the purpose of prevention. The description of honour crimes is supported by the analysis of a survey, where the respondents from various countries, religions and social backgrounds express their opinion about the crime. Even though the survey is not representative enough, it illustrates that the phenomenon of an honour killing is perceived differently. The religion factor is present though it is not the key one. The study also reveals that such factors as education and integration of closed communities are the determining ones and may play the key role in prevention of such crimes.

**Keywords:** honour killing, family honour, women victims, crime prevention.

### INTRODUCTION

An honour killing or a shameful killing is defined as a type of domestic violence. Both men and women commit and are victims of honour killings, however, most of these killings are carried out on girls and women that make a disproportionately large number of victims. The extent of such violent acts is very difficult to estimate – the data of them in most countries are not collected systematically. Many of these killings are reported and registered as suicides or accidents. And even though honour killings are often associated with the Muslim communities and/or distant past, such killings still occur all around the world. As a matter of fact, the number of honour crimes is generally decreasing, however, the problem still exists and causes serious concerns in terms of prevention. The issue is not widely discussed and analysed in some

---

<sup>1</sup> Scientific study of how and why people commit crimes.

---

countries, and the authors attempt to shed the light on that *terra incognita* from the point of view of the criminal law and the social attitude towards this criminological phenomenon.

The goal of the study is to have a deeper insight into the phenomenon of an honour killing from social perspectives. The issue of an honour killing is described from the view point of judiciary and supported by the analysis of an illustrative survey. The present research seeks to answer the questions whether there is a strong correlation between an honour killing and the religion, and what key reasons underlie such crimes. It is suggested that the answers to these questions might benefit a lot in terms of prevention.

The research methods are the critical analysis of the justice systems of 26 countries regarding honour crimes and a survey based on both direct and indirect questions about honour killings. The data regarding the justice system has been collected from international law reviews and legal publications. The attitudes towards honour killings have been collected through a survey. The design of the survey was based on such concepts as *honour, family arranged marriages, dating*, etc. The survey consisted of open-ended questions and closed-ended questions, as well as general questions about the background of the respondent. 111 respondents of different age groups and from 26 countries have been asked to express their opinion on the concepts related to honour killings. These answers have been used to determine the correlation between attitudes and cultural or religious groups.

The respondents do not represent the state they came from. They just illustrate a general approach to the issue expressed by educated people from different countries. This international survey seeks to provide a better understanding of the concept of an honour killing and to reveal how cultural, religious, economic and educational backgrounds shape the understanding and perception of this practice. And even though, the scope of the research is rather limited for making broad generalisations, it clearly illustrates the tendencies, which contradict some commonly accepted opinions and associations.

## **THEORETICAL ASPECTS OF HONOUR CRIMES**

The term *honour crime* is used to designate a huge variety of violent acts against the victim who is usually but not always a woman. This violence may take the form of beating, mutilation, kidnapping, acid attacks, rapes, or even killing mentioned above (Welchman, Hossain, 2005). The common feature of all these violent acts is a specific motive to commit such killings – in the name of honour. The belief that the victim's previous acts or behaviour

---

have brought dishonour upon the family or community lead to honour based violence. The perpetrators are usually members of the victim's family or members of the community which the victim belongs to.

Honour crimes were mentioned for the first time by the *Special Rapporteur on Violence against Women* in the reports to the *United Nations Human Rights Council* in 1999. The phenomenon was described as “crimes against women, whereby the family kills a female relative deemed to have defiled the honour of the family” (Coomaraswamy, 1999). More specific description was made by the international non-governmental organization *Human Rights Watch*. In accordance with the organization, the term can be described as an “act of revenge usually committed by male family members against usually female family members. The often reason of this act is that victims brought dishonour upon the family by refusing to enter a family arranged marriage, being the victim of a sexual assault, accused of committing adultery or seeking a divorce”. In other words, an honour killing can be defined as the attempted murder of a family member, usually a woman, who is believed to bring shame upon the family due to behaviour which is considered as unacceptable. The relationships that are disapproved by one's family, extramarital sexual relationships are often considered as intolerable in general.

The perpetrator of an honour killing commits the murder to clean the dishonour or shame which, according to his perception, has fallen on the head of the family or community in which they live. Offenders often do not feel regret or shame for the crime committed and usually justify the action blaming the victim. A woman can become the victim for a variety of reasons. In many cases women are killed for not meeting strict standards for chastity or failing, so called, “the virginity test” during the wedding night. Women in conservative communities are supposed to stay far from any kind of sexual practice before they get married. The hymen is considered to be a socio-physical sign that represents virginity and is associated with chastity, virtue and respect. If a woman did not bleed while penetration, she is believed to fail the social test. According to the common practice, then she is taken back to her family, where a member of the family commits a murder due to bringing shame upon them. Only her bleeding to death can erase the shame brought about her failure to bleed during the wedding night. All the money and presents which were given by the family and the wedding party guests must be returned (Abu-Odeh, 1996, 2010). Therefore, the wedding night is of the phenomenal importance for women, since it includes that crucial moment which results in the society making judgments about their morality. A sexual virtue of a woman carries not only a direct market economic

---

value but it also symbolises the family's honour in general. From that perspective, the failure to protect honour can weaken the family's position in their social environment. Thus, the specific causes of honour are to be found at the macro level of social norms and values, not at the micro level of individual perpetrators (Gartner and McCarthy, Oberwittler and Kasselt, 2014).

The common motive for the killing is also an inappropriate dressing style from the community's and/or family's point of view or when the victim refuses to enter into an arranged marriage. A woman might suffer the violence if she is spotted conversing with the opposite gender. In this case, the reason for killing is not previous relationship of the woman, but the fact that she violated the set of norms for women in that community.

On the other hand, men can also be the victims of honour killings, when they are homosexual, bisexual or transsexual. Hence, honour killings are not only the problem for women. In these cases, most victims are young men. Unfortunately, there is no systematic documentation on the issue (Gartner and McCarthy, Oberwittler and Kasselt, 2014).

From the point of view of the honour-based perspective, the standards of behaviour are asymmetric – they are stricter for women. In parallel to this, women are much more controlled. It seems that responsibility for the family's honour is primarily women's duty and it is a woman who can bring shame upon the family by violating the principles of the community. In contrast, men may be able to retake their lost honour through their later behaviour (Baker, Gregware, Cassidy, 1999). The disproportion of female victims and different standards are so obvious that in most cases honour killings are seen as domestic violence against women.

## **METHODS**

For better comprehension of honour crimes and before analysing several aspects related to them, it is necessary to approach to the issue from the social perspectives. Therefore, an online survey has been conducted with the purpose to reveal how honour killings are perceived and associated. The survey included several simple (yes / no) questions, as well as some open-ended questions giving the respondents some flexibility to express their opinion in more detail. The questions were direct (e.g., about justification of honour killings) or indirect (e.g., about marriages arranged by parents). All these questions were related to the issue of an honour killing. The survey was carried out among men and women from different ethnic groups, religions and cultures from all around the world. Our colleagues from foreign universities have

been asked to assist in distributing the survey among a larger number of participants. Along with this, the survey was available for public access on social media (Facebook). Finally, the data from 111 respondents have been collected and analysed. Responses have been received from 26 countries from different continents – the multicultural spectrum of responses includes Europe (the United Kingdom, Channel Island of Jersey, Lithuania, Spain, Italy, Ireland, Germany, Austria, France, Slovenia, Ukraine, Hungary, Slovakia, Poland), Africa (Uganda, Tunisia), America (the USA, Puerto Rico), and Asia (Turkey, Tajikistan, Azerbaijan, Iraq, Kazakhstan, Pakistan, India, Vietnam). Many of the respondents are from Muslim countries, what gives a good possibility to detect the link between the religion and honour killings, if such exists.

At the beginning of the survey, respondents were asked to complete the form about their gender, age, religion and education. In terms of gender, 60 respondents are male, and 51 are female. The majority of the respondents are with higher (university) education. 67.6% of those who were questioned live in cities, 23.5% live in towns, and 9.9% are from villages. All the participants were aged between 16 and 51 years old. The largest group of respondents were students between nineteen years of age and their early thirties.

### THE MEANING OF *HONOUR*

For the purpose of finding out how the concept of *honour* is perceived by different age, gender and cultural groups, the survey begins with an open-ended question such as **how they understand the concept of *honour***. Some respondents define the concept briefly, whereas others provide longer definitions and their own understanding of honour. The examples of the answers are the following:

1. *“Proud for people themselves.”* Student, 22, Turkey
2. *“It is external perception of person’s character traits.”* Attorney of Law, 25 years, Kazakhstan
3. *“It is quality of being honourable and respected.”* Student, 23, Slovakia
4. *“Is like a phone needing its battery and charger.”* Unemployed, 33, Romania
5. *“It is a set of actions and values that s self-imposed and also imposed by society to create the image of a “respectful” person in the eyes of others.”* Student, 21, Tunisia
6. *“It means to have great respect and loyalty to someone or something.”* Student, 16, the UK
7. *“That’s moral qualities, principles of the person that deserve pride and respect from others.”* Officer / Education, 26, Kazakhstan

- 
8. *"It means a woman's virtue or chastity for me."* Student, 24, Vietnam
  9. *"It is a good character or a reputation for honesty and fair dealing."* F&B Manager, 35, Romania
  10. *"The term honour is something quite archaic."* Musician, 19, Spain
  11. *"The honour doesn't appear in my daily life often. It doesn't mean much for me."* Civil Servant, 26, Germany
  12. *"It means you keep and fight for your principles."* Analyst, 28, Hungary
  13. *"The term means to be above average."* Barrister, 24, Ireland
  14. *"Honour is the term expressing an ability to act and to make decisions in a responsible and reasonable way without the fear of being ashamed."* Student, 24, Slovakia
  15. *"I have a different perspective. But generally in my country honour means guarding the women of your family. If they run with a man, or is found doing something which the family and Society doesn't approve of, then it means her Honour is lost. Also according to people honour means women, and women's honour is in her vagina. (God forbid) but if a woman is raped by default it is termed that she has lost her Honour. In my view this entire concept of honour is quite faulty."* Student, 24, India

As we can see from the examples of answers above, even though every answer is slightly different, the respondents share a very similar perception of the concept. Most of the participants understand the concept of *honour* as respect, dignity or pride. In general, the aspect of respect was included by all the respondents, with no matter how old they are or what country they are from. At the same time, some of those that have been questioned already specified that *honour* is defined as the chastity and virtue of a woman. Such viewpoint indicates that different genders are not treated equally.

## LOSS OF HONOUR

The following question of the survey focused on the associations of the loss of honour. The question asked **whether or not they have ever felt they lost honour**. The respondents had two options of answers – "yes" or "no" and, in case of the positive answer "yes", they were asked to describe the situation in which it happened. The majority of the respondents claim they have never experienced the loss. As a matter of fact, we cannot know whether the answers were really true. This question might involve some privacy concerns due to which the results might not be reliable. On the other hand, this might also be the truth as most of the respondents are of young age with a rather limited life experience. The illustrations of answers are here below:

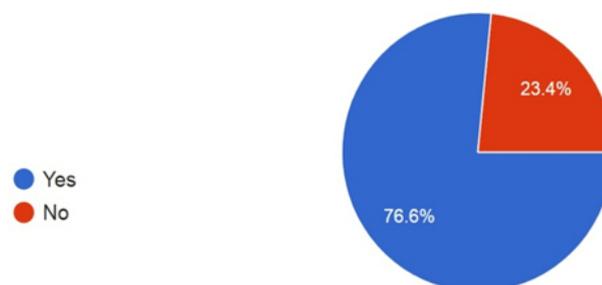
16. *"When people are mean."* Student, 24, Tunisia

- 
17. *“When I was bullied.”* Unemployed, 27, Pakistan
  18. *“First time having sexual relationship.”* Student, 24, Vietnam
  19. *“It happened in relationships.”* Student, 21, Ukraine
  20. *“When I lied and it was not necessary, I lied out of fear, but the person would’ve understood anyway.”* Student, 23, Slovakia
  21. *“When went against my instincts about trusting certain individuals.”* Unemployed, 24, Pakistan
  22. *“When my country was wrongly defamed.”* Student, 20, Pakistan
  23. *“I guess when someone mistreats me too much for no valid reason especially if they don’t try to see things from my side too.”* Student, 21, Tunisia
  24. *“Yes, I had before. I remember one time I was so mad to my mates for group work paper. And afterwards, I felt I lost. Then I fixed it.”* Student, 18, Azerbaijan
  25. *“Being verbally abused.”* Student, 22, Germany

Even though some respondents reported they felt shame caused by external factors related to other people, such answers which included *harassment* indicate the loss of honour as the result of the internal factors and their own behaviour, implying that they see themselves as being immoral in that particular situation.

## HONOUR KILLINGS AND SOCIAL AWARENESS

The question concerning social awareness of the phenomenon of honour killings has been included in the form of the following formulation: **do they know what the honour killing phenomenon means and do they know or have heard about such cases.** This was also a yes/no question which in a way show the level of conventionality or at least the lack of information on the issue.



**Figure 1.** Have you ever heard about honour killings?

*Figure 1* shows that more than three quarters – 76.6% of the respondents are aware of honour killings. In fact, many of them remembered some cases of honour killings. These varied

from general information on the news about foreign countries, from some movies or books, up to cases of such crimes in the living area of the respondent. It suggests that honour killings are still regarded as conventional practice in some regions (e.g., India, Tunisia, Uganda, Turkey, etc.) and the means of prevention are still not sufficient there. The following examples illustrate the sources of information about this abuse:

26. *“Especially in some overprotective Islam countries in the case when girls lost their virginity they are killed.”* Student, 19, Tunisia
27. *“I remember just through the news, examples from India, UK.”* Student, 25, Slovenia
28. *“I have heard about women being killed for sleeping with someone before marriage.”* Student, 24, Tunisia
29. *“Unfortunately, I can imagine it happening in many cases of dictatorship. Or in middle-east families, which violently kills their daughters, when they have been raped.”* Student, 23, Slovakia
30. *“I do not remember a certain case, except for Pushkin.”* Student, 23, Slovakia
31. *“Only from old news - connected with Caucasus.”* Officer/Education, 26, Kazakhstan
32. *“In the pre-colonial era, people from the Bakiga tribe in southern Uganda would carry out honour killings if a girl got pregnant out of wedlock. This kind of situation no longer happens.”* Student, 32, Uganda
33. *“I remember them from history (movies), nowadays in Arabic countries when some women are killed because they had “dishonoured” their families (by falling in love, by exposing sexual harassment...).”* Student, 23, Slovakia
34. *“It happened a lot in Japan, generally history of warriors, fathers after some crimes like rape on their daughters.”* Engineer, 23, Poland
35. *“In some states if India it takes place quite frequently. Mostly when girls and boys marry outside their caste and class, or if the families think their children spoilt their honour by going against the families, then honour killing takes place.”* Manager, 24, India

Many Turkish respondents remember the case which occurred in the east of Turkey. They state that *“In Turkey’s east areas, there are many events like honour killings.”*, or *“During 90’s we used to hear a lot about honour killing in the east of Turkey. But there has been always this kind of cases all over the country due to the patriarchy.”*

Other respondents also noted that the victims of honour killings are not only women, but men (mostly homosexuals) as well. For example, a 22 year old German student described the case where *“a guy had a boyfriend and when the family caught the relationship, his brother and uncle tortured him and wanted to kill him”*. Another respondent, a 21 year old student from

---

Tunisia, recalled a case that happened in Tunisia: “*A brother realised his brother was gay, so he and his mother killed that brother and burned him in the garden. Later the corpse started smelling and the police found it.*” Such examples show that homosexual people cannot feel safe even in their own homes as they are killed by the closest members of their family.

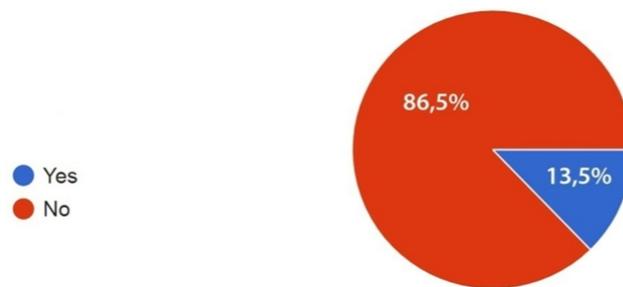
All the Pakistani respondents remembered about the Qandeel Baloch Case. Qandeel Baloch was a Pakistani social media celebrity and a model. She gained prominence due to her videos on social networks discussing controversial issues. On 15th July 2016, Qandeel Baloch was drugged and then choked to death by her brother Waseem Azeem while she was sleeping in her parents’ house. The killer claimed that he does not feel ashamed of killing her because she was doing videos on Facebook and dishonouring the family name. (Boone, 2017).

### “A DAUGHTER IS DATING”

The fourth part of the study included a practical task. They had to **imagine a hypothetical situation that they are parents and they find out their daughter is dating** – what would be their reaction? According to the survey, the majority of respondents from different countries would be happy about the fact of dating and wish their hypothetical daughter all the best. Some of those questioned would like to meet the boyfriend or to test him. Several respondents would recommend their daughter to be careful and do not trust the person they do not know. The Pakistani respondents, however, seem to be against dating in general. They do not like the very idea of having a daughter dating someone or believe they would have a control over her with the right to make a decision about letting or forbidding her to date. They explained that the very fact of dating is not morally appropriate, especially in the cases when a girl is under 18 years of old:

36. “*I don't think it is appropriate to date unless you are engaged or are to be engaged by the decision of parents. So I will not allow her to do so.*” Student, 22, Pakistan
37. “*If she is under 18 then I would not allow her. If she is above 18 then I would meet the guy and then decide.*” Student, 21, Pakistan
38. “*Honestly, can't say so and can't be sure.*” Assistant Manager, 21, Pakistan

It is important to note that not all the Pakistani respondents shared the same critical opinion on dating – there were those that supported their hypothetical dating daughter. A rather philosophical and liberal answer was provided by a 51 year old Pakistani teacher who believes that no regulations or restrictions should be placed on people’s private choices. In his words: *“I’m against marriage in all shapes and forms. I think neither a human being nor an animal should be forced to live under any restrictions.”*



**Figure 2.** Is dating somebody immoral?

Following this case, the respondents have been directly asked whether they consider dating as an immoral behaviour. *Figure 2* shows that 13.5 % of respondents answered to the question positively. Such result shows that the fact of dating which is associated with a normal traditional behaviour in some countries, is not seen as such in others. These cross-cultural differences must be firmly kept in mind in order to avoid misunderstandings such as breaking local rules and restrictions, what puts at risk the dating person due to violent acts. The data also show that a great number of people are still at risk of becoming potential victims of honour crimes and there is a great platform for prevention work.

## ARRANGED MARRIAGES

The issue of arranged marriages is in some indirect way related to honour crimes. Hence, the question about it was not accidentally included into the survey. The respondents were asked to express their **opinion on marriages arranged by parents**. Honour crimes usually appear in such tight-knit communities where social interests and needs have the priority and are put above the personal ones. Typically such communities are patriarchal in their structure and there exist discriminating norms for women. Some communities and religious groups treat an offspring, especially the female one, as a type of property of that family. A father or the community leaders decide the future of the children. Unfortunately, the use of force in such communities is not a rare case.

---

In general, the study has shown that many respondents do not support the idea of arranged marriages. They criticised this tradition, some of them even called it as being “disgusting”, “against human dignity” or “horrible”:

*“I do not support them unless the parents consult with their son/daughter about it (make the decision together)”* Student, 25, Slovenia

*“Is a crime.”* F&B Manager, 35, Romania

*“It's stupid and misogynist.”* Student, 20, Tunisia

*“I think it is awful.”* Attorney of Law, 25, Kazakhstan

*“It should not happen, there should be free will for everybody.”* Student, 16, United Kingdom

*“I don't agree at all because I am a romantic person.”* Accountant, 51, Slovakia

*“This is obstacle their personal life, couple should make their own decision because that life is their life, they should care responsibility for their life.”* Private Sector, 23, Azerbaijan

*“Not a norm in my culture, hard to understand why it is practiced.”* Clerk, 29, USA

*“In modern civilizations it is unacceptable, however it had several times worked in history.”* Analyst, 28, Hungary

*“Marriage should be a personal choice. Parents should not make that decision.”* Student, 24, Puerto Rico

*“I consider it unjust and invalid.”* Student, 27, Iraq

An interesting fact is that even though some respondents state that they are against arranged marriages, they still believe in a positive outcome of such practice which could lead to a happy marriage for life. This contradiction indicates that such people support the tradition of arranged marriages in one way or another:

*“It's a complex situation which is very much dependent on the society cultures and customs. It is a good practice in some cases but also has its downside. But I do believe everyone should be given a choice to choose their own marriage partner.”* Student, 32, Uganda

*“It's better to talk first with their children. After that ask how his or her opinion.”* Student, 23, Tajikistan

*“It can work out in a society where it is customary, as long as it is not forced upon the couple.”* Student, 22, Germany

*“They are alright, Parents have the rights to suggest who they prefer to be the life partner of their child, but giving suggestions and orders are different. There should be a mutual understanding, not as if one says the other must do. That is totally wrong, both need to agree.”* BPO - Assistant Manager, 21, Pakistan

Some respondents even claim that marriages arranged by parents are the best choice or the only way to get married:

*“Are better than those based on feelings.”* Engineer, 27, Kazakhstan

*“If the people getting married are satisfied then I don't see it being wrong. If only, the bride and the groom both are happy with it.”* Unemployed, 24, Pakistan

*“Nothing wrong in it.”* Student, 22, Pakistan

The results of the survey show that the ratio of criticising and supporting the tradition of arranged marriages is equal. Those who claim that such marriages should be arranged but not be forced are included among the supporters. The minority of the participants (mostly from Pakistan) strongly support the idea of arranged marriages. The same people claim that honour is reason enough to kill someone.

### SOME QUESTIONS ABOUT THE HUMAN RIGHTS IN DISCOURSE

The rest of the study focused on the discourse of honour crimes in respect to the human rights. With the purpose to reveal social attitude (even though reported subjectively) such questions as “Does the society accept honour crimes, in your opinion?” and “Should people have the right to get married without parents’ permission?” have been asked. The participants could choose only one of the options provided. They have been asked about the social atmosphere in general regarding the acceptance of honour crimes. The authors of this study have in mind that the respondents express their personal attitude, which might not come in line with the majority of their cultural community. However, some tendencies might be seen already and they are illustrated in *Figures 3 and 4* below:



**Figure 3.** Does the society accept honour crimes?



**Figure 4.** Can honour be justifiable reason to kill someone?

As we can see from Figures 3 and 4, the subjects were asked the questions concerning the acceptance of honour crimes in the society (according to their personal opinion) and about honour as the reason that justifies violence. According to 62.7% of respondents, the society does not accept the honour crimes, whereas more than one third of the participants claim that the honour crimes are approved by the society. The latter group indicates that a large part of the society in general might be tolerant as far as honour crimes are concerned. The opponents of such viewpoint make only 10.9%, stating that honour does not justify killing a person. The majority of respondents (89.1%) consider killing someone for honour as something unacceptable and wrong. The number of supporters of honour crimes is unpredictably high. It is really worrying that murder is so widely accepted by the society, even though this attitude is expressed subjectively. In this light, it might be suggested that critical comments while reporting honour crimes on the media could play an important role in educating the society and altering the attitude towards this violent practice.

The survey has also shown that one fifth of the respondents disagree with the statement that women or men should have the right to marry without their family's permission. Men's marriages without the approval are slightly more acceptable in comparison to ones made by women. This proves once more again that the standards for men and women are still different in spite of long lasting attempts of human rights activists and continuous fights human right abuses.



**Figure 5.** Should a wife always obey her husband?

A relatively similar number of the respondents (*see* Figure 5) reported positive answers whether women should always obey their husbands. According to their subjective opinion concerning the obedience, 83.8 % of respondents answered that women should not obey their husbands, whereas 16.2% believe that a woman's duty is to obey a man. The results suggest that the obligation to obey a husband or a father is typical for traditional patriarchal communities. The majority of such respondents are from Pakistan. The study has also shown that those respondents who strongly believe that women should always obey their husbands tend to justify honour killings as well. Thus, we can see an obvious correlation between submission of wives to their husbands and the honour killing phenomenon.

## CONCLUSIONS

The study has revealed that understanding the concept of *honour* is almost identical all around the world. General ideas of honour killings seem to be similar with no relation to the ethnical origin or religion. We found that those who support the idea of arranged marriages and who consider dating as an immoral behaviour are from the Muslim community with the most active advocates from Pakistan. However, many other respondents who also belong to the Muslim community disapprove honour killings. The research has revealed that such factors as higher education and employment play a more important role. University educated respondents and the employed ones from different countries, generally disapprove honour killings. They also report fewer discriminative answers regarding the right of women to freely choose the partner. Thus, even though the religion factor is present, we cannot suggest that there is a *strong* correlation between the Muslim religion and honour killings.

The socio-economic situation in communities and disintegration of tight-knit patriarchal communities seem to be the underlying reasons and the determining factors of honour killings. The analysis of the research suggests that university educated people share a very similar

---

viewpoint despite their cultural background. They respect human rights more and do not support discriminative traditions. Hence, education and better social conditions along with the integration of closed patriarchal communities would decrease the rate of honour killings and should be the priority means in the attempts of preventing such violence.

## REFERENCES

1. Abu-Odeh, L. Honour Killings and the Construction of Gender in Arab Societies. In: *Feminism and Islam*. Ed. Mai Yamani. Berkshire: Garnet Publishing Limited, 1996, 140-168.
2. Abu-Odeh, L. Honor Killings and the Construction of Gender in Arab Societies. In: *Georgetown Law Faculty Publications and Other Works*. Georgetown: Georgetown University Law Center, 2010, pp. 911-952.
3. Baker, N. V., Gregware, P. R., Cassidy, M. A. Family Killing Fields Honour Rationales in the Murder of Women, In: *Violence against Women*, 1999, vol. 5(2).
4. Boone, J.: 'She feared no one': the life and dead of Qandeel Baloch, *The Guardian*, 22th September 2017. Available at <https://www.theguardian.com/world/2017/sep/22/qandeel-baloch-feared-no-one-life-and-death>.
5. Coomaraswamy, R. Violence against women in the family. Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences. Geneva: United Nations Human Rights Council, (UN Doc E/CN.4/1999/68/Add.4).
6. Gartner, R., McCarthy, B., Oberwittler, D. Kasselt, J. *The Oxford Handbook of Gender, Sex and Crime*. Oxford: Oxford University Press, 2014, pp.654-658.
7. Human Rights Watch, 2004. Available at <https://www.hrw.org/report/2004/04/19/honoring-killers/justice-denied-honor-crimes>.
8. Welchman, L., Hossain, S. 'Honour': Crimes, Paradigms, and Violence against Women. London: Zed Books, 2005.

---

## VALSTYBEI STIPRINTI VIETINIŲ IR TARPTAUTINIŲ PROJEKTŲ VALDYMO KRYPTIS

**Gintaras Kavarskas**

*Mykolo Romerio universitetas  
Ateities g. 20, LT-08303, Vilnius, Lietuva.  
El. paštas: [gintaras.kavarskas@yahoo.com](mailto:gintaras.kavarskas@yahoo.com)*

DOI: 10.13165/PSPO-20-25-13

---

**Anotacija.** Problema yra neįdarbinti piliečiai valstybėje; tai yra rimta ir dabartinių laikų problema. Straipsnio tikslas yra sukurti tarptautinių projektų ir vietinių savivaldybių projektų valdymo kryptį, sukurti pasiūlymus, krypties veiksmingumui sukurti galimybes – pasiūlymus pasiūlyti institucijoms. Straipsnio uždaviniai yra šie: aptarti įdarbinimo problemos reikšmingumą, ir eksperimentuoti, problemos sprendimui naudojant projektų valdymo galimybes nedirbančių piliečių įdarbinimui; pateikti pasiūlymus, išvadas. Pagrindinis metodas yra eksperimentas, kad visi piliečiai būtų įdarbinti valstybės stiprinimui; empiriniai metodai yra pasiūlymai ir išvados. Tyrimo rezultatai atskleidė, kad yra būtina įdarbinti piliečius. Gintaras Kavarskas – vadybos magistro laipsnis, strateginis projektų valdymas, rizikos valdymas ir tarptautinių projektų valdymas, darbas, įdarbinimo valdymas, žmogiškųjų išteklių valdymo kokybės vertinimas, tarptautinis įdarbinimas, tarptautinis įdarbinimo valdymas, tarptautinis valdymas, įdarbinimo valdymo kryptis valstybėms, valdymo sistemos, valdymo inovacijos valstybėms, inovacijų valdymo vertinimas, ekstremaliųjų ir nepaprastųjų situacijų valdymo teorijos.

**Pagrindinės sąvokos:** įdarbinimas; kryptis; projektų valdymas; visuomenės nariai; visuomenė.

### IVADAS

Valstybei stiprinti vietinių ir tarptautinių projektų valdymo kryptis yra mokslo straipsnis; tyrimo problemos rimtumas ir problemos aktualumas yra neįdarbinti piliečiai, tyrimo naujumas yra eksperimentas, kad būtų įdarbinti piliečiai šiuolaikiniame pasaulyje Europoje. Sistemos gerinimui būtina visada analizuoti situaciją valstybėje ir dažnai įdarbinti piliečius, kad jiems būtų garantuota ne mažesnė negu vidutinio dydžio pensija, kai piliečiams bus apskaičiuojama ir skiriama pensija, kuri turi garantuoti orią senatvę ir geras galimybes nusipirkti visas paslaugas, kurios piliečiams garbingame amžiuje bus būtinos. Vietinėse savivaldybėse vykdomi projektai ir tarptautiniai projektai, įmonių ir įstaigų projektai yra būtini valstybės valdymo sistemai stiprinti, valstybei stiprinti, kad valstybė galėtų būti šiuolaikiška valstybė dabartiniame pasaulyje, kuris yra dažnai tobulinamas. Europos valstybės turi sugebėti valdyti sistemą taip gerai, kad visiems piliečiams būtų garantuota ne mažesnė negu vidutinė pensija, kad valstybėje nebūtų skurdo. Visuomenėje gyventojų skurdas ir neįdarbinimas trukdo valstybei įgyvendinti tikslus ir sistemą valdyti. Piliečių įdarbinimo problema Europos

valstybėse nėra išspręsta, todėl užimtumo darbu problema, neįdarbintų piliečių valstybėje **problema**, yra nauja, aktuali ir labai rimta; darbo suteikimo, įdarbinimo problemą gali spręsti Valstybei stiprinti vietinių ir tarptautinių projektų valdymo kryptis su siūlymais dėl krypties būtinumo valstybės valdymo modelyje ir valstybės valdymo sistemose, kad gerovės valstybė turėtų efektyvaus visuomenės gerovės valdymo kryptis, galėtų formuoti valdymo nuolatinio modelio galimybes dėl nuolatinės įdarbinimo krypties efektyvumo valstybėse. **Tyrimo objektas** yra siūlymai įdarbinti neįdarbintus piliečius dėl vietinių savivaldybių projektų ir tarptautinių projektų valdymo veiksmingumo krypties valstybės sistemos tobulinimui, valstybės stiprinimui; teisės dokumentuose randamas valdymo tobulinimas. Valstybė bus stiprinama šiuo mokslo straipsniu.

**Darbo tikslas** yra empiriškai sukurti tarptautinių projektų ir vietinių savivaldybių projektų valdymo kryptį – siūlymus įdarbinti neįdarbintus piliečius, krypties veiksmingumui sukurti galimybes, ir pateikti siūlymus institucijoms neįdarbintų piliečių įdarbinimo problemai spręsti dėl valstybės stiprinimo.

Tyrimo yra projektuojami du pagrindiniai **uždaviniai**: aptarti įdarbinimo problemos reikšmingumą, ir eksperimentuoti, problemos sprendimui naudojant projektų valdymo galimybes nedirbančių piliečių įdarbinimui; pateikti pasiūlymus, išvadas. Aptariant įdarbinimo problemos reikšmingumą, eksperimentuojami įdarbinimo siūlymai problemos sprendimui naudojant projektų valdymo galimybes nedirbančių piliečių įdarbinimui; tai yra būtina tam, kad valstybėje visi piliečiai būtų dirbantys ir kiekvienas pilietis gautų valstybės garantiją gauti vidutinio dydžio pensiją; valstybėje turi būti įgyvendinama įdarbinimo kryptis, kad valstybėje nebūtų skurdo ir dėl nuolatinės krypties efektyvumo tobulinimo įgyvendinimo. Valstybėje bus ir didesnių pensijų negu vidutinių pensijų. Antras uždavinys – pateikti pasiūlymus, išvadas. Vietinių savivaldybių projektų valdymo tobulinimą ir tarptautinių projektų valdymo tobulinimą ruošiant valstybės veiksmų planui tobulinti, kad valstybėje piliečiai būtų įdarbinti ir nebūtų skurdo, pateikti siūlymus institucijoms dėl valstybės stiprinimo. Piliečių įdarbinimas yra problema, kurią išspręsti gali projektų valdymo kryptis. Kadangi valstybėje yra neįdarbintų piliečių ir visų piliečių įdarbinimo valdymo aspektai nebuvo ištirti, tokia situacija lemia problemos aktualumą ir naujumą.

Tyrimo **metodika** ir **metodai** yra šiuolaikiniai. Pagrindinis metodas yra eksperimentas, kad visi piliečiai būtų įdarbinti valstybės stiprinimui; empiriniai metodai yra sukurti pasiūlymus ir išvadas. Empirinio tyrimo metu yra savarankiškai vykdomas eksperimentas valstybei

stiprinti, įdarbinimo problemai spręsti naudojant siūlymų projektavimą – kryptį valstybei stiprinti; manytina, kad naujas požiūris į projektų valdymą ir veiksmingumą gali projektuoti nedarbo sumažinimą, grėsmių išvengimą. Tikslas yra siekiamas siūlymais, kryptimi valstybei stiprinti. Moksliniame straipsnyje taikomas teorinio tyrimo metodas yra naujausių teisės dokumentų paieška, vertinant taikymo būtinumą valstybėje yra taikomas iš patyrimo empirinio tyrimo metodas. Mokslinio straipsnio autoriaus žinios po studijavimo Lietuvos vadybos akademijoje įstatymų taikymo ir teisinio reguliavimo Personalo tarnybų vadovo specialybę yra vertingos, kadangi iš patyrimo empirinio tyrimo metodas yra patirtis mokslo darbui ir vertingiems siūlymams valstybėse, kuris bus taikomas savarankiškam šio straipsnio autoriaus eksperimentui Europos valstybėse, kad piliečiai būtų įdarbinti, siekiant valstybėse užtikrinti gerovę visuomenei ir kiekvienam piliečiui; siūlymai yra vertingi problemai spręsti, siekiant formuoti valdymo nuolatinio modelio galimybes dėl nuolatinės krypties efektyvumo valstybėse. Šiame mokslo straipsnyje yra pateikiamos išvados ir siūlymai, bei tai bus ruošiama valstybės veiksmų planui tobulinti, kad valstybėje visi piliečiai būtų dirbantys, nebūtų skurdo ir visi piliečiai turėtų valstybės garantiją gauti tokią didelę pensiją, kad piliečiai galėtų nusipirkti visas būtinas paslaugas ir prekes dabar ir garbingame amžiuje pensijoje. Tarptautinių ir vietinių projektų valdymo kryptis yra įdarbinti neįdarbintus piliečius dėl valstybės stiprinimo. Ši kryptis yra būtina valstybei; tyrimo rezultatus galima panaudoti tam, kad neįdarbinti piliečiai galėtų būti įdarbinti darbui dirbti, ir krypties pavyzdžiu galima būtų papildyti valstybės gerovės valdymo modelį, valstybės valdymo sistemas, tobulinti valstybės valdymą, kai visi arba beveik visi piliečiai yra dirbantys – užimti darbu. Žmonės stiprintų valstybę, kurioje yra nuolatinė kryptis dėl piliečių įdarbinimo, kad piliečiai galėtų pirkti paslaugas ir galėtų sulaukę garbingų senatvės metų turėti tiek pinigų, kiek reikia oriam gyvenimui, sveikai gyvensenai, ir paslaugoms nusipirkti.

Šiame straipsnyje yra sprendžiama problema, kaip suteikti darbą neįdarbintiems piliečiams, kad įmonės ir įstaigos, bei valstybė galėtų tobulinti valdymą, kad piliečiai būtų dirbantys. Perspektyva yra valstybės stiprinimui, todėl visi neturintys darbo piliečiai turi būti įdarbinti naudojant vietinėse savivaldybėse vykdomus projektus ir tarptautinius projektus, kuriant alternatyvias galimybes valstybėje darbo suteikimui visuomenės nariams visuomenėje. Taigi, šis mokslo straipsnis yra aktualus dabartinės visuomenės gerovei kurti.

---

## TARPTAUTINIŲ IR VIETINIŲ PROJEKTŲ VALDYMO KRYPTIS DĖL VALSTYBĖS STIPRINIMO

Nors ir valstybei yra žinoma, kad įstaigos ir įmonės turi suvokimą, kad valstybėje yra neįdarbintų piliečių, bet ar įmonės ir įstaigos galėtų būti geriau pasiruošusios įdarbinti piliečius valstybėje. Projektai turi turėti kryptį dėl neįdarbintų piliečių įdarbinimo valstybei stiprinti; kryptis yra reikalinga dėl visuomenės gerovės, kad visi piliečiai valstybėje būtų įdarbinti. Tarptautinių projektų ir vietinėse savivaldybėse vykdomų projektų valdymo kryptis šiuolaikiniame pasaulyje turi būti nagrinėjama valstybėje ir valstybėse. Jei valstybė ypatingai domisi tarptautiniais projektais valstybėje ir vietinėse savivaldybėse vykdomais projektais tiek, kiek yra būtina visuomenei, tuomet piliečiai stiprina valstybę. Projektų rezultatai yra svarbūs visuomenės nariams, kurie dalyvavo projektuose ir gavo projektų rezultatų naudos, bei visiems kitiems piliečiams valstybėje, kad projektų naudą gautų visi valstybės visuomenės nariai. Kiekvienas projektas gali tobulinti visuomenę jei projektas buvo efektyviai valdomas ir buvo pasiektas ilgalaikis projekto efektyvumas, kurio kryptis buvo svarbi kiekvienam piliečiui visuomenėje. Projektų efektyvumas yra tuomet, kai šiuolaikinėje visuomenėje valstybėje piliečiai turi darbą ir valstybėje yra sumažintas skurdas. Visuomenės gerovė ir valstybės gerovė turi derėti tiek ilgai, kiek visuomenei yra būtina; valstybės įstatymai turi būti efektyviai naudojami, kad visuomenė gautų naudą. Pirma, įmonės ir įstaigos turi daug stengtis, kad garantuotų valstybei visų piliečių įdarbinimą valstybėje ir gerovę kiekvienam piliečiui valstybėje. Antra, valstybės gerovė yra visoms ir visiems, kadangi gerovė yra visų visuomenėje gyvenančių piliečių gerovė, gerovę turi gauti visi piliečiai valstybėje iki pensijos ir sulaukę pensijos. Trečia, valstybė turi analizuoti ar įmonės ir įstaigos įdarbina tiek darbuotojų, kiek būtų teisinga valstybei stiprinti. Ketvirta, kiekvienas pilietis valstybėje turi dirbti ir uždirbti tiek, kiek yra būtina gyvenimui gyventi be skurdo. Visa įdarbinta visuomenė yra ypatingai naudinga valstybei ir valstybės stiprinimui, todėl kiekvienas vietinis projektas ir kiekvienas tarptautinis projektas turi turėti kryptį įdarbinti piliečius valstybėje, tobulinti visuomenę ir stiprinti visuomenę, kad visuomenė gavusi projekto naudos galėtų stiprinti valstybę.

1. Valstybėje galima pastebėti pagrindines valstybei stiprinti kryptis, būdus. Piliečiams yra svarbu ne tik valstybės saugumas pasaulyje, valstybės strateginės kryptys, tikslai, sistemos funkcijos ir uždaviniai, bet ir piliečių gerovė: piliečių įdarbinimas dažnai tobulėjančioje visuomenėje valstybėje ir valstybės garantija, kad piliečiai turės pakankamai finansinių resursų gyvenimui, šeimai, sveikatos priežiūrai ir švietimui, vaikų auklėjimui, ir ypatinga valstybės

garantija užtikrinanti kiekvienam visuomenės nariui gauti tiek naudos, kiek reikia, kad valstybėje nebūtų visuomenės narių skurdo problemų, visų svarbiausia valstybės garantija, kad kiekvienas pilietis gaus tiek naudos, kiek kiekvienam piliečiui yra būtina, kad galėtų gyventi oriai; tačiau visos šios kryptys yra pasiekiamos, jei valstybė kuria visuomenę ir visuomenė kuria valstybę kartu su valstybe, kai valstybė garantuoja, kad gyvenimo kokybė gerėja ir kiekvienas pilietis gauna pagrindines naudas. Tačiau šios kryptys sunkiau pasiekiamos jei visuomenei yra pranešama, kad gyvenimas gerės po 10 metų. Gyvenimas turi kiekvieną mėnesį gerėti; tačiau, jei įstaigos pabrėžtų, kad pavyzdžiui lygios galimybės ir lygybė yra siekiama, vadinasi lygios galimybės ir piliečių lygybė dar nėra pasiekta tiek, kiek reikia šiuolaikiniam pasauliui kurti dabartinėje valstybėje. Ar būtų logiška pranešti visuomenei, kad lygybės problemos bus išspręstos po 10 metų? Per tą dešimtmetį gali įvykti labai nauji ir sudėtingi visuomenės vystymosi procesai, valstybė gali patirti naujų iššūkių, valstybės tobulinimui ir stiprinimui reikės vis naujesnių galimybių per tą dešimtmetį, apie kurį įstaigos mini piliečiams. Valstybė turi garantuoti tai, ko reikia piliečiams dabar, o ne pabrėžti, kad bus įgyvendinta po dešimties metų. Jei yra minima, kad valstybė garantuos, kad visi 18 ar 20 metų ir vyresni piliečiai bus įdarbinti po 10 metų, vadinasi dabartinio dešimtmečio didelę naudą gali gauti ne tie piliečiai, kuriems darbas yra svarbus gyvenimui ir gyvenimo kokybei užtikrinti, rūpinimuisi šeima ir vaikais, sveikatos ir švietimo paslaugų kokybei gauti, orios senatvės užsitikrinimui iš sumokamų įmokų ir darbo metų skaičiaus didėjimo. Pabrėžtina, kad remiantis mokslinė knyga ("Territorial States. A Case in Point: Standard International Relations Theories." Book: John Agnew, Derek Gregory, Linda McDowell (editors), *Geopolitics: re-visioning world politics*. London and New York: Routledge, 1998, 52.) „sistamai dominavimas yra reikalingas“[1]. Tačiau taip pat yra pabrėžtina, kad neįdarbinti piliečiai sumoka labai daug mokesčių kiekvienais metais, pavyzdžiui kai perka maistą, sumoka įmokas už butą, ir sumoka kitokius mokesčius. Ar yra teisinga minėti, kad gyvenimo pagrindo garantavimas priklauso nuo politikos, o ne nuo teisingo valstybės valdymo. Jei valstybės valdymas yra efektyvus, piliečiai gauna naudą tuomet, kai tik naudos reikia; pavyzdžiui, piliečiui susirgus valstybė gali mokėti pinigus piliečiui nepasaint to, kad pilietis iki susirgimo negavo darbo. Darbo suteikimas negali būti įstaigos ar įmonės pelno dalis, pavyzdžiui, įmonės ir įstaigos negali užsiimti nesąžiningu verslu ir įdarbinti pažeisdamos lygias galimybes, nes įdarbinimas nėra verslas. Kai kurios įmonės ir įstaigos iš anksto puikiai žino, kokią naudą valstybė duos už įdarbintus šiuos ar kitus žmones. Jei įstaiga ar įmonė siekia tik naudos, vėliau tokios įstaigos ir įmonės užsidaro, o naudą gavę

aukštas pozicijas užėmę darbuotojai išsiskirsto arba kuria naujas įstaigas ir įmones naujose sąlygose. Tačiau, Europos Parlamento ir Tarybos Reglamente (ES) 2019/1149 (2019 7 11 L 186/33), II Skyriuje Institucijos Užduotys, 10 straipsnyje Darbo jėgos judumo analizė ir rizikos vertinimas yra pabrėžta „kova su sukčiavimu, išnaudojimu, diskriminacija“[2]. Kitame dokumente, Europos Parlamento ir Tarybos Direktyvoje (ES) 2019/1937 (2019 11 26 L 305/43), VI Skyriuje Apsaugos priemonės, 19 straipsnyje Atsakomųjų veiksmų uždraudimas yra pabrėžta situacija dėl dirbančiojo teisės nepaisymo apie „i) terminuotos darbo sutarties nepakeitimą į neterminuotą darbo sutartį, kai darbuotojas turi teisėtą lūkesčių, kad jam bus pasiūlytas nuolatinis darbas“[3]. Valstybės garantija visuomenei yra tuomet įgyvendinama, kai kiekvienas pilietis valstybei yra svarbus ir gerbiamas, rūpinamasi kiekvienu piliečiu ir garantuojama gyvenime tiek darbo vietų ir tiek darbo metų piliečiui, kiek reikia oriam gyvenimui ir sveikai ir oriai senatvei sulaukti. Valstybės prestižas pasaulyje yra didėjantis tuomet, kai valstybėje yra įdarbinta daugiau negu 97 procentai piliečių valstybėje; todėl pabrėžtina, kad valstybėje yra būtina sukurti tarptautinių projektų ir vietinių savivaldybių projektų valdymo kryptį, kuri didintų darbo vietų skaičių, įmonės ir įstaigos siektų steigti darbo vietas, modernizuoti ankstesnes darbo vietas tobulindamos darbo vietas ir darbuotojų įgūdžius, darbuotojų funkcijas, siektų įdarbinti tiek gyventojų, kiek reikia visai valstybei, kad valstybėje visuomenė būtų saugi ir kiekvienas visuomenės narys galėtų gauti valstybės garantijas. Tai, kas yra minima dokumentuose turi derėti valstybėje šiuolaikiniame pasaulyje, dabartiniais metais ir vėliau. Įmonės ir įstaigos turi daug stengtis, kad garantuotų valstybei visų piliečių įdarbinimą valstybėje ir gerovę kiekvienam piliečiui valstybėje.

2. Valstybėje gerovė yra dėl visų visuomenėje gyvenančių piliečių; gerovę turi gauti visi piliečiai valstybėje iki pensijos ir sulaukę pensijos. Šioje vietoje yra pabrėžtina, kad knygoje (Karl W. Deutsch, *The Analysis of International Relations. Part Four, The Search for Peace. Some Prospects for the Future*. Third edition. Englewood Cliffs, New Jersey 07632: Prentice Hall, 1988, 309.) autorius pabrėžia ateities prognozių svarbą „pasaulio gyventojų populiacijai, poreikiams, ištekliams, viltims ir pastangoms“[4]. Jei valstybė dokumentuose nurodo, kad darbo stažas senatvės pensijai yra pavyzdžiui 35 metai, tuomet valstybė turi stengtis, kad piliečiams bus garantuota, kad jie tiek metų dirbs. Tarybos Sprendime (ES) 2018/1215 (2018 9 5 L 224/9), dėl valstybių narių užimtumo politikos gairių 1 straipsnyje, 8 gairėje Lygių galimybių visiems skatinimas, socialinės įtraukties skatinimas ir kova su skurdu yra pabrėžta, kad „Valstybės narės turėtų modernizuoti socialinės apsaugos sistemas, kad jomis būtų

užtikrinama veiksminga, rezultatyvi, tvari ir tinkama socialinė apsauga visais asmens gyvenimo etapais“[5]. Kitame svarbiame Europos dokumente, Europos Parlamento ir Tarybos Reglamente (EB) Nr.987/2009 (2009 10 30 L 284/4), I Antraštinėje dalyje, Bendrosios nuostatos, II Skyriuje Bendradarbiavimo ir keitimosi duomenimis nuostatos, 3 straipsnyje Atitinkamų asmenų ir įstaigų keitimosi informacija taikymo sritis ir taisyklės yra pabrėžta, kad „1. Valstybės narės užtikrina, kad atitinkamiems asmenims būtų suteikta reikiama informacija apie pagrindiniu reglamentu bei įgyvendinimo reglamentu padarytus pakeitimus, kad jie galėtų įtvirtinti savo teises“[6]. Valstybė turi garantuoti, kad jeigu įstaigos ir įmonės nesukuria tiek darbo vietų, kiek piliečiams yra būtina, tuomet valstybės pagrindinės institucijos sukuria galimybes ir naujas darbo vietas, kviečia skubiam įdarbinimui piliečius į tarptautinius ir vietinius projektus. Valstybė savarankiškai dirba su tomis įstaigomis ir įmonėmis, kurios nesugeba kurti naujų darbo vietų, neturi gebėjimų, įgūdžių kurti naujas darbo vietas. Kai kurios įmonės nekuria naujų darbo vietų, nes siekia didesnės naudos ir didesnio pelno paskirstymo tik keliems darbuotojams. Beveik kiekviena valstybė puikiai žino, kurie piliečiai nėra įdarbinti ir valstybė gali savarankiškai kreiptis į neįdarbintus piliečius ir kviesti atvykti skubiam įdarbinimui, nes privačios įstaigos ir įmonės galbūt įdarbina tik tam tikrus žmones. Valstybė turi garantuoti, kad įstaigos ir įmonės garantuos valstybei, kad visi piliečiai bus įdarbinti; tai turi būti įstaigos kryptis ir valstybės kryptis ta pačia kryptimi – valstybės stiprinimui, kad visi piliečiai gyventų oriai ir gautų garantiją gauti orų gyvenimą ir vidutinę pensiją ar aukštesnę už vidutinę pensiją, sulaukę pensijos. Jei valstybės dokumentuose minima, kad lygybės ir užimtumo problemos bus išspręstos po 10 metų, tuomet kai kurios įstaigos ir įmonės nesiekia dirbti valstybėje viena kryptimi, kuri yra būtina valstybės stiprinimui kiekvieną dieną, kiekvieną mėnesį, ir kiekvienais metais kiekvieną dešimtmetį valstybės vystymosi strategijų įgyvendinimo ir valstybės tikslų siekime. Valstybė, kuri garantuoja visiems gyventojams, kad visi piliečiai nuo 20 metų iki pensijos metų dirbs tiek metų, kiek yra būtina vidutinei pensijai įgyti, stiprina valstybę ir valstybės pažangą, valstybės valdymą ir ekonomiką. Vietiniai projektai ir tarptautiniai projektai gali efektyviai įdarbinti visus likusius bedarbius, kad jie turėtų lygias galimybes valstybėje; bedarbiai turėtų būti vadinami darbo vietų ieškančiais piliečiais su įstaigos pagalba arba savarankiškai ieškantys darbo vietų, kadangi tik tai formuoja šias sąvokas: užimtumą darbu, užimtumą darbo paieška, užimtumą laikinuoju darbu, užimtumą pastoviu darbu, ilgalaikį įdarbinimą, įdarbinimą darbui dirbti projektuose, įdarbinimą į įmonės ar įstaigos įsteigtas darbo vietas nesusijusias su projektais, įdarbinimą į valstybės aukštesnių įstaigų

įsteigtas darbo vietas kitose įstaigose ir valstybinėse ir privačiose įmonėse. Privačios įmonės negali būti tik privačios įmonės, kadangi privačios įmonės turi laikytis valstybės įstatymų; tik kai kurie įstatymai yra taikomi privačių įmonių veiklai, valdymui, administravimui, saugai, viešajam saugumui, aplinkosaugai; valstybėje dauguma įstatymų yra taikomi visoms valstybės ir privačioms įmonėms, todėl privačios įmonės turi susipažinti su tiek įstatymų, kiek yra būtina valstybei stiprinti, įmonės socialinei atsakomybei užtikrinti, kad visuomenė būtų įdarbinta, kiekvienas visuomenės narys ir visa visuomenė būtų dirbanti ir tik maždaug 3 procentai visuomenės narių būtų ieškantys darbo, kai kurie iš 3 procentų visuomenės narių nedirbtų ir būtų valstybės visuomenės išlaikomais piliečiais. Tarptautinių projektų ir vietinių savivaldybių projektų valdymo kryptį valdytų valstybės įstaigos ir įmonės, visa valstybė siektų užtikrinti piliečiams tiek įdarbinimo metų, kiek yra būtina vidutinei pensijai užsitikrinti ir dabartiniam gyvenimui gyventi gaunant pagrindines naudas, gyventi valstybėje be skurdo požymių valstybėje. Visuomenės gerovė yra valstybės gerovė, kurią turi siekti garantuoti įstaigos ir įmonės dėl valstybės stiprinimo, kad visi piliečiai iki pensijos ir sulaukę pensijos gautų maždaug vienodą gerovę valstybėje.

3. Valstybė turi analizuoti dėl kokių argumentų įmonės ir įstaigos įdarbina nedaug naujų darbuotojų. Kai kurios įstaigos ar įmonės siekia, kad valstybė apmokėtų už naujus darbuotojus kuo daugiau pinigų kiekvieną mėnesį; tokia situacija gali lemti įmonės ir įstaigos pagrindinių tikslų įgyvendinimo neefektyvumą, įmonės ir įstaigos darbą tik iki tos dienos, kol įmonė ir įstaiga gauna pelną, kurį vėliau pasidalintų aukštas pareigas ėję darbuotojai ir nebetęstų įmonės ir įstaigos veiklos. Valstybės dialogas su įmonėmis ir įstaigomis turi būti efektyvus ir mažinti nesąžiningai besielgiančių įmonių ir įstaigų galimybes įdarbinti vieną darbuotoją, kuris dirbs už tris žmones. Valstybė gali vykdyti vietinius projektus ir tarptautinius projektus ir jais siekti išsiaiškinti situaciją dėl darbuotojų skaičiaus didinimo. Valstybė tai turi daryti ir todėl, kad netolimoje nenumatytoje ateityje darbuotojai Europos valstybėse dirbs po 6 valandas per dieną, o kiti darbuotojai po 4 valandas ir mažiau, tokia situacija yra labai rimta ir valstybė turi būtinai tobulinti valstybės valdymo procesus ir sugebėti efektyviai analizuoti įmonių ir įstaigų veiklą visuomenės gerovei stiprinti; valstybė gali efektyviai konsultuoti įmones ir įstaigas, bei vertinti ir kontroliuoti darbuotojų poreikį. Darbuotojai nėra įmonės ar įstaigos nuosavybė, bet valstybės piliečiai, kuriems valstybė turi garantuoti, kad iki pensijos amžiaus gaus tiek darbo metų, kiek yra būtina vidutinei senatvės pensijai, kuri garantuoja didelę pensiją ir aukštą gyvenimo

---

kokybę, puikias galimybes būti naudingu visuomenei. Valstybė gali efektyviai išsiaiškinti, kiek darbuotojų kiekvienoje įmonėje ir įstaigoje turi dirbti.

Valstybėje gali būti pradėtas naujas stambus vietinis ir tarptautinis projektas, kurio darbuotojai tikrins visas valstybės įmones ir įstaigas dėl teisingo darbuotojų skaičiaus garantavimo valstybei. Toks projektas turėtų tęstis daug metų ir projektą turi įgyvendinti labai daug specialistų. Toks vietinis ir tarptautinis projektas sukurtų naujas darbo vietas darbui tokiam ilgalaikiame projekte. Toks vietinis ir tarptautinis projektas garantuotų valstybei, kad projekto tikslai yra aiškūs ir juos galima efektyviai siekti. Visas įmones ir įstaigas yra būtina dažnai tikrinti, kad galima būtų nuspręsti, kiek darbuotojų turi dirbti jose; tokiam projekte galėtų dirbti tūkstantis ar daugiau išsilavinusių darbuotojų. Toks projektas stiprintų valstybės valdymą ir valstybę, nes įmonės ir įstaigos turėtų skubiai įdarbinti tiek darbuotojų, kiek po patikrinimo būtų pasiūlyta ir vėliau patikrinta. Tokiu būdu įstaigose ir įmonėse būtų labai sparčiai kuriamos naujos darbo vietos. Pavyzdžiui dėl situacijos, Europos Parlamento ir Tarybos Reglamente (ES) 2019/1796 (2019 10 31 L 279 I/5), buvo reglamentuota pagalba „dėl globalizacijos sukeltų esminių pasaulio prekybos struktūrinių pokyčių, visų pirma pasireiškiančių smarkiai augančiu importu į Sąjungą, dideliu Sąjungos prekybos prekėmis ar paslaugomis pokyčiu, sparčiai mažėjančia Sąjungos tam tikro sektoriaus rinkos dalimi, veiklos perkėlimu į trečiąsias valstybes“[7]. Kitame Europos dokumente, Europos Parlamento ir Tarybos Reglamente (ES) Nr. 1287/2013 (2013 12 20 L 347/40), I Skyriuje Dalykas, 10 straipsnyje Europos įmonių tinklas buvo reglamentuota teisė dėl „b) palankesnių sąlygų tarpvalstybiniam verslo bendradarbiavimui, moksliniams tyrimams ir technologinei plėtrai, technologijų ir žinių perdavimui ir technologijų bei inovacijų partnerystėms sudarymas“[8]. Kai kurie įmonėse ir įstaigose dirbantys specialistai neturi pakankamai įgūdžių ir gebėjimų analizuoti, kiek ir kokių darbuotojų reikia tobulėjančiai įstaigai ir įmonei, todėl būtų vertinga valstybei pačiai atlikti darbo delegavimo funkciją ir pagal valstybės tikslus ir uždavinius, pagal valstybės poreikius ir galimybes gebėti bendradarbiavimo principu siūlyti kiek ir kokių darbuotojų į pareigas turi būti įdarbinta. Valstybė tuomet analizuotų, kiek pareigų eina kiekvienas darbuotojas valstybėje. Darbuotojas negali dirbti už du ar tris darbuotojus, todėl valstybė turi rūpintis savo piliečiais, nes kai kurios įmonės ir įstaigos neetiškai elgėsi dėl pelno siekimo ir dėl neturėjimo tokių specialistų, kurie ir teisingai ir pagal lygių galimybių įstatymus kiekvieną mėnesį analizuotų kiekvieno darbuotojo darbo vietą ir įdarbintų naujus darbuotojus nedelsiant, kai tik jų reikia. Vietinis ir tarptautinis projektas dėl įmonių ir įstaigų darbuotojų

patikrinimo yra būtinas valstybėje, siekiant žinoti teisingą dirbančių žmonių skaičių ir įdarbinti daug naujų darbuotojų; tokia papildanti valstybės tikslus ir uždavinius kryptis stiprintų valstybę, mažintų grėsmes, garantuotų valstybės piliečiams puikų gyvenimą iki senatvės ir puikų gyvenimą sulaukus senatvės amžiaus.

4. Kiekvienas pilietis valstybėje turi dirbti ir uždirbti tiek, kiek yra būtina gyvenimui gyventi be skurdo. Ekonomika augtų sparčiau ir žmogaus orumas būtų saugomas valstybėje kiekvieną mėnesį, kai kiekvienam piliečiui valstybė gali garantuoti gyvenimo pagrindą. Valstybė yra stipresnė tuomet, kai valstybė piliečiams garantuoja, kad kiekvienas pilietis, kuris pageidautų gauti darbą, bus įdarbintas per 3 mėnesius, nes jei valstybėje yra ilgą laiką nedirbančių žmonių, pasaulis mano, kad kai kurios įmonės galėjo elgtis neetiškai; kai kurios įmonės galėjo paversti įdarbinimą išmokų ir pelno siekimu ir pelno gavimu ir iš valstybės ir iš valstybių. Kai kurios įmonės neteisingai supranta įmonės ir įmonių socialinę ir moralinę atsakomybę, dėl to kiekvieno piliečio ir visų piliečių gerovė mažėja esant skurdui ir bedarbiams valstybėje. Įmonės ir įstaigos turi teisingai vertinti situaciją, nes visuomenėje kiekvienas pilietis turi turėti darbą ir sulaukęs pensijos ir vyresnio garbingo amžiaus gauti orią senatvę ir pakankamai daug pinigų gyvenimui gyventi ir rūpinimuisi sveikata. Įmonės ir įstaigos turi sukurti tiek darbo vietų, kiek yra būtina valstybei stiprinti, kiekvieno piliečio finansinei gerovei kurti kiekvieną mėnesį. Valstybė bus stipresnė, kai įmonės ir įstaigos garantuos, kad kiekvienas pilietis turės tiek darbo metų valstybėje, kiek yra būtina vidutinei pensijai uždirbti ir sulaukus pensijos, kiekvieną mėnesį gauti vidutinę pensiją, kad valstybėje nebūtų skurdo požymių. Jei įmonės ir įstaigos nesugeba rūpintis kiekvienu valstybėje žmogumi, tuomet, valstybė gali įstatymu reglamentuoti, kad kiekvieno dirbančiojo valstybėje darbo valandų skaičius sumažinamas iki 25 darbo valandų per savaitę, norint gauti vidutinį mėnesinį atlyginimą; jei bus būtina, valstybė gali sumažinti darbo valandų skaičių iki 20 darbo valandų per savaitę, kad būtų įdarbinti nedirbantys piliečiai, kurie gali dirbti. Valstybėje yra ir kitokių susitarimų su įmonės ar įstaigos darbdaviu, kai norint gauti vidutinį mėnesinį atlyginimą, privaloma dirbti tik tiek darbo valandų, kiek yra numatyta sutartyje su darbdaviu. Pabrėžtina, kad Europos Parlamento ir Tarybos Direktyvoje (ES) 2019/1152 (2019 7 11 L 186/117), dėl skaidrių ir nuspėjamų darbo sąlygų Europos Sąjungoje, Europos Parlamento vardu Pirmininkas A. Tajani, Tarybos vardu Pirmininkas G. Ciamba, III Skyriuje Būtinieji reikalavimai, susiję su darbo sąlygomis, 10 straipsnyje Minimalus darbo nuspėjamumas yra reglamentuota, kad „darbas vyksta iš anksto nustatytais apskaitinėmis valandomis ir dienomis“[9]. Kitame dokumente,

Komisijos Įgyvendinimo Reglamentas (ES) 2017/2384 (2017 12 20 L 340/35), 1 straipsnyje yra reglamentuoti „Darbo organizavimo ir darbo laiko tvarkos 2019 m. *ad hoc* modulio techniniai rodikliai“ [10]. Tokiu būdu įmonės ir įstaigos turi naujų galimybių įdarbinti visus valstybės piliečius, net ir tuos, kurie yra invalidai, pavyzdžiui įmonė ir įstaiga gali mėginti nupirkti žmogaus norą nusišypsoti ir žvelgti į visuomenę, kad įmonė ir įstaiga sumokėtų kiekvieną mėnesį atlyginimą didindama žmogaus pagarbą ir gerovę; valstybėse yra brangiai nuperkamos dainininkų keturių minučių dainos, vadinasi nupirkti ne balsą, o žmogaus norą neilgai nusišypsoti įstaigos ir įmonės džiaugsmui taip pat yra galima, kad įmonės ir įstaigos darbuotojai galėtų pasidžiaugti žmogumi valstybėje, o invalidumą turintys žmonės lengviau sveiktų matydami visos visuomenės paramą ir norą sutikti kiekvieną žmogų. Valstybė arba įstaiga ir įmonė garantuoja, kad ir kiti piliečiai gaus gerovės tiek, kad neliks skurdo nepaisant to, kad žmogus kažkurį laiką buvo bedarbiu ieškančiu darbo savarankiškai arba ieškojo darbo pasirinkęs valstybinės įstaigos pagalbą.

Vietinių savivaldybių projektai ir tarptautiniai projektai didintų dirbančių žmonių skaičių ir mažintų skurdą. Tokio tikslo siekimą tobulinant, įmonės ir įstaigos turi gebėti kurti naujas darbo vietas kiekvienam mėnesiui kiekvienam piliečiui valstybėje. Įmonės ir įstaigos turi rodyti iniciatyvą kurdamas darbo vietas ir nevēluodamos suteikti darbo vietas neįdarbintiems piliečiams, ir didinti kiekvieno piliečio valstybėje gerovę tiek daug, kiek reikia žmogui gauti iš valstybės įstaigų ir įmonių, kad kiekvienas pilietis sulaukęs pensijos amžiaus galėtų gauti pakankamai daug pinigų gyvenimui gyventi ir galėtų garantuoti sveikesnį gyvenimą siekiant ilgaamžiškumo ir pasaulio rekordo. Ekonominiai apskaičiavimai nelemia problemos išsprendimo, nes kai bus įdarbinti beveik visi piliečiai valstybėje, tuomet galima teisingai apskaičiuoti, kaip reikia visai visuomenei ir kiekvienam piliečiui valstybėje. Jei valstybė siekia būti tiek stipria valstybe, kiek reikia visuomenei, valstybėje turi būti įstatymu garantuota, kad kiekvienas pilietis sulaukęs pensijos amžiaus gaus tiek pinigų kiekvieną mėnesį, kiek žmogui yra būtina gyvenimui gyventi ir rūpintis sveikata ir aukštos kokybės maistu, ir nusipirkti visas būtinas paslaugas kiekvieną mėnesį. Vietiniai projektai ir tarptautiniai projektai yra būtini valstybei stiprinti, tačiau įmonės ir įstaigos, kurios vykdo tokius projektus turi įdarbinti daug naujų darbuotojų ir maksimaliai didinti dirbančių piliečių skaičių valstybėje, nes dalį finansavimo projektų vykdymui įmonės ir įstaigos gauna ir iš savo valstybės ir iš valstybių. Įmonės ir įstaigos negali kurti gerovę tik sau, nes tai yra neetiška. Vietinių ir tarptautinių projektų nauda turi patekti įvairiems visuomenės nariams, kad valstybėje nebūtų skurdo.

Gerovės valdymo sistemos turi tobulinti ir garantuoti visų piliečių ir kiekvieno piliečio gerovę, ir kiekvienam piliečiui garantuoti aukštos kokybės gyvenimą ir aukštos kokybės įdarbinimo paslaugas dabar, užimtumo darbu paslaugas dabar, kai piliečiai ieško darbo pagal specialybę piliečių garbei ir orumui išsaugoti ir valstybės iniciatyva. Pavyzdžiui, jei įstaiga, įmonė vykdo projektą vietinėje savivaldybėje ar tarptautinį projektą valstybėje, įstaiga, įmonė gali įdarbinti daug darbo projekto vadovų ir kitokių darbuotojų, tarnautojų, specialistų, kiek jų reikėtų valstybės visuomenės gerovei kurti ir projekto efektyvumui, kad piliečiai galėtų dirbti pagal specialybę. Robotų naudojimas ir techninės programos yra priemonės, kurios neturi mažinti gyventojų užimtumą darbu valstybėje, bet didinti įdarbintų piliečių skaičių valstybėje, kurie turi specialybę valstybėje; robotų naudojimas ir techninių programų naudojimas jau turi būti naudojamas teisingai, kad tokiomis priemonėmis galima būtų garantuoti visuomenei ir kiekvienam valstybės piliečiui gerovę: ne mažesnę negu vidutinį atlyginimą valstybėje kiekvieną mėnesį kiekvienam piliečiui, sveikatos paslaugas, švietimo paslaugas, ir kitas paslaugas, kiek jų reikia kiekvienam piliečiui valstybėje ir garbės ir orumo išsaugojimą. Piliečių garbė ir orumas yra stiprinami, kai įmonė ir įstaiga stengiasi išsaugoti darbuotoją ir siūlo naujų įgūdžių įgyti, kai įmonei ir įstaigai reikia, kad pilietis gyvenime išsaugotų išsilavinimo lygį. Vietinėje savivaldybėje vykstančių projektų ir tarptautinių projektų valdymas yra efektyvus, kai valdymas stiprina valstybę ir didina kiekvieno piliečio gerovę dabar ir piliečiams sulaukus pensijos. Jei visi piliečiai yra dirbantys, valstybė dar kartą analizuoja situaciją ir išsiaiškina ar kiekvienam piliečiui užtenka gerovės (materialinės gerovės, pavyzdžiui pinigų kiekvieną mėnesį, ir nematerialinės gerovės – garbės ir orumo piliečių sukurto savarankiškai ir valstybės iniciatyva palaikomo) valstybėje tiek, kad pilietis galėtų garantuoti gerovę sau, vaikams, ir kitiems žmonėms. Tarptautiniai projektai ir vietinėje savivaldybėje vykstantys projektai yra priemonės įdarbinti daug labai įvairių specialybių piliečių ir jei būtina, įmonėse ir įstaigose mokytį piliečius šiuolaikinių įgūdžių darbo vietose. Įmonės ir įstaigos taip pat turi turėti šiuolaikinių įgūdžių, kad sugebėtų įdarbinti tiek daug piliečių, kiek jų yra būtina valstybės gerovei gerinti, ir kurti įvairius projektus; pavyzdžiui, Europos institucijos Tarybos Rekomendacijoje 2016 m. vasario 15 d. (2016 2 20 C 67/5), dėl ilgalaikių bedarbių integracijos į darbo rinką, buvo reglamentuota „Remti socialinių inovacijų projektus, siekiant ilgalaikius bedarbius integruoti į darbo rinką“ [11]. Kitame Europos dokumente, Europos Parlamento ir Tarybos Reglamente (ES) Nr. 1304/2013 (2013 12 20 L 347/474), I Skyriuje Bendrosios nuostatos, 3 straipsnyje Paramos aprėptis buvo reglamentuota dėl „galimybių gauti darbą

ieškantiems darbo asmenims ir neaktyviems asmenims, įskaitant ilgalaikius bedarbius ir asmenis, nutolusius nuo darbo rinkos, suteikimas, taip pat pasitelkiant vietos užimtumo iniciatyvas ir remiant darbo jėgos judumą“[12]. Įmonės ir įstaigos gali įdarbinti specialistus ir kitus darbuotojus darbui dirbti projektuose, tie teisės dokumentai yra svarbūs įmonėms ir įstaigoms, kad jos galėtų turėti naujų galimybių sukurti naujas darbo vietas, kuriose dirbantys darbuotojai dalį savo laiko valandų skirtų savo pačių kuriamiems projektams įgyvendinti. Įmonės ir įstaigos vykdo projektus, tačiau patys darbuotojai gali ypatingai domėtis ir sukurti vietinėje savivaldybėje nedidelių ar vidutinio didumo projektų ar tarptautinių projektų ir savo įmonės ir įstaigos vadovo prašyti projektų vykdymui įdarbinti naujų darbuotojų ir dalyvauti personalo tarnybų susirinkime naujų darbuotojų mokymuose. Tarptautiniai projektai ir vietinėse savivaldybėse įgyvendinami projektai gali sumažinti nedirbančių piliečių skurdą, kai piliečiai yra įdarbinami, saugoti žmonių garbę ir orumą, kai žmogui reikia valstybės pagalbos.

Valstybės valdymo sistemoje galima vykdyti tarptautinius projektus ir vietinių savivaldybių projektus, kurie didins naujų darbo vietų skaičių, tačiau projektai turi stiprinti valstybės sistemą. Valstybės sistemos funkcijos ir sistemoje įgyvendinami uždaviniai turi būti stiprinami įdarbintų piliečių darbu valstybėje. Kai valstybės valdymo sistema yra visada gerinama naudingais projektais. Nauji projektai turi būti efektyviai vykdomi ir ateityje, nes valstybė būtina visada stiprinti ir valstybės viduje ir pasaulyje, savivaldybių lygiais ir valstybių lygiais. Valstybės valdymo plano tobulinimas priklauso nuo įmonėse ir įstaigose efektyviai kuriamų darbo vietų, nedirbanti piliečiai turi būti vėl įdarbinami, kad visa visuomenė ir kiekvienas visuomenėje pilietis matytų dirbančią visuomenę valstybėje. Vietiniai projektai ir tarptautiniai projektai yra efektyvi priemonė, kuri gali padėti valstybei didinti įdarbintų visuomenės narių skaičių, projektai turi turėti kryptį įdarbinti nedirbanti piliečius. Valstybės valdymo sistema leidžia kurti tarptautinius projektus ir projektus vietinėse savivaldybėse, kad valstybė būtų stiprinama. Šiame mokslo straipsnyje yra pateikiamos išvados ir siūlymai dėl valstybės stiprinimo.

## **IŠVADOS IR SIŪLYMAI**

Projektai turi turėti ypatingą kryptį valstybei stiprinti; kryptis yra reikalinga dėl visuomenės gerovės, kad visi piliečiai valstybėje būtų įdarbinti. Tarptautinių projektų ir vietinėse savivaldybėse vykdomų projektų valdymo kryptis turi būti įdarbinti visus piliečius valstybėje. Ši kryptis nėra projektų tikslai ir uždaviniai ir strategijos, bet kryptis, kuri yra būtina

vietinių ir tarptautinių projektų valdymui dėl valstybės stiprinimo ir kiekvieno piliečio gerovės garantavimo valstybėje. Šios straipsnio išvados ir siūlymai yra ypatingi dėl užimtumo – piliečių įdarbinimo, užimtumo darbu.

Pirma, įmonės ir įstaigos turi daug stengtis, kad garantuotų valstybei visų piliečių įdarbinimą valstybėje. Valstybė turi sugebėti garantuoti visuomenei, kad kiekvienas pilietis valstybei yra svarbus, todėl yra būtina, rūpintis kiekvienu piliečiu garantuojant tiek darbo metų piliečiui, kiek reikia oriam gyvenimui gyventi, sveikai ir oriai senatvei sulaukti, gerovei gauti gyvenime. Mokslinio straipsnio pirmoje dalyje buvo pabrėžta mokslinė knyga:

[1] "Territorial States. A Case in Point: Standard International Relations Theories." Book: John Agnew. Derek Gregory, Linda McDowell (editors), *Geopolitics: re-visioning world politics*. London and New York: Routledge, 1998, 52.

Vėliau taip pat buvo pabrėžti šie dokumentai:

[2] EUROPOS PARLAMENTO IR TARYBOS REGLAMENTAS (ES) 2019/1149 2019 m. birželio 20 d. kuriuo įsteigiama Europos darbo institucija, iš dalies keičiami reglamentai (EB) Nr. 883/2004, (ES) Nr. 492/2011 ir (ES) 2016/589 ir panaikinamas Sprendimas (ES) 2016/344 (Tekstas svarbus EEE ir Šveicarijai), Europos Sąjungos oficialusis leidinys 2019 7 11 L 186/33. eur-lex.europa.eu [2020-03-27].

[3] EUROPOS PARLAMENTO IR TARYBOS DIREKTYVA (ES) 2019/1937 2019 m. spalio 23 d. dėl asmenų, pranešančių apie Sąjungos teisės pažeidimus, apsaugos, Europos Sąjungos oficialusis leidinys 2019 11 26 L 305/43. eur-lex.europa.eu [2020-06-27].

Šiuolaikinis pasaulis valstybėje nėra tik dokumentuose. Todėl yra siūloma, kad valstybė taptų labai vertinga pasaulyje įdarbindama visus piliečius, kurie turi išsilavinimą. Įdarbinimo kryptis leistų atsirasti sąlygoms steigti tiek darbo vietų, kiek reikia visuomenei, kiekvienam piliečiui visuomenėje ir tokiu būdu valstybė bus stiprinama.

Antra, jeigu įstaigos ir įmonės nesukuria tiek darbo vietų, kiek piliečiams yra būtina, tuomet valstybės institucijos sukurs galimybes ir naujas darbo vietas, kvies skubiam piliečių įdarbinimui. Valstybė turi savarankiškai dirbti su tomis įstaigomis ir įmonėmis, kurios neturi gebėjimų, įgūdžių kurti naujas darbo vietas arba nenori įdarbinti naujų darbuotojų. Valstybė turi garantuoti, kad įstaigos ir įmonės garantuos valstybei, kad visi piliečiai bus įdarbinti. Piliečių įdarbinimas turi būti įmonių ir įstaigų kryptis dalyvauti valstybėje, o valstybei dalyvauti įmonių ir įstaigų darbe tikrinant ne tik tikslus ir uždavinius, bet ir kryptį. Tai yra būtina valstybės stiprinimui. Straipsnyje buvo pabrėžta knyga:

---

[4] Karl W. Deutsch, *The Analysis of International Relations. Part Four, The Search for Peace. Some Prospects for the Future*. Third edition. Englewood Cliffs, New Jersey 07632: Prentice Hall, 1988, 309.

Vėliau taip pat buvo pabrėžti šie dokumentai:

[5] SPRENDIMAI TARYBOS SPRENDIMAS (ES) 2018/1215 2018 m. liepos 16 d. dėl valstybių narių užimtumo politikos gairių, Europos Sąjungos oficialusis leidinys 2018 9 5 L 224/9. eur-lex.europa.eu [2020-03-27].

[6] EUROPOS PARLAMENTO IR TARYBOS REGLAMENTAS (EB) Nr.987/2009 2009 m. rugsėjo 16 d., nustatantis Reglamento (EB) Nr. 883/2004 dėl socialinės apsaugos sistemų koordinavimo įgyvendinimo tvarką (Tekstas svarbus EEE ir Šveicarijai, Europos Sąjungos oficialusis leidinys 2009 10 30 L 284/4. eur-lex.europa.eu [2020-06-26].

Todėl, įmonėms ir įstaigoms yra rekomenduojama užtikrinti visuomenės gerovę, kad visi piliečiai iki pensijos ir sulaukę pensijos gautų gerovę valstybėje. Kiekvieno projekto vykdyme valstybės stiprinimui yra būtina neįdarbintų piliečių įdarbinimo kryptis.

Trečia, valstybė turi analizuoti ar įmonės ir įstaigos įdarbina tiek darbuotojų, kiek būtų teisinga valstybei stiprinti. Valstybė turi analizuoti įmonių ir įstaigų veiklą visuomenės gerovei stiprinti. Vietinis ir tarptautinis projektas dėl įmonių ir įstaigų darbuotojų patikrinimo yra būtinas valstybėje. Šio straipsnio dalyje buvo pabrėžti šie reglamentai:

[7] EUROPOS PARLAMENTO IR TARYBOS REGLAMENTAS (ES) 2019/1796 2019 m. spalio 24 d. kuriuo iš dalies keičiamas Reglamentas (ES) Nr. 1309/2013 dėl Europos prisitaikymo prie globalizacijos padarinių fondo (2014–2020 m.), Europos Sąjungos oficialusis leidinys 2019 10 31 L 279 I/5. eur-lex.europa.eu [2020-03-27].

[8] EUROPOS PARLAMENTO IR TARYBOS REGLAMENTAS (ES) Nr. 1287/2013 2013 m. gruodžio 11 d. kuriuo sukuriama 2014–2020 m. įmonių konkurencingumo ir mažųjų bei vidutinių įmonių programa (COSME) ir panaikinamas Sprendimas Nr. 1639/2006/EB (Tekstas svarbus EEE), Europos Sąjungos oficialusis leidinys 2013 12 20 L 347/40. eur-lex.europa.eu [2020-06-26].

Todėl valstybei valstybės stiprinimui yra siūloma efektyviai konsultuoti įmones ir įstaigas, bei vertinti ir kontroliuoti darbuotojų poreikį, stiprinti valstybę įdarbinus visus piliečius valstybėje. Steigiant naujas įmones bus naujų projektų, kurie turi turėti įdarbinimo kryptį; vietiniai ir tarptautiniai projektai turi tikslus ir strategijas, kurių vykdymui turi būti ir neįdarbintų piliečių įdarbinimo kryptis.

---

Ketvirta, valstybėje nebūtų skurdo ir valstybė būtų stipresnė, kai įmonės ir įstaigos garantuotų, kad kiekvienas pilietis turės tiek darbo metų valstybėje, kiek yra būtina vidutinei pensijai uždirbti ir sulaukus pensijos, kiekvieną mėnesį gauti vidutinę pensiją. Vietinių ir tarptautinių projektų nauda turi patekti įvairiems visuomenės nariams. Taigi, įmonėms ir įstaigoms yra siūloma garantuoti piliečiams darbo vietas gyvenime, kad piliečiai galėtų puikiai gyvenime gyventi ir galėtų visada stiprinti valstybę. Straipsnio ketvirtoje dalyje buvo pabrėžti šie svarbūs Europos valstybėms dokumentai:

[9] EUROPOS PARLAMENTO IR TARYBOS DIREKTYVA (ES) 2019/1152 2019 m. birželio 20 d. dėl skaidrių ir nuspėjamų darbo sąlygų Europos Sąjungoje, Europos Sąjungos oficialusis leidinys 2019 7 11 L 186/117. eur-lex.europa.eu [2020-03-27].

[10] KOMISIJOS ĮGYVENDINIMO REGLAMENTAS (ES) 2017/2384 2017 m. gruodžio 19 d., kuriuo nustatomi darbo jėgos atrankinio tyrimo, atliekamo pagal Tarybos reglamentą (EB) Nr. 577/98, darbo organizavimo ir darbo laiko tvarkos 2019 m. *ad hoc* modulio techniniai rodikliai (Tekstas svarbus EEE), Europos Sąjungos oficialusis leidinys 2017 12 20 L 340/35. eur-lex.europa.eu [2020-06-26].

[11] I (Rezoliucijos, rekomendacijos ir nuomonės) REKOMENDACIJOS TARYBA TARYBOS REKOMENDACIJA 2016 m. vasario 15 d. dėl ilgalaikių bedarbių integracijos į darbo rinką (2016/C 67/01), Europos Sąjungos oficialusis leidinys 2016 2 20 C 67/5. eur-lex.europa.eu [2020-03-27].

[12] EUROPOS PARLAMENTO IR TARYBOS REGLAMENTAS (ES) Nr. 1304/2013 2013 m. gruodžio 17 d. dėl Europos socialinio fondo, kuriuo panaikinamas Tarybos reglamentas (EB) Nr. 1081/2006, Europos Sąjungos oficialusis leidinys 2013 12 20 L 347/474. eur-lex.europa.eu [2020-06-26].

Valstybėje visiems piliečiams turi būti nesudėtinga užduotis uždirbti vidutinę pensiją. Valstybės valdyme yra būtina įdarbinimo kryptis, ji taip pat būtų ir projektuose valstybėje. Kryptis turi būti projektuose. Tarptautinių ir vietinių projektų valdymo kryptis yra įdarbinimui neįdarbintų piliečių dėl valstybės stiprinimo.

Straipsnio rezultatus galima panaudoti moksle ir valstybės valdymo darbe ir tam, kad neįdarbinti piliečiai galėtų būti įdarbinti; pabrėžtina, kad krypties pavyzdžiu galima būtų papildyti valstybės gerovės valdymą, valstybės valdymo sistemas, kai visi arba beveik visi piliečiai yra dirbantys – užimti darbu valstybėje. Visuomenė stiprintų valstybę, kurioje yra nuolatinė kryptis dėl piliečių įdarbinimo, kad būtų stiprinama valstybė.

Valstybėje yra būtina įdarbinti visus piliečius, nes tuomet problemos rimtumas sumažės; gyventojai stiprins visą valstybę ir valstybės sistemą. Kiekvienas įdarbintas pilietis valstybėje yra ypatingai naudingas valstybės stiprėjimui. Todėl valstybės veiksmų planą yra būtina tobulinti, kad ne tik vietinių ir tarptautinių projektų kryptis būtų įdarbinti piliečius valstybėje, bet ir valstybė turėtų kryptį garantuoti visuomenei ir kiekvienam piliečiui įdarbinimą – užimtumą. Valstybės stiprėjimas ir valstybės valdymo plano tobulinimas priklauso nuo gyventojų gerovės, todėl visi piliečiai turi gauti darbą valstybės gerovės stiprinimui.

## LITERATŪRA

1. Agnew John, „Territorial States. A Case in Point: Standard International Relations Theories.“ Book: Gregory Derek, McDowell Linda (editors), *Geopolitics: re-visioning world politics*. London and New York: Routledge, 1998.
2. EUROPOS PARLAMENTO IR TARYBOS REGLAMENTAS (ES) 2019/1149 2019 m. birželio 20 d. kuriuo įsteigiama Europos darbo institucija, iš dalies keičiami reglamentai (EB) Nr. 883/2004, (ES) Nr. 492/2011 ir (ES) 2016/589 ir panaikinamas Sprendimas (ES) 2016/344 (Tekstas svarbus EEE ir Šveicarijai), Europos Sąjungos oficialusis leidinys 2019 7 11 L 186/21-56. eur-lex.europa.eu [2020-03-27].
3. EUROPOS PARLAMENTO IR TARYBOS DIREKTYVA (ES) 2019/1937 2019 m. spalio 23 d. dėl asmenų, pranešančių apie Sąjungos teisės pažeidimus, apsaugos, Europos Sąjungos oficialusis leidinys 2019 11 26 L 305/17-56. eur-lex.europa.eu [2020-06-27].
4. Deutsch Karl W., *The Analysis of International Relations. Part Four, The Search for Peace. Chapter 21: Some Prospects for the Future*. Third edition. Englewood Cliffs, New Jersey 07632: Prentice Hall, 1988.
5. SPRENDIMAI TARYBOS SPRENDIMAS (ES) 2018/1215 2018 m. liepos 16 d. dėl valstybių narių užimtumo politikos gairių, Europos Sąjungos oficialusis leidinys 2018 9 5 L 224/4-9. eur-lex.europa.eu [2020-03-27].
6. EUROPOS PARLAMENTO IR TARYBOS REGLAMENTAS (EB) Nr.987/2009 2009 m. rugsėjo 16 d., nustatantis Reglamento (EB) Nr. 883/2004 dėl socialinės apsaugos sistemų koordinavimo įgyvendinimo tvarką (Tekstas svarbus EEE ir Šveicarijai, Europos Sąjungos oficialusis leidinys 2009 10 30 L 284/1-42. eur-lex.europa.eu [2020-06-26].
7. EUROPOS PARLAMENTO IR TARYBOS REGLAMENTAS (ES) 2019/1796 2019 m. spalio 24 d. kuriuo iš dalies keičiamas Reglamentas (ES) Nr. 1309/2013 dėl Europos prisitaikymo prie globalizacijos padarinių fondo (2014–2020 m.), Europos Sąjungos oficialusis leidinys 2019 10 31 L 279 I/4-6. eur-lex.europa.eu [2020-03-27].
8. EUROPOS PARLAMENTO IR TARYBOS REGLAMENTAS (ES) Nr. 1287/2013 2013 m. gruodžio 11 d. kuriuo sukuriama 2014–2020 m. įmonių konkurencingumo ir mažųjų bei vidutinių įmonių programa (COSME) ir panaikinamas Sprendimas Nr. 1639/2006/EB (Tekstas svarbus EEE), Europos Sąjungos oficialusis leidinys 2013 12 20 L 347/33-49. eur-lex.europa.eu [2020-06-26].
9. EUROPOS PARLAMENTO IR TARYBOS DIREKTYVA (ES) 2019/1152 2019 m. birželio 20 d. dėl skaidrių ir nuspėjamų darbo sąlygų Europos Sąjungoje, Europos Sąjungos oficialusis leidinys 2019 7 11 L 186/105-121. eur-lex.europa.eu [2020-03-27].
10. KOMISIJOS ĮGYVENDINIMO REGLAMENTAS (ES) 2017/2384 2017 m. gruodžio 19 d., kuriuo nustatomi darbo jėgos atrankinio tyrimo, atliekamo pagal Tarybos reglamentą (EB) Nr. 577/98, darbo organizavimo ir darbo laiko tvarkos 2019 m. *ad hoc* modulio techniniai rodikliai

- 
- (Tekstas svarbus EEE), Europos Sąjungos oficialusis leidinys 2017 12 20 L 340/35-40. eur-lex.europa.eu [2020-06-26].
11. I (Rezoliucijos, rekomendacijos ir nuomonės) REKOMENDACIJOS TARYBA TARYBOS REKOMENDACIJA 2016 m. vasario 15 d. dėl ilgalaikių bedarbių integracijos į darbo rinką (2016/C 67/01), Europos Sąjungos oficialusis leidinys 2016 2 20 C 67/1-5. eur-lex.europa.eu [2020-03-27].
  12. EUROPOS PARLAMENTO IR TARYBOS REGLAMENTAS (ES) Nr. 1304/2013 2013 m. gruodžio 17 d. dėl Europos socialinio fondo, kuriuo panaikinamas Tarybos reglamentas (EB) Nr. 1081/2006, Europos Sąjungos oficialusis leidinys 2013 12 20 L 347/470-486. eur-lex.europa.eu [2020-06-26].

## LOCAL AND INTERNATIONAL PROJECTS MANAGEMENT DIRECTION TO STRENGTHEN COUNTRY

**Gintaras Kavarskas**  
*Mykolas Romeris University*

### Summary

The problem is the unemployed citizens in a country; this is a serious problem nowadays. The aim of the article is on creating the direction for the management of the local projects and the international projects, to make suggestions, for the efficiency of the direction to create opportunities – to make proposals to institutions. The tasks are these: to discuss the significance of the employment problem, and to experiment, using opportunities of the projects management for the solution of the problem – to employ the unemployed citizens, to make suggestions, conclusions. The main method is the experiment in order to employ all the citizens to strengthen the country; the empirical methods are suggestions and conclusions. The results in the article revealed that there is the need to employ citizens.

**Keywords:** employment; direction; management of projects; members of the public; the general public

---

# APPLICATION OF KEY PERFORMANCE INDICATORS TO IMPROVE THE EFFICIENCY OF MONITORING OF THE ORGANISATION'S ACTIVITIES: THEORETICAL APPROACH

<sup>1</sup>Rūta Klimaitienė

<sup>1</sup>Vilnius university  
Muitinės str. 8, LT-44280 Kaunas, Lithuania  
E-mail: [Ruta.Klimaitiene@knf.vu.lt](mailto:Ruta.Klimaitiene@knf.vu.lt)

<sup>2</sup>Eva Derengovska

<sup>2</sup>UAB „Citco Vilnius“  
Junior accounts payable analyst  
E-mail: [Eva.Dereng@gmail.com](mailto:Eva.Dereng@gmail.com)

<sup>3</sup>Kristina Rudžionienė

<sup>3</sup>Vilnius University  
Muitinės str. 8, LT-44280 Kaunas, Lithuania  
E-mail: [Kristina.Rudzioniene@knf.vu.lt](mailto:Kristina.Rudzioniene@knf.vu.lt)

DOI: 10.13165/PSPO-20-25-20

---

**Abstract.** Key performance indicators (KPI), if properly used at an enterprise, can demonstrate the progress achieved by the enterprise in its pursuit of strategic objectives. The main goal of this research was to develop a model for the application of KPI process with the objective to improve the efficiency of monitoring of the organisation's activities. Literature review, systematic and comparative analysis of literature, academic literature synthesis, content analysis, monitoring and modelling were carried out. KPI are these particular indicators which best reflect the key/fundamental processes of the enterprise activity. In order to draw maximum benefits from the selected KPI, they have to conform to certain characteristics: achievable, owned, timely, relevant and measurable. The authors suggest a model of the process of KPI application which would help to improve the efficiency of monitoring of the organization's activities. When the strategy of an organization has been established and the key objectives have been outlined, four stages of KPI application are enumerated: 1) identification of the function of an indicator; 2) data mining; 3) use of data; 4) indicator relevance validation. The model recommends selecting the optimal number of indicators and checking whether the costs of tracking a single indicator do not exceed the benefits of the monitoring process.

**Keywords:** KPI – key performance indicator, performance management, efficiency, organization, monitoring.

**JEL code:** L25.

## INTRODUCTION

Traditionally, the activity of enterprises is assessed on the basis of their financial indicators. However, considering the currently available abundant data, globalization and increasing competitiveness, financial indicators fail to reflect the multilateral view of the

---

enterprise. Financial statements of an enterprise do not suggest what is responsible for their achievement and what may impact their alterations. This lack of information is a restriction when multilateral evaluation of the results of an enterprise is conducted; thus inefficient decisions may be taken. In order to ensure productivity and a high level of activity monitoring, the appropriate indicators are required to facilitate the process of decision making. Also, in many cases, the staff of an enterprise cannot straightforwardly see how the work they perform contributes to the achievement of the objectives of the enterprise thus reducing the value generated by their work.

The above listed issues may be tackled by key performance indicators (KPI) which also serve for supplementing financial statements with useful information. These indicators systemize the sheer volume of data, which provides better grounds for assessing the current processes and making decisions. On top of that, KPI highlight whether the objectives are being pursued in a well-directed and uniform effort.

Ahmad and Dhafr (2002), Peterson (2006), Peterson (2006), Tsai and Cheng (2012), Parmenter (2015), Lindberg *et al.* (2015), Bernard Marr and Co. (2017B), Astrauskaitė and Paškevičius (2018), Gusnadi and Hermawan (2020) investigated the concept of KPI and defined their essential aspects. Eckerson (2009), Parmenter (2015), Burbuio (2017), Lo-Iacono-Ferreira, Capuz-Rizo and Torregrosa-Lopez (2018) outlined the key characteristics of KPI and highlighted why these indicators are beneficial to an organization. Alrajehi (2014), Pirlog and Balinti (2016), Barbuio (2017), Ante *et al.* (2018) and Zelga (2018) claimed that the measurement of the efficiency of activity by employing KPI helps the management make strategic decisions which are crucially beneficial to the enterprise. However, in many cases, the KPI which are being observed do not actually bring the benefits which were expected, nor do they facilitate the achievement of the objectives. This failure stems from the selection of unsuitable KPI, or else the costs of tracking KPI exceed the value of the benefits which are received. In order to make the process of KPI application beneficial for the efficiency of the activity monitoring, consistency of the process is required.

Object of research – a system of assessment based on KPI.

*Aim of research* – to develop a model for the application of KPI process with the objective to improve the efficiency of monitoring of the organisation's activities.

*Objectives of research:* 1) On the grounds of literature sources, to analyze the key aspects of KPI, their characteristics and benefits for an organization; 2) To identify the main stages of

the KPI's application process to improve the effectiveness of monitoring of the organisation's activities which would facilitate the implementation of the strategy of the organization.

*Methods of research.* To achieve the set objectives, literature review, systematic and comparative analysis of literature, academic literature synthesis were carried out, using the available open sources and the results of earlier field studies. Content analysis, induction, deduction, summarization along with the monitoring method and modelling.

## KEY POINTS AND BENEFITS OF KEY PERFORMANCE INDICATORS

Scholarly literature contains a wide variety of definitions of KPI; therefore, evidently, authors perceive and explain the term differently. Table 1 lists a sample of definitions presented by various authors.

**Table 1.** Definitions of KPI

Author	Definition
Ahmad and Dhafr (2002)	A <i>number or value</i> which can be compared against a target
Peterson (2006)	<i>Numbers</i> designed to succinctly convey as much information as possible.
Eckerson (2011)	A measurement of how well the industrial process in the organization performs an operational activity that is critical for <i>the current and future</i> success of that organization
Tsai and Cheng (2012)	A <i>quantitative</i> index which reveals the <i>key</i> success factors of an organization.
Parmenter (2015)	Focusing on those aspects of organizational performance that are the most critical for <i>the current and future</i> success of the organization.
Badawy et al. (2016)	A <i>set of measures</i> focusing on those sides of organizational performance that are critical for the success of the organization
Bernard Marr and Co. (2017B)	A way to measure how well companies, business units, projects or individuals are performing in relation to their <i>strategic</i> goals and objectives.
Astrauskaitė and Paškevičius (2018)	A <i>measurable value</i> that demonstrates how effectively a company is achieving key business objectives.
Gusnadi and Hermawan (2020)	A series of important performance indicators that are measurable and can provide information on the extent to which the company's <i>strategic objectives</i> have been successfully achieved.

Source: compiled by the authors

Having explored the definitions of KPI presented by various authors and listed in Table 1, we may claim that top attention is attributed to the word 'key', i.e., the essential/ most important criteria. It is the key criteria which bring enterprises to their strategic objectives. Prior to 2006, the indicators of activity evaluation had been defined as a means of information

---

concentration; however, more recent definitions have been focusing on the present and the future, and thus on the strategic objectives which the indicators help to achieve. The highlighted authors emphasize the characteristic of ‘quantitativeness’ of KPI, i.e., that the indicators must be measurable as it helps the monitoring and analysis of an indicator. Having generalized on the definitions listed in Table 1, we see that an indicator is a marker which is important to an enterprise (or a department, project or individual) which may be measured and which shows how efficient is the pursuit of some objective.

Helmold and Samara (2019) distribute KPI into two categories: 1) *high level* – ones which are expected to produce the overall evaluation of the enterprise and show its general outlook; 2) *low level* – ones which reflect more detailed processes taking place in departments and/or reflect the performance of specific members of staff. Meanwhile, Graham *et al.* (2015), Parmenter (2015) provide the following categories: 1) lag indicators present historical results; 2) lead KPI predict future performance and enable future trends to be identified. Lag KPI are the traditional indicators of financial analysis: profitability, activity, liquidity, and solvency. PwC (2017A) splits the leading indicators into three main groups: staff, clients, and non-financial activity.

It may be claimed that Helmold and Samara (2019) and Graham *et al.* (2015) suggest similar structures of KPI. High level KPI are the ones which correspond to the lagging indicators as both groups focus on the general assessment of the activity of the enterprise. Meanwhile, the low level indicators and the leading indicators are focused towards the staff and the processes taking place in departments.

Parmenter (2015) does not agree with the distribution of KPI into the leading and lagging ones because, in his opinion, KPI should focus only on the present and on the future. The author claims that most organizations concentrate on the indicators of very old activity (which are a month or even a quarter old); according to the author, such activity indicators cannot be referred to as KPI. Kerzner (2013) also claims that the information provided by KPI is beneficial for taking decisions in the future and that there is no point in tracking the indicators which are impossible to affect.

Intrafocus (2018) suggests that an enterprise researching its lagging KPI may draw conclusions and adapt them for its future on the basis of the activities conducted in the past; however, it does not trigger any impact regarding the pursuit of strategic objectives. The main reason of using the lagging KPI is that the data is easily accessible and calculable. The authors

claim that an enterprise may affect only the leading KPI, and only this type of KPI brings the enterprise closer to its objectives. However, it should be emphasized that even the leading KPI are not a guarantee of success, that is, at the current moment, the enterprise cannot be sure that a specific indicator value will definitely contribute positive added value. Proof will only be presented by the positive change of the lagging indicators which will only be available after a certain time.

Having generalized on the statements of the researched authors, we may conclude that only the leading KPI bring the enterprise closer to the objectives it is pursuing, and, with the help of the lagging indicators, would it be possible to assess the appropriateness, efficiency and the created added value of the leading indicators. Therefore, it is essential that enterprises should strike the right balance between the leading and lagging KPI so that the efficiency of the monitored activity should be appropriately and validly assessed.

Not all the indicators can be called key performance indicators. In order to make an indicator followed by an enterprise useful and efficient so that it would help to pursue the objectives of the enterprise, it has to adhere to specific criteria (characteristics) (Table 2). These guidelines help enterprises create such indicators of activity tracking which would fully correspond to its current activity of operations, specific aspects and needs thus eliminating the likelihood of selecting an indicator merely because of its popularity and/or accessibility of the data to be observed.

**Table 2.** Characteristics of KPI

Characteristics	Comments on characteristics	Authors highlighting the characteristics
1. Sparse	The fewer KPIs, the better	Eckerson (2009)
2.Chain / drillable	Connected between different levels of management	Eckerson (2009), Parmenter (2015)
3. Simple	Definitions and theoretical terms should be clear and well-defined.	Eckerson (2009), Parmenter (2015), Lo-Iacono-Ferreira, Capuz-Rizo and Torregrosa-Lopez (2018)
4. <i>Achievable</i>	Users know how to affect outcomes	Eckerson (2009), Lo-Iacono-Ferreira, Capuz-Rizo and Torregrosa-Lopez (2018)
5. <i>Owned</i>	An individual or a group is responsible for KPI	Eckerson (2009), Parmenter (2015), Burbuio (2017), Lo-Iacono-Ferreira, Capuz-Rizo and Torregrosa-Lopez (2018)
6. Verifiable	The data used to calculate KPIs should be auditable both in terms of its accuracy and appropriateness for purpose.	Eckerson (2009), Burbuio (2017)
7. Actionable	Oriented towards the objectives of the activity	Eckerson (2009), Lo-Iacono-Ferreira, Capuz-Rizo and Torregrosa-Lopez (2018)

8. <i>Timely</i>	Observed within a defined timescale	Parmenter (2015), Burbuio (2017),
9. <i>Relevant</i>	Measures should be identified that clearly support the strategic objectives of the broadcaster.	Parmenter (2015), Burbuio (2017), Lo-Iacono-Ferreira, Capuz-Rizo and Torregrosa-Lopez (2018)
10. <i>Measurable</i>	Possible to express quantitatively	Burbuio (2017), Lo-Iacono-Ferreira, Capuz-Rizo and Torregrosa-Lopez (2018)
11. <i>Balanced</i>	Consisting of financial and non-financial indicators	Eckerson (2009)
12. <i>Aligned</i>	KPIs don't undermine each other	Eckerson (2009)
13. <i>Nonfinancial</i>	Not expressed in a currency	Parmenter (2015)
14. <i>Accessible</i>	Available as data	Burbuio (2017)
15. <i>Cost effective to collect</i>	The effort required to collate and report a KPI needs to be weighed up against the benefits	Burbuio (2017)
16. <i>Validated</i>	They should give no incentives and no opportunities to go for short-term results only	Eckerson (2009), Parmenter (2015)

Source: compiled by the authors

Table 2 highlights that the authors tend to disagree as to whatever should be efficient KPI. Eckerson (2009), Parmenter (2015), Barbuio (2017), Lo-Iacono-Ferreira, Capuz-Rizo and Torregrosa-Lopez (2018) are uniform in claiming that the 'owner' of an indicator is ultimately important. Parmenter (2015), Barbuio (2017), Lo-Iacono-Ferreira, Capuz-Rizo and Torregrosa-Lopez (2018) agree that an indicator must be relevant. This characteristic is also highlighted by Huysalo, Kelanti and Markula (2018) as well as Zavalij (Завалий, 2019) who state that the objectives of an enterprise and the relevant key performance indicators should be reviewed, fine-tuned, and, if required, renewed if their relevance has been lost. There is one more characteristic – timeliness – which is related to relevance, i.e., the timeline must be defined, as suggested by Parmenter (2015), Barbuio (2017). Eckerson (2009), Parmenter (2015), Lo-Iacono-Ferreira, Capuz-Rizo and Torregrosa-Lopez (2018) agree regarding the simplicity of the indicators and believe that it is directly related with their efficiency. This is also corroborated by Alrajehi (2014) and Bernard Marr and Co. (2017A) who suggest that the indicators of activity assessment should be understood virtually at any level of the organization. Alrajehi (2014) adds that data collection and monitoring should not require specific knowledge.

Eckerson (2009) is the only researcher to highlight the characteristics not only of a single criterion but also the characteristics of the entire KPI system, i.e., that the system of characteristics needs to contain few, balanced and harmonious criteria thus highlighting the importance of the relationship among all the researched indicators of the enterprise.

---

Lo-Iacono-Ferreira, Capuz-Rizo and Torregrosa-Lopez (2018) suggest using the SMART (i.e., Specific, Measurable, Achievable, Relevant, Timely) acronym structure for the composition of the appropriate KPI as the five listed characteristics define the required characteristics. This suggests that KPI should be oriented towards the objectives of an activity, expressed in quantified values, well-grounded, be interrelated and related with the performed work, and be tracked during the indicated time.

Analysis of the characteristics of KPI listed in Table 2 suggests that, since 2017, attention has been paid not only to the benefit provided by KPI, but also the costs of data gathering are considered, which is important because the costs of information gathering or indicator observing may exceed the benefits brought by KPI, which is economically irrational. On the basis of a characteristic which is singled out, it is important to consider the potential inefficiency of the observable indicators.

Having explored the data presented in Table 2, we determine that authors single out relatively different characteristics, but, for most KPI, the key characteristics are the following: achievable, owned, timely, relevant and measurable.

When devising new or reassessing currently available KPI, it is essential to consider the highlighted properties which help to determine the most efficient and beneficial indicators to reflect the progress achieved by the enterprise in terms of the objectives which have been set. Such KPI would also help to eliminate all work which yields no added value to a department or the entire enterprise, i.e., the creation of excessive production (information), long wait until the processing of production (information) and/or additional correction of the performed work.

Alrajehi (2014), Pirlog and Balinti (2016), Barbuio (2017) as well as Ante *et al.* (2018) and Zelga (2018) highlight that the measurement of the efficiency of an activity by using KPI helps the management take strategic decisions beneficial for the management. Such decisions bear significant impact on the overall performance of the enterprise; they are related with future planning and long-term effect. Strategic decisions help to fulfill the potential of the enterprise in terms of the achievement of the objectives. Barbuio (2017) and Zelga (2018) also claim that KPI help to instill the culture of systematic improvement at enterprises.

Popa (2015) singles out four main reasons for developing KPIs: 1) checking if the ways of action adopted are in accordance with the objectives; 2) gathering the information necessary to improve the activity; 3) controlling and monitoring the activities and the people performing

---

them s); 4) providing support for the reports going to external stakeholders (external reporting indicator).

Smith and Heijden (2017) also remark that KPI represent a useful source of information which serves as an addition to the financial statements. For Lithuanian enterprises, the additional information gathered with the assistance of KPI would be reflected in the notes of financial statements where more detailed information would be delivered regarding possible questions why the objectives were (not achieved) and what had direct impact on the success/failure; thus the results presented in the three main financial statements (Profit (loss) statements, Balance sheet, Cash flow statement) would be elaborated.

PwC (2017A) also suggests three causes why it is essential to assess non-financial indicators: 1) they are better related with the long-term strategy of the enterprise; 2) they reflect intangible assets (e.g., relationship with the clients); 3) they may provide an early signal about the financial indicators of the future and help tracing one's competitive advantage.

On the grounds of the benefits provided by KPI as elaborated by various scholars, the authors of the present paper suggest using the KPI system because of the six following causes:

1. KPI system provides background for taking strategic decisions;
2. KPI system supplements the results provided in financial statements;
3. KPI system is a tool for tracking and controlling activities and the people implementing these activities;
4. KPI system registers the difference between the factual and planned results;
5. KPI system provides information for the improvement of activity;
6. KPI system checks the adherence between the selected actions and the objective.

The observed indicators facilitate the process of identifying the problem areas. Having identified the current problem, it is essential to determine the key reason why the problem has been encountered and to find solutions so that the encountered problem should not be a recurrent one instead of merely mitigating its impact. Thus, the processes at the enterprise are upgraded, and this contributes to the achievement of the objectives of the enterprise which have been set.

---

## PROCESS OF APPLICATION OF KEY INDICATORS OF THE ORGANIZATION'S ACTIVITIES

When the efficiency of the activity of an organization is being observed, it is essential to do the proper selection of KPI and to apply them consistently, to track the benefits they bring and to introduce timely modifications whenever needed. According to Mourtzis, Papatheodou and Fotia (2018), many enterprises do not observe any positive changes in their activity even though KPI are being tracked, measured and analyzed. The main cause from the point of view of these authors is the selection of inappropriate KPI. In order to escape this issue, it is essential to adhere to the proper course of their adoption as then the suitability of the selected indicators is seen as early as at the stage of their creation; otherwise, immediate corrective action may be taken by either 'fine-tuning' that indicator or rejecting it completely.

The authors of the present paper should adhere to the following stages of the KPI's application process to improve the effectiveness of monitoring of the organisation's activities as indicated in the graphic model presented in Figure 1:

1. Identification of the function of an indicator;
2. Data mining;
3. Use of data;

Indicator relevance validation.

*Identification of the function of an indicator.* In order to assess KPI, first of all, the strategic objective should be considered which has to be verbalized in order to verify the relevance of KPI in the course of activity and to check whether a specific indicator is actually related with the objective that has been set. Joppen *et al.* (2019) also indicate that objectives constitute an important factor when selecting KPI. Without having a strategic objective, the likelihood of a failure of a KPI system increases as the observed data will most probably fail to reflect the implied strategy of the enterprise, there will be no interconnection, and lots of valuable time will be lost.

The selected KPI should conform to the key general qualitative characteristics (achievable, owned, timely, relevant and measurable) as well as other specific properties which are of importance to the specific enterprise.

It is also of importance to select the right number of KPI. When exploring scholarly literature, it was observed that the optimal number of KPI to be used at an enterprise largely varies in the recommendations of different authors (Table 3).

**Table 3.** Recommended number of KPI

Author	Number
Kaplan and Norton (1996, quoted from Graham <i>et al.</i> , 2015)	<20
Slater <i>et al.</i> (1997)	Min. 7; max. 12
Hope and Fraser (2003, quoted from Graham <i>et al.</i> , 2015)	<10
PwC (2007)	4–10
Kerzner (2013)	6–10
Parmenter (2015)	<10

Source: compiled by the authors

From Table 3, we may observe the trend of a decreasing number of KPI. Back in 1996, it was advisable to establish up to 20 KPI; however, more recent sources suggest having up to 10 KPI. Warren (2011) and Mourtzis, Papatheodou and Fotia (2018) share the opinion of sticking to a low number of KPI as they claim that an excessive number of KPI would result in lack of clarity. According to Lautour (2018), the number of KPI, the number of KPI should be minimized. Harvey and Sotardi (2018) claim that an excessive number of KPI may result in scattered data, whereas an insufficient number will produce ‘black spots’, which is simply unacceptable. Borsos *et al.* (2016) highlights that the number of KPI at an enterprise depends on its size, the complexity of the processes taking place there, and on some specific aspects of the objectives.

When dealing with this issue, we may consider the Pareto principle, according to which, 20% factors create 80% of the result; therefore, it is sufficient to focus on the factors producing the highest value which will lead to the objective most efficiently. It is essential to highlight that an insufficient number of KPI may fail to reflect the entire complex view of the enterprise.

Hence, in order to make the employed KPI beneficial, it is necessary to establish the optimal number of KPI to be observed, to select the right indicators, to set the appropriate objectives, and to use the data which can be easily gathered.

*Data mining.* The objective of the stage of data collection is to identify how the data will be collected, what/which scale will be used for measurements, whichever is the criterion for unsatisfactory/neutral/satisfactory levels, and which sources of information shall be used.

The method of data mining should be reliable in order to minimize the likelihood of gathering data of low precision. Shah (2019) highlights for different ways to collect qualitative data for improvement: free-text question in a survey, interviews, observations, and review of

---

documentation. The definition of the evaluation/scale/range of the data will also help to express the data in a quantifiable way. This may be a formula, a numerical value, or a mark on a scale depending on the optimal type for the selected indicator.

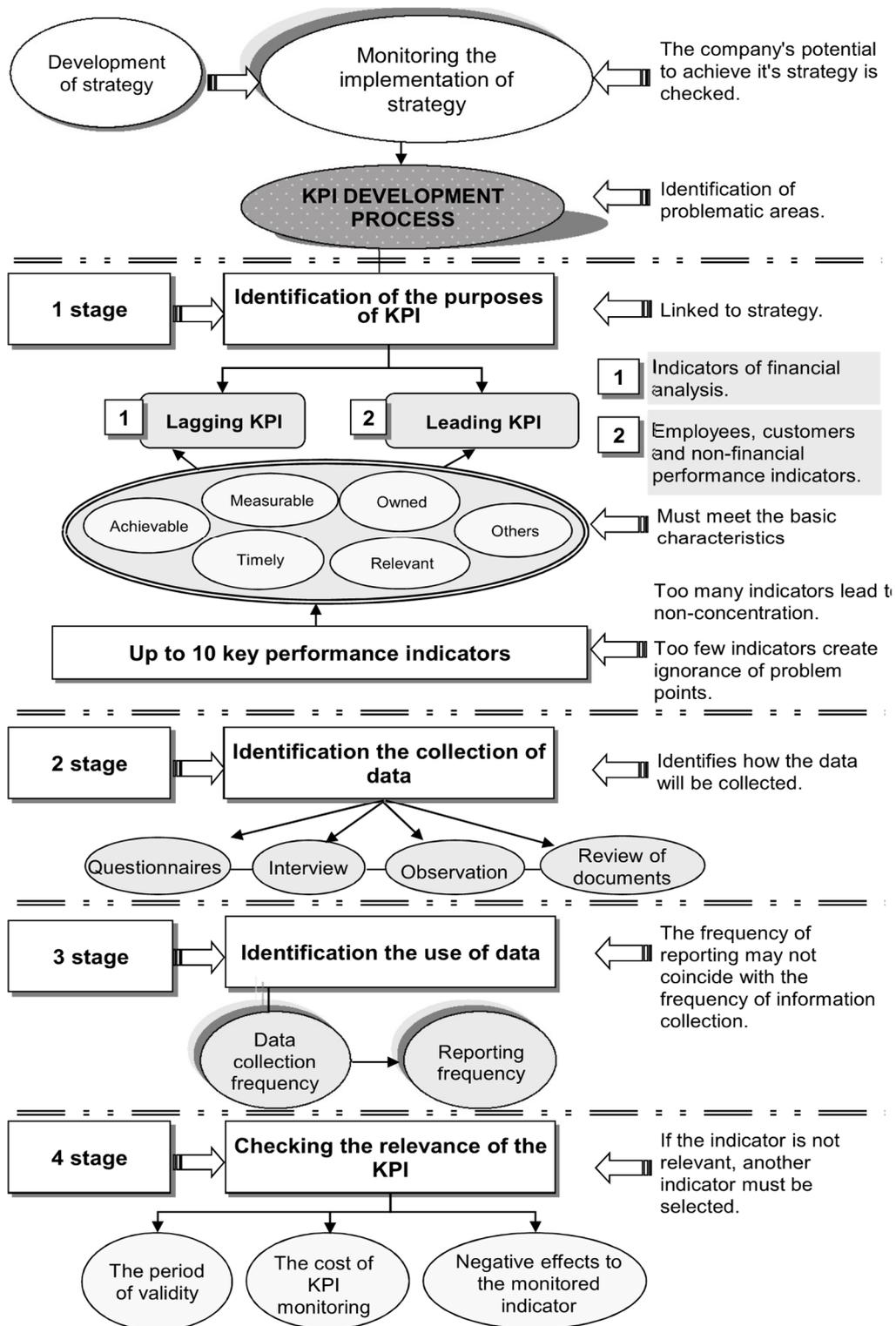
Engle (2018) observes that many enterprises opt for analysis of easily collectible data. This is not necessarily a bad choice because these indicators may help in the process of decision taking, but risks are involved that more valuable information may evade the scope of attention. The author highlights that the identification of the indicators bearing a high added value may be a complicated and expensive process; however, it is likely that such indicators shall be far more valuable. Meanwhile, according to Barbuio (2017), if data mining requires extensive resources, the benefits provided by this information should be considered responsibly as this may be irrational from the economic point of view.

It is of importance to highlight that not every single activity should be observed with the help of KPI as valuable information about the progress which has been made is not provided by every indicator. Meanwhile, Badawy *et al.* (2016) observe that most enterprises are using too much KPIs, this can weaken the focus on aims; a large list of KPIs that does not have clear connections to business objectives may be a sign of a bigger problem; a shortage of strategic focus on selecting KPIs is a difficult process; lack of understanding of the KPIs lead to a failure in monitoring and reporting of measures.

*Use of data.* If the frequency and the timeframe of data selection has been established, it helps to standardize data collection thus also eliminating additional and unplanned work; also, it aligns different KPI so that they simultaneously present the entire picture. Bishop (2018) emphasizes that daily data collection helps the management improve the results of their teams, but foregrounds that this way of measurement may lead to the achievement of short-term goals. In the opinion of this author, it is essential to establish such a frequency of data collection which would give sense to the observed indicator.

The frequency of presentation of statements should be related with the frequency of data collection in order to make the information presented in a statement *still* relevant. Appleton (2017) notes that annual presentation of KPI statements is a reflection of historical rather than current data. Meanwhile, Staron, Niesel and Bauman (2018) observe that there are few researches investigating the frequency at which statements should be presented and at which they are actually presented in practice. It is of importance that the frequency of statement presentation need not necessarily coincide with the frequency of information gathering;

therefore, the enterprise must individually select the frequency of statement presentation which is optimal for the enterprise.



**Figure 1.** The model for the application of KPI process to improve the efficiency of monitoring of the organisation's activities

---

*Indicator relevance validation.* The validation of the relevance of an indicator involves the temporal validity of the indicator, the likely costs of tracking the indicator, the factual relevance, and the relation of potential negative impacts with the tracked indicator. The validity/review date of an indicator is necessary so that it would be possible to check its validity systematically as an irrelevant indicator does not yield any added value while demanding precious work time which might be assigned to a more relevant activity. The importance of regular review of indicators is also highlighted by Appleton (2017). We should emphasize that the validity term is most relevant for such temporary activities of an enterprise or its department as, e.g., projects.

The identification of the costs of observing an indicator is essential in order to be able to verify whether the costs associated with the indicator under monitoring do not exceed the provided benefits. The identification of the potential negative impact helps to direct attention towards potential threats related with the selected KPI and to consider in advance the means and/or actions to be taken in order to avoid potential threats. Parmenter (2015), Bernard Marr and Co. (2018) and Kaiser and Young (2018) highlight that KPI should not be related with salary bonuses or any other incentives.

## CONCLUSIONS AND RECOMMENDATIONS

Having analyzed the arguments presented in literature which serve as foundation of the benefits of KPI to an enterprise, we may claim that these indicators, if properly used at an enterprise, can demonstrate the progress achieved by the enterprise in its pursuit of strategic objectives.

Having explored the concept of KPI and its focal points, we state that KPI are these particular indicators which best reflect the key/fundamental processes of the enterprise activity. The indicators are divided into lagging (financial) and leading (non-financial); the lagging indicators may reflect the success of the leading indicators. KPI are not standardized indicators; therefore, each organization should select on its own such KPI which would be most appropriate for the field in which the enterprise is specializing. In order to draw maximum benefits from the selected KPI, they have to conform to certain characteristics: achievable, owned, timely, relevant and measurable.

The authors of the present paper thus suggest a model for the application of KPI process which would help to improve the efficiency of monitoring of the organization's activities. When

the strategy of an organization has been established and the key objectives have been outlined, four stages of KPI application are enumerated: 1) identification of the function of an indicator; 2) data mining; 3) use of data; 4) indicator relevance validation. These stages must be implemented consecutively. The first part assesses the constitution of a single indicator by conducting the general validation of the function of an indicator and the three consecutive stages: data mining, their use, and the verification of the relevance of the indicator. Having completed all the stages of the first part, transition to the second part is made, and the overall KPI system is assessed. The model recommends selecting the optimal number of indicators and checking whether the costs of tracking a single indicator do not exceed the benefits of the monitoring process.

The indicators which have been involved in the monitoring model of the activity of the organization for a long time and which have been systematically proving their benefits for the increase of operational efficiency are actually these indicators which conform to all the characteristics listed by the explored researchers. This ensures the optimal number of KPI and the significant support of the top management of the enterprise.

## REFERENCES

1. Ahmad, M., M., Dhafr, N. (2002). Establishing and Improving Manufacturing Performance Measures. *Robotics and Computer Integrated Manufacturing*, 18, 171-176.  
[https://doi.org/10.1016/S0736-5845\(02\)00007-8](https://doi.org/10.1016/S0736-5845(02)00007-8)
2. Alrajehi, Sh., H. (2014). Importance of KPI Identification and Implementation in Kuwaiti Construction Industry. <http://bura.brunel.ac.uk/handle/2438/13824>
3. Ante, G., Facchini, F., Mossa, G., Digiesi S. (2018). Developing a Key Performance Indicators Tree for Lean and Smart Production System. *IFAC-Papers OnLine*, (51)11, 13-18.  
<https://doi.org/10.1016/j.ifacol.2018.08.227>
4. Appleton, L. (2017). *Libraries and Key Performance Indicators*. Chandos Publishing.  
<https://doi.org/10.1016/B978-0-08-100227-8.00002-9>
5. Astrauskaitė, I., Paškevičius, A. (2018). An Analysis of Crowdfunded Projects: KPI's to Success. *Entrepreneurship and Sustainability Issues*, 6(1), 23-24.  
[http://doi.org/10.9770/jesi.2018.6.1\(2\)](http://doi.org/10.9770/jesi.2018.6.1(2))
6. Badawy, M., Abd El-Aziz, A., A., Idress, A., M., Hesham, H., Hossam. Sh. (2016). A Survey on Exploring Key Performance Indicators. *Future Computing and Information Journal*, 1(1-2), 47-52. <https://doi.org/10.1016/j.fcij.2016.04.001>
7. Barbuio, F. (2017). *Performance Measurement: A Practical Guide to KPI and Benchmarking in Public Broadcasters*. <https://www.publicmediaalliance.org/wp-content/uploads/2017/08/PerformanceMeasurementAPracticalGuide.pdf>
8. Bernard Marr and Co (2017A). How to Develop Effective KPI.  
<https://www.bernardmarr.com/default.asp?contentID=763>
9. Bernard Marr and Co (2017B). What Is a KPI?  
<https://www.bernardmarr.com/default.asp?contentID=762>

10. Bishop, D., A. (2018). Key Performance Indicators: Indication to Creation. *IEEE Engineering Management Review*, 46(1), 13-15. <https://doi.org/10.1109/EMR.2018.2810104>
11. Borsos, G., Iacob, C., C., Celefariu, G. (2016). The Use KPI's to Determine the Waste in Production Process. *IOP Conference Series: Materials Science and Engineering*, 161. <https://doi.org/10.1088/1757-899X/161/1/012102>
12. Eckerson, W., W. (2009). Performance Management Strategies: How to Create and Deploy Effective Metrics. [https://www.microstrategy.com/Strategy/media/downloads/white-papers/TDWI\\_Performance-Management-Strategies.pdf](https://www.microstrategy.com/Strategy/media/downloads/white-papers/TDWI_Performance-Management-Strategies.pdf)
13. Eckerson, W. W. (2011). *Performance Dashboards: Measuring, Monitoring, and Managing Your Business*. John Wiley, Hoboken, NJ.
14. Engle, P. (2018). Picking the Right Key Performance Indicators. *Industrial and Systems Engineering at Work*, 50(6), 22. <https://www.iise.org/ISEMagazine/Details.aspx?id=46769>
15. Graham, I. et al. (2015). Performance Measurement and KPI for Remanufacturing. *Journal of Remanufacturing*, 5(10), 1-17. <http://dx.doi.org/10.1186/s13243-015-0019-2>
16. Gusnadi, Y., Hermawan, A. (2020). Designing Employee Performance Monitoring Dashboard Using Key Performance Indicator (KPI). *Bit-Tech*, 2(2), 19-26. <https://jurnal.kdi.or.id/index.php/bt/article/view/107/63>
17. Harvey, H., B., Sotardi, S., T. (2018). Key Performance Indicators and the Balanced Scorecard. *Journal of the American College of Radiology*, 15(7), 1000-1001. <https://doi.org/10.1016/j.jacr.2018.04.006>
18. Helmold, M., Samara, W. (2019). *Progress in Performance Management: Management for Professionals*. Germany: Springer, Cham. <https://doi.org/10.1007/978-3-030-20534-8>
19. Hyysalo, J., Kelant, M., Markkula, J. (2018). Redefining KPI with Information Flow Visualisation – Practitioners' View. *ICSEA 2018 The Thirteenth International Conference on Software Engineering Advances*. Nice: IARIA. 114-121. [https://www.researchgate.net/publication/329197055\\_ICSEA\\_2018\\_The\\_Thirteenth\\_International\\_Conference\\_on\\_Software\\_Engineering\\_Advances](https://www.researchgate.net/publication/329197055_ICSEA_2018_The_Thirteenth_International_Conference_on_Software_Engineering_Advances)
20. Intrafocus (2018). How to Develop Meaningful Key Performance Indicators. <https://www.intrafocus.com/services/developing-meaningful-KPI/>
21. Joannides de Lautor, V. (2018). *Strategic Management Accounting Volume II: Beyond the Numbers*. London: Palgrave Macmillan. <https://doi.org/10.1007/978-3-319-92952-1>
22. Joppen, R., Enzberg, S., Gundlach, A., Dumitrescu, R. (2019). Key Performance Indicators in the Production of Future. *Procedia CIRP*, (81), 759-764. <https://doi.org/10.1016/j.procir.2019.03.190>
23. Kaiser, K., Young, D. (2018). The Perils of KPI-Driven Management. *Strategic Finance*, 99(12), 39-45. [https://www.researchgate.net/publication/326753399\\_The\\_Perils\\_of\\_KPI-driven\\_Management](https://www.researchgate.net/publication/326753399_The_Perils_of_KPI-driven_Management)
24. Kerzner, H. (2013). *Project Management Metrics, KPI, and Dashboards: A Guide to Measuring and Monitoring Project Performance*. New Jersey: John Wiley and Sons, Inc. <https://doi.org/10.1002/9781118826751>
25. Lindberg, C., F., Tan, A., T., Yan, J., Y., Starfelt, F. (2015). Key Performance Indicators Improve Industrial Performance. *Energy Procedia*, 75, 1785-1790. <https://doi.org/10.1016/j.egypro.2015.07.474>
26. Lo-Iacono-Ferreira, V., Capuz-Rizo, S., Torregrosa-Lopez, J. (2018). Key Performance Indicators to Optimize the Environmental Management System – A Case Study of Universitat Politècnica de Valencia. *Journal of Cleaner Production* 178, 846-865. <https://doi.org/10.1016/j.jclepro.2017.12.184>
27. Mourtzis, D., Papatheodorou, A., M., Fotia, S. (2018). Development of a Key Performance Indicator Assessment Methodology and Software Tool for Product-Service System Evaluation

- 
- and Decision-Making Support. *Journal of Computing and Information Science in Engineering*, 18(4), 1-13. <https://doi.org/10.1115/1.4040340>
28. Parmenter, D. (2015). *Key Performance Indicators: Developing, Implementing, and Using Winning KPI*. (3rd ed.) Unites States of America: Wiley.  
<https://doi.org/10.1002/9781119019855>
29. Pirlog, R., Balinti, A., O. (2016). An Analyze Upon the Influence of the Key Performance Indicators (KPI) on the Decision Process Within Small and Medium-Sized Enterprises (SME). *Hyperion International Journal of Econophysics and New Economy*, 9(1), 173-185.  
<https://www.journal-hyperion.ro/journal-archive/category/18-volume-9-issue-1-2016?start=9>
30. Peng, W., Sun, T., Rose, P., Li, T. (2008). Computation and Applications of Industrial Leading Indicators to Business Process Improvement. *International Journal of Intelligent Control and Systems*, 13(3), 196-207. <http://www.asmemesa.org/ezconf/IJICS/issue.php?id=2>
31. Peterson, E., T. (2006). *The Big Book of Key Performance Indicators*. Web Analytics Demystified.  
[https://www.academia.edu/7062678/The\\_Big\\_Book\\_of\\_Key\\_Performance\\_Indicators\\_by\\_Eric\\_Peterson](https://www.academia.edu/7062678/The_Big_Book_of_Key_Performance_Indicators_by_Eric_Peterson)
32. Popa, B., M. (2015). Challenges When Developing Performance Indicators. *Journal of Defense Resources Management*, 6(1), 111-114.  
[http://journal.dresmara.ro/issues/volume6\\_issue1/15\\_popa.b\\_vol6\\_issue1.pdf](http://journal.dresmara.ro/issues/volume6_issue1/15_popa.b_vol6_issue1.pdf)
33. PricewaterhouseCoopers (2007). *Guide to Key Performance Indicators: Communicating the Measures That Matter*. [https://www.pwc.com/gx/en/audit-services/corporate-reporting/assets/pdfs/uk\\_kpi\\_guide.pdf](https://www.pwc.com/gx/en/audit-services/corporate-reporting/assets/pdfs/uk_kpi_guide.pdf)
34. PricewaterhouseCoopers Luxemburg (2017A). *CFO Key Performance Indicators (KPI) Survey*. <https://www.pwc.lu/en/finance-function-effectiveness/docs/cfo-key-performance-indicators.pdf>
35. Shah, A. (2019). Using Data for Improvement. *BMJ*, 364, 1-6. <https://doi.org/10.1136/bmj.1189>
36. Slater, A.,F., Olson, E., M., Reddy, V., K. (1997). Strategy-Based Performance Measurement. *Business Horizons*, 40(4), 37-44. [https://doi.org/10.1016/S0007-6813\(97\)90037-9](https://doi.org/10.1016/S0007-6813(97)90037-9)
37. Smith, S., Heijden, H. (2017). Analysts' Evaluation of KPI Usefulness, Standartisation and Assurance. *Journal of Applied Accounting Research*, 18(1), 63-86.  
<https://doi.org/10.1108/JAAR-06-2015-0058>
38. Staron, M., Niesel, K., Niclas, B. (2018). Milestone-Orientaited Usage of Key Performance Indicators – An Industrial Case Study. *E-Informatica Software Engineering Journal*, 12(1), 217-236. <https://doi.org/10.5277/e-Inf180109>
39. Tsai, Y., Ch., Cheng, Y., T. (2012). Analyzing Key Performance Indicators (KPI) for E-commerce and Internet Marketing of Elderly Products: A Review. *Archives of Gerontology and Geriatrics*, 55(1), 126-132. <https://doi.org/10.1016/j.archger.2011.05.024>
40. Warren, J. (2011). *Key Performance Indicators (KPI) – Definition and Action*. Hamburg: At Internet. [https://www.kwantyx.com/wp-content/uploads/AT\\_WP\\_KPI\\_EN.pdf](https://www.kwantyx.com/wp-content/uploads/AT_WP_KPI_EN.pdf)
41. Zelga, K. (2018). Key Performance Indicators as a Type of Performance Measurement – Analysis of a Chosen Enterprise. *Acta Universitatis Nicolai Copernici*, 45(1), 127-135.  
[http://dx.doi.org/10.12775/AUNC\\_ZARZ.2018.011](http://dx.doi.org/10.12775/AUNC_ZARZ.2018.011)
42. Завалий, Т. (2019). Анализ подходов к пониманию сущности KPI как основы для построения BSC. *Studia Universitatis Moldaviae*, 122(2), 120-127. <http://studiamsu.eu/wp-content/uploads/17.-p.120-127.pdf>

---

## VALUE FOR THE CONSUMER DURING THE PANDEMIC

**Justyna Majchrzak-Lepczyk**

*Poznań University of Economics and Business  
Al. Niepodległości 10, 61-875 Poznań, Poland  
e-mail: [justyna.majchrzak-lepczyk@ue.poznan.pl](mailto:justyna.majchrzak-lepczyk@ue.poznan.pl)*

DOI: 10.13165/PSPO-20-25-14

---

**Abstract.** The COVID-19 pandemic is undoubtedly an unprecedented event. Suddenly, peace and routine were replaced with fear for our own safety and health, and greater concern for our own home budget. In many countries the mandatory quarantine and the current situation where the disease is still present around the world, has undoubtedly contributed to a change in consumer behavior and the way people make purchases. Businesses, in turn, are facing many challenges, not only related to the decline in their revenues. Many organizations have to concentrate on their own digitization of their activities, as well as on digitally supporting their clients and gaining their trust. The changing, uncertain and complex reality is shaping new patterns, and modern technologies are changing the way we make purchasing decisions and make actual purchases. This shapes the need to create individual customer experiences, which are a specific value for them, and which allows them to strengthen the brand image, as well as help increase market share. We observe a dynamic development of e-commerce and ubiquitous digitization. In many places the increasing multi-channel sales are constantly changing customer preferences, which determines the process of intense changes taking place in trade. The aim of the article is to present the possibilities and methods of creating value for the customer in commerce, caused by the Covid-19 pandemics, with particular emphasis on e-commerce. The source of the article is the available literature on the subject, as well as the analysis of research reports carried out during and after the pandemic accumulation, both among customers and businesses. A qualitative analysis of the existing data was performed, citing selected innovative solutions used by businesses. Undoubtedly, these solutions affect the quality of customer service offered. What builds the future of trade is professional communication, relationship shaping, building trust, speed of actions taken, also in the field of innovation and digitization.

**Keywords:** e-commerce, value, consumer behavior, innovation, shopping, Covid-19

**JEL:** M12 - Personnel Management, M21 - Business Economics, M31 - Marketing

### NEW ECONOMIC REALITY

Until recently, the situation in which the world currently finds itself would be difficult to imagine. Volatility and uncertainty are features of the reality where everyone is present today. In order to provide buyers with the highest quality of services provided, companies undergo internal transformations, adapting their activities to the current conditions. Particular attention is paid to the health and safety of customers, but it is also necessary to focus activities on strengthening digital channels. The Covid-19 pandemic has emphasized even more clearly the need to activate the consumer - to increase attention to their involvement.

---

The coronavirus pandemic is shocking the global economy. Member States have implemented measures to support budgetary liquidity and policies to increase the capacity of national health systems, but also to help citizens and sectors particularly affected by the pandemic.

The numerous restrictions introduced in many parts of the world, including Poland, related to the mobility of people, catering and entertainment activities, the operation of many shops and shopping malls, led, among other things, to changes in consumer behavior. The applicable operating restrictions, as well as additional obligations at subsequent stages, resulted from the need to ensure the safety of both employees and customers. The pandemic showed a threat that customer service companies had never faced before. These include: suspended deliveries from other countries, shortages in components and production of raw materials, delays in order fulfillment, shortages in goods, delays in deliveries to end customers, or staff shortages. Thus, the businesses that had properly developed procedures before the quarantine and which had focused on investments in the area of new technologies, facilitating both distribution and effective management, did better in the difficult time. The hardest situation is for local shops and service points, whose owners often have no idea or the possibility of introducing new solutions, including the digitization of their sales or services. It may also result from ignorance, lack of skills or reluctance of the owners to technological innovations.

Immediately after the time of forced quarantine, when people were in home isolation and most of the retail outlets and service outlets were closed, great chaos ensued and fears for our own safety and those of our loved ones. As soon as the economy began to open through the possibility of using various facilities and institutions, some people approached this opportunity with extreme caution. When shopping malls, hairdressing and beauty salons and restaurants were opened, these points experienced increased traffic, but the wave of customers did not take long. There are rather fewer returns to daily activities than before the pandemic, and some continue to avoid such contact. Many people started cooking and making their own meals due to spending more time at home. On the other hand, those with no desire or culinary skills started using the services of catering companies with an offer of home delivery. Undoubtedly, the most radical changes still concern participation in mass entertainment events, such as cinema or theater. The event industry and trade fairs are in an extremely difficult situation. The scale of losses for these industries, due to the restrictions resulting from the Covid-19 pandemic, is enormous, possibly leading to a wave of insolvencies and bankruptcies.

---

The above-mentioned examples show a clearly different functioning of the market, resulting from the concerns about our own safety and the risk of infection, but also from top-down restrictions and prohibitions. The problem for some may also be the uncertain situation of the household budget.

In a situation where the access to brick-and-mortar stores was difficult or impossible, consumers started using e-commerce more willingly and purchased products via the Internet. Many customers have been forced to go through an accelerated digital education process. There has been a greater pre-pandemic diversity among e-consumers due to demographic data. Many more elderly people have become convinced of the need for electronic form of shopping.

### **CHANGES IN TRADE PATTERNS**

Poland is gaining importance on the European map of e-commerce. Well-known global brands and electronic sales platforms locate their logistics, distribution and returns handling centers in Poland. Apart from the central geographic location, well-developed road and warehouse infrastructure, the most important entities providing CEP services (couriers, express parcels and parcels) are also present in the country. Not without mention is also the availability of qualified managerial staff.

E-commerce in Poland is constantly developing, and its market share is growing. According to the estimates by Unity Group, in 2020 Polish e-commerce should reach a value in the range of PLN 100-120 billion, and its annual dynamics in the coming years should exceed 20% (money.pl, 2020).

The considerations are intended to present the possibilities and methods of creating value for the customer in commerce, with particular emphasis on e-commerce. On the basis of available sources, observations as well as analyzes of the latest research reports, the current trends were observed and diagnosed, both among customers and enterprises.

Customers are more likely to decide to make e-purchases, the reasons for which can be put down to, among others, the increase to the Internet access or technological innovations that enable easy, fast and safe shopping. Growing customer requirements and expectations mean that the companies which previously operated only offline are now deciding to go online. Such activities make it possible to reach a new, previously unsupported group of customers. The competition in e-commerce is fierce, and the companies operating in the network build their competitive advantage by shaping relationships with customers and gaining their trust.

---

The electronic commerce in Poland looks very promising. However, the transformation of trade does not mean displacing traditional sales. On the contrary, both of these sales channels - traditional and electronic - complement each other, both in terms of sales and communication, as well as in terms of deliveries and returns handling. These activities are in line with the concept of multi-channel. The elements of the correct implementation of such a strategy include:

- the client is the most important and all activities are implemented to increase their satisfaction,
- the use of uninterrupted operation of contact points, time and devices used by the consumer at a given moment,
- all available channels are perceived by the client as an integrated offer of one brand,
- the consumer has the right to use the contact channel of their own choice at every stage of the purchase,
- it is possible to order goods via the Internet and pick them up at a brick-and-mortar outlet or purchase in a stationary store with delivery to the indicated place,
- the customer can access both online and offline promotions, so the price is the same in different channels,
- updated assortment data in real time enable access to inventory levels in each store.

The development of multi-channel was caused, inter alia, by changes in customer behavior. In an increasingly multi-channel world, there are many significant interdependencies between the different stages of the customer journey (on the demand side) and product flow (on the supply side), creating great challenges and opportunities for companies (He, Xu and Wu, 2020). Before making a decision to make a purchase, the consumer looks for information, checks the terms of purchase in the electronic store, at the same time visiting the stationary outlet to see and evaluate the product in person. This changing nature of the customer journey has become one of the main topics of marketing research (Verhoef, Kannan and Inman, 2015).

The consequence of such behavior are the effects of ROPO (research online, purchase offline) and ROTOPO (research online, test offline, purchase online), which come down to searching for information about the product on the web, then going to a brick-and-mortar store to try it out and to finally make a purchase in the e-shop. ROPO is also known as webrooming and involves a consumer starting their shopping journey by viewing a product on the Internet and then purchasing it offline.

---

Another consequence caused by the customer's purchasing behavior is showrooming, also known as reverse ROPO. It involves the simultaneous comparison of the price of goods in the traditional and online store. The buyer will make the purchase in a place where the offer will be more attractive to him (Freichel, Wollenburg and Wörtge, 2020; Malko, 2018; Buldeo, Verlinde, Macharis, Schoutteet and Vanhaverbeke, 2019).

Logistic service plays a special role in e-commerce, as it allows both to retain existing customers and to attract new buyers. These processes can be carried out independently or outsourced. The range of the supply offering to individual customers is beginning to play a very important role, when the buyer can choose the most convenient form of delivering the ordered products.

Online sales have been steadily increasing for several years. In 2019, 62% of customers participating in the annual Gemius survey declared that they make electronic purchases. In the current pandemic in 2020, such a declaration was made by 73% of consumers (Gemius and Instytut Gospodarki Elektronicznej, 2020). March only brought an increase by 50% compared to January this year, while April - by 111% (Gemius and Instytut Gospodarki Elektronicznej, 2020). This shows how significantly forced domestic isolation, trade and service restrictions and the ban on gathering accelerated the development of e-commerce. After the gradual unfreezing of the economy, the growth slowed down somewhat, but it can be expected that 2020 will see a record increase in e-shopping interest.

On the supply side, we can also see a change in the approach of entrepreneurs to e-commerce, who more often realize the need and, at the same time, the necessity to base their sales on e-commerce.

The change in consumer habits, such as limited use of cash, was also reflected in the strategy of large brands. What is worth mentioning here are the courier companies which, without the need to sign the package with the previously sent code, made it possible to collect the ordered products or by enabling BLIK payments in the cash on delivery option. The limit of contactless payment with a card without a PIN was also increased to PLN 100, facilitating cashless settlements. It is worth emphasizing here that Poland is a country where customers are very eager to use modern payment methods and banking technologies. The Polish banking sector is one of the most innovative in the world (PwC, 2016).

---

It can be seen, therefore, that enterprises make every effort to meet the needs of customers, offering them amenities that guarantee, among other things, a sense of security and speed of transaction execution, which undoubtedly constitutes a specific value.

## THE IMPORTANCE OF VALUE FOR THE CONSUMER

P. Drucker (2002) said that the ability to deliver value to the customer gives businesses a purpose, and meeting buyers' expectations leads to improved financial results of these entities. Ph. Kotler calls the value perceived by the client: the advantage of the benefits offered by the company over the cost that the client will have to bear. According to H. Mruk (2010), focusing on customer value is an important element in building a company's competitive position. The same opinion is shared by B. Dobiegała-Korona (2006), who claims that maximizing profits by building value for customers should be the main goal of a marketing strategy and integrate many processes in order to obtain and maintain a competitive advantage.

In order to understand how the consumer perceived the value, numerous studies are carried out to diagnose its most important components. One of the most detailed analyzes is the classification proposed by E. Almquist and his team (Almquist, 2016; Almquist, Senior and Bloch, 2016). These authors believe that various combinations of product features, prices, and other components are important and useful evaluation tools, but they only test consumers' responses to predetermined values that managers usually evaluate. The authors identified 30 types of values that they divided into four categories:

- functional,
- emotional,
- life changing,
- social impact.

It turns out that for many businesses the problem is to determine what elements should be added to increase the perceived value of their brand or assortment offer.

E. Almquist (2020) also carried out some research during the Covid-19 pandemic, which showed that consumers around the world value services, products, people and institutions that reduce their anxiety (emotional element) and risk (life-changing element), at the same time providing a sense of security and belonging (social impact element). Companies and governments should therefore analyze whether their actions and communications offer these three types of value.

## EVOLUTION OF CONSUMER BEHAVIOR

The Covid-19 pandemic has accelerated the pace of behavioral changes in the lifestyles of people around the world in the way they: work, eat, communicate, play, learn, and train. This also applies to consumption patterns in each category, including groceries, entertainment, and healthcare. Contemporary consumer behavior is characterized by several distinct factors, which boil down to the speed of the flow of the message, the automation and simplification of all processes and relations taking on a digital character. The values that consumers follow in their everyday lives are clearly changing. On the one hand, it is necessary to point out the ease of expressing emotions, thanks to openness in social media, and on the other hand, time has become the most precious value, and its shortage is experienced by everybody now.

Global research carried out before and after the coronavirus outbreak shows how reality is changing (Figure 1). Undoubtedly, understanding the pace of changes in consumer behavior can allow companies to understand new trends.

<b>74%</b>	have worked from home for at least some time
<b>59%</b>	have increased the use of video chat applications since the outbreak
<b>49%</b>	are open to sharing their data if it helps to improve their city
<b>45%</b>	avoid using plastic whenever possible
<b>44%</b>	of millennials <sup>1</sup> have an Amazon Prime membership <sup>2</sup>
<b>36%</b>	spend more on entertainment and media since the outbreak began
<b>35%</b>	have been buying groceries online / by phone since the outbreak

**Figure 1.** Global consumer changes

Source: (PwC, 2020)

Many have started remote work, and interest in video has grown significantly. Digital reality enables and disseminates tracking the user on the web using algorithms to personalize content and create the need to have a product compatible with the profile analysis. Thus, e-

<sup>1</sup> Consumers most often referred to as generation Y, networks or the Internet, because they treat this medium as part of their lives.

<sup>2</sup> The program was introduced by Amazon in 2005. It has evolved over the years and now, for a fee, the customer enjoys additional benefits, such as receiving a free two-day delivery all year round. In addition, the service has been appreciated for additional value in the form of getting free books, watching free video content, getting free games, etc.

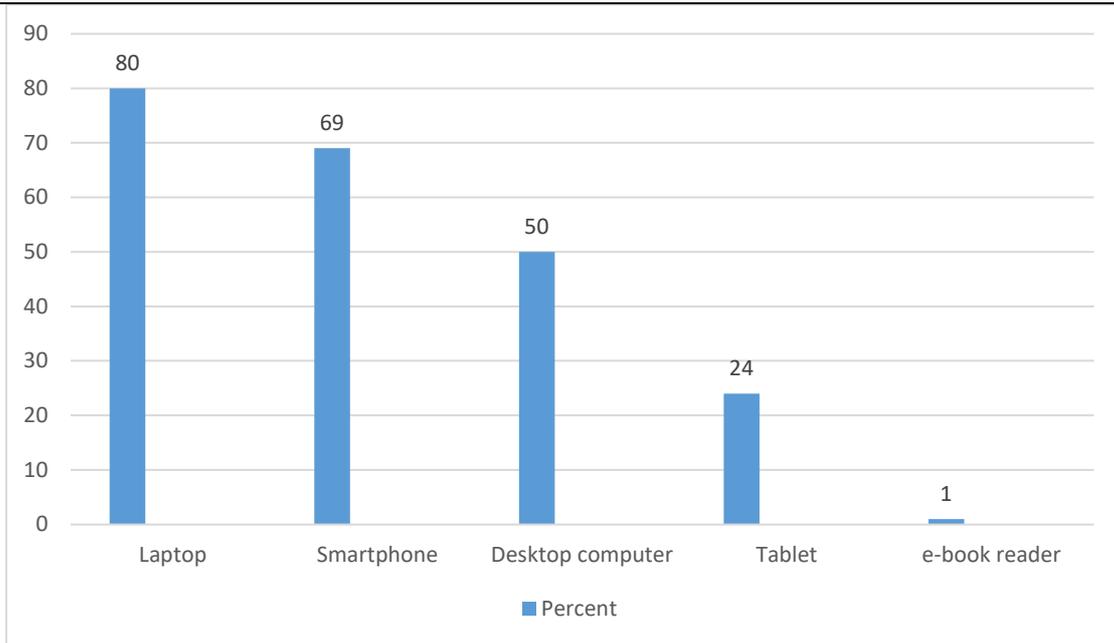
---

companies have gained a tool that offers a range of content and information about customers and their needs. Customers, on the other hand, use the possibilities of various communication channels and come into contact with a given brand in many places (online store, traditional store, mobile application, social media or advertisements in other media). Therefore, it is important to combine behavioral and transactional data with each other and only then can one build effective, personalized communication (Stańczuk, 2020).

Changes are also observed in the research results obtained by Gemius and the Chamber of Electronic Economy. For the first time since the company started carrying out research - delivery of a parcel to a selected point has been indicated more often than delivery by courier directly to work or home (Gemius and Izba Gospodarki Elektronicznej, 2020). It should be assumed that this tendency may strengthen. However, further development of this form of delivery will only be possible with the involvement and support of businesses operating in e-commerce. The technologies available to e-shops are also important. The report shows that 55% of customers used the courier delivery to their home, and over 60% used the delivery to the point of sale. 61% of buyers ordered products for parcel machines themselves - this group is enlarged by customers using collection points such as Poczta Polska (Polish Post), Żabka (a retailer), Orlen (petrol stations), Ruch (a newsagent chain), and others. It is therefore clear that customers appreciate the possibility of picking up the ordered products at any time convenient for them, usually at a point located on the way or near their place of residence / work.

The main factors motivating to make online purchases include: 24/7 availability (82%), convenience understood as the possibility of shopping without leaving home (78%) and unlimited time to choose a product (72%) (Gemius and Izba Gospodarki Elektronicznej, 2020).

Among the devices most often used when shopping online, consumers indicated a laptop, which was indicated by as many as 80% of respondents (Figure 2).



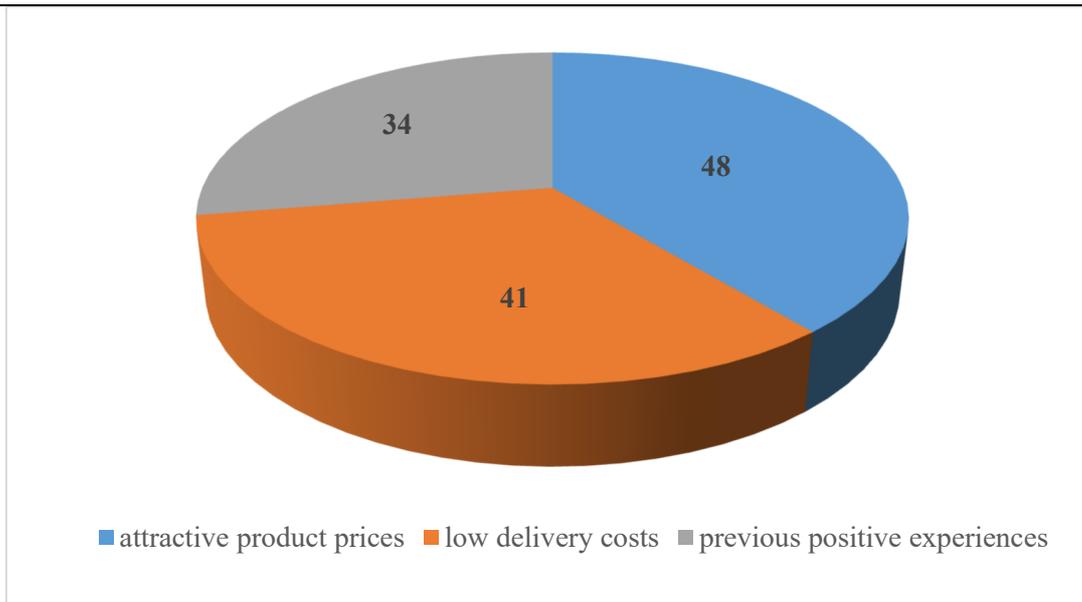
**Figure 2.** Devices used in electronic shopping

Source: Prepared on the basis of (Gemius and Izba Gospodarki Elektronicznej, 2020)

A laptop is invariably the most popular device used by customers in the e-shopping process. The remaining items on the list include: a smartphone (69%) and a desktop computer (50%). A tablet is used by nearly every fourth customer in the purchasing process.

The credibility of an e-store is shaped by opinions about the store (48%). The option of payment at pickup was most frequently indicated in the second place, which means e-shops are not fully trusted yet. A clear group of buyers (33%) prefer to pay on delivery when they can check whether they actually have received the product they ordered. For 26% of people taking part in the survey, clear and transparent information on returns and complaints is significant.

Among the factors motivating customers to choose a specific e-shop and the willingness to return to it in order to make repeated purchases, the most frequently indicated were: prices of both products and deliveries, and previous positive shopping experiences (Figure 3).



**Figure 3.** Factors influencing the choice of an e-shop

Source: Prepared on the basis of (Gemius and Izba Gospodarki Elektronicznej, 2020)

Customers, fearing for their own safety, choose places where they can make quick purchases. For such people, online stores are often the choice, but they can also be small stores located nearby (convenience stores). The choice of channels is based on concern for their health and safety. In both channels, consumers often look for shopping opportunities and attractions, but also the convenience of shopping. The advantage of convenience stores is undoubtedly their proximity (PropertyNews.pl, 2020).

Next year will verify whether the currently observed behavior changes will remain unchanged.

## CLOSING

Both Covid-19 and modern technologies have changed the standard of functioning of consumers and enterprises. Connecting to the Internet seven days a week, 24 hours a day is a fact that modern organizations must cope with. Customers, having almost unlimited access to information, which they obtain very quickly, often using smartphones for this purpose, start to expect an offer from enterprises tailored to their requirements and preferences. The value is the implementation of the omnichannel sales system by entities, improvement and modernization of payment methods, or improvement of the quality of logistics services provided. Thus, the examples of enterprises' activities presented in the paper were to illustrate the importance of

following changes in the market, skilfully reflecting the company's activities in this respect. Only then is it possible to create value that is so important to customers.

It should be assumed that the retail industry will have to adapt to the changing purchasing model. Changes in customer needs and behavior will be the key. Shopping will be more prudent, thoughtful and economical for many. The increase in online sales will continue. Online stores and retailers can benefit from this, as they have lower operating costs than companies operating in multichannel sales. This means that they will be able to offer their customers products at lower prices. On the other hand, the undoubted advantage of multichannel retailers is the ability to offer a personalized shopping experience regardless of the channel in which the purchases were made. Ultimately, it is the customer who decides what they are looking for and what value there is for them, whether it is the sum of purchasing experiences or a lower price.

## REFERENCES

1. Almquist, E. (2016). *The 30 Things Customers Really Value*, <https://www.bain.com/insights/thirty-things-customers-really-value-hbr/>
2. Almquist, E., Senior, J. and Bloch, N. (2016). *The Elements of Value*, <https://www.bain.com/insights/the-elements-of-value-hbr/>
3. Almquist, E. (2020). *Three Elements of Value® for Consumers Take Precedence During a Pandemic*, <https://www.bain.com/insights/three-elements-of-value-for-consumers-take-precedence-snap-chart/>
4. Buldeo R.H., Verlinde, S., Macharis, C., Schoutteet, P. and Vanhaverbeke, L. (2019). Logistics outsourcing in omnichannel retail: State of practice and service recommendations, *International Journal of Physical Distribution & Logistics Management*, 49(3), pp. 267-286. <https://doi.org/10.1108/IJPDLM-02-2018-0092>
5. Dobiegała-Korona, B. (2006). Wartość dla klientów generatorem wartości przedsiębiorstwa. [W:] B. Dobiegała-Korona i A. Herman (red.), *Współczesne źródła wartości przedsiębiorstwa*. Warszawa: Difin
6. Drucker, P.F., (2002). Delivering value to customers, *Measuring Business Excellence*, 6(4), <https://doi.org/10.1108/mbe.2002.26706dae.007>
7. Freichel, S.L.K., Wollenburg, J. and Wörtge, J.K. (2020), The role of packaging in omnichannel fashion retail supply chains – How can packaging contribute to logistics efficiency? *Logistics Research*, 13(1), DOI\_10.23773/2020\_1
8. Gemius i Izba Gospodarki Elektronicznej, (2020), *E-commerce w Polsce 2020. Gemius dla e-Commerce Polska*, <https://eizba.pl/wp-content/uploads/2020/06/Raport-e-commerce-2020-2.pdf>
9. He, Y., Xu, Q., and Wu, P. (2020) Omnichannel retail operations with refurbished consumer returns, *International Journal of Production Research*, 58(1), 271-290, DOI: 10.1080/00207543.2019.1629672
10. Kotler, Ph.(2005). *Marketing*. Poznań: REBIS
11. Malko, N. (2018). *Istota omnichannel z perspektywy zachowań nabywców i technologii*. Pobrane z [http://yadda.icm.edu.pl/yadda/element/bwmeta1.element.desklight-6ea2516f-8782-4377-862b-9ba2946a5b22/c/IBRKK-handel\\_wew\\_5-2018-\\_1\\_-160-168.pdf](http://yadda.icm.edu.pl/yadda/element/bwmeta1.element.desklight-6ea2516f-8782-4377-862b-9ba2946a5b22/c/IBRKK-handel_wew_5-2018-_1_-160-168.pdf)

12. money.pl, 2020, *Unity Group: E-commerce w Polsce może przekroczyć 100 mld zł w tym roku*, <https://www.money.pl/gielda/unity-group-e-commerce-w-polsce-moze-przekroczyc-100-mld-zl-w-tym-roku-6507248780777089a.html>
13. Mruk, H. (2010). Wartość dla klienta a pozycja konkurencyjna przedsiębiorstwa. [W:] B. Dobiegała-Korona and T. Doligalski (red.). *Zarządzanie wartością klienta. Pomiar i strategię*. Warszawa: Poltext
14. PropertyNews.pl (2020), *Centra convenience skorzystają na wzroście e-commerce?*, [https://www.propertynews.pl/centra-handlowe/centra-convenience-skorzystaja-na-wzroscie-e-commerce,85765\\_1.html](https://www.propertynews.pl/centra-handlowe/centra-convenience-skorzystaja-na-wzroscie-e-commerce,85765_1.html)
15. PwC, (2016). *Sektor finansowy coraz bardziej #fintech*, <https://www.pwc.pl/pl/pdf/sektor-finansowy-coraz-bardziej-fintech-raport-pwc.pdf>
16. PwC, (2020), *Global Consumer Insights Survey 2020, The consumer transformed*, <https://www.pwc.com/gx/en/consumer-markets/consumer-insights-survey/2020/consumer-insights-survey-2020.pdf>
17. Stańczuk, D. (2020), *Konsument treści mobile: automatyka behawioralna a indywidualizm w komunikacji*, <https://www.cushmanwakefield.com/pl-pl/poland/news/2020/07/mobile-content-consumer>
18. Verhoef, P.C., Kannan, P.K. and Inman, J.J. (2015), From multi-channel retailing to omni-channel retailing: Introduction to the special issue on multi-channel retailing. *Journal of Retailing*, 91(2), pp. 174-181, <https://doi.org/10.1016/j.jretai.2015.02.005>

---

## AGILE IN COMMERCIAL SETUP – MISSION IMPOSSIBLE?

**Jurij Matyskevic<sup>1</sup>**

<sup>1</sup>*Mykolas Romeris University  
Vilnius, Lithuania  
Tel. +370 640 63798,  
E-mail: [mediajurijlt@gmail.com](mailto:mediajurijlt@gmail.com)*

**Zaneta Simanaviciene<sup>2</sup>**

<sup>2</sup>*Mykolas Romeris University  
Vilnius, Lithuania  
Tel. +370 68751813,  
E-mail: [zasiman@mruni.eu](mailto:zasiman@mruni.eu)*

DOI: 10.13165/PSPO-20-25-24

---

**Abstract.** This article reviews applicability of the very trendy in IT world Agile framework or even mindset and culture (a set of practice that in contradiction to other product and project management practises treats predominantly IT development in very flexible and iterative manner). Research starts with the very foundations of Agile practise, revises its main building blocks (principles) mentioned in primary source – Agile manifesto and examines validity of such principles to be implemented in commercial and business setup, e.g. in commercial relationships between different commercial undertakings.

**Justification of the research.** Agile and agility is very popular nowadays in mainly IT world however due to its nature it is very close to LEAN principles being implemented in manufacturing operations. The main idea behind that mindset is that products have to be developed in iterative mode – closely communicating with the customers and delivering working pieces of functionality as soon as possible (MVP – Minimum Viable Product). Such approach without any doubts is perfectly suitable for internal R&D projects (developing absolutely new products, brainstorming together new ideas), however its full application is doubtful in commercial setup due to the number of reasons.

**Aim** is to examine the applicability of Agile framework in commercial setup, pointing out what and why Agile principles work, and what parts of this mindset can be ignored as non-applicable.

**Methods** employed are analysis of the scientific articles, analysis of best practice use cases, comparison, analytical descriptive and generalization methods.

**Findings** of this research support the assumption that through leveraged Agile practise commercial companies can essentially benefit in designing product's quality and speed (time to market). However some of Agile principles shall be adapted to the nature of commercial relationships by introducing more formal approach to the extent possible (without jeopardizing Agile principles).

**Conclusions** emphasize positive Agility features and recommend to implement such practises, introducing additional key elements that would ensure formal contractual relationships between commercial undertakings.

**Keywords:** Blockchain, Sustainability, Technology application.

**Jel codes:** O31, O32

---

## INTRODUCTION

Agile is a very popular Product development framework, which has been emerged in IT society (to be more specific in Software development, as even main source of Agile principles was named as “Manifesto for Agile Software Development”) and predominantly still heavily being used in IT industry. It’s also is worth mentioning that this usage is not limited by only software, but there are certain trends that Agile goes mainstream in at least majority of IT offerings if not all. Set of Agile features (to be covered later in this research) allows to draw a conclusion that initially Agile as a framework has been developed to be used in internal R&D (Research and Development) projects.

As IT industry significantly contributes to global economy worldwide authors decided to examine suitability of Agile application in commercial setup, e.g. using this framework in commercial relationships between different commercial entities.

**Problem** is to search and select proper product/project management methodology that could accept current challenges in rapidly changing technology industry, taking into account global competition, increased demand to “time to market” KPI, demanding needs of end users and smooth delivery practice in commercial environment.

**Purpose** is to examine suitability of Agile framework’s application in commercial relationships taking into account problems mentioned above.

**Object** is Agile application in commercial Product/Project development setup.

Tasks:

- to review Agile principles that serve as Agile foundations with the aim of applicability in commercial environment;
- to compare Agile framework with it’s main competitor – Waterfall;
- to review and describe main features of Agile framework that allowed this practice to become so popular in at least Software development;
- to review requirements of commercial Product development;
- to find out and explain what Agile features and principals suits commercial setup completely and what additions and enhancements might be needed.

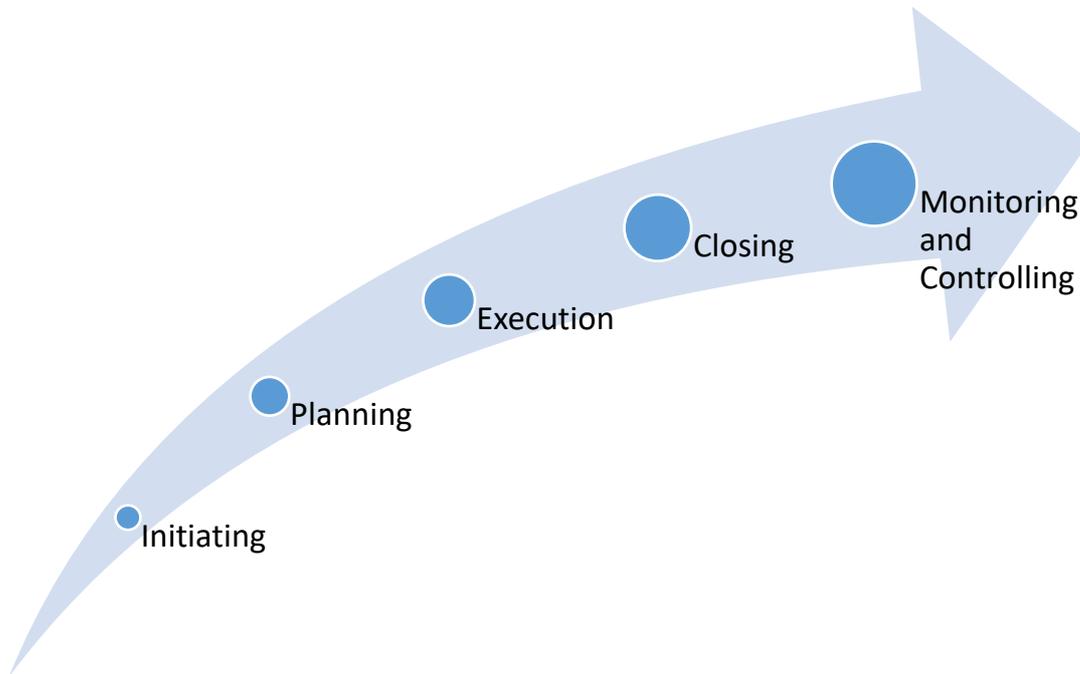
**Methodology of the Research** – analysis of the scientific articles, analysis of best practice use cases, comparison, analytical descriptive and generalization methods. It shall be noted that due to the topic’s novelty and practical application authors have put a lot of focus on practical sources.

---

## 1. AGILE FOUNDATION

Cambridge dictionary provides following meanings of Agile: able to move your body quickly and easily, able to think quickly and clearly, able to deal with new situations or changes quickly and successfully [5]. Of course in our context the latter meaning is most suitable, definitely such features as ability to deal with new situations or changes in efficient manner is very valuable asset both within internal and external development projects. Therefore Agile creation as a framework followed exactly that objective, as previous Project management methodologies (most common Waterfall) was unable to address efficiently increasing demand of functionalities. Markets are synonymous with rapid change and, as a result, commercial success or failure is largely determined by the organization's flexibility and responsiveness. Responsiveness is characterized by short time-to-market, the ability to scale up (or down) quickly and the rapid incorporation of consumer preferences into the design process [6]. Before explaining Agile framework it is worth explaining its main rival – Waterfall.

Waterfall is probably one of the earliest Project management methodologies which has started with the rise of first computer machines. The approach is logically sequenced, each phase follows previous one, deviation of this rule generally is not allowed. Therefore it comes with the name – natural flow as waterfall. Traditionally Waterfall is considered as best suited for large scale regulated projects due to its documented process.



**Figure 1.** Sequence of Waterfall phases  
*Source:* composed by authors

- **Initiating** is the phase, where essentially business case of the project, answering to the main questions such as who is going to finance the project (Sponsor), who will be affected by the project (Stakeholders) and what are actual benefits of the project (high level cost benefit analysis) shall be prepared and adopted. This information is contained in project manager's drafted Project charter (according to PMI) or Project concept definition statement (according to CompTia).
- **Planning** is the phase requiring most paperwork, as all activities shall be thoroughly planned, estimated and properly documented in project management plan (which consists of plenty of another sub plans such as Risk management plan, Change management plan, etc.)
- **Implementation** of technology is a real challenge which shall consist of development phase (installing Blockchain into actual IT infrastructure, merging it with current IT systems), testing phase (factory testing, functional testing and final E2E (End to End - acceptance testing) and deployment (with roll back scenario properly documented in above mentioned risk management plan).

---

- **Monitoring and controlling** is unique phase as it is the only phase which shall go along with others, meaning that performance and quality control shall be in place from the very beginning when it is possible to define relevant KPI's (Key Performance Indicators). Essential part of this activity shall be documented in Quality Assurance plan (part of general Project management plan).

- **By Closing** phase projects are typically finished, when all deliverables are accepted, lessons learned are documented and properly archived. One of the extremely essential points here – all paper documentation and also technical source code shall be indeed stored very properly, as IT technologies are constantly evolving, and it is highly likely that soon project will need to be adapted to the new requirements. Moreover current implementation needs being maintained – in order to do that DevOps (Development and Operations) teams must have access to proper documented outcomes of previous projects.

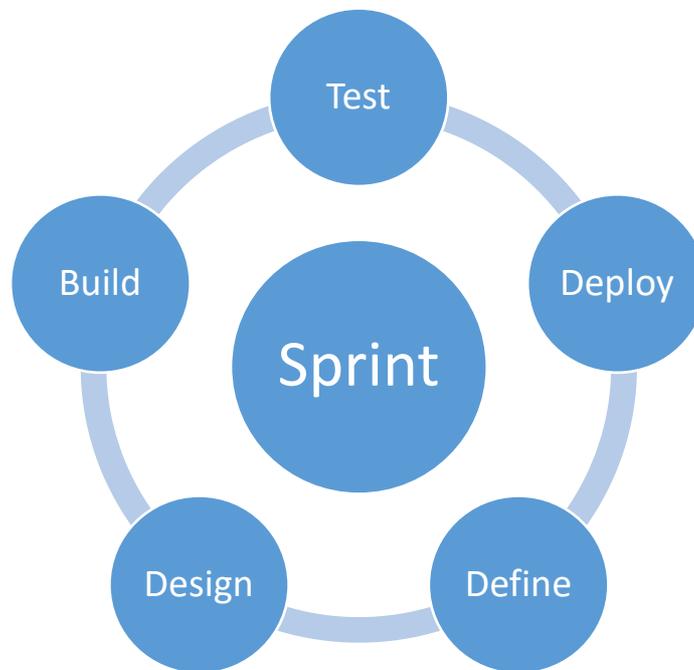
On the contrary Agile is not so strictly sequenced and it even is not a methodology, but rather a framework – a set of practice that in contradiction to Waterfall treats IT development in quite free manner. The Agile development values are particularly relevant to the implementation of a rule set using the Agile Business Rules Development approach [4]. This framework was born at 2001 by publishing Agile manifesto with following 4 values (Agile manifesto, 2001):

- Individuals and interactions over processes and tools
- Working software over comprehensive documentation
- Customer collaboration over contract negotiation
- Responding to change over following a plan

Another significant part of Agile Manifesto is twelve principles:

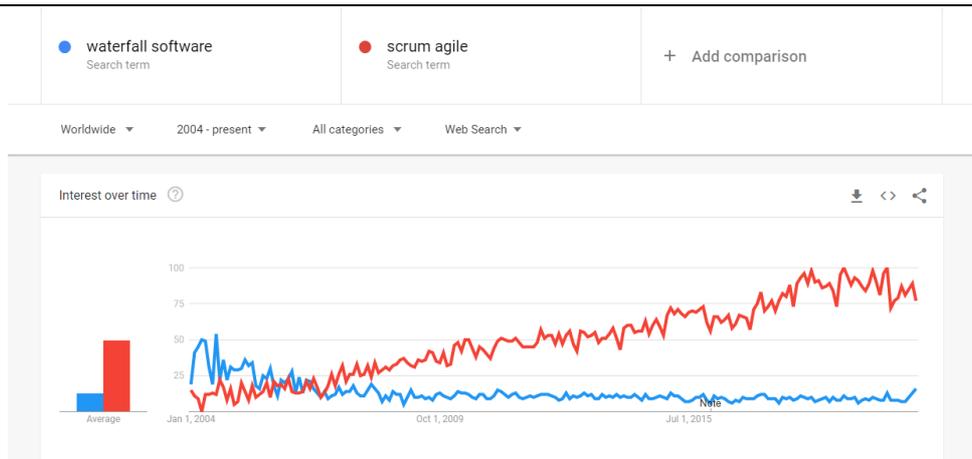
- Our highest priority is to satisfy the customer through early and continuous delivery of valuable software.
- Welcome changing requirements, even late in development. Agile processes harness change for the customer's competitive advantage.
- Deliver working software frequently, from a couple of weeks to a couple of months, with a preference to the shorter timescale.
- Business people and developers must work together daily throughout the project.
- Build projects around motivated individuals. Give them the environment and support they need, and trust them to get the job done.

- 
- The most efficient and effective method of conveying information to and within a development team is face-to-face conversation.
  - Working software is the primary measure of progress.
  - Agile processes promote sustainable development. The sponsors, developers, and users should be able to maintain a constant pace indefinitely.
  - Continuous attention to technical excellence and good design enhances agility.
  - The best architectures, requirements, and designs emerge from self-organizing teams.
  - At regular intervals, the team reflects on how to become more effective, then tunes and adjusts its behavior accordingly.



**Figure 2.** Sprint within Agile framework  
Source: composed by authors

In practice poll below shows Agile domination over Waterfall:



**Figure 3.** Usage of Agile vs Waterfall  
*Source:* Google trends (2020)

As was already mentioned this practice is predominantly designed for software development but it even denies the concept of project – rather product development work conducted in time slots (sprints). Each sprint shall end with MVP (Minimum Viable Product) – deployable piece of functionality.

However having analyzed information above, authors still think that Agile is mainly internal product development practice focused on R&D activity due to the following reasons:

- Scope of future product is not clear, **collocated** and **dedicated** teams are brainstorming future product features together. When one thinks about agile software development and the challenging basic conditions of the business environment, one might think that nothing is fixed. Naturally this is particularly true of the scope. If we were able to describe it with sufficient accuracy in advance, then we probably would not consider anything other than a fixed price contract anyway [3];

- Roles within the team are not pre-defined, whole team is responsible for product entirely, all decisions shall be made by whole team;

- There is no Project manager role, Scrum master is a person only facilitating the process and removing impediments, no authority to accept or validate MVP;

- Teams shall consist of major product development stakeholders, that are building the product on daily basis together (including business units – in case of commercial setup – representatives from customer’s business units);

- Priorities are defined by Product owner (customer voice) however this role cannot assign more tasks/user stories on a sprint;

---

- Team is not committing for the MVP results (especially in the beginning of the actual work, as first sprints usually to realize and learn complexity of the product/user stories);

- Main sprint definition is not actual work done, it is simply time slot during which sprint team can commit just to be engaged in given product development.

Having said that let's review how main Agile basis – values fit to commercial relationships.

## 2. AGILE VALUES IN COMMERCIAL SETUP

As authors already mentioned above, Agile basis is 4 values and 12 principles. Aim of this chapter is to examine suitability of 4 values to commercial setup (principles essentially derived from values, so in this context they might be ignored). Contemporary software development entails considerable innovation, discovery, change sensing, and change responding (Conboy, 2009; Vidgen & Wang, 2009) while addressing various people, project, process, and institutional factors such as project scope and size, stakeholder participation, resources, technology, and outsourcing (McLeod & MacDonell, 2011) [2]. Despite further findings authors can make a definite statement – whatever product development practice is (internal or external), organization shall be ready to Agile practices, it has first of all review its business processes and align them to fit in Agile framework. Have you ever played the role of business owner and found yourself between "a rock and a hard place" of organizational politics when prioritizing backlog features? The Agile Stream approach negates those politics by dedicating development teams to organizational units and allowing those teams to continue working, iteration after iteration, as long as they continue delivering business value.[10]. Last but not least, both management and employees need to re-build themselves to Agile culture, without these assumptions Agile won't work in either organization.

### A. INDIVIDUALS AND INTERACTIONS OVER PROCESSES AND TOOLS

This value implies that Product development is not just ordinary task for IT team, but also requires intensive commitment and engagement from all major business units to actually build the product (share insights on current status quo, bringing business-related requirements, compliance, demand for product roadmap, etc.) **on daily basis**. The rule discovery, analysis, and validation activities require active and efficient communication between the rule developer, subject matter experts (SME), and business users. Such processes are defined as lightly as

---

possible [4]. It goes without any sayings that in such a case Product has much higher probability to be very functional and successful however even in internal projects that might bring an issue, as business unit people have their direct duties to perform, as this is their primary objective at given role, and respectively managers shall plan the load for business units accordingly.

The suggestion here for commercial Product development would be that organizations-customers shall precisely assess the cost benefit analysis in the very initiating phase and decide how much it can spend working hours of their best employees on system development, which in case is much better developed will get back ROI at much greater level covering both financial and labor costs. In 2004 PMI (Project Management Institute) found out that project initiation is the main reason why projects fail [12]. Moreover the same study claims that only 56 percent of strategic initiatives meet their original goals and business intent. This poor performance results in organizations losing US\$109 million for every US\$1 billion invested in projects and programs. Other sources report other major losses: For example, British food retailer Sainsbury had to write off its \$526 million investment in an automated supply-chain management system.

Systems is that they are too rigid to cope with changing business demands, especially for long running BPs. A solution to overcome this problem is to combine BPs with business rules (BR) [9]. As for final statement to authors' opinion wording over doesn't eliminate completely processes and tools. Giving priority to live interactions both counterparties (customer and provider) could first of all begin these interactions according to the processes that have built predictability and environment for such interactions, and later conducting and fixing the results of such interactions in appropriate tools.

## **B. WORKING SOFTWARE OVER COMPREHENSIVE DOCUMENTATION**

At first look this value sounds impeccably, as indeed customer seeks for ultimate result. Each iteration produces a working, tested set of rules that can be executed, which has far more business value than a rule description manual. While all project stakeholders benefit from such a principle, business users in particular are then sure that what they see (the rules, the business process) is what gets executed in the deployed system [3]. However valid questions would be:

- As IT systems need constant maintenance and upgrade , what happens when initial product's developers left the company, and there is no relevant documentation of the Product?

- 
- Same question extremely valid in commercial product development, how company can change provider (due to number of reasons) if new vendor won't get any knowledge transfer on the Product?

As example the U.S. Federal Aviation Administration spent \$2.6 billion unsuccessfully trying to upgrade its air traffic control system in the 1990s [1]. Practical solution that authors suggest is once product is enough mature, e.g. MVP passed acceptance testing and this functionality is deployed in production environment to fix that code in technical specs. The approach would allow during design and development phase to focus main effort on working software, and after to fix that success in technical specs.

Our results show that iterative documentation practices led to more extensive and more detailed textual documentation. We found that writing documentation was perceived as a intrusive task leading to task specialization and allocation of documentation to less qualified team members. Consequently, this hampered collaboration within the team. Based in our findings, we suggest that if documentation is to be delivered with the project, producing documentation should be communicated and accepted by the team as a proper product [13].

Agile also shall be applied maintaining current company's licenses and certificates, that are based on proper documentation. Conventional thinking would conclude that agile and ISO must not be compatible. After all, ISO is often characterized as being heavy on process / heavy on documentation - the opposite of agile. Just as the assumption that agile is about no documentation is faulty, so are the assumptions that ISO needs to be a burdensome process. ISO 9001:2000 is not only compatible with agile, but can provide just enough structure to help ensure your agile processes are followed [11].

### **C. CUSTOMER COLLABORATION OVER CONTRACT NEGOTIATION**

Since Roman empire (Roman law) and till today commercial relationships are being performed by concluding legally binding documents – contracts. Contracts are society's programming language. Corporations are defined by contracts with investors, employees, customers, etc. Countries are defined by social contracts with citizens, representatives, corporations, etc. [14]. And this field also constantly evolves and develops, as we can face emergence of new generation, digital and smart contracts based on blockchain technology. First of all speaking about full blockchain contract we have to highlight that this is purely digital – so called „smart contracts“ that means coded with software. Because blockchain transactions

---

are programmable and self-enforcing, parties might use smart contracts to design contractual relationships that are automatically executed without the additional costs of monitoring or enforcement [15].

Contracts serve not only as “source of truth” and kind of guarantee for scope and nature of services to be performed by vendor and legitimate ground for money movements, but also as proof of legitimate business practice for state regulation authorities such as tax inspection. That means that counterparts could not totally avoid contractual phase of their relationships. Solution that could be offered but authors consists of several options. At first usage to maximum possible extent automated “smart” contracts based on blockchain, so that majority of standard clauses are cover by machines and parties can focus on specific provisions. Second usage of so called “framework agreements” whereas standard conditions could be negotiated once, and after that parties only negotiates on specific provisions (even double synergy can be achieved by automating smart contracts). Last but not least purely legal argument - contracts can be concluded orally, in writing or by conclusive actions [7].

The latter possibility seems very attractive as in this case let’s say start of development effort can be interpreted as already concluded contract however it shall be not misused, as legislation puts additional limitations on such way on conclusion in terms of value, specific kinds of the services, etc. In practice there are studies that align business contracts to Agile. We report on our experiences from two commercial projects conducted under a new form of contract that supports agile development and encourages efficient collaboration between customer and supplier. We show actual extracts from our contracts and describe how to adjust a contract to specific project conditions[16]. Specific Agile related advantage of this value is that Subject matter experts who define the business policies and the business rules are strongly involved in the development process. As the customers of the final system and owners of the policies, they are conveniently collocated with the development team during the project. There is no specification document thrown above a wall waiting for the IT to develop the system [9].

#### **D. RESPONDING TO CHANGE OVER FOLLOWING A PLAN**

This value probably contradicts to classical “waterfall” methodology most, as Agile mindset sets priorities only within Product backlog and separate sprints only without comprehensive planning. The failure of plan-driven waterfall-based methods in software projects experiencing significant uncertainty and frequent changes in requirements prompted

---

the adoption of the Agile Manifesto (Highsmith & Cockburn, 2001) and the proposal of several agile methods such as Scrum (Schwaber, 2004) and XP (Beck, 2000) [5].

Business rules evolve more often and faster than other standard pieces of software. This is actually one of the key values of the business rule approach. For this fundamental reason, the methodology to support the rule set development must be tailored to such rapid life cycle and include the appropriate activities, processes, best practices, and work products to support such changes efficiently[9]. Main idea behind is that circumstances such as user experience and demand, new technologies, new priorities shall be taken into account “on the run” as due to the speed and variety it is not possible to estimate it in thorough planning.

The only counterargument from the authors is that company-customer always performs planning of its business and of course has insights of timeline when product shall be launched. So inevitably high level planning of product release (and of course including respectful development and testing activities) must be in place. In the same time authors agree that given both customer and supplier are agile organizations and product development is agile-aligned (e.g. stakeholders actively participate in sprint activities) change management activities could be performed very efficiently.

Our goal has been to meet our customerpsilas needs for predictable results while maintaining our commitment to agile practices. Key success factors include developing a responsive contract modification process that allows for quick change management and

## CONCLUSIONS

Authors have performed research on Agile suitability for commercial Product development e.g. between separate commercial units that cooperate on contractual basis.

First the basis of Agile framework has been analyzed – demand behind emergence, initial suitability for certain kinds of projects, comparison to other worldwide methodology - waterfall. It has been defined that Agile product (Agile doesn’t use project terminology highlighting its focus not on processes but rather on value) management methodology is based on Agile manifesto containing 4 values and 12 principles.

Suitability for commercial setup research has been performed mainly analyzing 4 values, as 12 principles to authors opinion are auxiliary, as they derive from abovementioned values.

Individuals and interactions over processes and tools value can be used in commercial setup if two preconditions are met. First in the very beginning during product initiating activity

---

company-customer shall very precisely foresee man/hours labor budget of its employees participating on daily basis in sprint activities jointly with vendor's teams. Such commitment from the customer can be explained by much greater ROI achieved by such participation. Second – high level processes and tool still have to exist first of all creating environment for such close interactions and fixing results in appropriate tools.

Working software over comprehensive documentation value applies in commercial setup only under condition that once working software deployed in production environment respectful technical specification has been created. Failure to comply with this rule might lead to non-ability to maintain, update and develop systems in the future.

Customer collaboration over contractual negotiations value in authors' opinion might be mitigated by several assumptions. Given the fact that contracts are still required, first option would be to automate it on the basis of Blockchain technology, so that teams focus only on very specific several clauses instead of negotiating all contract text over and over again. Second option is framework contracts that provide similar benefit, e.g. standard provisions being accepted once without re-visiting it on every project. Final option which shall not be misconducted is pure legal "game" to conclude the contract by conclusive actions.

Final value Responding to change over following a plan implies controversial balance between flexibility and predictability. Authors recognizing flexibility of such approach in change management are still of the opinion that at least high level plan containing main milestone such as at least commercial launch shall be in place.

## Summary

**Actuality** – validity of the topic determined by the fact that on one hand Agile becoming (or in some industries already became) mainstream framework for product development. As a lot of such development is being performed between separate commercial units on contractual basis, it's worth analyzing how main Agile principles apply to commercial relationships.

**Goals** - to examine suitability of Agile framework to commercial product development and consider how main Agile values could be aligned or enhanced to fit in commercial setup.

**Methods** - analysis of the scientific articles, analysis of best practice use cases, comparison, analytical descriptive and generalization methods. It shall be noted that due to the topic's novelty and practical application authors have put a lot of focus on practical sources.

**Results** – Author's opinion is that literal treatment of Agile values does not allow this methodology being implemented in commercial setup, mainly due to little guarantees to customer (ambiguous scope, little procedures, no firm commitment from the vendors, etc.) However this could be solved by interpreting Agile framework in more wider context.

---

**REFERENCES**

1. Aotea. (2011). Aotea Business analysis insight. The impact of Poor requirements with a poster. Aotea.
2. Batra, D et. al. (2016), Agility Facilitators for Contemporary Software Development, Journal of Database Management (JDM) 27(1), p.28, doi:10.4018/JDM.2016010101
3. Book M., Gruhn V., Striemer R. (2016) Agile Contract Models. In: Tamed Agility. Springer, Cham. [https://doi.org/10.1007/978-3-319-41478-2\\_13](https://doi.org/10.1007/978-3-319-41478-2_13)
4. Boyer, J., Mili, H. (2011). Agile Business Rule Development. Springer-Verlag Berlin Heidelberg, doi:<https://doi-org.ezproxy.metropolia.fi/10.1007/978-3-642-19041-4>
5. Cambridge dictionary, [interactive]: <https://dictionary.cambridge.org/dictionary/english/agile> [accessed 2020-10-08].
6. Christopher, M., Lawson, R. and Peck, H. (2004), "Creating agile supply chains in the fashion industry", International Journal of Retail & Distribution Management, Vol. 32 No. 8, pp. 367-376. <https://doi.org/10.1108/09590550410546188>
7. Civil Code of the Republic of Lithuania, adopted by the Parliament of the Republic of Lithuania on 2000 July 18 d. No. VIII-1864 (1.71 article).
8. Franklin, T., "Adventures in Agile Contracting: Evolving from Time and Materials to Fixed Price, Fixed Scope Contracts," Agile 2008 Conference, Toronto, ON, 2008, pp. 269-273, doi: 10.1109/Agile.2008.88.
9. Graml, T., Bracht, R. and Spies, M., "Patterns of Business Rules to Enable Agile Business Processes," 11th IEEE International Enterprise Distributed Object Computing Conference (EDOC 2007), Annapolis, MD, 2007, pp. 365-365, doi: 10.1109/EDOC.2007.35.
10. Hunter, Z. and Spann, D., "Creating Agile Streams for Business & Technical Value," Agile 2008 Conference, Toronto, ON, 2008, pp. 144-147, doi: 10.1109/Agile.2008.93.
11. McMichael, B. and Lombardi, M., "ISO 9001 and Agile Development," Agile 2007 (AGILE 2007), Washington, DC, 2007, pp. 262-265, doi: 10.1109/AGILE.2007.36
12. PMI (2014). PMI's pulse of the Profession: The High Costs of Low Performance. [interactive]. Access: <https://www.pmi.org/learning/thought-leadership/pulse/the-high-cost-of-low-performance-2014> [accessed 2020-02-07].
13. Stettina ,C. J., Heijstek, W. and Fægri, T. E., "Documentation Work in Agile Teams: The Role of Documentation Formalism in Achieving a Sustainable Practice," 2012 Agile Conference, Dallas, TX, 2012, pp. 31-40, doi: 10.1109/Agile.2012.7.
14. Omohundro, S. (2014). Cryptocurrencies, Smart Contracts, and Artificial Intelligence. Steve Omohundro.
15. Kiviat, T. (2015). Beyond Bitcoin: Issues in Regulating Blockchain Transactions. Duke Law Journal No. 65, p. 569-608.
16. Thorup, L. and Jensen, B., "Collaborative Agile Contracts," 2009 Agile Conference, Chicago, IL, 2009, pp. 195-200, doi: 10.1109/AGILE.2009.19

---

## RESTRICTIONS ON THE PROTECTION OF PUBLIC INTEREST IN THE FIELD OF CONSTRUCTION AND TERRITORIAL PLANNING

**Kristina Mikalauskaitė-Šostakienė**

*Mykolas Romeris University  
Maironio st. 27, LT-44211 Kaunas, Lithuania  
Telephone +370 37 281409  
E-mail: [k.m.sostakiene@mruni.eu](mailto:k.m.sostakiene@mruni.eu)*

DOI: 10.13165/PSPO-20-25-16

---

**Abstract.** In the event of a violation of individual rights, the right to judicial protection is universally guaranteed. In cases where the right of a particular person is violated or a legitimate interest protected by law, the person himself or herself may apply to judicial protection directly. However, there are many situations in which certain acts or omissions cause damage to an object of general interest. In such a case, the public interest is presumed to be infringed. Assessing the cases of violation of the public interest in general, the sphere of territorial planning and construction should be distinguished as a specific area. Since cases of abuse of judicial protection occurred in these areas, often under the guise of protecting the public interest, the legal regulation was changed. This article analyzes the restrictions on the protection of the public interest established by legal norms, the changes in the legal regulation due to the protection of the public interest in the field of planning and construction of territories. The answer to the question of whether a restriction of the protection of the public interest is necessary at all is sought. It is presumed that excessive restrictions on the protection of the public interest may prevent it from defending it and dishonest individuals from pursuing their private interests at the expense of the public interest.

**Keywords:** territorial planning, construction, public interest, restriction of public interest protection

### INTRODUCTION

Constitutional law universally recognizes that the state is an organization of the whole society (*Rulings of the Constitutional Court of the Republic of Lithuania* of 25 November 2002, 4 March 2003, 30 September 2003, 3 December 2003). The power of the state, as a political organization of the whole society, covers the entire territory of the state, its purpose is to ensure human rights and freedoms, to guarantee the public interest (*Ruling of the Constitutional Court of the Republic of Lithuania* of 30 December 2003). The imperative of social coherence is entrenched in the Constitution (*Rulings of the Constitutional Court of the Republic of Lithuania* of 14 January 2002, 3 December 2003, 5 March 2004). In performing its functions, the state must act in the interests of the whole society (*Ruling of the Constitutional Court of the Republic of Lithuania* of 4 March 2003). Every public interest can only be based on the fundamental values of society, which are enshrined, protected and defended by the Constitution; its

---

entrenchment and assurance, defence and protection are constitutionally motivated. The jurisprudence of the Constitutional Court has held that the implementation of the public interest as a public interest recognized by the state and protected by law is one of the most important conditions for the existence and development of society itself (*Rulings of the Constitutional Court of the Republic of Lithuania* of 6 May 1997 and 13 May 2005). On the other hand, the public interest, as a general interest of the state, the whole society or a part of society, must be reconciled with the autonomous interests of the individual, because not only the public interest but also the rights of a person are constitutional values (*Rulings of the Constitutional Court of the Republic of Lithuania* of 6 May 1997, Decisions of 13 December 2006).

These values enshrined in the Constitution - the protection and defence of the rights and legitimate interests of the individual and the public interest - cannot be contradicted. The right balance needs to be struck in this area. At the same time, it should be noted that the public interest is not to be considered any legitimate interest of a person or a group of persons, but only one that reflects and expresses the fundamental values of society, which are enshrined, protected and defended by the Constitution; these include, *inter alia*, openness and coherence of society, justice, individual rights and freedoms, the rule of law, etc. This is the interest of the society or a part thereof, which the state, in the exercise of its functions, is constitutionally obliged to ensure and satisfy, *inter alia* through the courts, in cases adjudicating following its competence.

Therefore, whenever the question arises as to whether a certain interest is to be regarded as public, it must be possible to substantiate that certain values enshrined in, protected and defended in the Constitution would be violated if the interest of a certain person or group is not satisfied. And in cases where the decision on whether a certain interest is to be considered public and defended and protected as a public interest must be made by the court adjudicating the case, it is necessary to state the reasons in the relevant court act. Otherwise, there would be a reasonable doubt that what is defended and protected by the court as public interest is not a public interest but a private interest of a particular person. It should be emphasized that the public interest is dynamic and changing (*Ruling of the Constitutional Court of the Republic of Lithuania* of 8 July 2005). On the other hand, it is very diverse. In principle, it is not possible to say *a priori* in which areas of life which may give rise to legal disputes or which may require the application of a law, the public interest may be threatened or the public interest may need to be safeguarded by the intervention of public authorities or officials. <...> The Constitutional

---

Court has held that laws, without violating the Constitution, may establish in which cases and under which procedure authorized institutions or authorized officials may defend the public interest in court (*Ruling of the Constitutional Court of the Republic of Lithuania* of 22 February 2001). It should be mentioned that the Constitution contains expressis verbis respective powers (according to Paragraph 2 of Article 118 of the Constitution, a prosecutor shall protect the rights and legitimate interests of a person, society and the state in cases established by law).

The public interest in territorial planning and construction is examined in various aspects (Klimas, Brazdeikis (2013), Raižys (2013), Lastauskienė, Bakšienė (2015) etc.). This article will not seek to reveal the concept of public interest. The purpose of the research is to determine whether the constitutionally and statutory importance of the public interest cannot be denied by providing for restrictions on its protection.

**Methodology.** Analyzing the legal regulation of public interest protection in the context of the researched topic, comparative historical, logical-analytical, document analysis, scientific literature and document analysis methods were used. The comparative historical method is used in the analysis as a definition of another public interest and the conditions of its protection in legal acts, in the context of the analyzed topic. The method of document analysis is used to study the legal acts regulating territorial planning, construction and protection of the public interest. The logical-analytical method is used to make generalizations and formulate conclusions. The method of analysis of scientific literature and court decisions is used to find out the application and interpretation of legal norms regulating the protection of public interest both in court practice and doctrine.

## **DEFENCE OF THE PUBLIC INTEREST IN THE FIELD OF TERRITORIAL PLANNING AND CONSTRUCTION**

The Supreme Administrative Court of Lithuania (hereinafter - the SACL), commenting on the public interest, noted that the legislator has not defined the public interest in legal acts, therefore its existence must be determined by the court in each specific case, taking into account all the circumstances of the case. and meaning. This court has repeatedly stated (see, for example, the SACL ruling of 27 December 2011 in administrative case No. A525-3318 / 2011) that the public interest, in applying the Law on Administrative Proceedings, should be perceived as what is objectively significant, necessary, valuable to the society or a part thereof, and the right of a person to defend the public interest in administrative proceedings is defined as the

---

right of persons provided by law to apply to an administrative court in cases established by law to defend what is objectively significant, necessary, valuable.

Article 30 of the Constitution of the Republic of Lithuania (*Constitution of the Republic of Lithuania* (CRL) 1992 Lietuvos Aidas, No. 220-0), Article 5 of the Code of Civil Procedure of the Republic of Lithuania (*Code of Civil Procedure of the Republic of Lithuania*) (hereinafter - CPC), Article 5 (*Law on Administrative Proceedings of the Republic of Lithuania, 1999 No. VIII-1262*) (hereinafter - LAP) enshrines one of the basic rights of a person - a person whose constitutional rights and freedoms are violated has the right to apply to a court. the violated or disputed right or interest protected by law has been defended (Article 5 (1) of the CPC); Every interested entity has the right to apply to a court under the procedure established by law to defend the violated or disputed right or interest protected by law (Article 5 (1) of the LAP).

The possibility to apply to a court in defence of the public interest as provided for in Item 3 of Paragraph 3 of Article 5 and Paragraph 1 of Article 55 of the Law on Administrative Proceedings of the Republic of Lithuania. The provision of Paragraph 2 of Article 49 of the Code of Civil Procedure of the Republic of Lithuania states that in cases provided by law, state and municipal institutions and other persons may file a claim or statement to protect the public interest. According to the meaning of the indicated legal norms, the public interest may be protected in court under two conditions, i. y. the public interest is protected only by applying to a court established by law and only in cases provided by law. The norms of the LAP and the CPC, which indicate the entities entitled to apply to the court for the protection of the public interest, are formal, which do not provide a specific list of entities that may defend the public interest in the courts. It is also important that the law establishes not only the subjects but also the areas in which they have the right to defend the public interest in court. One of these areas is territorial planning and construction.

The main legal act regulating territorial planning in Lithuania is the Law on Territorial Planning of the Republic of Lithuania (*Official Gazette. 2013, No. 76-3824*), which aims to ensure sustainable territorial development and rational urbanization by establishing systematic nature of territorial planning process solutions, compatibility of documents at different levels and requirements for interaction, to create conditions for the harmony of the natural and anthropogenic environment, urban quality, preserving the valuable landscape, biological diversity, natural and cultural heritage values.

---

Therefore we can state that this law is firstly aimed at sustainable territorial development and the priority for the ownership of land is not expressed. However, it is natural that a person (natural or legal) considers firstly what activity he could carry out that would be useful to him in the first place and therefore the society interest or public interest is of less importance for such owner (*Pranevičienė, Šostakienė, Vasiliauskienė (2017)*).

The main legal act in the field of construction is the Law on Construction of the Republic of Lithuania (*Official Gazette 2001*, No. 101-3597), which establishes the essential requirements for all construction, reconstruction and repair of buildings in the territory of the Republic of Lithuania, its exclusive economic zone and continental shelf. procedures for research, design, construction, completion of construction, use and maintenance of buildings, demolition, principles and responsibilities of construction participants, public administration entities, owners (or users) of buildings and other legal and natural persons in this field. The procedure for state supervision of territorial planning and state supervision of construction, the institutions performing supervision, their competence, duties and rights shall be established by the Law on State Supervision of Territorial Planning and Construction of the Republic of Lithuania.

In its practice, the SACL has noted that territorial planning is a territorial organization of the activities of natural and legal persons, which seeks to ensure the public interest - rational use of the territory in a specific way - establishing or forming the legal status of certain territories. They record in writing and graphically the knowledge about the territory, land plots or their groups, the needs, conditions and procedure for their management and development (see the decision of the SACL of 30 October 2008 in Administrative Case No. A822-1678 / 2008, the decision in Administrative Case No A-2032-525 / 2015 of 23 March 2015). The objectives of territorial planning enshrined in the Law on Territorial Planning can be achieved, and the interests of natural and legal persons or their groups, society, municipalities and the state in harmonizing the conditions of use and development of land and land in this territory can be harmonized only in strict compliance with legal regulations; for example, the SACL ruling of 20 March 2014 in administrative case No. A602-343 / 2014). In this context, it is particularly important to mention that the case law thus recognizes that the legality of territorial planning and construction procedures is *per se* of public interest (SACL. No. eA-732-438 / 2019, No. A520-500 / 2013; No. A756- No. 1621/2012; No. A525-3318 / 2011; No. A63-1158

---

/ 2010; No. A525-648 / 2010; Order of the Supreme Court of Lithuania No. 3K-3-496 / 2010; No. 3K-3-310 / 2010);

As can be seen from the scope of the legal framework, these are the areas that affect the whole environment around us, and the consequences of that impact will be felt not only by the present but also by future generations. Therefore, the position of the SACL that the legality of these processes is in itself in the public interest is to be supported.

The public interest in territorial planning is implemented through a regulated public territorial planning process, which is obligatory for all planning organizers, establishing in the decisions of territorial planning documents measures for use and protection of the territory, obligatory or possible activities and obligatory or possible activities and their restrictions. part). The following have the right to protect the public interest in the field of territorial planning: 1) institutions performing state supervision of territorial planning (National Land Service under the Ministry of Agriculture, State Forest Service, State Territorial Planning and Construction Inspectorate under the Ministry of Environment) (Article 3 of the Law on State Supervision of Territorial Planning and Construction Paragraph 1, Item 6 of Paragraph 1 of Article 22 (Official gazette. 2013. No. 76-3848.) 2) the public concerned (Paragraphs 1 and 5 of Article 49 of the Law on Territorial Planning); In this case, the law provides an exhaustive list of persons, and persons not included in this list the opportunity to defend the public interest.

As regards public authorities empowered to defend the public interest, the possibility for those authorities to defend the public interest in the context of the entity is not restricted. Restrictions apply to the right of the public concerned to defend the public interest.

According to Article 2 (20) of the Law on Territorial Planning, the public concerned is the public whose legitimate interests are or may be affected by the decisions of the draft territorial planning document or which have an interest in the implementation of these decisions. According to this definition, associations and other public legal entities (except legal entities established by the state or municipality, their institutions) established under the procedure established by legal acts and promoting sustainable development of territories and environmental protection are in all cases considered as interested parties. The concept of the public concerned in the territorial Planning Act is in line with the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ("the Aarhus Convention"), ratified in 2001. July 10 the concept of the society and the

---

interested society established in Paragraphs 4 and 5 of Article 2 of Law IX-44919 (Official gazette. 2009. No. 8-273).

In interpreting this concept, the courts have stated that the law confers on public legal persons the right to defend the public interest, without linking this right to the moment of establishment of the legal person. Thus, the legislature opted for a regulation which allowed the locus to stabilize the public interest of public legal persons, irrespective of when they were established.

Taking into account the provisions of the Law on Environmental Protection and Territorial Planning, it is possible to distinguish the criteria for determining whether an applicant is considered an interested public under the Law on Environmental Protection and the Law on Territorial Planning, which has the right to go to court: 1) association (non-governmental organization) the procedure operating under the requirements of the laws of the Republic of Lithuania; 2) it promotes environmental protection, helps to solve landscaping problems.

To determine whether a public organization meets the second criterion, i. y. promotes environmental protection, helps to solve landscaping problems, legal acts regulating the activities of a public organization must be assessed, evidence confirming the actual activities of a public organization in the field of environmental protection and landscaping, provisions of the statutes of a public organization the main objectives of the public organization. After the appeal to the court, the activities carried out by the public organization, the actions are taken, the appeal to various institutions do not constitute grounds to state that during the appeal to the court it acted as a non-governmental organization promoting environmental protection and solving landscaping problems. The fact that before the establishment of the association, its members, as individuals, actively participated in the discussion of wind power plant development issues in Pagėgiai municipality and adjacent districts does not substantiate the applicant's activities as a public organization in the field of environmental protection and landscaping (SACL Administrative Case No. A520-211 / 2013 ).

The Law on Territorial Planning of the Republic of Lithuania article 49 paragraph 4 states that interested parties members of the public, other interested natural and legal persons the right to apply to a court for an administrative decision on territories withdrawal of approval of a planning document only if they: 1) participated in territorial planning publicity procedures and filed complaints or notifications due to public administration entities accepted with territories

---

planning decisions or areas of inaction by these entities planning public oversight authorities by due to the contested administrative decision regarding territorial planning acceptance of the approval of the document, if during the publicity procedures knew or could objectively have foreseen his or her potentially infringing rights; or 2) for reasons recognized by the court as important, was not able to participate in publicity procedures for territorial planning and submit complaints or notifications regarding decisions made by public administration entities related to territorial planning or inaction of these entities to territorial planning authorities before the contested administrative decision on territorial planning. document approval.

A reasonable question arises as to whether this is the case in paragraph 4 of the commented article the restriction imposed does not infringe Article 5 (1) of the LAP, which that every stakeholder has the right to be established by law to apply to a court to defend a violated or disputed right or statutory interest. However, the commentary is a *lex specialis* concerning the LAP norm mentioned above and should be given priority. On the one hand, such regulation is to be welcomed, as it is clear defines who will be able to question the territorial planning document. How it can be seen that it will usually be able to be active and planning, the results of those who are interested in the results, who know or can objectively anticipate their violated rights, will already provide complaints or notifications. On the other hand, such regulation also has a negative aspect, as to a certain extent it potentially restricts the right to judicial defence, which, among other things, is guaranteed by Paragraph 1 of Article 30 of the Constitution (Klimas (2017)).

In the light of this, it must be concluded that, although the law unconditionally confers a right on the public concerned to defend the public interest, that case-law has restricted that right.

## **RESTRICTION OF THE PROTECTION OF THE PUBLIC INTEREST IN THE CONTEXT OF MATERIAL JUSTIFICATION**

Neither the Law on Territorial Planning, nor on Construction, nor the Law on State Supervision of Territorial Planning and Construction provides an exhaustive list of grounds on which institutions have the right to apply for the protection of the public interest. Guidelines for these frameworks can be found in the case law and the 2018 Opinion of the Prosecutor General of the Republic of Lithuania. June 26 order no. I-218 “On the Approval of the Recommendations on the Protection of the Public Interest” (TAR, 27 June 2018, No. 2018-10552) Description of the Procedure for the Protection of the Public Interest in the State

---

Territorial Planning and Construction Inspectorate under the Ministry of Environment wording of Order No. 1V-128 of the Head of the Planning and Construction Inspectorate under the Ministry of Environment of 17 July 2020).

As mentioned, the legislature does not define the public interest and the court must determine the existence of public interest on an *ad hoc* basis each time. For the LAP, the public interest is perceived as what is objectively significant, necessary, valuable to the society or a part thereof, and the right of a person to defend the public interest in administrative proceedings is defined as the right of persons provided by law to apply to an administrative court. significant, necessary, valuable to society or a part of it. In administrative case no. A17-742/2007, the panel of judges noted that the legislator gives the prosecutor the right to decide whether or not there is a public interest in initiating an administrative case in a particular case, but ultimately the presence or absence of public interest is decided by a court hearing an administrative case. In such a case, the court must determine the existence of the public interest on an *ad hoc* basis, taking into account all the circumstances of the particular case, the nature and significance of the issues to be considered therein (Order of the Supreme Administrative Court of Lithuania of 5 November 2007). In cases where the decision as to whether a particular interest is to be regarded as public and to be defended and protected as a public interest must be taken by the court seised, the reasons must be given in the relevant judicial act. Otherwise, there would be a reasonable doubt that what is defended and protected as public interest is not a public but a private interest of a certain person (ruling of the Constitutional Court of the Republic of Lithuania of 21 September 2006).

To protect the public interest and a person's subjective right or interest protected by law, the rules of administrative proceedings differ, therefore in a specific case it is important to determine what the applicant applied to the administrative court - protecting the public interest or subjective right or Order of 28 April 2008 in Administrative Case No A438-679 / 2008). Besides, the conditions for the satisfaction of a complaint differ, as not every violation of the law also leads to a violation of the public interest, but such a violation is necessary to satisfy the complaint regarding the protection of the public interest. Meanwhile, a person who defends his subjective right must prove the violation of this right during the proceedings. The distinction between cases in which the public interest is protected and where the applicant is defending his subjective rights or interests protected by law, in particular, makes it possible to define the subject-matter of the proceedings and to apply certain rules of evidence.

---

Determining whether the applicant has applied to the court for his subjective right or the protection of the public interest is also significant because when the law does not give the applicant the right to apply to the court for the protection of the public interest indicated in the complaint (request), the judge must refuse to accept such complaint ) under Article 37 (2) (1) of the LAP. The case law recognizes that the main criteria for determining whether a person is defending the public interest or his subjective right or interest protected by law are the legal arguments, the circumstances on which he bases his claims. SACL panel of judges in administrative case no. A3-11 / 2004, systematically assessing Article 5 (1), (3) (1) and (3) and Article 56 (1) of the LAP, ruled that where the applicant bases his claim on a violation of private subjective rights or interests, the applicant should be considered to have applied to the LAP under the procedure laid down in Article 5 (1), in defence of one's own infringed or disputed right or interest protected by law.

However, in cases when the applicant bases his complaint on what is significant, necessary, valuable for the society or a part of it, it is assessed that the applicant has to apply to the court based on Article 5 (3) (3) and Article 56 (1) (LAP Order of the Court of 23 January 2004 in Administrative Case No. A3-11/2004; Order of the Court of 22 March 2007 in Administrative Case No. A17-316 / 2007; Order of the Enlarged Chamber of Judges of 19 January 2007 in Administrative Case No A3-64/2007; Order of 26 March 2008 in Administrative Case No A146-857/2008). Article 5 (3) (3) and Article 56 of the LAP provide for the right of a prosecutor to apply to a court in a case provided by law to protect the public interest or to protect the rights of the state, municipality or persons and the interests protected by law, but does not provide for their right to apply to a court. the rights and interests of a third party. For example, in administrative case No. A5-768 / 2007 the panel of judges did not satisfy the prosecutor's request to oblige the Kaunas County Governor's administration to restore the property rights to the land managed by persons who died before the nationalization of the land to the heirs of deceased former property owners who submitted applications in accordance with the established procedure. The panel of judges ruled that the prosecutor did not protect the public interest by this claim, but sought to protect the rights and interests of a third party, and did not provide a legal basis for such a claim (Order of 21 September 2007 in Administrative Case No. A5-768 / 2007).

The decision to protect the public interest must respect the principles of legitimate expectations, legal certainty and legal stability, assess the time before possible infringements,

---

their extent, the circumstances, whether the consequences can be prevented or whether the infringements have led to consequences. and etc.

If administrative decisions which may infringe the public interest and which have been taken more than 10 years ago, or where the infringements are minor, involve only technical and/or procedural errors (not affecting the legality of the decisions), a decision not to protect the public interest may be taken.

In the case of competition between several public interests, and if it is decided that other public interests may be harmed or will not be adequately protected at a reasonable cost by going to court, all competing public interests must be identified, i. y. the content of each public interest and the reasons why one or more public interests are given priority in a particular case.

Article 118 of the Constitution of the Republic of Lithuania provides that a prosecutor shall protect the rights and legitimate interests of a person, society and the state in the cases provided by law. Article 19 of the Law on the Prosecutor's Office of the Republic of Lithuania stipulates that prosecutors protect the public interest when they establish a violation of a legal act that violates the rights of a person, society, state and legitimate interests, and such violation is considered a violation of public interest.

The right of a prosecutor to go to court to protect a person's interests is an exception and is always linked to a breach of the public interest. The prosecutor shall apply to the court in civil or administrative proceedings when he establishes a violation of legal acts, the nature of which, in the prosecutor's opinion, is essential for the rights and legitimate interests of individuals, their groups, the state and society. It should be noted that the prosecutor, having established a legal basis for this, protects the interests of the person in all cases provided for in the Civil Code (hereinafter - CC) or the Code of Civil Procedure (eg CC 1.85, 2.10, 2. 114, 3.32, 3.39, 3.182, 3.263, CPK 449, 454, 494, 538 and other cases provided for by the CC and the CPC), and only in exceptional cases when the violation of the rights and legitimate interests of a person coincides with the violation of the public interest.

## CONCLUSIONS

Assessing the cases of violation of the public interest in general, the sphere of territorial planning and construction should be distinguished as a specific area. It should be noted that the legislator, by granting the prosecutor the right to initiate civil and administrative cases when the public interest so requires, has not introduced the concept of public interest. This means that

the legislator has a broad understanding of the public interest and gives the prosecutor the right to decide for himself whether a public interest has been violated in a particular case or not (except in cases provided for by the CC and the CCP; in these cases, a violation of the public interest is presumed).

In the field of territorial planning and construction, the protection of the public interest is restricted by two criteria: by the subjects entitled to defend the public interest and by the material interest. On the one hand, such provisions of the Law on Territorial Planning of the Republic of Lithuania are to be welcomed, as it is clear defines who will be able to question the territorial planning document. On the other hand, such regulation also has a negative aspect, as to a certain extent it potentially restricts the right to judicial defence, which, among other things, is guaranteed by Paragraph 1 of Article 30 of the Constitution.

It must be concluded that application to the courts in the public interest, even in the event of a breach of the law, may not protect the public interest based on substantive interest, competition or legitimate expectations, legal certainty and legal stability. Based on analysis of legal regulation and case-law practice it could be concluded, that excessive restrictions on the protection of the public interest may prevent from defending it and dishonest individuals from pursuing their private interests at the expense of the public interest.

## REFERENCES

1. Klimas E. (2017). *Lietuvos Respublikos teritorijų planavimo įstatymo komentaras* [The commentary on the Law of the Republic of Lithuania on Territorial Planning]. Mykolo Romerio universitetas.
2. Klimas, E., Brazdeikis, A. (2013) Visuomenės viešojo intereso gynimas planuojant teritorijas. In *Viešojo intereso gynimas: subalansuoto požiūrio link*. [Defence of Public Interest: Towards a Sustainable Approach], Vilnius: Vilniaus universitetas, p. 118–139.
3. Lastauskienė G., Bakšienė D. (2015) Public interest protection problem in the territorial planning process. *Teisė*, Vol 96, DOI: 10.15388/Teise.2015.96.8757 Available from: [https://www.researchgate.net/publication/291140585\\_VISUOMENES\\_INTERESU\\_APSAUGO\\_S\\_PROBLEMA\\_PLANUOJANT\\_TERITORIJAS](https://www.researchgate.net/publication/291140585_VISUOMENES_INTERESU_APSAUGO_S_PROBLEMA_PLANUOJANT_TERITORIJAS) (Accessed 2020-12-12)
4. Pranevičienė, B., Mikalauskaitė-Šostakienė, K., Vasiliauskienė, V. (2017). Territorial planning in Lithuania: the issues of security of society and interests of investors. *Montenegrin journal of economics*. Podgorica: Economic Laboratory for Transition Research. Vol. 13, No. 3, pp. 75-83, DOI: 10.14254/1800-5845/2017.13-3.7
5. Raižys D. (2013). Viešojo intereso gynimas planuojant teritorijas: perspektyvinės tendencijos. [Defending the public interest in territorial planning: perspective trends] *Public security of public order: scientific articles*. Kaunas: Mykolas Romeris University, pp. 221-237, Available: <https://repository.mruni.eu/bitstream/handle/007/15111/Rai%20ys.pdf?sequence=1> (Accessed 2020-12-12)

---

**LEGAL REFERENCES**

6. Constitution of the Republic of Lithuania, 1992 (*Echo of Lithuania*, 1992 Nr. 220-0);
7. Konvencija dėl teisės gauti informaciją, visuomenės dalyvavimo priimant sprendimus ir teisės kreiptis į teismus aplinkos klausimais, *Valstybės žinios*. 2009. Nr. 8-273 [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters] (*Official gazette*, 2009. No. 8-273)
8. Lietuvos Respublikos teritorijų planavimo ir statybos valstybinės priežiūros įstatymas, *Valstybės žinios*. 2013. Nr.76-3848. [The Law on State Supervision of territorial Planning and Construction of the Republic of Lithuania (*Official Gazette*, 2013. No 76-3848)].
9. Lietuvos Respublikos teritorijų planavimo įstatymas, *Valstybės žinios*. 1995. Nr.107-2391. [Law on Territorial Planning of the Republic of Lithuania], *Official Gazette*, 1995, Nr. 107-2391].
10. Lietuvos Respublikos teritorijų planavimo įstatymas, *Valstybės žinios*. 2004. Nr.21-617. [Law on Territorial Planning of the Republic of Lithuania]. (*Official Gazette*, 2004, No. 21-617).
11. Lietuvos Respublikos statybos įstatymas, *Valstybės žinios*. 2004, Nr.28-868 [The Law on State Supervision of territorial Planning and Construction of the Republic of Lithuania] (*Official Gazette*, 2013. No 76-3848)
12. Lietuvos Respublikos administracinių bylų teisenos įstatymas, *Valstybės žinios*. 1999 Nr. VIII-1262 [Law on Administrative Proceedings of the Republic of Lithuania], (*Official Gazette*, 1999 No. VIII-1262);
13. Lietuvos Respublikos civilinio proceso kodeksas, *Valstybės žinios*. 2002. Nr. 36, 2002 Nr. 42 [Code of Civil Procedure of the Republic of Lithuania] (*Official Gazette*, 1999 No. 2002. Nr. 36, 2002 Nr. 42);
14. Lietuvos Respublikos prokuratūros įstatymas, *Valstybės žinios*, 1994-10-19, Nr. 81-1514, [Law on the Prosecutor's Office of the Republic of Lithuania] (*Official Gazette*, 1994 No. 81-1514);
15. Order of the Prosecutor General of the Republic of Lithuania. June 26, Order No. I-218 “On the Approval of the Recommendations on the Protection of the Public Interest” (*TAR*, 27 June 2018, No. 2018-10552);
16. 2020 m. liepos 17 d. įsakymu Nr. 1V- 128 Valstybinės teritorijų planavimo ir statybos inspekcijos prie Aplinkos ministerijos viršininko įsakymas Dėl Viešojo intereso gynimo Valstybinėje teritorijų planavimo ir statybos inspekcijoje prie Aplinkos ministerijos tvarkos aprašo patvirtinimo [Description of the Procedure for the Protection of the Public Interest in the State Territorial Planning and Construction Inspectorate under the Ministry of Environment wording of Order No. 1V-128 of the Head of the Planning and Construction Inspectorate under the Ministry of Environment of 17 July 2020]. Available: <https://vtpsi.lrv.lt/lt/teisine-informacija/teises-aktai-2/virsininko-isakymai/kiti-isakymai> (Accessed 2020-12-12)
17. The Constitutional Court of the Republic of Lithuania, Ruling of 25 November 2002;
18. The Constitutional Court of the Republic of Lithuania, Ruling of 4 March 2003;
19. The Constitutional Court of the Republic of Lithuania, Ruling of 30 September 2003;
20. The Constitutional Court of the Republic of Lithuania, Ruling of 3 December 2003;
21. The Constitutional Court of the Republic of Lithuania, Ruling of 30 December 2003;
22. The Constitutional Court of the Republic of Lithuania, Ruling of 14 January 2002.
23. The Constitutional Court of the Republic of Lithuania, Ruling of 5 March 2004;
24. The Constitutional Court of the Republic of Lithuania, Ruling of 6 May 1997;
25. The Constitutional Court of the Republic of Lithuania, Ruling of 3 May 2005;
26. The Constitutional Court of the Republic of Lithuania, Ruling of 13 December 2006;
27. The Constitutional Court of the Republic of Lithuania, Ruling of 8 July 2005;
28. The Constitutional Court of the Republic of Lithuania, Ruling of 22 February 2001;

29. Ruling of the Supreme Administrative Court of Lithuania in administrative case No. A525-3318 / 2011;
30. Ruling of the Supreme Administrative Court of Lithuania in Administrative Case No. A822-1678 / 2008;
31. Ruling of the Supreme Administrative Court of Lithuania in Administrative Case No. eA-732-438 / 2019,
32. Ruling of the Supreme Administrative Court of Lithuania in Administrative Case No. A520-500 / 2013;
33. Ruling of the Supreme Administrative Court of Lithuania in Administrative Case No. 1621/2012;
34. Ruling of the Supreme Administrative Court of Lithuania in Administrative Case No. A525-3318 / 2011;
35. Ruling of the Supreme Administrative Court of Lithuania in Administrative Case No. A63-1158 / 2010;
36. Ruling of the Supreme Administrative Court of Lithuania in Administrative Case No. A525-648 / 2010;
37. Ruling of the Supreme Administrative Court of Lithuania in Administrative Case No. A438-679 / 2008;
38. Ruling of the Supreme Administrative Court of Lithuania in Administrative Case No. A3-11 / 2004;
39. Ruling of the Supreme Administrative Court of Lithuania in Administrative Case No. No. A3-11 / 2004;
40. Ruling of the Supreme Administrative Court of Lithuania in Administrative Case No. A17-316 / 2007,
41. Ruling of the Supreme Administrative Court of Lithuania in Administrative Case No. A3-64 / 2007;
42. Ruling of the Supreme Administrative Court of Lithuania in Administrative Case No. A146-857 / 2008;
43. Ruling of the Supreme Administrative Court of Lithuania in Administrative Case No. A5-768/2007;
44. Order of the Supreme Court of Lithuania No. 3K-3-496 / 2010;
45. Order of the Supreme Court of Lithuania No. 3K-3-310 / 2010;

---

## IŠŠŪKIAI LYDERYSTEI VIEŠOJO SAUGUMO INSTITUCIJOSE: LIETUVOS POLICIJOS ATVEJIS

**Žaneta Navickienė<sup>1</sup>**

<sup>1</sup>*Mykolo Romerio universitetas  
Ateities g. 20, LT-08303 Vilnius  
Tel. +370 37 28 14 09  
El. paštas: [z.navickiene@mruni.eu](mailto:z.navickiene@mruni.eu)*

**Laura Andrijauskaitė<sup>2</sup>**

<sup>2</sup>*Policijos departamentas  
Saltoniškių g. 19, LT-08105 Vilnius  
Tel. +370 671 74513  
El. paštas: [laura.andrijauskaite@gmail.com](mailto:laura.andrijauskaite@gmail.com)*

DOI: 10.13165/PSPO-20-25-17

---

**Anotacija.** Viešojo saugumo institucijoms, tame tarpe ir policijai, reikalinga permąstyti, kaip naujai šias institucijas valdyti, bei konstatuoti, kad lyderio savybės yra būtinos ne tik vadovams, bet ir kiekvienam pareigūnui. Tokį poreikį lemia pokyčiai darbo rinkoje ir pripažinimas, kad gebėjimas operatyviai reaguoti į kintančią aplinką, veikti kritinėmis sąlygomis ir greitai priimti sprendimą yra vienos svarbiausių darbuotojo savybių. Be to, „naujos kartos“ policijos pareigūnų įstojimas į tarnybą, didelės galimybės ir iššūkiai, susiję su technologijų prieinamumu ir plėtra, ir kiti veiksniai yra saistomi ir su pokyčiais platesniame policijos veiklos kontekste: globalizacija, didėjančiu biudžetiniu spaudimu, kintančiu nusikalstamų veikų pobūdžiu, socialinės inžinerijos injekcijomis, emocinio intelekto svarba, taigi, ir augančiu profesinių-psichologinių žinių poreikiu suprasti ir vertinti socialinius kontekstus, visuomenės lūkesčiais policijos reagavimo į įvykius greičiui, kokybei ir kt. Kintantis daugiabriaunis policijos veiklos kontekstas verčia keistis ir pačią organizaciją bei kelia kitokios, novatoriškos lyderystės policijoje poreikius. Tad lyderystės ugdymas tampa pagrindiniu teisėsaugos pareigūno profesijos ateities rūpesčiu.

Straipsnyje analizuojami egzistuojantys lyderystės stiliai ir lyderio bruožai viešojo saugumo srities kontekste, taip pat apžvelgiami lyderystės kompetencijų teisinio reguliavimo ypatumai viešajame administravime ir policijoje, lyderystės įgijimo, ugdymo ir vertinimo procesai policijoje bei jų nuoseklumas.

**Raktažodžiai:** lyderystė, lyderystės ugdymas, policija, viešasis saugumas.

### ĮVADAS

Veiklų ir procesų kompleksiskumas, kintantys nusikalstamumo modeliai, augantys visuomenės lūkesčiai bei technologiniai pokyčiai suponuoja policinės veiklos modelių kaitą ir individualios lyderystės poreikį. Tuo tarpu modernios policijos organizacijos vis dar pasižymi aukštu centralizacijos laipsniu, ypač priimant sprendimus, vertikalia-hierarchine struktūra, procedūriškumu ir galios, pozicijos ar rango, autoriteto santykiais, o tai riboja viešojo saugumo organizacijų gebėjimą adaptuotis prie kintančios aplinkos ir pokyčių įgyvendinimo efektyvumą

(Hughes, 2010). Šiuo metu egzistuojantis vadovo - lyderio vaidmuo yra nepakankamas modernioms viešojo saugumo organizacijoms dėl iš esmės pasikeitusios policijos veiklos aplinkos, kintančios šių organizacijos struktūros bei veiklos modelių.

Tarptautiniai moksliniai tyrimai viešojo saugumo srityje vykdomi gana aktyviai, siekiama analizuoti ir apibrėžti viešojo saugumo institucijų veiklos apimtis ir atsakomybes, jėgos panaudojimo teisėtumo aspektus, analizuojama ikiteisminių tyrimų organizavimo problematika ir kt. Mokslinių tyrimų laukas viešojo saugumo srityje yra gana platus, tačiau pastarąjį dešimtmetį itin didelis dėmesys skiriamas ne tiek policinei veiklai, kiek policijos veiklos valdymui ir administravimui, jo efektyvumui (Uhl-Bien et al., 2007), racionalių policinės veiklos strategijų pasirinkimui (Hughes, 2010) bei nuolatiniam mokymuisi, taip pat lyderystės policijoje pokyčio poreikiui ir problematikai (Uhl-Bien et al., 2007). Lyderystė viešojo saugumo srityje, tame tarpe ir policinėje veikloje, ilgą laiką buvo tyrinėjimų ir domėjimosi sritimi (Hogett, 2019), lyderystės policijoje tyrimuose dominuojantys aspektai buvo lyderystės stilių svarba, lyderio asmenybės savybės, bruožai ir elgesys (Schafer, 2010).

Tuo tarpu Lietuvoje moksliniai tyrimai viešojo saugumo srityje atliekami labai fragmentiškai, viešasis saugumas kaip mokslinių tyrimų laukas yra praktiškai nenagrinėtas, juntama didelė sisteminių tiek mokslinių, tiek taikomųjų tyrimų stoka. Mokslinius tyrimus viešojo saugumo srityje pareigūnų rengimo klausimais, vertybių, profesionalumo ir kitais klausimais atliko Ž. Navickienė, A. Šakočius. Lyderystės tema dominavo analizuojant lyderystės modelių kaitą (A. Skarbalienė, T. Sudnickas), lyderystės klausimus atskirose srityse yra nagrinėjo R. Smaliukienė (viešojo administravimo srityje); J. Navickaitė, D. Baronaitė, M. Bujokaitė, J. Urbanovič ir kiti (švietimo įstaigose vadovų lyderystė, mokytojų lyderystė), V. Zajančauskienė, M. Stankūnas (visuomenės sveikatos srityje). Lietuvių mokslininkai, nagrinėjantys lyderystės problemą, kalba apie lyderystės raiškos sąsają su efektyviu valdymu (D. Baronienė), „idealųjį“ ir „realųjį“ lyderio tipus (E. Butkevičienė, E. Vaidelytė, G. Žvaliauskas), lyderystės ir valdymo stilius (R. Razauskas) lyderystės kompetenciją (V. Šilingienė) ir pan.

Žmogiškųjų išteklių ir saugumo aplinkos pokyčiai įtakoja ir Lietuvos policijos veiklos modelius, organizacinę struktūrą, personalo sudėtį ir charakteristikas. Lietuvos policija ir jai vadovaujantis personalas turi ne tik prisitaikyti prie kintančios aplinkos ir naujų veiklos standartų, bet ir prie naujos policijos pareigūnų kartos asmenybės savybių (charakteristikų). Visa tai reikalauja kitokio požiūrio į reikalavimų viešojo saugumo sektoriaus personalui

formulavimą, lyderystės kompetencijų vertinimą ir ugdymą. Kompetentingi lyderiai yra svarbi sąlyga organizacijai, kuri siekia sisteminės plėtros kintančioje aplinkoje; negana to, nuo lyderystės policijoje efektyvumo, bendrąją prasme, priklauso ir viešojo saugumo situacija šalyje. Daugelis mokslininkų taip pat pripažįsta, kad esminis organizacijos augimo ir efektyvių pokyčių veiksnys yra lyderystė. Taigi, lyderis ir lyderystė tampa reikšmingomis generuojamomis sąvokomis ir viešojo sektoriaus kontekste (Atkočienė at al., 2019), ypač kalbant apie iššūkius viešajam saugumui XXI a.

**Tyrimo problema.** Lyderystė viešojo saugumo kontekste analizuota fragmentiškai, mokslinės diskusijos lyderystės viešojo saugumo srityje stoka suponuoja sisteminio požiūrio į lyderystę, lyderio savybių ugdymą bei raiškos viešojo saugumo srityje ribotumus. Ypač aktuali viešojo saugumo institucijoms tampa klausimas: kokie modernios lyderystės stiliai ir lyderio bruožai yra tinkamiausi viešojo saugumo institucijoms, veikiančioms nestabilios aplinkos ir didelių visuomenės lūkesčių jų veiklai sąlygomis. Ne mažiau aktuali dilema – yra Lietuvos policijos lyderystės ugdymas, taigi, ir Lietuvos policijos pareigūno, kaip lyderio, paveikslo konceptualizavimas.

**Tyrimo objektas** – lyderystė Lietuvos policijoje.

**Mokslinio straipsnio tikslas** – išanalizuoti lyderio savybių rinkinių ypatumus viešojo saugumo organizacijų kontekste bei lyderystės savybių vertinimo ir ugdymo procesus Lietuvos policijoje.

Siekiant užsibrėžto tikslo, keliami **šie tyrimo uždaviniai:**

1. Išanalizuoti lyderystės sampratą, lyderystės kompetencijų modelius ir jos ypatumus policijos veikloje.
2. Įvertinti lyderystės kompetencijų apibrėžtį tiksliniuose Lietuvos viešojo sektoriaus ir Lietuvos policijos teisės aktuose.
3. Išanalizuoti lyderystės kompetencijų apibrėžties, įgijimo ir vertinimo, taip pat ir ugdymo ypatumus Lietuvos policijoje.

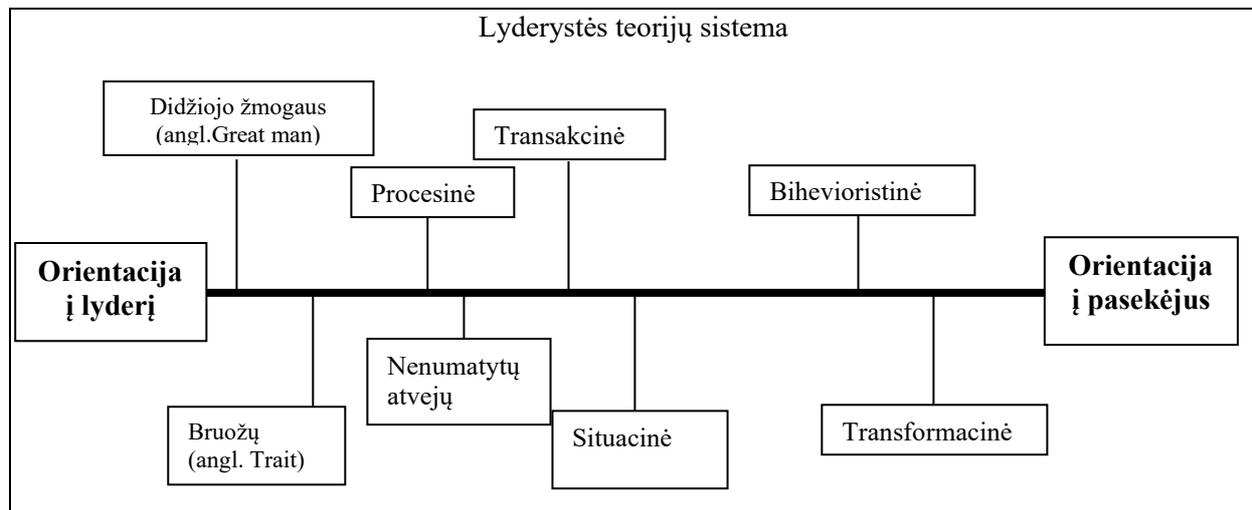
Mokslinis straipsnis rengtas naudojant mokslinės literatūros analizės ir sintezės metodus, atliekant lyginamąją analizę ir antrinių duomenų analizę.

## **LYDERYSTĖ IR JOS TRANSFORMACIJOS POLICIJOS VEIKLOS KONTEKSTE**

Lyderystės temos populiarumą ir sudėtingumą rodo lyderystės sąvokų įvairovė. Lyderystė gali būti suprantama kaip elgseną įtakojantis procesas, kuriuo siekiama organizuoti

grupės elgseną siekiant nustatytų tikslų arba kaip socialinės įtakos procesą, kur lyderis siekia paveikti organizacijos narius, arba kaip individo gebėjimą paveikti/motyvuoti kitus, pamirštant asmeninius interesus prisidėti prie bendros vizijos įgyvendinimo (Minelgaitė at all, 2018) Lyderystė yra suprantama ir kaip gera vadyba (valdymas) ir kaip lyderystės procesas ar kaip socialiniai mainai tarp lyderio ir jo pasekėjo, lyderystė kaip procesas skatina ir įtakoja tiek sprendimus, tiek veiksmus (Allio, 2013). Taigi, iš esmės lyderystė yra daugiadimensė sąvoka su daugybe įvairių aspektų. Lyderystės procesas visuomet apima lyderius, pasekėjus ir kontekstą ar situaciją, kurioje veikiama. Apibendrinant galima teigti, kad kertinis šių apibrėžimų elementas yra galimybė arba galia įtakoti pasekėjų (organizacijos narių) elgseną, o tokia galia gali būti įgyjama skirtingais būdais. Vis tik svarbu paminėti, kad daugelis autorių pastebi, jog lyderystė neturėtų būti siejama vien tik su formalia pozicija organizacijoje, netgi priešingai, svarbus yra neformalus lyderio pripažinimas (Minelgaitė at al., 2018).

Apibendrinant, lyderystės teorijas istorinėje perspektyvoje sąlyginai (lyginant būdingas charakteristikas) galima būtų skirstyti į dvi kategorijas: į lyderius orientuotas teorijas ir į pasekėjus orientuotas teorijas (Khan & Nawaz, 2016). Kalbant apie bene populiariausias lyderystės teorijas (transakcinę ir transformacinę), reikėtų paminėti, kad transakcinę priskirtina prie į lyderį orientuotų teorijų, o transformacinę, savo ruožtu, priskirtina prie teorijų, orientuotų į pasekėjus.



**1 pav.** Lyderystės teorijų sistema

**Šaltinis:** parengta autorių pagal A. Khan, A. A. Nawaz (Khan & Nawaz, 2016)

Didžiausias dėmesys tyrinėjant lyderystės fenomeną policijoje taip pat skiriamas šioms dviem lyderystės teorijoms: transakcinei ir transformacinei. Pirmoji remiasi susitarimu tarp

lyderio ir jo pasekėjų, kur lyderis užtikrina skatinimą, apdovanojimą ir motyvaciją pasekėjams, o pasekėjai, savo ruožtu suteikia galimybę lyderiui realizuoti lyderystę (transakcinė lyderystė). Antrasis fokusuojasi į lyderio charizmos vaidmenį, kaip išskirtinai individualią lyderio charakteristiką, kuri įgalina lyderius transformuoti grupes ar organizacijas (transformacinė lyderystė) (Dulewicz & Higgs, 2005). Abu lyderystės modeliai yra aktualūs policijos veiklos kontekste, tačiau jų taikymo efektyvumas yra nulemtas aplinkybių, kuriomis tenka veikti lyderiui, t. y. transakciniai lyderiai veikia organizacijos stabilumo laikotarpiu, tuo tarpu transformaciniai lyderiai veikia pokyčių laikotarpiu, jų įtaka pasireiškia per organizacinės struktūros, procesų, sistemų transformavimą. Transformacinė lyderystė nustato naujas organizacines vertybes, tuo tarpu transakcinė lyderystė užtikrina vadybinius procesus, susieja viziją su veikla, ją operacionalizuoja.

Kai aplinka yra nestabili, dažnai ryškėja tendencija ir poreikis keisti lyderystės stilių, skirtingi literatūros šaltiniai pateikia didelę įvairovę skirtingų lyderystės stilių. Daugelis lyderystės stilių turi tarpusavyje nemažai panašumų bei turinio atkartojimų, tačiau, anot mokslininkų, susifokusavimas tik į du pagrindinius lyderystės stilius: transakcinį ir transformacinį, pernelyg susiaurinamas ir supaprastinamas požiūris į lyderystę, kuris savo esme yra kompleksinis ir daugiabriaunis reiškinys.

Taigi, jei lyderystė yra daugiabriaunis reiškinys, o lyderystės modeliai ir stiliai yra priklausomi nuo daugelio faktorių, ypač konkrečios aplinkos ar situacijos, kurioje tenka veikti lyderiui. Kyla pagrįstas klausimas, kokios lyderystės poreikis yra viešojo saugumo institucijose, ar viešojo saugumo sistemai galioja tokios pat taisyklės, kaip ir kitoms organizacijoms, ar vis tik viešojo saugumo institucijų veiklos specifika bei statutinė struktūra suponuoja poreikį svarstyti mišrius lyderystės modelius? Kaip turėtų būti charakterizuojama lyderystė policijos darbe? Transakcinė ir transformacinė lyderystė policijos veikloje yra tarpusavyje glaudžiai susijusios, tai du to paties reiškinio poliai ir būtų gana netikslu poliarizuoti šiuos du lyderystės stilius viešojo saugumo kontekste, veikiau juos tikslinga traktuoti kaip vienas kito tąsą. Lyderio elgsena viešojo saugumo kontekste turėtų būti konstruojama tiek per transakcinės, tiek per transformacinės lyderystės modelius, netraktuojant jų kaip absoliučiai skirtingų/opozicinių modelių, nes tai leistų optimaliau atskleisti lyderio policijoje elgsenos poreikius praktikoje, ypač tai tampa aktualu gyvenant nuolatinio pokyčio būsenoje bei poreikio tuos pokyčius įgyvendinti ir įtvirtinti, nepamirštant moralios lyderystės poreikio dimensijos, kur kiekvienas policijos pareigūnas kasdien tampa lyderiu, kuriam taikomi aukšti sektinos elgsenos standartai.

---

## LYDERYSTĖ – KOMPETENCIJŲ MODELIAI

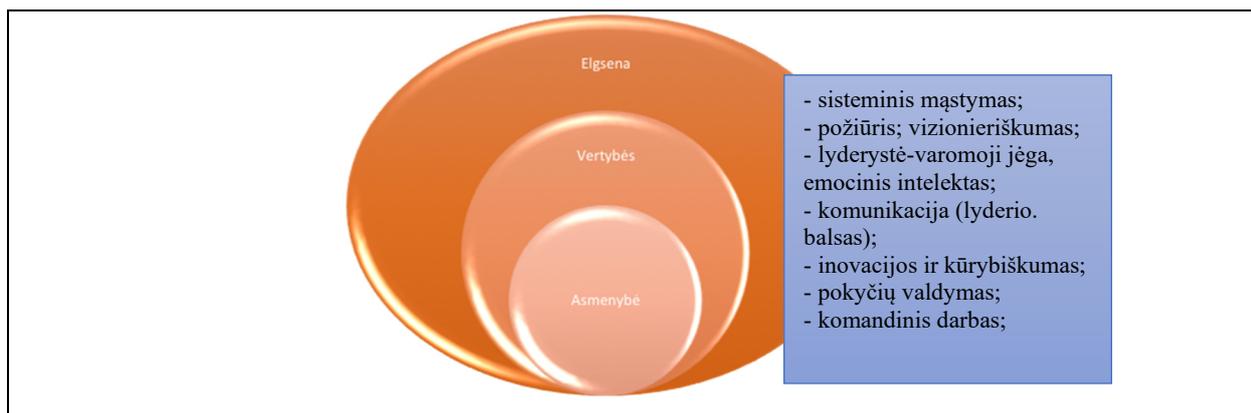
XX a. organizacijų veiklose dažniau analizuojamas ir naudojamas terminas „vadovas“, o lyderio sąvoka pradėta tyrinėti per lyderio ir vadovo funkcijų bei atsakomybių organizacijoje palyginimą (Atkočienė at al., 2019). Vadovavimas paprastai siejamas su formalia pozicija organizacijos hierarchinėje struktūroje, su pavestomis funkcijomis ir atsakomybėmis, sprendimų priėmimo galia formaliai siejama su įgaliojimais. Tuo tarpu lyderio veikla ir įtaka apibrėžiama per emocinio intelekto elementus: grupės pripažinimą, gebėjimus motyvuoti, skatinti grupės narius siekti bendrų organizacijai tikslų. Vis tik daugelyje statutinių organizacijų vis dar svarbus yra pozicijos organizacinėje struktūroje/ rango/ statuso autoritetas, t. y. lyderystė, visų pirma, grindžiama formalia pozicija (galia), kur nurodymas ar įsakymas yra dažniausiai naudojamos priemonės tikslų pasiekimui.

Tinkamas arba laukiamas lyderio elgesys yra gana kintančio turinio sąvoka, kadangi kiekvienas kontekstas suponuoja skirtingus lūkesčius laukiamai lyderio elgsenai, t. y. visuomenės struktūra, kultūra, organizacijos tipas ar konkrečios grupės ypatumai gali suponuoti skirtingos lyderystės poreikį. Ilgą laiką „idealaus“ lyderio profilio, jo efektyvumo ir rezultatyvumo klausimai buvo viena svarbiausių mokslinių tyrimų objektų (Minelgaitė at al., 2018). Mokslinėje literatūroje vis dar nėra aiškaus sutarimo dėl teorijos tiksliausiai nusakančios lyderiavimo efektyvumą konkrečioje situacijoje ir išskirtinų svarbiausių asmeninių lyderio bruožu identifikavimo (Adamonienė & Ruibytė, 2011).

XXI a. ryškėja mėginimai apibendrinti ir sudaryti lyderių kompetencijų modelius, įvairios lyderiams būdingos charakteristikomis, gebėjimai grupuojami, siekiant turėti apibrėžtą skaičių lyderiams būdingų charakteristikų ir kompetencijų aibę. Pagrindiniais akademinų tyrinėjimų klausimais šioje srityje tampa: (1) kokios kompetencijos sudaro lyderystę ir (2) ar gali būti lyderystės išmokstama? Bendrąja prasme, kompetencija yra sąvoka, apibrėžianti charakteristikas, užtikrinančias sėkmingą užduočių ar tikslų įgyvendinimą. Kompetencija gali būti apibrėžiama per tris pagrindinius elementus, t. y. žinios, įgūdžiai ir gebėjimai (Anderson & Sun, 2017).

R.E. Boyatzis išskiria 3 pagrindines lyderystės kompetencijų grupes: emocines, socialines ir kognityvines (Boyatzis, 2008). M. Pagon ir kt. taip pat išskiria 3 skirtingas grupes su joms būdingomis kompetencijomis: (a) kognityvinės (kritinis, analitinis, strateginis mąstymas, kūrybiškumas, problemų sprendimas); (b) funkcinės (komunikaciniai gebėjimai, mokymasis, asmeninis tobulėjimas, vadybiniai, planavimo gebėjimai); (c) asmeninės ir

socialinės (komandinis darbas, empatija, streso valdymas, motyvaciniai gebėjimai ir pan.) (Stoller, 2008). J.K. Stoller siūlo vertinti 6 pagrindines lyderystės savybių grupes: (1) techninės žinios ir įgūdžiai (operacinės, finansinės, informacinių sistemų, žmoniškųjų išteklių ir strateginio planavimo kompetencijos); (2) “industrijos“ žinios (viešojo saugumo kontekste: policijos veiklos procesai, reguliavimas, nusikalstamumo tendencijos ir pan.); (3) problemų sprendimo įgūdžiai; (4) emocinis intelektas; (5) komunikacija ir (6) išipareigojimas nuolatiniam mokymuisi (Stoller, 2008). S.L. Tubbs ir E. Schulz teigia, kad lyderystės kompetencijos gali būti reprezentuojamos per tris ratus, kurie apibrėžia tris skirtingus lyderystės aspektus (Tubbs & Schulz, 2006) (žr. 2 pav.). (1) Vidinis ratas apima asmenybę. (2) Sekantis ratas apima asmenines vertybes. Ir (3) išorinis ratas apima lyderio elgseną ir įgūdžius (meta-kompetencijas). Autorius teigia, kad atributai (1) vidiniame rate yra užfiksuojami jauname amžiuje ir yra praktiškai neįmanomi pakeisti lyderystės savybių vystymo kontekste; (2) asmens vertybės yra lankstesnės nei nusistovėjusios asmenybės charakteristikos, bet labiau stabilios ir patvarios nei elgsena. (3) elgsena, apibrėžta išoriniame rate, yra lengviausia paveikiama vystant lyderystės kompetencijas (Tubbs & Schulz, 2006). Šio straipsnio kontekste aktualiausias yra trečiasis išorinis ratas, todėl plačiau diskutuosime tik šį modelio aspektą. Išoriniame rate autoriai išskyrė kompetencijas, kurios asocijuojasi su efektyvia lyderyste. Penkiasdešimt kompetencijų yra suskirstytos į septynis klasterius arba meta-kompetencijas, kurių kiekvienas klasteris susideda iš subkompetencijų.



**2 pav.** Lyderystės kompetencijų taksonomija ir meta-kompetencijos  
*Šaltinis: parengta autorių pagal Tubbs & Schulz (2006).*

Apibendrinant galima teigti, kad skirtingi autoriai pateikia skirtingas išvalgas apie lyderiams būtinas kompetencijas ar jų rinkinius. Lyderystės savybių rinkinius turėtų sudaryti

dvi pagrindinės savybių grupės, t. y. bendrosios lyderystės kompetencijos bei specifinės srities kompetencijos, būtinos atliepti policijos sistemos poreikius ir spręsti išskylančius iššūkius.

Specifinės srities kompetencijos galėtų apimti: (a) ekspertškumas ir patirtis konkrečioje srityje; (b) žinios (procedūrinės, funkcinės, išsilavinimas konkrečioje srityje ir pan.); (c) bazinės kognityvinės kompetencijos (atmintis, dedukcinis mąstymas, analitika, priežasčių-pasekmių analizė ir t.t.). Tuo tarpu bendrųjų lyderystės kompetencijų viešojo saugumo kontekste apibrėžimas yra reikalaujantis gilesnės analizės. Tradicinė kilimo pareigose praktika viešojo saugumo sistemoje remiasi labiau akademinėmis žiniomis, praktinės veiklos patirtimi ir nusistovėjusia rangų sistema, tuo tarpu lyderystės kompetencijų/bruožai tampa paskesniu dalyku, kompleksinis požiūris į lyderystės kompetencijų ugdymą nėra užtikrinamas, nėra aiškių susitarimų, tai kokios kompetencijos yra laikyti svarbiais skirtingų lygių pareigybių policijos pareigūnams (tame tarpe ir skirtingų lygių vadovų), kokie lyderio kompetencijų rinkiniai yra reikalingi skirtingose vadovavimo pakopose, kaip kompleksiskai tos kompetencijos yra ugdomos ir vertinamos.

## **LIETUVOS VIEŠOJO SEKTORIAUS LYDERYSTĖS KOMPETENCIJŲ APIBRĖŽTIS**

2019 m. birželio 11 d. buvo patvirtintas Viešojo administravimo sektoriaus profesinis standartas. Jo unikalumas tiriamų profesinių veiklų kontekste tapo dideliu iššūkiu formuojant šio sektoriaus profesinio standarto metmenis. Kuriant viešojo administravimo profesinį standartą, buvo labai svarbu ne tik sukurti metodologinę platformą bet ateityje turėti aiškia praksiologinę naudą formuojant atskiroms profesijoms/pareigybėms keliamus reikalavimus ir būtinų kompetencijų, tame tarpe ir lyderystės, turinį. Tyrimo eigoje buvo susidurta su keliomis aktualijomis.

Pirma, kriterijų, skirtų viešojo administravimo sektoriaus profesinių veiklų klasifikavimui ir posektorių identifikavimui, nustatymo dilema. Buvo nustatyta, jog viešojo administravimo sektoriui būdingas labai didelis profesinių veiklų skaičius – tyrimo metu buvo nustatyta net 16098 tikslinės įstaigos (papildomai dar mažiau negu 3 įstaigos neviešinant jų paskirties), o tai savo ruožtu apsunkino atskirų veiklų pagal tam tikrą panašų pobūdį grupavimą, lyderystės vietos paieškas pačiame sektoriuje.

Antra, viešojo administravimo sektoriaus ir profesinių veiklų ribų nustatymo ir jų sutapimo dilema. Keltas viešojo administravimo sektoriaus ir tam tikros profesinės veiklos

santykio ir nevienodų sektoriaus ir šių veiklų ribų nustatymo klausimas („ribų nesutapimas“). Nustatyta, jog dalis profesinių veiklų būdinga ne tik viešojo administravimo sektoriui, bet ir privačiajam sektoriui ar kitą specialių teisinių reguliavimą turinčiam sektoriui.

Pažymėtina, jog trečioji aktualija – atskirų profesinių veiklų ir teisinio reguliavimo specifiškumas, taip pat lyderystės (vadovavimo) kompetencijų vieta. Tyrimo metu buvo pakankamai sudėtinga vienodai (pagal vienodą profesinių veiklų skaičių ir apimtį) sugrupuoti visas nagrinėjamas profesines veiklas. Vėlgi, kaip įprasminama lyderystė atskirose profesinėse veiklose?

Tad kaip labai aktualų klausimą būtų galima identifikuoti lyderystės kompetenciją šiame standarte. Pažymėtina, kad šiame standarte lyderystė tapatinama su vadovavimu. Kaip matyti, iš identifikuotų Viešojo administravimo sektoriaus profesinio standarte (2019) identifikuotų kvalifikacijų ir lygių, lyderystė (vadovavimas) nėra išskirtas kaip savarankiška kvalifikacija. Vadovavimas įvardinta kaip viešojo administravimo specialisto kvalifikacijos specializacija (LTKS VII). Šios specializacijos turinyje išskirtinos 5 pagrindinės kompetencijos, būdingos (reikalingos) lyderiui (vadovui) (žr. 1 lentelę).

**1 lentelė.** Viešojo administravimo sektoriaus lyderystės (vadovavimo) kompetencijos

1 kompetencija	2 kompetencija	3 kompetencija	4 kompetencija	5 kompetencija
Strateginių sprendimų priėmimas	Įstaigos ar padalinio veiklos procesų organizavimas	Pavaldžių subjektų darbo koordinavimas ir kontroliavimas	Darbo procesų kokybės ir efektyvumo koordinavimas	Pagal kompetencijų administracinių sprendimų priėmimas

**Šaltinis:** Viešojo administravimo sektoriaus profesinis standartas, 2019

Apibendrinant galima teigti, jog patvirtintame viešojo administravimo sektoriuje nėra išskiriama profesinio standarto vadovavimo kvalifikacija – tai identifikuota kaip viešojo administravimo specialisto kvalifikacijos specializacija, kuriai būdingos penkios pagrindinės kompetencijos, orientuotos į sprendimų priėmimą, tame tarpe ir strateginių, veiklos procesų organizavimą ir kontroliavimą bei darbo kokybės ir efektyvumo gebėjimų apibrėžtį. Šių kompetencijų apibrėžtis svarbi formuojant esminius šiuolaikinio policijos vadovavimo (lyderystės) konceptus ir išryškinant bei aktualizuojant viešojo saugumo lyderystės stiliaus transformaciją dabartinio laikmečio kontekste. Pabrėžtina, jog unikalus policijos lyderystės modelis lems ir savitą policijos vadovavimo kompetencijų raišką. Todėl kitoje šio straipsnio dalyje panagrinėsime policijos lyderystės kompetencijų ypatumus.

## LYDERYSTĖS KOMPETENCIJOS, JŲ FORMAVIMAS IR VERTINIMAS LIETUVOS POLICIJOJE

Pastaruoju metu ne tik teisėsaugos institucijos, panaudodamos naujausias technologijas ir efektyvius tyrimo metodus, aktyvina veiksmus nusikalstamų veikų atskleidimo ir tyrimo srityje. Tačiau vien tik atskleidimo ir tyrimo veiksmų sinchronizavimas neužtikrintų, juolab ir nepadidintų visuomenės lūkesčių sukuriant tvarų visuomenės saugumą (Europos Sąjungos Tarybos 2015 m. birželio 10 d. išvados). Siekiant didesnio viešojo sektoriaus valdymo efektyvumo, būtinos šiuolaikinės permanentinės vadybinės priemonės, pagrįstos aiškia ir pamatuota lyderystės raiška.

Autorės, siekdamos kompleksiskai ir sistemiškai vertinti lyderystės kompetencijų raišką, šių kompetencijų ugdymo kryptis ir turinį bei įgytų kompetencijų vertinimą, sukonstravo ir rėmėsi koncepciniu lyderystės kompetencijų formavimo modeliu (2 pav.).



**2 pav.** Koncepcinis lyderystės kompetencijų formavimo modelis viešojo saugumo institucijose

**Šaltinis:** parengta autorių.

Lietuvos policijos generalinio komisaro 2012 m. balandžio 6 d. įsakymu Nr. 5-V-284 patvirtintas Policijos pareigūnų ir kitų policijos sistemos darbuotojų kompetencijų aprašas, kuris reglamentuoja kriminalinės, viešosios policijos, administravimo funkcijas atliekančių ir vadovaujančių pareigų einančių pareigūnų, kitų policijos sistemos darbuotojų (darbuotojų) veiklos kompetencijas, žinių ir gebėjimų turinį bei laukiamus rezultatus. Aprašu siekiama nustatyti darbuotojų rengimo, veiklos ir kvalifikacijos tobulinimo kriterijus, būtinus profesinėje veikloje. Apraše nurodoma, kad profesinės kompetencijos suprantamos kaip žinios, įgūdžiai,

gebėjimai, požiūriai, kitos asmeninės savybės, skirtos darbuotojų sėkmingai bendrajai profesinei veiklai. Tuo tarpu specialiosios kompetencijos suprantamos kaip žinios, įgūdžiai, gebėjimai, požiūriai, kitos asmeninės savybės, skirtos kriminalinės ir viešosios policijos, administravimo funkcijas atliekančių bei vadovaujančias pareigas einančių pareigūnų ir kitų policijos sistemos darbuotojų sėkmingai profesinei veiklai konkrečioje veiklos srityje. Papildomos specialiosios kompetencijos suprantamos kaip žinios, įgūdžiai, gebėjimai, požiūriai, kitos asmeninės savybės, skirtos policijos pareigūnų ir kitų policijos sistemos darbuotojų, einančių vadovaujamas pareigas, sėkmingai profesinei veiklai. Tvarkos apraše profesinės ir specialiosios kompetencijos sugrupuotos pagal darbuotojų veiklos sritis (kriminalinė policija, viešoji policija ir administravimas), taip pat svarbu pastebėti, kad kiekviena kompetencija yra apibrėžta per žinias ir gebėjimus (Lietuvos policijos generalinio komisaro 2012 m. balandžio 6 d. įsakymas Nr. 5-V-284).

Policijos pareigūnų, einančių vadovaujančias pareigas, papildomos specialios kompetencijos yra: (1) gebėjimas priimti svarbius, optimalius ir visai įstaigai (padaliniui) tinkamus sprendimus; (2) gebėjimas planuoti, koordinuoti ir kontroliuoti įstaigos (padalinio) veiklą; (3) derybų vedimo įgūdžiai; (3) gebėjimas valdyti ir taikyti permainas kasdieninėje įstaigos veikloje; (4) gebėjimas organizuoti komandinį darbą; (5) gebėjimas palaikyti nediskriminavimo ir lygių galimybių politikos principus; (6) gebėjimas valdyti ir planuoti įstaigos (padalinio) žmogiškuosius išteklius; (7) gebėjimas valdyti ir planuoti įstaigos (padalinio) finansinius išteklius; (8) konfliktų ir rizikos valdymo pagrindų išmanymas; (9) gebėjimas vadovauti diskusijoms ir pasitarimams; (10) gebėjimas valdyti stresą ir spaudimą; (11) gebėjimas analitiškai ir kūrybiškai mąstyti; (12) gebėjimas suteikti grįžtamąjį ryšį ir atlikti vertinamąjį pokalbį; (13) gebėjimas organizuoti ir įgyvendinti korupcijos prevencijos priemonės (Lietuvos policijos generalinio komisaro 2012 m. balandžio 6 d. įsakymas Nr. 5-V-284).

Taigi, Policijos sistemoje yra apibrėžti tam tikri kompetencijų reikalavimai vadovaujančias pareigas einantiems pareigūnams. Pastebėtina, kad dalis jų yra gana konkrečios pavienės funkcijos (pvz., atlikti vertinamąjį pokalbį, organizuoti ir įgyvendinti korupcijos prevencijos priemonės), tačiau dalis įvardintų kompetencijų patenka ir į lyderystės kompetencijų apibrėžtį, kaip pvz., analitinis ir kūrybinis mąstymas, planavimas, organizaciniai gebėjimai, pokyčių (permainų) valdymas, komunikacija (derybiniai įgūdžiai, diskusijų ir pasitarimų vedimas, grįžtamasis ryšys). Lyginant su S.L. Tubbs (2 pav.) pateikiamais lyderio

bruožais, policijos vadovaujamosios grandies pareigūnams keliami reikalavimai tik iš dalies apima vizionieriškumo elementą (daugiau per planavimo prizmę), taip pat stokojama emocinio intelekto ir inovatyvumo bruožų. Atkreiptinas dėmesys, kad lyderystės bruožai aptariami tik kaip vadovujančias pareigas einančių pareigūnų kompetencijos bei nėra apibrėžtos jokia apimti nevadovujančias pareigas einantiems pareigūnams. Darytina prielaida, kad lyderystės Lietuvos policijoje kompetencijos nėra būtinos ne vadovujamas pareigas einantiems darbuotojams ir lyderystė formaliai siejama tik su vadovujamomis pareigomis, tai yra apibrėžiama per statuso/pareigybės galią, o ne asmens įtaką. Taigi, tai rodo, jog lyderystė policijoje ne tik turėtų būti įtraukta į minėtą kompetencijų aprašą, bet ir teisingai ir išsamiai eksplikuota jame.

Identifikuotų kompetencijų transformavimas ir grupavimas Lietuvos policijos lyderystėje – vienas iš kertinių žingsnių, kadangi iki šiol nėra sukurta vieningo koncepto, pagrindžiančio konkrečių lyderystės kompetencijų poreikį. Todėl pradinis policijos lyderystės kompetencijų kūrimas galėtų būti realizuojamas jau turimų identifikuotų viešojo sektoriaus vadovavimo kompetencijų ir mokslinės literatūros analizės, taip pat suformuotų lyderystės kompetencijų sintezės pagrindu transformuojant kompetencijų turinį ir pritaikant jas policijos veikloje atsižvelgiant į veiklos ypatumus (žr. 2 lentelę).

**2 lentelė.** Lietuvos policijos vadovavimo (lyderystės) kompetencijų raiška (parengta autorių, atsižvelgiant į patvirtintą Viešojo administravimo sektoriaus profesinis standartą).

Lyderystės kompetencijos (pgl. Tubbs)	Vizionieriškumas	Pokyčių valdymas	Sisteminis mąstymas		Inovatyvumas ir kūrybiškumas	Komunikacija	Emocinis intelektas
			Pavaldžių subjektų darbo koordinavimas ir kontroliavimas	Pagal kompetencijų administracinių sprendimų priėmimas			
<b>Kompetencijos viešojo sektoriaus vadovavimo standartas</b>	Strateginių sprendimų priėmimas	Įstaigos ar padalinio veiklos procesų organizavimas	Pavaldžių subjektų darbo koordinavimas ir kontroliavimas	Pagal kompetencijų administracinių sprendimų priėmimas	Darbo procesų kokybės ir efektyvumo koordinavimas	-	-
<b>Kompetencijų raiška ir ypatumai policijos veikloje</b>	Sistemos, įstaigos vizijos kūrimas, strateginių tikslų įgyvendinimo organizavimas.	Pokyčių policijoje numatymas ir prognostinis vertinimas atsižvelgiant į socialinius, politinius kultūrinius veiksnius  Darbo organizavimas ir veikimas kritinėse (ekstremaliose) situacijose.	Pajėgų pergrupavimas, atsakomybės delegavimas pagal poreikį ir pajėgų valdymas atsižvelgiant į kintančią situaciją	Standartizuotų procedūrų atlikimas ir veikimas, orientuotas į efektyvumo matavimo instrumentus	Netipinių situacijų vertinimas ir operatyvus sprendimų priėmimas	Strateginė komunikacija; Derybiniai įgūdžiai, kasdienė ir „proginė komunikacija“	Gebėjimas organizuoti komandinį darbą; palaikyti nediskriminavimo ir lygių galimybių politikos principus; konfliktų ir rizikos valdymas

Šaltinis: sudaryta autorių

---

Lietuvos policijos pareigūnu galima tapti keliais alternatyviais būdais, t. y.

- baigus Lietuvos policijos mokyklos (LPM) policininko modulinę profesinio mokymo programą (Policininko modulinė profesinio mokymo programa skirta kvalifikuotam pirminės grandies policijos pareigūnui (policininkui);
- baigus Mykolo Romerio universiteto Viešojo saugumo akademijos vieną iš bakalauro studijų programų (Teisė ir ikiteisminis procesas, Teisės ir policijos veikla, Teisė ir kriminalistika, Policijos veikla);
- turint aukštąjį teisinį neuniversitetinį išsilavinimą ir baigus LPM organizuojamus Vidurinės grandies pareigūnų įvadinio mokymo kursų (vidurinės grandies veiklos ir reagavimo funkcijas atliekantiems pareigūnams parengti) programą;
- turint aukštąjį (universitetinį ir neuniversitetinį išsilavinimą) ir baigus LPM organizuojamą Vidurinės grandies pareigūnų įvadinio mokymo kursų (vidurinės grandies veiklos ir reagavimo funkcijas atliekantiems pareigūnams parengti) programą;
- tarnybinio kaitumo būdu perėjus dirbti iš kitos statutinės organizacijos.

Autorės, siekdamos įvertinti, ar formaliai prieš tampant policijos pareigūnu, policijos sistemoje yra užtikrinamas lyderystės įgūdžių ugdymas, išanalizavo visų alternatyvų mokymų programas bei jų turinį. Pastebėtina, kad atskiros lyderystės kompetencijų viešojo saugumo srityje mokymo programos ar atskiri mokymo dalykai nebuvo parengti, ir pareigūnai iš esmės tikslingai ir kompleksiskai nėra supažindinami su lyderystės samprata, tad jų lyderystės įgūdžiai sistemiškai ir proporcingai rengiamoms pareigoms nebuvo ugdomi. Pastebėtina, kad Mykolo Romerio universiteto rengiamose bakalauro studijų programose kiek fragmentiškai yra lavinamos tam tikros lyderystės kompetencijos, pvz., komunikacija, psichologijos studijų dalyko apimtyje ugdomos emocinio intelekto kompetencijos ir pan. Taigi, darytina išvada, kad daugelis į policijos sistemą ateinančių dirbti policijos pareigūnų nėra įgiję formalių lyderystės žinių, jų kompetencijos šioje srityje visiškai nebuvo ugdomos, tad neturint tokių sisteminių žinių apie lyderystę, nėra galimybės sąmoningai ir tinkamai suvokti lyderystės veikimo ir jos principų realizuoti praktiniame darbe.

Sėkmingos organizacijos bus tos, kurios sugebės atrasti, formuoti ir ugdyti lyderio savybes, t. y. ugdyti lyderius organizacijos viduje (Atkočienė at al., 2019). Lietuvos policija organizuoja įvairios apimties ir trukmės kvalifikacijos tobulinimo kursus policijos sistemos darbuotojams, kurių apimtyje ne maža dalis mokymų tenka ir lyderystės kompetencijų

ugdymui. Tačiau, nors Lietuvos policija investuoja dideles lėšas į darbuotojų kvalifikacijos ir kompetencijos apibrėžtį, kompetencijų (tame tarpe ir lyderystės) stiprinimą, vis tik kvalifikacijos tobulinimo sistema pasižymi fragmentiškumu ir žemu koordinacijos laipsniu (nėra vieningos žinybinės institucijos, kuri koordinuotų viešojo saugumo pareigūnų kompetencijų ugdymo veiklas, t. y. pareigūnai ugdomi skirtingose institucijose, mokymo programos nėra suderintos ir tęstinės, įgūdžių tobulinimo procesas tik fragmentiškai susijęs su pareigūnų veiklos ir kompetencijų vertinimu.

Lyderystės ir jos raiškos elementai Lietuvos policijoje taip pat analizuoti ir vertinant kasmetinio policijos pareigūno veiklos vertinimo sistemą. Vertinimo kriterijais yra laikomi kriterijai, kuriais remiantis yra vertinama kiekvieno darbuotojo darbinė veikla (Vidaus tarnybos sistemos pareigūnų tarnybinės veiklos vertinimo tvarkos aprašas). Teisės aktai reglamentuoja, kad pareigūnai vertinami kelių pakopų sistema, vertinami metiniai veiklos rezultatai, taip pat tinkamumas eiti pareigas bei kvalifikacija. Tinkamumo einamoms pareigoms, veiklos vertinimo kriterijai susideda iš: (1) gebėjimo panaudoti turimas žinias ir įgūdžius pareigybės aprašyme nustatytoms funkcijoms atlikti; (2) organizuotumo ir veiklos planavimo; (3) veiklos kokybės; (4) fizinio pasirengimo (kaip atskiras elementas). Tuo tarpu kvalifikacijos vertinimas apima šiuos vertinimo kriterijus: (1) gebėjimas tobulėti; (2) kūrybingumas; (3) bendravimo ir bendradarbiavimo įgūdžiai, atliekant pareigybes aprašyme numatytas funkcijas, (4) atsakingumas; (5) lojalumas tarnybai (5) gebėjimas administruoti įstaigos struktūrinio padalinio veiklą (padalinių vadovams), savikritiškumas (įstaigų vadovams); (5) lyderystė (įstaigų vadovams). Lyderystė kaip kompetencija vertinama aukščiausiu balu tais atvejais, kai įstaigos vadovas kuria įstaigos vertybes, viziją, misiją ir įkvepia darbuotojus siekti įstaigos strateginių tikslų formuodamas įstaigos tikslų įgyvendinimą, orientuotą į įstaigos kultūrą, pozityvią darbo aplinką. Inicijuoja pokyčius ir skatina bendradarbiavimą (Lietuvos Respublikos vidaus ministro 2019 m. sausio 15 d. įsakymas Nr. 1V-55). Lyderystė vėlgi tapatinama su organizacine struktūra ir būtina tik aukščiausio lygio vadovams (policijos sistemos mastu tai yra policijos įstaigų vadovai).

Apibendrinant lyderystės kompetencijų ir jų raiškos, ugdymo ir vertinimo sistemos Lietuvos policijoje analizę, teigiama, kad iš esmės stokojama aiškios lyderystės kompetencijų apibrėžties. Lyderystė iš esmės sietina tik su vadovaujančiųjų pareigūnų veikla, kompetencijų ugdymo ir vertinimo sistemos fragmentuotos ir neužtikrina nuoseklaus lyderystės įgūdžių formavimo ir vertinimo proceso. Todėl ateityje vienas iš esminių klausimų, susijusių su

lyderystės kompetencijų ugdymu – atlikti Lietuvos policijos lyderystės kompetencijų poreikio vertinimą, paremtą jau anksčiau identifikuotų kompetencijų pagrindu ir parengti mokymo programą, pasižyminčią šiuolaikinės lyderystės nuostatomis transformuojant jas į policijos veiklos aktualijas. Tolimesniems moksliniams tyrimams ir analizei autoriai siūlo vadovautis lyderystės kompetencijų formavimo ir ugdymo modeliu, kuris įgalintų sistemiškai ir kompleksiskai žvelgti į lyderystę viešojo saugumo kontekste. Pateikti siūlymai rodo tarpdisciplininių ateities mokslinių tyrimų svarbą atliekant Lietuvos policijos lyderystės poreikių vertinimą, taigi, ir akivaizdžią policijos ir vadybos mokslų įtaką praktikai.

## IŠVADOS IR SIŪLYMAI

Lyderio elgsena viešojo saugumo kontekste turėtų būti konstruojama tiek per transakcinės, tiek per transformacinės lyderystės modelius, netraktuojant jų kaip opozicinių, kas leistų optimaliau atskleisti lyderio policijoje elgsenos poreikius praktikoje, ypač tai tampa aktualu gyvenant nuolatinio pokyčio būsenoje bei poreikio tuos pokyčius įgyvendinti ir įtvirtinti, nepamirštant moralios lyderystės poreikio dimensijos, kur kiekvienas policijos pareigūnas kasdien tampa lyderiu, kuriam taikomi aukšti sektinos elgsenos standartai.

Viešojo administravimo sektoriaus profesinis standarte lyderystė tapatinama su vadovavimu, įvardinama kaip viešojo administravimo specialisto kvalifikacijos specializacija ir apima penkias pagrindines kompetencijas: strateginių sprendimų priėmimą; veiklos procesų organizavimą; koordinavimą ir kontrolę; kokybės ir efektyvumo koordinavimą; administracinių sprendimų priėmimą. Lyderystė Lietuvos policijoje formaliai siejama tik su vadovaujamomis pareigomis, tai yra apibrėžiama per statuso/pareigybės galią, o ne asmens įtaką ar poveikį.

Lyderystės ugdymas yra fragmentiškas. Atskiros lyderystės kompetencijų viešojo saugumo srityje mokymo programos nėra parengtos, ir pareigūnai iš esmės kompleksiskai nėra supažindinami su svarbiausiomis lyderystės nuostatomis. Tradicinė vertikaliosios karjeros praktika viešojo saugumo sistemoje remiasi labiau akademinėmis žiniomis, praktinės veiklos patirtimi ir nusistovėjusia rangų sistema, tuo tarpu lyderystės kompetencijos/bruožai tampa paskesniu dalyku, kompleksinis požiūris į lyderystės kompetencijų ugdymą nėra užtikrinamas, nėra aiškių susitarimų, kokie bruožai yra laikyti svarbiais skirtingų lygių pareigybių policijos pareigūnams (tame tarpe ir skirtingų lygių vadovų), kokie lyderio kompetencijų rinkiniai yra reikalingi skirtingose vadovavimo pakopose, kaip kompleksiskai tos kompetencijos yra ugdomos ir vertinamos.

Pareigūnų veiklos vertinimo sistemos apimtyje lyderystės kompetencijos vertinamo tik aukščiausio rango vadovams, t. y. policijos įstaigų vadovams. Siekiant sisteminio ir kompleksinio požiūrio į lyderystę bei kryptingo ir laikmečio reikalavimus atitinkančio lyderystės kompetencijų ugdymo, jas siejant ne tik su užimamomis pareigomis, būtina atlikti Lietuvos policijos lyderystės kompetencijų poreikio vertinimą.

## LITERATŪRA

1. Adamonienė R., Ruibytė L. Vadovų lyderystės raiška statutinėse organizacijose. Management theory and studies for rural business and infrastructure development. Research papers, ISSN 1822-6760. 2011, Vol. 5, No 29, 6 13. Prieiga per internetą: <[www.mts.asu.lt/mtsrbid/article/download/308/337](http://www.mts.asu.lt/mtsrbid/article/download/308/337)>.
2. Allio, R.J. Leader and Leadership-many theories, but what advice is reliable?, Strategy & Leadership, 2013, Vol. 41, No 1, 4 14.
3. Anderson, M.H., Sun, P.Y.T. Reviewing Leadership styles: overlaps and the need for a new „Full -Range“ Theory, International Journal of management Reviews, British Academy of management, 2017, Vol. 19, 76 96.
4. Atkočienė Z., Siudikienė D., Girmienė I. Inovatyvios lyderystės vaidmuo žinių valdymo ir inovacijų kūrimo procesuose šiuolaikinėje organizacijoje, Informacijos mokslai, VU leidykla, ISSN 1392-0561. 2019, Vol. 86, 68 97,
5. Boyatzis, R. Competencies in the 21 st. Centuri. Journal of Managements Development, 2008, T. 27. Nr.1.
6. Dulewicz, V., Higgs, M. Assessing leadership styles and organisational context Journal of Managerial Psychology. Emerald Group Publishing Limited 0268-3946 DOI 10.1108/02683940510579759. 2005, Vol. 2, 105 123.
7. Europos Sąjungos Tarybos 2015 m. birželio 10 d. išvados dėl atnaujintos 2015-2020 m. Europos Sąjungos vidaus saugumo strategijos.
8. Fisher, A., Weir, D., Phillips, J. Beyond transactional and transformational leadership into the double helix: a case-study of blended leadership in police work, Review of Enterprise and Management Studies. 2014, Vol. 1, No 2, 16 28.
9. Flynn, Edward A. and Victoria Herrington, Toward a Profession of Police Leadership. New Perspectives in Policing Bulletin. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 2015. NCJ 248573.
10. Hogett, J., Redford, P., Toher, D., White, P. Challenges for police leadership: Identity, Experience, Legitimacy and direct Entry, Journal of Police and Criminal Psychology 2019, Vol. 34, 145 155.
11. Huberts, L., Kaptein, M., Lathuizen, K. A. Study oft he impact of three leadership styles on integrity violations committed by police officers, Policing: An International Journal of Police Strategies & Management, 2007, Vol. 30, No 4, 87 604.
12. Hughes, M. Academy training to retirement: permeating leadership in police organizations, Journal of Current Issues in Crime, Law and Law Enforcement ISSN: 1935-3545. Nova Science Publishers, Inc., 2010, Vol. 2, No 4, 327 334.
13. Khan, A., Nawaz, A. A. Comparative analysis of leadership theories: a review, Gomal university Journal of Research, Special Issue IV, December, 2016, ISSN: 1019- 8180.
14. Kvalifikacijų ir profesinio mokymo plėtros centro direktoriaus 2019 m. birželio 11 d. įsakymas Nr. V1-107 Dėl Viešojo administravimo sektoriaus profesinis standarto patvirtinimo.

15. Lichtenstein, Benyamin B., Plowman, Donde Ashmos. The leadership of emergence: A complex systems leadership theory of emergence at successive organizational levels. Management Department Faculty Publications. 63, 2009.  
<https://digitalcommons.unl.edu/managementfacpub/63>.
16. Lietuvos Respublikos vidaus ministro 2019 m. sausio 15 d. įsakymas Nr. 1V-55 Dėl Lietuvos Respublikos vidaus tarnybos statuto įgyvendinimo, Vilnius.
17. Lietuvos policijos generalinio komisaro 2012 m. balandžio 6 d. įsakymas Nr. 5-V-284 Dėl Policijos pareigūnų ir kitų policijos sistemos darbuotojų kompetencijų aprašo patvirtinimo.
18. Lietuvos policijos generalinio komisaro 2017 m. spalio 24 d. įsakymas Nr. 5-V-901 Dėl Vidurinės grandies pareigūnų įvadinio mokymo kursų (vidurinės grandies veiklos ir reagavimo funkcijas atliekantiems pareigūnams parengti) programos patvirtinimo.
19. Lietuvos policijos generalinio komisaro 2020 m. rugpjūčio 17 d. įsakymas Nr.5-V-706 Dėl policininko modulinės profesinio mokymo programos patvirtinimo.
20. Minelgaitė I., Stangej, O., Guðmundsdóttir S., Guðmundsdóttir, A. E. Demystifying Leadership in Iceland: An Inquiry Into Cultural, Societal, and Entrepreneurial Uniqueness, 2018.
21. Parris, D. L., Peachey, J. W. A Systematic Literature Review of Servant Leadership Theory in Organizational Contexts, Journal of Business Ethics, DOI : 10.1007/s1055101213226. March 2013, Vol. 113, No 3, 377 393.
22. Pearson-Goff, M., Herrington, V. Police leadership: A systematic review of the literature, Policing, doi:10.1093/police/pat027. 1 13.
23. Uhl-Bien, M., Marion, R., McKelvey, B. Complexity Leadership Theory: Shifting leadership from the industrial age to the knowledge era, The Leadership Quarterly 18:4 (August 2007), Special Issue on Leadership and Complexity; doi 10.1016/j.leaqua.2007.04.002. 2007, 298 318;
24. Steinheider, B., Wuestewald, T. From the bottom-up: sharing leadership in a police agency Police Practice and Research,2008, Vol. 9, No 2, 145 163.
25. Schafer, J. A. Effective leaders and leadership in policing: traits, assessment, development, and expansion, Policing: An International Journal of Police Strategies & Management 2010, Vol. 33, No 4, 644 663.
26. Stoller, J. K., Developing Physician-leaders: key Competencies and available programs; The Journal of health administration education, 2008, 307 328.
27. Tubbs, S. L., Schulz, E. Exploring a Taxonomy of global leadership competencies and meta-competencies, The Journal of American Academy of Business Cambridge, 2006, Vol. 8, No 2, 29 34.

## CHALLENGES FOR LEADERSHIP IN PUBLIC SECURITY INSTITUTIONS: THE CASE OF THE LITHUANIAN POLICE

**Žaneta Navickienė<sup>1</sup>**  
Mykolas Romeris University

**Laura Andrijauskaitė<sup>2</sup>**  
Police Department

### Summary

Changing socio-economic factors, the strictness of society as a recipient of services, its innovative approaches to the importance of human qualities in professional activities strongly influences not only activities of institutions but also management models. The significantly changed context of policing is forcing changes in the police organization itself and raise the need for different, innovative leadership

---

in policing. Therefore, public security institutions, including the Lithuanian police, need to review existing management practices, recognize that leadership and management are not identical concepts, and state that leadership qualities are necessary not only for managers but also for every police officer.

The main aim of the article is to analyze the peculiarities of leadership traits in the context of public security institutions and the processes of leadership assessment and development in the Lithuanian police.

The dimension of leadership analyzed in the article - from the definition of leadership and the concept of competencies to the possibilities of its development in the Lithuanian police - shows the relevance and novelty of this topic, and at the same time this research raises serious concerns that law regulation processes of acquiring, developing and evaluating police leadership consistency must be thoroughly reviewed and properly elaborated.

The results of the study have showed that a behavior of leader in the context of public security should be constructed through both transactional and transformational leadership models without treating them as opposite models. The behavioral needs of the police leader in practice would be allowed for optimal disclosure for this reason. There is a lack of clarity in the definition of leadership in targeted legislation. In addition, the issues of leadership development in the Lithuanian police are not conceptualized, coordinated, or systematically addressed. Separate curricula or target training subjects for the strengthening of leadership competencies in the field of public security are not developed. The traditional practice of vertical career advancement in the public security system is based more on academic knowledge, practical experience and a well-established ranking system, while leadership competencies/traits become a matter of course, a comprehensive approach to leadership competency development is not ensured. Furthermore there is no clear agreement on what traits are considered important for police officers at different levels of the status of police officers (including managers at different levels), what sets of leadership competencies are needed at different levels of leadership, how comprehensively those competencies are developed and assessed.

In order to achieve a systematic and integrated approach to leadership in the public security sector including a consistent and purposeful development of leadership competencies that meets the requirements of the present, it is necessary to assess the need for leadership competencies of the Lithuanian police in the future.

**Keywords:** leadership, leadership training, police, public security.

---

## ARMS TRADING AND WEAPONS PROLIFERATION IN AFRICA: IMPLICATIONS FOR NIGERIA

**Ejiroghene Augustine Oghuvbu**

*Covenant University  
Ota, Ogun State, Nigeria  
Email: [augustine4best@yahoo.com](mailto:augustine4best@yahoo.com)*

DOI: 10.13165/PSPO-20-25-18

---

**Abstract.** This study investigates the proliferation of Small Arms and Light Weapons (SALWs) in Africa and its implications for Nigeria. SALWs are prominent classes of weapons due to their portability and capacity to ensure defence. As such they are in high demand and are also produced in large numbers. However, these weapons are also illicitly trafficked and transported across state borders. Africa is not excluded as 100 million SALWs are trafficked in the continent. The study adopts the failed state theory to explain the proliferation of weapons and their effects. The study employs the qualitative research method and utilises the case study research design. The study draws data from secondary sources which include already published books, book chapters, academic journals, newspapers, and internet sources. As its method of data analysis, the study adopts thematic analysis, segmenting data retrieved into themes following the objectives of the study. The findings of the study reveal that the proliferation of SALWs is an enabler for insurgency, militancy, and crime in Nigeria. The study recommends that strict monitoring and surveillance be instituted at the countries and illegal access roots to the country be blocked to discourage the transportation of illegal arms.

**Keywords:** Africa, implications, Nigeria, Proliferation, SALWs

### INTRODUCTION

Small Arms and Light Weapons (SALWs) remain the most desirable out of all categories of weapons known to man. This is as a result of the cost and handling as they are cheap, easily assessable, and easy to use as compared with heavy weapons (International Peace Institute, 2009). Additionally, SALWs present its users with the opportunity of variation of use. Put differently, Small Arms and Light Weapons provide users with a wide range of users including defence, etc. This is the reason behind the large number of SALWs in circulation in South Africa. Accordingly, South Africa has four million SALWs in circulation, a fraction of the number of weapons in circulation in Africa (Fleshman, 2011:6 ; Jacqmin, 2019). This however creates an opportunity for individuals with criminal intentions to employ such weapons to fulfil their intents (Moses & Ngomba, 2017). This in turn creates room for the transference of SALWs through unprotected and porous borders. The security risks posed by the wide availability of SALWs are evident in the number of people killed on a global scale per year. According to Malam (2014:6), SALWs kill between 500,000 and 700,000 people annually.

---

Apart from the number of recorded deaths, SALWs are known to fuel conflicts. Ayuba & Okafor (2014) opine that conflicts are invigorated due to the abundance of SALWs procured by criminal non-actors and national governments, with state-owned financial resources. This is the experience of the African continent as states have witnessed different dimensions of ethnic and religious conflicts. Some of the interstate conflicts that have occurred in the continent include the Nigeria-Cameroon dispute over Bakassi peninsular, Algeria-Morocco conflict, Eritrea-Ethiopian crisis between 1962 and 1979 and a host of others, not to mention issues such as the Rwandan Genocide, the Nigerian civil war and so on. These conflicts are fuelled by the constant circulation of SALWs in the continent.

### **STATEMENT OF PROBLEM**

According to (Pytlak, 2010:2), about 100 million SALWs are in constant circulation in Africa. The effects of this are devastating as they fuel wars, conflicts, and other forms of violence and crimes. While in circulation, these weapons find their way into Nigeria and in some cases are successfully retrieved by security forces and in other cases fall into the hands of those individuals or groups with criminal intent. Such an occurrence is not only detrimental but inimical to Nigeria's security and development. This research problem is reinforced by the absence of studies investigating the implications of the proliferation of SALWs in Nigeria. Several studies subsist on the proliferation of SALWs in Africa. Malam (2014) examined the subject matter about its implications for West African Regional Security. Caleb and Gerald (2014) from a different perspective, focused on the role SALWs play in African conflicts. Nganga (2008) investigated the effects of Small Arms Proliferation in Sub Saharan Africa. Despite the many studies that exist, only a few studies examine the effect of arms proliferation in Africa and its implications on Nigeria, thus the objective of this study. This paper therefore investigate the proliferation of Small Arms and Light Weapons in Africa and its effects on Nigeria

### **SIGNIFICANCE OF THE STUDY**

This study serves both theoretical and practical significance. Theoretically, it serves as a resource material for students, scholars, and researchers in the field of policy and strategic studies investigating the proliferation of SALWs in Nigeria and Africa as a whole. Practically

---

it examines the proliferation of SAWs in Africa and its implications on Nigeria. In line with this, it presents workable solutions to the challenges faced.

## **LITERATURE REVIEW. THE CONCEPT OF SMALL ARMS AND LIGHT WEAPONS**

Small Arms and Light Weapons (SALWs) are subject of discourse in academic circles, among governments and international organisations. These discussions not only border on SALWs but also on their implications for security. In clarifying its meaning, a plethora of definitions exist due to the numerous suggestions and submissions of scholars. SALWs refer to portable weapons either a barrelled weapon or an explosive device, capable of expelling a bullet of the projectile through an explosive force and/ or capable of causing significant damage by its explosion. (Beeck, Fegurson, Hesta, Groenewald, Hutton, Mobekk, Ossome, Rupiya, Russell & Skinner, 2012). The Bureau of Crisis Prevention and Recovery (2008) attempts a dichotomization of the concept and explains each term individually. Small Arms refer to weapons that are designed for individual use or use by a single person. This is due to their size and design and include all barrelled weapons. Light weapons on the other hand refer to weapons that can be used by two to three people.

Significant to note is that SALWs are not the only category of weapons available in the world today. However, in a plethora of the weapons and armaments available, they are the most preferred. Moses & Ngomba (2017) explain that in comparison to Big Arms and Heavy Weapons, SALWs are preferred due to their size and cheap nature. Big Arms and Heavy Weapons are expensive and weigh heavily on the purchasing actor (either state or individual). SALWs on the other hand are cheaper, simple, durable, easy to control, lighter, and equally lethal (Moses & Ngomba, 2017). Mogire (2017) corroborates this by adding that SALWs is the choice of military and police organisations as well as civilians because they are highly lethal, simple to use, durable, etc.

**Table 1: Classification of Small Arms and Light Weapons**

S/N	Small Arms	Light Weapons
1.	Recoilless Rifles	Portable anti-aircraft guns,
2.	Portable Launchers	Recoilless rifles
3.	Anti-Aircraft Missile Systems	Portable anti-tank guns
4.	Mortars and Calibres less than 100mm	Portable launchers of antitank missiles
5.	Sub-Machine Guns, Assault Rifles, Light Machine Guns	Handheld-under-barrel guns
6.	Heavy Machine Guns	Mounted grenade launchers

Source: *Moses & Ngomba (2017)*

Be this as it may, innumerable security challenges confront states due to the wide availability of these weapons. In congruence, Malam (2014) asserts that the significant implication of small arms accumulation and circulation is its capacity to increase the risk of armed conflict. Concerning this study, the wide availability and/or the proliferation of SALWs is examined in the next segment.

## **PROLIFERATION OF SMALL ARMS AND LIGHT WEAPONS AND CONFLICT IN AFRICA**

The proliferation of Small Arms and Light Weapons (SALWs) describes a situation of wide availability of weapons of this grade. Similarly, Malam (2014) explains the proliferation of SALWs as the accumulation and circulation of small arms and weapons. Vines (2005) from another perspective describes the proliferation of SALWs as the illicit transfer of such weapons. The world is awash with these weapons for reasons ranging from mass production to illicit sales and transfer. Specifically, the proliferation of these weapons around the world is because some state actors provide non-state militias and insurgent actors with SALWs, government stockpiles are not effectively managed and monitored, as such significant amounts of these weapons are stolen. Between 700,000 to 900,000 SALWs are manufactured each year. More than 100,000 people are killed by these weapons all over the world, every year (Ashkenazi, Kosling & Kogler, 2013). Globally, about 640 million Small Arms and Light Weapons are in circulation, 100 million of which are in Africa (Abiodun et al, 2018).

African countries have in one form or the other suffered from the proliferation of these weapons. This is evident through the frequent eruption of ethno-religious conflicts and crisis in the continent. Chad, Ethiopia, Sudan, Rwanda, Niger, Mali, Nigeria, and other countries in the continent encounter ethnic and religious conflicts. These conflicts have and still find expression in civil wars, insurgency, etc. (Jinadu, 2007). There is however a nexus between the

---

proliferation of SALWs and conflicts on the continent. Small Arms and Light Weapons in their abundance fuel the eruption of these conflicts and other forms of armed violence. Malam (2014) in agreement asserts that the wide circulation of weapons leads to armed violence among other issues. Among the nations with prominent issues of conflict and arms flows in Africa is Somalia.

Somalia a state in the horn of Africa has endured perpetual conflicts since the 1980s. The roots of the conflict lay in political, socio-cultural and economic factors, chief of which is the competition for scarce resources among the unemployed of the society. The numerous conflicts the state has faced has generated a significant number of refugees and internally displaced persons (IDP). More probing is the malnutrition issues of children in Somalia and the many lives lost through the conflict directly or indirectly (Moller, 2009). Atalay (2019) estimates that more than 500,000 people have been killed since the inception of the conflict in the 1980s. In addition to the mass loss of lives, so many have been displaced within the country. As of February 2018, more than 2.6 million people are displaced in the country (CCCM Cluster Somalia, 2018). The effects of the conflict are not felt alone by the war-torn state. Somalia's war generated a situation of insecurity in East Africa which has given rise to terrorist organisations notably al-Shabaab. The al-Shabaab is responsible for several activities including the December 2010 attacks in Uganda and Kampala which culminated in the deaths of more than 75 people (Gumbi, 2015).

While the war in protracted conflict continuously ravages the East African state, scholars have recognised linkages between the fragile nature of the state and the extensive flow of arms and weapons into the state. Opongo (2016) explains that fragility situations in Somalia are closely connected to the illicit flow of SALWs. The wide availability of arms in the country not only fuelled the conflict but also contributed to the insecurity of lives and properties. Despite the United Nations (UN) arms embargo on the conflict-ravaged state, SALWs still trickle in through numerous channels. Supplies of these weapons are made available by backers of warring factions in the state. Eritrea allegedly supplied arms to the Somali opposition groups. The impact of the continuous flow of arms into the state is that the arms market and sales are prominent in Somalia despite the arms embargo (Wezeman, 2010).

The Rwandan Genocide of 1994 is also another conflict in the history of Africa. The Genocide was sparked by the death of Rwanda's then-president Juvenal Habyarimana who was of the Hutu ethnic group when his plane was shut down by two surface-to-air missiles. While

---

there is no consensus as to the perpetrator of the act, the death of President Habyarimana contributed to the already existing ethnic tensions between the Hutu and Tutsi (Human Rights Watch, 2006). Within hours after the President's death, members of the Armed forces began killing those opposed to Hutu dominance, some of which were Tutsi (Human Rights Watch, 2006). This sparked reprisal killings and the situation subsequently degraded to a genocide. More than 800,000 people were slaughtered during the genocide (World Vision, 2008). Many were orphaned, widowed, aid dependants, disabled. Ultimately, the genocide ravaged society and destroyed lives and properties (Nikuze, 2014).

The genocide and the proliferation of SALWs are closely linked. On this premise, Euka, (2012), asserts that the flow of arms particularly SALWs is central to the Rwandan Genocide. Before the genocide, militia leaders and members had received AK-47 assault rifles, mortars, grenades, and other weapons. These weapons were procured with cash and kind payments. Suppliers of these weapons included state and non-state actors. Notable states were China, Greece, Egypt, Poland, and South Africa (Euka, 2012). The constant supply of SALWs to civilians as well as militia members increased the possibility of a conflict erupting.

## **PROLIFERATION OF SMALL ARMS AND LIGHT WEAPONS IN NIGERIA**

Since the re-introduction of democratic rule in 1999, Nigeria has witnessed an upsurge in the availability of Small Arms and Light Weapons (SALWs). This is deemed responsible for the prevalence of violence and crimes in the country. Affirming this, Moses & Ngomba (2017) point out that the level of insecurity in Nigeria is as a result of the availability of Small Arms of Weapons which are used to perpetuate robberies, murders/ assassinations and other crimes. In congruence, Abdullahi (2016) notes that the illicit trafficking of Small Arms and Weapons has proven problematic for security within the Nigerian state. While the immediate consequences of the proliferation of these weapons remain robberies, murders, and other forms of armed violence, certain indirect outcomes abound. These include but not limited to the discouragement of foreign direct investments, negative perception of security in the country, lack of or no confidence in security apparatus, and so on (Moses & Ngomba, 2017).

Despite itemizing its effects, scholars have also pointed out the reasons and rationale behind the proliferation of this grade of weapons in Nigeria. Abiodun et al (2018) attribute the abundance of SALWs in Nigeria to the porous nature of the country's borders, points out that the border security agencies witness difficulty in securing the country's borders due to

inadequate resources and poor border demarcation between Nigeria and other neighbouring countries. Compounding the existing problem of porous borders is the fact that there are numerous illegal entry points to Africa's giant. According to Babatola (2015), there are more than 1,400 illegal routes into Nigeria. These points serve as pathways and channels for conveying illegal goods including SAWLs. Another factor responsible for the proliferation of SALWs is the provision of weapons in the Cold War era. During the Cold War, western and eastern power blocs represented by the United States and USSR made provisions of arms into certain states to serve for use in conflict. However, the end of that era marked a problem of insecurity as these weapons were collected by illegal arms dealers, and local smugglers (Jacob, Ishaya & Ado, 2019). Corroborating this argument, Malam (2014) establishes that the supply of weapons during the cold war, inevitably laid the foundations for the current crisis of weapons proliferation witnessed in modern-day Nigeria.

#### **METHODS OF SMALL ARMS AND LIGHT WEAPONS ACQUISITION**

There are numerous means and methods of acquiring SALWs in Nigeria. However, the following are observed:

- a. **Local manufacture of SALWs:** Nigeria is endowed with industries and craftsmen capable of manufacturing Small Arms and Light Weapons ammunition. The country possesses a broad base of weapons manufacturers, who specialise in the manufacture of SAWLs. Weapons such as these are manufactured at either the local level or the industrial level (Moses & Ngomba, 2017). Be this as it may, the most reported level of SAWLs manufacturing in Nigeria are from local manufacturers who produce weapons including Dane guns, handguns, shotguns, assault rifles, muzzleloaders, etc. Notable states in Nigeria that witness the manufacture of these weapons include Adamawa, Abuja, Anambra, Benue and Plateau states (Nowak & Gsell, 2018). The manufacture of these weapons in itself is not problematic. However, the illicit trade and movement of these weapons repudiates the positive gains of local weapons manufacture in Nigeria as they lead to issues of organised arms violence and other forms of criminality (Chuma-Okoro, 2011).
- b. **Porous Borders and Illegal Access Routes:** The porous nature of Nigeria's borders generates adverse effects for security within the country. Put differently, the risk of insecurity in Nigeria is heightened by the permeability of the African giant's borders. In

---

support, Babatola (2015) asserts that the prominence of porous borders has aided crimes and security challenges across the country. Chief among the reasons for Nigeria's porous borders is the inability of border agencies to adequately monitor and halt illegal activities in and around the country's access points. A major fall out of this is the unabated movement of people and commodities in and out of the country (Olomu, Alao & Adewumi, 2019). These commodities include Small Arms and Light Weapons. Other points of entry for SALWs include illegal access and entry routes. These routes prove problematic and challenging for security in Nigeria. Babatola (2015) points out that over 1,400 access routes exist around Nigeria. These give access to smugglers of these weapons.

## **THEORETICAL FRAMEWORK**

This study adopts the failed state theory as its theoretical framework. The failed state theory describes a situation of failure by a state in its performance of certain duties. Put differently, the theory explains a state that has failed in the performance of its duties (Abiodun et al, 2018). Central to the failed state theory is the definition of a state as a service provider. In this sense, a state protects the lives and properties of its citizens, creates an allowance for political participation, health, education, and maintains security of the rule of law (Eriksen, 2011). On this premise, state failure refers to the inability of a state to provide essential services. In line with this, Englehart (2009) submits that state failure occurs when states are unable to fulfil their obligations which in this case reflects the failure to provide essential services. In essence, failed states refer to states that are no longer capable of performing their obligations.

The following are the assumptions of the failed state theory:

1. Failed states are embroiled in conflicts
2. Failed states are incapable of maintaining peace, order, security and so on within their borders
3. Failed states can be viewed in terms of the absence of governmental functions and operations
4. Failed states suffer a restriction of the free flow of information, the subjugation of women, the inability to accept responsibility for failure and domination by a restrictive religion

---

Within the scope of this work, the precepts of the failed state theory explain the proliferation of SALWs as a result of the inability of the Nigerian government to secure state borders and also seal of illicit access points. In agreement, Mark & Iwebi (2019) affirm that the lack of effective control over the borders creates room from smuggling of arms and by implication, the proliferation of SALWs in the country. Inevitably, these arms end up in the hands of individuals with ill intentions and are used to perpetrate varying degrees of crimes.

## RESEARCH METHODOLOGY

This study adopts the qualitative approach and utilises the case study research design. The study retrieves data from secondary sources including books, book chapters, journal articles, and newspapers. To analyse this data retrieved, the study adopts thematic analysis to segment the data retrieved into themes following the objectives of the study.

### Effects of Arms Trading and Weapons Proliferation in Nigeria

The effects of the proliferation of SALWs in Nigeria cannot be underestimated. Explains that the proliferation of this class of weapons in Nigeria is responsible for fuelling some ethnic conflicts, insurgencies, violent crimes such as rape and robbery. Ultimately, these situations contribute to the displacement of persons (Abiodun et al 2018).

The following are the threats posed by the proliferation of SALWs

Terrorism: Nigeria has not been excluded from the list of countries confronting terrorist groups and their activities in Nigeria. Africa's most populous black country has been confronting the scourge of terrorism since 2009 as perpetrated by the Boko Haram sect. due to the attacks of the Boko Haram sect, over 100,000 people have been killed since May of 2011, along with more than 244,000 Nigerians seeking refuge in Neighbouring countries (CFR, 2020). This caused outcry and protests from international organisations and notable figures in the world. Boko Haram takes advantage of the porous nature of Nigeria's borders to gain weapons and ammunitions to perpetuate its attacks. Abiodun et al (2018) establishes that the boundaries shared between Nigeria and Niger possess close to 1,500 illegal entry points. These access points serve as channels the Boko Haram sect receive their weapons and ammunition. Besides from the illicit transfer of these weapons, Boko Haram is also able to add stolen weapons to its arsenal. The Boko Haram sect steals weapons from army bases. In November of 2018, Boko Haram militants raided an army base in Metele, Borno State of Nigeria. The raid

---

culminated in the deaths of a large number of soldiers and stealing military weapons (Reinl, 2019).

**Militancy:** Militancy is another activity in Nigeria that constitutes a threat to the country. One such is the militancy in the Niger Delta. The Niger Delta militants continually launch attacks against oil installations of the country, kidnappings, killings, and other forms of violent crimes (Abiodun et al, 2018). Militants in the region capitalise on the availability of SALWs to perpetuate their activities.

**Crime:** The proliferation of weapons in Africa and Nigeria has facilitated various acts of crimes. This is as a result of the fact that criminals see the abundance of SALWs as an opportunity to perpetrate varying forms of armed crimes. Some of the crimes in this category include murders, robberies, armed assault (including rape), and other activities inimical to security (Chuma-Okoro, 2011). The implications of this are also worrisome, being that crime has adversely affected human security, economic and social development in Nigeria. Metu, Kalu, & Maduka (2019) points out that the increase in crime rates aided by the illicit transfer of weapons had a broad range of consequences for sustainable economic growth in Nigeria.

## CONCLUSION AND RECOMMENDATIONS

The study investigated the proliferation of Small Arms and Light Weapons in Africa and its effects on Nigeria. SALWs, produced on a large scale are in constant circulation in the African continent. The flow of arms from Africa into Nigeria has resulted in insurgency through the Boko Haram insurgency sect, militancy in the Niger Delta Region, Increased Crimes, and a host of other issues. These issues have adversely affected human security, social and economic development within the state. In line with this, the study recommends that

1. Stricter levels of monitoring and surveillance are instituted at the country's borders. The study also recommends that the illegal access points into Nigeria be blocked by security operatives, to discourage the illicit transfer of weapons into the country.
2. The study also calls for tighter regulations on the manufacture and production of SALWs in Nigeria.
3. Also, acts of insurgency, militancy, and crimes must be decisively dealt with to reduce their prevalence in Nigeria.

---

**REFERENCES**

1. Abdullahi, I. (2016). The state of proliferation of small arms and light weapons in Sub-Saharan Africa: regional, state and local causes. *International journal of business and law research* 4(3), 22-36.
2. Abiodun, T. F., Ayo-Adeyekun, I., Onafowora, O. & Nwannenaya, C. (2018). Small arms and light weapons proliferation and its threats to Nigeria's internal security, *international journal of social science and humanities research*, 6(3), 34-45.
3. Abiodun, T. F., Ayo-Adeyekun, I., Onafowora, O. & Nwannenaya, C. (2018). Small arms and light weapons proliferation and its threats to Nigeria's internal security, *international journal of social science and humanities research*, 6(3), 34-45.
4. Ashkenazi, M., Kosling, M. and Kogler, C. (2013). The Kalashnikov curse. Retrieved from <https://www.dandc.eu/en/article/small-arms-and-light-weapons-cause-more-deaths-heavy-weaponry-developing-countries> on the 28th of March 2020.
5. Atalay, G. (2019). The Somalia Civil War from 1988-1991. *IOSR Journal of Humanities and Social Science*, 24(4), 88-94.
6. Ayuba, C., & Okafor, G. (2015). The role of small arms and light weapons proliferation in African conflicts. *African Journal of Political Science and International Relations*, 9(3), 76-85.
7. Babatola, J. E. T. (2015). Challenges of Nigeria's borders and frontier security (1960-2014). Retrieved from [https://www.researchgate.net/publication/313860814\\_Challenges\\_of\\_Nigeria\\_Borders\\_and\\_Frontier\\_Security](https://www.researchgate.net/publication/313860814_Challenges_of_Nigeria_Borders_and_Frontier_Security) on the 17th of March 2020
8. Beeck, C., Fegursson, L. Groenewald, H., Hutton, L., Mobekk, E., Rupiya, M., Russell, W. & Skinner, S. (Eds.) (2012). *Small Arms and Light Weapons: a training manual*. Saferworld
9. CCCM Cluster Somalia (2018). Operational Portal Refugee Situations. Retrieved from [https://data2.unhcr.org/en/situations/cccm\\_somalia](https://data2.unhcr.org/en/situations/cccm_somalia) on the 28th of March 2020.
10. Chuma-Okoro, H. (2011). Proliferation of small arms and Light Weapons in Nigeria: Legal implications. *Law and Security in Nigeria*, 255-313.
11. Englehart, N. A. (2009). State capacity, state failure, and human rights. *Journal of Peace Research*, 46(2), 163-180.
12. Enuka, C. (2012). Small Arms Proliferation and Armed Conflicts in Africa: The Case of Rwandan Conflict. *Khazar Journal of Humanities and Social Sciences*.
13. Eriksen, S. S. (2011). 'State failure' in theory and practice: the idea of the state and the contradictions of state formation. *Review of International Studies*, 37(1), 229-247.
14. Fleshman, M. (2011). Small arms in Africa. Retrieved from <https://www.un.org/africarenewal/magazine/december-2011/small-arms-africa> on the 24th of April 2020.
15. Gumbi, K. S. (2015). The effect of Somali armed conflict on the East African Sub-Region. *African Journal of Political Science and International Relations*, 9(4), 115-119
16. Human Rights Watch (2006). *The Rwandan Genocide: how it was prepared*. A human rights watch briefing paper, no. 1
17. International Peace Institute (2009). IPI Report: The monitoring and evaluation of peace operations. Retrieved from <https://www.ipinst.org/2009/11/ipi-report-the-monitoring-and-evaluation-of-peace-operations> on the 23rd of May 2020.
18. Jacqmin, D. (2017). *The proliferation of small arms and light weapons: definitions and challenges*. Brussels: WCO Knowledge Academy
19. Jacob, D. G., Ishaya, J. & Ado, D. M. (2019). Small arms and light weapons proliferation and insecurity in Nigeria: Nexus and implications for national stability. *IOSR Journal of Humanities and Social Science*, 24(2), 34-39.

20. Jinadu, L. A. (2007). Explaining & managing ethnic conflict in Africa: towards a cultural theory of democracy. Department of Peace and Conflict Research, Uppsala University; Nordiska Afrikainstitutet.
21. Malam, B. (2014). Small arms and light weapons proliferation and its implications for West African Regional Security. *International Journal of Humanities and Social Science*, 8(4), 260-269
22. Metu, A., Kalu, C., & Maduka, O. (2018). Analysis of Crime Rate and Economic Growth in Nigeria: The Institutional Challenges and Way Forward. *Journal of Economic Studies*, 15(1), 39-50.
23. Mogire, E. (2004). The Humanitarian impact of small arms and light weapons and the threat to security. In 15th International Amaldi conference: Changing threats to global security: Peace or Turmoil (pp. 255-282).
24. Moses, J. M. & Ngomba, J. L. (2017). Small arms and light weapons proliferation in the early 21st century: The Nigerian case. *International Journal of Development and Sustainability*, 6(11), 1638-1652,
25. Nikuze, D. (2014). The Genocide against the Tutsi in Rwanda: Origins, causes, implementation, consequences, and the post-genocide era. *International Journal of Development and Sustainability*, 3(5), 1086-1098.
26. Nowak, M. & Gsell, A. (2018). Handmade and deadly: craft production of small arms in Nigeria. Geneva: German cooperation
27. Nowak, M. & Gsell, A. (2018). Handmade and deadly: craft production of small arms in Nigeria. Geneva: German cooperation
28. Olomu, B., Alao, D. O., & Adewumi, E. (2019) Border Security Issues and Challenges of the Nigeria Customs Service. *International Journal of Latest Research in Humanities and Social Science*, 2(3), 10-19.
29. Opongo, E. (2016). An assessment of illicit small arms and light weapons proliferation and fragility situations: Somalia. Nairobi: Regional Centre on Small Arms and Light Weapons.
30. Pytlak, A. (2010). Small Arms and Light Weapons: Africa-A Resource Guide for Religions for Peace.
31. The Bureau of Crisis Prevention and Recovery (2008). How to guide: Small Arms and Light Weapons Proliferation. Geneva: United Nations Development Programme.
32. Vines, A. (2005). Combating light weapons proliferation in West Africa. *International Affairs*, 81(2), 341-360.
33. Wezeman, P. D. (2010). Arms flows and the conflict in Somalia. SIPRI.
34. World Vision (2008). 1994 Rwandan genocide, aftermath: Facts, FAQs, and how to help. Retrieved from <https://www.worldvision.org/refugees-news-stories/1994-rwandan-genocide-facts> on the 31st of March 2020.

---

## ADMINISTRATIVE JUSTICE SYSTEM IN LITHUANIA: GENESIS, DEVELOPMENT AND TENDENCIES

**Birutė Pranevičienė<sup>1</sup>**

<sup>1</sup>*Mykolas Romeris University  
Maironio st. 27, LT-44221 Kaunas  
El. paštas: [praneviciene@mruni.eu](mailto:praneviciene@mruni.eu)*

**Eglė Bilevičiūtė<sup>2</sup>**

<sup>2</sup>*Mykolas Romeris University  
Ateities st. 20, LT- LT-08303 Vilnius  
El. paštas: [eglutebil@gmail.com](mailto:eglutebil@gmail.com)*

DOI: 10.13165/PSPO-20-25-19

---

**Annotation.** The article presents the development of the Lithuanian administrative justice system. Administrative justice is understood as a specialized system for resolving disputes arising in the field of public administration. The origins of Lithuanian administrative justice are linked to the works of legal scholars before the Second World War. During that period, professors M. Romeris and P. Leonas focused on the issue of administrative justice and control of the legality of administrative actions in their researches. Lithuanian scholars already justified the need for administrative justice before the war, modeled a possible system of administrative justice, but their theoretical insights and draft laws on the establishment of an administrative court were not implemented until the restoration of Lithuania's independence. Only in 1999 specialized administrative courts were established in Lithuania. Also during that period, special pre-trial administrative dispute resolution institutions were established: the Supreme Commission for Administrative Disputes and Tax Disputes Commission. The structural reform of Lithuanian administrative courts and the Supreme Commission for Administrative Disputes took place in 2018. The system of administrative justice is still being reformed and new bills have been submitted to Parliament. Therefore, the article discusses the changes that have already taken place and the changes in administrative justice in Lithuania planned for the near future.

**Keywords:** administrative justice, administrative courts, administrative quasi-courts, pre-trial dispute resolution.

### INTRODUCTION

After the restoration of independence, Lithuania underwent a number of significant changes not only in the political, economic and social life of the state, but also in the development of the system for controlling the legality of the actions of the administration. For more than three decades, Lithuania has been on the path of democratic processes. Forms of state governance are improving, society is becoming more and more open, new legal institutions and organizations are being formed, and existing institutions are being reformed. For a long time, there were no institutions in Lithuania that protected people from the arbitrariness of

administrative power. In 1999 specialized administrative courts and administrative dispute commissions were established. In this way, a new mechanism was created, which allowed to increase the security of individual rights by means of the control of the legality of the actions of the administration, enabling the protection of the rights of persons violated by improper actions of the administration.

Although the Lithuanian system of administrative justice is relatively young, its ideological beginnings can be found in the works of scholars even before the Second World War. During that period, Mykolas Romeris and Petras Leonas mainly wrote on the topic of administrative justice and control of the legality of administrative actions. Later, after the restoration of Lithuania's independence, the works of the mentioned scientists were studied by such scholars as Juozas Žilys<sup>1</sup>, Arvydas Andruškevičius<sup>2</sup>, Mindaugas Maksimaitis<sup>3,4</sup>, Kęstutis Lapinskas<sup>5</sup> etc.

Later, after the establishment of administrative courts, on the subject of administrative justice wrote J. Paužaitė-Kulvinskienė<sup>6</sup>, S. Šedbaras<sup>7</sup>, D. Raižys<sup>8</sup>, D. Urbonas<sup>9</sup>, aspects of pre-trial administrative dispute resolution were explored by these scholars: L. Paškevičienė<sup>10</sup>, *Daiva Bereikienė*, *Tomas Gagys*, *Jūratė Ramanauskaitė*<sup>11</sup>, *B. Pranevičienė*<sup>12</sup> and others.

The structural reform of Lithuanian administrative courts and the Supreme Commission for Administrative Disputes took place in 2018. The system of administrative justice is still being reformed and new bills have been submitted to Parliament. Therefore, it is important to

---

1 Žilys J., Administracinių teisės aktų teisėtumo problema prof. Mykolo Romerio mokslo darbuose. *Jurisprudencija*, 2005, t. 64(56); 19–28

2 Andruškevičius A., Profesorius Mykolo Romerio lege ferenda nuostatos administracinio teismo klausimu ir jų atspindys dabartinėje Lietuvos teisėje, *Jurisprudencija*, 2010, 3(121), p. 25–37

3 Maksimaitis M., Teisinės valstybės modelis // Mykolo Romerio mokslas apie valstybę. – Vilnius: Mokslo aidai, 1997.

4 Maksimaitis M., Petras Leonas: advokatas ir profesorius, *Jurisprudencija*, 2016, 23(1), p. 7–24

5 Lapinskas K., M. Romeris ir administracinė justicija Lietuvoje. Mykolas Romeris ir šiandiena: teminis straipsnių rinkinys / Sud. Mindaugas Maksimaitis. Vilnius: Lietuvos teisės universitetas, 2000, p. 27–37

6 Paužaitė-Kulvinskienė, J. Administracinė justicija: teorija ir praktika. Vilnius: Justitia, 2005

7 Šedbaras S. Administracinio proceso teisinio reglamentavimo problemos Lietuvos Respublikoje. Vilnius: Justitia, 2006

8 Raižys D. Procesas pirmosios instancijos administraciniame teisme. Daktaro disertacija, Mykolo Romerio Universitetas, 2008

9 Raižys D., Urbonas D., Legal issues concerning judicial control of the legality of normative administrative acts, *Jurisprudencija*, 2009, 2(116), p. 167–186

10 Paškevičienė L., Išankstinio administracinių ginčų nagrinėjimo institutas Lietuvoje: teisinio reguliavimo aiškinimo problematika, *Teisė / Law* . 5/20/2019, Vol. 111, p. 67-91

11 Bereikienė D., Gagys T., Ramanauskaitė J., Greito proceso administracinių ginčų komisijoje koreliacija su asmens teise į teisingą procesą, *Visuomenės saugumas ir viešoji tvarka*, 2019 (23), p. 17- 32.

12 Pranevičienė B., Kvaziteismai administracijos kontrolės sistemoje, Vilnius: Lietuvos teisės universitetas, 2003

---

analyze the changes in Lithuanian administrative justice that have already taken place and the changes planned for the near future.

The purpose of this article is to present the origins of administrative justice in Lithuania, its development and possible development perspectives.

In accordance with its purpose, the methods of historical, comparative and systematic analysis have been used in the preparation of this article. In order to present the genesis of administrative justice in Lithuania, an analysis of scholarly works and historical sources was performed. Legal acts and their amendments and draft new legal acts were analyzed in order to present the development and changes of the Lithuanian administrative justice system.

### **THEORETICAL ASSUMPTIONS AND LEGAL BACKGROUND FOR THE ESTABLISHMENT OF ADMINISTRATIVE COURTS IN 1918 – 1940**

Lithuania proclaimed the Declaration of Independence on February 16, 1918, and it proclaimed Lithuania as an independent Republic, organized according to democratic principles. A new system of public organisation was being developed. In 1922, the Constitution of the Republic of Lithuania was adopted, which essentially legalized the function of the administrative court:

“The court decides the legality of administrative orders”<sup>13</sup>

Article 18 of the chapter "Lithuanian Citizens and Their Rights" of this Constitution stated that a citizen who has been abused by an official in office has the right to appeal to a court and demand compensation for damages in accordance with the procedure prescribed by law: “*A citizen who has been abused by an official in office has the right to appeal to a court in accordance with the procedure established by law*”<sup>14</sup>. However, no such laws have been passed.

During the period of validity of 1922 Constitution, there were attempts by individual citizens and lawyers representing them to apply to various judicial institutions with complaints about acts of public administration that violated their interests. However, no court has declared itself competent to deal with such type of complaints.

Later, the 1928 Constitution of the Republic of Lithuania omitted the provisions on the administrative court. No provisions for an administrative court were included in 1938 Constitution of the Republic of Lithuania either<sup>15</sup>.

---

13 1922 Constitution of the Republic of Lithuania, Lietuvos valstybės konstitucijos. Vilnius, 1989, Art. 68

14 1922 Constitution of the Republic of Lithuania, Lietuvos valstybės konstitucijos. Vilnius, 1989, Art. 18

15 Lietuvos valstybės konstitucijos. Vilnius, 1989.

---

Theoretical discussions on the topic of administrative justice, control of the legality of administrative actions, establishment of a specialized administrative court, etc. were quite intense during that period. One of the most famous lawyers and scientists of that time, professor Mykolas Romeris was an active promoter of the establishment of an administrative court. Professor M. Romeris in 1928 published a conceptual study “Administrative Court”, and later in the magazine of literature, science, society and academic life “Židinys” he commented on the draft Law on Administrative Court prepared by the State Council and the version of this draft prepared by the Seimas’ Commission in 1940.<sup>16</sup>

According to Mykolas Romeris, a particularly important role in a democratic state is the function of the judiciary and the control of the activities of administrative institutions and officials. Mykolas Romeris stated: "the administrative court is one of the most serious institutions of the Rule of law, on which the Rule of law is based, because without an administrative court the state is only police state, not State under the Rule of law"<sup>17</sup>. Principal prof. M. Romeris’ provisions on the administrative court were as follows: first of all, the administrative court must be independent – it means, the court must be separated from the executive, second, the jurisdiction of the administrative court must be general and not attributive, it means the administrative court should settle disputes concerning all acts of public administration, except those which are specified by law as exceptions.<sup>18</sup>

According to the suggestion of M. Romeris, an attempt was made to solve the problem of the administrative court in the draft Law on the Organization of Courts prepared by the State Council. However, on 9 December 1931 the Cabinet of Ministers decided to delete the provisions related to the administrative court from the draft Law on the Organization of Courts. Later, on the basis of the resolution of the Cabinet of Ministers, a special commission of the Administrative Court was formed, which drafted the Law on the Administrative Court. The draft provided that "an administrative court may be appealed against by a person whose direct personal matter has been seized by the administrative act; the contested act is not required to infringe any of the complainant's subjective rights"<sup>19</sup>

---

16 Lapinskas, K. M. Riomeris ir administracinė justicija Lietuvoje. Mykolas Riomeris ir šiandiena: teminis straipsnių rinkinys / Sud. Mindaugas Maksimaitis. Vilnius: Lietuvos teisės universitetas, 2000, p. 27–37.

17 Riomeris, M. Mokslas apie valstybę. Vilnius, 1997. P.195

18 Römeris, M. Administracinis teismas. Kaunas: Valstybės spaustuvė, 1928.

19 M. Riomeris, Administracinio teismo įstatymo projektas. Židinys. 1940. Nr. 5-6, p. 564

---

In 1936 the issue of the administrative court was raised again in the Parliament of the Republic of Lithuania. The initiative to raise the issue of the Administrative Court with the Seimas belongs to the member of the Parliament, Prime Minister Antanas Merkys. A commission of the Administrative Court, chaired by A. Merkys, was formed in the Seimas with the task - to prepare the draft law. Unfortunately, the creative work of the administrative court was interrupted by the beginning of the Soviet occupation.

## **CONSTITUTIONAL FOUNDATIONS OF SPECIALIZED ADMINISTRATIVE JUSTICE AFTER THE RESTORATION OF INDEPENDENCE OF LITHUANIA**

On 25 October 1992, the Constitution of the Republic of Lithuania (which came into force on 2 November 1992) was adopted by referendum.

For the first time in the history of the state the Constitution provided for the institution of administrative courts.

“The courts of the Republic of Lithuania shall be the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts, and local courts.

For the consideration of administrative, labour, family, and cases of other categories, specialised courts may be established according to the law.

No courts with extraordinary powers may be established in the Republic of Lithuania in time of peace.

The formation and competence of courts shall be established by the Law on Courts of the Republic of Lithuania.”<sup>20</sup>

Taking into account the constitutional foundations of administrative justice, in 1999 for the first time specialized administrative courts and pre-trial institutions examining administrative disputes were established in Lithuania: the Supreme Commission for Administrative Disputes and Tax Disputes Commission.

### **I PERIOD: 1999 – 2000**

Parliament of the Republic of Lithuania 1998 June 25 approved the Outline of the Reform of the Legal System on 25 June 1998<sup>21</sup>. They indicated that using the system of general courts, two-instance administrative courts would be established in Lithuania, to which cases on the

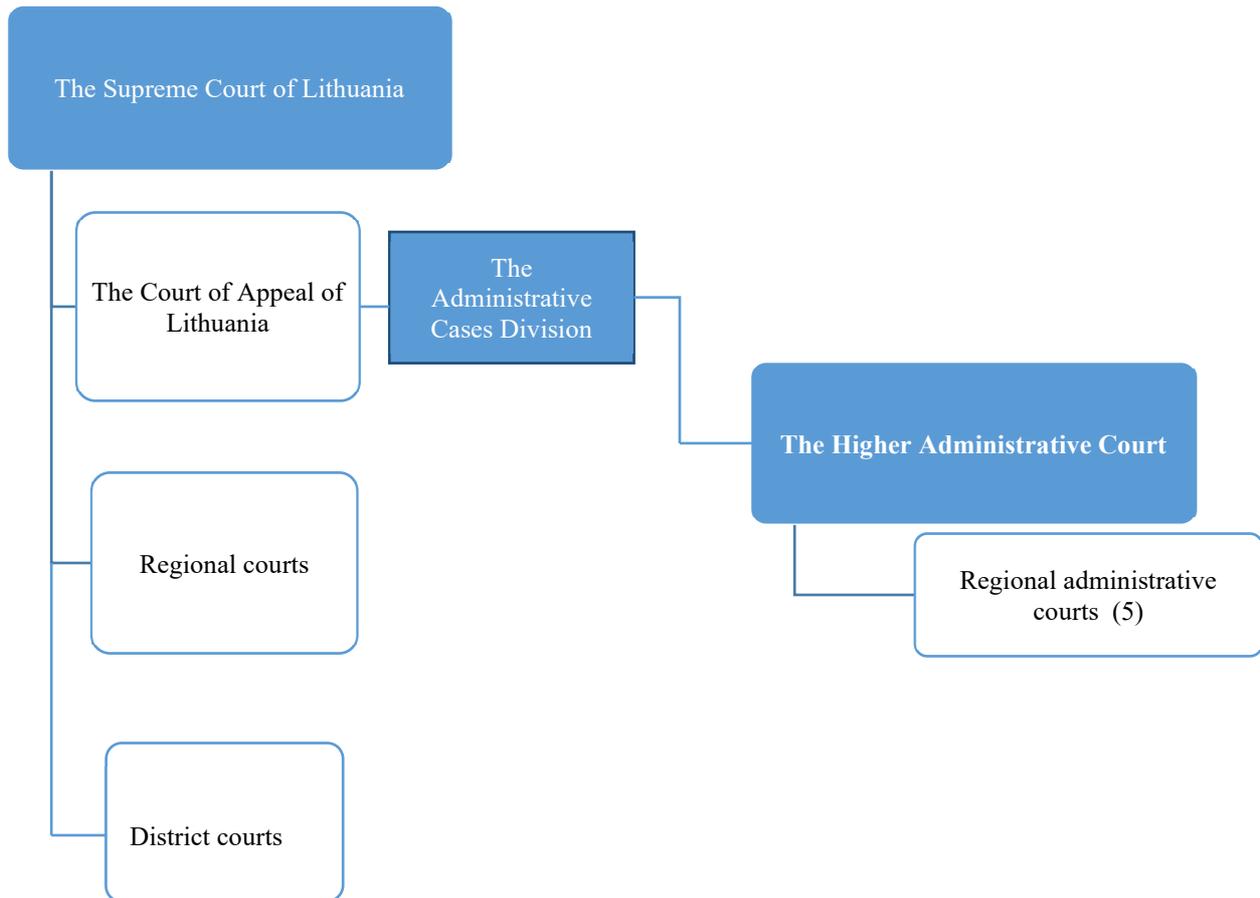
---

20 Constitution of Republic of Lithuania, Valstybės Žinios, 1992, Nr.:31, Publ. Nr. 953, Article 111

21 Resolution of the Seimas of the Republic of Lithuania on the Outline of the Reform of the Legal System (new version) and their Implementation, Valstybės žinios, 1998-07-08, Nr. 61-1736

legality of decisions taken by management institutions and officials and other cases arising from administrative legal relations, such as taxes, etc., would be transferred.

The Law on the Establishment of Administrative Courts of the Republic of Lithuania was adopted on 14 January 1999<sup>22</sup>. On its basis, administrative courts were established in Lithuania, and they started operating on 1 May 1999.



**1 picture.** Lithuanian Courts System 1999-2000 (composed by the authors)

The system of newly established administrative courts consisted of 5 regional administrative courts (Vilnius, Kaunas, Klaipėda, Panevėžys and Šiauliai), the Higher Administrative Court and the Administrative Cases Division of the Lithuanian Court of Appeal. This model was temporary, chosen for economic reasons and was called a transition period.

By establishing a system of administrative courts, Lithuania has demonstrated its desire to strengthen the control of public administration, to implement the constitutional provision that government institutions must serve the people. Administrative courts have to interpret and

<sup>22</sup> Law on the Establishment of Administrative Courts of the Republic of Lithuania, Valstybės žinios, 1999-02-03, Nr. 13-309

---

apply national, international and European Union law in such a way that public authorities take lawful and reasonable decisions that allow the development of fair competition, personal initiative and other free market values.

The Law on Administrative Proceedings was adopted<sup>23</sup>. A pre-trial dispute settlement procedure had been established: before applying to an administrative court, individual legal acts or actions adopted by public administration entities provided by law may be challenged in the pre-trial procedure. The procedure for administrative dispute commissions and the principles of their operation have been established<sup>24</sup>: unless otherwise provided by law, pre-trial examination of administrative disputes shall be performed by municipal public administrative dispute commissions, county administrative dispute commissions and the Supreme Administrative Dispute Commission.

In 1999 a specialized tax dispute commission has also been set up. The Tax Dispute Commission is a pre-trial body for tax disputes, a quasi-court. It is an institution established under the Government of the Republic of Lithuania. The purpose of the Commission is to examine the taxpayer's complaints objectively and to reach lawful and reasoned decisions.

## **II PERIOD: 2001 – 2017**

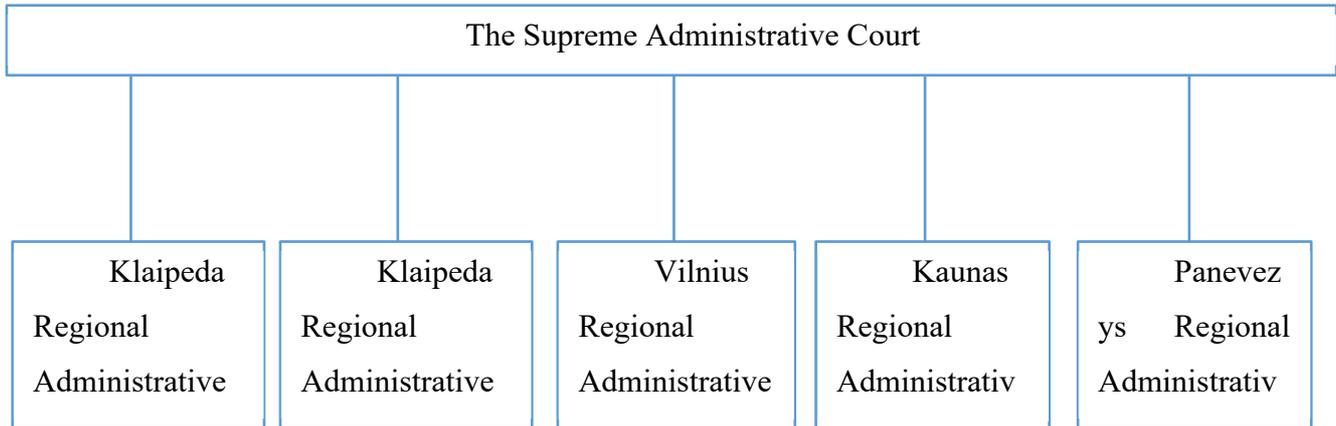
In 2000 the final stage in the formation of the separate administrative court system was launched in June. The draft Law Amending and Supplementing the Law on the Establishment of Administrative Courts submitted to the Seimas noted that the dual legal nature of administrative courts complicates the process of establishing this court system, hinders the formation of unified court practice by applying laws, prevents proper judicial control and effective administrative supervision. These circumstances determined the need to reorganize the Administrative Cases Division of the Court of Appeal of Lithuania and the Higher Administrative Court into the Supreme Administrative Court of Lithuania and thus definitively separate the system of administrative courts from the system of courts of general jurisdiction. Thus since 2001 Lithuania created a smooth and clear system of two-tier administrative courts: regional administrative courts and the Supreme Administrative Court of Lithuania, among other things, forming a unified practice of administrative courts.

---

23 Law on Administrative proceedings of the Republic of Lithuania, Valstybės žinios, 1999-02-03, Nr. 13-308

24 Law on on Administrative Disputes Commissions of the Republic of Lithuania, Valstybės žinios, 1999-02-03, Nr. 13-310

On 19 September 2000, the Law on the Establishment of Administrative Courts was amended and as of 1 January 2001, the system of administrative courts of the Republic of Lithuania consisted of 5 previously established regional administrative courts and the Supreme Administrative Court of Lithuania.



**2 picture.** Lithuanian Administrative Courts System 2001 – 2017 (composed by the authors)

### III PERIOD: 2018 – UNTIL NOW

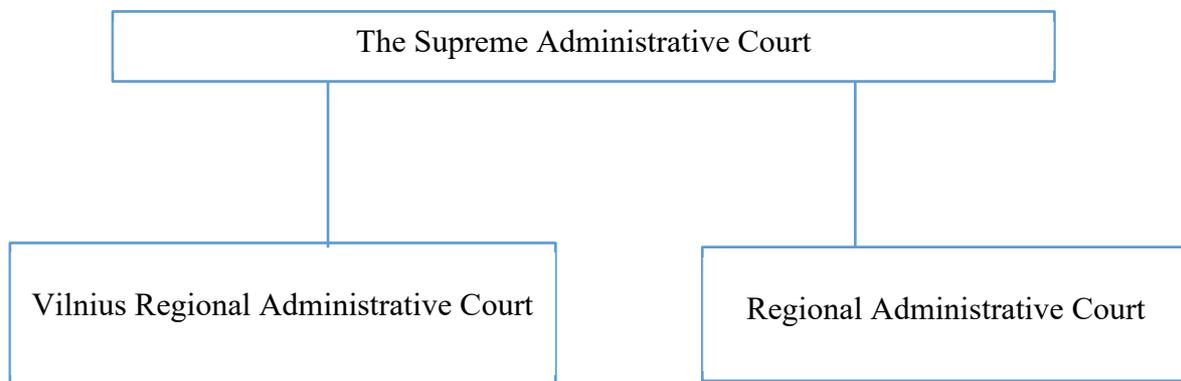
2015 December 22 the Seimas of the Republic of Lithuania adopted the Resolution “On the Reorganization of Courts”<sup>25</sup>, which provided that the institutional reorganization of the courts must be completed by 1 January 2018. The objectives of the reorganization of the judicial system were as follows:

- 1) To increase the efficiency of case processing by equalizing the workload and conditions of judges and court staff;
- 2) To facilitate the exercise of the right of individuals to go to court by providing opportunities to conduct proceedings as close as possible to the person's place of residence;
- 3) To make more efficient use of the human and material resources of the courts by concentrating the resources allocated to the administration of the courts;
- 4) To expand the self-government of judges by legalizing a new chain of judicial self-government;
- 5) To expand the possibilities of specialization of judges by increasing the number of judges working in one court;

<sup>25</sup> The Resolution of Seimas of the Republic of Lithuania “On the Reorganization of Courts”, TAR, 2015-12-23, Nr. 20269

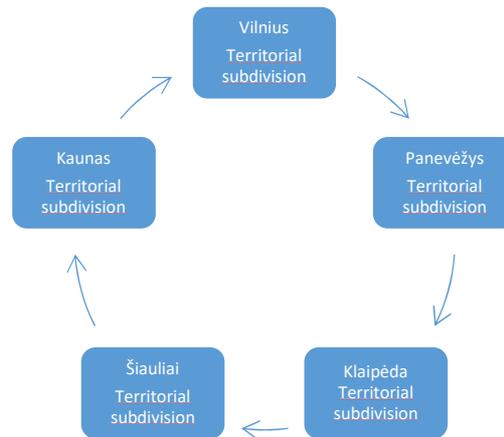
- 6) To eliminate organizational obstacles in the handling of cases - to harmonize the areas of activity of courts and other law enforcement institutions.

As part of the judicial reform, from 1 January 2018 regional administrative courts were reorganized. The Supreme Administrative Court of Lithuania and two regional administrative courts are currently operating in Lithuania: Vilnius Regional Administrative Court and Regional Administrative Court (Kaunas Palace of Regional Administrative Court, Klaipėda Palace of Regional Administrative Court, Šiauliai Palace of Regional Administrative Court, Panevėžys Palace of Regional Administrative Court ).



**3 picture.** Lithuanian Administrative Courts System from 2018(composed by the authors)

The structural reform of the Supreme Administrative Disputes Commission in 2018 has been implemented as well. Until then, the supreme Administrative Disputes Commission of Lithuania, operating in Vilnius, examined only administrative disputes regarding decisions taken by the Central Authorities. The Supreme Administrative Disputes Commission was reorganized, renamed the Lithuanian Administrative Disputes Commission and additional 4 divisions of the Lithuanian Administrative Disputes Commission operating on the territorial principle were established.



**4 picture.** The structure of Lithuanian Administrative Disputes Commission (composed by the authors)

## RECENT DEVELOPMENTS

In 2019 the modern administrative justice system in Lithuania celebrated 20 years anniversary. Also, the Minister of Justice of the Republic of Lithuania in March 2019 created a working group for the improvement of legal acts regulating the settlement of administrative disputes. The main idea of such reform is the strengthening of the institute of pre-trial administrative dispute solution. As it was mentioned above, there are two main quasi-court institutions in Lithuania - Lithuanian Administrative Disputes Commission (below-Commission) and Tax Disputes Commission. Since January 2018 the Supreme Commission for Administrative Disputes, which examines administrative disputes, was reorganized into the Lithuanian Administrative Disputes Commission with territorial divisions in Kaunas, Klaipėda, Šiauliai and Panevėžys, thus the Commission operates throughout the territory of Lithuania. Discussions between lawyers and politicians advocate a mandatory pre-trial procedure for certain categories of administrative disputes. Therefore, it is envisaged that some cases will be examined by the Lithuanian Administrative Disputes Commission in a mandatory pre-trial procedure.

At the moment, individual can choose whether to appeal to the Regional administrative court or to the Lithuanian Administrative Disputes Commission. Complaints are currently being investigated by 27 members of the Commission - state officials in Vilnius, Kaunas, Klaipėda, Šiauliai and Panevėžys. 35 positions of civil servants and employees working under employment contracts have been approved. The Commission examines disputes quickly and efficiently - according to Article 12 of the Law on Pre-trial Administrative Disputes of the

---

Republic of Lithuania, a complaint (request) submitted to the Administrative Disputes Commission must be examined no later than within 20 working days from its adoption; if necessary, by a reasoned decision of the Commission, the general term for the examination of the complaint (application) may be extended for another 10 working days.

According Commission activity reports<sup>26</sup> only about 12 percent decisions were appealed to the district administrative court (respectively, the number of cases examined by Lithuanian Administrative Disputes Commission, in which the decisions were not appealed, reduces the workload of the courts). For example out of all 1167 decisions made by the Commission in 2018, only 143 decisions were appealed to the administrative court: 25 decisions made by the Commission were not annulled, 12 were annulled, one case was terminated by a settlement agreement between the parties; was not accepted<sup>27</sup>.

When considering administrative cases in courts, it is observed that when an administrative dispute is first examined in independent collegial pre-trial institutions, such cases are processed in courts faster and with higher quality, as the factual and other factual issues of the essential case are determined; the number of complaints submitted by public administration entities is decreasing; the stability of court decisions is increasing. In addition, pre-trial solution of administrative disputes is a less formalized, faster, and cheaper way for individuals to defend violated rights and interests protected by law.

Taking this into account, the above mentioned working group prepared the project of suggested changes of the Law on Administrative Proceedings of the Republic of Lithuania No. VIII-1029 (articles 20, 23, 28, 31, 33, 43, 56, 78, 88, 117, 133, 134) and supplementing this law with articles 115<sup>1</sup> ir 138<sup>1</sup>; suggested changes of Law on the Procedure for Pre-trial Administrative Disputes of the Republic of Lithuania No. VIII-1031 (articles 2, 5, 8, 10, 14, 18, 19), supplementing this law with articles 10<sup>1</sup>, 13<sup>1</sup>, 13<sup>2</sup>, 20<sup>1</sup> and cancelation of article 21; changes of Law of the Republic of Lithuania “On the Legal Status of Aliens” No. IX-2206 (chapter X), Law on the Civil Service of the Republic of Lithuania No. VIII-1316 (articles 5, 18, 32, 34, 51) and supplementing this law with article 56; changes of the Penal Enforcement Code of the Republic of Lithuania (Article 183).

---

26 Planning documents of the Lithuanian Administrative Dispute Commission.

[<https://lagk.lrv.lt/lt/administracine-informacija/planavimo-dokumentai> ]

27 Activity Report of the Lithuanian Administrative Disputes Commission for 2018.

[[https://lagk.lrv.lt/uploads/lagk/documents/files/Administracine%20informacija/Veiklos%20ataskaitos/2018%20veiklos%20ataskaita\(1\).pdf](https://lagk.lrv.lt/uploads/lagk/documents/files/Administracine%20informacija/Veiklos%20ataskaitos/2018%20veiklos%20ataskaita(1).pdf) ]

---

All above mentioned drafts of amendments of the laws intend the mandatory pre-trial examination of disputes regarding:

- 1) compensation for damage caused by illegal actions of state administration entities and municipal administration entities;
- 2) regarding the decision to refuse to issue, change or revoke a residence permit in Lithuania, to refuse to issue or revoke a work permit in Lithuania;
- 3) disputes between civil servants.

The Commission and its territorial subdivisions do not resolve: 1) cases that do not fall within the jurisdiction of administrative courts, 2) cases that are not subject to out-of-court pre-trial procedures, 3) disputes (cases) based on complaints (requests) for other pre-trial disputes, 4) cases which, according to the laws, are assigned to the exclusive competence of the Vilnius Regional Administrative Court, 5) cases assigned to the Supreme Administrative Court of Lithuania, 6) tax disputes; 7) administrative disputes, for which the law establishes a different procedure, 8) issues of compensation, 9) issues of reimbursement of costs incurred by the parties to the case.

To make the proceedings before the court of first instance more expeditious and efficient, when considering a case concerning a decision made by a quasi-judicial institution, it is proposed to establish in the draft of Law on Administrative Proceedings of the Republic of Lithuania No. VIII-1029 that new evidence which has not been submitted to the Commission, its territorial unit or the Tax Disputes Commission, which has examined the dispute in a mandatory pre-trial procedure, shall be examined only if the court finds reasonable reasons for not doing so earlier or when the need to submit new evidence arose later in court proceedings. In addition, in order to ensure a fair trial, it is established that a complaint (application, statement) against a decision of Commission, its territorial unit or the Tax Disputes Commission made after a mandatory pre-trial examination of an administrative dispute may not raise claims that were not filed in these institutions. Requirements that are inextricably linked to already submitted requirements are not considered as new requirements. Given that Commission and its territorial subdivisions and the Tax Disputes Commission hear disputes at hearings (oral proceedings), the draft of Law on Administrative Proceedings of the Republic of Lithuania No. VIII-1029 proposes to establish an exception for oral proceedings in court, stipulating that a case may be heard in written proceedings when appealing to Commission, a

---

decision of its territorial subdivision or the Tax Disputes Commission, if the parties to the proceedings do not object to such proceedings within the time limit set by the court.

Assessing the fact that Commission and the Tax Disputes Commission would be mandatory pre-trial institutions for certain categories of administrative disputes, it is envisaged to grant them the right to suspend the dispute in case of doubt as to the legality of a normative administrative act upon request to check whether a specific normative administrative act (or part thereof) that should be applied in resolving the dispute complies with the law or the Government normative act. Project of Law on Administrative Proceedings of the Republic of Lithuania No. VIII-1029 proposes to regulate the form of an application for the legality of a normative administrative act to an administrative court - such an application would be formalized by a decision; the Law on Administrative Proceedings of the Republic of Lithuania No. VIII-1029 also sets requirements for the content and annexes of the decision.

The draft Law on Administrative Proceedings of the Republic of Lithuania No. VIII-1029 and the draft Law of the Republic of Lithuania on the Procedure for Pre-trial Administrative Disputes No. VIII-1031 propose to change the rules of territorial jurisdiction of administrative cases in order to make them more flexible, to allow the applicant to sue closer to his place of residence, while creating more equal distribution of cases between Vilnius Regional Administrative Court and Regional court chamber (respectively for a more even distribution of labor cases between Commission and its territorial divisions).

Projects also proposes to establish that an appeal (application, statement) shall be filed at the choice of the applicant: 1) to the administrative court in whose territory the applicant's place of residence is located, or 2) to that administrative court; in the territory of which the defendant has its registered office (residence) or, if the defendant is a state or a municipality, in the administrative court in the territory of which the seat of the institution representing the defendant is located. An analogous option of the applicant is offered when submitting a complaint (application) to Commission or its territorial subdivision.

In order to better ensure the guarantees of the procedural rights of individuals in mandatory pre-trial proceedings in administrative disputes, it is proposed to establish a general provision on the procedural rights and obligations of the parties, in particular by establishing that the procedural rights of the parties are equal; the fact that the parties to the case have the right to make exclusions and requests, requests to receive procedural documents in electronic form by electronic means, provide evidence, participate in the examination of evidence, ask

---

questions to other parties, witnesses, specialists, give explanations, present arguments and arguments; requests, arguments and reasoning of the parties to the case, to receive copies of the decisions of Commission and its territorial subdivisions resolving the case, to appeal against the decisions of Commission and its territorial subdivisions and to exercise other rights granted by this law.

Thus, the above mentioned projects of laws propose to expand pre-trial administrative dispute resolution in independent collegial pre-trial institutions in order to resolve such disputes faster, more efficiently and at lower cost, while reducing administrative court workload and thus allowing other cases in the courts to be dealt with more quickly and efficiently, paying more attention to complex cases. It is estimated that the adoption of the draft of above mentioned laws would reduce the workload of administrative courts of first instance by about 4,000 cases, thus reducing the number of appeals filed with the Supreme Administrative Court of Lithuania in the future, thus creating preconditions for faster and better processing of other court cases. Pre-litigation proceedings would lead to faster resolution of administrative disputes with lower costs for the parties (no stamp duty, no mandatory representation by a lawyer).

## CONCLUSIONS

1. The emergence of new modern state institutions in Lithuania to control the legality of administrative actions in Lithuania is based on the valuable legacy of pre-war Lithuanian legal specialists and scholars. In addition, the emergence of administrative justice is based on a solid legal basis - constitutional norms.
2. Specialized system of protection of human rights in the field of public administration exists in Lithuania since 1999. There are administrative courts and quasi-courts (Lithuanian administrative disputes commission, Tax disputes commission).
3. Recent initiatives in Parliament proposed the expansion of pre-trial administrative dispute resolution in independent collegial pre-trial institutions in order to resolve such disputes faster, more efficiently and at lower cost, while reducing administrative court workload and thus allowing other cases in the courts to be dealt with more quickly and efficiently, paying more attention to complex cases.
4. The Lithuanian administrative justice system has been transformed since its establishment and is currently being reformed, so it is not possible to assess its effectiveness at this time.

---

**REFERENCES**

1. Andruškevičius A., Profesoriaus Mykolo Romerio lege ferenda nuostatos administracinio teismo klausimu ir jų atspindys dabartinėje Lietuvos teisėje, *Jurisprudencija*, 2010, 3(121), p. 25–37.
2. Bereikienė D., Gagys T., Ramanauskaitė J., Greito proceso administracinių ginčų komisijoje koreliacija su asmens teise į teisingą procesą, *Visuomenės saugumas ir viešoji tvarka*, 2019 (23), p. 17- 32.
3. Constitution of Republic of Lithuania, *Valstybės Žinios*, 1992, Nr.:31, Publ. Nr. 953.
4. Lapinskas K., M. Riomeris ir administracinė justicija Lietuvoje. Mykolas Riomeris ir šiandiena: teminis straipsnių rinkinys / Sud. Mindaugas Maksimaitis. Vilnius: Lietuvos teisės universitetas, 2000, p. 27–37.
5. Law on Administrative proceedings of the Republic of Lithuania, *Valstybės žinios*, 1999-02-03, Nr. 13-308
6. Law on Administrative Disputes Commissions of the Republic of Lithuania, *Valstybės žinios*, 1999-02-03, Nr. 13-310.
7. Law on the Establishment of Administrative Courts of the Republic of Lithuania, *Valstybės žinios*, 1999-02-03, Nr. 13-309.
8. Lietuvos valstybės konstitucijos. Vilnius, 1989.
9. M. Riomeris, Administracinio teismo įstatymo projektas. *Židinys*. 1940. Nr. 5-6.
10. Maksimaitis M., Teisinės valstybės modelis // Mykolas Romeris mokslas apie valstybę. – Vilnius: Mokslo aidai, 1997.
11. Maksimaitis M., Petras Leonas: advokatas ir profesorius, *Jurisprudencija*, 2016, 23(1), p. 7–24.
12. Paškevičienė L., Išankstinio administracinių ginčų nagrinėjimo institutas Lietuvoje: teisinio reguliavimo aiškinimo problematika, *Teisė / Law* . 5/20/2019, Vol. 111, p. 67-91.
13. Paužaitė-Kulvinskienė, J. Administracinė justicija: teorija ir praktika. Vilnius: Justitia, 2005.
14. Planning documents of the Lithuanian Administrative Dispute Commission. [<https://lagk.lrv.lt/lt/administracine-informacija/planavimo-dokumentai> ]
15. Pranevičienė B., *Kvaziteismai administracijos kontrolės sistemoje*, Vilnius: Lietuvos teisės universitetas, 2003.
16. Raižys D. Procesas pirmosios instancijos administraciniame teisme. Daktaro disertacija, Mykolas Romeris Universitetas, 2008.
17. Raižys D., Urbonas D., Legal issues concerning judicial control of the legality of normative administrative acts, *Jurisprudencija*, 2009, 2(116), p. 167–186.
18. Resolution of the Seimas of the Republic of Lithuania on the Outline of the Reform of the Legal System (new version) and their Implementation, *Valstybės žinios*, 1998-07-08, Nr. 61-1736.
19. Riomeris, M. *Mokslas apie valstybę*. Vilnius, 1997.
20. Rōmeris, M. *Administracinis teismas*. Kaunas: Valstybės spaustuvė, 1928.
21. Šedbaras S. *Administracinio proceso teisinio reglamentavimo problemos Lietuvos Respublikoje*. Vilnius: Justitia, 2006.
22. The Resolution of Seimas of the Republic of Lithuania “On the Reorganization of Courts”, TAR, 2015-12-23, Nr. 20269.
23. Žilys J., Administracinių teisės aktų teisėtumo problema prof. Mykolas Romeris mokslo darbuose. *Jurisprudencija*, 2005, t. 64(56); p. 19–28.
24. Activity Report of the Lithuanian Administrative Disputes Commission for 2018. [[https://lagk.lrv.lt/uploads/lagk/documents/files/Administracine%20informacija/Veiklos%20ataskaitos/2018%20veiklos%20ataskaita\(1\).pdf](https://lagk.lrv.lt/uploads/lagk/documents/files/Administracine%20informacija/Veiklos%20ataskaitos/2018%20veiklos%20ataskaita(1).pdf) ]

---

## POLICE OFFICERS ATTITUDE TOWARD DOMESTIC VIOLENCE: IS IT CHANGING?

Laima Ruibytė<sup>1</sup>

<sup>1</sup>Mykolas Romeris University  
Maironio st. 27, LT-44211 Kaunas  
Phone: (8 37) 28 14 01  
E-mail: [laimaruibyte@mruni.eu](mailto:laimaruibyte@mruni.eu)

Vilius Velička<sup>2</sup>

<sup>2</sup>Mykolas Romeris University  
Maironio st. 27, LT-44211 Kaunas  
Phone: (8 37) 28 14 09  
E-mail: [vilius.velicka@mruni.eu](mailto:vilius.velicka@mruni.eu)

DOI: 10.13165/PSPO-20-25-21

---

**Abstract.** 9 years after the adoption of the Law on Protection from Domestic Violence, its implementation has been constantly improved, Nevertheless, subjective obstacles to the effective prevention of domestic violence remain. This paper examines the peculiarities of the attitude of Lithuanian police officers towards domestic violence against women and their activities in domestic violence situation. The paper aims to, to identify and to compare the attitude of officers and students toward various aspects of domestic violence; to analyse the dynamics of such attitudes in nine year since 2011 and to compare the results in terms of gender and work position. In the research 390 subjects, including 146 students of Lithuania Police School, 244 police officers participated. Results show that legal regulation is well advanced compared with law situation in 2011. The rights of victims of domestic violence are clarified and more widely regulated in law, police officers are more specialized in preventing domestic violence, and the rights of victims are better implemented and protected in practice. Observing the attitudes of police officers towards the domestic violence during the years, it can be stated that there have been positive changes in attitudes and ability to help victims of violence, but at the same time police officers' notes that working with domestic violence frustrates them with the recurrence of domestic violence and there is a lack of support from managers and the wider system (courts, prosecutors, communities) for their initial intervention.

**Keywords:** domestic violence, violence against women, police officers, gender stereotypes.

### INTRODUCTION

The issue of domestic violence in Lithuania is studied from various aspects - from the point of view of cultural gender (Michailovič, 2014, Vaigė, 2013), legal problems (Urbonas, 2011, Jakštienė, 2014, 2017), interinstitutional cooperation (Bučiūnas, Velička, 2017) However, there are few studies examining the attitudes of police officers towards domestic violence (Ruibytė, Velička, 2008, 2012). Comparing the results of the 2007 and 2011 researches, the authors state that changes in police officers' attitudes towards domestic violence

---

change relatively slowly (Ruibyte, Velička, 2012), which may lead to an insufficiently effective response to the domestic violence cases. Whereas attitudes determine the way of responding to situations, knowing them would give an idea of what measures should be taken to change the inappropriate beliefs.

Therefore, in this work we **set the goal** to further investigate the dynamics and changes in the attitude of Lithuanian police officers towards violence and assistance to a woman experiencing violence. To achieve this goal, the following tasks were set: to review changes in legislation governing the prevention of domestic violence; to identify the specificities of attitudes of police officers and students, future police officers towards domestic violence against women; to compare the results in terms of gender and work position.

## **OVERVIEW OF LEGISLATION ON THE PREVENTION OF VIOLENCE IN CLOSED ENVIREMENT**

2011 May 26 The Seimas of the Republic of Lithuania adopted the Republic of Lithuania Law on Protection against Domestic Violence (hereinafter LOPADV), which entered into force at the 15th of December in 2011. The adoption of this law is associated with fundamental changes in the regulation of legal protection against domestic violence in Lithuania (Jakštienė, 2019).

The law states that domestic violence is a violation of human rights and freedoms. This law aims to protect individuals from domestic violence. The law defines the concept of domestic violence, establishes the rights and responsibilities of the subjects of domestic violence, the implementation of prevention measures, the provision of assistance in the event of domestic violence and the application of protection measures to a person who has experienced violence. In order to implement this law, the Government of the Republic of Lithuania adopted a resolution “On the Implementation of the Law of the Republic of Lithuania on Protection against Domestic Violence” at the 14 th of September in 2011. Pursuant to the following legal acts, the Lithuanian Police Commissioner General issued orders regulating the actions of police officers.

The Government of the Republic of Lithuania paid great attention to the prevention of domestic violence and adopted Resolution no. 485 “On the Approval of the State Program for the Prevention of Domestic Violence and the Provision of Assistance to Victims for 2014–2020” issued on 28th of May 2014. The program sets 2 goals for prevention and comprehensive

---

assistance to victims of violence, the tasks to achieve these goals, provides an analysis justifying the goals and objectives, set out the evaluation criteria and their meanings. Other programs and strategies also contribute to the implementation of the Program: the Child Welfare Program for 2013–2018, approved by the Minister of Social Security and Labour on the 3th of December 2012 by order no. A1-547 “On the Approval of the Child Welfare Program for 2013–2018”, Mental Health Strategy, approved by the Seimas of the Republic of Lithuania in 2007. April 3 by resolution no. X-1070 “On the Approval of the Mental Health Strategy”, Alcohol and Tobacco Control Program (Interinstitutional Action Plan), approved by the Government of the Republic of Lithuania in 2011. September 14 by resolution no. 1080 "On the approval of the Alcohol and Tobacco Control Program (Interinstitutional Action Plan)".

In the fight against domestic violence, the European Parliament and Council Directive 2012/29 / EU should be mentioned as an important piece of legislation of the European Union. This document establishing minimum standards on the rights, support and protection of victims of crime and which replaced Council Framework Decision 2001/220 / JHA. The purpose of this Directive is to ensure that victims of crime in all Member States receive adequate information, support, protection and are able to participate fully in criminal proceedings. It is important to note, that victims of domestic violence, gender-based violence, sexual violence and abuse are identified as being in a particularly high risk of harm and therefore need specialized assistance, specialist support and legal protection. It is necessary to ensure supportive environment for victims of violence in case they would make decisions and where victims of such crimes would be treated with dignity, respect and sensitivity. This Directive recognizes that women, who are victims of gender-based violence, as well as their children, often need special support and protection due to the high risk of secondary and repeat victimization, intimidation and retaliation. The Directive sets out an individual procedure for assessing the protection needs of victims of crime (Jakštienė, 2017). Later the provisions of the Directive were transposed into the legal acts of the Republic of Lithuania. LOPADV was improved and changed. In total, the law has 8 amendments. Taking into account the above-mentioned amendments, the Lithuanian Police Commissioner General issued orders and instructions regulating the actions of police officers. In order for police officers to be properly trained on how to respond appropriately to domestic violence, the qualification improvement program was prepared and approved.

Also, we must mention about the draft law, which is prepared and submitted for consideration. The Ministry of Social Security and Labour of the Republic of Lithuania has

---

prepared and registered the draft Law of the Republic of Lithuania on Protection against Domestic Violence and Violence against Women (registered in Register No. 20-6276) on the 28th of April 2020. The draft law contains provisions related to the application of the Protection order against violence. This is a new legal preventive protection measure. The purpose of a protection order against violence is to protect a person from possible violence by instructing a potential abuser to temporarily move out of the place of residence where he or she lives with the person who may experience violence and / or not to approach him or her, communicate or seek contact with him or her. The draft law includes provisions on the use of personal data and assistance in helping victims of domestic violence or violence against women.

Summarizing the changes in the legal regulation in the fight against domestic violence, we would like to single out the European Union legislation - the European Parliament and of the Council Directive 2012/29 / EU, issued on the 25th of October 2012, which is establishing minimum standards on the rights, support and protection of victims of crime. The implementation of this Directive and its transposition into national law have led to significant changes in national legislation on the protection of the rights of victims of domestic violence.

Legal regulation is well advanced compared with law situation in 2011. The rights of victims of domestic violence are clarified and more widely regulated in law, officials are more specialized in preventing domestic violence, and the rights of victims are better implemented and protected in practice.

## **POLICE OFFICERS' RESPONSE TO DOMESTIC VIOLENCE**

As can be seen from the reviews since the adoption of the LOPADV, its implementation has been constantly improved, training of law enforcement officers on how to act more effectively in situations of domestic violence constantly going on. Naturally, police officers enforcing this law face increased workload, new challenges and problems. Various aspects of police work with domestic violence can be found in the scientific literature (Gover, Pudrzynska, Dodge, 2011, Sun, Li, Yuning, 2011, Logan, Shannon, Walker, 2006, Sun, Chu, 2010). Gaps in the implementation of law and insufficiently accurate and detailed documentation of incidents are analysed - it is noticed that police officers do not always respond successfully and adequately in situations of domestic violence, thus reducing trust in them and increasing the likelihood of recurrence of violence. (Shtelmakher, 2010). Women who have been victims of violence often do not trust the police, afraid to call police because they feel they will not be

---

taken seriously or will receive help. Studies have shown that confidence in the police encourages victims to seek help, report violence, cooperate with the police (Kautt and Tankebe 2011, Davis et al., 2003; Stover et al, 2010). On the contrary, negative experiences prevent victims from the contact with police, increase their mistrust and helplessness and deter attempts to leave the perpetrator (Fleury et al. 1998; Johnson 2007). Barrett, Peirone and Cheung (2019) note that despite twenty years of policies in Canada to improve police response to spousal violence, negative attitudes towards police on the part of victims persist. Similar research conducted in Lithuania in 2019 shows that domestic violence victims still do not have enough trust in police assistance - 24% of women experienced domestic violence, of which only 24% turned to the police. Women with migrant or refugee status are particularly unlikely to contact the police because of their particularly sensitive situation, fear of being deported, lack of language skills, and no information on where to turn.

The analysis of the scientific literature emphasizes that in order to ensure an appropriate response of police officers to domestic violence there is a clear need to develop policies that restrict or guide police discretion while avoiding the problems inherent in mandatory arrest rules (Diemera et al., 2017). The survey in USA (Farris, Holman, 2015) show that strong connection of sheriffs' attitudes and actions on violence against women. It reveals important relationships between office policies and sheriff attitudes: sheriffs who believe in violence against women myths are much less likely to have mandatory arrest policy.

At the same time there is a need for collaborative, problem-solving approaches to crime prevention that emphasize working in partnership with the community and more decentralised decision-making (Clement et al. 2009; Murray, 2002). Finding a balance between compulsion and discretion is emerging as a significant challenge in policing domestic violence (Hageman-White et al. 2015).

Changing police practice in this way can change the police culture. The culture of the police organization is one of the important factors in determining the effectiveness of their reaction to interpersonal violence and their ability to assist victims of domestic violence (Murray, 2002).

Factors shaping the culture of a particular country's police organization in relation to the domestic violence are cultural and legal differences, including police officers' attitudes toward interpersonal violence, the levels of tolerance for violence, and holding gender inequality beliefs (Sun et al., 2012). Police attitudes toward the domestic violence affect the assessments

---

and responses to abuse cases (Gracia et al. 2011), or as well as the attitudes of victims of violence to the police's ability to assist in crises situation.

In many countries, the police are still a male-dominated institution that is not sensitive enough to dealing with women who have been victims of violence (Farris, Holman, 2015, Gölge, Sanal et al. 2015.) Logan's (2006) analysis of the International Crime Survey states that victims of sexual and violent crime are less satisfied with police work than victims of theft, and female victims are often treated with insufficient respect.

Research shows that even with the right legislation to combat domestic violence, its implementation depends to a large extent on the prevailing police and public culture, the attitudes of police officers towards gender equality and the violence perpetrated. It is emphasized that the stereotype of a woman as a subordinate to a man among police officers influences policing practices and that attitudes towards domestic violence and its harm need to be changed at the national level.

## METHODOLOGY OF THE RESEARCH

**Participants.** 390 subjects, including 146 (37.4%) students of Lithuania Police School, 148 (37.9%) patrols, 81 (20.8%) investigators, and 15 (3.8%) specialists participated in the study. Of all study participants, 126 (32.3%) were women and 264 (67.7%) were men. The mean age of the study participants was 27.55 years  $\pm$  7.6 years.

**Methods.** Two questionnaires were used to implement the purpose of the investigation. One of them was for police officers, the 12-question questionnaire we used in the 2007- and 2011-year survey (Ruibyte, Velicka, 2008, 20012). The second 7-question questionnaire was for students. The purpose of the questionnaires was to identify the main aspects of the attitude of future and working police officers towards domestic violence against women, that is knowledge, feelings about and behaviour or readiness to act in a certain way in situations related to domestic violence.

Also students and police officers were asked about their sociodemographic: gender, age, and position at work (only for police officers).

Document analysis method was used to examine the changes in the legislation of domestic violence.

**Procedure.** The survey was conducted in 2019. Police officers were interviewed during refresher courses and students during lectures. The questionnaires for participants were

---

anonymous. SPSS 22.0 package was used for statistical analysis and empirical data (paired samples t test and Chi-square test).

## RESULTS

The results showed that 50% of surveyed police officers face domestic violence quite often (several times a day or a week) when a man is violent., 42.5% of all students face with domestic violence at work or in practice, 34.9% of all students heard about domestic violence from the media, and 32.9% heard about it from friends or acquaintances.

Nearly half of the police officers (46.7%) after assistance has been provided later learn about situation in the family. However, as many as 42.2% not interested about situation in a violent family after assistance has been provided.

About the readiness of police officers to respond appropriately to cases of domestic violence we can judge from officer's knowledge of the law itself and its application. evaluates it positively and knows how to apply it in practice, 28.7% of police officers indicated that they had read the law, assessed it positively and knew how to apply it in practice, and 27.9% indicated that they had read the law, assessed it positively, but they did not know how to apply the law in practice. In the 2012 survey, 56.9% of surveyed police officers did not know how to evaluate the law because they are unfamiliar with it, 26.3% read and evaluate positively, but did not know how to apply it in practice, 7.8% read, evaluate negatively and did not know how will need to apply it.

Compared to the previous study, the results of this study showed more subjects (89%) knows where to direct victims of domestic violence (68.9% of police officers and 67.5% of students in 2012).

The results revealed that 91% of police officers base their decision to open a pre-trial investigation on domestic violence cases on a visual assessment of the victim's condition, and 57.8% on the victim's oral testimony. As many as 77% of officials say that the main reason for avoiding a decision to open a pre-trial investigation is that cases of this nature often do not reach court because the victim withdraws the statement. However, 66.4% indicate that in their practice, cases of violence against the perpetrator were frequent.

Half of the police officers involved in the investigation (53.3%) arrived on a family call, sometimes trying to reconcile the conflicting parties, 84.4% inform the abuser that he will be punished if the violence continues. 93% inform the woman what legal steps she needs to take

to protect themselves from violence, 77.5% support the woman psychologically, advise where to turn for help and encourage her to write a statement.

The attitude of students and police officers towards the phenomenon in question is revealed by their own attitude towards aggressive actions towards various manifestations of domestic violence. The responses of both groups of respondents revealed that the attitude towards such actions is generally negative (Table 1).

**Table 1.** Comparison of students 'and police officers' attitudes towards the manifestations of domestic violence against women

Question		N	mean ± standard deviation	Results of the comparison model
I think it is possible to slap a wife	Students	146	1.15±0,44	F (388)=11,27 p=0.68
	Policemen	244	1.26±0,65	
If the wife thinks of another, she earned a slap	Students	146	1.42±0,81	F (388)=0.19 p=0.53
	Policemen	244	1.48±0,76	
If a wife behaves flirtatiously with another man, she may be slapped	Students	146	1.43±0,73	F (388)=0.608 p=0.44
	Policemen	244	1.49±0,77	
Women who experience violence often provoke their partners themselves, so they beat them	Students	146	2.30±1,07	<b>F (388)=3.58</b> <b>p&lt;0.0001</b>
	Policemen	244	2.74±1,01	
If women behaved differently, men would be less violent	Students	146	2.09±1,19	<b>F (388)=0.236</b> <b>p=0.01</b>
	Policemen	244	2.37±1,07	
	Policemen	244	1.97±1,43	
Nothing terrible if a furious husband throws a slipper at his wife	Students	146	1.75±0,95	F (388)=0.80 p=0.59
	Policemen	244	1.81±0,96	
If the violence were really brutal, the victim would leave the perpetrator	Students	146	2.84±1,40	F (388)=0,349 p=0.09
	Policemen	244	3.08±1,35	
The main cause of male domestic violence is alcohol	Students	146	3.65±1,15	F (388)=0,791 p=0.74
	Policemen	244	3.69±1,09	
I don't think domestic violence is a big issue	Students	146	1.42±0,81	<b>F (388)=6,45</b> <b>p=0.008</b>
	Policemen	244	1.72±0,94	
There are cases where violence is justified	Students	146	1.48±0,81	<b>F (388)=3,57</b> <b>p=0.006</b>
	Policemen	244	1.74±0,94	
Male violence against women has little effect on children	Students	146	1.24±0,74	F (388)=1,96 p=0.30
	Policemen	244	1.32±0,74	
Only weak women become victims of domestic violence	Students	146	1.53±0,82	<b>F (388)=1,61</b> <b>p=0.004</b>
	Policemen	244	1.80±0,94	
Women themselves are often violent against men	Students	146	3.19±0,94	F (388)=0,061 p=0.64
	Policemen	244	3.15±0,89	
Domestic violence is a serious crime	Students	146	1.64±0,90	<b>F (388)=2,44</b> <b>p&lt;0,0001</b>
	Policemen	244	2.32±1,01	
Domestic violence is not a priority area for a police officer	Students	146	1.92±1,05	<b>F (388)=0,118</b> <b>p&lt;0,0001</b>
	Policemen	244	2.51±1,00	
The police must not interfere in private life	Students	146	1.67±0,93	<b>F (388)=0,147</b> <b>p&lt;0,0001</b>
	Policemen	244	2.23±0,95	
	Students	146	2.88±1,27	<b>F (388)=0,13</b>

	Domestic violence is most common in lower social and antisocial families	Policemen	244	3.27±1,25	p<0,0001
--	--	-----------	-----	-----------	----------

Note: scores for each question from 1 to 5 points, where 1 - strongly disagree, 5 - strongly agree

The understanding of the phenomenon of domestic violence is shown by the knowledge of the subjects about the causes of this phenomenon. The results of the survey revealed that students and police officers rate the impact of alcohol and drugs on domestic violence as particularly important and most important among all the factors listed (95.4% and 90% consider these factors important and particularly important). According to almost half of the participants, domestic violence is influenced by both innate male aggression (45.9% of respondents), jealousy (47.7%) and family conflicts (52.8%). One third of the respondents believe that domestic violence is influenced most by childhood violence (39.7% of respondents), the desire to demonstrate masculinity against a woman (34.6% of respondents), the feeling of inferiority of a man (36.4% of respondents) and the desire for control (41% of respondents).

Police officers' views on the dangers of violence to society can be deduced from the results presented in Table 2.

**Table 2.** Assessment of the danger of a crime to society

	Answer options	percentage of responses from survey participants
The danger of theft crime to society	little important	33 (8,5%)
	important	225 (57,7%)
	very important	132 (33,8%)
The danger of violence in public to society	little important	3 (0,8%)
	important	97 (24,9%)
	very important	290 (74,4%)
The danger to society of indecent behavior in a public place	little important	83 (21,3%)
	important	221 (56,7%)
	very important	86 (22,1%)
The danger of domestic violence to society	little important	9 (2,3%)
	important	75 (19,2%)
	very important	304 (77,9%)

The results revealed that when evaluating crimes according to their danger to society (Table 3), a larger proportion of study participants (57.7%) theft and indecent behavior in public place (56.7%) considered as an important and dangerous crime to society, violence in public place (74, 4%) and in the family (77.9%) as a very important and dangerous crime for society. In the 2012 survey, meanwhile, 69.4% of students and 62.9% of officials rated domestic violence as very important.

**Table 3.** What should be changed to make it more effective to help a women victim of domestic violence

	percentage of responses from survey participants
Do not change anything as it is a private matter	17 (4,4%)
Amend the criminal law to make police more effective, as now police officers have little power	189 (48,5%)
More knowledge and training on how to deal with domestic violence is needed to make police assistance more effective	206 (52,8%)
More managerial attention is needed for this work	41 (10,5%)

Note: the percentages in the questions do not add up to 100%, as some study participants chose not one but several answers.

In response to the question, “What needs to be changed to make police assistance more effective for women who have experienced violence?” (Table 3), the survey revealed that 52.8% of all respondents believe that more knowledge and training is needed on how to deal with domestic violence. In order to make police assistance to a woman more effective (27.5% in 2012). 48.5% of respondents believe that the criminal law needs to be amended to make police assistance in case of domestic violence more effective, as under current law, officials have little power. 10.5% of respondents believe that managers need more attention to this work (6.0% in 2012).

**A comparison of the results of officers and students** revealed that police officers have a statistically significantly ( $p < 0.0001$ ) more favourable attitude towards domestic violence against women than the students (they rate domestic violence against women as a less favourable phenomenon) (Table 1).

A similar number of police officers and students know where to turn for help a woman who has experienced domestic violence (the answers to this question did not differ statistically significantly,  $p = 0.06$ ). The police officers and students participating in the study similarly assessed the danger of the crime to society in public. Statistically significantly more police officers and students rate the risk of violence in public ( $p = 0.008$ ) and theft ( $p = 0.004$ ) as a serious crime to society than an insignificant or very important one (differences differ statistically significantly). A statistically significantly higher share of police officers and students in the study rated the danger of domestic violence to society as a very important crime rather than a significant or insignificant crime against society ( $p = p < 0.0001$ ). Thus, it can be said that domestic violence is perceived by both groups as very important in the context of other crimes;

Police officers and students rated alcohol ( $p = 0.22$ ), congenital male aggression ( $p = 0.07$ ), and familial conflict ( $p = 0.56$ ) masculinity ( $f = 0.09$ ) and male inferiority ( $p = 0.10$ ) influence on domestic violence against women (the answers of police officers and students to this question did not differ statistically significantly). Statistically significantly more police officers and students rated drug use ( $p = 0.01$ ) as a particularly important factor influencing domestic violence against women (the impact of these factors was assessed as particularly important compared to other response categories).

A similar number of police officers and students in the study believe that in order to provide more effective police assistance to women who have experienced domestic violence, more managerial attention is needed for this work ( $p = 0.34$ ). Statistically significantly more police officers than students believe that the criminal law needs to be changed ( $p = 0.04$ ) and that more knowledge and training is needed on how to deal with domestic violence ( $p = 0.001$ ) in order to be more effective in helping women in domestic violence cases.

Comparing the attitudes of men and women to the domestic violence, it was found that men in the study had a statistically significantly more favourable attitude towards domestic violence against women than women (they rated domestic violence against women as a less favourable phenomenon) (Table 4).

**Table 4.** Average assessment of manifestations of violence against women

			Results of the comparison model
Assessment of manifestations of violence against women	male (264)	40,21 ± 7,80	F (388)=3,51
	female (126)	33,85 ± 6,79	p<0,0001

Note: The higher the score on the scale of attitudes towards violence against women in the family, the more favourable the participants in the study rate violence against women as an acceptable thing.

Significantly more men than women in the study agree with such statements as: a) I think you can slap a wife ( $p = 0.001$ ), b) If a wife thinks of another, she earned a slap ( $p = 0.001$ ), c) If a wife behaves flirtatiously with another a man, she can be slapped ( $p < 0.0001$ ), d) Women who experience violence often provoke their partners themselves, so they beat them ( $p < 0.0001$ ), e) If women behaved differently, men would be less violent ( $p < 0.0001$ ), f) nothing terrible if a furious man throws a slipper at his wife ( $p = 0.001$ ), g) If the violence were really brutal, the victim would leave the abuser ( $p < 0.0001$ ). Also, significantly more men than women do not consider domestic violence to be a major problem ( $p = 0.001$ ), men significantly more

than women agreed with the statements that a) there are cases when violence is justified ( $p < 0.0001$ ) b) Male violence against women has little impact on children ( $p = 0.004$ ) c) Only weak women become victims of domestic violence ( $p = 0.004$ ) d) Women themselves are often violent against men ( $p = 0.001$ ) e) Domestic violence usually occurs in lower standing and antisocial families ( $p = 0.001$ ).

However, there was no statistically significant difference between men and women on all other issues related to the assessment of domestic violence. A similar number of men and women in the study knew where to turn for help for a woman who had experienced domestic violence (statistically the answers of men and women to this question did not differ significantly,  $p = 0.54$ ). Respondents, both men and women, similarly assess the danger of theft ( $p = 0.41$ ), indecent behaviour in public ( $p = 0.23$ ) and violence in public ( $p = 0.28$ ) the danger of crime to society (statistically male and female answers did not differ significantly). Statistically significantly higher share of men than women considers domestic violence to be an important and very important crime for society ( $p = 0.008$ ).

Men and women in the study similarly assessed the impact of alcohol ( $p = 0.66$ ), drugs ( $p = 0.19$ ), jealousy ( $p = 0.51$ ), and family conflicts ( $p = 0.65$ ) on domestic violence against women (statistically men and women's responses to this question did not differ significantly). A statistically significantly higher proportion of men than women in the study believe that innate male aggression ( $p < 0.0001$ ), childhood violence ( $p = 0.001$ ), demonstration of masculinity against a woman ( $p = 0.001$ ), feeling of inferiority of a man ( $p = 0.01$ ) and the aim of control ( $p = 0.01$ ) are insignificant, not very important or moderately important factors for domestic violence against a woman.

**A comparison between officers** (patrol responses versus investigators responses) showed that patrols and investigators have very similar understandings of various aspects of domestic violence, as statistically investigators and patrols responses to all questions did not differ significantly.

## DISCUSSION

Compared to the results of the previous survey in 2012, there have been positive changes in the attitude of police officers towards the activities in the domestic violence situation. More police officers and future police officers see domestic violence as a very important and dangerous crime for society, know, where to refer woman for help, support the woman

---

psychologically, advise and encourage her to write a statement, inform the abuser that he will be punished, if the violence continues, inform the woman what legal action she needs to take to protect herself from the violence, ie take the actions necessary to ensure the prevention of domestic violence. There is a growing number of officers who sometimes check up on families after assistance has been provided. The results showed that both patrols and investigators have very similar understandings of various aspects of domestic violence.

However, some results suggest that there are still operational aspects to be corrected. One-third of police officers, similar to those in the 2012 survey, said they rated the LOPADV positively, but they did not know how the law would need to be applied in practice. Although most officers report that in their practice, cases of violence against the abuser have been frequent, the main reason for avoiding a decision to open a pre-trial investigation is that cases of this nature often do not reach court because the victim withdraws the statement. Research shows that such a situation reduces job satisfaction and motivation to help (Horwitz et al., 2011) and to prevent this appropriate measure could be taken, such as debriefing, feedback and continuing domestic violent education.

Although, in general, respondents' perceptions of various forms of domestic violence are negative, it can be argued, as in the previous survey, that women's attitudes towards domestic violence against women are more negative and less influenced by stereotypes than men's, e.g. about the role of a woman in the rise of violence, her life with the abuser, and so on. Statistically men have a significantly more favourable attitude than the women in the study (they view domestic violence against women as a less favourable phenomenon). It can be assumed that differences in attitudes towards violence against women are still affected by existing gender stereotypes in society that attribute greater power to men in their relationships with women, as well as prejudices that justify violence against women. Similar differences are found in other studies (Sun, 2007, Toon & Hart, 2005). It should be noted that students view domestic violence against women as a less favourable phenomenon than police officers, so it can be assumed that students' attitudes are also influenced by their learning and the acquisition of up-to-date and modern views on domestic violence. Gover, Paul, and Dodge (2011) research data shows that younger officers and those with a college education less likely to underestimate situations of domestic violence.

It can also be assumed that it is easier for men to assess the external causes of SAAs, such as alcohol and drug use, family conflicts, than with "traditional masculinity" (demonstration of

---

masculinity against a woman, desire for control) or inferiority, childhood violence as the main reason for domestic violence. This misconception that alcohol and drug abuse cause domestic violence is quite common myth (Gover, Paul, and Dodge, 2011). While substance abuse does not cause domestic violence, it is a significant risk factor for escalation of intimate partner violence. Nevertheless, in many other aspects of domestic violence (other causes, danger to society, perception of helping a woman), the opinions of men and women surveyed did not differ significantly.

Officers are increasingly realizing that more effective police assistance to women in domestic violence situations requires more knowledge and training on how to deal with domestic violence, and that greater leadership attention is needed for this work. And these provisions are much more pronounced than in the previous study. At the same time considerable number of police officers say the criminal law needs to be improved.

Thus, in order to improve the implementation of the law on domestic violence, both the attitudes of police officers towards domestic violence should be changed, as well as their training and the improvement interinstitutional cooperation in domestic violence cases. As police officers are part of society, society itself must be educated about domestic violence, its perception and prevention.

## CONCLUSIONS

9 years after the adoption of the Law on Protection from Domestic Violence, the legal regulation in Lithuania has changed significantly, which has made it possible to better ensure the protection of victims of violence and the prevention of domestic violence. Legal regulation is well advanced compared with law situation in 2011. The rights of victims of domestic violence are clarified and more widely regulated in law, police officers are more specialized in preventing domestic violence, and the rights of victims are better implemented and protected in practice. Observing the attitudes of police officers towards the domestic violence during the years, it can be stated that there have been positive changes in attitudes and ability to help victims of violence. Experience in Lithuania and various countries shows that criminalizing domestic violence makes police officers more empowered to deal with the problem, but at the same time they note that working with domestic violence frustrates them with the recurrence of domestic violence and there is a lack of support from their managers and the wider system (courts, prosecutors, communities) for their initial interventions. More training, counselling,

---

case studies of domestic violence and closer cooperation between professional groups is needed.

## REFERENCES

1. The Republic of Lithuania Law on Protection against Domestic Violence [interactive] [viewed in the 28th of September 2020] access via the Internet <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.400334/asr>
2. The Government of the Republic of Lithuania paid great attention to the prevention of domestic violence and adopted Resolution no. 485 “On the Approval of the State Program for the Prevention of Domestic Violence and the Provision of Assistance to Victims for 2014–2020” issued on 28th of May 2014, [interactive]viewed in the 2th of October 2020, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/b2368b30ea2711e3abf5c17841df37a3>
3. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA [interactive]viewed in the 2th of October 2020 <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029>
4. Draft Law of the Republic of Lithuania on Protection against Domestic Violence and Violence against Women, [interactive] [viewed in 28th of September 2020 on internet] <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/4af85de0896311eaa51db668f0092944>
5. Barrett B.J., Peirone A., Cheung Chi Ho. (2019). Spousal Violence and Evaluations of Police Performance in Canada: Does Police Contact Matter. *Journal of Family Violence* 34:199–211 <https://doi.org/10.1007/s10896-018-0017-x>
6. Bučiūnas, G., Velička, V. (2017) Keitimasis informacija ir tarpinstitucinis bendradarbiavimas tiriant smurto artimoje aplinkoje atvejus = Exchange of information and interinstitutional cooperation in domestic violence cases. Kaunas: Mykolas Romeris universiteto Viešojo saugumo fakultetas, 2017, 2017 info:eu-repo/semantics/openAccess.
7. Clement, K., Tatum, K. M., Kruse, M. J., & Kunselman, J. C. (2009). Exploring agency policing models and response to domestic violence. *Policing: An International Journal of Police Strategies & Management*, 32, 92–107.
8. Diemera K., Rossb S., Humphreys C., and Healey L. (2017). A ‘double edged sword’: discretion and compulsion in policing domestic violence. *Police Practice and Research*, VOL. 18, NO. 4, 339–351 <http://dx.doi.org/10.1080/15614263.2016.1230853>
9. Davis, R. C., Maxwell, C. D., & Taylor, B. (2003). Preventing repeat incidents of family violence: Analysis of data from three field experiments. *Journal of Experimental Criminology*, 2, 183–210.
10. Farris E.M, Holman M., R. (2015). Public Officials and a “Private” Matter: Attitudes and Policies in the County Sheriff Office Regarding Violence Against Women. *SOCIAL SCIENCE QUARTERLY*, Volume 96, Number 4, December, 1118-1135
11. Fleury R.E., Sullivan C.M., Bybee D.I., Davidson II W.S. (1998) "Why Don't They Just Call the Cops?": Reasons for Differential Police Contact Among Women with Abusive Partners. *Violence and Victims*, Vol. 13, No. 4.330-346.
12. Gölge Z.B., Sanal Z.B.Y., Yavuz S., Arslanoglu-Çetin E. (2016). Attitudes toward Wife Abuse of Police Officers and Judiciary Members in Turkey: Profession, Gender, Ambivalent Sexism and Sex Roles *J Fam Viol* 31:785–796 DOI 10.1007/s10896-016-9823-1
13. Gover, A.R., Pudrzynska Paul D., Dodge, M. Law Enforcement Officers’ Attitudes About Domestic Violence. *Violence Against Women*; May. 2011, Vol. 17 Issue 5, p.619-636.

14. Gracia, E., García, F., Lila, M. (2011). Police attitudes toward policing partner violence against women: Do they correspond to different psychosocial profiles? *Journal of Interpersonal Violence*, 26(1), 189–207.
15. Jakštienė, R. (2014) Domestic violence in case-law of European Court of Human Rights. *Visuomenės saugumas ir viešoji tvarka (11) : mokslinių straipsnių rinkinys = Security of society and public order : proceedings of scientific articles (11) / Mykolas Romeris universitetas. Viešojo saugumo fakultetas. Kaunas : Mykolas Romeris universitetas. Viešojo saugumo fakultetas. 2014, [t.] 11, p. 68-87*
16. Jakštienė R. (2017) The assessment of victims of violence in close environment to identify specific protection needs. *Jurisprudence*. 2017, 24(2). P. 359-386 [interactive]viewed in the 2th of October 2020]  
[https://www.mruni.eu/en/mokslo\\_darbai/jurisprudencija/archyvas/dwn.php?id=440215](https://www.mruni.eu/en/mokslo_darbai/jurisprudencija/archyvas/dwn.php?id=440215)
17. Jakštienė R. Domestic violence against women: protection by criminal law. Doctoral Thesis *Social Sciences, Law (01 S)*. 2019. P. 105
18. Johnson, I. M. (2007). Victims' perceptions of police response to domestic violence incidents. *Journal of Criminal Justice*, 35, 498–510.
19. Hageman-White, C., Humphreys, C., Tuttey, L., Diemer, K. (2015). Overview of current policies on arrest, prosecution and protection by the police and the justice system as responses to intimate partner violence. In H. Johnson, B. Fisher, & V. Jaquier (Eds.), *Critical issues on violence against women: International perspectives and promising strategies* (pp. 47–65). London: Routledge
20. Healey K., Smith Ch., O'Sullivan, CH. *Batterer Intervention: Program Approaches and Criminal Justice Strategies*. U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 1998.
21. Horwitz, S., Mitchell, D., LaRussa-Trott, M., Santiago, L., Pearson, J., Skiff, D., Cerulli, C. (2011). An Inside View of Police Officers' Experience with Domestic Violence. *Journal of Family Violence*; Nov.2011, Vol. 26 Issue 8, p.617-625.
22. Kautt, P., Tankebe, J. (2011). Confidence in the criminal justice system in England and Wales: a test of ethnic effects. *International Criminal Justice Review*, 21(2), 93–117.  
<https://doi.org/10.1177/1057567711408084>
23. Logan, T. K., Shannon, L., Walker, R. (2006). Police Attitudes Toward Domestic Violence Offenders. *Journal of Interpersonal Violence*; Oct., Vol. 21 Issue 10, p.1365-1374.
24. Michailovič, I. (2014) Kai kurie smurto artimoje aplinkoje aspektai socialinės kultūrinės lyties požiūriu. *Kriminologijos studijos*, 01 November 2014, Vol.2
25. Murray, J. (2002). Police culture: A critical component of community policing. *Australian Journal of Forensic Sciences*, 34, 57–71.
26. Ruibytė, L.; Velička, V. (2007). Teisinės ir psichologinės kliūtys, trukdančios pareigūnams sustabdyti smurtą šeimoje // *Policijos pareigūnų profesinio rengimo aktualijos: mokslinių straipsnių rinkinys / Mykolas Romeris universiteto Viešojo saugumo fakultetas; Kaunas, 2007. p. 31-40.*
27. Ruibytė, Velička, V. (2012) Dirbančių ir būsimų policijos pareigūnų nuostatos į smurtą artimoje aplinkoje. *Visuomenės saugumas ir viešoji tvarka (7) : mokslinių straipsnių rinkinys = Public security and public order : scientific articles (7) [Elektroninis išteklius]*. Kaunas : Mykolas Romeris universiteto Viešojo saugumo fakultetas. 2012, [t.] 7, p. 166-180.
28. Shtelmakher.M. Police misconduct and liability: applying the state-created danger doctrine to hold police officers accountable for responding inadequately to domestic-violence situations. *Loyola of Los Angeles law review* [Vol. 43:1533 Summer 2010].
29. Stover, C. S., Berkman, M., Desai, R., & Marans, S. (2010). The efficacy of a police-advocacy intervention for victims of domestic violence: 12 month follow-up data. *Violence Against Women*, 16, 410–425.

- 
30. Sun, I. (2007). Policing domestic violence: Does officer gender matter? *Journal of Criminal Justice*, 35(6), 581–595.
  31. Sun, I.Y., Li, J.C. M., Yuning W. Chinese and American college students' preferences for police response to domestic violence. *Policing & Society*; Jun. 2011, Vol. 21 Issue 2, p.214-232.
  32. Sun, I.Y., Chu, D.C., Who is better for handling domestic violence? A comparison between Taiwanese female and male Officers. *Journal of Criminal Justice*; Jul. 2010, Vol. 38 Issue 4, p. 453-459.
  33. Sun I.Y., Wu Y., Huang L., Lin Y., Li J.C.M., Su M. (2012) Preferences for Police Response to Domestic Violence: A Comparison of College Students in Three Chinese Societies. *J Fam Viol* 27:133–144
  34. Toon, R., & Hart, B. (2005). Layers of meaning: Domestic violence and law enforcement attitudes in Arizona. Retrieved from <https://repository.asu.edu/items/8558>
  35. Urbonas, D. Policijos pareigūnų teisė sulaikyti ir pristatyti asmenį į policijos įstaigą smurto privačioje erdvėje kontekste.// Mokslinių straipsnių rinkinys „Visuomenės saugumas ir viešoji tvarka“, 2011 (5), p. 220-239.
  36. Vaigė, L. (2013) The concept of domestic violence in Lithuania and the aspect of gender from the perspective of international law. *Socialinių mokslų studijos : mokslo darbai = Social sciences studies : research papers / Mykolas Romeris universitetas. Vilnius : Mykolas Romeris universitetas. 2013, Nr. 5(1), p. 255-274.*

---

# THE STATUS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WITHIN THE HUMAN RIGHTS ARCHITECTURE OF THE EUROPEAN UNION

**Harald Christian Scheu<sup>1</sup>**

*<sup>1</sup>Police Academy of the Czech Republic in Prague  
Lhotecká 559/7, 143 00 Prague 4-Kamýk, Czech Republic  
E-mail: [scheu@post.cz](mailto:scheu@post.cz)*

**Bohumil Peterka<sup>2</sup>**

*<sup>2</sup>Police Academy of the Czech Republic in Prague  
Lhotecká 559/7, 143 00 Prague 4-Kamýk, Czech Republic  
E-mail: [b.peterka@post.cz](mailto:b.peterka@post.cz)*

DOI: 10.13165/PSPO-20-25-22

---

**Abstract.** This paper, deals with the specific position of the European Convention of Human Rights within the EU human rights architecture. Special attention is drawn to the relationship between the European Convention of Human Rights and the EU Charter of Fundamental Rights, as well as the relationship between the European Convention of Human Rights and general legal principles. Despite some tensions between the Luxembourg and the Strasbourg systems of protection, the European Convention remains an important external pillar of the human rights doctrine of the EU Court of Justice. The European Convention and the relevant case law of the European Court of Human Rights continue to be a stabilizing element of the European protection of human rights

**Keywords:** European convention, human rights, fundamental freedoms

## INTRODUCTION

In the period immediately following the end of World War II, the international system experienced a paradigm shift. Whereas, in the spirit of traditional international law, human rights issues were considered an internal matter of sovereign states and possible claims arising from violations of individual rights were raised at the international level by the home state within the institute of diplomatic protection, after 1945, international organizations such as the United Nations and the Council of Europe began to address individual human rights with great commitment. For the first time, the protection of the rights of all human beings was codified in international documents, and international organizations established a solid institutional structure for human rights monitoring.

Besides the Universal Declaration of Human Rights of 1948 and the American Declaration of the Rights and Duties of Man of 1948, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”) is one of the key documents

---

adopted at the first stage of international human rights protection. Unlike other legally non-binding documents of international organizations, the ECHR was conceived as an international treaty which, aside from the codification of binding rights and freedoms, established, for the first time in the history of the international system, a judicial, respectively a quasi-judicial system of protection accessible to individuals.

In academic literature, there is no doubt that the ECHR has become the basis of the most successful and dynamic regional system for the protection of human rights. European protection has long served as a model or inspiration for other regional systems and, in many ways, it even exceeds the universal standard of protection developed by the United Nations.

On the other hand, some problems related to current human rights protection in Europe must not be overlooked. The ECHR-based system has, in a way, fallen victim to its own success. This is true not only for the overburdening of the European Court of Human Rights by the high number of complaints from individuals who, after having unsuccessfully exhausted all national remedies, very often perceive an application to Strasbourg as their last hope for justice, and also from those who use the publicity and authority of the Strasbourg Court for political and lobbying purposes.

European protection involving several competing systems also suffers from a certain lack of systematicness. Over time, protection under the ECHR has come into direct competition with national constitutional mechanisms and EU instruments. Orientation in this system, sometimes referred to as the Bermuda Triangle,<sup>1</sup> Labyrinth<sup>2</sup> and Human Rights Puzzle,<sup>3</sup> is not easy at all.

The Treaty of Lisbon introduced a new version of Article 6 of the Treaty on European Union (“TEU”), defining three levels of protection within EU human rights law: first the EU Charter of Fundamental Rights (“CFREU”), second the ECHR and third general principles of law. In this paper, we want to shed light on the specific position of the ECHR within the EU human rights architecture. After a brief introduction to the genesis of the three-pillar system of protection and the concept of the current Article 6 TEU, special attention will be drawn to the

---

<sup>1</sup> HIRSCH, Günter. Grundrechtsschutz im „Bermuda-Dreieck“ zwischen Karlsruhe, Straßburg und Luxemburg, *Europarecht – Beiheft* 1/2006, 7-18; Kleine-Cosack, Michael. Grund- und Menschenrechtsschutz im „Bermuda-Dreieck“. *Mängel- und Reformbedarf aus Sicht der Anwaltspraxis*, *Anwaltsblatt* 7/2011, 501-505.

<sup>2</sup> HARATSCH, Andreas. Die Solange-Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte – Das Kooperationsverhältnis zwischen EGMR und EuGH, *ZaöRV* 66 (2006), 927-947.

<sup>3</sup> SCHEECK, Laurent. Solving Europe’s Binary Human Rights Puzzle. *The Interaction between Supranational Courts as a New Parameter of European Governance*, *Questions de Recherche - Research in Question*, October 2005, available at: <http://www.sciencespo.fr/cevi/sites/sciencespo.fr/cevi/files/qdr15.pdf>.

---

relationship between the ECHR and the CFREU, as well as the relationship between the ECHR and general legal principles.

## **ORIGINS OF THE RELATIONSHIP BETWEEN THE ECHR AND EU LAW – GENERAL PRINCIPLES OF LAW AND OPINIONS OF THE CJEU**

Initially, the European Communities were not established with the aim of human rights protection. They were designed as tools of purely economic integration. Two main reasons for that may be identified. First, the founding Member States did not envisage going beyond the purely economic dimension of integration enshrined in the founding treaties, and second, Member States saw sufficient guarantees for the protection of human rights in their own constitutional catalogues of rights at the national level and mainly in the ECHR at the international level.

Until the late 1960s the CJEU<sup>4</sup> simply rejected human rights arguments.<sup>5</sup> It was, in particular, the development of the doctrine of the primacy of European law that required a shift of this paradigm. It was brought about by the CJEU in *Stauder* (1969).<sup>6</sup> In *Stauder*, the CJEU reflected academic and political discourse of the time (which followed after previous judgments enshrining the primacy of EC law) and ruled that common values of national constitutional law, in particular national human rights, must be considered an unwritten part of EC law.

In the subsequent case law, the CJEU expanded the range of sources of general principles of law. In the *Internationale Handelsgesellschaft* (1970), the CJEU coined the notion of general principles of law. Until 1974, when the CJEU consolidated its approach in *Nold*,<sup>7</sup> the relationship between EC Law and international law was not entirely clear, or rather the CJEU avoided mentioning the international human rights obligations of the Member States. In *Nold*, the CJEU expressly stated that “international treaties for the protection of human rights on which the member states have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of community law”, similar to the national constitutional law of the Member states. That opened up the relationship between EC

---

<sup>4</sup> In this paper, the abbreviation of the CJEU refers to both the Court of Justice of the European Union and its predecessors, regardless of their official name.

<sup>5</sup> Cf. e.g. 1/58 *Stork v High Authority*, in which the CJEU expressly refused to review EC legislation in the light of the fundamental rights enshrined in the law of the Member States.

<sup>6</sup> 29/69 *Stauder*.

<sup>7</sup> 4/73 *Nold*.

law and the ECHR as the most important human rights treaty binding all the Member States.<sup>8</sup> However, it was still a relationship without sharp contours, because the ECHR (as well as other human rights conventions) was never declared formally binding upon the EU, but it was only considered to be an especially significant source of inspiration for the CJEU. The first explicit reference to the ECHR in the case law of the CJEU appeared in *Rutili* (1975), where the ECHR recognized the need to interpret EC law in the light of the ECHR.<sup>9</sup>

This case law was soon reflected by other EC institutions. In their joint declaration of 1977, the European Parliament, the Council and the Commission emphasized the paramount importance of the protection of fundamental rights, which derives primarily from the constitutions of the Member States and from the ECHR.<sup>10</sup> The exceptional position of the ECHR is well illustrated by the fact that no other human rights treaty is mentioned.

The final confirmation of the relationship between the ECHR and Community law followed in 1979, when the CJEU first decided a preliminary ruling on the basis of the ECHR. In *Hauer*,<sup>11</sup> following the opinion of Advocate General Capotorti, the CJEU ruled that the ECHR is integrated into Community law.<sup>12</sup> In the following years, the CJEU repeatedly returned to clarifying the boundaries between Community (and later EU) law and the ECHR,<sup>13</sup> but the foundations laid from the late 1960s to the late 1970s were never called into question.

Quite soon, as early as 1979, the Commission called for the EC's accession to the ECHR in a memorandum.<sup>14</sup> Efforts for the EC to formally accede to the ECHR, thus strengthening its position as a human rights organization, had grown stronger over time. They materialized in the early 1990s, when the Council asked the CJEU whether the EC's accession to the ECHR was compatible with primary law.

In its Opinion No. 2/94, the CJEU replied rather succinctly that it was not, for two reasons. First, the CJEU stated that it did not have sufficient information to answer the question, as the specific conditions under which the Community should submit to the judicial review mechanisms established by the ECHR were to be set.<sup>15</sup> The second reason was that the EC at

---

<sup>8</sup> 4/73 *Nold*, para 13.

<sup>9</sup> KORENICA, F. *The EU Accession to the ECHR; Between Luxembourg's Search for Autonomy and Strasbourg's Credibility on Human Rights Protection*, Springer International Publishing Switzerland, 2015, 43.

<sup>10</sup> Joint Declaration by the European Parliament, the Council and the Commission, 4 May 1977, para 1.

<sup>11</sup> 44/79 *Hauer*.

<sup>12</sup> Opinion of AG Capotorti in 44/79 *Hauer*.

<sup>13</sup> C-260/89 *ERT*, C-159/90 *SPUCI*, C-299/95 *Kremzow* or C-413/99 *Baumbast*.

<sup>14</sup> Memorandum on the Accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>15</sup> Opinion of the Court 2/94 of 28 March 1996, para 20-22.

---

the time did not have the power to accede to the ECHR, as the Community lacked both explicit and implicit power to join international human rights treaties.<sup>16</sup>

The situation changed by the adoption of the Lisbon Treaty, amended Article 6 TEU of which includes the obligation of the EU to accede to the ECHR. However, CJEU Opinion No. 2/13 has stopped the preparations for accession for the time being. The CJEU found the draft CJEU Accession Agreement inadmissible. There is not enough room to summarize the most important arguments put forward by the CJEU,<sup>17</sup> but the leitmotif of the whole opinion is that the EU's accession to the ECHR, as proposed, jeopardizes the principle of autonomy of EU law as it has been shaped since the 1960s. We can consider paradoxical the fact that the very principle which was behind the origin and developments of the CJEU's human rights case law is currently hampering further development in the area.

## POST-LISBON HUMAN RIGHTS ARCHITECTURE ACCORDING TO ARTICLE 6 TEU

The Lisbon Treaty fundamentally reformed the human rights framework of EU law and, through Article 6 TEU, introduced into EU law a comprehensive human rights architecture based on three pillars. Article 6 (1) TEU, which deals with questions of the status and interpretation of CFREU, provides that the Charter shall have the same legal value as the EU founding treaties and shall be interpreted in accordance with the general provisions in Title VII of the Charter and with due regard to the so-called Explanations.

The second paragraph of Article 6 TEU very briefly stipulates that the EU will accede to the ECHR, whereby such accession shall not affect the Union's competences as defined in the Treaties. At first sight, the wording of this provision seems very unfortunate, as it contains the unconditional obligation to enter an agreement which, however, has to be negotiated with the other contracting parties, and therefore will be subject to compromises. In other words, the EU is bound by an obligation which it, objectively, can fulfil only with the help of external subjects.

---

<sup>16</sup> Opinion of the Court 2/94 of 28 March 1996, para 27.

<sup>17</sup> For more detail consult e.g. HALBERSTAM, D. "It's the Autonomy, Stupid!" A Modest Defense of Opinion 2/13 on EU Accession to the ECHR, and the Way Forward. *German Law Journal*, 2015, 16(1), 105-146; HALLESKOV STORGAARD L., EU Law Autonomy versus European Fundamental Rights Protection—On *Opinion 2/13* on EU Accession to the ECHR, *Human Rights Law Review*, Volume 15, Issue 3, September 2015, 485–521; KELLERBAUER, M., KLAMERT, M., TOMKIN, J. (eds.) *The EU Treaties and Charter of Fundamental Rights: a Commentary*, Oxford University Press, 2019, 83-86.

---

The third paragraph of Article 6 recalls and reaffirms the binding nature of general legal principles, which stem from the ECHR and the constitutional traditions of the EU Member States.

Although this three-pillar structure of European human rights protection looks very impressive and certainly reflects high ambitions, it should be noted that, in light of its genesis, the current version of Article 6 TEU is not the result of a long-term and well-thought-out human rights strategy. The architecture defined in Article 6 EU represents a synthesis of more or less successful stages of EU integration. The leitmotif of the whole regulation can be identified as the pursuit of a maximalist approach, according to the principle "the more human rights and the more human rights mechanisms, the better".

However, as in many other areas, greater quantity does not necessarily mean greater quality. The opposite may be true. The second pillar of the EU's human rights architecture was not implemented due to the fact that in Opinion 2/13 of December 2014 the CJEU declared that the text of the accession agreement, which had been finalized after long and complicated negotiations, was incompatible with EU law. Therefore, more than ten years after the entry into force of the Lisbon treaty, the ECHR as such is still not a formal part of EU law. In contrast, the binding nature of the general principles of EU law is not in dispute, but the scope for their practical application appears to be considerably limited in light of the post-Lisbon case law of the CJEU.

The serious shortcomings of the system provided by Article 6 TEU cannot simply be resolved by Luxembourg case-law. The danger of divergent interpretations of human rights provisions at the level of the CJEU, the ECHR and national courts may, on the contrary, increase the fragility of the whole system and weaken its legitimacy. Needless to say, the instability of the Union's human rights system naturally influences the sensitive division of competences between international, EU and national courts. In this context, the proposal by European Commissioner Viviane Reding to repeal Article 51 of the CFREU can be seen as a clear effort to extend the Union's powers to the detriment of the Member States' sovereignty. According to this plan, all national acts, even those which are not related to EU law, would be potentially subject to legal action by the European Commission and to legal review by the CJEU whereby the CFREU would serve as the major point of reference.<sup>18</sup> As openly admitted by

---

<sup>18</sup> V. Reding's speech entitled "The EU and the Rule of Law - What next?" is available on the European Commission's website ([https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_13\\_677](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_13_677)).

---

Reding, such extension of the scope of the CFREU would mean a significant federalization of the Union.<sup>19</sup>

In light of these ambiguities and risks, it is necessary to pay more attention to the relationship of the ECHR to other sources of EU protection of fundamental rights.

### **THE RELATIONSHIP BETWEEN THE ECHR AND THE CFREU**

Even before the adoption of the CFREU, considerable attention was paid to the relationship between EC or EU law and the ECHR and it materialized in the case law of both the CJEU and the ECHR. Although the ECHR and CFREU regimes are based on different legal bases, given the largely identical scope of application it is natural that a comprehensive system of informal and formal links has been established between them. This relationship can be considered an important pillar of the European community of law, connected by the shared system of values.<sup>20</sup>

The question of EC liability for breaches of the ECHR was raised in Strasbourg as early as in the 1970s. In the judgment in *Confédération française du travail v EC*, the European Commission of Human Rights rejected the complaint on the ground that, since the EC was not a party to the ECHR, the complaint was inadmissible *ratione personae*.<sup>21</sup> Direct review of EC and EU acts is therefore ruled out until the EU's accession to the ECHR. However, the possibility of an indirect review, i.e. a review of the conduct of a Member State which has only complied with its obligations under EU law, remained open.

The European Court of Human Rights ("ECtHR") never gave up the possibility of reviewing violations of the ECHR which occur as a result of the application of EC or EU law by a Contracting Party to the ECHR. In *Matthews*, the ECtHR confirmed the earlier approach considering a direct review of an EC act impossible, but expressly allowed an indirect review, ruling that denying a citizen the opportunity to vote in the European Parliament elections in Gibraltar (on the basis of the UK Accession Treaty) constitutes a breach of the ECHR.<sup>22</sup>

In *Bosphorus*, the ECtHR found a balanced compromise, sometimes nicknamed the "Strasbourg Solange". First, the ECtHR confirmed its previous case law according to which the parties to the ECHR can be held liable for all acts and omissions, no matter whether those acts

---

<sup>19</sup> V. Reding: "I admit that this would be a very big federalizing step." (Ibidem.).

<sup>20</sup> GRAGL, P. *The Accession of the European Union to the European Convention on Human Rights*, Hart Publishing, 2013, 51.

<sup>21</sup> *Confédération française du travail v the EC* (Application No. 8030/77).

<sup>22</sup> *Matthews v United Kingdom* (Application No. 24833/94).

---

or omissions arise from national law or from their international obligations. They cannot therefore relieve themselves of this responsibility by mere reference to the fulfilment of their EU membership obligations. However, the ECtHR substantially mitigated this conclusion by introducing the presumption that the system of protection of human rights in EU law provides human rights protection equivalent to that of the ECHR, therefore a Member State implementing EU law cannot deviate from the ECHR standards.<sup>23</sup>

A lively debate on speculation as to whether the ECtHR would reconsider the *Bosphorus* compromise after the CJEU opinion 2/13 was ended by *Avotiš*.<sup>24</sup> In the ruling, the ECtHR did not fundamentally reconsider its position and confirmed that EU law represents a human rights protection regime equivalent to the ECHR. The ECtHR will continue to refuse to review Member States' acts if EU law does not allow for any discretion on the part of the Member State and if no dysfunction in the EU's control system can be identified.

The delicate balance between the Luxembourg and Strasbourg regimes, reflected by the ECtHR in *Bosphorus*, necessarily had to be imprinted in the CFREU text as well. Since its inception as a non-binding instrument in 2000, the CFREU has contained Article 52 (3).

Article 25 (3) enshrines the principle that the CFREU must provide at least an equivalent level of protection of rights that are also covered by the ECHR. The provision (together with Article 53 of the CFREU)<sup>25</sup> enshrines the relationship between the two instruments from the CFREU's point of view.<sup>26</sup> The two provisions belong to the most important rules of interpretation of the CFREU.<sup>27</sup> Since the CFREU became a binding instrument, there has been a will to maximize convergence between the CFREU and the ECHR, as evidenced e.g. by the Joint Declaration of the CJEU and ECtHR Presidents of January 2011.<sup>28</sup> The aim of Article 52

---

<sup>23</sup> *Bosphorus* (Application No. 45036/98).

<sup>24</sup> *Avotiš* (Application No. 17502/07).

<sup>25</sup> Although Article 53 of the CFREU explicitly mentions the ECHR, it can be argued, in line with the commentary literature, that since the relationship between the CFREU and the ECHR is specifically governed by Article 52 (3) of the CFREU, Article 53 makes no difference in this respect. Cf. e.g. KELLERBAUER, M., KLAMERT, M., TOMKIN, J. (eds.) *The EU Treaties and Charter of Fundamental Rights: a Commentary*, Oxford University Press, 2019, 2261-2262.

<sup>26</sup> Two remarks must be added. First, according to the Explanations to the CFREU, Article 52 (3) covers not only the ECHR itself but also its Protocols. Second, reservations of individual Member States to the ECHR cannot be taken into account when applying the CFREU.

<sup>27</sup> PEERS, S. (ed.) *The EU Charter of Fundamental Rights: a Commentary*, Beck, 2013, 1490.

<sup>28</sup> Joint communication from Presidents Costa and Skouris, available at: [https://www.echr.coe.int/Documents/UE\\_Communication\\_Costa\\_Skouris\\_ENG.pdf](https://www.echr.coe.int/Documents/UE_Communication_Costa_Skouris_ENG.pdf).

---

(3) is to keep human rights protection in the EU coherent without violating the principle of the autonomy of EU law.<sup>29</sup>

However, the question is to what extent the CJEU is also bound by the case law of the ECHR, not only by the ECHR itself. On the one hand, the ECHR must be seen as a "living instrument", the content of which is to a large extent determined by the ECtHR's interpretation, which reflects social and political developments and often favours teleological and comparative interpretations.<sup>30</sup> On the other hand, the CJEU is the sole highest authority in interpreting EU law.<sup>31</sup> Again, the result is a compromise. The CJEU must respect the case law of the ECtHR, although it is not unconditionally bound by it. This was subsequently reflected in a number of judgments and opinions in which the CJEU explicitly cites an analysis of the case law of the ECtHR as a precondition for its own reasoning.<sup>32</sup>

If we focus on the exception to the equivalence rule, i.e. on the situation where EU law provides higher protection, we can distinguish at least two types of cases where the CJEU has identified the need to deviate from the ECHR.<sup>33</sup> The first is the situation where EU law confers a higher level of protection of rights than the case law of the ECtHR. *Diouf*<sup>34</sup> or *Radu*<sup>35</sup> can serve as an illustration of this approach. The second situation appears if the relevant provision of the ECHR has not been ratified by all Member States and the ECHR regime, enshrined in international law, is not able to provide the same level of protection as a more coherent system of EU law. This was reflected, for example, in *Fransson*, in which the CJEU emphasized that Article 52 (3) of the CFREU did not affect the relationship between Member States' national law and the ECHR, and clarified that until the EU acceded to the ECHR, the ECHR itself had not formally been incorporated into the legal order of the Union. Thus, European Union law does not constitute, as long as the European Union has not acceded to it, a legal instrument

---

<sup>29</sup> PEERS, S., ed. *The EU charter of Fundamental rights: a Commentary*, Beck, 2013, 1742.

<sup>30</sup> Cf. e.g. KELLERBAUER, M., KLAMERT, M., TOMKIN, J. (eds.) *The EU Treaties and Charter of Fundamental Rights: a Commentary*, Oxford University Press, 2019, 2256.

<sup>31</sup> BRITAIN, S. *The Relationship Between the EU Charter of Fundamental Rights and the European Convention on Human Rights: an Originalist Analysis*, *European Constitutional Law Review*, 11: 482–511, 2015, s. 503.

<sup>32</sup> E.g. C-334/12, *Jaramillo*, para 43: "According to the case-law of the European Court of Human Rights on the interpretation of Article 6(1) of the ECHR, to which reference must be made in accordance with Article 52(3) of the Charter (...)"

<sup>33</sup> Cf. BRITAIN, S. *The Relationship Between the EU Charter of Fundamental Rights and the European Convention on Human Rights: an Originalist Analysis*, *European Constitutional Law Review*, 11: 482–511, 2015 506 et seq.

<sup>34</sup> C-69/10 *Diouf*.

<sup>35</sup> C-396/11 *Radu*.

---

which has been formally incorporated into European Union law. Consequently, European Union law does not govern the relations between the ECHR and the legal systems of the Member States, nor does it determine the conclusions to be drawn by a national court in the event of a conflict between the rights guaranteed by that convention and a rule of national law.<sup>36</sup>

In the period following the Opinion 2/13, it is possible to identify a trend in the case law of the CJEU, where in some human rights cases the Court completely omits the explicit reference to relevant ECtHR case law and focuses only on the assessment of its compatibility with the CFREU, despite the ECtHR case law clearly being taken into account.<sup>37</sup> The "Charter-centrist" view is demonstrated in some recent case law. In JZ, the CJEU even ruled that the application of Article 52 (3) is permissible only if the autonomy of Union law and of the CJEU is preserved.<sup>38</sup> However, this approach does not constitute any clear trend. An example of recent landmark decision, in which the CJEU, on the other hand, clearly preferred compliance with the case law of the ECtHR over the effectiveness and coherence of EU law and the principle of mutual trust between Member States, is Aranyosi and Căldăraru.<sup>39</sup> The subject of the dispute was the extradition of the citizens of Hungary and Romania on the basis of a European arrest warrant to these states, where the prison conditions do not meet the requirements of the ECtHR case law. In his Opinion, Advocate General Bot favoured the principle of mutual trust (possibly threatened by the EU accession to the ECHR according to Opinion 2/13). However, in the ruling, the CJEU stated that the issuing authority must examine carefully and in the light of each individual case whether the extradited person is in danger of inhuman or degrading treatment under Article 4 of the CFREU, which must be interpreted in accordance with ECtHR case law.

## **THE RELATIONSHIP BETWEEN THE ECHR AND GENERAL PRINCIPLES OF LAW**

The general principles of law include fundamental rights, which are guaranteed by the ECHR and which result from the constitutional traditions common to the Member States. From the late 1960s, it was the CJEU that introduced and gradually shaped the doctrine of general legal principles. Since protection based on unwritten general principles was conceived as a

---

<sup>36</sup> C-617/10 Fransson, para 44.

<sup>37</sup> C-362/14 Schrems.

<sup>38</sup> C-294/16 PPU JZ, para 50.

<sup>39</sup> C-404/15 a C-659/15 PPU Aranyosi and Căldăraru.

---

compensation for the absence of human rights in the founding treaties, the status of such principles became somewhat complicated and confusing after the Lisbon Treaty which stipulated that the CFREU, as a maximalist codification of human rights, is legally binding.

The question arises as to whether it would be more appropriate to fully replace the concept of general human rights principles with the CFREU. It is also unclear what should be the relationship between the general principles of law and the ECHR after the EU's accession to the ECHR. However, due to the mentioned problems related to the implementation of Article 6 (2) TEU, the second question has not become relevant, so far.

While Article 6 TEU does not at all address the relationship between the CFREU and general principles of law, the Charter itself is more explicit in this regard. Under Article 52 (4) of the Charter, fundamental rights which result from the constitutional traditions common to the Member States shall be interpreted in harmony with those traditions. In other words, the EU institutions, in particular the CJEU, do not interpret general principles of law autonomously, but take into account the use of certain terms and concepts by national authorities.

However, this interpretative rule does not solve all issues related to general legal principles, as Article 52 (4) of the CFREU relates only to the common constitutional traditions of the Member States. This provision, therefore, does not reflect the problem that general legal principles are based not only on constitutional traditions but also on the ECHR. Although the formal accession of the EU to the ECHR has not yet taken place, it must be borne in mind that the vast majority of the rights contained in the ECHR (and its additional protocols) have been reflected into both the CFREU and the set of general legal principles.

At this point, the problem of competing interpretations of general legal principles needs to be addressed. Although Article 52 (4) of the CFREU takes into account only the constitutional traditions of the Member States when interpreting general principles of law, with a view to the historical development of the whole concept, it is obvious that the ECHR forms the core of the general principles of law. Therefore, the interpretation of rights guaranteed by the general principles of law needs to take into account not only the text of the ECHR but also relevant Strasbourg case-law.

It is common ground that the interpretation of general principles of law may be the same in the light of constitutional traditions and also in the light of the Strasbourg case-law. This is because the national standard of human rights in Member States is often strongly influenced by

---

the Strasbourg system, not only in those Member States, such as the Czech Republic, in which the ECHR forms part of the constitutional order.

On the other hand, the concept of general principles of law also includes potential contradictions between Strasbourg's understanding of human rights as a living tool and a more conservative approach applied by national constitutional courts. The reference to national constitutional traditions in Article 52 (4) of the Charter can thus be understood as a certain defence of national traditions and values against Europeanisation and globalization tendencies.<sup>40</sup> However, the line between national and European values is not set in stone. As national constitutional traditions do not approach all human rights in the same way, national values can vary significantly from one Member State to another.

In the past, the CJEU has, therefore, relatively freely interpreted general principles of law. German legal doctrine has introduced the term “evaluative legal comparison” (“*wertende Rechtsvergleichung*”) in order to explain the Court’s methodology.<sup>41</sup> In some cases, the CJEU recognized a general principle of law which was adopted by only one Member State’s legal order (e.g. a specific form of confidentiality between lawyer and client).<sup>42</sup> In other cases, it did not accept as a general principle a rule which had been recognized by the vast majority of Member States (e.g. animal protection).<sup>43</sup> It is no wonder that such degree of methodological freedom, which can take the form of an autonomous interpretation of national concepts, was criticized long before the adoption of the Treaty of Lisbon.<sup>44</sup>

The uncertainty associated with the interpretation of general principles of law could be reduced if the CJEU took strong account of the ECHR, especially in those cases in which the constitutional traditions of the Member States appear to be contradictory. Such an interpretative rule is supported by Article 52 (3) of the CFREU, according to which the meaning and scope of the rights, which are simultaneously guaranteed by both the CFREU and the ECHR, shall be the same. It would certainly go against the premise of the unity and autonomy of European

---

<sup>40</sup> See Borowsky, M. Artikel 52, In Mayer, J. (ed.) *Charta der Grundrechte der Europäischen Union* (4th edition), Baden-Baden, 2014, 801.

<sup>41</sup> For more details, see Franz C. Mayer, Constitutional comparativism in action. The example of general principles of EU law and how they are made—a German perspective, *International Journal of Constitutional Law*, Volume 11, Issue 4, October 2013, 1003–1020.

<sup>42</sup> 155/79 AM & S.

<sup>43</sup> C-189/01 Jippes.

<sup>44</sup> *Lecheler*, H. *Der Beitrag der allgemeinen Rechtsgrundsätze zur Europäischen Integration – Rückblick und Ausblick*, ZEuS 2003, 338-352.

---

Union law if the interpretation of the rights guaranteed by the CFREU and the ECHR had to change as a result of a new approach in some Member States.

At first sight, the Explanations *relating to the Charter of Fundamental Rights* support the argument that general principles of law do not have any direct effect on the meaning and scope of the rights laid down in the Charter and the ECHR. This concerns, for example, the right to life (Article 2 of the CFREU and Article 2 of the ECHR), the right to personal liberty (Article 6 of the CFREU and Article 5 of the ECHR), the freedom of expression (Article 11 of the CFREU and Article 10 of the ECHR) or the right to property (Article 17 CFREU and Article 1 of the first Additional Protocol to the ECHR). However, the Explanations do not offer a similar comparison of rights guaranteed by the Charter and general principles of law. Part of the doctrine therefore admits the relevance of general principles of law only in those cases in which the scope of a certain right (e.g. the right to education) goes beyond the narrow scope of the CFREU and the ECHR (Article 14 CFREU and Article 2 of the first Additional Protocol to the ECHR).<sup>45</sup>

We do not fully agree with this interpretation. Although in standard cases there is not much room left for the application of general legal principles besides the CFREU and the ECHR, the attention paid by the ECtHR to arguments based on the so-called European consensus cannot be overlooked. According to the case law of the ECtHR, the meaning of the provisions of the ECHR is not given forever, but must be understood in light of the societal changes in the Contracting States.<sup>46</sup> From a methodological point of view, the ECtHR examines relevant standards and legal practices at the national level in order to identify common approaches shared by most States Parties.<sup>47</sup> The content and scope of the rights under the ECHR are therefore to some extent conditioned by the understanding of those rights by the authorities of the Contracting States. Thus, in the light of the case law of the ECtHR, new developments in most Member States may significantly affect the interpretation of the fundamental human rights provided by the ECHR.

At present, there is no effort on the part of the CJEU to address the conceptual weaknesses of European human rights protection. In its practice, the Court practically no longer takes into

---

<sup>45</sup> BOROWSKY, *op. cit.*, 803.

<sup>46</sup> For a critical analysis of the concept of European consensus in the case law of the ECtHR, see DRAGHICI, Carmen. *The Strasbourg Court between European and Local Consensus: Anti-Democratic or Guardian of Democratic Process?* Public Law. 2017 (1), 11-29.

<sup>47</sup> REGAN, Daniel. *European Consensus: A Worthy Endeavour for the European Court of Human Rights.* Trinity C.L.Rev. 51 (2011), p. 52.

---

account general legal principles, nor does it have any clear ambition to clarify the link between the ECHR and general legal principles in the current system of EU law.

## REFERENCES

1. Borowsky, M. Artikel 52, In Mayer, J. (ed.) *Charta der Grundrechte der Europäischen Union* (4th edition), Baden-Baden, 2014.
2. BRITTAIN, S. The Relationship Between the EU Charter of Fundamental Rights and the European Convention on Human Rights: an Originalist Analysis, *European Constitutional Law Review*, 11: 482–511, 2015, s. 503.
3. *Confédération française du travail v the EC* (Application No. 8030/77).
4. DRAGHICI, Carmen. The Strasbourg Court between European and Local Consensus: Anti-Democratic or Guardian of Democratic Process? *Public Law*. 2017 (1).
5. Franz C. Mayer, Constitutional comparativism in action. The example of general principles of EU law and how they are made—a German perspective, *International Journal of Constitutional Law*, Volume 11, Issue 4, October 2013.
6. GRAGL, P. *The Accession of the European Union to the European Convention on Human Rights*, Hart Publishing, 2013.
7. HALBERSTAM, D. “It's the Autonomy, Stupid!” A Modest Defense of Opinion 2/13 on EU Accession to the ECHR, and the Way Forward. *German Law Journal*, 2015, 16 (1).
8. HALLESKOV STORGAARD L., EU Law Autonomy versus European Fundamental Rights Protection—On Opinion 2/13 on EU Accession to the ECHR, *Human Rights Law Review*, Volume 15, Issue 3, September 2015.
9. HARATSCH, Andreas. Die Solange-Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte – Das Kooperationsverhältnis zwischen EGMR und EuGH, *ZaöRV* 66 (2006).
10. HIRSCH, Günter. Grundrechtsschutz im „Bermuda-Dreieck“ zwischen Karlsruhe, Straßburg und Luxemburg, *Europarecht – Beiheft* 1/2006.
11. Joint communication from Presidents Costa and Skouris, [https://www.echr.coe.int/Documents/UE\\_Communication\\_Costa\\_Skouris\\_ENG.pdf](https://www.echr.coe.int/Documents/UE_Communication_Costa_Skouris_ENG.pdf).
12. Joint Declaration by the European Parliament, the Council and the Commission, 4 May 1977.
13. KELLERBAUER, M., KLAMERT, M., TOMKIN, J. (eds.) *The EU Treaties and Charter of Fundamental Rights: a Commentary*, Oxford University Press, 2019.
14. Kleine-Cosack, Michael. Grund- und Menschenrechtsschutz im „Bermuda-Dreieck“. Mängel- und Reformbedarf aus Sicht der Anwaltspraxis, *Anwaltsblatt* 7/2011.
15. KORENICA, F. *The EU Accession to the ECHR; Between Luxembourg's Search for Autonomy and Strasbourg's Credibility on Human Rights Protection*, Springer International Publishing Switzerland, 2015, 43.
16. Lecheler, H. Der Beitrag der allgemeinen Rechtsgrundsätze zur Europäischen Integration – Rückblick und Ausblick, *ZEuS* 2003.
17. *Matthews v United Kingdom* (Application No. 24833/94).
18. PEERS, S. (ed.) *The EU Charter of Fundamental Rights: a Commentary*, Beck, 2013.
19. REGAN, Daniel. *European Consensus: A Worthy Endeavour for the European Court of Human Rights*. *Trinity C.L.Rev.* 51 (2011).
20. SCHEECK, Laurent. Solving Europe's Binary Human Rights Puzzle. The Interaction between Supranational Courts as a New Parameter of European Governance, *Questions de Recherche - Research in Question*, October 2005, available at: <http://www.sciencespo.fr/ceri/sites/sciencespo.fr/ceri/files/qdr15.pdf>.

- 
21. V. Reding's speech entitled "The EU and the Rule of Law - What next?" Is available on the European Commission's website ([https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_13\\_677](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_13_677)).

---

## MIGRATION PROCESSES AS A PACKAGE OF CHALLENGES AND THREATS FOR PUBLIC SECURITY

**Danguolė Seniutienė**

*Mykolas Romeris University  
Maironio st. 27, LT-44298 Kaunas, Lithuania  
Telephone (+370 37) 281401  
E-mail: [d seniutiene@mruni.eu](mailto:d seniutiene@mruni.eu)*

DOI: 10.13165/PSPO-20-25-23

---

**Abstract.** This article presents a framework of issues of migration processes. Over the last five years, the European institutions have given priority to the European agenda on migration. Today after the Covid-19 pandemic, in the Europe and worldwide, dominated by a variety of crises, whether political, social or economic. The analysis of current trends in migration processes leads the conclusion that this issues still very actual and nowadays. Migration flows in one way or another also affect national security issues. The European Union's migration legislation reviewed and recommendations provided to the Member States. In the article, are raised questions: What encourages migration? Why is this now? Why migrate? Is migration a natural right?" Do migration trends and intensity not threaten security aspects<sup>1</sup>? Migration processes taking place within state borders. Therefore, law enforcement officials: the police officials, border officials must constantly monitor the migration process, analyse the findings and adapt their daily work.

**Keywords:** migration processes, border guard, human rights, public security.

### INTRODUCTION

One of the most striking features of "the development of modern society is the tremendous increase in the migratory mobility of the population"<sup>2</sup>. "Intensified globalization processes have led to an increase in migration around the world: migration flows, directions and volumes have changed."<sup>3</sup> Different type of migration to Europe or from Europe taking place still and will continue to do in the future. People come to Europe "for a variety of reasons"<sup>4</sup>. "Rapidly developing international relations in the political, economic, social and cultural spheres, changes in the areas of state border control, the structure of international labor demand, rapid development of science and technology, new communication and transport technologies

---

<sup>1</sup> Williams, W. Migration and Security. In J. Peter Burgess (ed.) *The Handbook of New Security Studies*, London: Routledge, 2010.

<sup>2</sup> Damulienė, A. "Migracijos problema Lietuvoje ir jos įtaka šalies ekonomikai". *Business systems and economics: Vol. 3 (1)*, MRU, 2013

<sup>3</sup> Naulickaitė, I. ir Melnikas, B. „Emigracijos iš Lietuvos procesai ekonomikos globalizacijos sąlygomis“. *Mokslas - Lietuvos ateitis Science – Future of Lithuania*. VGTU: Vilnius, 2015. <http://www.mla.vgtu.lt>

<sup>4</sup> Jurado, E. ir Brochmann, G "Europe's Immigration Challenge: Reconciling Work, Welfare and Mobility". IB Tauris: Policy Network, January, 2013.

---

determine the movement of migration flows."<sup>5</sup> In addition, the intensity of migration flows currently driven not only by various factors of "globalization and liberalization"<sup>6</sup>, but also by poverty in the countries of origin, population growth, wars, political turmoil, and an unstable political situation. Personal reasons play an important decisive role: hopes for a successful life, family reunification, and so on. Expectations of migrants include not only financial and living improvements, but also aspirations to obtain residence permits.

Migration as a social phenomenon has existed for a long time, but gradually, together with the phenomenon of migration, there was a need to assess the relationship between migration, the state and society at the level of security assessment. Modern international migration processes and their tendencies are one of the main objects in the field of social sciences.

**The aim** of the article is to conduct the analysis of migration phenomenon and critical issues related to the migration processes.

**Methodology.** To achieve aim of the research were applied theoretical: description, a analysis, and comparison methods. The work based on various scientific literature: monographs, articles, conference proceedings, etc., which help to analyze the research topic in detail. The work use theoretical literature presenting various aspects of the approach, as well relied on empirical research and statistics.

## MIGRATION FLOWS

Migration a very complex phenomenon of the humanity evolution, attracting researchers from various fields. In other hands, migration is now a top-tier political issue interconnected to human rights, development, and geopolitics at national and international levels. Recent developments that have attracted the attention of politicians, economists, lawyers and sociologists around the world, as well as the media, prove the relevance of this phenomenon. At present, the sharp increase in immigration flows and the challenges they pose, as well as the high level of critical public attitudes towards ongoing migration processes, are forcing many

---

<sup>5</sup> Seniutienė, D. ir de Violante Oliveira, P. F. "Migration: Trends, dynamics and critical issues" *In : Visuomenės saugumas ir viešoji tvarka: mokslinių straipsnių rinkinys 13*. MRU: Kaunas, 2015, P. 203-222.

<sup>6</sup> Hays, J. "Globalization and the new politics of embedded Liberalism". Oxford: Oxford university press, 2010, P. 401.

EU countries to review and reform their legal instruments and "immigration policies"<sup>7</sup> in detail. The EU Commission continues to take new initiatives to implement a common European immigration policy and to respond to the challenges and threats posed by immigration.

According to the International Organization for Migration (IOM)<sup>8</sup>, today's world is living in an unprecedented period of global human mobility: about a billion people have moved from one place to another, 3.5% of the planet's population. Of these, more than 250,000 are international migrants crossing their country's border. The rest are so-called local migrants, who mostly move from the periphery to the cities. The number of migrants in the world is increasing (Table 1), two thirds of them are economic migrants, and one third of those arriving are political migrants.

**Table 1.** International migrants, 1970-2019

Year	Number of migrants	Migrants as a % of the world's population
1970	84,460,125	2.3%
1975	90,368,010	2.2%
1980	101,983,149	2.3%
1985	113,206,691	2.3%
1990	153,011,473	2.9%
1995	161,316,895	2.8%
2000	173,588,441	2.8%
2005	191,615,574	2.9%
2010	220,781,909	3.2%
2015	248,861,296	3.4%
2019	271,642,105	3.5%

Source: UN DESA, 2008, 2019a, 2019b.

Note: The number of entities (such as States, territories and administrative regions) for which data were made available in the 2019 UN DESA Revision of International Migrant Stock was 232. In 1970, the number of entities was 135.

Source: IOM<sup>9</sup>

Although the economic motivations for demography are very strong, rapid migration is also driven by "shrinking distances" due to technological progress and the increasing number of both man-made and natural disasters, forcing people to move from one place to another.

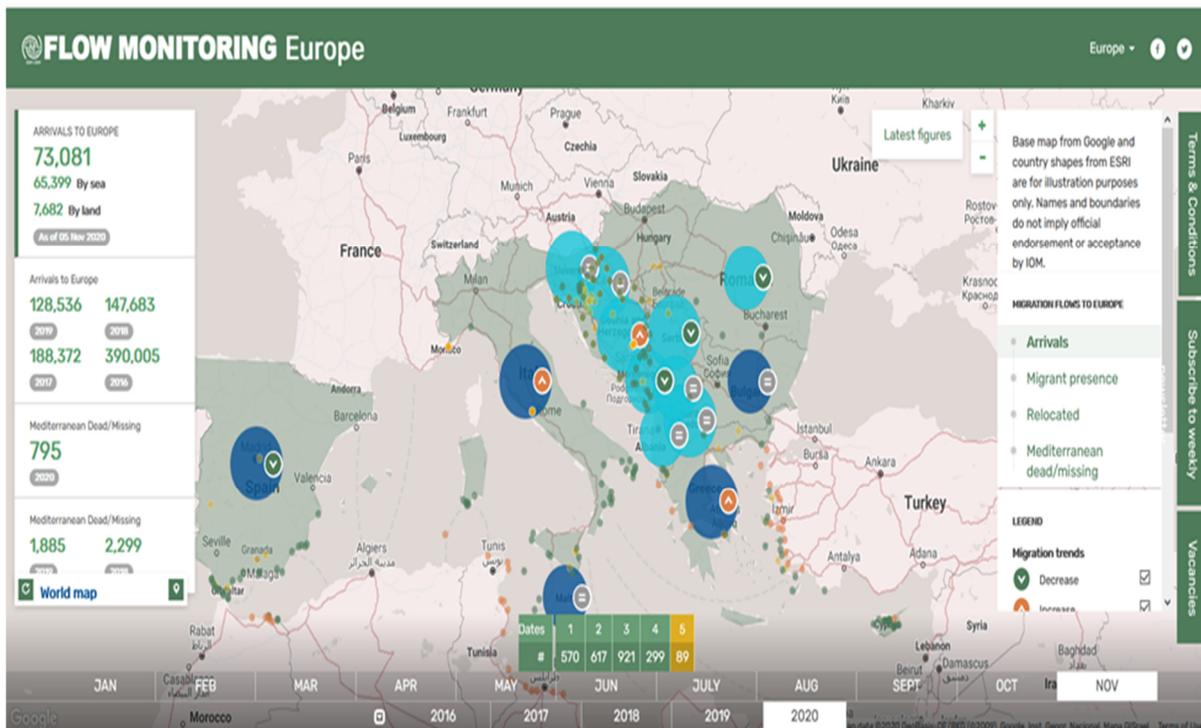
<sup>7</sup> Violante de Oliveira, P. F., Seniutienė D. ir Borges Gonçalves, F. "Internal security: challenges for the Europe of the XXI century". *European police science and research bulletin*. (Budapest: European Police College (CEPOL), P. 4-9.

<sup>8</sup> Tarptautinė migracijos organizacija, 2020 Internetinė prieiga: [https://www.un.org/sites/un2.un.org/files/wmr\\_2020.pdf](https://www.un.org/sites/un2.un.org/files/wmr_2020.pdf)

<sup>9</sup> Tarptautinė migracijos organizacija, 2020 Internetinė prieiga, 2020 Internetinė prieiga: [https://www.un.org/sites/un2.un.org/files/wmr\\_2020.pdf](https://www.un.org/sites/un2.un.org/files/wmr_2020.pdf)

“Modern processes of globalization present new forms and opportunities of human migration; emphasis is placed on various aspects of their integration, acculturation, adaptation or isolation in foreign countries. People have become cosmopolitan, easily crossing the boundaries of different aspects and meanings of their lives, such as class, race, gender, culture, or state of residence.”<sup>10</sup> As various statistics show, most European countries are facing a particularly rapid and marked increase in international migration and, in particular, in illegal immigration. The influx of immigrants to European countries (Map 1) inevitably affects and encourages host countries to review their migration policies and adapt them to these processes affected by globalization.

Map 1. Arrivals to Europe



Source: IOM<sup>11</sup>

It is therefore becoming important to find out how regulatory instruments and migration policies are changing in the various European host countries in this period of globalization and intensified migration.

<sup>10</sup> Kripienė, I. „Identitetų konstravimas transnacionalinėje migracijoje: šiuolaikiniai imigrantai iš Lietuvos Jungtinėse Amerikos Valstijose“. *Daktaro disertacija*. Kaunas: Vytauto Didžiojo universitetas, 2012.

<sup>11</sup> Tarptautinė migracijos organizacija, 2020. Internetinė prieiga: <https://migration.iom.int/europe?type=arrivals>

---

## MIGRATION PROCESSES AND CHALLENGES TO PUBLIC SECURITY

The human right to free movement without restrictions was defined in the United Nations Universal Declaration of Human Rights<sup>12</sup> at 1948. It states, that "everyone has the right to freedom of movement and residence within the borders of each State" and "everyone has the right to leave any country, including his own, and to return to his country".

International migration is an integral part of globalization: the 21st century, even called the "migration age". Although "international migration has existed for a long time before the age of globalization, the scale, speed and complexity of global migration have become unprecedented during it."<sup>13</sup>

Scientific literature states, that the concept of the migration phenomenon varies depending on the context in which it is explained. The term migration used in various sciences: sociology, demography, criminology, law and etc. in various contexts. In some cases, migration has legal consequences, in other cases it does not.

"There is no single universal migration theory that fully explains the migration process and the determinants of migration."<sup>14</sup> Theories explaining migration examine this process at different levels, in certain parts, emphasizing one aspect or another. It should be noted that migration theories should not be seen as alternatives, but as complementary theories.

International migration is not a new phenomenon. As part of the processes of global economy and integration, the international mobility of people is constantly changing and gradually increasing. The rapidly changing dynamics and content of international migration are linked not only to changing economic, political and cultural relations between countries or regions, but also to fundamental "Human Rights", which (should be) inseparable from current migration policies at EU level.<sup>15</sup> "Although the development and implementation of migration policy at the national level is inseparable from the general principles of migration policy,

---

<sup>12</sup>Visuotinė žmogaus teisių deklaracija. Internetinė prieiga:

[http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=278385&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=278385&p_query=&p_tr2=)

<sup>13</sup> Naulickaitė, I. ir Melnikas, B. "Emigracijos iš Lietuvos procesai ekonomikos globalizacijos sąlygomis". *Mokslas - Lietuvos ateitis Science - Future of Lithuania*, VGTU, Vilnius 2015. <http://www.mla.vgtu.lt>

<sup>14</sup> Maslauskaitė, A. ir Stankūnienė, V. "Šeima abipus sienų Lietuvos transnacionalinės šeimos genezė, funkcijos, raidos perspektyvos". Vilnius: Tarptautinė migracijos organizacija Socialinių tyrimų institutas, 2007.

<sup>15</sup> „Migration and International Human Rights Law“. Practitioners Guide No.6. International Commission of Jurists, 2011, P. 29.

---

looking deeper into the implementation of EU migration policy, the EU is gradually moving from human rights to migration as an economic and / or social process."<sup>16</sup>

EU cooperation at the political level on the integration of migrants began in 1999 following the adoption of the Tampere program<sup>17</sup>. The program states that asylum and migration issues require a common EU policy, which should include cooperation with migrants' countries of origin, a common EU asylum system and the management of migration flows. Since 2004 the Hague Program<sup>18</sup>, adopted in November 2006, increasingly focuses on the integration of migrants. The program emphasizes that integration is an ongoing two-way process involving migrants and the host society, as well as all policies, including education and employment and anti-discrimination policies. Migration and integration issues are developed in key EU documents and integration challenges are detailed in 2009 The Stockholm Program<sup>19</sup> and the EU 2020 strategy<sup>20</sup>.

As mentioned earlier, in recent decades, the forms, nature and quality of migration processes have reached unprecedented proportions. Migration processes have become one of the most important challenges today and are seen not only as a simple mechanical movement of people, but as a complex social process involving many aspects, including a very strong impact on social life and national security issues.

The intensive development of migration flows has made "the phenomenon of migration an integral part of all global problems"<sup>21</sup>, which requires a new approach to the legal regulation of international migration processes in order to strike a balance between the interests of those involved in migration processes. This suggests that migration regulation mechanisms and instruments should be based on social research to reveal the changing content of migration and its impact on security.

---

<sup>16</sup> Trečiųjų šalių piliečių integracijos trajektorijos ir vertinimo mechanizmai. <http://www.ces.lt/wp-content/uploads/2013/05/Migracijos-ir-migrant%C5%B3-integracijos-teorini%C5%B3-prielaid%C5%B3-sociologiniais-ir-politologiniais-aspektais-analiz%C4%972.pdf>

<sup>17</sup> *Tamperės programa*. [http://www.europarl.europa.eu/summits/tam\\_en.htm](http://www.europarl.europa.eu/summits/tam_en.htm) 1999

<sup>18</sup> *Hagos programa: laisvės, saugumo ir teisingumo stiprinimas Europos Sąjungoje*. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:053:0001:0014:LT:PDF>

<sup>19</sup> *Stokholmo programa – Atvira ir saugi Europa piliečių labui ir saugumui*. [http://eur-lex.europa.eu/legal-content/LT/TXT/PDF/?uri=CELEX:52010XG0504\(01\)&rid=11](http://eur-lex.europa.eu/legal-content/LT/TXT/PDF/?uri=CELEX:52010XG0504(01)&rid=11)

<sup>20</sup> *Komisijos komunikatas 2020 m. Europa Pažangaus, tvaraus ir integracinio augimo strategija*. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:LT:PDF>

<sup>21</sup> Martin H. W. Möllers, "Migration, Integration und europäische Grenzpolitik". *Jahrbuch öffentliche Sicherheit Sonderband 5: Gebundene Ausgabe* – 15. April 2011.

---

Why is this the case now? Why migrate? “Is migration a natural right?” Do migration trends and intensity not threaten security aspects?<sup>22</sup> Modern legal regulation (international, regional and national) is completely out of line with the fundamentally changed migration situation. The regulation of modern migration aspects will have to include sets of rules for different legal regimes. Thus, it is already possible to predict a certain level of inconsistency in the future legal framework or internal tensions that will have to be resolved by the officials of the relevant institutions on the basis of the discretion granted to them.

The main institution in Lithuania that ensures the control of migration processes and has to prevent possible threats to public security is the State Border Guard Service under the Ministry of the Interior. The role and activities<sup>23</sup> of this service have changed depending on historical and political events. Following the ratification of the Schengen Agreement<sup>24</sup>, Lithuania and other Member States abolished controls at their internal borders. This means that Schengen cooperating countries no longer carry out border checks. As internal border controls are no longer in place, common instruments need to be developed to ensure security in this area, i.e. y. playing a unique role in the protection of external borders and the management of border security<sup>25</sup>.

The basis of cooperation between EU Member States on security issues is the EU Internal Security Strategy. It includes actions to address the most urgent threats to EU security. These actions pursue five main strategic objectives:

- Dismantling criminal and terrorist networks,
- Tackling radicalization and recruitment,
- Protect citizens, businesses and society from cybercrime,
- Strengthen the management of the common external borders, and

---

<sup>22</sup> Miller, D. “*Is there a human right to immigrate?*” Nuffield College: Oxford, 2015.

<sup>23</sup> Lietuvos Respublikos Valstybės sienos ir jos apsaugos įstatymas. *Valstybės žinios*, 2000-05-24, Nr. 42-1192

<sup>24</sup> Šengeno erdvė, laisvo judėjimo erdvė be vidaus sienų kontrolės atsirado 1985 m., kai penkios ES valstybės narės pasirašė Šengeno susitarimą ir taip pradėjo bendradarbiauti, kad panaikintų kontrolę prie vidaus sienų. Vėlesniais metais prie šio bendradarbiavimo prisijungė dauguma ES valstybių narių ir kelios ES nepriklausančios šalys. Konvencija dėl Šengeno susitarimo 1985 m. birželio 14 d. sudaryto tarp Benilukso ekonominės sąjungos valstybių, Vokietijos Federacinės Respublikos ir Prancūzijos Respublikos Vyriausybės dėl laipsniško jų bendrų sienų kontrolės panaikinimo įgyvendinimo. Internetinė prieiga: [http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:42000A0922\(02\)](http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:42000A0922(02))

<sup>25</sup> ES vidaus saugumo strategija. Internetinė prieiga: <https://www.scribd.com/document/44558915/The-EU-Internal-Security-Strategy-in-Action>

---

- Improving the EU's crisis preparedness and response capacity".<sup>26</sup>

As mentioned above, the aspects discussed show that the implementation of strategic goals must be define and evaluate the measures used and implemented to strengthen the management of the common external borders.

Border security organizations at EU and national level are governmental organizations, and their financial capacity is always dependent on public funding and is usually limited. Nevertheless, border guards are required to deliver the highest levels of performance, effective border control management and security.

Due to new challenges to public security and intensified migration processes, the EU is working towards a common approach to security and maintenance. Members are developing and implementing modern systems at the external borders to improve border control: such as EUROSUR<sup>27</sup>, Visa Information System<sup>28</sup>, European Fingerprint database - EURODAC<sup>29</sup>, Passenger Data Registration System<sup>30</sup>, etc., legal regulation of the use of the mentioned systems has been created.

According to the EU directive from October 6, 2016 the Common Integrated Risk Analysis Model (CIRAM) was to become operational, thus making the integration of both the above-mentioned models and this model into national law mandatory. In the absence of common integration rules proposed for Member States, it is appropriate to analyse the situation and suggest possible ways to implement the integrated risk analysis model.

After Lithuania's accession to the European Union and the Schengen area, the areas regulated by the legal acts of the European Union will inevitably be transformed at the national level. One of the priority areas is state border protection, control of migration processes. Legal norms regulating border control, border security and migration control issues establish an innovative model of international communication and cooperation between states and “instruments” for their implementation.

---

<sup>26</sup> Komisijos komunikatas Europos Parlamentui ir Tarybai ES vidaus saugumo strategijos įgyvendinimas. Penki žingsniai kuriant saugesnę Europą. KOM/2010/0673. Internetinė prieiga: <http://eur-lex.europa.eu/legal-content/LT/TXT/HTML/?uri=CELEX:52010DC0673&from=LT>

<sup>27</sup> European Border Surveillance System (EUROSUR). Internetinė prieiga: [https://ec.europa.eu/home-affairs/e-library/glossary/european-border-surveillance-system\\_en](https://ec.europa.eu/home-affairs/e-library/glossary/european-border-surveillance-system_en)

<sup>28</sup> Visa Information System (VIS). Internetinė prieiga: [https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-information-system\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-information-system_en)

<sup>29</sup> Identification of applicants (EURODAC). Internetinė prieiga: [https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/identification-of-applicants\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/identification-of-applicants_en)

<sup>30</sup> Passenger Name Record (PNR). Internetinė prieiga: [https://ec.europa.eu/home-affairs/what-we-do/policies/police-cooperation/information-exchange/pnr\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/police-cooperation/information-exchange/pnr_en)

---

Therefore, there is a need to assess the compatibility of the above-mentioned legal norms with the norms of the European Union and the Schengen *acquis*, to assess the changes in the conceptual status of cooperation and borders during integration processes and their perspectives in terms of border protection organization and public security impact.

## CONCLUSION

Migration as a social phenomenon has existed for a long time, but gradually, together with the phenomenon of migration, there was a need to assess the relationship between migration, the state and society at the level of security assessment. Modern international migration processes and their tendencies are one of the main objects in the field of cooperation at international, regional and national levels. The changing content of migration and its impact on security raising the questions: Why is this the case now? Why migrate? Is migration a natural right? Do migration trends and intensity not threaten security aspects? Modern legal regulation (international, regional and national) is completely out of line with the fundamentally changed migration situation. There is a need to assess the compatibility of the above-mentioned legal norms at international, regional and national level; to assess the changes in the conceptual status of cooperation and borders during integration processes and their perspectives in terms of border protection organization and public security impact.

## REFERENCES

1. Damulienė, Aldona. Migracijos problema Lietuvoje ir jos įtaka šalies ekonomikai. *Business systems and economics*: Vol. 3 (1). Vilnius: MRU, 2013.
2. Hagos programa: laisvės, saugumo ir teisingumo stiprinimas Europos Sąjungoje. Internetinė prieiga: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:053:0001:0014:LT:PDF>
3. European Border Surveillance System (EUROSUR). Internetinė prieiga: [https://ec.europa.eu/home-affairs/e-library/glossary/european-border-surveillance-system\\_en](https://ec.europa.eu/home-affairs/e-library/glossary/european-border-surveillance-system_en)
4. Jurado, Elena ir Grete Brochmann. *Europe's Immigration Challenge: Reconciling Work, Welfare and Mobility*. IB Tauris: Policy Network, January, 2013.
5. Hays, Jude. *Globalization and the new politics of embedded Liberalism*. Oxford: Oxford university press, 2010.
6. Huemer, Michael. *Is there a Right to Immigrate? Social Theory and Practice*: Volume 36, Issue 3, July. JAV: Social Theory and Practice, 2010.
7. Identification of applicants (EURODAC). Internetinė prieiga: [https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/identification-of-applicants\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/identification-of-applicants_en)
8. International migration: Overview, News of Migracion. Internetinė prieiga: <http://www.unfpa.org/migration>

9. Komisijos komunikatas 2020 m. Europa Pažangaus, tvaraus ir integracinio augimo strategija. Internetinė prieiga: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:LT:PDF>
10. Komisijos komunikatas Europos Parlamentui ir Tarybai ES vidaus saugumo strategijos įgyvendinimas. Penki žingsniai kuriant saugesnę Europą. KOM/2010/0673 Internetinė prieiga: <https://eur-lex.europa.eu/legal-content/LT/TXT/HTML/?uri=CELEX:52010DC0673&from=IT>
11. Komisijos Komunikatas Europos Parlamentui ir Tarybai Europos sienų ir pakrančių apsaugos pajėgos ir veiksmingas Europos išorės sienų valdymas, COM(2015) 673 final. <https://ec.europa.eu/transparency/regdoc/rep/1/2015/LT/1-2015-673-LT-F1-1.PDF>
12. Komisijos Pasiūlymas Proposal for a directive of the european parliament and of the council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing. Žiūrėta 2016 spalio 27 d. [http://www.europarl.europa.eu/RegData/docs\\_autres\\_institutions/commission\\_europeenne/com/2013/0151/COM\\_COM\(2013\)0151\\_LT.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2013/0151/COM_COM(2013)0151_LT.pdf)
13. Konvencija dėl Šengeno susitarimo 1985 m. birželio 14 d. sudaryto tarp Beniliukso ekonominės sąjungos valstybių, Vokietijos Federacinės Respublikos ir Prancūzijos Respublikos Vyriausybės dėl laipsniško jų bendrų sienų kontrolės panaikinimo įgyvendinimo. Internetinė prieiga: [http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:42000A0922\(02\)](http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:42000A0922(02))
14. Kripienė, Ieva. *Identitetų konstravimas transnacionalinėje migracijoje: šiuolaikiniai imigrantai iš Lietuvos Jungtinėse Amerikos Valstijose. Daktaro disertacija*. Kaunas: Vytauto Didžiojo universitetas, 2012.
15. Maslauskaitė, Aušra, ir Vlada Stankūnienė. *Šeima abipus sienų Lietuvos transnacionalinės šeimos genėzė, funkcijos, raidos perspektyvos*. Vilnius: Tarptautinė migracijos organizacija Socialinių tyrimų institutas, 2007.
16. Migration and International Human Rights Law. Practitioners Guide No.6. International Commission of Jurists, 2011.
17. Miller, David. *Is there a human right to immigrate?* Nuffield College: Oxford, 2015.
18. Möllers, Martin H. W. Migration, Integration und europäische Grenzpolitik. Jahrbuch öffentliche Sicherheit Sonderband 5: Gebundene Ausgabe, 2011.
19. Naulickaitė, Indrė, ir Borisas Melnikas. Emigracijos iš Lietuvos procesai ekonomikos globalizacijos sąlygomis. Mokslas - Lietuvos ateitis/Science – Future of Lithuania Vilnius: VGTU, 2015. <http://www.mla.vgtu.lt>
20. Passenger Name Record (PNR). Internetinė prieiga: [https://ec.europa.eu/home-affairs/what-we-do/policies/police-cooperation/information-exchange/pnr\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/police-cooperation/information-exchange/pnr_en)
21. Seniutienė, Danguolė, ir Paulo Fernando de Oliveira. Migration: trends, dynamics and critical issues. In : Visuomenės saugumas ir viešoji tvarka: mokslinių straipsnių rinkinys. Kaunas: MRU, 2015.
22. Sipavičienė Audra, Vlada Stankūnienė. Lietuvos gyventojų (e)migracijos dvidešimtmetis: tarp laisvės rinktis ir išgyvenimo strategijos. Filosofija. Sociologija. 2011. T. 22. Nr. 4: Lietuvos mokslų akademija, 2011.
23. Stokholmo programa – Atvira ir saugi Europa piliečių labai ir saugumui. Internetinė prieiga: [http://eur-lex.europa.eu/legal-content/LT/TXT/PDF/?uri=CELEX:52010XG0504\(01\)&rid=11](http://eur-lex.europa.eu/legal-content/LT/TXT/PDF/?uri=CELEX:52010XG0504(01)&rid=11)
24. Tamperės programa. Internetinė prieiga: [http://www.europarl.europa.eu/summits/tam\\_en.htm](http://www.europarl.europa.eu/summits/tam_en.htm)
25. Tarptautinė migracijos organizacija. Internetinė prieiga: [https://www.un.org/sites/un2.un.org/files/wmr\\_2020.pdf](https://www.un.org/sites/un2.un.org/files/wmr_2020.pdf)
26. *Trečiųjų šalių piliečių integracijos trajektorijos ir vertinimo mechanizmai*. Internetinė prieiga: <http://www.ces.lt/wp-content/uploads/2013/05/Migracijos-ir-migrant%C5%B3-integracijos-teorini%C5%B3-prielaid%C5%B3-sociologiniais-ir-politologiniais-aspektais-analiz%C4%972.pdf>

- 
27. Violante de Oliveira, Paulo Fernando, Danguolė Seniutienė ir Fernando Borges Gonçalves. *Internal security: challenges for the Europe of the XXIst century. European police science and research bulletin*. Budapest : European Police College (CEPOL).
  28. Visa Information System (VIS). Internetinė prieiga: [https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-information-system\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-information-system_en)
  29. Visuotinė žmogaus teisių deklaracija. Internetinė prieiga: [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=278385&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=278385&p_query=&p_tr2=)
  30. Walters, Williams. *Migration and Security*. In J. Peter Burgess (ed.) *The Handbook of New Security Studies*, London: Routledge, 2010.

---

## BLOCKCHAIN AS SUSTAINABILITY DRIVER

Zaneta Simanaviciene<sup>1</sup>

<sup>1</sup>Mykolas Romeris University  
Vilnius, Lithuania  
Tel. +370 68751813,  
E-mail: [zasiman@mruni.eu](mailto:zasiman@mruni.eu)

Jurij Matyskevic<sup>2</sup>

<sup>2</sup>Mykolas Romeris University  
Vilnius, Lithuania  
Tel. +370 640 63798,  
E-mail: [mediajurijlt@gmail.com](mailto:mediajurijlt@gmail.com)

DOI: 10.13165/PSPO-20-25-15

---

**Abstract.** This article designed to review impact on Sustainability of the one of the most modern cutting edge technologies' namely Blockchain. First of all article describes technological background of Blockchain technology nature and also provides contemporary challenges that this technology faces today. Secondly definition of Sustainability is provided. Thirdly impact level on all 3P's has been observed.

**Justification of the research.** Blockchain being one of the most innovative technology nowadays brings solid state of trust between different stakeholders, this technology is extremely useful when we do speak about variety of market players involved in multiple transactions among them, especially when we do speak about value capture, therefore we can expect huge efficiency if we implement it in correct – methodological and systematic order. On the other hand Sustainability is a phenomenon that covers a lot of multifunctional dimensions and brings huge advantages in social sphere such as social responsibility, transparency, efficient usage of resources, compliance to human right, etc. This paper uses definition of Sustainability of John Elkington „Tripple Bottom Line“.

**Aim** is to examine the impact of Blockchain on Sustainability, providing level of that impact on 3 different dimensions – Planet, People, Profit.

**Methods** employed are analysis of the scientific articles, analysis of best practice use cases, comparison, analytical descriptive and generalization methods.

**Findings** of this research support the assumption that Blockchain can essentially contribute to Sustainability due to its technical characteristics – such as decentralized, public/transparent highly reliable register of transactions.

**Conclusions** emphasize Blockchain application in suitable functions with only 2 side comments that the biggest positive results of such implementation can be achieved only after addressing Blockchain challenges and second one is that Blockchain implementation itself generates new generation challenges.

**Keywords:** Blockchain, Sustainability, Technology application.

**Jel codes:** O31, O32

---

## INTRODUCTION

Blockchain being one of the most innovative technology nowadays brings solid state of trust between different stakeholders, this technology is extremely useful when we do speak about variety of market players involved in multiple transactions among them, especially when we do speak about value capture, therefore we can expect huge efficiency if we implement it in main economical activities in correct – methodological and systematic order.

As Blockchain essentially is ICT (Information and Communication Technology) concept, it shall be implemented according to the best Project management methodologies.

Sustainability is a multidimensional phenomenon that due to its contribution to all spheres could be considered as one of the most essential drivers for economic and social development. This research as a Sustainability definition uses „Tripple Bottom Line“ concept developed by John Elkington, meaning People, Planet and Profit. Therefore this paper analyses Blockchain impact and contribution to all these three features.

**Problem** is to analyze, search and select proper technology ensuring Sustainability in wider economic and social environment such as globalization (increased amount of stakeholders, international transactions with different legislation), different level of technological advancement, residual risks related to fraud and human errors.

**Purpose** is to examine suitability of Blockchain to complete aforementioned tasks taking into account above mentioned problems and to define and highlight main features and considerations of such contribution.

**Object** is Blockchain contribution to Sustainability.

Tasks:

to review and describe the technological background of Blockchain, highlighting its most appropriate features for Sustainability;

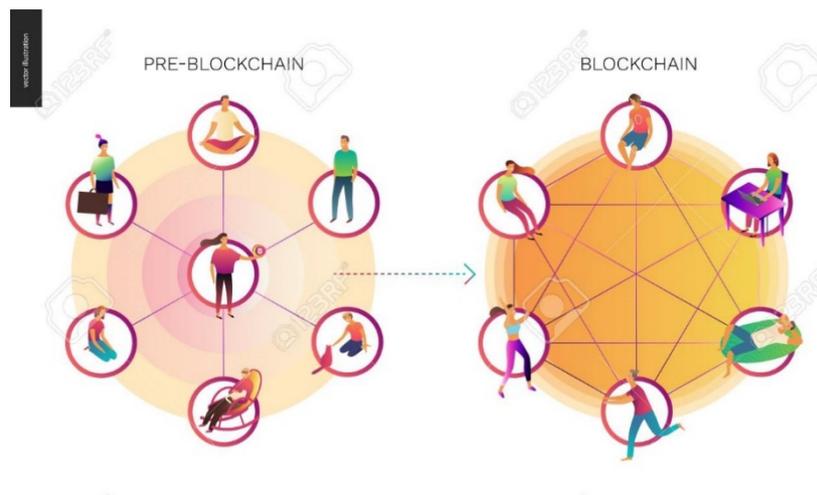
to provide contemporary challenges that this technology faces today;

to review specific Blockchain features contributing specifically to 3P' (People, Planet, Profit).

**Methodology of the Research** – conceptual analysis (analysis of the scientific articles), analysis of best practice use cases, comparison, analytical descriptive and generalization methods. It shall be noted that due to the topic's novelty and practical application authors have put a lot of focus on practical sources.

## 1. TECHNOLOGICAL BACKGROUND

Despite the fact that blockchain technology is incredibly popular and quite well known in IT world, to my opinion it is still worth providing general description of its technological roots to economic society. So in simple terms blockchain is a technology which empowers creating distributed or decentralized in economic and legal world ledger (in IT world log) to record the transaction.



**Figure 1.** Blockchain graphical concept  
*Source:* Grivina (2020)

As a relatively new technology, blockchain is designed to achieve decentralization, real-time peer-to-peer operation, anonymity, transparency, irreversibility and integrity in a widely applicable manner [18]. Even literal analysis of this technology allows to draw a conclusion that we are speaking about chain of blocks - or blocks of information within one logical chain. The changes made by the various parties are assembled and stored in the database at regular intervals as bundled packets called 'blocks'. When new blocks are added to the original database, they form a blockchain, or an up-to-date database containing all the changes made [11]. Blocks contain the useful data (initiated by the owner – or node) and technical information for encryption, so called hash. The block after initiated by one participant is sent to all participating nodes and their content and hashes will be accordingly verified by all participating nodes. This creates a block interdependency accessing up to a chain—the Blockchain [6]. The origins and the purpose of the transactions could vary, but for economic sciences main priority is the value – capturing value and registering any modifications - tracking it (like owner, quantity, price, etc.). We'd like to elaborate 3 main features that describe blockchain technology the best:

---

Distributed or decentralized ledger. This feature implies that there is no one single authority controlling the database, as it is based on peer to peer principle. We have proposed a system for electronic transactions without relying on trust. To solve this, we proposed a peer-to-peer network using proof-of-work to record a public history of transactions that quickly becomes computationally impractical for an attacker to change if honest nodes control a majority of CPU power [12]. This feature gives us incredible flexibility (avoiding time and effort costs associated with one - registrar, filling complex procedures, registration lags, paying additional verification and registering fees etc.) which is of great demand in multifaced environment;

Public, transparent and verifiable. When it comes to publicity – blockchain can be realized in different ways, but the main principle that it is based on well known in IT security Public and Private key infrastructure. Regarding transparency – as we already mentioned before all participants have the same full database - full amount of the same information (that was before verified together as well), therefore there is no room for data misinterpretation. Overall, I wish to provide a system such that users can be guaranteed that no matter with which other individuals, systems or organizations they interact, they can do so with absolute confidence in the possible outcomes and how those outcomes might come about [20];

Immutable and reliable. Under blockchain technology new data do not replace old blocks, instead of this new blocks being put „on top“ of the current blocks thereby representing complete and exhaustive log or register possessing also historical records with proper time marks of the transactions, which allows to have a big picture with all details of respective facts‘ alterations. Consequently, the blockchain technology is extremely reliable as a distributed method of data storage [11]. Thus, data on a blockchain is more accurate, consistent and transparent than when it is pushed through paper-heavy processes. It is also available to all participants who have permissioned access. To change a single transaction record would require the alteration of all subsequent records and the collusion of the entire network (Hooper, 2018).

As a conclusion – blockchain technology is extremely useful when we do speak about variety of market players involved in multiple transactions among them. Above mentioned features ultimately result in trust - trust in transaction‘ s participants (who is who), its amount, time and overall integrity (Genuity). In this manner, as it is easy to verify the origin and accuracy of the information whatever its source, no external intermediary (such as a central server) trusted by all the parties is required to validate the data [11]. Moreover, some scientists

---

have also found mathematical proof of economic advantages of Blockchain application: From the equilibrium analysis, we first show that a platform offers a higher QoS (Quality of Service) can set a higher equilibrium price and get a larger revenue [8].

## **2. BLOCKCHAIN WITHIN DIGITAL IDENTIFICATION (SECURITY)**

Despite the fact that primarily topic of this paper is Blockchain impact on Sustainability, authors have decided to highlight another significant field which would be positively affected because of the very nature of that technology – namely Security. Indeed Blockchain may essentially contribute to security in many ways, this chapter (as this is not predominant research object) will cover only that field which lays on the very top – identification in digital environment. Traditional identity management (identification, authentication and authorization) even given that it is digital (access managed by the passwords) is already outdated compared to today realities due to the following reasons: First traditionally digital means that identity is managed by centralized server, which serves as a perfect target for hackers. Thus, identification of security related requirements, vulnerabilities, and threats are keys to the development of a trustworthy system (Habib, Torjusen, Leister, 2015). Federal Trade Commission reports that in Fraud related to Identity theft resulted in \$1.48 billion loss in 2018 (Siciliano, 2019). Second traditional digital identity management systems heavily dependent on personal data processing, which impose additional risks of non - compliance with GDPR (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data). As of January 21st, 2020, amount of EU wide fines of GDPR non – conformity resulted in \$126 million loss (IP, 2020) (since GDPR came into force 25 May 2018). Last but not least even digital identity management is still static – that means that persons shall maintain their actual records (validity of passport and its ID, position, email address and phone number, etc.) manually. Blockchain eliminates all these problems, offering trusted decentralized (near impossible to hack), verified by relationships identity solution which doesn't require personal data at all, and which is dynamic in nature. This feature accompanied with market realities – e-commerce organization's demand to deal with great variety of reliable partners and customers in order to find best quality vs price ratio and provider's demand to penetrate new markets makes Blockchain application highly attractive. On top of that strict KYC (Know Your Customer) and KYS (Know Your Supplier) procedures imposed on majority

---

of regulated industries, therefore trusted and transparent identity management with Blockchain enables to ensure great global companies 'compliance function.

### 3. BLOCKCHAIN CONTEMPORARY CHALLENGES

Despite clear advantages, Blockchain also faces certain number of challenges. Main challenges noticed so far are:

- **Lack of standards/interoperability.** This problem leads to the fact that majority of currently implemented blockchains are mainly standalone technologies, that are unable to communicate within global interoperable network. Main negative consequence is that such separate Blockchain implementations solve only temporarily local efficiency issues but will fail gaining absolute P2P intercommunication advantage (in terms of data transmission, security, etc.) simply because they have been made by different algorithms. Vice versa presence of universal standards would allow different networks to communicate with each other.
- **Regulatory issues.** It shall be admitted that regulation always following technological progress, not vice versa – therefore there is always a delay in proper regulation, same applies to Blockchain. Several obstacles can be considered. First of all it's unclear to what extent Blockchain can be used in regulated industries such as Banking/Payment. Another example is smart contracts – to which extent parties can rely on smart contract provisions in litigation or concluding such a contract with public administration? Last but not least is privacy and personal data protection – to what extent customers can share their personal data and who would be data controller/processor according data protection legislation in that Blockchain case?
- **Implementation costs.** It goes without any saying that Blockchain implementation costs (as any IT integration) and costs are both explicit and implicit (changing organizational policies and business processes). Explicit costs would be transition project – actually Blockchain implementation into current IT infrastructure (aligning blockchain with ERPs in place) and maintenance of this new hybrid formation. It shall be noted that both such activities most likely would be

---

outsourced, as hiring and maintaining blockchain developing capacity within the company is not an option unless this is core business.

- **Permissionless vs permissioned blockchain.** Nowadays Blockchain has evolved into 2 different types, which is essentially affected by the implementation purpose or objectives. **Permissionless** blockchain - the most bright example is same cryptocurrency Bitcoin can be described as feature “shared by all network users, updated by miners, monitored by everyone, and owned and controlled by no one” (Swan, 2015). In other words **permissionless** Blockchain is absolutely open for users that have access to the devices as they can simply join this pure decentralized network. Decentralization as Blockchain’s advantage was already described above, however this model also has its two shortcomings. The first is processing time. As also was described above in order to form a block in the chain and for that at least 51 percent of participating nodes shall admit this new block, so the more system members we have the more transactions it will generate. The potential delay taking into account computing power of modern devices won’t be so great, however processing time is still slower comparing to traditional Visa or Mastercard payment gateways. As a comparison Visa is capable of processing more than 2000 transactions per second, while Bitcoin only three to seven transactions per second, and Ethereum (second biggest Blockchain) approximately 20 transactions in a second. Another problem is privacy. As system is open to everyone in case of extremely sensitive data company owners may be indeed reluctant to implement such model. On another hand **permissioned** blockchain also has issues to consider. This type of implementation – practical example would be for instance Ripple has clear user administration system in place – e.g. it is able to define user’s rights and permissions to work in, starting from the very admission. As in this case Blockchain has a certain administrator, it shall be considered as partially decentralized with all respective consequences. “On one hand, with appropriate deployment of access-control layers, a permissioned blockchain has a greater potential to maintain privacy and fit business governance needs than a permissionless. On the other hand, a centralized agency with override privileges is allowed in a permissioned blockchain and might undermine the credibility of the blockchain” (Liu, Wu, Jie Xu, 2019).

---

As a conclusion main technological features of Blockchain are proper means to ensure Sustainability, however relevant implementation ways (Project management methodologies) and general readiness of IT infrastructure shall be timely considered. Despite all advantages of this cutting edge technology it still has some challenges to overcome mainly due to its novelty - lack of regulation and lack of usage practice.

#### 4. SUSTAINABILITY CONCEPT

Nowadays phenomenon of Sustainability has reached top attention from majority of industries, and is still evolving. Calls for responsible corporate behavior are coming from investors, insurers, environmental interest groups, financial institutions, and international trading partners [1]. Such situation is determined by the fact that Sustainability is one of the most important features contributing to industries' transformation in achieving "new generation" status – smart, coherent and reliable. All in all, it becomes apparent that sustainability concept became an important paradigm of today's economic and social development. Sustainability with all its implications and impacts fits well into the scope of the smart grids and their inevitable and inadvertent social impacts. The concept of sustainability has become the key prerequisite for the transformation from the traditional electricity systems to the smart grids of the future for most of the governments in the world [16].

In this context concept or definition and its metrics are extremely important: "In this study, a definition of sustainable transportation and major performance indexes are given for use in the decision-making processes. Recent theoretical developments and studies using such performance indexes are investigated and used to provide the conceptual basis of the sustainability in transportation activities [14].

Importance of Sustainability has been highlighted also by European Union, which has made this concept as mainstream into its policies and legislation and constantly reviews Sustainable Development Strategy [5] and goals. The SDGs balance the three dimensions of sustainable development: the economic, social and environmental. They provide concrete objectives for the next 15 years, focussed inter alia on:

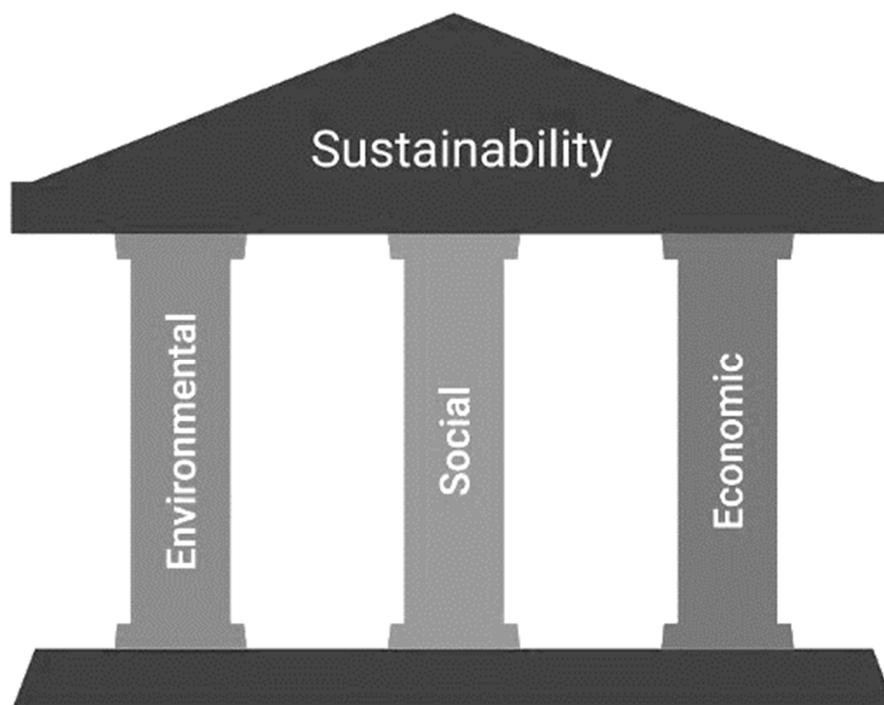
- human dignity
- regional and global stability
- a healthy planet
- fair and resilient societies

- prosperous economies.

They help to promote convergence between EU countries, within societies and with the rest of the world” [17].

Despite that importance Sustainability definition differs among various scientists. However, the definition of sustainability and “what should be sustained” (e.g., what might constitute critical natural capital) is by no means agreed within the scientific community. The definition is subject to value judgments (Bell and Morse, 2008; Bond et al., 2011), and it could be interpreted as a shared ethical belief (Seager et al., 2004). Patterson et al. (2017) identified four main interpretations of the concept of sustainability: (i) ecological, (ii) economic, (iii) thermodynamic and ecological-economic, (iv) public policy and planning theory [15].

Despite these various opinions authors of this research has taken so-called “classical” definition of Sustainability, provided in 1994 by John Elkington, by the founder of a British consultancy called SustainAbility. The essence of this approach is that Sustainability from company perspective is mainly based on three bottom lines – pillars: Profit (Economic), People (Social) and Planet (Environment).



**Figure 2.** Three pillar concept of Sustainability  
*Source:* Watson (2020)

---

It's obvious that all these triple bottom lines are interdependent.” Whereas social sustainability depends on economic sustainability and vice versa, both, strongly depend on environmental sustainability. The dependency of the environment from social and economic sustainability is much smaller” [19]. Now let's review how Blockchain can impact all these 3Ps dimensions.

## **5. BLOCKCHAIN IMPACT ON PROFIT (ECONOMIC DIMENSION)**

Sustainability requirements for Profit are twofold, on one hand Profit is driving force for any kind of business and merchants are keen to maximize it to the maximum level being also able to develop and grow business, on another hand profit shall be reasonable and transparent so that products and services are affordable to end users and customers. OECD has even launched guidelines on transfer pricing introducing “arm's length” principle in defining “fair” profit level within intra group agreements [13].

### **A. BLOCKCHAIN CONTRIBUTION ENSURING REASONABLE AND TRANSPARENT PRICE**

As was already mentioned before one of the biggest Blockchain advantages is its transparency. “For this reason, it has been frequently pointed out that the distribution process is not transparent and the distribution margin is high... We propose a system that guarantees the transparency of the product distribution structure by applying Blockchain and smart contracts to the price-tracking portion of supply chain management systems. This approach allows companies to track their trades by enhancing transparency in the SCM, thereby discouraging companies from pursuing excessive profits” A Study on the Transparent Price Tracing System in Supply Chain Management Based on Blockchain [7]. Scientists researching this subject – pricing see it as integrated element of global sale-purchase agreement even in wider context as changes in supply chain. The added transparency, traceability and security to the supply chain can go a long way toward making our economies safer and much more reliable by promoting trust and honesty, and preventing the implementation of questionable practices [7].

### **B. BLOCKCHAIN CONTRIBUTION ENSURING EFFICIENT COSTS**

Main idea of this subchapter is that Blockchain can also maximize profit by eliminating relevant costs. Blockchain technology is uniquely positioned to tackle the problems of both

---

speed and cost. In sum, blockchain technology solves an important problem in electronic value transfers. The blockchain does not only move value; it also integrates several components of the trading-clearing settlement value chain in an elegant, efficient, and mathematical way (Kiviat, 2015:19). European Bank – Santander estimates that blockchain could reduce banks' infrastructural costs by \$15-20 billion a year by 2022 (Perez, 2015).

French consultancy giant – Capgeminy predicts that consumers' wallets could save up to \$16 billion in banking and insurance fees also per year (Capgeminy, 2016). According to 2013 World Economic Forum's Report. Enabling Trade. Valuing Growth Opportunities (Forum, 2013): Blockchain can help all parties involved in shipping to increase sustainability, reduce or eliminate fraud and errors, improve inventory management, minimize courier costs, reduce delays caused by paperwork, waste and identify issues faster. This could increase worldwide GDP by almost 5% and total trade volume by 15%.

## **6. BLOCKCHAIN IMPACT ON PEOPLE (SOCIAL DIMENSION)**

This sort of dimension essentially means how companies ensure compliance to social responsibility during their operations. Main way to achieve is to declare values in Codes of conduct, Ethical codes, Different kind of Policies and of cause following it after. Companies that appear duplicitous displease consumers. A Trinity Mirror study notes that 58% of adults don't trust brands that fail to show concrete proof that they keep their promises. Consumers demand social responsibility and accountability, both of which blockchain can build into a company's processes. By embracing blockchain and its inherent transparency, a company creates trust internally and positive buzz externally [4].

However it shall be also noted that Blockchain as every automation in the same time creates risks for people as employees. Scientists like Birkel, H.S. and Hartmann, E. see the risk of loosing jobs of low and even medium competence employees after launch of Industry 4.0 with technologies like IoT, Blockchain and Big data [2].

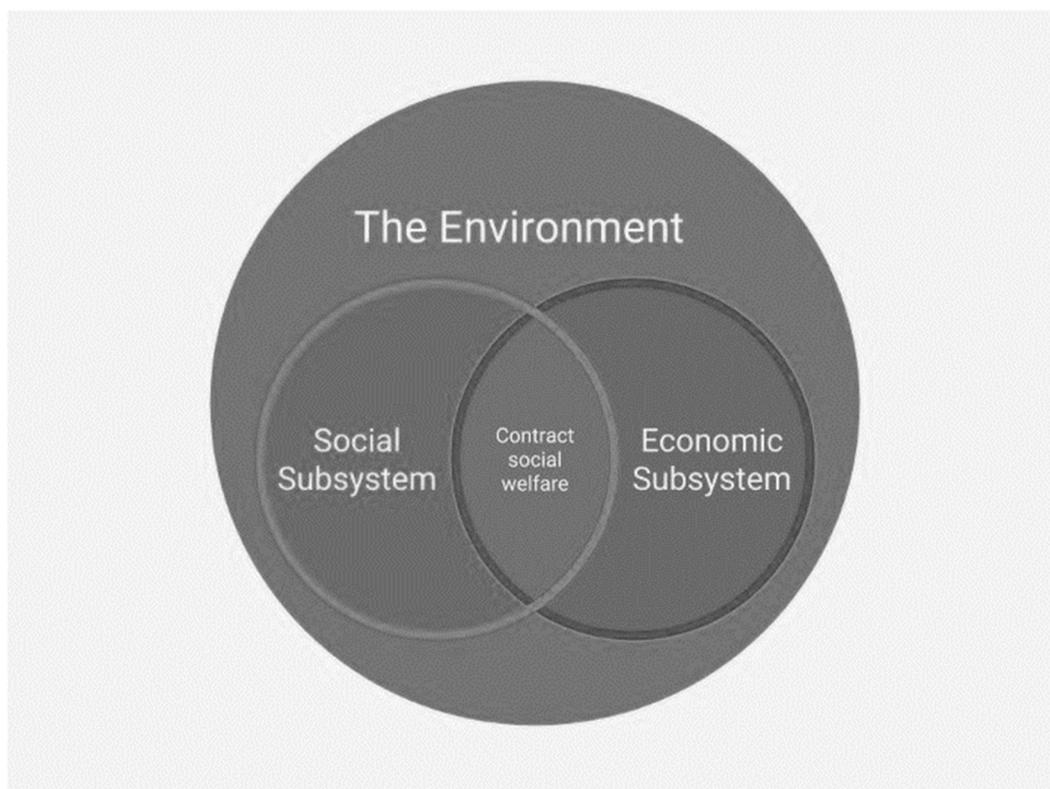
## **7. BLOCKCHAIN IMPACT ON PLANET (ENVIRONMENTAL DIMENSION)**

It goes without any sayings that Environmental dimension is the predominant one, as it serves as a baseline for other two. Science perceived as a servant and generator of technological innovation has led to notable improvements in human life, but has also strongly reinforced the

concept of “conquest of nature”, which too often has resulted in degradation of the natural environment through exploitation by misapplied technologies [3].

Luckily modern society has understood the importance of preserving our cradle. Nowadays attention to environmental protection or environmental sustainability is on radar of different social groups. For many firms, the shift to proactive environmental management is driven by pressures from governments, customers, employees, and competitors. Both consumers and investors are beginning to see more clearly the relationship between business performance and environmental quality.

The trend toward proactive environmental management is being accelerated by public pressures on governments almost everywhere to assure a cleaner environment. Government regulations have become more stringent, legal liabilities for environmental damage have become more burdensome, and customers have become more demanding [1].



**Figure 3.** Relationship of 3Ps Sustainability  
*Source:* Watson (2020)

Blockchain being data and facts driven technology can serve environmental sustainability in several ways. Besides clear advantages of identifying and eliminating wasteful and non-green practice, it can also track environmentally destructive misconduct. Utility

---

companies, to take just one example, could use Blockchain to prove to consumers that the energy they use derives from clean and sustainable sources, rather than oil, gas and coal. In one case, blockchain helps the environment by stopping unsustainable practices. In the other case, blockchain spurs change by shining light on bad actors. In both scenarios, the world changes for the better. [10]

## CONCLUSIONS

Analysis of Blockchain technology with focus on Sustainability has shown, that Blockchain is the key technology of Industry 4.0 - e.g. new generation production (smart factories) and economy. Derived from cryptocurrencies it may have broad usage in modern economy and can significantly contribute to Sustainability due to its technological features – decentralized ledger (ledger that has no single authority to manage its records), immutability and reliability (which is ensured by the very technological nature) and also publicity and transparency (e.g. public access of general public for verification purposes)

Analysis of various scientific studies and researches has shown that the concept of Sustainability is multifaced and ambiguous, and its research as a separate field is still developing. Classical approach built by J. Elkington defines Sustainability in three dimensions from Company perspective – 3Ps: Economic (Profit), Social (People) and Environmental (Planet). It is worth mentioning that all these 3Ps are interdependent, however Environmental dimension is predominant as it serves a “playground” for the rest two.

Analysis of Blockchain impact on Sustainability allowed to identify ways how Sustainability can benefit from Blockchain. On Profit side Blockchain can ensure both transparent and reasonable markup clearly seen by the customers and partners and also cost efficiency due to the automation. On People side bigger trust could be achieved between commercial undertakings and society (People), as Blockchain enables to track business’s promises in transparent ways. Last but not least Environmental dimension also becomes advantageous due to transparent compliance to circular economy.

## Summary

**Actuality** – topic is extremely actual as first of all technology represents one of main drivers of economic development, Blockchain being one of the key trends. On another hand Sustainability is one of the main topic within all social groups (governments, companies, civil society, non-governmental organizations, etc.).

**Goals** - to examine how Blockchain can contribute to Sustainability (which in this paper defined as J. Elkington 3Ps).

**Methods** - analysis of the scientific articles, analysis of best practice use cases, comparison, analytical descriptive and generalization methods. It shall be noted that due to the topic's novelty and practical application authors have put a lot of focus on practical sources.

**Results** – Authors' opinion is that given full scale Blockchain implementation, it would have enormous positive impact on all 3Ps. However as side comment it also shall be mentioned that impact on People (predominantly as employees) might be risk of losing jobs due to the full automation.

## REFERENCES

1. Berry, M., Rondinelli D. (1998) Proactive corporate environmental management: A new industrial revolution. *Academy of Management Perspectives* Vol. 12, No. 2  
<https://doi.org/10.5465/ame.1998.650515>
2. [Birkel, H.S.](#) and [Hartmann, E.](#) (2019), "Impact of IoT challenges and risks for SCM", *Supply Chain Management*, Vol. 24 No. 1, pp. 39-61. <https://doi.org/10.1108/SCM-03-2018-0142>
3. Caldwell L.K. (1998) The Concept of Sustainability: A Critical Approach. Ecological Sustainability and Integrity. *Environmental Science and Technology Library*, vol 13. Springer, Dordrecht. [https://doi.org/10.1007/978-94-017-1337-5\\_1](https://doi.org/10.1007/978-94-017-1337-5_1)
4. Caputo S, (2018) 3 ways Blockchain can positively influence CSR. *Corporate Board Member*. [interactive]. Access: <https://boardmember.com/3-ways-blockchain-positively-influence-csr/> [accessed 2020-09-17]
5. Communication from the Commission A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development (Commission's proposal to the Gothenburg European Council) /\* COM/2001/0264
6. Hackius, N., Petersen, M. (2017). Blockchain in Logistics and Supply Chain: Trick or Treat. *Hamburg International Conference of Logistics*, Vol. Digitalization in Supply Chain Management and Logistics, p. 1-18.
7. Yoo M., Won Y., (2018) A Study on the Transparent Price Tracing System in Supply Chain Management Based on Blockchain Sustainability. *Sustainability* 10(11):4037  
DOI: 10.3390/su10114037
8. Lee, H., Sung, K., Lee, K., Lee, J., Min, S. (2018). Economic Analysis of Blockchain Technology on Digital Platform Market. *IEEE 23rd Pacific Rim International Symposium on Dependable Computing*, Vol. 1, p. 94-103. doi: 10.1109/PRDC.2018.00020.
9. Liu M., Wu K., Jie Xu J., (2019). How will Blockchain technology impact Auditing and accounting: Permissionless vs Permissioned Blockchain. *Current issues in auditing*, 13(2), 19-29, <https://10.2308/ciia-52540>.
10. Mansell D. (2020) Blockchain for the Environment: It Is Real and It Is Here. *Cointelegraph*. Access: <https://cointelegraph.com/news/blockchain-for-the-environment-it-is-real-and-it-is-here> [accessed 2020-09-20]
11. Mattila, J., Seppälä, T. (2015). Blockchains as a Path to a Network of Systems—An Emerging New Trend of the Digital Platforms in Industry and Society. *ETLA Reports* Vol. 45, p. 1-17.
12. Nakamoto, S. (2008). *Bitcoin: A Peer-to-Peer Electronic Cash System*. [interactive]. Access: <https://bitcoin.org/en/bitcoin-paper> [accessed 2020-01-17].
13. OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <https://doi.org/10.1787/tpg-2017-en>
14. Resat H, Turkay M. (2015). Sustainability of Products, Processes and Supply Chains. *Computer Aided Chemical Engineering* Vol. 36, p. 401-420.
15. Sala, S. (2020) Triple bottom line, sustainability and sustainability assessment, an overview. *Biofuels for a more Sustainable future*. <https://doi.org/10.1016/B978-0-12-815581-3.00003-8>
16. Strielkowski, W (2020). Social Impacts of Smart Grids: The Future of Smart Grids and Energy Market Design. *Elsevier Inc.* doi.org/10.1016/C2018-0-02749-8. ISBN 978-0-12-817770-9.

- 
17. The EU approach towards implementing the UN's 2030 Agenda for Sustainable Development together with its member countries. [https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals/eu-approach-sustainable-development\\_en](https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals/eu-approach-sustainable-development_en)
  18. Tijan, E., Aksentijevic, S., Ivanic, K., Jardas, M. (2019). Blockchain Technology Implementation in Logistics. *Sustainability* Vol. 11, No. 4. p. 1-13. doi:10.3390/su11041185 352-375.
  19. Watson., A. (2018) The core concept of Sustainability, *Open forests* Access: <https://medium.com/openforests/the-core-concept-of-sustainability-8facc0811f4f> [accessed 2020-09-15]
  20. Wood, G. (2014). *Ethereum: A Secure Decentralized Transaction Ledger*. [interactive]. Access: <http://gavwood.com/paper.pdf> 2017 [accessed 2020-01-17].

---

## DEVELOPING INTERCULTURAL COMPETENCES TO DIMINISH THE THREAT OF INTERCULTURAL CONFLICT RISE

**Aušra Stepanovienė**

*Mykolas Romeris University  
Maironio st. 27, LT-44211 Kaunas  
Telephone: +370 37 281409  
E-mail: [ausrastep@mruni.eu](mailto:ausrastep@mruni.eu)*

DOI: 10.13165/PSPO-20-25-25

---

**Annotation.** Each country's culture consists of a mosaic of specific ethnic subcultures. Each of these cultures has its value and standard systems, patterns of behaviour and worldview. Thus, it is no surprise that people representing various cultural groups inevitably conflict. This article discusses the nature of intercultural conflicts, the reasons of their rise and their types. Although often the difference of cultures is emphasized as a substantial reason of intercultural conflicts, in real life communicating individuals who differ by their character features and their cultural and intellectual levels cause conflicts. Besides, quite a vital social phenomena as superstitions exists – a tendentious and hostile preconceived attitude. Superstitions have a big emotional critical mass, which place phenomenon in a twisted light and form a negative aggressive outlook of them. Superstitions stimulate negative forms of internecine communication which spill out into ethnic and intercultural conflicts. A proper attention for the acquisition of intercultural competences can become an effective assumption to suppress intercultural conflicts and to stimulate a complete communication and collaboration of representatives from different cultures.

**Keywords:** intercultural competences, different cultures, intercultural conflicts, behaviour.

### INTRODUCTION

Every culture has the system of its values and standards as well as patterns of behaviour, world outlook and perception. Therefore, it is no wonder that people who represent various cultural groups unavoidably have conflicts. Conflicts can be *long-term* related to cultural superstitions that come from the mindset of a nation or a social group and *short-term* arising from change of conjuncture in relationship among nations, which are frequently induced by efforts of the ruling class to achieve their goals by making use of cultural differences. Under circumstances of globalisation, movement of labour force and capital from one country to another is increasing and, thus, traditional demographic view of the country is changing as well. There are more immigrants, who, having entered the new cultural environment feel not comfortable and are not always accepted by other people favourably primarily due to the fact that they become rivals in the local labour market and also by their different world outlook, which is reflected in their culture treated as hostile and hardly perceptible for locals. Such

---

encounter becomes a challenge for both locals and newcomers. Locals have to admit that that in order to get along with immigrants they need to get rid of earlier stereotypes and superstitions, to see positive aspects in newcomers' culture, not to ignore it. On the other hand, newcomers are supposed to perceive that they are guests who must take into consideration hosts' encouragement and not to show off with their behaviour. It seems obvious but in reality it is not easy to maintain good intercultural relationships with those who have been living in the country for a long time and have become its real citizens, foster their cultural traditions and values. A lot of researchers of different science branches, e.g. Banks James (2001); Giedrė Paurienė (2010); Eglė Kvieskaitė (2011); Loreta.Chodskienė (2012); Frese Michael (2015), Robert J. Taormina and Rail M. Shamionov (2016), etc. have paid attention to it. However, most attention was paid to impact of cross-cultural conflicts on patterns of mindset and behaviour of an ethnic group, individual and society. Significant researchers James W. Carey(2008), Beth Fisher-Yoshida (2010) Vilija Gudonienė (2013), Gintaras Stripeikis (2014), Gabrielė Kuraitienė (2015), Andrea Čajkova (2015), Michael B. Hinner (2017), Janete Schmidmeier (2018), Linda Jean Kenix (2019) and others while discussing intercultural conflicts thoroughly analyse their reasons and consequences that determine behaviour of nations and individuals. However, they do not analyse the importance of intercultural competences in more.

Meanwhile extent of cultural competence acquired (linguistic, communication, cultural) mostly determines possibilities, impact and vitality of conflicts. On the other hand, it becomes a rather specific factor that suppresses the conflicts. Thus, the aim of the article is to reveal the importance of intercultural competences in order to diminish the risk of intercultural conflict rise.

The objectives of the article are to find out a) nature of intercultural conflicts b) their causes c) expression peculiarities.

Research methods - the content analysis method of various authors' publications, of the reference sources.

## **INTERCULTURAL CONFLICTS, CAUSES OF THEIR RISE**

There are numerous definitions of the word 'conflict'. In a general sense conflict is a situation when two individuals or two groups of individuals do not agree on actions taken by one of them or when he/she does not want the other one to undertake the action. Therefore, one can claim that a conflict is the discrepancy of interests, collision of incompatible tendencies

---

causing strong unpleasant experiences (Lipskytė, 2018). As the object of the article is intercultural conflicts, attention is paid to the aspects that have impact on intercultural communication or, in other words, for conflicts that destroy this communication.

Conflicts have dynamic nature. They arise from a range of events which are induced by changing circumstances: situation of objects/phenomena – arising problem – conflict. Conflict does not mean that relationship between individuals ends. Rather an opportunity to change the pattern of communication emerges, which leads to subsequent development of relationship both positively and negatively. Following the theory of a positive conflict, conflicts are an unavoidable and compulsory condition of everyday life. It does not necessarily has to become a dysfunctional power.

Different approaches concerning motifs of intercultural conflicts can be found. The most dominant of them claims that individual's disposition against others and their unacceptance lies in human nature, his instinct not to accept the other person as hostile. Social Darwinists promoting this approach claim that the law of life is fight for one's existence observed in the animal world. It is also found in human society by conflicts of various nature. In other words, conflicts are unavoidable and even essential. During conflicts an individual develops and becomes mature as a personality. Thus, conflicts are perceived as necessity for one's social development. Special investigations deny this attitude. Hostility to people of other nations and ethnic communities is not universal. It is determined by causes of social nature (Fisher-Yoshida, 2010). The same can be said about intercultural conflicts. Their main cause is differences between nations, which can cause misunderstandings or even open collisions. As contemporary society with regard to culture is not and cannot be homogeneous, tension and conflicts arise between various cultural groups that foster their own values and standard systems acceptable not for all (Hinner, 2017). Many investigators notice that the range of intercultural conflict causes is rather wide but the prevailing are these:

- Special reliance on one's opinion and significance of one's culture (Kristic, 2017),
- Preconceived attitudes evaluating behaviour of the partner,
- Insufficient knowledge about the other culture and its peculiarities (Tučas, 2019),
- Evaluation of other cultural values, peculiarities of standards and behaviour through one's own cultural outlook.
- Culture anthropologists distinguish several types of intercultural conflicts:
- Conflicts between traditions and cultural innovations

- 
- Conflicts among different ethnic groups and their cultures (f.e. between Sakartvelians and Ossetians, Lithuanians and Russians),
  - Conflicts between religious groups (f.e. between Catholics and Protestants in Northern Ireland, Orthodox and Units in Ukraine, Sunnis and Shiites in Islamic countries),
  - Conflicts between generations that belong to different subcultures,
  - Conflicts between different linguistic communities and their representatives (due to linguistic barriers and interpretation mistakes) (Banks, 2013).

It is notable that a conflict can be provoked not only by communication partner's insufficient knowledge of a language but also more serious reasons, frequently hardly perceived by communicating individuals. These reasons lie within sub-consciousness but, on the other hand, they often induce conflicts.

Conflicts cannot be evaluated as power of destructive communication process or in principle be rejected. Conflicts help better perceive one's identity and uniqueness. As they cannot last forever, it encourages to look for ways how to change the situation. It is true that not every conflict situation turns into a conflict. Transition from a conflicting situation into a conflict occurs via perception of communicating individuals that their relations are controversial and interests are different. In such a way a conflict becomes the acquired controversy. From this follows the fact that participants of intercultural conflicts are social actors. When they describe a situation as a conflict, one can speak about tension in their communication. It becomes conflicting and turns into the real conflict (Carey, 2008).

One of the main reasons for intercultural conflicts provided by investigators is personal qualities of communicators: superstitions, arrogance, inflexibility, career-driven nature and seeking power. Frequently intercultural conflicts are caused by social (interpersonal) relations, strong competition, insufficient acknowledgement of skills, insufficient support or preparation for compromises, contradiction between aims and measures to achieve these goals. The reasons of organizational intercultural conflict rise are heavy workload, inaccurate instructions, not clear competences or responsibilities, contradiction between the aims raised, regular change of rules when communicating with partners, deep changes, restructuring of positions and roles.

Conflicts often emerge between individuals who are closely related by various connections and interests (for example, business partners, friends, colleagues). The more close relations are (both formal and informal), the higher the chance that conflicts can arise. Thus, in

---

intercultural communication conflicts can be provoked not only by cultural differences but also the already mentioned personal, social and organizational reasons. One often likes emphasizing cultural differences as the essential reason of intercultural conflicts. However, it is obvious that in real life, although significant, but not cultural differences cause conflicts but rather individuals themselves who differ in their character qualities as well as cultural and intellectual level. These issues in their behalf become a significant obstacle to ensure efficient communication. On the other hand, there is a social phenomenon like superstitions that makes strong impact on the development of intercultural conflicts.

### **SUPERSTITIONS AS REINFORCEMENT OF INTERCULTURAL CONFLICTS**

Psychologists describe superstitions as a tendency and a hostile approach towards a nation or an ethnic group without any sufficient basis. In intercultural communication superstitions are expressed as hostile, open and not based objectively with regard to behaviour and social status of representative from another culture or cultural group. The main reason for occurring superstitions is inequality of ethnic group social, economic and cultural life conditions. It determines xenophobia for other nations and newcomers. Usually superstitions come from insufficient, frequently distorted awareness of the object. Superstitions are often identified with stereotypes, but it is not true.

Stereotypes are a reflection of certain features of one specific cultural group. One can claim that it is a specific summoned view of the group though it has no special emotional evaluation. Meanwhile superstition is negative, preconceived hostile evaluation of all group behaviour that has emotional aspect. The most prominent example of superstitions is racism, sects, homophobia, discrimination with regard to sex or age, etc. On the other hand, one cannot forget that superstitions like stereotypes are cultural phenomena. Their occurrence is determined not by biological but by social cultural circumstances. Superstitions take a significant position in the space of everyday culture. They are characterized by huge susceptibility and transferability, they are rendered from generation to generation. In their turn they are incorporated into culture as standard requirements, i.e. as strict directives on how to behave with regard to a certain social group or phenomenon. It is true that superstitions that have huge emotional critical mass make a significant impact on the environment. It is impossible not to notice them or not to respond. As it was mentioned before, superstitions

---

encompass a rather wide spectrum of phenomena, which includes separate objects, ideas and surely ethnic groups.

In psychology there are numerous theories that explain the origin of superstitions. One of them is frustration and aggression theory. In psyche of a human being the state of tension, i.e. frustration, is created due to various reasons and negative emotions. This state requires expression and any person can become its object. When a frustrating individual envisages reasons of his failure in any ethnic group, he/she expresses his preconceived dissatisfaction on its representatives he feels hostile towards. According to the theory, superstitions emerge as individual's effort to establish his/her relation with others, the other ethnic group and at the same time to set his/her own self above others. During such establishment process other's inferiority is demonstrated and hostility with his/her regard is shown.

Superstitions are acquired during the socialisation process when an individual takes over the values, standards, and behaviour patterns. Thus, here the parents' role is important. Individual superstitions arise not only from intercultural communication but due to spread of superstitions within the social group. Superstitions take a significant role in everyday life of human beings. By providing phenomena in the distorted way and developing an aggressive, negative attitude, superstitions provoke negative ways of communication, which turn into ethnic and intercultural conflicts. Their scale in huge part depends on the type of superstitions (Lauren & Kramer, 2008). The following types of superstitions can be distinguished:

1) *unbiased* – when it is openly declared that representatives of the other group as well as their qualities are significantly poorer;

2) *symbolic* – they are based on negative superstitions with regard to representatives of the other group. Its values are considered as threatening.

3) “*long arm*“ superstitions – when one behaves positively with representatives of the other group in certain situations (negotiation, formal meetings) though in everyday life hostility is demonstrated.

4) antipathy superstitions – a negative attitude is shown openly in cases when behaviour does not satisfy a representative of one's own culture.

Representatives of different classes and social groups are prone to superstitions. However, not all superstitions are equally affecting. Ethnic superstitions have strongest impact. The prevailing attitude towards certain ethnic groups changes very slowly. It requires a lot of time and effort. Numerous factors have impact on the change of superstitions, namely general

---

cultural background, openness of society, education policy, the media, which is supposed to ensure rendering of undistorted information though. Unfortunately, the media today frequently becomes the strongest transmitter of superstitions because in such a way it is trying to gain readers'/viewers' attention and popularity. Undoubtedly superstitions and stereotypes encourage rise of intercultural conflicts whereas in case of a conflict it must be resolved, i.e. take a certain position, determined by intercultural competences, i.e. whether they are possessed or not.

## INTERCULTURAL COMPETENCES

In order to achieve mutual understanding, knowledge, abilities and skills which are known as intercultural communication competences are necessary. They show the level of interpersonal communication, which allows successful communication with partners and achieving goals by overcoming egocentrism and cultural closeness (Ilie, 2019). The opinion that intercultural competences can be acquired by knowledge gained via communicating with representatives of the other culture started to prevail. This knowledge in its turn was subdivided into *specific*, which mean specific culture, and *general*, which is related to one's ability to use such communication skills as tolerance, emphatic listening, general knowledge of cultural universals. Despite this subdivision, it is obvious that success of intercultural communication depends on acquisition of both types of the knowledge, in other words, on the ability not to identify but also accept and interpret new cultural knowledge and in such a way acquire a new culture (Zascerinska, 2008). Thus, an individual in intercultural communication is supposed to be able to:

- Have a friendly attitude towards different cultural phenomena and representatives of other cultures in order to understand it,
- Try to better perceive hostile culture so that one could evaluate one's own culture more critically and refuse prevailing stereotypes and superstitions,
- Adequately accept and interpret different cultural values,
- Try to deliberately overcome obstacles that separate different cultures and see in a different culture not only differences but also similarities,
- Be able to compare existing ethno-cultural stereotypes with personal experience and make independent conclusions,

- 
- Be able to critically evaluate and change one's attitude towards hostile cultures by developing intercultural communication skills and experience,
  - Systematize facts of cultural life,
  - Synthesize and summarize one's personal experience of intercultural dialogue.

In intercultural communication linguistic competence means one's ability to choose appropriate linguistic tools when communicating and be able to repeat the already obtained experience in analogous situations. One must notice that linguistic competence though significant in intercultural communication, plays a relative part in intercultural communication due to several circumstances. Firstly, when evaluating linguistic competences representatives of different cultures use different criteria. For instance, Brits respond to language correctness rather sensitively whereas Americans see efforts to speak and communicate as more important. Secondly, in different cultures imagination what a correct use of a language is may not coincide. Thirdly, one must not forget that requirements for the use of one's native language are always higher than for a foreign language. It implies that knowing a foreign language will never be equal to the native language because there will always exist inborn priority of a native language. Lastly, levels of competence evaluation differ as well. A person can use a foreign language in his/her everyday life but have no competence for communication with his/her colleagues in a professional level. In such a situation a human being is forced to use everyday language and thus diminish the efficiency of communication. Thus, perfect knowledge of a foreign language is important seeking efficient communication though at the same time it is insufficient. Linguistic competence must be supplemented by communication competence.

Communication competence defines ways and strategies essential to ensure efficient communication. In other words, it is important not only to be aware of general laws of human life but also respond sensitively to the slightest changes of a partner when communicating. Elements of communication competence are composed of:

- Ability to make use of verbal and non-verbal cultural acceptance tools,
- Ability to adequately express one's ideas and understand the speaker,
- Ability to interpret specific signals of a certain culture by which a person expresses his/her intention to communicate (or not),
- Ability to guide oneself how much time one is supposed to devote to listening and speaking regarding the situation and cultural communication standards,
- Ability to address the language in the necessary direction,

- 
- Ability to provide and interpret signals of communication roles and termination,
  - Maintain the communication distance acceptable for a hostile culture,
  - Ability to adapt to communicator's social status and intercultural distinctiveness,
  - Ability to adjust one's behaviour communicating with partners in time (Wiseman & Koester, 1993).

It is no doubt true that the mentioned elements of communication competence require a lot of efforts and time. On the other hand, success of communication development mostly depends on individual's capacity to absorb hostile culture, acquire it, and make it a tool when reaching one's goals.

*Cultural competence* means one's ability to absorb new knowledge, values, common to the culture in communication. For this reason one must be able to extract necessary information from various cultural sources (books, films, political phenomena, etc.), differentiate them by significance for communication. It shows speaker's cultural literacy. If literacy of both partners is more or less the same, it only reinforces efficient communication. However, not always literacy of speakers is equal. If there is huge discrepancy, communication efficiency only deteriorates and partners feel certain inconvenience. Then the lack of cultural competence is frequently compensated by good language and communication skills. However, it is not always possible. Sometimes cultural tension-reality arises, and one must accept it. On the other hand, all cultures can survive only if tolerance is observed. In globalization there exists requirement for tolerance as objective necessity because the world is too various. All its processes are evaluated differently by different cultures. Each culture has such right and one must respect it, which means tolerate it by acknowledging the right to be different. Tolerant attitude towards intercultural communication means that some features of an individual or his/her group are one of the many and one cannot treat them as absolute or too significant.

Each of the mentioned competences has three level. The first level is general awareness of hostile culture and its difference as a fact, identification of this difference. The second level is one's attempt to compare this difference with his/her culture by identifying differences and similarities. The third level is one's attempt to understand the culture and its value for gaining acknowledgement from representatives of that culture.

Thus, each of the mentioned competence can be listed and defined in three levels. Presence of tolerant attitudes with regard to other cultures in intercultural communication shows maturity of individual's competences. On the other hand, it is obvious that cultural

---

competence for different groups can be different too. Certain requirements can be addressed for the manager, others for a lecturer or the director. Different levels of the mentioned competences necessary seeking comprehensive communication and understanding with people from other cultures are applied.

## **LEVELS OF INTERCULTURAL COMPETENCES AND THEIR EXPRESSION**

Linguistic communication. The first level. It means that a human being is able to use linguistic tools by which he/she is trying to establish communication relations with representatives of the hostile culture.

His/her knowing of a foreign language is based on the general knowledge. In other words, he has the basics of a foreign language but his knowledge does not let him freely render all nuances of the language. The second level implies that a person has well mastered a language and is trying as accurately as possible to get across his/her ideas, clearly separates his/her linguistic space from a hostile one. The third level means that a human being has fully mastered a foreign language, all its nuances, and not only does he/she feel well communicating with representatives of a foreign language but also he/she is perceived as a native. In other words, from linguistic point of view he/she is fully established.

Communication competence. The first level means one's ability to identify specific signals of a hostile culture's representative. The second level implies one's ability to adequately express his ideas and understand the speaker as well as to master the conversation with regard to the situation and cultural communication standards. The third level means one's ability to use verbal and non-verbal tools in order to adjust behaviour to that of partner's, maintain convenient and culture-acceptable communication distance and, thus, become welcome.

Cultural competence. The first level means one's ability to look for and find information about a hostile culture of a representative of which he/she is supposed to communicate. It is new knowledge, values, essential for communication with representative of a hostile culture. The second level implies one's ability to clearly distinguish peculiarities of one's own and hostile culture as well as to perceive and name them. The third level means one's ability to absorb the hostile culture at a maximum level and make it a tool to achieve one's goals when communicating with people from hostile cultures.

The mentioned competences and their consistent mastering on one hand reduce intercultural tension and danger of conflict rise. On the other hand, it makes assumptions and

---

encourages seeking reasonable solutions acceptable for both sides. Thus, development of intercultural competences is important for every representative of a specific nation and ethnic group that seeks to efficiently communicate and cooperate with individuals of other cultures.

## CONCLUSIONS

Each country's culture consists of a mosaic of specific ethnic subcultures. Each of these cultures has its value and standard systems, patterns of behaviour and worldview. Thus, it is no surprise that people representing various cultural groups inevitably conflict. The range of intercultural conflict rise is varied: preconceived attitudes when evaluating behaviour of an individual, insufficient knowledge of the other culture, evaluation of other culture's values through one's cultural glasses, reliance on one's opinion, significance of one's own culture.

Though one frequently tends to emphasize the difference of cultures as the essential reason of intercultural conflicts, it is obvious that in real life cultural differences are undoubtedly relevant. However, conflicts are caused by individuals themselves who differ in their character properties, cultural and intellectual level. There exists a widespread phenomenon known as superstitions. It is a tendentious and preconceived attitude without sufficient grounds. Superstitions that have huge critical emotional mass by introducing phenomena in a twisted light reinforce negative interpersonal communication forms that turn into ethnic and intercultural conflicts. Although the scale of conflicts depends on the type of superstitions, their solutions are significantly affected by intercultural competences. Thus, their development is an important goal of each representative of the culture. Only it can diminish the threat of intercultural conflict rise and create favourable conditions for cooperation by seeking reasonable and mutually acceptable solutions.

## REFERENCES

1. Banks, J. A., McGee Bank, C. A. Multicultural education: issues and perspectives. Hoboken (NJ): Wiley, cop. 2013.
2. Carey, J. W. Communication as Culture. Routledge, New York, 2008, pp. 33-34.
3. Fisher-Yoshida, B. *Reframing conflict: intercultural conflict as potential transformation*. Washington, Columbia University Press, 2010, p.26-27.
4. Hinner, M.B. Intercultural Misunderstandings: causes and solutions. *Rusian Journal of Linguistics*, 2017, (21(4)), pp. 885-909.
5. Ilie, O.A. The Intercultural Competence. Developing Effective Intercultural Communication Skills. *International conference "Knowledge-based organization "*, 2019, 25(2), vol 25, No1, pp. 264-268.

- 
6. Kristic, P. Thinking identity with difference: *Society and theory*. Filozofija I Društvo XXVIII (1), 2017.
  7. Lauren G Block, Kramer.T. *The effect of superstitious beliefs on performance expectations*. Journal of the Academy of Marketing Science, 2008, 37(2), pp.161-169
  8. Lipskytė, T., Matkevičienė, R., Barkauskaitė, O., Vaičeliūnaitė, G., Norvaišienė Aiškinamasis ryšių su visuomene terminų žodynas, Lietuvos komunikacijos asociacija, Vilnius, 2018. Available at <https://www.ltka.eu/wp-content/uploads/2020/01/LTKA-termin%C5%B3-%C5%BEodynas.pdf>, accessed 2020-08-21.
  9. Tučas, R. Konfliktų geografija. *Mokslo ir technologijų paaulis*, 2019. Available at <http://www.technologijos.lt/zyme/Konfliktu-geografija?tid=14018>, accessed 2020-04-12.
  10. Wiseman, R., Koester, J. Intercultural communication competence. Newbury Park: Sage, 1993, pp. 26-27.
  11. Zascerinska, J. *Defining communicative competence*. 1<sup>st</sup> International Conference on Engineering and Business Education, 2008, Wismar.

---

## IŠŠŪKIAI KIBERNETINIAM SAUGUMUI: SOCIALINĖ INŽINERIJA INSTITUCINIO IZOMORFIZMO KONTEKSTE

**Aurimas Šidlauskas<sup>1</sup>**

<sup>1</sup>*Mykolo Romerio universitetas  
Ateities g. 20, LT-08303 Vilnius, Lietuva  
Telefonas +370 683 36681  
El. paštas: [aurimas868@gmail.com](mailto:aurimas868@gmail.com)*

**Svajūnė Ungurytė-Ragauskienė<sup>2</sup>**

<sup>2</sup>*Mykolo Romerio universitetas  
Ateities g. 20, LT-08303 Vilnius, Lietuva  
Telefonas +370 602 13885  
El. paštas: [svajune.unguryte@gmail.com](mailto:svajune.unguryte@gmail.com)*

DOI: 10.13165/PSPO-20-25-26

---

**Anotacija.** Kibernetinės atakos sudėtingėja ir tampa vis labiau rafinuotos. Vis daugiau kibernetinių incidentų paremti manipuliavimu žmonėmis, jų silpnybėmis, siekiama apeiti informacijos apsaugos sistemas bei pavogti ir užvaldyti konfidencialią informaciją. Pastebimas socialinės inžinerijos metodais paremtų kibernetinių incidentų skaičiaus didėjimas. Tokia statistika verčia organizacijas reaguoti į pokyčius ir prisitaikyti prie vyraujančio institucinio lauko, tobulinti esamą teisinį reguliavimą. Straipsnio tikslas – išanalizavus socialinės inžinerijos sąvokos turinį ir tokio tipo kibernetinių atakų atsiradimo prielaidas bei kibernetinių incidentų valdymo reglamentavimą nacionalinėje teisėje, pateikti išvadas ir rekomendacijas kibernetinio saugumo reguliavimo tobulinimui institucinio izomorfizmo kontekste. Atlikta analizė atskleidė, jog šiuo metu Lietuvoje socialinės inžinerijos institucinis izomorfizmas nukreiptas tik į techninius kibernetinį saugumą užtikrinančius veiksnius, o žmogiškajam faktoriui skiriama nepakankamai dėmesio. Siekiant įveikti socialinės inžinerijos keliamus iššūkius išauga darbuotojų švietimo kibernetinio saugumo tematika poreikis. Augant socialinės inžinerijos rūšies kibernetiniams incidentams taip pat svarbu vadovautis gerąja praktika, kuri kartu su nacionalinės teisės aktais būtų įtvirtinta organizacijų kibernetinio saugumo politikoje, numatant aiškia kibernetinių incidentų valdymo procedūrą.

**Pagrindinės sąvokos:** socialinė inžinerija, kibernetiniai incidentai, kibernetinis saugumas, institucinis izomorfizmas.

### ĮVADAS

Nacionalinėje kibernetinio saugumo būklės ataskaitoje (2019) rašoma, kad 2018 m. užfiksuotas 25 procentais didesnis socialinės inžinerijos metodais paremtų kibernetinių incidentų skaičius. To priežastis yra žmogaus veiksnio išnaudojimas kibernetinėms atakoms realizuoti. Išaugo kibernetinių incidentų sudėtingumas, atakos tampa vis labiau rafinuotos. Pasaulinių rizikų ataskaitoje (2020) nurodoma, kad ateityje kibernetinių atakų tik daugės. Krašto apsaugos ministerijos bendradarbiaujant su „Kurk Lietuvai“ išleistame kibernetinio

saugumo vadove (2020) rašoma, kad socialinės inžinerijos technikos keičiasi ir atsiranda vis naujesnių apgavystės metodų. Tokia kibernetinių incidentų statistika verčia organizacijas reaguoti į pokyčius ir prisitaikyti prie vyraujančio institucinio lauko, tobulinant esamą teisinį reguliavimą, pateikiant rekomendacijas ar numatant vidaus veikimo politiką. Grėsmių nacionaliniam saugumui vertinime (2020) rašoma, kad kenkėjiškos veiklos aktyvumas Lietuvos kibernetinėje erdvėje išlieka aukštas, todėl labai svarbus yra tokios situacijos detalus nagrinėjimas. Viena iš teorijų, leidžiančių nagrinėti tokio prisitaikymo galimybes yra iš institucionalizmo kilusi institucinio izomorfizmo koncepcija, kuri remiasi trimis mechanizmais – reguliaciniu, reiškiančiu reguliavimą iš „išorės“, normatyviniu, apimančiu organizacijos vidaus politiką ir imitaciniu, paremtu veiksmy ar strategijų atkartojimu.

**Mokslinė problema** – kokios yra socialinės inžinerijos incidentų atsiradimo prielaidos ir kaip tobulinti kibernetinio saugumo reguliavimą institucinio izomorfizmo kontekste?

**Straipsnio tikslas** – išanalizavus socialinės inžinerijos sąvokos turinį ir tokio tipo kibernetinių atakų atsiradimo prielaidas bei kibernetinių incidentų valdymo reglamentavimą nacionalinėje teisėje, pateikti išvadas ir rekomendacijas kibernetinio saugumo reguliavimo tobulinimui institucinio izomorfizmo kontekste. Išsikeltam tikslui pasiekti numatyti **uždaviniai**:

Įvardinti socialinės inžinerijos sąvoką ir rūšis.

Išanalizuoti kibernetinių incidentų valdymo reglamentavimą nacionalinėje teisėje.

Išnagrinėti socialinę inžineriją pasitelkus institucinio izomorfizmo koncepcijos tris mechanizmus.

Siekiant atsakyti į išsikeltus uždavinius buvo taikomas sisteminės literatūros ir duomenų analizės **metodas**, apimantis kibernetinių incidentų statistikos apžvalgą, socialinės inžinerijos sąvokos ir rūšių apibrėžimus. Surinkti duomenys analizuojami pasitelkiant institucinio izomorfizmo koncepcijos tris jos mechanizmus – priverstinį arba reguliacinį, normatyvinį ir mimetinį. Atlikta analizė atskleidė, jog nagrinėjant socialinės inžinerijos atvejį priverstinio izomorfizmo pagrindu didžiausias dėmesys turi būti skiriamas reguliavimui nacionaliniu lygmeniu. Remiantis normatyviniu izomorfizmu lemiama vaidmenį atlieka vidiniai reiškiniai organizacijoje ir profesionalų žinios, galinčios padėti įveikti socialinės inžinerijos keliamus iššūkius organizacijoms tikslingai vykdomų mokymų dėka. Socialinės inžinerijos nagrinėjimo atveju mimetizmas gali pasireikšti per jau išaiškintų kibernetinių nusikaltimų atvejų viešinimą ir sėkmingai taikomų praktikų atkartojimą.

---

## **SOCIALINĖS INŽINERIJOS SAŲOKA, PSICHOLOGINIAI ĮTAKOS VEIKSNIAI IR TIPAI**

Socialinė inžinerija informacijos saugumo kontekste yra psichologinio manipuliavimo forma, kuri apima socialines priemones nukreiptas ir vykdomas atliekant sistemos puolimą per netechninius vektorius. Tai yra labai sėkmingas kibernetinių užpuolikų įrankis, nes jis priklauso nuo žmonių polinkio pasitikėti vienas kitu. Paprastai tai apima socialinius įgūdžius, leidžiančius užpuolikams surinkti reikiamą informaciją, reikalingą apeiti organizacijos saugumo protokolus (Gobeo, 2018). Socialinės inžinerijos terminas siejamas su informacijos saugumo pažeidimais pasinaudojus žmogiškuoju faktoriumi. Žmogus, pirmiausia yra individas, kurio negali užprogramuoti veikti pagal tam tikras taisykles, bet kurioje situacijoje. Jis pasielgs taip, kaip jam atrodo teisingiausia ir priimtinausia. Taigi socialinių inžinierių taikinys žmogus ir jo silpnybės, kurias jie meistriškai išnaudoja siekdami užsibrėžto tikslo (Dirgėla, 2007). Socialinė inžinerija siejama su žmonių klaidinimu ir manipuliavimu, o ne technologijomis ar kitais mechanizmais. Šis metodas yra populiarus, nes žmogiškasis elementas dažnai yra silpniausia sistemos dalis ir labiausiai linkęs į klaidas (Shimonski, 2016).

Socialinė inžinerija reiškia psichologinį žmonių manipuliavimą atliekant veiksmus ar konfidencialios informacijos atskleidimą. Tai yra pasitikėjimo savimi būdas rinkti informaciją, sukčiauti ar gauti prieigą prie sistemos. Socialinė inžinerija dažnai yra tik viena iš kompleksinės atakos dalių. Visi socialinės inžinerijos metodai yra pagrįsti specifiniais žmogaus sprendimų priėmimo atributais, vadinamais kognityviniais šališkumais – žmogiško faktoriaus klaidomis, siekiant atlikti išpuolius (Smith, 2015). Šiandien žmonės greičiau nei bet kada anksčiau gali rinkti informaciją apie asmenis ir organizacijas. Internetinėse duomenų bazėse, viešuose įrašuose ir socialinės žiniasklaidos svetainėse yra stulbinantis gausumas informacijos, ir daugeliu atvejų šie duomenys yra nemokami. Daugelis žmonių skelbia išsamią asmeninę informaciją apie savo kasdienę veiklą visam pasauliui. Kai užpuolikas surenka informaciją apie vidinius procesus, žmones ar sistemas, jie gali naudoti ją sudėtingesnėms atakoms vykdyti (Andress, 2019). Vis daugiau žmonių naudojami socialinių tinklų svetainėmis, siekdami skatinti socialinius ryšius. Nors teikiamų paslaugų pranašumai yra akivaizdūs, dažnai nepaisoma vartotojų privatumo trūkumų ir kylančių padarinių (Huber et al., 2009), norint saugiai naudotis socialinio tinklo paslaugomis, būtina didinti vartotojų informuotumą ir juos šviesti apie galimas grėsmes (Albladi ir Weir, 2020).

Socialinė inžinerija tapo rimta grėsme virtualiose bendruomenėse ir yra veiksminga priemonė pulti informacines sistemas (Krombholz, 2015). Kibernetiniai nusikaltėliai socialinės inžinerijos metodais bando išviloti naudotojų pinigus prašydami atlikti pinigines perlaidas, apsimesdami organizacijų vadovais, siūlydami įsigyti prekes suklastotose interneto svetainėse. Šiuo metu socialinės inžinerijos metodai neapsiriboja elektroninių laiškų, suklastotų interneto svetainių kūrimu ar žinučių socialiniuose tinkluose siuntimu – kibernetiniai nusikaltėliai gali paskambinti telefonu, bandyti susisiekti kitais būdais.

Hatfield (2018) teigia, kad po įvairiais socialinės inžinerijos išsireikšimais slypi trys pagrindinės idėjos – episteminė asimetrija, technokratinis dominavimas ir teleologinis pakeitimas:

Episteminė asimetrija atsiranda tada, kai asmuo ar grupė turi didelį žinių pranašumą prieš kitą asmenį ar grupę tam tikroje srityje.

Technokratinis dominavimas atsiranda tada, kai asmuo, turintis aukštą techninių žinių lygį, naudoja tas žinias norėdamas pakeisti kitų elgesį, kai dėl tokio elgesio nukentėjusieji turi mažesnę galią ar valdžią.

Teleologinis pakeitimas įvyksta tada, kai asmuo ar grupė kitame asmenyje ar grupėje pakeičia pirminį savo elgesio tikslą ar tikslą su savuoju – dažnai pakeisdami patį taikinio elgesį.

Socialinės inžinerijos metodais paremti kibernetiniai incidentai susiję su manipuliavimu naudotojų veiksmais internete ir apgaule. Jų metu vyksta informacijos rinkimas, platinama kenkimo programinė įranga, išnaudojami pažeidžiamumai. Siunčiami apgaulingi ir klaidinantys elektroniniai laiškai, rašomos žinutės socialiniuose tinkluose su kenkėjišku kodu ar nuorodomis į kenkėjiškas interneto svetaines. Užpuolikai gali bandyti apgauti darbuotojus, kad jie atskleistų vartotojų vardus ir slaptažodžius, arba gali suteiktų papildomą prieigą (O'Hanley ir Tiller, 2013). T. Kiškis (2012) nurodo socialinės inžinerijos taikymo sritis – įvairaus tipo kritinių duomenų vagystės, pramoninis šnipinėjimas, finansinės machinacijos, sukčiavimas, šantažas, informacijos rinkimas.

Išpuolių, pagrįstų socialine inžinerija, paskatinimas yra tas, kad žmonės tobulina technologijas. Kai išmokstama atakas atremti technologinėmis priemonėmis, psichologinis manipuliavimas sistemos vartotojais ar operatoriais tampa vis patrauklesnis. Taigi saugos inžinierius tiesiog turi suprasti pagrindinę psichologiją ir saugumo pritaikomumą (Anderson, 2008). J. Mikejan (2017) nurodo socialinės inžinerijos psichologinius įtakos veiksnius:

---

*Socialinis programavimas ir smalsumas.* Socialinis programavimas yra įtakos instrumentas, kuriuo siekiama paveikti žmonių elgesį, kad jie pradėtų elgtis pagal socialinio inžinieriaus elgesio modelį. Įdomiai suformuluotas žinutės tekstas arba netikėtas, tačiau pažįstamas šaltinis sudomina. Išnaudojamas žmonių noras pirmauti, norėdami parodyti savo vertę, be svarstymų atskleidžia kibernetiniam nusikaltėliui jo prašomą informaciją.

*Baimė ir skubėjimas.* Kibernetiniai nusikaltėliai žino, kad žmogaus emocijos ir protas ne visada bendradarbiauja, nes kiekvienas žmogus kažko bijo. Priimami skubūs ir neapgalvoti sprendimai, gavus laišką neatkreipiamas dėmesys į jo šaltinį ir turinį.

*Pranašumas ir pripažinimas (atlygis).* Pranašumas yra būseną, kuomet žmonės jaučiasi daugiau žinantys ir turinčiu didesnę vertę lyginant su kitais. Sukčiavimo aukai ypač svarbi kitų nuomonė, ji gali būti perdėtai giriama. Sukuriama iliuzija, kad bus gaunama kažkokia nauda.

*Pasitikėjimas ir empatija.* Daug lengviau yra patikėti gauta informacija, nei ją tikrinti ir kritiškai įvertinti. Žmonėms gali būti tiesiog nepatogu kažkam prieštarauti ir išreikšti tam tikras abejones, ypač jei kalba visuomenėje labai gerai žinomas veikėjas. Svarbiausias faktorius – autoritetas. Socialinės inžinerijos metodą naudojantis apgavikas gali manipuliuoti aukos emocijomis – pagalba, užuojauta, globa, motinystė ir tėvystė.

P. Kamat et al. (2018) nurodo šiuos socialinės inžinerijos tipus:

*Pretekstas (angl. Pretexting).* Kibernetinis nusikaltėlis didelį dėmesį skiria patikimo scenarijaus kūrimui, kurį panaudoja kaip pretekstą bandydamas pavogti savo aukų informaciją ar asmeninius duomenis. Sukuriamas melagingas pasitikėjimo jausmas, gali būti apsimitama – bendradarbiu, privačios arba valstybės įmonės darbuotoju. Pavogti asmens duomenys yra panaudojami tapatybės vagystėms ir antriniam išpuoliams įvykdyti.

*Masalas (angl. Baiting).* Apgavystei panaudojamas melagingas pažadas, išnaudojant sukčiavimo aukos godumą ar smalsumą. Aukos įviliojamos į spąstus, pavagiama jų asmeninė informacija arba užkrečiamos informacinės sistemos kenkėjiška programine įranga. Pavyzdžiui, kibernetiniai nusikaltėliai matomose vietose palieka masalą – kenkėjiškų programų užkrėtą USB raktą, tikėdamiesi, kad auka jį ras ir juo pasinaudos. Masalo efektui sustiprinti, USB raktas gali būti išskirtinės išvaizdos, taip pat panaudojamas žinomos įmonės logotipas ir užrašomas tekstas „konfidencialu“, „neskaityti“, „privatu“ ir t.t. Sukčiavimas nebūtinai turi būti vykdomas fiziniame pasaulyje, internete viliojančios reklamos sukčiavimo aukas nukreipia į kenksmingas svetaines arba siūlo atsisiųsti įvairaus skaitmeninio turinio kartu su kenkėjiška programine įranga.

Panika (angl. *Scareware*). Kibernetinių nusikaltėlių aukos atakuojamos melagingais pavojaus signalais ir fiktyviais grasinimais. Pavyzdžiui, interneto naršyklės lange iššoka reklaminės juostos įspėjančios apie pavojų jūsų kompiuteriui, kuriose rašoma „Jūsų kompiuteris užkrėstas virusais, išvalyti“, „Jūs turite virusų, paspauskite šią nuorodą“ ir t. t. Paspaudus tokią reklamą nukreipiama į užkrėstą svetainę arba pradama siųsti kenkėjiška programinė įranga.

„*Fišingas*“ (angl. *Phishing*). Daugybei žmonių siunčiami suklastoti laišakai su kenksmingu programiniu kodu prisegtuke arba nuorodoje, pranešantys netikėtą loterijos laimėjimą, programinės įrangos gedimą, neapmokėtą sąskaitą, kurią neva siunčia jūsų vadovas arba programinės įrangos teikėjas.

Siekdamos padidinti efektyvumą ir produktyvumą, įmonės linkusios dažniau reorganizuotis ir nuolat tobulina savo IT infrastruktūrą. Dėl to per pastaruosius kelerius metus dauguma organizacijų patyrė reikšmingų pokyčių ir dabar yra labai priklausomos nuo savo IT infrastruktūrų ir joms palaikyti reikalingų įgūdžių rinkinių (Purser, 2004). „*IBM*“ kompanijos ir „*Ponemon*“ instituto tyrimas (2019) parodė, kad beveik kas antras duomenų pažeidimas įvyksta dėl netyčinės žmogaus klaidos ar sistemų pažeidimų. Taip pat 70 proc. informacijos saugos vadovų išskiria kompetentingų darbuotojų trūkumą kaip didžiausią iššūkį siekiant užtikrinti įmonės kibernetinį saugumą. Anot D. Gibson (2014), jei darbuotojai ir vartotojai nesupranta saugumo praktikos vertės, jie mažiau linkę imtis konkrečių veiksmų. Kibernetinio saugumo subjektai skiria daug išteklių ryšių ir informacinių sistemų (toliau – RIS) atsparumui didinti, infrastruktūrai apsaugoti techninėmis priemonėmis, tačiau vis dar per mažai dėmesio skiriama darbuotojams šviesti ir sąmoningumui didinti. Laikomasi nuomonės, kad kibernetinis saugumas yra informacinių technologijų specialistų kompetencijos ir techninės įrangos klausimas. Įvykus kibernetiniam incidentui, atsakomybė dažniausiai yra perkeliama naudotojui, kuris iki įvykio dažniausiai deramai neinformuojamas ar nešviečiamas, kaip valdyti su kibernetiniu saugumu susijusias rizikas (Nacionalinė kibernetinio saugumo būklės ataskaita, 2019). Šiuolaikinei organizacijai svarbu suprasti kibernetinių nusikaltimų galimą žalą ir gebėti tinkamai panaudoti prevencijos priemones (Panavas, 2020). Deja, šių išpuolių negalima sustabdyti naudojant tik technologijas (Salahdine, Kaabouch, 2019).

## SOCIALINĖS INŽINERIJOS KIBERNETINIŲ INCIDENTŲ VALDYMAS

Lietuvos Respublikos kibernetinio saugumo įstatyme (toliau – KSI) kibernetinis incidentas apibrėžiamas, kaip įvykis ar veika kibernetinėje erdvėje, galintys sukelti arba sukelti grėsmę arba neigiamą poveikį RIS perduodamos ar jose tvarkomos elektroninės informacijos prieinamumui, autentiškumui, vientisumui ir konfidencialumui, galintys trikdyti arba trikdantys RIS veikimą, valdymą ir paslaugų jomis teikimą. Iki 2019 m. pradžios kibernetiniai incidentai buvo skaičiuojami atsižvelgiant į automatinėmis priemonėmis apdorotų ir išsiųstų pranešimų bei specialistų betarpiškai (rankiniu būdu) apdorotų kibernetinių incidentų skaičių. Metinėse nacionalinėse kibernetinio saugumo būklės ataskaitose yra pateikiama kibernetinių incidentų skaičiaus statistika (žr. 1 lentelę).

**1 lentelė.** Kibernetinių incidentų skaičius Lietuvoje 2014 - 2018 m.

Metai	Kibernetinių incidentų skaičius Lietuvoje
2014	36136
2015	41583
2016	49463
2017	54414
2018	53183

Šaltinis: sudaryta autorių pagal nacionalines  
2014 – 2018 m. kibernetinio saugumo būklės ataskaitas

Nacionalinis kibernetinio saugumo centas (toliau – NKSC), atsižvelgdamas į būtinybę incidentus klasifikuoti pagal poveikį, nuo 2019 m. kibernetiniais incidentais traktuoja atvejus, kada specialistai įvykius apdoroja betarpiškai – priskiria poveikio reikšmę bei nustato incidento kategoriją. Nuo šiol atskiriami automatinėmis priemonėmis ir programomis apdoroti procesai, kurie traktuojami kaip kibernetiniai įvykiai. Tokia klasifikacija, kai kibernetiniai įvykiai atskiriami nuo kibernetinių incidentų, įvesta siekiant suvienodinti klasifikavimą pagal ES kibernetinio saugumo agentūros bei kitų šalių kibernetinių incidentų valdymo komandų taksonomiją. Didinami pajėgumai ir gerinama kibernetinio saugumo branda leido aiškiau identifikuoti kibernetines grėsmes. Lietuvoje 2019 m. registruotas 3241 kibernetinis incidentas, kai jų tyrimams atlikti reikėjo tiesioginio specialistų dalyvavimo. Automatinėmis priemonėmis apdorotų kibernetinių įvykių skaičius Lietuvos IP režyje siekė daugiau kaip 300000, rašoma Nacionalinėje kibernetinio saugumo būklės ataskaitoje (2020).

---

Kibernetinis saugumas – visuma teisinių, informacijos sklaidos, organizacinių ir techninių priemonių, kuriomis siekiama išlaikyti atsparumą veiksniams, kibernetinėje erdvėje keliantiems grėsmę ryšių ir informacinėmis sistemomis perduodamos ar jose tvarkomos elektroninės informacijos prieinamumui, autentiškumui, vientisumui ir konfidencialumui, ryšių ir informacinių sistemų netrikdomam veikimui, valdymui arba paslaugų šiomis sistemomis teikimui, taip pat kuriomis siekiama atkurti įprastinę ryšių ir informacinių sistemų veiklą, reglamentuojama KSI. Lietuvos Respublikos Vyriausybės patvirtintame nacionaliniame kibernetinių incidentų valdymo plane (toliau – Planas) nurodoma, kad už kibernetinių incidentų valdymo organizavimą, stebėseną ir analizę nacionaliniu lygiu atsakingas NKSC, Valstybinė duomenų apsaugos inspekcija, Lietuvos policija ir kitos institucijos, kurių funkcijos susijusios su kibernetiniu saugumu. Kibernetinio saugumo subjektai pateikia NKSC atsakingų asmenų, su kuriais galima susisiekti visą parą, telefono numerius, elektroninio pašto adresus, kitą kontaktinę informaciją, sudarančią sąlygas visą parą keistis informacija kibernetinio incidento valdymo metu. Kibernetinio saugumo subjektas – subjektas, valdantis ir (arba) tvarkantis valstybės informacinius išteklius, ypatingos svarbos informacinės infrastruktūros (toliau – YSII) valdytojas, viešųjų ryšių tinklų ir (arba) viešųjų elektroninių ryšių paslaugų, elektroninės informacijos prieglobos paslaugų ir skaitmeninių paslaugų teikėjas, apibūdinama KSI.

Kibernetinio saugumo subjektai Plane nustatytais sąlygomis ir tvarka praneša NKSC apie jų valdomose ir (arba) tvarkomose RIS įvykusius kibernetinius incidentus ir taikytas kibernetinių incidentų valdymo priemones. Svarbu pabrėžti, kad ši nuostata netaikoma skaitmenines paslaugas Lietuvos Respublikoje ir (arba) kitoje Europos Sąjungos valstybėje narėje teikiančioms mažoms ir labai mažoms įmonėms, kurios yra apibrėžtos Smulkiojo ir vidutinio verslo plėtros įstatyme.

Kibernetinių incidentų poveikis (arba poveikio kategorija) – pavojingas, didelis, vidutinis ir nereikšmingas, skirstomas pagal kriterijus (žr. 1 pav.).

<p><b>Nereikšmingas</b> (bent vienas iš kriterijų)</p> <ul style="list-style-type: none"> <li>• RIS trikdoma &lt; 1 val.</li> <li>• Paveiktų paslaugos gavėjų ar kompiuterizuotų darbo vietų skaičius &lt; 100, arba 5 %</li> <li>• Paslauga teikiama, bet trikdoma</li> <li>• Nuostoliai &lt; 250 000 Eur</li> </ul>	<p><b>Vidutinis</b> (bent du iš kriterijų)</p> <ul style="list-style-type: none"> <li>• RIS trikdoma ≥ 1 val., bet &lt; 2 val.</li> <li>• Paveiktų paslaugos gavėjų ar kompiuterizuotų darbo vietų skaičius &lt; 1000, arba 25 %</li> <li>• Paslauga trikdoma dalyje šalies teritorijos</li> <li>• Pažeistas informacijos ar RIS konfidencialumas ir (ar) vientisumas</li> <li>• Nuostoliai ≥ 250 000, bet &lt; 500 000 Eur</li> </ul>
<p><b>Didelis</b> (bent du iš kriterijų)</p> <ul style="list-style-type: none"> <li>• RIS trikdoma ≥ 2 val.</li> <li>• Paveiktų paslaugos gavėjų ar kompiuterizuotų darbo vietų skaičius ≥ 1000, arba 25 %</li> <li>• Paslauga trikdoma visos šalies teritorijoje ir (ar) ≥ 1 ES šalyje</li> <li>• Pažeistas informacijos ar RIS konfidencialumas ir (ar) vientisumas</li> <li>• Nuostoliai ≥ 500 000 Eur</li> </ul>	<p><b>Pavojingas</b> (bent vienas iš kriterijų)</p> <ul style="list-style-type: none"> <li>• RIS trikdoma ≥ 24 val. ir (ar) viršijamas maksimalus leistinas paslaugos neveikimo laikas</li> <li>• Paveiktų paslaugos gavėjų ar kompiuterizuotų darbo vietų skaičius ≥ 100 000, arba 50 %</li> <li>• Sutrikdomas (gali sutrikti) paslaugų veikimas visos šalies teritorijoje ir (ar) ≥ 1 ES šalyje, valstybės funkcijų ir (ar) priimtų įsipareigojimų vykdymas, sukeliamas (gali kilti) ekstremalus įvykis, nurodytas Vyriausybės patvirtintame Ekstremaliųjų įvykių kriterijų sąrašė</li> </ul>

**1 pav.** Kibernetinių incidentų poveikis pagal kriterijus

Šaltinis: sudaryta autorių pagal Nacionalinį kibernetinių incidentų valdymo planą

Kibernetinių incidentų poveikį, atsižvelgdami į nustatytus kriterijus, priskiria kibernetinio saugumo subjektai, kurių RIS nustatyti kibernetiniai incidentai, išskyrus pavojingus kibernetinius incidentus, jų kategoriją turi teisę priskirti tik NKSC. Priklausomai nuo kibernetinio incidento kategorijos skiriasi informavimo ir tyrimo procedūros. Kibernetinio saugumo subjektai apie incidentą NKSC gali pranešti telefonu, e. paštu arba užpildę specialią formą jų internetiniame puslapyje. Pranešime informuojant apie didelio ar vidutinio poveikio kibernetinius incidentus pateikiama Plane įvardinta informacija:

1. Kibernetinio incidento grupė (grupės), pogrupis (pogrupiai) ir poveikio kategorija.
2. Trumpas kibernetinio incidento apibūdinimas.
3. Tikslus laikas, kada kibernetinis incidentas įvyko ir buvo nustatytas.
4. Kibernetinio incidento šalinimo tvarka (nurodant, ar tai prioritetas, ar ne).
5. Tikslus laikas, kada bus teikiama kibernetinio incidento tyrimo ataskaita.
6. Plano kriterijų, kuriais vadovaujantis kibernetiniai incidentai priskiriami kibernetinių incidentų kategorijoms, sąrašė yra nurodyta socialinės inžinerijos grupė, pogrupis ir galima poveikio kategorija (žr. 2 lent.).

**2 lentelė. Socialinė inžinerija Plano kriterijų sąrašas**

Kibernetinio incidento grupės	Kibernetinio incidento poveikis	Nereikšmingas (N)	Vidutinis (V)	Didelis (D)	Pavojingas (P)
	Kibernetinio incidento pogrupiai				
Informacijos rinkimas (angl. <i>information gathering</i> ) Žvalgyba ar kita įtartina veikla (angl. <i>scanning, sniffing</i> ), manipuliavimas naudotojų emocijomis, psichologija, pastabumo stoka, pasinaudojimas technologiniu neišmanymu (angl. <i>social engineering</i> ), siekiant stebėti ir rinkti informaciją, atrasti silpnąsias vietas, atlikti grėsmę keliančius veiksmus, apgavystės, siekiant įtikinti naudotoją atskleisti informaciją (angl. <i>phishing</i> ) arba atlikti norimus veiksmus	3.1. RIS paketų / informacijos perėmimas		V	D	P
	3.2. RIS klastojimas, siekiant surinkti prisijungimo ar kitą svarbią informaciją, tiksliniai laiškai, kuriuose, pasinaudojant <b>socialinės inžinerijos</b> principais, siekiama išvilioti prisijungimo ir (ar) kitą svarbią informaciją, priversti atlikti norimus veiksmus (pvz., finansines operacijas)		V	D	P
	3.3. Vykdoma perimetro priemonių žvalgyba (nebandant įsilaužti)	N	V		
	3.4. Naudojami <b>socialinės inžinerijos</b> metodai, siekiant išvilioti prisijungimo prie RIS ir (ar) kitą svarbią informaciją	N	V		

Šaltinis: sudaryta autorių pagal Nacionalinį kibernetinių incidentų valdymo planą

Kibernetinio saugumo subjektai NKSC informuoja apie:

1. Didelio poveikio kibernetinius incidentus – nedelsiant, bet ne vėliau kaip per vieną valandą nuo jų nustatymo;
2. Vidutinio poveikio kibernetinius incidentus – ne vėliau kaip per keturias valandas nuo jų nustatymo;
3. Nereikšmingo poveikio kibernetinius incidentus – periodiškai kiekvieno kalendorinio mėnesio pirmą darbo dieną teikiant apibendrintą informaciją apie kiekvienos grupės incidentų, įvykusių nuo paskutinio pranešimo teikimo dienos, skaičių.

Plane papildomos sąlygos ar išimtys taikomos skaitmeninių paslaugų teikėjams, YSII valdytojams ir asmenims, kuriems teisės aktuose nėra nustatytos pareigos pranešti apie kibernetinius incidentus. Skaitmeninių paslaugų teikėjai NKSC informuoja tik apie didelio poveikio kibernetinius incidentus ir tik tuo atveju, kai gali naudotis informacija, kuri reikalinga incidento poveikiui įvertinti. YSII valdytojai, kurių paslaugų teikimas priklauso nuo skaitmeninių paslaugų teikėjų teikiamų paslaugų, nustatę neigiamą poveikį jų valdomos YSII veiklai, kurį lėmė skaitmeninių paslaugų teikėjų ryšių ir informacinėse sistemose įvykę

sutrikimai, apie šį neigiamą poveikį nedelsdami, bet ne vėliau kaip per vieną valandą nuo neigiamo poveikio nustatymo informuoja NKSC ir skaitmeninių paslaugų teikėjus, kurių RIS įvyko nurodyti sutrikimai. Asmenys, kuriems teisės aktuose nėra nustatytos pareigos pranešti apie kibernetinius incidentus jų valdomose RIS, turi teisę savanoriškai pranešti NKSC apie kibernetinius incidentus ir taikytas kibernetinių incidentų tyrimo ar valdymo priemones.

NKSC gavęs informaciją apie kibernetinį incidentą, turi teisę patikslinti kibernetinio incidento kategoriją (priskirti didesnės ar mažesnės reikšmės kibernetinių incidentų poveikio kategorijai). Taip pat prašyti papildomos informacijos, reikalingos kibernetinio saugumo subjekto RIS kibernetinio saugumo būsenai vertinti, nurodant informacijos pateikimo terminą. NKSC, įvertinęs gautą informaciją, patvirtina, patikslina arba savarankiškai priskiria kibernetinio incidento poveikio kategoriją, ir ne vėliau kaip per vieną valandą nuo informacijos gavimo arba, jeigu kibernetinio saugumo subjekto prašoma papildomos informacijos, nuo papildomos informacijos gavimo informuoja apie tai pranešėją. Kai būtina informuoti visuomenę siekiant išvengti kibernetinio incidento arba valdyti vykstantį kibernetinį incidentą, NKSC, pasikonsultavęs su kibernetinio saugumo subjektu, pranešusiu apie kibernetinį incidentą, informuoja visuomenę apie pavienius kibernetinius incidentus arba reikalauja, kad tai padarytų kibernetinio saugumo subjektas.

Lietuvos Respublikos administracinių nusižengimų kodekso 479 straipsnio 1 dalyje yra įtvirtinta atsakomybė, už KSI nuostatų dėl pareigos teikti informaciją pažeidimus, kuri užtraukia įspėjimą arba baudą juridinių asmenų vadovams ar kitiems atsakingiems asmenims dėl informacijos apie kibernetinius incidentus ir taikytas kibernetinių incidentų valdymo priemones nepateikimo NKSC arba šios informacijos teikimo tvarkos pažeidimo. Pažeidimų pakartotinis padarymas užtraukia griežtesnes baudas.

Nacionalinėje kibernetinio saugumo ataskaitoje (2020) rašoma, organizacijos dažnai atitinka arba beveik atitinka saugos politikos *de jure* kriterijų. Tikrinami subjektai turi formaliai apsibrėžę saugos procesus, gaires, tačiau saugos užtikrinimas dažnai vertinamas kaip biurokratinė našta. Saugos dokumentai būna parengti formaliai, pagal nebegaliojančius Lietuvos Respublikos teisės aktus, o dokumentų turinyje apibrėžti procesai nebūna priskirti pagal kompetenciją.

Socialinės inžinerijos incidentas, priklausomai nuo pogrupio ir poveikio kategorijos, gali būti priskiriamas nereikšmingam, vidutinio, didelio arba pavojingo svarbumo incidentui. Nevaldomas arba netinkamai valdomas, priklausomai nuo pogrupio ir poveikio kategorijos,

neriešmingas socialinės inžinerijos incidentas gali tapti vidutiniu, o vidutinis – dideliu arba pavojingu. Kibernetinio saugumo subjektai privalo laikytis atitinkamų teisinio reguliavimo procedūrų, už jų nesilaikymą numatyta administracinė atsakomybė. Asmenys, kuriems teisės aktuose nėra nustatytos pareigos apie kibernetinius incidentus pranešti NKSC, turi teisę tai padaryti savanoriškai. Tinkamas reagavimas į kibernetinius incidentus sumažina galimą patirti žalą, siekiant užtikrinti kibernetinį saugumą.

## **SOCIALINĖ INŽINERIJA INSTITUCINIO IZOMORFIZMO KONTEKSTE**

Nagrinėjant socialinės inžinerijos reiškinių pasitarnauja institucinio izomorfizmo teorija, kuri remiasi trimis svertais – priverstiniu arba reguliaciniu, normatyviniu ir mimetiniu. Priverstinis arba reguliacinis izomorfizmas pasireiškia per taisykles, standartus arba įstatymus. Šio mechanizmo atsiradimo prielaida yra išorės spaudimas. Poveikis arba išorės spaudimas, kurį organizacijoms oficialiai ir neformaliai daro kitos organizacijos, nuo kurių jos yra priklausomos (Amor-Esteban et al., 2018). Mokslinėje literatūroje priverstinis izomorfizmas remiasi įstatymų ir kitų teisės aktų bei suinteresuotųjų šalių reikalavimais (Kasperavičiūtė-Černiauskienė, 2014). Nagrinėjant socialinės inžinerijos atvejį priverstinio izomorfizmo pagrindu didžiausias dėmesys turi būti skiriamas reguliavimui nacionaliniu lygmeniu.

Didžiausia grėsmė kyla paprastiems naudotojams dėl kibernetinio saugumo ir IT raštingumo stokos. Ši grėsmė taip pat labai aktuali ir verslo subjektams, kurie dėl socialinės inžinerijos metodais pagrįstų kibernetinių incidentų praranda konfidencialią informaciją arba patiria tiesioginius finansinius nuostolius. Nacionalinėje kibernetinio saugumo būklės ataskaitoje (2020) pateikiamos socialinės inžinerijos metodais pagrįstų kibernetinių incidentų grėsmių valdymo rekomendacijos (pavyzdžiui, kritiškai vertinti reklamas internete ir elektroniniu paštu siunčiamuose laiškuose (ypač siūlomas dideles nuolaidas); prašymus atlikti pinigines perlaidas tikrinti kitais būdais, pavyzdžiui, pasitikslinti aplinkybes paskambinus telefonu, neatlikti skubotų veiksmų, nepasiduoti emocijoms, iki galo išsiaiškinti veiksmų, kuriuos prašoma atlikti, būtinumą ir kt.). Tačiau, šios rekomendacijos nėra pakankamos. Labai svarbu tikslingai parengtos taisyklės, nuolat atnaujinamos rekomendacijos ir tinkamai parengta teisinė bazė.

Socialinę inžineriją taip pat galima analizuoti per dar vieną institucinio izomorfizmo mechanizmą – normatyvinį. Normatyvinis izomorfizmas neatsiejamas nuo organizacinės elgsenos. Organizacijos tam tikros tvarkos laikosi ne todėl, kad išorės veikėjus supranta kaip

galingus, nusistovėjusi vidaus praktika tiesiog tampa savaime suprantama. Normatyvinis izomorfizmas organizacijose gali atsirasti dėl profesionalizacijos proceso, specializacijos ir sudėtingų profesinių standartų svarbos (Ali ir Frynas, 2018). Šis mechanizmas akcentuoja moralinį legitimacijos aspektą, reiškiantį pageidaujamą ar tinkamą elgesį (Kasperavičiūtė-Černiauskienė, 2014). Jeigu priverstinis arba reguliacinis izomorfizmas reiškiasi per poveikį iš išorės, remiantis normatyviu izomorfizmu lemiama vaidmenį atlieka vidiniai reiškiniai organizacijoje.

Technologijos vaidina tam tikrą vaidmenį mažinant socialinės inžinerijos išpuolių poveikį, tačiau pažeidžiamumas priklauso nuo žmogaus elgesio – impulsų ir psichologinių polinkių. Nors literatūra remia psichologinio jautrumo riziką socialinės inžinerijos išpuoliams, investicijos į organizacinio švietimo kampanijas suteikia optimizmo, kad socialinės inžinerijos išpuolius galima sumažinti (Conteh ir Schmick, 2016). Pagrindinis dėmesys turėtų būti skiriamas saugumo supratimui ir įmonės darbuotojų mokymui (O'Hanley ir Tiller, 2013). Didžiausią dalį kibernetinio saugumo situacijos gerinimo veiksnių apima profesinis žinojimas. Galima daryti prielaidą, kad šiuo metu būtent šis elementas yra vienas aktualiausių viešojo sektoriaus organizacijose (Grincevičius, 2019). Rezultatai rodo, kad supratimas apie socialinę inžineriją yra teigiamas saugumo apsaugos praktikos numatytojas. Taigi, siekdami sumažinti socialinės inžinerijos išpuolių galimų padarinių tikimybę, organizacijos turėtų ne tik stengtis stiprinti darbuotojų žinias apie saugumą, bet ir investuoti į darbuotojų supratimo apie socialinę inžineriją didinimą (Aldawood et al., 2020). Normatyvinis izomorfizmas, paremtas profesionalų žiniomis gali padėti įveikti socialinės inžinerijos keliamus iššūkius organizacijoms tikslingai vykdomų mokymų dėka.

Trečiasis institucinio izomorfizmo mechanizmas – mimetizmas. Remiantis šia izomorfizmo forma, galima teigti, jog ilgainiui organizacijos keičiasi, kad taptų panašesnės į kitas organizacijas savo aplinkoje (Heather ir Haveman, 1993). Mimetizmas, tai kitų sėkmingų organizacijų veiklos, procesų ar strategijų atkartojimas. Mokslinėje literatūroje teigiama, jog atkartojamos tik sėkmingos organizacijos ar procesai. Socialinės inžinerijos nagrinėjimo atveju mimetizmas gali pasireikšti per jau išaiškintų kibernetinių nusikaltimų atvejų viešinimą ir sėkmingai taikomų praktikų atkartojimą.

Remiantis nacionalinio kibernetinio saugumo būklės ataskaita (2019), populiariausi socialinės inžinerijos metodais pagrįsti kibernetiniai incidentai pagal 2018 m. statistiką Lietuvoje buvo „phishing“ elektroniniu paštu, žinučių socialiniuose tinkluose siuntimas arba

naudotojų viliojimas į suklastotas interneto svetaines. Kibernetiniai nusikaltėliai šiais metodais dažnai siekia finansinės naudos. Ypač tokio pobūdžio kibernetinių incidentų padaugėja šventiniais periodais, kai naudotojai yra viliojami nuolaidomis, ir vertingai atrodančiais pasiūlymais ir pan. Dažnas atvejis, kai kibernetiniai nusikaltėliai, apsimesdami įmonių vadovais, prašo buhalterių atlikti pinigines perlaidas. Šidlauskas (2017) teigia, kad dažniausiai tokio pobūdžio atakos būna nukreiptos prieš bankų klientus, siekiant sužinoti jų prisijungimo prie elektroninės bankininkystės sistemų slaptažodžius ar kreditinių kortelių duomenis. Sukčiai išsiunčia tūkstančius vienodo turinio žinučių ir tikisi, jog keli ar keliolika vartotojų „*užkibs ant kabliuko*“. Pavojaus signalai – beasmėnė žinutė, žinutė iš paslaugų teikėjo kurio paslaugomis niekada nesinaudojote, laiške nurodytos neaiškios nuorodos ir (ar) prisegti neaiškūs priedai (failai), įtartinas el. pašto adresas, nenaudojamas „*https*“ protokolas, nerišlūs sakiniai ir gramatinės klaidos, keistos vizualinės detalės.

Perpratus tokio pobūdžio kibernetinių nusikaltimų veikimo ir įgyvendinimo principus aiškiai sumažėja jų rizika. Sėkmingai išaiškinus socialinės inžinerijos incidentų pobūdį galima parengti atitinkamas rekomendacijas-namų vartotojams ir organizacijoms bei tobulinti teisinę bazę. Remiantis mimetinio izomorfizmo mechanizmu galima pagerinti priverstinio arba reguliacinio bei normatyvinio izomorfizmo lemiamus aspektus.

## IŠVADOS

Socialinės inžinerijos reiškinys mokslinėje literatūroje dar nėra plačiai išanalizuotas, tačiau augantis tokio pobūdžio kibernetinių nusikaltimų skaičius atkreipia vis didesnę mokslininkų teoretikų ir praktikų dėmesį. Socialinės inžinerijos incidentas, priklausomai nuo pogrupio ir poveikio kategorijos, gali būti priskiriamas nereikšmingam, vidutinio, didelio arba pavojingo svarbumo incidentui. Nevaldomas arba netinkamai valdomas, priklausomai nuo pogrupio ir poveikio kategorijos, nereikšmingas socialinės inžinerijos incidentas gali tapti vidutiniu, o vidutinis – dideliu arba pavojingu.

Straipsnyje atlikta analizė atskleidė, jog šiuo metu Lietuvoje socialinės inžinerijos institucinis izomorfizmas nukreiptas tik į techninius kibernetinį saugumą užtikrinančius veiksnius, o žmogiškajam faktoriui skiriama nepakankamai dėmesio. Kadangi socialinės inžinerijos keliama iššūkiai kompleksiniai ir dinamiški, jų žala tiesiogiai priklauso nuo žmogaus pasirengimo tokios atakos atėmimui.

Kibernetinio saugumo subjektai privalo laikytis atitinkamų teisinio reguliavimo procedūrų, už jų nesilaikymą numatyta administracinė atsakomybė. Augant socialinės inžinerijos rūšies kibernetiniams incidentams taip pat svarbu vadovautis gera praktika, kuri kartu su nacionalinės teisės aktais būtų įtvirtinta organizacijų kibernetinio saugumo politikoje, numatant aiškią kibernetinių incidentų valdymo procedūrą. NKSC teigia, kad organizacijos dažnai atitinka arba beveik atitinka *de jure* saugumo politikos kriterijų. Audituojami subjektai turi oficialiai apibrėžtus saugos procesus ir gaires, tačiau saugumo užtikrinimas dažnai laikomas biurokratine našta.

Nacionalinėje kibernetinio saugumo būklės ataskaitoje (2020) pateikiamos socialinės inžinerijos metodais pagrįstų kibernetinių incidentų grėsmių valdymo rekomendacijos nėra pakankamos. Siekiant įveikti socialinės inžinerijos keliamus iššūkius išauga darbuotojų švietimo kibernetinio saugumo tematika poreikis. Organizacijos be visų aukščiau išvardintų priemonių turėtų rengti mokymus ir šviesti darbuotojus apie kibernetinį saugumą. Taip pat kasmet atlikti rizikos vertinimą ir kartas nuo karto rengti pratybas, kurių tikslas būtų įvertinti organizacijos atsparumą kibernetinėms grėsmėms.

Lietuvoje veikiančioms organizacijoms, pasitelkus institucinio izomorfizmo prielaidas, pravartu atsižvelgti į kitose šalyse taikomus būdus kovojant su kibernetinio saugumo, konkrečiai socialinės inžinerijos iššūkiais. Kovai su socialine inžinerija neįmanoma pasiūlyti universalaus sprendimo, todėl svarbiu tampa kompleksinis atsakas į šias grėsmes, apimantis nacionalinį reguliavimą, organizacijos vidaus politiką ir sėkmingų praktikų atkartojimą.

## LITERATŪRA

1. Albladi, S. M., & Weir, G. R. (2020). Predicting individuals' vulnerability to social engineering in social networks. *Cybersecurity*, 3(1), 1-19.
2. Aldawood, H., Alashoor, T., & Skinner, G. (2020). 'Does awareness of social engineering make employees more secure?' *International Journal of Computer Applications*, 975, 8887.
3. Ali, W. & Frynas, J. G. (2018) The Role of Normative CSR-Promoting Institutions in Stimulating CSR Disclosures in Developing Countries. *Corporate Social Responsibility and Environmental Management*, Vol. 25, pp. 373–390
4. Amor-Esteban, V., Garcia-Sanchez, I.-M. & Galindo-Villardón, M.-P. (2018) Analysing the Effect of Legal System on Corporate Social Responsibility (CSR) at the Country Level, from a Multivariate Perspective. *Soc Indic Res*, Vol. 140, pp. 435–452
5. Anderson, R. (2008). *Security engineering*. John Wiley & Sons.
6. Andress, J. (2019). *Foundations of Information Security: A Straightforward Introduction*. San Francisco
7. Conteh, N. Y., & Schmick, P. J. (2016). Cybersecurity: risks, vulnerabilities and countermeasures to prevent social engineering attacks. *International Journal of Advanced Computer Research*, 6 (23), 31.

8. Dirgėla, R. (2007). *Žmogiškasis veiksnys informacijos sistemų apsaugoje: Magistro darbas*. Vilnius: Vilniaus universitetas.
9. Gibson, D. (2014). *Managing risk in information systems*. Jones & Bartlett Publishers.
10. Gobeo, A., Fowler, C., & Buchanan, W. J. (2018). *GDPR and Cyber Security for Business Information Systems*. River Publishers.
11. Grincevičius, R. (2019). *Kibernetinio saugumo valdymo gerinimas taikant atsparumo modelius organizacijose: Daktaro disertacija*. Vilnius: Mykolas Romeris universitetas.
12. Hatfield, J. M. (2018). Social engineering in cybersecurity: The evolution of a concept. *Computers & Security*, 73, 102-113.
13. Heather, A. & Haveman, A. (1993) Follow the Leader: Mimetic Isomorphism and Entry Into New Markets. *Administrative Science Quarterly*, Vol. 38, No. 4 (Dec., 1993), pp. 593-627
14. Huber, M., Kowalski, S., Nohlberg, M., & Tjoa, S. (2009, August). Towards automating social engineering using social networking sites. *In 2009 International Conference on Computational Science and Engineering* (Vol. 3, pp. 117-124). IEEE.
15. Kamat, P., Gautam, A. S., Tavares, J., Mishra, B., Kumar, R., Zaman, N., & Khari, M. (2018). Recent trends in the era of cybercrime and the measures to control them. *Handbook of e-business security*, 243-258.
16. Kasperavičiūtė-Černiauskiene, R. (2014) *Pasirinkimas diegti kokybės vadybos priemonės: ISO9001 standarto atvejis Lietuvos aukštojo mokslo ir studijų institucijose: daktaro disertacija*. – Vilnius: Mykolas Romeris universitetas, 264 p.
17. Kiškis, T. (2012). *Privatumo ir saugos lygio vertinimo interneto svetainėse metodo parengimas ir taikymas: Magistro darbas*. Kaunas: Kauno technologijos universitetas.
18. Krašto apsaugos ministerija ir „Kurk Lietuvai“. (2020) Kibernetinis saugumas ir verslas. Prieiga per internetą: [https://www.nksc.lt/doc/Kibernetinio\\_saugumo\\_vadovas\\_verslui\\_2020.pdf](https://www.nksc.lt/doc/Kibernetinio_saugumo_vadovas_verslui_2020.pdf)
19. Krombholz, K., Hobel, H., Huber, M., & Weippl, E. (2015). Advanced social engineering attacks. *Journal of Information Security and applications*, 22, 113-122.
20. Lietuvos Respublikos administracinių nusižengimų kodeksas. (2015). Prieiga per internetą: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/b8d908c0215b11e58a4198cd62929b7a/asr>
21. Lietuvos Respublikos kibernetinio saugumo įstatymas. (2014). Prieiga per internetą: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/f6958c2085dd11e495dc9901227533ee/asr>
22. Lietuvos Respublikos valstybės saugumo departamentas ir Antrasis operatyvinių tarnybų departamentas prie Krašto apsaugos ministerijos (2020). Grėsmių nacionaliniam saugumui vertinimas. Prieiga per internetą: <https://www.vsd.lt/wp-content/uploads/2020/02/2020-Gresmes-LT-.pdf>
23. Lietuvos Respublikos Vyriausybės 2018 m. rugpjūčio 13 d. nutarimas Nr. 818 „Dėl Lietuvos Respublikos kibernetinio saugumo įstatymo įgyvendinimo“. (2018). Prieiga per internetą: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/94365031a53411e8aa33fe8f0fea665f/asr>
24. Mikejan, J. (2017). *Socialinio tinklo vartotojų pažeidžiamumų tyrimas, naudojant socialinės inžinerijos metodus: Magistro darbas*. Vilnius: Vilniaus Gedimino technikos universitetas.
25. Nacionalinio kibernetinio saugumo būklės ataskaita už 2016 metus. (2017). Prieiga per internetą: [https://www.nksc.lt/doc/nksc\\_metine\\_ataskaita\\_uz\\_2016.pdf](https://www.nksc.lt/doc/nksc_metine_ataskaita_uz_2016.pdf)
26. Nacionalinio kibernetinio saugumo būklės ataskaita už 2017 metus. (2018). Prieiga per internetą: [https://www.nksc.lt/doc/NKSC\\_ataskaita\\_2017\\_lt.pdf](https://www.nksc.lt/doc/NKSC_ataskaita_2017_lt.pdf)
27. Nacionalinio kibernetinio saugumo būklės ataskaita už 2018 metus. (2019). Prieiga per internetą: [https://www.nksc.lt/doc/NKSC\\_ataskaita\\_2018.pdf](https://www.nksc.lt/doc/NKSC_ataskaita_2018.pdf)
28. Nacionalinio kibernetinio saugumo būklės ataskaita už 2019 metus. (2020). Prieiga per internetą: [https://www.nksc.lt/doc/Nacionalinio\\_kibernetinio\\_saugumo\\_bukles\\_ataskaita\\_2019.pdf](https://www.nksc.lt/doc/Nacionalinio_kibernetinio_saugumo_bukles_ataskaita_2019.pdf)

29. O'Hanley, R., & Tiller, J. S. (2013). Information Security Management Handbook, *Sixth Edition, Volume 7*. Auerbach Publications.
30. Panavas, S. (2020). *Šiuolaikinių kibernetinių nusikaltimų grėsmės prevencijos planas Generolo Jono Žemaičio Lietuvos karo akademijai: Bakalauro darbas*. Vilnius: Generolo Jono Žemaičio Lietuvos karo akademija.
31. Ponemon Institute, IBM Security (2019). Cost of a Data Breach Study 2019.
32. Purser, S. (2004). *A practical guide to managing information security*. Artech House.
33. Salahdine, F., & Kaabouch, N. (2019). Social engineering attacks: A survey. *Future Internet*, 11(4), 89.
34. Shimonski, R. (2016). *CEH v9: Certified Ethical Hacker Version 9 Study Guide* (Vol. 9). John Wiley & Sons.
35. Smith, K. (2015) *The Ultimate Hacking for Beginners*. Kevin Smith
36. Šidlauskas, A. (2017). *Vartotojų elektroninių duomenų apsaugos ypatumai: Magistro darbas*. Vilnius: Mykolas Romeris universitetas.
37. World Economic Forum. The Global Risks Report. (2020). Prieiga per internetą: [http://www3.weforum.org/docs/WEF\\_Global\\_Risk\\_Report\\_2020.pdf](http://www3.weforum.org/docs/WEF_Global_Risk_Report_2020.pdf)

## CHALLENGES FOR CYBER SECURITY: SOCIAL ENGINEERING IN THE CONTEXT OF INSTITUTIONAL ISOMORPHISM

Aurimas Šidlauskas<sup>1</sup>, Svajūnė Ungurytė-Ragauskienė<sup>2</sup>  
Mykolas Romeris University

### Summary

Cyber attacks are becoming more complex and sophisticated. More and more cyber incidents are based on manipulation of people and their weaknesses, the aim is to deceive information security systems, steal and seize confidential information. There has been an increase in the number of cyber incidents based on social engineering methods. Such statistics force organizations to respond to change and adapt to the prevailing institutional field, to improve the existing legal framework. The aim of the article is to present conclusions and recommendations for the improvement of cyber security regulation in the context of institutional isomorphism after analyzing the content of the concept of social engineering and the preconditions for the emergence of this type of cyber attacks and the regulation of cyber incident management in national law. The aim of the article is to analyze the content of the concept of social engineering and the preconditions for the occurrence of this type of cyber attacks and the regulation of cyber incident management in national law, to provide conclusions and recommendations for improving cyber security regulation in the context of institutional isomorphism. The analysis revealed that currently in Lithuania the institutional isomorphism of social engineering is focused only on the technical factors ensuring cyber security, and insufficient attention is paid to the human factor. In order to overcome the challenges posed by social engineering, the need to educate employees on cyber security is growing. Given the growth of social engineering cyber incidents, it is also important to follow good practices, which, together with national legislation, are enshrined in organizations' cyber security policies, with a clear cyber incident management procedure.

**Keywords:** Social engineering, cyber incidents, cyber security, institutional isomorphism.

---

## PROHIBITION OF TERRORISM DURING ARMED CONFLICTS

Violeta Vasiliauskienė

*Mykolas Romeris University  
Maironio st 27, LT-44211 Kaunas, Lithuania  
Telephone (+370 37) 303655  
E-mail: [v.vasiliauskiene@mruni.eu](mailto:v.vasiliauskiene@mruni.eu)*

DOI: 10.13165/PSPO-20-25-27

---

**Abstract.** The problem of the definition of terrorism is controversial and relevant to international law. The universal definition is not yet reached in international treaties; thus the discussion of the question is important in distinguishing this phenomenon from other so called “regular” crimes. The aim of the article is to reveal the elements of the definition of terrorism, paying particular attention to the situations of armed conflict. The object of the research - norms of international law defining terrorism, enshrined in the provisions of international agreements concluded within the framework of various regional international organizations and the United Nations.

**Keywords:** terrorism, armed conflict, international conventions, definition of terrorism, terrorizing of civilians

### INTRODUCTION

As the United Nations (hereinafter – UN) Special Rapporteur for human rights and terrorism has noted, “the issue of terrorism [is] one of the most controversial issues in the contemporary international legal and political arena. This has been apparent since 1937, when concerted international effort to promulgate the International Convention for the Prevention and Punishment of Terrorism, adopted under the auspices of the League of Nations, failed.”<sup>1</sup> Probably no word in modern language evokes as many different emotions, from believing in radical change to anger and condemnation, as terrorism. The popular saying “one man’s terrorist, another man’s freedom fighter” is also reflected in the debate on the definition of terrorism, a problem which contributes significantly to the complexity of the issue. This saying is especially relevant when evaluating the actions amounting to terrorization of civil population during armed conflict.

The term “terror” was first used to describe the policy of intimidation used during the French Revolution. As mentioned above, there were international efforts before World War II

---

<sup>1</sup> UN Commission on Human Rights. Sub-Commission on the Promotion and Protection of Human Rights. *Terrorism and Human Rights*. Progress report of the Special Rapporteur, Kalliopi K. Koufa. 27 June 2001. No. E/CN.4/Sub.2/2001/31. [accessed on 2020 10 15] Available at <https://www.refworld.org/docid/3d5a2cd30.html>

---

to adopt an International Convention for the Prevention and Punishment of Terrorism, but it did not come into force. It defined terrorism as “all criminal acts directed against a State with the aim of creating a state of fear in certain individuals, groups of individuals or the general public.”<sup>2</sup>

In 1972, a special *ad hoc* committee was set up in the UN General Assembly (hereinafter – GA) to consider the draft Comprehensive Convention on Terrorism and to define terrorism. This committee did not reach a final agreement on the definition of terrorism, but emphasized in its report that the main issue on which there was disagreement was whether or not the actions of national liberation movements should be included in the definition of terrorism. For further development of the definition of terrorism, the UN GA in 1996 in its resolution No. 51/210 set up a new *ad hoc* committee, one of the tasks of which was to reach an agreement on the definition of terrorism in the Comprehensive Convention on Terrorism (hereinafter – Draft Comprehensive Convention), it is still under deliberations of the states.

The aim of the article is to reveal the elements of the definition of terrorism, paying particular attention to the situations of armed conflict. The object of the research - norms of international law defining terrorism, enshrined in the provisions of international agreements concluded within the framework of various regional international organizations and the United Nations. The study used a variety of general and specific legal research methods: analytical, systematic analysis, analogies, comparative historical, linguistic, teleological, and critical.

## 1. THE ELEMENTS OF THE DEFINITION OF TERRORISM

The present situation about the definition of terrorism is that there is no universal international treaty, applicable in the whole world that would define terrorism. Regional organizations have their definitions of terrorism, which tend to adopt ‘list’ approach – that is, the terrorist acts are defined by listing particular criminal acts, labeling them terrorist. But during development of regional legislation, the new trend that is emerging is the definition of a general definition of terrorism.

Although the International Convention for the Suppression of the Financing of Terrorism<sup>3</sup> covers only one aspect of the fight against terrorism, it provides a first abstract definition of

---

<sup>2</sup> *Convention for the Prevention and Punishment of Terrorism*. 1937 [accessed on 2020 10 15] Available at <https://dl.wdl.org/11579/service/11579.pdf>, Article 1(2).

<sup>3</sup> *International Convention for the Suppression of the Financing of Terrorism*. 1999 [accessed on 2020 10 20] Available at <https://www.un.org/law/cod/finterr.htm>

---

terrorist act: “act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.”<sup>4</sup>

The Draft Comprehensive Convention, Article 2, defines terrorism as an unlawful and intentional act of a person by which he causes the death or serious bodily injury of any person, or serious damage to public or private property, including public places of use, public or governmental bodies, public transport system or infrastructure, or the environment, or damage above to such objects, if it is likely to cause significant economic damage, if the purpose of such action (judging by its nature or context) is to intimidate the public, or to compel a government or international organization to take or refrain from doing so. A serious threat to commit such acts, as well as an attempt to commit such an offense, aiding or abetting or organizing such an offense, shall also be considered a terrorist offense.<sup>5</sup>

Although a definition of global terrorism has not (yet) been adopted, some common elements in the definition of terrorism can be identified from the existing definitions of terrorism. It can be noted that in order to determine whether a terrorist attack has taken place, two elements are taken into account: the objective element – the criminal offense of a certain extent, and the subjective – the relevant motivation and goals of the perpetrators.

**Objective element of terrorism.** The range of acts that fall within the definition of terrorism is very wide. The Draft Comprehensive Convention defines that terrorist offenses cover acts which result in the death of or serious injury to property or serious damage to property, whereas the Convention on the Financing of Terrorism covers only the taking of life or serious bodily harm<sup>6</sup>. Other conventions, such as the Arab Convention on the Suppression of Terrorism<sup>7</sup>, this range is very wide, from the aforementioned crimes against human life and health to any damage to the environment or property or activities that could jeopardize national

---

<sup>4</sup> *Ibid*, Article 2.

<sup>5</sup> United Nations. *Draft Comprehensive Convention on International Terrorism*. 2000 [accessed on 2020 10 20] Available at <https://digitallibrary.un.org/record/422477>, Article 2

<sup>6</sup> VASILIAUSKIENĖ, V. *Kova su terorizmu tarptautinės humanitarinės teisės kontekste [Fight Against Terrorism in the Context of International Humanitarian Law]*. Doctoral dissertation. Social Sciences: Law (01S). Vilnius, 2014, p. 45.

<sup>7</sup> *The Arab Convention for the Suppression of Terrorism*. 1998 [accessed on 2020 10 15] Available at [https://www.unodc.org/images/tldb-f/conv\\_arab\\_terrorism.en.pdf](https://www.unodc.org/images/tldb-f/conv_arab_terrorism.en.pdf), Article 1(3).

---

resources. The same broad wording is given in the Convention of the Organisation of the Islamic Conference on Combating International Terrorism.<sup>8</sup>

In some documents, an attempt to carry out a terrorist attack is also considered a terrorist offense. C. Walter emphasized that there had been a recent trend in national legal systems to include acts of violence, whether violent or non-violent, which were destructive to public infrastructure.<sup>9</sup> The same trend is observed internationally. However, the overly broad definition runs the risk that legitimate forms of protest against government decisions that commit the relevant crimes or simply harm the state (such as a general strike) could be described as terrorism, so the definitions of terrorism should include the criterion of serious harm, which would help to distinguish such acts from forms of peaceful protest, which also seek to change state policy on relevant issues, but do not cause damage equivalent to that caused during a terrorist attack.<sup>10</sup>

**Aim and motive.** This element consists of two elements, that is, the motive for the act may be either to intimidate the civilian population or to illegally compel a government or international organization to take or refrain from certain actions. Some definitions provide other, additional motives. The EU's definition refers to the aim (rather than the element of harm) of „seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.“<sup>11</sup> The Organisation of African Unity Convention on the Prevention and Combating of Terrorism identifies two further elements of terrorist aim, namely the disruption of any public service, the provision of any necessary service to the public or the creation of a state of emergency; or the desire to provoke a universal uprising in the state.<sup>12</sup> The Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism besides the aims of intimidation or compelling the government to take certain actions also lists as terrorist the aim of undermining public security.

---

<sup>8</sup> *Convention of the Organisation of the Islamic Conference on Combating International Terrorism*. 1999 [accessed on 2020 10 20] Available at <https://www.refworld.org/docid/3de5e6646.html>

<sup>9</sup> WALTER, C. *Defining Terrorism in National and International Law*. WALTER, C. et. al. *Terrorism as a Challenge for National and International Law: Security vs. Liberty?* Berlin: Springer, 2003: p. 23-44, p. 34.

<sup>10</sup> VASILIAUSKIENĖ, *op. cit.* 6, p. 45.

<sup>11</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA. OL L 88, 2017 3 31, p. 6-21. Article 3.

<sup>12</sup> *OAU Convention on the Prevention and Combating of Terrorism* [accessed on 2020 10 20] Available at [https://au.int/sites/default/files/treaties/37289-treaty-0020\\_-\\_oau\\_convention\\_on\\_the\\_prevention\\_and\\_combating\\_of\\_terrorism\\_e.pdf](https://au.int/sites/default/files/treaties/37289-treaty-0020_-_oau_convention_on_the_prevention_and_combating_of_terrorism_e.pdf)

---

Thus, the common denominator among all regional conventions in terms of the stated aim of the act would be two main optional elements - that is, to intimidate the population, and secondly, to force the government (and in some cases an international organization) to take or refrain from certain actions. By defining the purpose more broadly, there is a danger of equating the crime of terrorism with other crimes.<sup>13</sup>

## 2. ACTS OF TERRORISM DURING ARMED CONFLICT

### 2.1. Armed conflict and terrorist acts

The concept of armed conflict is important in the sense that when an armed conflict starts, the whole body of rules of international humanitarian law (hereinafter – IHL) comes into operation. The main sources of this branch of law are contained in four Geneva Conventions of 1949 and their three additional protocols.<sup>14</sup> Those legal acts do not give a definition of an armed conflict.

One of the most widely used definitions of armed conflict was formulated in the *Tadić* case of the International Criminal Tribunal for the Former Yugoslavia (hereinafter – ICTY), where the tribunal stated: “we find that an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved.”<sup>15</sup>

Common Article 2 of the Geneva Conventions states that an international armed conflict is “all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.”<sup>16</sup> International armed conflict is also “all cases of partial or total occupation of the

---

<sup>13</sup> VASILIAUSKIENĖ, *op. cit.* 6, p. 45.

<sup>14</sup> The Geneva Conventions and their additional protocols may be found at <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions>.

<sup>15</sup> International Criminal Tribunal for former Yugoslavia. *Prosecutor v. Duško Tadić a/k/a „Dule“*. Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction of 2 October 1995. Case No. IT-94-1-AR72. [accessed on 2020 10 25] Available at <http://www.icty.org/x/cases/tadic/acdec/en/51002.htm>, para. 178.

<sup>16</sup> *Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*. Geneva, 12 August 1949. [accessed on 2020 10 25] Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/365>, Article 2.

---

territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”<sup>17</sup> Article 1(4) of I Additional Protocol to Geneva Conventions (hereinafter – AP I) states that the struggles of national liberation are also considered as international armed conflict.

Non-international armed conflicts are regulated by Common Article 3 of Geneva Conventions and by II Additional Protocol. Common Article 3 of Geneva Conventions is applicable in “the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties”.<sup>18</sup> Depending on the situation, hostilities take place either between one or more armed groups and the government, or between several such armed groups. The situation of armed conflict must be distinguished from situations that are not considered armed conflict, that is, incidents, border clashes, and the like. The definition of non-international armed conflict in AP II is narrower than in Common Article 3 of the Geneva Conventions. AP II is applicable to all armed conflicts “which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.”<sup>19</sup> Thus it requires the organized armed group to exercise control over territory, whereas Common Article 3 is applicable also where such control is not present.

Both terrorist acts and armed conflicts are associated with the use of force and casualties of people. As E. Stepanova notes, „not all armed conflicts involve the use of terrorist means. At the same time, incidents of terrorism or even sustained terrorist campaigns can occur in the absence of open armed conflict, in an environment that would otherwise be classified as ‘peacetime’. Nonetheless, in recent decades terrorism has been most commonly and systematically employed as a tactic in broader armed confrontations.”<sup>20</sup>

Terrorism is often carried out by the actors of contemporary armed conflicts. As the state-based conflicts decrease, and so has the number of battle-related deaths in state-based conflicts since 1950s. However, this positive trend is counterbalanced by the fact, that terrorism is

---

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*, Article 3.

<sup>19</sup> *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977. [accessed on 2020 10 25] Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/475>, Article 1.

<sup>20</sup> STEPANOVA, E. *Terrorism in Asymmetrical Conflict. Ideological And Structural Aspects*. SIPRI Research Report No. 23. Oxford University Press, 2008, p. 1.

---

integral to many contemporary conflicts, and some of the worst trends in contemporary armed conflicts are related to the use of terrorism as standard tactic of conflict.<sup>21</sup>

“Whilst IHL does not recognize ‘terrorists’ as their own discrete category of actors during situations of armed conflict, it does recognize and prohibit “terrorist” activities. Any acts which would normally be categorized as ‘terrorist’ as understood within the context of the universal anti-terrorism instruments and criminal justice approaches during peacetime, such as the deliberate perpetration of acts of violence against civilians or civilian objects, constitute war crimes under IHL which should be prosecuted accordingly.”<sup>22</sup>

## **2.2. Prohibition of terrorist acts in international treaties and customary international law**

Terrorist acts in the context of armed conflict are prohibited both directly and indirectly. Terrorist acts against persons not involved in hostilities and their property, depending on their purpose and manner, may be considered as attacks on civilians and objects (Articles 51 (2) and 52 of Additional Protocol to Geneva Conventions, hereinafter – AP I, Article 13 of Additional Protocol to Geneva Conventions, hereinafter – AP II), non-discriminating attacks (Article 51 (4) of AP I), attacks against religious shrines (Article 53 of AP I, Article 16 of AP II), attacks on dangerous establishments and installations (Article 56 of AP I, Article 15 of AP II), hostage-taking (Common Article 3 (1) of the Geneva Conventions, Article 75 of AP I, Article 15 of AP II), the killing of persons who are not or are no longer involved in hostilities (Common Article 3 (1) of the Geneva Conventions, Article 75 of AP I, Article 4 (2) of AP II).<sup>23</sup>

Terrorist acts committed against combatants are prohibited if they are committed using deception prohibited by Article 37 of AP I. However, especially in the context of the exception in Article 44 of the AP I, where combatants may not be distinguished from the civilian population due to the nature of the hostilities, the line between deception and legitimate military action against combatants is very unclear. However, it is clear that norms of international humanitarian law do not preclude terrorist acts against combatants, as intimidation of combatants for strategic purposes is probably the oldest tactic of war.<sup>24</sup>

---

<sup>21</sup> *Ibid.*

<sup>22</sup> United Nations Office on Drugs and Crime. *Counter-Terrorism Module 6 Key Issues: International humanitarian law, terrorism and counter-terrorism*. July 2018. [accessed on 2020 10 25] Available at <https://www.unodc.org/e4j/en/terrorism/module-6/key-issues/ihl-terrorism-and-counter-terrorism.html>

<sup>23</sup> JODOIN, S. Terrorism as a War Crime. *International Criminal Law Review*. 7 (2007): 77–115, p. 81.

<sup>24</sup> *Ibid.*, p. 82.

---

Although there have been attempts in the past to ban the terrorization of the civilian population, specific provisions on terrorism were first set out in Article 33 of the IV Geneva Convention, which states that “Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.”<sup>25</sup> Terrorism is also prohibited by Article 51 (2) of AP I, which states that “Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”<sup>26</sup> This prohibition is also repeated word per word in the International Committee of the Red Cross (hereinafter – ICRC) study on Customary international humanitarian law<sup>27</sup> as a customary norm of international humanitarian law. The same prohibition is also applicable during non-international armed conflicts and is enacted in Article 13(2) of AP II. Another provision applicable in this context is Article 4(2)(d) of AP II, stating that against people not (no longer) participating in hostilities “the following acts [...] remain prohibited [...]: acts of terrorism.”<sup>28</sup>

It should be noted that the definition of terrorism is implicit in these provisions. Terrorism, in accordance with Article 51 of AP I and Article 13 of AP II, is to be defined, within the limits of IHL norms, as acts of coercion or threats against certain persons (civilians or non-combatants) whose primary, main purpose is to cause fear/terror in those persons.<sup>29</sup> This is an exception to the general regulation of terrorism in the sense that the crime of terrorism is criminalized within the meaning of IHL norms, but in the absence of a common definition of terrorism, this crime is not yet enshrined in general international law.<sup>30</sup>

It should be noted that virtually all military action causes fear among the civilian population, as well as among the military. Attacks on the armed forces are sometimes purposefully carried out in a brutal manner in order to instil fear in the enemy soldiers and persuade them to surrender, but such intimidation is not addressed in these provisions. This provision prohibits acts the main purpose of which is to cause fear to the civilian population,

---

<sup>25</sup> *Convention (IV) relative to the Protection of Civilian Persons in Time of War*. Geneva, 12 August 1949. [accessed on 2020 10 25] Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/380>

<sup>26</sup> *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977. [accessed on 2020 10 25] Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/470>

<sup>27</sup> HENCKAERTS, J.-M., DOSWALD-BECK, L. (eds.) *Customary International Humanitarian Law*. Vol. I – Rules. Vol. II – Practice. Cambridge University Press, 2005, p. 8

<sup>28</sup> Protocol II, *op. cit.* 19.

<sup>29</sup> JODOIN, *op. cit.* 23, p. 85.

<sup>30</sup> VASILIAUSKIENĖ, *op. cit.* 6, p. 57.

but without conferring virtually any military advantage.<sup>31</sup> Thus, this subjective element (the aim to cause fear of the civilian population) must always be regarded as a necessary element and not merely as a side effect of the military action.<sup>32</sup> It should also be noted that countermeasures cannot be applied regarding Article 51 of AP I.

Serious violations of the abovementioned provisions can be considered war crimes. War crimes are violations of IHL that can result in personal criminal responsibility. These include violations of the Geneva Conventions and their additional protocols, as well as serious violations of other rules and customs of war, such as the use of prohibited methods and means of warfare. This is confirmed by Article 85 of AP I, according to which terrorist acts which result in the death or serious injury of civilians are to be regarded as serious offenses of Geneva Conventions and are considered war crimes.<sup>33</sup>

This was extensively analysed by the International Criminal Tribunal for the former Yugoslavia (hereinafter – ICTY) in case *Prosecutor v. Galic*. According to the ICTY, the prohibition of acts to intimidate the civilian population is a specific and separate prohibition in the context of a general prohibition of attacks on civilians<sup>34</sup>. The ICRC Commentary on AP II states that “Attacks aimed at terrorizing are just one type of attack, but they are particularly reprehensible. Attempts have been made for a long time to prohibit such attacks, for they are frequent and inflict particularly cruel suffering upon the civilian population. Thus, the Draft Rules of Aerial Warfare, prepared in The Hague in 1922, already prohibited such attacks. Air raids have often been used as a means of terrorizing the population, but these are not the only methods. For this reason, the text contains a much broader expression, namely “acts or threats of violence” so as to cover all possible circumstances.”<sup>35</sup>

According to the ICTY, the prohibition of terrorism is a provision of customary IHL. The ICTY Appeals Chamber stated that the relevant provisions of the Additional Protocols prohibiting acts aimed at intimidating the civilian population had been adopted unanimously at

---

<sup>31</sup> PILLOUD, C. (ed.) et al., ICRC. *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*. Dordrecht: ICRC/Martinus Nijhoff Publishers, 1987. (Protocol I), para. 1940, p. 618.

<sup>32</sup> GASSER, H. P. Prohibition of Terrorist Acts in International Humanitarian Law. *International Review of the Red Cross*. July-August 1986, Vol. 26, No. 253: 200–212.

<sup>33</sup> *Ibid.*

<sup>34</sup> International Criminal Tribunal for former Yugoslavia. *Prosecutor v. Stanislav Galić*. Trial Judgement of 5 December 2003. Case No. IT-98-29-T. [accessed on 2020 10 25] Available at <http://www.icty.org/x/cases/galic/tjug/en/gal-tj031205e.pdf> para. 98.

<sup>35</sup> *Commentary on the Additional Protocols*, op. cit. 144, (Protocol II), para. 4785, p. 1453. <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=2C8494C2FCAF8B27C12563CD0043AA67>

the Diplomatic Conference for the adoption of the Additional protocols and had not been the subject of any objections<sup>36</sup>. 150 States are parties to these Protocols. The Tribunal also carried out an extensive investigation and found that many states had enshrined in their legislation and military leaders a ban on terrorist measures, which in some cases was worded in exactly the same way as the provisions of AP I and AP II.<sup>37</sup>

Another question arises – whether this provision may give rise to *individual* responsibility of the person having carried out such attacks. In examining whether this prohibition could be considered as a basis for individual responsibility, the ICTY noted that as early as 1919, The Commission of Responsibilities, set up at the Paris Peace Conference, had already mentioned “systemic terrorism” in its report on violations of the law of war.<sup>38</sup> Although no convictions were made under this provision, this shows that as early as 1919, the intent of the states was to criminalize the deliberate terrorization of civilians. In drafting the Statute of the International Military Tribunal in 1945, it was also proposed to include the crime of terrorism, which was not subsequently adopted in the text. 1945 The Australian War Crimes Act included the crime of “systemic terrorism” in the category of war crimes.<sup>39</sup>

It should also be noted that in 1947 a military court in Makassar (Dutch East Indies, now Indonesia) in case *Motomura et al.* convicted individuals of “systemic terrorism against people suspected by the Japanese of crimes.” These acts of terrorism involved the repeated regular and prolonged torture and ill-treatment of individuals, the arrest of individuals on the basis of rumours, and the loss of many lives.<sup>40</sup> The ICTY has also reviewed the practice of many states, which showed that states criminalized the terrorization of civilians in armed conflict in their legislation.<sup>41</sup> The Tribunal therefore concluded that customary IHL establishes personal criminal liability for breaches of the prohibition of civilian terrorism laid down in Article 51 (2) of AP I and Article 13 (2) of AP II<sup>42</sup> and is therefore applicable in all states, notwithstanding their ratification or not of the Additional protocols.

The ICTY has identified the following elements of a terrorist offense:

---

<sup>36</sup> *Galić* Trial Judgement, *op. cit.* 34, paras. 99-101; International Criminal Tribunal for former Yugoslavia. *Prosecutor v. Stanislav Galić*. Appeals Judgement of 30 November 2006. Case No. IT-98-29-A. [accessed on 2020 10 25] Available at <http://www.icty.org/x/cases/galic/acjug/en/gal-acjud061130.pdf>, para. 87.

<sup>37</sup> *Galić* Appeals Judgement, *op. cit.* 36, para. 89

<sup>38</sup> *Ibid.*, para. 93.

<sup>39</sup> *Galić* Trial Judgement, *op. cit.* 34, para. 118.

<sup>40</sup> *Ibid.*, para. 115.

<sup>41</sup> *Galić* Appeals Judgement, *op. cit.* 36, para. 94-95.

<sup>42</sup> *Ibid.*, para. 98. VASILIAUSKIENĖ, *op. cit.* 6, p. 54.

- 
1. These are acts of violence against the civilian population or individuals who are not directly involved in hostilities resulting in the death or serious injury of the mentioned persons;
  2. The perpetrator deliberately directed these actions against civilians or persons not directly involved in hostilities.
  3. The main purpose of the act was to provoke the fear of the civilian population.<sup>43</sup>

The Tribunal noted that it was not necessary to establish that civilians were in fact intimidated, nor was it necessary to prove a causal link between criminal acts and intimidation. The ICTY emphasized that only acts of violence against civilians and not against combatants are considered a crime of terrorism during armed conflict.<sup>44</sup>

In the *Galic* case in particular, the tribunal found that “crime of terror within the meaning of Article 3 of the Statute [establishing the jurisdiction of the ICTY] was committed against the civilian population of Sarejevo during the Indictment Period. In relation to the actus reus of the crime of terror as examined above, the Trial Chamber has found that acts of violence were committed against the civilian population of Sarajevo during the Indictment Period. The Majority has also found that a campaign of sniping and shelling was conducted against the civilian population of ABiH-held areas of Sarajevo with the primary purpose of spreading terror.”<sup>45</sup>

### **2.3. The field of application of different provisions prohibiting terrorism**

These provisions on terrorism have different scope. The prohibition in Article 33 of the Geneva Convention IV applies only to international armed conflicts, thus it is addressed only to members of the armed forces of a State and members of the armed forces of national liberation movements within the meaning of Article 1 (4) of AP I. The scope of Article 13 (2) of AP I would be the same. The prohibitions in Article 4 (2) (d) and Article 13 (2) of the AP II apply to the parties to this conflict, that is to say, to the armed forces of a State and to other participants in a non-international armed conflict who meet the requirements of Article 1 (1) of the AP II.<sup>46</sup> Persons protected under Article 33 of Geneva Convention IV are persons under the power of the Party to the conflict. They are protected from illegal acts of violence - collective

---

<sup>43</sup> *Galić* Trial Judgement, op. cit. 148, para. 133.

<sup>44</sup> *Ibid*, para. 134-135.

<sup>45</sup> *Galić* Trial Judgement, op. cit. 34, para. 597.

<sup>46</sup> VASILIAUSKIENĖ, op. cit. 6, p. 59

---

punishment and terrorism. Thus, the scope of this article would be the illegal use of terrorism to maintain public order in the occupied territory.

The scope of other provisions is wider. The provision of Article 51 (2) of AP I is in the article on the protection of all civilians, not only those in the power of a party to an armed conflict, and thus protects all civilians. This article prohibits not only the commission of such acts, but also the threat to commit such acts.

Article 51 of AP I is one of the most important articles of this protocol, and therefore the prohibition of terrorism must be regarded as an important, essential provision. Similarly, Article 13 of AP II also protects all civilians from the crime of terrorism. The prohibition of terrorism in Article 4 of AP II covers an even wider range of persons, as it applies not only to civilians but also to combatants who are no longer involved in hostilities (the scope of this article is “all persons not directly or no longer involved in hostilities”). Thus, the prohibition of terrorism is formulated in the latter article in the broadest of all provisions analysed<sup>47</sup>.

Because terrorism is considered an attack on civilians, a legitimate military attack on military objects and combatants (or fighters in a non-international armed conflict) that provides a military advantage is not considered terrorism and is not prohibited.<sup>48</sup> The primary purpose of such attacks will be to gain a military advantage. Attacks on the civilian population will be seen as having the primary aim of intimidation of the civilian population, although their perpetrators and perpetrators claim to pursue military objectives.<sup>49</sup> However, the prohibition of terrorism would cover acts which, although directed against a military object, are carried out without distinction and unproportionally, and are carried out with the primary purpose to intimidate the civilian population. However, there is a problem of overlap in this respect: terrorist acts are covered by a more general ban on attacking civilians. Thus, this crime can be considered as a qualified crime of direct attack of civilians.<sup>50</sup>

As already mentioned, the ICTY argues that these provisions should be considered as part of customary IHL. This was stated in 1973 by J. Paust, who quoted sources from the 20th

---

<sup>47</sup> *Ibid.*, p. 60

<sup>48</sup> JODOIN, *op. cit.* 23, p. 94.

<sup>49</sup> KALSHOVEN, P. “Guerrilla” and “Terrorism” in Internal Armed Conflict. *The American University Law Review*. Vol. 33, 1983: 67–81. p. 78-79. He gives two examples of such attacks: a military attack directed at a settlement of civilians working in a military factory, and the assassination of a high-level civilian officer working in a unit organizing resistance to the uprising.

<sup>50</sup> JODOIN, *op. cit.* 23, p. 95; KALSHOVEN, *op. cit.* 49, p. 80.

---

century and even earlier ones<sup>51</sup>. Therefore, it can be stated that the application of these provisions is much wider, especially in armed conflicts involving states that have not ratified AP I and AP II. According to Jodoin, despite their customary nature, their scope is linked to that set out in the Protocols.<sup>52</sup> The question arises how to assess terrorist acts in conflicts that do not go beyond the threshold of armed conflict set out in AP II and hence where only Article 3 of Geneva Conventions applies. Is this prohibition applicable in those conflicts, or are only the conventions governing individual acts of terrorism applicable, or does the prohibition on terrorism not apply at all? Given the purpose of this ban, which is to protect the civilian population from physical and psychological violence caused by terrorist acts, which is one of the key objectives of IHL, this customary ban on terrorism should also apply to so-called Article 3 of Geneva Conventions conflicts, which do not qualify as armed conflict, set out in AP II.<sup>53</sup>

While terrorist acts are regulated by IHL, most conventions governing terrorist acts stipulate that they do not apply in times of armed conflict. This issue is one of the outstanding issues in the negotiations on the Comprehensive Convention on Terrorism. We are talking here about the relationship between IHL and the so-called terrorist law (which would consist of the above-mentioned conventions governing specific terrorist acts). The proposal of the Coordinator on the Comprehensive Convention on Terrorism project also proposes to exclude situations of armed conflict from the scope of the Convention.

Thus, it can be stated that the IHL norms establish the prohibition of terrorism, and violations of this obligation must be considered as a war crime of terrorism. This ban on terrorism is part of customary IHL.

## CONCLUSIONS

There is yet no universal definition of terrorism in international law. Earlier, regional conventions would adopt 'list' approach, that is, list the crimes (and corresponding international treaties outlawing them) which are considered terrorist. Lately, the trend of adopting a more general definition emerged.

The draft UN Comprehensive Convention on Terrorism defines terrorism using two elements, objective (act causing serious damage) and subjective (act having specific terrorist

---

<sup>51</sup> PAUST, J. Terrorism and the International Law of War. *Military Law Review*, Vol. 64, Spring 1974: 1–36, p. 11.

<sup>52</sup> JODOIN, *op. cit.* 23, p. 87.

<sup>53</sup> VASILIAUSKIENĖ, *op. cit.* 6, p. 60.

---

aim/purpose). This convention defines terrorism as an unlawful and intentional act of a person by which he causes the death or serious bodily injury of any person, or serious damage to public or private property, including public places of use, public or governmental bodies, public transport system or infrastructure, or the environment, or damage above to such objects, if it is likely to cause significant economic damage, if the purpose of such action (judging by its nature or context) is to intimidate the public, or to compel a government or international organization to take or refrain from doing so. The definitions of general nature in regional conventions tend to include these two elements as well.

Terrorism is often carried out by the actors of contemporary armed conflicts. As the state-based conflicts decreases, and so has the number of battle-related deaths in state-based conflicts since 1950s. However, this positive trend is counterbalanced by the fact, that terrorism is integral to many contemporary conflicts, and some of the worst trends in contemporary armed conflicts are related to the use of terrorism as standard tactic of conflict.

Terrorist acts in the context of armed conflict are prohibited both directly and indirectly. Terrorist acts against persons not involved in hostilities and their property, depending on their purpose and manner, may be considered as attacks on civilians and objects, non-discriminating attacks, attacks against religious shrines, attacks on dangerous establishments and installations, hostage-taking and similar.

Terrorism can also be distinguished as a separate war crime prohibited by Geneva Conventions and their additional protocols. During armed conflict it has a special meaning. Terrorism, in accordance with Article 51 of AP I and Article 13 of AP II, is to be defined, within the limits of IHL norms, as acts of coercion or threats against certain persons (civilians or non-combatants) whose primary, main purpose is to cause fear/terror in those persons. This provision prohibits acts the main purpose of which is to cause fear to the civilian population, but without conferring virtually any military advantage. Thus, this subjective element (the aim to cause fear of the civilian population) must always be regarded as a necessary element and not merely as a side effect of the military action. Serious violations of the abovementioned provisions can be considered war crimes. The prohibition of terrorism in armed conflict is not only established in international treaties establishing the rules of IHL, but is also considered to be part of customary IHL.

The ICTY has identified the following elements of a terrorist offense: 1) These are acts of violence against the civilian population or individuals who are not directly involved in

hostilities resulting in the death or serious injury of the mentioned persons. 2) The perpetrator deliberately directed these actions against civilians or persons not directly involved in hostilities. 3) The main purpose of the act was to provoke the fear of the civilian population.

## REFERENCES

1. *Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*. Geneva, 12 August 1949. [accessed on 2020 10 25] Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/365>
2. *Convention (IV) relative to the Protection of Civilian Persons in Time of War*. Geneva, 12 August 1949. [accessed on 2020 10 25] Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/380>
3. *Convention for the Prevention and Punishment of Terrorism*. 1937 [accessed on 2020 10 15] Available at <https://dl.wdl.org/11579/service/11579.pdf>
4. *Convention of the Organisation of the Islamic Conference on Combating International Terrorism*. 1999 [accessed on 2020 10 20] Available at <https://www.refworld.org/docid/3de5e6646.html>
5. Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA. OL L 88, 2017 3 31, p. 6-21.
6. GASSER, H. P. Prohibition of Terrorist Acts in International Humanitarian Law. *International Review of the Red Cross*. July-August 1986, Vol. 26, No. 253: 200–212.
7. HENCKAERTS, J.-M., DOSWALD-BECK, L. (eds.) *Customary International Humanitarian Law*. Vol. I – Rules. Vol. II – Practice. Cambridge University Press, 2005.
8. *International Convention for the Suppression of the Financing of Terrorism*. 1999 [accessed on 2020 10 20] Available at <https://www.un.org/law/cod/finterr.htm>
9. International Criminal Tribunal for former Yugoslavia. *Prosecutor v. Stanislav Galić*. Trial Judgement of 5 December 2003. Case No. IT-98-29-T. [accessed on 2020 10 25] Available at <http://www.icty.org/x/cases/galic/tjug/en/gal-tj031205e.pdf>
10. International Criminal Tribunal for former Yugoslavia. *Prosecutor v. Stanislav Galić*. Appeals Judgement of 30 November 2006. Case No. IT-98-29-A. [accessed on 2020 10 25] Available at <http://www.icty.org/x/cases/galic/acjug/en/gal-acjud061130.pdf>.
11. International Criminal Tribunal for former Yugoslavia. *Prosecutor v. Dučko Tadić a/k/a „Dule“*. Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction of 2 October 1995. Case No. IT-94-1-AR72. [accessed on 2020 10 25] Available at <http://www.icty.org/x/cases/tadic/acdec/en/51002.htm>
12. JODOIN, S. Terrorism as a War Crime. *International Criminal Law Review*. 7 (2007): 77–115.
13. KALSHOVEN, P. “Guerrilla” and “Terrorism” in Internal Armed Conflict. *The American University Law Review*. Vol. 33, 1983: 67–81.
14. *OAU Convention on the Prevention and Combating of Terrorism* [accessed on 2020 10 20] Available at [https://au.int/sites/default/files/treaties/37289-treaty-0020\\_-\\_oau\\_convention\\_on\\_the\\_prevention\\_and\\_combating\\_of\\_terrorism\\_e.pdf](https://au.int/sites/default/files/treaties/37289-treaty-0020_-_oau_convention_on_the_prevention_and_combating_of_terrorism_e.pdf)
15. PAUST, J. Terrorism and the International Law of War. *Military Law Review*, Vol. 64, Spring 1974: 1–36.
16. PILLOUD, C. (ed.) et al., ICRC. *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*. Dordrecht: ICRC/Martinus Nijhoff Publishers, 1987. (Protocol I).

- 
17. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977. [accessed on 2020 10 25] Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/475>
  18. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977. [accessed on 2020 10 25] Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/470>
  19. STEPANOVA, E. *Terrorism in Asymmetrical Conflict. Ideological And Structural Aspects*. SIPRI Research Report No. 23. Oxford University Press, 2008.
  20. The Arab Convention for the Suppression of Terrorism. 1998 [accessed on 2020 10 15] Available at [https://www.unodc.org/images/tldb-f/conv\\_arab\\_terrorism.en.pdf](https://www.unodc.org/images/tldb-f/conv_arab_terrorism.en.pdf)
  21. UN Commission on Human Rights. Sub-Commission on the Promotion and Protection of Human Rights. *Terrorism and Human Rights*. Progress report of the Special Rapporteur, Kalliopi K. Koufa. 27 June 2001. No. E/CN.4/Sub.2/2001/31. [accessed on 2020 10 15] Available at <https://www.refworld.org/docid/3d5a2cd30.html>
  22. United Nations Office on Drugs and Crime. *Counter-Terrorism Module 6 Key Issues: International humanitarian law, terrorism and counter-terrorism*. July 2018. [accessed on 2020 10 25] Available at <https://www.unodc.org/e4j/en/terrorism/module-6/key-issues/ihl-terrorism-and-counter-terrorism.html>
  23. United Nations. *Draft Comprehensive Convention on International Terrorism*. 2000 [accessed on 2020 10 20] Available at <https://digitallibrary.un.org/record/422477>
  24. VASILIAUSKIENĖ, V. *Kova su terorizmu tarptautinės humanitarinės teisės kontekste [Fight Against Terrorism in the Context of International Humanitarian Law]*. Doctoral dissertation. Social Sciences: Law (01S). Vilnius, 2014.
  25. WALTER, C. Defining Terrorism in National and International Law. In: WALTER, C. et. al. *Terrorism as a Challenge for National and International Law: Security vs. Liberty?* Berlin: Springer, 2003: p. 23-44, p. 34.

---

## EVENT RISKS FROM THE STANDPOINT OF ENTROPY SYSTEMS

Vyacheslav Voloshyn<sup>1</sup>

<sup>1</sup>*Pryazovskyi State Technical University  
Universitetska street, 7  
Mariupol, Ukraine  
Tel +380 629 52 99 23  
E mail: [rector@pstu.edu](mailto:rector@pstu.edu)*

Viktoriya Saravas<sup>2</sup>

<sup>2</sup>*Pryazovskyi State Technical University  
Universitetska street, 7  
Mariupol, Ukraine  
Tel +380 98 572 5601  
E mail: [saravas\\_v\\_e@pstu.edu](mailto:saravas_v_e@pstu.edu)*

DOI: 10.13165/PSPO-20-25-29

---

**Annotation.** It is proposed to consider risk as an event category in the aspect of time, event and entropy scales in understanding their direction in relation to time, events and changes in the energy-entropics of the event system in the paper. A similar model for studying risks in any systems, not related to their probabilistic characteristics, is based on the concepts of catastrophe theory in the application at times on the time scale preceding the present time  $T_p$ . Such a model can be easily represented in the form of a directed multilevel graph, the root directory of which displays one of the known bifurcations, at the moment of time  $\Delta\tau$ , which turns into an accomplished event. The energy component of such an event in the form of its entropy gives an idea of the degree of reliability of the transition from uncertainty to a verified event. It is it that in the time interval  $\Delta\tau \rightarrow T_p$  illustrates the magnitude and direction of event risk that can lead to accidents and other undesirable events. It can be argued that the *multiple uncertainty that precedes the accomplished certainty in time is the key to understanding event risk as an analytical category.*

Some examples show the methodology of using the theory of catastrophes in comparison with the time scales, events and entropy to study marketing risks associated with events that may occur.

**Keywords:** risk, theory of catastrophes, accomplished certainty, event certainty, probabilistic characteristics.

### INTRODUCTION

The discussion of understanding risks as a category of hazards in any engineering systems is most often associated with understanding the phenomenon of time, its past, present and future. The authors studying this problem, one way or another, are looking for a solution to the phenomenon of the thermodynamic or, in another way, the psychological "arrow of time" at the level of philosophy, quantum mechanics, thermodynamics, knowledge of uncertain events, etc. Most often, risks are determined through the probability of events that are the reason for their appearance against the background of many other equivalent events. And, the most typical

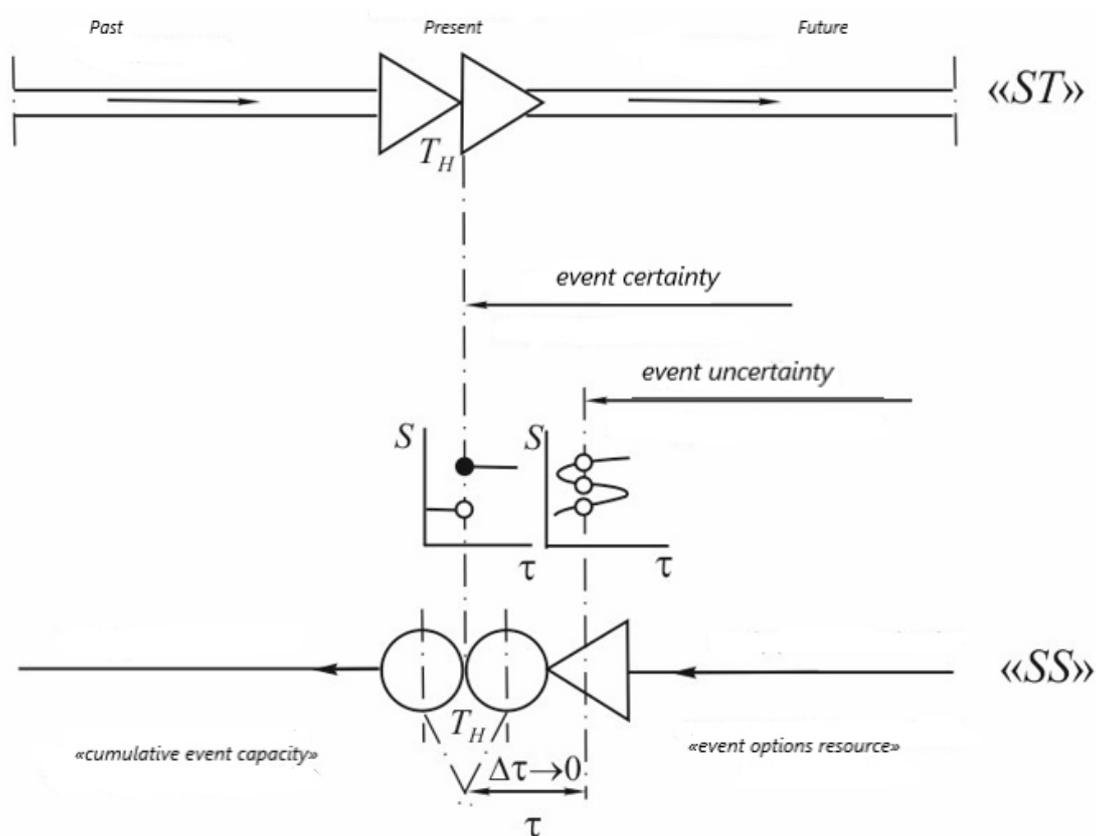
variant, which one has to face, claims that a reliable study of this phenomenon, as a probabilistic category, is not possible by calculation.

Most often, risks are determined through the likelihood of events that cause their manifestation against the background of many other equivalent events. And, the most typical option, which one has to face, claims that a reliable study of this phenomenon is difficult by calculation.

## THEORETICAL BACKGROUND

### SOME ASPECTS OF EVENT RISKS PHILOSOPHY

For ease of understanding the processes of risk formation, we will present the well-known unidirectional "arrow of time" in the following interpretation: the entire time scale "ST" is easily divided into several irregular intervals [1], this is past, present, future. Geometric representation of the relativity of the time scale and the scale of events from the standpoint of risk formation shown in the Figure 1.



**Figure 1.** Geometric representation of the relativity of the time scale and the scale of events from the standpoint of risk formation

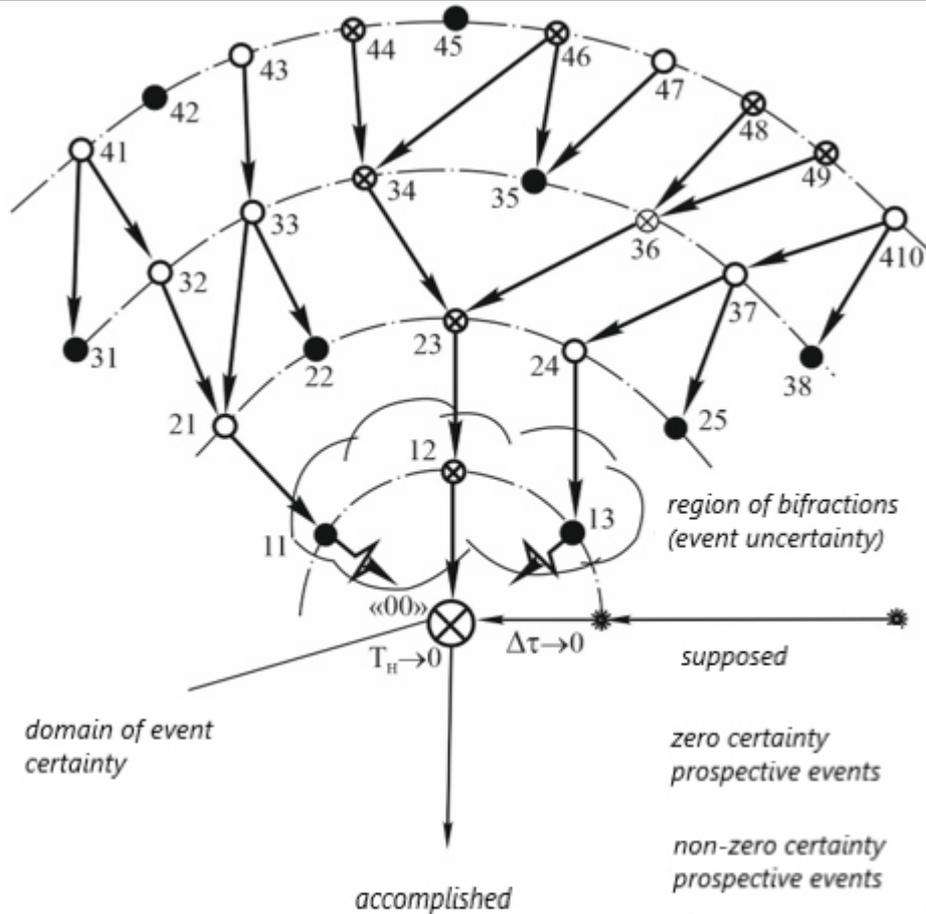
The past gives an idea of what has happened, the future is associated with the assumed, and the present is associated with the coming.

There is another unidirectional scale speculatively. It can be called the "SS" event scale. In work [2], it is shown that the series of events in chronology is a multi-layer spatial structure, consisting of events that have already taken place and remained in the past, events that occur now, in the present, and events that can be predicted from the future. *Moreover, all events, in one way or another, are associated with energy consumption, which is important for this work.* The vector of such events is always directed in the direction opposite to the "arrow of time" as it shown at Figure 1.

This simple scheme does not take into account one conditional event interval: between potential and onset events. In time, this interval ( $\Delta\tau$ ), like the present time ( $T_H$ ), tends to zero. This is an event interval of uncertainty before the present time, which is almost always zero, but its meaning in the time series is extremely large. The zero interval ( $\Delta\tau$ ) instantly separates one single of several potential events from the essence of the event that has occurred. One could argue about the existence of this condition in the form  $\lim_{\Delta\tau \rightarrow 0} (T_H + \Delta\tau) = T_H$ , if not for the convincingness of the theory of catastrophes [3], in particular, the concept of bifurcation, which is the essence of the transition from time uncertainty of an event with a zero interval to an event that has happened, it is quite unambiguous.

Unlike traditional bifurcations aimed at the transition of the system from stability to an unstable state, in our case we are dealing with a system that, under the influence of many smallest increments in the form of individual events, tends to stability in the form of one single event that occurs in the present time. In the theory of catastrophes, this process is called out-of-bifurcation self-organization of the system, that is, actions to order elements of one level at the expense of internal factors of the system, which, in this case, is the event resource base as illustrated in Figure 1.

The above model can be easily represented in the form of a sequential digraph (Fig. 2), where the vertices ( $ij$ ) are a reflection of some supposed events ( $j$ ) or the happened event "00" at each  $i$ -th level of the predicted time interval in the future, in relation to the present, and the edges of the graph are cause-and-effect relationships that sequentially transform one  $j$ -th reason into another. There are four consecutive levels ( $i = 4$ ) of supposed events, each of which at its own level is independent from other equal levels. And only when moving to the next level, its own inter-level connection is manifested.



**Figure 2.** An oriented graph of mappings of the assumed eventfulness and causal relationships between the events that are in the assumption

Let us single out three components: supposed events (four levels in the time interval of the future), the event interval between potential and onset events ( $\Delta\tau \rightarrow 0$ ), the present time  $T_H \rightarrow 0$  and the area of already accomplished events. The lowest, first, level of events shows us exactly the bifurcation, for example, in the form of a Whitney assembly, when in the time period  $\Delta\tau$  there are only three variants of events: 11, 12, 13, and only one of them, namely 12, has already become reality after a moment in the present time (see Fig. 2). The chain of alleged events that led to the accomplished "00" looks like:

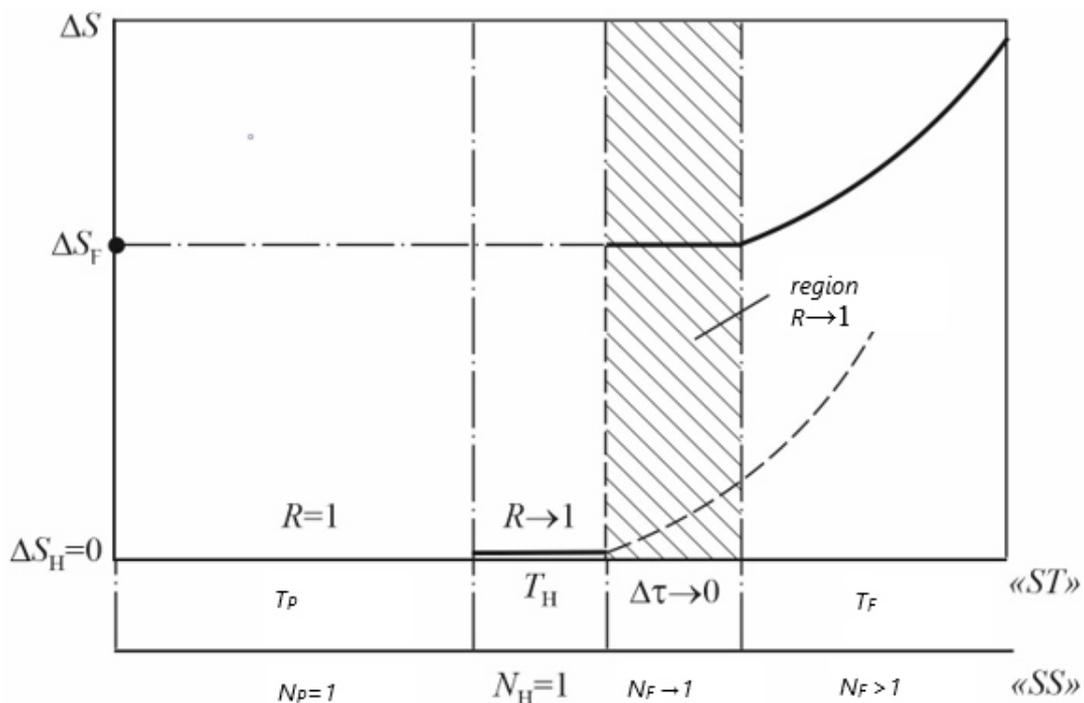
$$00 \rightarrow \overbrace{(23)}^I \rightarrow \overbrace{(34)}^{II} \rightarrow \overbrace{(34 \rightarrow 36)}^{III} \rightarrow \overbrace{(44 \rightarrow 46 \rightarrow 48 \rightarrow 49)}^{IV}$$

All other possible events did not lead to a real result, event "00".

In nature, there is another parameter, the one-pointedness of which is not questioned. This is entropy. Entropy, as a measure of energy dissipation, is an indicator of the dynamism of a

system. The smaller the measure of energy dissipation established and fixed in time, the more the system is oriented towards sequential structuring, the manifestation of new systemic qualities that prevent the emergence of uncertainty. And vice versa, the more significant is the dissipation of energy, the more the system tends to stability, balance, stability.

In a simplified version, the increase in the entropy  $\Delta S$  of the system is a quantitative measure of the disorder, which is determined by the number of admissible events  $N$  related to the system. That is,  $\Delta S \sim \ln N$ . The entropy of the system is the greater, the more there are admissible options for its states from the future, and related events that determine these states in the antecedent to the present. This means that for the future time the number of undefined states is  $N_F \gg 1$ , and for the present time there is only one, quite definite state  $N_H = 1$ , which is now happening. The transition from  $N_F \gg 1$  to a well-defined  $N_H = 1$  is carried out at the desired time  $\Delta\tau \rightarrow 0$ , which precedes the present. Therefore, the condition  $\Delta S_F \gg \Delta S_H$  is always satisfied as shown in Figure 3. And the risk of getting a well-defined event from the future is always equal to  $R \cong (S_F - S_H)/\Delta S_F = 1$  in the transition from risk uncertainty to a certain event of the present.



**Figure 3.** Entropy of risk in the ratio of time "ST" and event "SS" measurements

The opposite of the unidirectional arrow of time and entropy, on the one hand, and the scale of events, on the other, is emphasized by their main properties. For the arrow of time and entropy, this is the sequence and inevitability of the onset of the subsequent time, the subsequent

---

dissipation of energy or information, etc. For the scale of events, this is the uncertainty and palliativeness of the states that have not yet arrived.

The same applies to such an indicator of the system as the risk associated with its existence and operation. Formally, in the coordinates  $R = \Phi(\Delta S)$ , for the first time, there are interdependent probabilistic characteristics: risk and entropy.

## METHODOLOGY

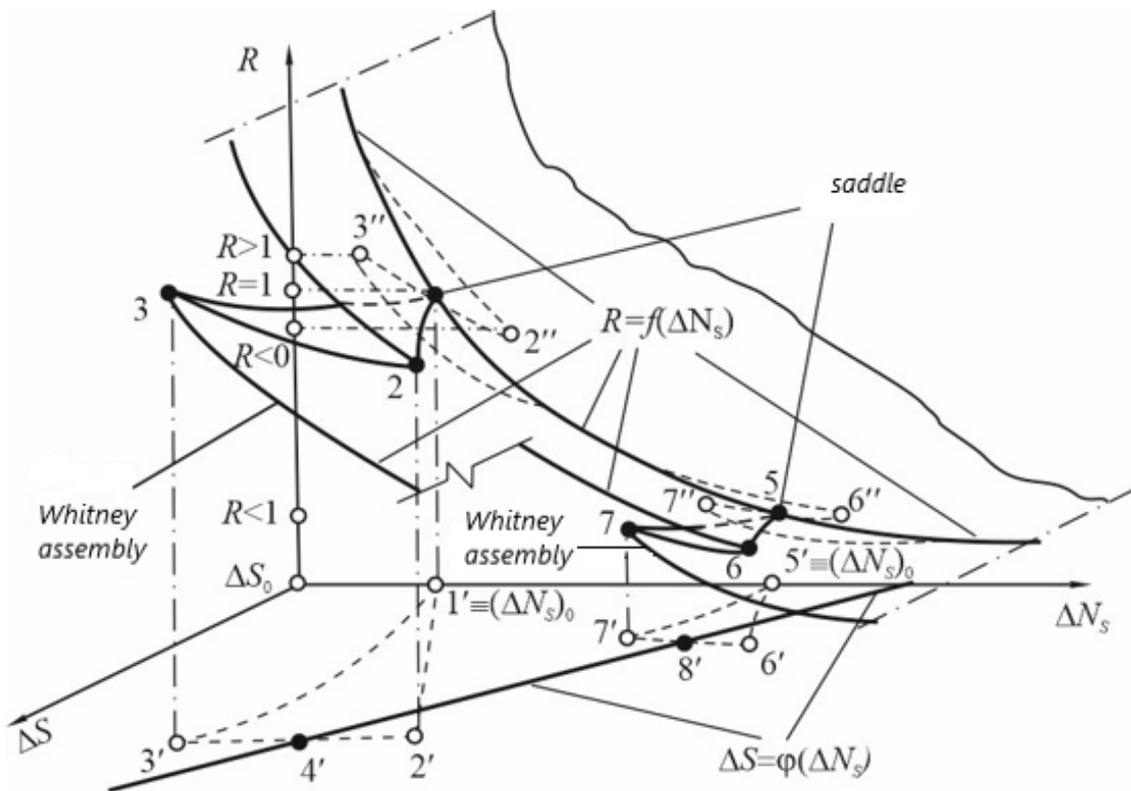
We may be interested in the risks associated with production activities and production systems. As a rule, such systems are structured, fully manageable and predictable. Information about the state of the production system is, of course, related and refers to the technical system by which the production is carried out and to the technological process, that is, the sequence of programmed actions, physical, chemical, mechanical and other effects, material and energy flows involved in production, It also applies to a person, an employee, an operator, his actions, mistakes. The variety of all these indicators gives the normative, including the related information, state of the production process. At the same time, for a variety of reasons, these standard indicators change their initial values depending on external conditions, changes in related industries, wear and tear of the technical system, the influence of the human factor. All this leads to a certain informational distortion of the state of a large production system. Distortions in information lead to distortions, adjustments to the conditions of the technological process, changes in the operation of a technical system and its elements, to a change in the conditions of a person's work.

All this is the reason that when the system enters an abnormal mode of operation, they, under certain circumstances, will lead to an emergency. Therefore, it should be taken for granted that the conditions of emergency operation and the associated risks are determined, first of all, by the state of information about the state of the production system, its insufficiency or redundancy, loss of orderliness of information, its distortion and, most importantly, lack of response to this information. That is, to changes in entropy in the system.

Information about the normative state of the system can be known in advance and remain in the past, that is, be available, for example, in the "cumulative capacity of events" as shown in Figure 1. In the process of work, it can change, be distorted, deviate from what is laid down in the normative documentation and become known at the last moment and only with a certain degree of probability. So, we come to understand that we are dealing with information

uncertainty. Moreover, the degree of uncertainty depends on the number of possible (assumed) states of the system, including dangerous or, conversely, safe.

Making a decision under risk conditions is, in essence, either avoiding danger (state "0"), or the onset of a dangerous event - "1". It becomes clear that in the first case the system has an organized character, in the second case we are dealing with a destructive system and with high entropy. This means that the calculation of the uncertainty is possible. The latter statements allow us to create a model of interaction of the main parameters, which, in our opinion, should be taken into account in risk management, namely, the change in non-entropy  $\Delta N_s$ , entropy ( $\Delta S$ ) and risks ( $R$ ) in the coordinate space. Formation of risk uncertainty in one of the coordinate grids in conditions of bifurcation along the coordinates  $R(\Delta N_s)$  shown in Figure 4.



**Figure 4.** Formation of risk uncertainty in one of the coordinate grids in conditions of bifurcation along the coordinates  $R(\Delta N_s)$

On the graph, the saddle of the Whitney assembly (point 1) is located on the coordinate plane  $R(\Delta N_s)$  and corresponds to the coordinates  $\Delta N_s = (\Delta N_s)_0$  and  $R \sim 1,0$ . Moreover, the saddle of the assembly, point 1 (and 5, respectively) is always located on the curve  $R = f(\Delta N_s)$ . This is the limiting point after which the system enters the real time interval with a bifurcation, for example, in the form of a Whitney assembly (points: 1-2-3 and 5-6-7). The loop of the

Whitney assembly in the coordinate space  $R, \Delta S, \Delta N_s$  follows the shape of the curve  $R = f(\Delta N_s)$  on the corresponding coordinate plane. And the projection of the current saddle point (4') of the Whitney assembly is always tied to the coordinate dependence  $\Delta S + \Delta N_s = S_{max}$ .

Thus, a smooth and unambiguous dependence of the type  $R = f(\Delta N_s)$  receives uncertainty, in this case, the Whitney assembly (or other catastrophe), which occurs in the form of a risk event with an increase in entropy from  $\Delta S_0$  and above  $\Delta S \geq \Delta S_0$ ) in the period before the present time, and which will instantly grow into a real event, one of two or three reflected in the Whitney assembly illustrated in Figure 2, either it will be point (2) for which  $R < 1,0$ , or it there will be point (1) for which a risk event  $R = 1,0$  will take place, or for point (3) we get a hypothetical event with  $R > 1.0$ . There may be more than three possible variants of alternative events, but in this case, more complex dependencies of bifurcations such as dovetail, umbilic, etc. should be used [3].

The problem of finding one single option from a set of uncertain events can have a solution according to the theory of catastrophes. Calculated dependencies for determining a unique variant of an event from the area of bifurcation uncertainty for some disasters shown in Table 1.

**Table 1.** Calculated dependencies for determining a unique variant of an event from the area of bifurcation uncertainty for some disasters. (here  $M = x^2 + \Delta\tau$ ,  $N = y^2 + \Delta\tau$ )

№	Disaster name	The equation Disasters	Equation solution	Disaster risk
1	Fold	$E = Mx$	$x_1, x_2, x_3$	0,333
2	Build Whitney	$E = x[Mx + a]$	$x_1, x_2, x_3, x_4$	0,25
3	Dovetail	$E = x\{x[Mx + a] + b\}$	$x_1, x_2, x_3, x_4, x_5$	0,20
4	Butterfly	$E = x(x\{x[Mx + a] + b\} + c)$	$x_1, x_2, x_3, x_4, x_5, x_6$	0,16
5	Ombilica hyperbolic	1. $E = x(M + 0,5y) + y(N + 0,5x)$	$x_1, x_2, x_3, y_1, y_2, y_3$	0.333
		2. $3x^2 + ay + c = 0$ 3. $3y^2 + ax + c = 0$	$x_1, x_2, y_1, y_2$	0,25
6	An endless sequence of forms for one variable	$E = x^{\alpha+1} + x^\alpha + \dots \cdot \beta$	$x_i, i = 1,1, \alpha$	0,9(9)

## RESULTS AND DISCUSSIONS

We will show how some risks from the occurrence of systemic accidents in power systems and approaches to their management are determined. The main challenge is to ensure a safe energy supply and reliable supply management. Equipment: high-voltage main and

---

distribution power lines, transformers, electrical generating capacities of all types. Each node has its own vulnerability due to the onset of risk events [6-8].

These events include:

- natural events (floods, storms, bad weather, rains, earthquakes, tornadoes, mudstorms, extreme changes in air temperature, meteorological disasters);
- equipment malfunctions caused by wear, material fatigue, changes in operating conditions;
- human errors during operation;
- offenses related to artificial interference by special people, cybercrime;
- terrorism artificial destruction of the power supply system.

In electrical safety, there are three standard types of failures in electrical equipment. These are: a standard accident, which refers to the failure of one element of the system; non-standard accident associated with the simultaneous failure of two or more elements at the same time; critical accident associated with a failure due to improbable events.

The most typical events associated with the risk of disruption in the operation of linear electrical equipment:

- high wind speed (1);
- extremely high (2) or extremely low (3) temperature;
- heavy precipitation in the form of rain (4) or snow (5);
- adhesion of snow (6) icing of wires (7);
- snow storms (8);
- flood (9);
- landslides initiated by extreme precipitation (10);
- thunderstorms (11);
- snow avalanches (12);
- earthquakes (13);
- tsunami (14);
- forest and other fires (15);
- storms and hurricanes (16).

The occurrence of such events can be classified according to the seasons: winter (W), winter-spring (W-Sp), spring (Sp), spring-summer (Sp-Su), summer (Su), summer-autumn (Su-Ot), autumn (Ot), autumn-winter (Ot-W) depending on meteorological, average climatic and

other natural conditions. The matrix of cascading events, when each subsequent event is the cause of the previous one and, in turn, becomes the cause of the subsequent event, is presented in Table. 2.

**Table 2.** Matrix of possible events associated with risks for the linear power supply system due to natural causes

Period of the year	Developments															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
W	«1»	«1»	«1»	0	«1»	«1»	«1»	«1»	0	0	0	0	0	0	0	«1»
W-Sp	«1»	«1»	«1»	«1»	«1»	«1»	«1»	«1»	«1»	«1»	0	0	0	0	0	«1»
Sp	«1»	«1»	«1»	0	«1»	0	0	0	0	0	«1»	0	0	0	0	«1»
Sp-Su	«1»	«1»	«1»	«1»	0	0	0	0	0	2	«1»	0	0	0	0	0
Su	0	«1»	«1»	«1»	0	0	0	0	0	0	«1»	0	0	0	0	0
Su-Ot	«1»	«1»	«1»	«1»	0	0	0	0	0	«1»	«1»	0	0	0	0	«1»
Ot	«1»	«1»	«1»	«1»	«1»	0	0	0	0	0	0	0	0	0	0	«1»
Ot-W	«1»	0	«1»	«1»	«1»	«1»	0	0	0	0	0	0	0	0	0	«1»

As investigated, for example, consider the group of events "5" - "8", which occur in the winter-spring period of the year. As a matrix of cause-and-effect relationships, we will take the time period of interest to us, February 20-March 10 (Table 3).

**Table 3.** Incident matrix for selected events that can disrupt the operation of the electricity transmission system

Days of the period	Developments					
	«5»	«6»	«7»	«8»	«9»	«10»
20.02.	6	4	3	0	0	1
21.02.	12	6	8	0	0	1
22.02.	0	0	0	0	1	0
23.02.	5	0	0	0	0	0
24.02.	8	5	5	1	0	0
25.02.	22	11	3	1	0	0
26.02.	11	5	4	1	0	1
27.02.	14	0	7	0	0	0
28.02.	16	0	4	0	0	0
01.03.	0	0	0	1	1	1
02.03.	0	0	0	1	0	0
03.03.	0	0	0	0	0	0
04.03.	4	0	0	0	0	1
05.03.	7	1	3	0	0	0
06.03.	2	0	0	1	1	0
07.03.	0	0	0	0	0	0
08.03.	3	0	0	0	0	0
09.03.	5	1	0	0	0	0
10.03.	0	0	0	0	0	0

In particular, the projected time period on March 27 includes increased risks associated with precipitation in the form of snow (14 cases during the study period) and glaciation of conductive wires (7 cases). Bifurcation uncertainty in this case has the character of a fold catastrophe and has three solutions to the equation  $\Delta E = x(x^2 + \Delta\tau)$ . With a constant potential of the system, the calculated values of the risks are here  $x_{1,2} = \sqrt{-\Delta\tau}$ ,  $x_3 = 0$ , the solution of which, taking into account expression (2), represents the result of a choice of two options: heavy precipitation in the form of snow, or icing of wires.

The check is carried out using the regression equation between the energy potential and the significant indicators of the system. The regression equation obtained on the basis and calculation of the number of events associated with the influence of climatic conditions on the state of emergency power transmission lines (see Tables 3 and Tables 4) has the form

$$\Delta E = 7,1 \cdot 10^{-6}x^4 - 1,3 \cdot 10^3x^2 + 0,37x$$

and

$$d(\Delta E)/dx = 28,4 \cdot 10^{-6}x^3 - 2,6 \cdot 10^3x + 0,37 = 0.$$

Empirical dependences have their analogues in the theory of catastrophes, as it shown in Table 2, in the form of the Whitney assembly, where the parameter  $\Delta\tau = 1,3 \cdot 10^3$ , or 0.36 of hours. According to the regression equation, the parameter  $a = 0,37$ . Let's first assume that  $x \leq 1,0$ . Then, omitting the first polynomial of the equation, its solution will become  $x = 0,14 \cdot 10^{-3} \ll 1,0$ .

The actual level of risk associated with the two parameters shown will be equal to one, if we assume that in the present time two indicated events will occur at once and one should prepare for them in combination. This prevents the possibility of a risk event and emergency. For a time interval of 0.36 hours, such a forecast gives more accurate statistics on the obtained climatic precipitation in the form of snow and glaciation of wires, and therefore requires appropriate preparations for work related to snow removal. Even if, due to other random events, the corresponding risks are not justified, and such natural phenomena do not occur on this particular day, the measures may have a preventive value, the meaning of a training session, etc. But at the same time, preparedness for their implementation will cause the prevention of their consequences for a large engineering system.

---

## CONCLUSION

Probabilistic methods for assessing the risks of events have their drawbacks, which are difficult for an objective assessment of the risk itself at the time of its occurrence. The reason lies in the uncertainty inherent in the concept of the probability of an event, as a function of a possible state, but far from reality. It is proposed to use one of the bifurcation states to assess the risk of an event in the present time, as a function of certain energy indicators of the system (entropy), which can accumulate in some future as the most reliable forecast and transit at the present time in the form of a well-defined value through a buffer transition from an indefinite state to certainty in the time period  $\Delta\tau \rightarrow 0$  preceding the present. This approach, as a first approximation, allows you to avoid probabilistic uncertainty in the calculations of the risk parameters of the system.

## REFERENCES

1. Hawking S. (1998). *A Brief History of Time*. US, New York City: Bantam Books.
2. Bogdanov A. (1989). *Tectology (General organizational science)* (In 2 books): Book. 1: Editorial board L. I. Abalkin (editor-in-chief) et al., Branch of Economics of the USSR Academy of Sciences. Institute of Economics of the Academy of Sciences of the USSR, Moscow: Economics.
3. Poston T., Stewart I. (2012). *Catastrophe Theory and Its Applications (Dover Books on Mathematics)* (1st Ed.). US, New York City: Dover Publications.
4. Saunders P. (2010). *An Introduction to Catastrophe Theory* (1st Ed). US, Cambridge, Cambridge University Press.
5. Wildgen, Wolfgang (1982). *Catastrophe Theoretic Semantics. An Elaboration and Application of René Thom's Theory*. Netherlands, Amsterdam: Benjamins.
6. Turner W. C. (2004). *Energy management handbook*. Lilburn: The Fairmont Press, Inc. – ISBN 0-88173-460-8.
7. Thumann A. (2012). *Handbook of energy audits*. Boca Raton, London: CRC Press, Taylor & Francis Group. – ISBN 978-1-4665-6162-5.
8. Goswami D. Y. (2016). *Handbook of energy efficiency and renewable energy*. New York: CRC Press, Taylor & Francis Group.

---

**RECENZENTAI/ REVIEWERS:**

- Prof. habil. Ph. D. Žaneta Simanavičienė, Mykolas Romeris University, Lithuania
- Prof. Ph. D. Rūta Adamonienė, Mykolas Romeris University, Lithuania
- Prof. Ph. D. Piotr Bogdalski, Police Academy in Szczytno, Poland
- Prof. Ph. D. Martina Blaškova, Police Academy of the Czech Republic, Czech Republic
- Prof. Ph. D. Tatjana Polajeva, EuroAcademy, Estonia
- Prof. Ph. D. Žaneta Navickienė, Mykolas Romeris University, Lithuania
- Prof. Ph. D. Vaiva Zuzevičiūtė, Mykolas Romeris University, Lithuania
- Prof. Ph. D. Orekhova Tatjana Viktorovna, DIA Academy of Economics, Bulgaria
- Prof. Ph. D. Mihaela Gavrilă, Sapienza University, Italy
- Prof. Ph. D. Birutė Pranevičienė, Mykolas Romeris University, Lithuania
- Prof. Ph. D. Saulė Petronienė, Kaunas University of Technology, Lithuania
- Prof. Ph. D. Violeta Vasiliauskienė, Mykolas Romeris University, Lithuania
- Assoc. prof. Ph. D. Aurelija Pūraitė, Mykolas Romeris University, Lithuania
- Assist. Prof. Ph. D. Lienite Litavniece, Rezekne Academy of Technologies, Latvia
- Assoc. Prof. Ph. D. Laetitia Langlois, Angers University, France
- Assoc. Prof. Ph. D. Tiina Koivuniemi, Police University College, Finland
- Assoc. Prof. Ph. D. Cristian-Eduard Stefan, Police Academy “Alexandru Ioan Cuza”, Romania
- Assoc. Prof. Ph. D. Andrej Sotlar, University of Maribor, Slovenia
- Assoc. prof. Ph. D. Laima Ruibytė, Mykolas Romeris University, Lithuania
- Assoc. Prof. Ph. D. Tiina Koivuniemi, Police University College, Finland
- Ph. D. Linas Meškys, Vytautas Magnus University, Lithuania
- Ph. D. Ramunė Jakštienė, Mykolas Romeris University, Lithuania
- Ph. D. Agnė Margevičiūtė, Mykolas Romeris University, Lithuania
- Ph. D. Eglė Štareikė, Mykolas Romeris University, Lithuania
- Ph. D. Janina Juškevičiūtė, Mykolas Romeris University, Lithuania
- Lect. Kristina Mikalauskaitė-Šostakienė, Mykolas Romeris University, Lithuania
- Lect. Daiva Bereikienė, Mykolas Romeris University, Lithuania

---

## REQUIREMENTS FOR THE PREPARATION OF AN ELECTRONIC FORM OF AN ARTICLE

Unedited articles are being published in a periodical peer reviewed journal “Public Security and Public Order”. The content of such articles associates with various aspects of public security. Original, topical and corresponding the requirements articles can be placed in CEPOL data basis according to the recommendations of the editorial board.

The article should identify the purpose of the scholarly analysis, its object and methods and prior coverage of the issue. It should include research results, conclusions and the list of sources. The article should be reviewed by two members of an editorial board or other two selected reviewers.

The article should comply with the following structure:

1. Title.
2. Author, an institution the author is representing, its address, email.
3. A detailed summary (at least 600 symbols) in the language the article is written in. The summary should briefly present the content of the article, identify the issues analyzed, and should include the basic 4-5 keywords).
4. Introduction. It should address the topicality of the topic of the article, identify the purpose of the scholarly analysis, its object and method and prior coverage of the issue.
5. The main text should include detailed analysis of the topic. It is recommended to divide the text into parts and subparts ( e.g.1.2.1.,2.2.1., etc.).
6. The article should be finalized with substantiated conclusions and recommendations.
7. The list of sources should include all sources referred to in the article. It should comply with the following structure: firstly, the primary legal sources in a hierarchical order ( i.e. Constitution, laws, by-laws, etc.), followed by case law. This should be followed by scholarly writings listed in alphabetical order, and other sources (<https://www.mendeley.com/guides/harvard-citation-guide>).
8. If an article is published in Lithuanian, it should be followed with a detailed summary and keywords in English. The summary should be at least 600 symbols long.

The manuscript should be 1.5 spaced on one side of an A4 list paper, margins 25 mm. The article should be no longer than 18 pages.

Pictures, schemes, diagrams and tables may be presented in the following formats: Tagged Image Format File (TIFF), Word for Windows, Corel Draw, Excel. Text editor – Microsoft Word.

---

An article will be reviewed by at least two scholars, specializing in the area relating to the topic of an article. At least one of them will be from a different institution than Mykolas Romeris University.

Articles have to be presented to the managing editor editor via OJS platform <https://www3.mruni.eu/ojs/vsvt> : by April 15 (for the first edition of the year) by October 15 (for the second edition of the year).

---

Autorių kolektyvas

**Visuomenės saugumas ir viešoji tvarka (25):** mokslinis žurnalas. – Kaunas: Mykolo Romerio universiteto Viešojo saugumo akademija, 2020. – 436 p.

ISSN 2029–1701 (print) ISSN 2335–2035 (online)

**VISUOMENĖS SAUGUMAS IR VIEŠOJI TVARKA (25)**

**Mokslinis žurnalas**

**PUBLIC SECURITY AND PUBLIC ORDER (25)**

**Research Journal**

Atsakingasis redaktorius – prof. dr. Rūta Adamonienė  
Atsakingojo redaktoriaus pavaduotoja – doc. dr. Aurelija Pūraitė

Vykdantysis redaktorius – doc. dr. Algirdas Muliarčikas

Maketavo – Pavel Lesko ir Nėlė Visminienė

2020-12-15

31 autorinis lankas

Išleido Mykolo Romerio universiteto Viešojo saugumo akademija

Maironio g. 27, LT- 44211, El. paštas [vsa@mruni.eu](mailto:vsa@mruni.eu)

Kaunas 2020 m.

Tinklapis internete [www.mruni.eu](http://www.mruni.eu)

<https://www3.mruni.eu/ojs/vsvt/index>